

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 12 December 2024

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

### **Decision (including any steps ordered)**

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1. The complainant has requested demographic information relating to Cabinet attendees of ministerial and other ranks. The Cabinet Office stated that it did not hold some of the requested information and refused the remainder of the request under section 21 of FOIA (information reasonably accessible to the applicant). During the course of the Commissioner's investigation the Cabinet Office estimated that compliance with the request would exceed the appropriate limit at section 12 of FOIA.
2. The Commissioner's decision is that the Cabinet Office was entitled to rely on section 12 to refuse the entire request. No steps are required.

### **Request and response**

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3. The complainant submitted the following request to the Cabinet Office on 15 January 2024:

Please provide a breakdown of Cabinet attendees of ministerial and other ranks by age, ethnicities and gender for each Cabinet for the years 1974-2024.

Please include a column for each position, with different columns for departmental name changes. For example, the Minister of State for Brexit Opportunities and Government Efficiency would be one column filled for the 2020-2022 rows and blank for others.

Please create a new row with a relevant date and attendee age update for each personnel change.

Please include each entry in square brackets in each cell containing the name of the office holder and relevant demographic details. Please provide as much granularity for ethnicities as possible, with ethnicities again recorded in square brackets in the relevant cell to facilitate multiple entries, for example [David Cameron, [Jewish, Scottish], male, 57] in the current row in the Foreign Secretary column, and appearing in the 2010 row in the Prime Minister column as [David Cameron, [Jewish, Scottish], male, 43].

An example of the format with some columns filled based on the current Cabinet is below.

Date | Prime Minister | Deputy Prime Minister | Foreign Secretary | Home Secretary | Defence Secretary | Justice Secretary | ...  
 Jan 2024 | [Rishi Sunak, [Indian], male, 43] | [Oliver Dowden, [English], male, 45] | [David Cameron, [Jewish, Scottish], male, 57] | [James Cleverly, [Black African, English], male, 54] | [Grant Shapps, [Jewish], male, 55] | [Alex Chalk, [English], male, 47] | ...

In the same table, please also include one column for each ethnicity mentioned with information of representation of that ethnicity in the Cabinet in that particular row, and the proportion of that ethnicity in the general population as determined by the most recent contemporary census. For example the row created for present Cabinet attendees would use the most recent census data (using England and Wales census data only in this example) to include columns such as:

Date | ... | Black African [Cabinet, Recent Census] | Indian [Cabinet, Recent Census] | Jewish [Cabinet, Recent Census] ...  
 Jan 2024 | ... | [6.3%, 2.5%] | [6.3%, 3.1%] | [12.5%, 0.5%] ...

The count should be for each ethnicity mentioned to more accurately record those of mixed/multiple ethnicities, for example [James Cleverly, [Black African, English], male, 54] would be counted once in the Black African column and once in the English column.

Please provide a second tab with a table of the accompanying data for each Cabinet attendee in the dataset, including birth date, ethnicities, gender, name, ranks and months served attending the Cabinet.

4. On 16 January 2024 the Cabinet Office advised the complainant that it did not consider their correspondence to comprise a valid request for information under section 8(1)(c) of FOIA. The Cabinet Office clarified that it was not required to create new information or provide opinion or explanation in order to respond to a request.

5. On the same day the complainant revised their request as follows:

Does the Cabinet Office hold any demographic data at all on Cabinet attendees? If so, please provide as much data as possible close to that requested (name, age, ethnicities, gender) for the 32 current attendees listed here: <https://www.gov.uk/government/ministers>

6. The Cabinet Office refused the request on 2 February 2024, again stating that it did not meet the requirements of section 8(1)(c).

7. The complainant submitted a further revised request on 3 February 2024:

Please provide a breakdown of Cabinet attendees of ministerial and other ranks by age, ethnicities and gender for the publicly disclosed attendees of the current Cabinet listed here: <https://www.gov.uk/government/ministers>

Please provide as much granularity for ethnicities as possible to facilitate multiple entries, for example: [David Cameron, Foreign Secretary, [Jewish, Scottish], male, 57].

If the Cabinet's Equality Hub does not hold this information as implied by the previously rejected request despite its multimillion pound budget for gathering ethnicity and gender-related data, please provide as much information as the Cabinet Office holds on the demographics of Cabinet attendees.

8. On 14 February 2024 the Cabinet Office advised the complainant that it did not collect personal data of Cabinet Ministers.

9. On 15 February 2024 the complainant submitted a further request, asking the Cabinet Office if it held any of the requested information in any format. They asked if they should direct their request to individual government departments, and drew the Cabinet Office's attention to information it had published that mentioned the then Prime Minister's heritage.

10. The Cabinet Office responded to the request of 15 February 2024 (as set out at paragraph 9 above) on 1 March 2024. It stated that it held some

of the requested information but did not hold the gender or ethnicity of Ministers attending Cabinet.

11. The Cabinet Office stated that the information it held, relating to the age of Ministers attending Cabinet, was exempt under section 21 since it was already "available in the public domain, including through online encyclopaedias".
12. The complainant requested an internal review on 11 March 2024. They pointed out that the information published via online encyclopaedias was not generally "official" information.
13. The Cabinet Office provided the outcome of the internal review on 4 April 2024. It upheld its reliance on section 21 of FOIA and its position that it did not hold the remainder of the requested information.

### **Scope of the case**

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14. The complainant contacted the Commissioner on 8 April 2024 to complain about the Cabinet Office's refusal to provide the requested information. They did not accept the Cabinet Office's claim that it did not hold information relating to the "stated gender or ethnicity of Ministers attending Cabinet." They also referred the Commissioner to information published by the Cabinet Office which referred to former Prime Ministers David Cameron and Rishi Sunak.<sup>1</sup>
15. The Commissioner noted that the complainant made a number of revised requests to the Cabinet Office before complaining to him. He therefore considered it appropriate to limit the scope of the case to the most recent request, made on 15 February 2024.
16. During the course of his investigation the Commissioner asked the Cabinet Office to confirm whether it had considered the appropriate limit at section 12 of FOIA (applicable where the cost of compliance exceeds the appropriate limit). The Commissioner notes that public authorities may at any stage seek to rely on an exemption or exclusion not previously claimed. This was confirmed by the Upper Tribunal in the

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<sup>1</sup> <https://www.gov.uk/government/speeches/david-camerons-speech-to-the-knesset-in-israel> and <https://www.gov.uk/government/news/the-prime-ministers-message-for-gurpurab-2023>

case of *McInerney v IC and Department for Education* [2015] UKUT 0047 (AAC).<sup>2</sup>

17. The Cabinet Office did not withdraw reliance on section 21 but subsequently provided additional submissions on section 12. The Commissioner has examined section 12 first, on the basis that if compliance with the request would exceed the appropriate limit, then he is not required to consider other elements of the Cabinet Office's position such as section 21.

## Reasons for decision

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### Section 12 – cost of compliance exceeds the appropriate limit

18. Section 12(1) of FOIA provides that a public authority is not obliged to comply with a request for information if the authority estimates that complying with the request would exceed the appropriate limit, known as the cost limit (£600 for central government, £450 for all other authorities). A public authority may rely on section 12 in respect of the duty to confirm or deny that the requested information is held or in respect of the duty to communicate information to the requester.
19. Section 12 of FOIA should be considered with the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004<sup>3</sup> (the "Fees Regulations"). Regulation 4(4) states that authorities should calculate the cost of confirming or denying that the requested information is held by multiplying the time estimated by £25 per hour.
20. When estimating whether confirming or denying that the requested information is held would exceed the appropriate limit the public authority may only take into account the following activities:
  - (a) determining whether it holds the information,
  - (b) locating the information, or a document which may contain the information,

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<sup>2</sup> <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=4420>

<sup>3</sup> <https://www.legislation.gov.uk/uksi/2004/3244/contents/made>

(c) retrieving the information, or a document which may contain the information, and

(d) extracting the information from a document containing it.

21. If the authority considers that confirming or denying that the requested information is held would cost more than the appropriate limit, it is not obliged to comply with the request. In the case of the Cabinet Office, the £600 limit applies, which equates to 24 hours of work undertaking the above activities.
22. The Commissioner's consideration of section 12 came about in the context of the Cabinet Office maintaining that it did not hold information relating to the ethnicity of Ministers falling within the scope of the request.
23. The Commissioner referred the Cabinet Office to the information provided by the complainant as set out at paragraph 14 above, and pointed out that the complainant thus maintained that the Cabinet Office did in fact hold at least some of the requested information. The Commissioner asked the Cabinet Office to consider whether, although it may not already hold the information in a collated format, it may hold relevant information which could be collated to respond to the request.
24. It appeared to the Commissioner that any relevant information held by the Cabinet Office was likely to be scattered among records such as the information identified by the complainant. Therefore, in the very particular circumstances of this case, the Commissioner was of the view that it was appropriate to ask the Cabinet Office to consider the work that may be necessary to comply with the request in the event that the Commissioner issued a decision notice requiring it to do so.
25. The Cabinet Office was of the view that the information referred to by the complainant comprised "ministers' declaration of their own personal data, referring to their heritage". As such the Cabinet Office did not consider it to be definitive or "official" information. The Commissioner agrees with this interpretation of such information.
26. However, the Commissioner notes that the complainant did not request "official" information from the Cabinet Office. The request of 15 February 2024 merely asked whether the Cabinet Office held any of the requested information in any format. The Commissioner also observes that the right of access under FOIA extends to recorded information held by a public authority; it is not limited to information that is definitive or official.

27. In any event the Cabinet Office subsequently conducted a scoping exercise to estimate the time required to collate information relevant to this part of the request, ie ethnicity. It stated that it would need to locate and review every official speech (or other official communications) made by the then cabinet ministers and then determine if information were in scope, which would far exceed the cost limit.
28. As a result of the scoping exercise the Cabinet Office established that, in the former Prime Minister's Cabinet, 215 articles had been published on the 'Prime Minister's Office, 10 Downing Street' webpage over the previous nine months. The Cabinet Office estimated that it would take ten minutes to extract and examine each article for relevant information. This equated to nearly 36 hours to determine if the Cabinet Office held relevant information in respect of the former Prime Minister alone, and did not include the time taken to search for information in respect of other ministers.
29. When considering the Cabinet Office's position, the Commissioner is mindful of the First-tier Tribunal's view in the case of *Randall v IC and MHPRA*.<sup>4</sup> The Tribunal commented that a reasonable estimate, in relation to the costs of complying with a request, is one that is "...sensible, realistic and supported by cogent evidence".
30. The Commissioner considers that a sensible and realistic estimate must be informed by the circumstances of the particular case. As a starting point the Commissioner accepts that the Cabinet Office does not routinely collect or collate information relating to ministers' ethnicity. It follows that the Cabinet Office would need to undertake a search in order to comply with this part of the request. The Commissioner further accepts that the Cabinet Office has provided a reasonable indication of some of the work that it would need to undertake in order to comply with this part of the request.
31. The Commissioner acknowledges that the scoping exercise conducted by the Cabinet Office covered a period subsequent to the request, as opposed to providing the number of articles published at the time the request was received. However the Commissioner considers the scoping exercise to be useful in providing an indication of the work that would be

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<sup>4</sup> Appeal no EA/2006/0004

required to identify published articles which may contain relevant information.

32. The Commissioner has also considered the reasonableness of the estimate of the time required as set out in the scoping exercise. The 36 hours as estimated by the Cabinet Office would clearly exceed the appropriate limit of 24 hours. Even if the time required had been overestimated, taking five minutes as more reasonable would still take nearly 18 hours. However the Commissioner is satisfied that ten minutes is reasonable when it is taken into account that such a search would need to be expanded to cover all the other ministers who fall within scope of the request. In any event the Commissioner notes that the search would only deal with one part of the request, ie ethnicity information. He further believes it likely that the Cabinet Office would also need to consider other sources of recorded information such as correspondence, briefings and other records. This would take additional time.
33. Based on the information set out above, the Commissioner is satisfied that compliance with the complainant's request of 15 February 2024 would exceed the appropriate limit of 24 hours. Consequently the Commissioner finds that the Cabinet Office was entitled to refuse the request under section 12 of FOIA.

## **Section 16 – advice and assistance**

34. Section 16 of FOIA requires public authorities to provide reasonable advice and assistance to those making or wishing to make requests for information. The Code of Practice issued under section 45 of FOIA (the Code)<sup>5</sup> states that, where a public authority is relying on section 12 to refuse a request, it should, where possible, help the applicant to refine their request within the cost limit.
35. The Commissioner notes that the Cabinet Office did not rely on section 12 until he investigated the case. Therefore the Cabinet Office did not offer advice and assistance to the complainant.
36. Accordingly the Commissioner has considered whether the complainant may now be offered advice and assistance to help them refine their request and bring it within the cost limit. He recognises that the Cabinet Office does not collect or collate the requested information, and it

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<sup>5</sup> <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>



follows that the Cabinet Office may not be able to provide responses without undertaking searches as described above.

37. The Commissioner would therefore recommend that the complainant consider other sources of information, such as online encyclopaedias as suggested by the Cabinet Office. Although these sources do not comprise information published by a public authority, they may be of assistance to the complainant in their research.

## Right of appeal

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38. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

39. 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.
40. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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