

Freedom of Information Act 2000 (Section 51)

Information notice

Date: **19 December 2019**

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

Section 51

Under section 51 of the Freedom of Information Act 2000 (the "Act"), which is set out below, the Information Commissioner (the "Commissioner") has the power to serve a notice on a public authority requiring it to furnish her with any information she requires to enforce the requirements of the Act.

51. – (1) If the Commissioner –

(a) has received an application under section 50, ...

she may serve the authority with a notice (in this Act referred to as "an information notice") requiring it, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to the application, to compliance with Part I or to conformity with the code of practice as is so specified.

Application under section 50

1. The Commissioner has received an application under section 50, reference FS50867955, for a decision whether a request for information made by the complainant to the Cabinet Office on 7 March 2019, has been dealt with in accordance with the requirements of Part I of the Act.

Nature of complaint

2. The complainant submitted the following request to the Cabinet Office on 7 March 2019:

'I would now like to request under FOI information within category 3 in the Cabinet Offices letter of 24 October 2018 – 2012-13: correspondence between the Cabinet Office and the University [of Southampton] on additional closed archive records.'

3. The Cabinet Office responded on 27 March 2019 and confirmed that it held information falling within the scope of the request. The Cabinet Office explained that some of this information was exempt from disclosure on the basis of section 21 (information reasonably accessible to the requester) of FOIA, namely the following documents, albeit they had been redacted on the basis of section 40(2) (personal data):

- Email from the University of Southampton to the Cabinet Office dated 4 October 2012;
- Email from the Cabinet Office to the University of Southampton dated 5 October 2012;
- Email from the University of Southampton to the Cabinet Office dated 15 May 2013;
- Email from the Cabinet Office to the University of Southampton dated 23 May 2013 with Cabinet Office drafting advice on the response to accessing closed items in the Broadlands Archive;
- Listing of Lord and Lady Mountbatten's diaries and correspondence.

4. The Cabinet Office provided the complainant with one document, redacted on the basis of section 40(2) of FOIA, namely:

- Email from University of Southampton to the Cabinet Office dated 5 October 2012.

5. The complainant contacted the Cabinet Office on 12 April 2019 in order to ask it to conduct an internal review of this response. He raised the following points:

- He asked the Cabinet Office to clarify how section 21(1) of FOIA was being applied;
- He disputed the application of section 40(2) to withhold information; and,
- He alleged that the Cabinet Office was likely to hold more than 5 pieces of correspondence falling with the scope of the request.

6. The complainant also asked the Cabinet Office to:

'provide a schedule identifying any withheld documents or information (including the nature, date, identity of sender/recipient, and broad subject/content) and the corresponding exemption(s) relied on'

7. The Cabinet Office responded on 9 July 2019. It provided some clarification on how section 21 of FOIA had been applied and disclosed the attachment to the email from the Cabinet Office to the University of Southampton dated 23 May 2013.

8. The complainant contacted the Commissioner on 21 August 2019 about the Cabinet Office's handling of this request. He raised the following grounds of complaint:

- He disputed the Cabinet Office's reliance on section 21 of FOIA because in his view it was not clear which emails are the ones referred to in the refusal notice and internal review or which documents the Cabinet Office claims were attached to which emails. In light of this the complainant suggested that it cannot be argued that such information is reasonably accessible if he does not know which information has actually been withheld on the basis of section 21(1) of FOIA.
- He disputed the Cabinet Office's reliance on section 40(2) of FOIA to redact information.
- He believed that the Cabinet Office is likely hold further information falling within the scope of this request other than that previously disclosed or withheld.
- He was dissatisfied with the Cabinet Office's failure to provide a schedule of any withheld documents or information in response to the request at paragraph 4.2 of the internal review.
- He was unhappy with the Cabinet Office's delays in completing the internal review.

9. The Commissioner wrote to the Cabinet Office on 4 November 2019 in relation to this complaint. The Commissioner asked the Cabinet Office to provide her with a copy of the withheld information, to provide her with submissions to justify its reliance on the exemptions cited and also to respond to a number of additional questions to allow her to consider this complaint. The Commissioner asked for a response to this letter within 20 working days.

10. Having received no response to this letter, the Commissioner contacted the Cabinet Office on 6 December 2019 in order to chase up the outstanding response.
11. However, at the date that this notice is being issued the Cabinet Office has not provided any response to the Commissioner's letter of 4 November 2019.

Information required

12. In view of the matters described above the Commissioner hereby gives notice that in the exercise of her powers under section 51 of the Act she requires that the Cabinet Office shall, within 30 days of the date of this notice, furnish the Commissioner with a copy of the following information:
 - A full and complete response to her letter of 4 November 2019.

Failure to comply

13. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act, and may be dealt with as a contempt of court.

Right of appeal

14. There is a right of appeal against this information notice to the First-tier Tribunal (Information Rights). Information about the appeals process can be obtained from:

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

Tel: 0300 1234504

Fax: 0870 739 5836

Email: grc@Justice.gov.uk

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

15. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this information notice is sent. If Notice of Appeal is served late the Tribunal will not accept it unless it is of the opinion that it is just and right to do so by reason of special circumstances.

Signed

Jonathan Slee
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF