

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 November 2024

Public Authority: Cabinet Office
Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant has requested information on the number of occasions in 2022 when advice given to the Prime Minister or Cabinet Secretary by the Cabinet Office's Propriety and Ethics Team (PET) concerning a ministerial conflict of interest, was actioned by the relevant minister and was not actioned by the relevant minister.
2. Following the Commissioner's decision notice and step ordered in IC-229622-T9H4¹ (27 March 2024), the Cabinet Office confirmed that they held the information requested but that this was exempt from disclosure under section 36(2)(c)(prejudice to the effective conduct of public affairs) and that the balance of the public interest favoured maintaining the exemption.
3. The Commissioner's decision is that the information requested is exempt under section 36(2)(c) and that the public interest balance favours maintaining the exemption.
4. The Commissioner does not require any further steps by the Cabinet Office.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2024/4029332/ic-229622-t9h4.pdf>

Request and response

5. On 30 November 2022, the complainant wrote to the Cabinet Office and requested information in the following terms:

'1) Please state the number of occasions in the 2022 calendar year that the propriety and ethics team gave advice to the

- (a) prime minister
- (b) cabinet secretary

In relation to a ministerial conflict of interest.

2) Please state the number of occasions in the 2022 calendar year that the propriety and ethics team gave advice to the

- (a) prime minister
- (b) cabinet secretary

about a ministerial conflict of interest where that advice was

- (a) actioned by the relevant minister
- (b) not actioned by the relevant minister

3) If any case management database is used by the propriety and ethics team for managing cases of a potential ministerial conflict of interest, please state the name of that database (for example, the ministerial interests case management system)'.

6. The Cabinet Office responded to the request on 20 February 2023 and advised that in respect of parts 1 and 2 of the request, they could neither confirm nor deny (NCND) whether they held the requested information by virtue of section 36(3) of FOIA (prejudice to the effective conduct of public affairs). In respect of part 3 of the request the Cabinet Office advised that they were refusing the same as vexatious under section 14(1) of FOIA.
7. Following an internal review on 3 May 2023, the Cabinet Office withdrew their reliance on section 14(1) in respect of part 3 of the request and instead applied section 36(3) to the same.
8. During a subsequent investigation by the Commissioner, the Cabinet Office revised their position in respect of parts 1 and 2 of the request. They confirmed that they did hold the information requested in part 1

but that this was exempt from disclosure under sections 36(2)(b)(i), (ii) and (c). In respect of the information requested in part 2 of the request, the Cabinet Office confirmed that they did not hold this information.

9. The Commissioner's subsequent decision notice of 27 March 2024 (IC-229622-T9H4) found that the information requested in part 1 of the request was not exempt under sections 36(2)(b)(i) and (ii) but was exempt under section 36(2)(c) and the public interest balance favoured maintaining the exemption. In respect of part 3 of the request the Commissioner found that the Cabinet Office were correct to NCND whether they held the information requested under section 36(3).
10. However, in respect of the information requested in part 2 of the request, the Commissioner found, on the balance of probabilities, that the information **was** held by the Cabinet Office. The Commissioner's decision notice therefore ordered the Cabinet Office to either disclose this information to the complainant or provide him with a fresh response explaining why the information was exempt from disclosure.
11. On 30 April 2024, the Cabinet Office complied with the decision notice and provided the complainant with a fresh response to part 2 of his information request. They stated that they considered that their original response to the request had been correct but that the Commissioner had taken a different interpretation than them of the word 'actioned'. In IC-229622-T9H4, the Commissioner had found (paragraph 129) as follows:

'The Commissioner does not agree with the Cabinet Office's contention that the complainant's request, as worded, requires a value judgement and therefore does not constitute a valid information request for recorded information. The fact that civil servants would not **formally** record whether or not a Minister had actioned advice received does not necessarily mean that the Cabinet Office would not hold information showing whether or not a Minister had actioned (i.e. followed or heeded) the advice. Specifically, just because the PET are not responsible for Ministerial accountability does not necessarily mean that they (or the Cabinet Office) would not hold recorded information which shows or indicates whether a Minister has or has not actioned advice provided by the PET to the Prime Minister or the Cabinet Secretary'.
12. The Cabinet Office advised the complainant that, 'in the interests of using public funds efficiently', they had decided not to appeal the Commissioner's decision notice and had conducted further searches in light of the Commissioner's interpretation of part 2 of the request. This meant that, in order to comply with the decision notice, the Cabinet Office had re-interpreted 'actioned' as meaning, 'any next steps taken after advice was given regarding ministerial interests'. Consequently, following a search of their records, the Cabinet Office advised the

complainant that they held information in scope of part 2 of his request but that this information was exempt from disclosure under section 36(2)(c) of FOIA. This was because, in the opinion of the qualified person, its disclosure would otherwise prejudice the effective conduct of public affairs.

13. In respect of the public interest test, the Cabinet Office stated that they recognised that there is a public interest in transparency, 'particularly in relation to the interests that ministers hold and how they are handled, given ministers' key positions in public life'.
14. However, the Cabinet Office stated that a significant amount of information is already placed in the public domain about the ministerial interests process through the regular publication of the List of Ministers' Interests, which contains the details of the interests of every minister as the Independent Adviser deems necessary for publication². Additionally, where there have been investigations relating to the interests of individual ministers, the findings of these have been published by the Independent Adviser on GOV.UK. The Cabinet Office gave the example of the case of the former minister, Rt Hon Nadhim Zahawi MP³.
15. Furthermore, the Cabinet Office advised that they judged that releasing information could lead to inaccurate inferences being made about the ministerial interests process because of the nature of the information requested. They explained that:

'For example, if the information was disclosed and the number of pieces of advice regarding conflicts of interest was misconstrued as very large or very small, this could lead to erroneous assumptions about the underlying issues or the nature of the advice that was offered. Releasing this information would therefore not be in the public interest, as it would not enhance public understanding of the ministerial interests process, and could subsequently reduce public confidence in the process on the basis of a misunderstanding'.
16. The Cabinet Office contended that even disclosing numerical data about advice given to ministers would have a chilling effect on the recording of information, with knock-on impacts on the ministerial interest process. The Cabinet Office stated that their application of the exemption was 'concerned with the effects of making the information public and the long-standing precedent of not disclosing information regarding

² <https://www.gov.uk/government/publications/list-of-ministers-interests>

³ <https://www.gov.uk/government/publications/advice-from-the-independent-adviser-on-ministers-interests-january-2023/letter-from-sir-laurie-magnus-to-the-prime-minister-29-january-2023--2>

individual cases or advice to the Prime Minister'. They contended that, 'routine disclosure of the information sought would erode the ability of future officials to give advice to the Cabinet Secretary and Prime Minister in confidence, including on matters outside the ministerial interest process'.

17. The Cabinet Office stated that:

'It is a longstanding convention, maintained across multiple administrations – and accepted by Parliament – that the government does not comment on advice that officials may or may not give to the Prime Minister. This is highlighted through recent oral evidence sessions with the Public Administration and Constitutional Affairs Committee on 26 April 2021⁴, 28 June 2022⁵, and 12 July 2023⁶, in which the Cabinet Secretary and Darren Tierney, Cabinet Office Director General for Propriety and Constitution, reiterated the need for confidentiality in individual cases and did not disclose details of advice given to the Prime Minister'.

18. Taking into account all the circumstances of the case, the Cabinet Office determined that the balance of the public interest favoured withholding the information held within part 2 of the complainant's request.

Scope of the case

19. The complainant contacted the Commissioner on 2 May 2024 to complain about the Cabinet Office response to part 2 of his request.

20. In his complaint to the Commissioner the complainant contended that the public interest 'clearly lies in transparency' for the same public interest reasons which he had previously provided and which had been considered by the Commissioner, in decision notice IC-29622-T9H4. The complainant contended that there is a clear public interest, 'in understanding if PET advice has not been followed in any cases'.

21. In view of the time that had passed since the complainant's request, and it having already been the subject of that decision notice, the Commissioner accepted the complainant's complaint without the need for an internal review.

⁴ committees.parliament.uk/oralevidence/2084/pdf/

⁵ committees.parliament.uk/oralevidence/10485/pdf/

⁶ committees.parliament.uk/oralevidence/13497/pdf/

22. During the course of his investigation the Commissioner had sight of the withheld information and supporting submissions from the Cabinet Office.
23. The Commissioner considers that the scope of his investigation is to determine whether the Cabinet Office were correct to withhold the information requested in part 2 of the request under section 36(2)(c) of FOIA.

Reasons for decision

24. Section 36(2)(c) states that:

'(2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act:

- (c) Would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs'.

25. In deciding whether section 36(2)(c) is engaged, the Commissioner must determine whether the qualified person's opinion was a reasonable one.
26. Further, in determining whether the opinion is a reasonable one, the Commissioner takes the approach that if the opinion is in accordance with reason and not irrational or absurd – in short, if it is an opinion that a reasonable person could hold – then it is reasonable. This is not the same as saying that it is the only reasonable opinion that could be held on the matter. The qualified person's opinion is not rendered unreasonable simply because other people may have come to a different (but equally reasonable) conclusion. It is only not reasonable if it is an opinion that no reasonable person in the qualified person's position could hold. Nor does the qualified person's opinion have to be the most reasonable opinion that could be held; it only has to be a reasonable opinion.
27. The Cabinet Office advised the Commissioner that the qualified person in this instance was Baroness Neville-Rolfe, then Minister of State at the Cabinet Office. The Minister provided her opinion on 25 April 2024 that section 36(2)(c) was engaged on the basis that disclosure would otherwise prejudice the effective conduct of public affairs. The Commissioner was provided with copies of the submissions to the qualified person and confirmation of her opinion.
28. It is important to be clear that the exemptions contained in section 36 focus on the processes that may be inhibited, rather than what is in the

withheld information. The issue, in this case, is whether the qualified person's opinion that disclosure of the information would otherwise prejudice the effective conduct of public affairs is a reasonable one.

29. In submissions to the Commissioner, the Cabinet Office advised that as the information requested by the complainant in part 2 of his request was 'effectively a subset' of the information requested in part 1 of the request (which the Commissioner had previously found exempt from disclosure under section 36(2)(c)), their arguments for the application of the exemption in the present case were the same as for those in the previous case. Those arguments had been submitted to the qualified person, who had agreed with the same in her aforementioned opinion provided in this case.
30. In IC-229622-T9H4 (27 March 2024), the Cabinet Office had explained (in respect of the information requested in part 1 of the complainant's request) that their application of the exemption was concerned with the effects of making the information public and the long-standing precedent of not disclosing information regarding individual cases or advice to the Prime Minister. The Cabinet Office advised that they considered that making public, information about advice from the PET to the Cabinet Secretary, Prime Minister or others, 'would encourage undue media speculation and comment about the ministerial interests and ministerial appointments processes'. The Cabinet Office contended that routine disclosure of the information requested would erode the ability of future PET officials (or other officials) to give advice to the Cabinet Secretary and Prime Minister in confidence, including on matters outside the ministerial interests process. The Cabinet Office stated that, 'it is a longstanding convention, maintained across multiple administrations – and accepted by Parliament – that the government does not comment on advice that officials may or may not give to the Prime Minister'.
31. Building on that position, the Cabinet Office stated that it would be a significant break in precedent, maintained across multiple administrations, for information to be routinely released into the public domain about the number of times that officials gave advice to senior officials/ministers, 'even if the advice itself were not released'.
32. The Cabinet Office contended that their position of confirming that the relevant information (numerical figure) is held and withholding that information is entirely consistent with the above precedent, 'which is a vitally important one for governments of all political persuasion'. The Cabinet Office noted that the precedent/convention had been recently demonstrated by the Director General Propriety and Constitution Group in oral evidence session with the Public Administration and Constitutional Affairs Committee (PACAC) on 12 July 2023.

33. The Cabinet Office maintained that if the information held was disclosed in response to the complainant's request, 'even statistics relating to the frequency of the requests' (for advice), it would be a significant erosion of this longstanding precedent that preserves the confidentiality of advice.
34. Furthermore, the Cabinet Office advised that they judged that releasing the information in scope could lead to inaccurate inferences about the ministerial interests process because of the nature of the information requested. For example, if the information was disclosed and the number of pieces of advice regarding conflicts of interest was misconstrued as very large or very small, this could lead to erroneous assumptions from the public that there are a very large number of propriety issues that need to be considered, or that the process of providing advice is not thorough enough, respectively. The assumptions that sit beneath the request mean there is an increased likelihood of such interpretations being made – and thus harms to the overall process being incurred.
35. Finally, in IC-229622-T9H4, the Cabinet Office had submitted to the Commissioner that the 'high bar' 'for considering a qualified person's opinion to be unreasonable should be given due weight.
36. The Cabinet Office contended that 'the submission, follow-up advice, and agreement from the qualified person clearly sets out why section 36(2) applies to the information in scope of this part (part 1) of the request. We contend that this judgement – coming from a minister who themselves has experience of participating in the ministerial interests process – is clearly an 'objectively reasonable' one and we cannot see convincing arguments to the contrary'. The Cabinet Office stated that they did not believe that the high bar had been reached for the qualified person's judgement (Baroness Neville-Rolfe) to be considered unreasonable, given that they could not see that the applicability of section 36 could be objectively characterised as 'absurd' or 'irrational'.
37. In the above case the Commissioner found that sections 36(2)(b)(i) and (ii) were not engaged in respect to part 1 of the complainant's request, for reasons which the Commissioner set out in his decision notice. However, the Commissioner considered that the arguments provided by the Cabinet Office in support of section 36(2)(c) were more persuasive and apposite. In paragraphs 75 and 76 of his decision notice, the Commissioner found that:

'The Commissioner agrees with the Cabinet Office that making information public about advice given by the PET to the Prime Minister and Cabinet Secretary, even numerical data alone, would encourage media speculation and comment about the ministerial interests and ministerial appointments processes. That speculation and comment

would be prejudicial as inaccurate inferences or assumptions could very easily be made, based upon the information disclosed. For example, if the number of occasions on which the PET had provided advice to the Prime Minister and the Cabinet Secretary were disclosed, and this was compared to media reporting of examples of alleged Ministerial misconduct during the year in question, were there to be an apparent discontinuity between the two, this could lead to inaccurate or wrongful assumptions being made.

As the Cabinet Office have contended, if the figure held (for pieces of advice) was disclosed, this could be misconstrued by the public as being very large or very small, leading to 'erroneous assumptions from the public that there are a very large number of propriety issues that need to be considered, or that the process of providing advice is not thorough enough, respectively'. The Commissioner considers that either outcome would be damaging to public confidence in the ministerial interests process, and would, consequentially, prejudice the effective conduct of the process by the PET'.

38. The Commissioner therefore found that the qualified person's opinion in relation to section 36(2)(c) was reasonable and so this exemption is engaged in respect to part 1 of the complainant's request.
39. In submissions to the Commissioner, the Cabinet Office stated that, 'the information in scope of this request is effectively a subset of information upon which the Commissioner has already taken a view'. The Commissioner notes that the Collins English Dictionary defines a subset as follows: 'a subset of a group of things is a smaller number of things that belong together within that group'.
40. However, in this case, the Commissioner does not consider that the information requested in part 2 of the request is a simple subset of the wider information in scope of part 1 of the request. Information that is a true subset of larger information is generally the same information just broken down into a more granular level. For example, an example of a request for a natural subset of the information in part 1 of the request would be the number of those occasions where the PET advice was that there was a ministerial conflict of interest and the number of those occasions where the PET advice was that there was no ministerial conflict of interest.
41. In contrast, the information requested in part 2 of the request is, regardless of the content or nature of that advice, the number of occasions that the relevant minister actioned (i.e. heeded or followed) the advice and the number of occasions that the relevant minister did not action (i.e. did not heed or follow) the advice. The Commissioner would agree and accept that the information in part 2 of the request is certainly linked to the information in part 1 of the request, but it is of a

sufficiently different order in scope and degree to set it apart from being an actual subset of that information.

42. This distinction notwithstanding, the Commissioner is satisfied that the opinion of the qualified person provided in the current case is a reasonable one and that section 36(2)(c) is engaged with respect to part 2 of the complainant's request. He agrees that the disclosure of the requested information would otherwise prejudice the effective conduct of public affairs, for the reasons previously found by the Commissioner in paras 75 and 76 of the aforementioned decision notice.
43. For example, hypothetically speaking, in an individual case, there may be entirely reasonable reasons why a minister may not have heeded such advice from the PET (e.g. the circumstances giving rise to a potential ministerial conflict of interest may have changed prior to the provision of the advice to the minister, rendering any action by the minister unnecessary or superfluous). Without such sensitive and confidential case specific information and context, inaccurate or wrongful assumptions/conclusions could be made from the disclosure of such numerical information.

Public interest test

44. Section 36 is a qualified exemption and in accordance with the requirements of section 2 of FOIA, the Commissioner must consider whether in all the circumstances of the case the public interest in maintaining the exemption cited outweighs the public interest in disclosing the information.
45. In considering complaints regarding section 36, where the Commissioner finds that the qualified person's opinion was reasonable, he will consider the weight of that opinion in applying the public interest test. This means that for section 36 cases where he has made such a finding the Commissioner accepts that a reasonable opinion has been expressed that prejudice or inhibition would, or would be likely, to occur, but he will go on to consider the severity, extent and frequency of that prejudice or inhibition in forming his own assessment of whether the public interest test dictates disclosure.
46. In his complaint to the Commissioner the complainant relied on the public interest arguments which he had made in respect of the previous linked case considered by the Commissioner (IC-229622-T9H4).
47. Essentially, the complainant had contended that very little information about how the PET operates is in the public domain, raising concerns about how effectively it operates and whether advice about the risks of political appointments are being appropriately made to the Prime Minister, or whether this advice is being followed. The complainant contended that, 'there is a clear public interest in some basic statistical

information about the case handling process being put in the public domain, and what is done with the advice which PET provides'. The complainant contended that if PET advice in handling conflicts of interest is not being actioned by ministers in all cases, then this raises serious concerns about the effectiveness of the PET's role as a safeguard for our political system, 'something about which there is a clear public interest in transparency'.

48. The complainant stated that if advice from the PET is being routinely ignored, and compliance with that advice is not being tracked, then this would raise serious questions about the suitability of the current management of ministerial interests. He contended that:

'If ministers are not following advice from the unit, this is something that the public has a right to know about those that spend their taxes and rule in their name, as it would raise serious questions about whether the rules ensuring propriety of ministers are sufficiently strong'.

49. The complainant stated that the workings of the PET are 'obscure' and there is little to no information on the Government website about how it operates in practice. He contended that:

'Apparent failures of the PET to be able to influence on conduct matters raises questions about how effective the unit is in general at ensuring propriety in government. I would argue that these failures strengthen the argument that there should also be greater transparency about how often their advice is being followed in relation to conflicts of interest'.

50. In his complaint in the present case, the complainant further contended that there is a 'clear public interest in understanding if PET advice has not been followed in any cases'.

51. In submissions to the Commissioner, the Cabinet Office similarly relied upon the arguments which they had made to the Commissioner in IC-229622-T9H4.

52. The Cabinet Office had noted that the scope of the complainant's request was limited to advice given by the PET and therefore excluded advice regarding ministerial conflicts of interest that might be provided from other sources (e.g. the Independent Adviser on Ministers' Interests, who is appointed by the Prime Minister to advise him on matters relating to the Ministerial Code. The post holder is independent of government and expected to provide impartial advice to the Prime Minister). The Cabinet Office stated that this means that any information in scope of the request as worded may necessarily only be a partial picture and could thus give an inaccurate or misleading picture about the totality of the ministerial interests process.

53. Fundamentally, the Cabinet Office contended that the complainant's premise for the public interest in his request appeared to be based on misunderstandings and that disclosure of the information held would not meet the public interest arguments advanced by the complainant.
54. The Cabinet Office advised that the request, 'assumes a certain model of compliance' which does not reflect the reality of the ministerial interests process'. The Cabinet Office stated that there is no ministerial 'compliance function', and the PET does not audit or enforce compliance with ministers (though officials do play an important role in the ministerial interests process, in particular, permanent secretaries across Whitehall, as set out in the Ministerial Code). The Cabinet Office stated that, 'such an assumption appears to reflect a misunderstanding of the general relationship between ministers and civil servants'.
55. Rather than being 'obscure', the Cabinet Office advised that the role and various teams of the PET has been explained to Parliament, including to the PACAC on 28 June 2022. They advised that further information about the ministerial interests process is set out in the twice-yearly List of Ministers' Interests, and has been discussed in Parliament extensively.
56. The Cabinet Office stated that the complainant's submissions around advice being 'ignored', 'is an unduly loaded phrase and does not reflect the constitutional settlement whereby officials give advice and ministers make decisions'. The Cabinet Office cited the following from the Ministerial Code:
- 'It is not the role of the Cabinet Secretary or other officials to enforce the Code. The Prime Minister's Independent Adviser has a role, set out in Terms of Reference published by the Prime Minister, in advising the Prime Minister and Ministers about adherence to the Code. Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Code and for justifying their actions and conduct to Parliament and the public'.
57. The Cabinet Office noted that the assumption that officials do enforce compliance with the Ministerial Code appeared to be based on a misunderstanding of the Code.
58. The Cabinet Office highlighted the Commissioner's decision in FS50849464⁷ (3 March 2020) which concerned a request to the Cabinet Office for information on the number and distribution of Ministerial

⁷ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2617398/fs50849464.pdf>

Misconduct complaints for a number of specified years. In that case, which involved section 40(2)(third party personal data) and not section 36, the Commissioner found that in relation to a breakdown of how many complaints were made against each named Minister for each of the specified years, the Cabinet Office had been correct to withhold the information under section 40(2).

59. In that case the Commissioner found that:

'The information is purely numerical and does not take into account the severity of a complaint, for example, a procedural matter versus an allegation of harassment. The information will also include, as the Cabinet Office notes, vexatious complaints and complaints ultimately not upheld. As a result, the Commissioner is not persuaded that disclosure of the requested information provides any real effective scrutiny of Ministerial conduct or the robustness and effectiveness of the complaints investigation process'.

60. In IC-229622-T9H4, the Cabinet Office stated that they believed that the Commissioner's above finding as to information concerning 'ministerial conduct', would also be an apt assessment of the information requested by the complainant in the present request (i.e. ministerial conflicts of interest).

61. The Commissioner appreciated that there were parallels between the information requested in FS50849464 and that requested by the complainant in the present request. However, he noted that whilst the Cabinet Office withheld the number of complaints made against each named Minister for each of the specified years, they did disclose the information requested in part 1 of the request in FS50849464, specifically, 'how many Ministerial Misconduct complaints did the UK Government receive' for each of the specified years. That information was not linked or specific to any individual Minister, and nor is the information requested by the complainant in the present case.

62. Despite drawing some degree of comparison by citing the Commissioner's decision in FS50849464, the Cabinet Office contended that comparison of the ministerial interests process with that of ministerial conduct is flawed.

63. The Cabinet Office stated that it is not correct that there is a lack of transparency around the management of ministerial interests when the Independent Adviser on Ministers' Interests seeks to publish the List of Ministers' Interests twice-yearly. They advised that these publications include a description of how this process is conducted, as does the Independent Adviser's annual report. The Independent Adviser also appears at select committees to explain his work.

64. The Cabinet Office noted that whilst the complainant had included a public interest argument around whether advice about the risks of political appointments are being appropriately made to the Prime Minister, of the three specific cases which he had cited (Richard Sharp, Nadhim Zahawi and the interests of then Prime Minister Sunak's wife), two did not concern ministerial appointments, and all three had been subject to extensive public transparency, including via information put into the public domain via government publications or with cooperation and input from government.
65. The Cabinet Office contended that the disclosure of the information in scope of part 1 of the complainant's request would add very little, if anything at all, to the public understanding of these matters. The Cabinet Office stated that, 'it is hard to see a logical link between the release of such high-level information and the particular cases cited by the requester, for example, how it would help public understanding of 'what advice was given in relation to the appointment of Nadhim Zahawi as Chancellor, and whether it was followed'.
66. Finally, in submissions to the Commissioner in the present case, the Cabinet Office made the point that the disclosure of the information requested by the complainant in part 2 of his request, would provide no information without the context of the information in part 1 of the request, which the Commissioner had previously found to be exempt from disclosure under section 36(2)(c).

Commissioner's consideration

67. One of the central arguments in the complainant's public interest case for disclosure is his contention that there is very little information in the public domain about how the PET operates and that its workings are obscure. The Cabinet Office have disputed that contention and have sought to refute it by highlighting, by way of example, the appearance before the PACAC on 28 June 2022 of the Director General of the PET, Mr Tierney.
68. The Commissioner recognises and accepts that on that occasion Mr Tierney provided significant information about the structure and size of the PET and made clear that the team is very busy, being approached for advice by Ministers, special advisers and permanent secretaries. However, this information did not reveal much detail as to how the PET actually operates in practice, such transparency effectively being limited to the team spending, 'a lot of its time advising people on the best way to get Government business done within the codes and rules'.
69. The Commissioner notes that the Institute for Government states that the PET, 'support the prime minister and cabinet secretary when they need to take decisions about complaints and concerns about individuals'

behaviour under the Ministerial or Civil Service codes'⁸. However, this is similarly very broad based information and does not provide any detail as to how the PET go about providing that support.

70. Consequently, as previously stated in IC-229622-T9H4, the Commissioner would agree with the complainant that in respect of its actual case handling processes and detailed operational workings, it would appear that there is little information in the public domain about the PET.
71. However, in the above case the Commissioner did not consider that the disclosure of a numerical figure, **in of itself**, would provide any useful or insightful information as to the processes of the PET in terms of its advice facility to the Prime Minister and Cabinet Secretary.
72. In addition, the already very limited public interest value and weight of the withheld information, is further reduced by the fact, as the Cabinet Office have noted, that the PET is not the only source of advice in respect of ministerial conflict of interest matters (i.e. others including the Independent Adviser on Ministerial Interests and departmental permanent secretaries).
73. In IC-229622-T9H4 the Commissioner found as follows (paragraphs 111 to 114:

'Therefore, the disclosure of the numerical figure held by the Cabinet Office, would not necessarily provide the complete picture as to advice given to the Prime Minister or Cabinet Secretary in respect of ministerial conflict of interest matters. For example, it would exclude any advice provided by Permanent Secretaries or the Independent Adviser on Ministerial Interests. Consequently, the Commissioner agrees with the Cabinet Office that the disclosure would give an inaccurate or misleading picture about the totality of the ministerial interests process. The Commissioner similarly agrees that some of the examples cited by the complainant (such as the Prime Minister's wife and Richard Sharp) do not concern ministerial conflict of interest matters and are therefore outside the scope of the request.

Conversely, it clearly cannot be the case, as contended by the Cabinet Office, that the public interest in the transparency of the ministerial interests and ministerial appointments processes, 'is already met by regular publications from the Prime Minister's Independent Adviser on Ministers' Interests'. As the Cabinet Office have noted, the Independent Adviser on Ministers' Interests is only one source of advice to the Prime

⁸ <https://www.instituteforgovernment.org.uk/explainer/cabinet-office>

Minister and is separate to any advice which might be provided to the Prime Minister (or Cabinet Secretary) by the PET, and it is the PET with which the complainant's request is concerned.

However, because the assumptions which lie behind the request appear to be flawed (i.e. the request appears to assume that all and any advice to the Prime Minister and the Cabinet Secretary on matters of ministerial conflicts of interest will come from the PET), the Commissioner agrees with the Cabinet Office that disclosure of the withheld information (numerical figure) could well lead to inaccurate and unhelpful inferences about the ministerial interests process. Seen in isolation from the wider picture and context of ministerial conflict of interest matters, the figure could, as the Cabinet Office have contended, be misconstrued as very large or very small.

The Commissioner considers that attempts could well be made to cross reference/connect the number of occasions when the PET provided the relevant advice to the Prime Minister and/or Cabinet Secretary to the number of ministerial conflict of interests matters reported in the public domain during 2022. However, such an exercise would be unreliable and of limited public interest value in terms of transparency and accountability, since the PET are not the only source of advice to the Prime Minister and/or Cabinet Secretary on such matters'.

74. However, the Commissioner considers that the information requested in part 2 of the request carries a separate and stronger public interest than the information requested in part 1. The Cabinet Office have contended that the information in part 2 of the request would provide no information without the context of the information in part 1 of the request but the Commissioner has difficulty in accepting that. As the complainant has correctly contended, there is a public interest in understanding if PET advice has not been followed in any cases. Disclosure of the information in part 1 of the request would not be necessary in order for disclosure of the information requested in part 2 of the request to serve the public interest propounded by the complainant. The public interest in knowing the number of occasions within the given year that ministers have not followed/heeded advice from the PET does not require knowing the total number of occasions that the PET provided advice to the Prime Minister or Cabinet Secretary about a ministerial conflict of interest.
75. The Commissioner recognises and appreciates that the PET has no power to enforce compliance by a minister with the ministerial interests process. However, given the serious nature of the work undertaken by the PET (i.e. propriety and ethics), it would reasonably be expected that a minister would follow/heed such advice, especially if that advice came via the Prime Minister or the Cabinet Secretary. Therefore, were there to have been any occasions during the period in question where a

minister did not follow or heed the PET advice, such information, even only numerical in nature, would carry a stronger and more specific public interest weight and value, in terms of transparency and accountability, than the more generalised information requested in part 1 of the request.

76. Therefore, whilst the Commissioner previously found that there is limited public interest in information as to number of times in 2022 that the PET gave advice to the Prime Minister or the Cabinet Secretary about a ministerial conflict of interest, the Commissioner considers that the information requested in part 2 of the request – in particular the figure for advice not actioned - carries a stronger and more specific public interest.
77. However, as noted in paragraph 43 above, the reason(s) for any minister(s) not actioning the relevant PET advice may well be one(s) which do not in any way reflect unfavourably or negatively upon the unnamed minister concerned. Without associated occasion specific information and context, the Commissioner considers that the public interest weight and value of the numerical information requested in part 2 of the request, whilst stronger and separate to the limited public interest attached to the information requested in part 1, is nevertheless insufficient to outweigh the strong public interest in protecting the effective operation of the PET advice process.
78. The Commissioner does not consider that disclosure of the information in part 2 of the request would cause harm to the degree and extent opined by the qualified person, but he does agree and accept that harm to the PET advice process would be so caused. Consequently, and taking into account all the circumstances of the case, the Commissioner is satisfied that the public interest in maintaining section 36(2)(c) to the information requested in part 2 of the request, outweighs the public interest in disclosure of the same.

Right of appeal

79. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

80. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

81. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Alexander Ganotis
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