

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

### **Decision notice**

**Date:** 24 March 2025

**Public Authority:** Home Office  
**Address:** 2 Marsham Street  
London  
SW1P 4DF

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

---

1. The complainant requested information relating to the number of occasions that Suella Braverman, the then Home Secretary, forwarded emails from her ministerial email account to one of her privately held email accounts.
2. The Home Office cited section 21(1) (information accessible to the applicant by other means) of FOIA to refuse the request.
3. The complainant disputes that the Home Office conducted appropriate searches to locate the information within the scope of the request and, therefore, that it was not entitled to rely on that exemption to refuse the request.
4. The Commissioner's decision is that, on the balance of probabilities, the Home Office does not hold further information within the scope of the request. He is also satisfied that the Home Office correctly applied section 21(1) in this case.
5. The Commissioner requires no steps to be taken as a result of this decision.

## Background

---

6. There are references in this decision notice to a letter, written by Suella Braverman to the Home Affairs Select Committee (HASC), dated 31 October 2022. That letter is published on the GOV.UK website<sup>1</sup>.
7. There are also references to a previous ICO decision, IC-208249-Q2C6<sup>2</sup>.
8. That case relates to a request for information to the Home Office dated 27 October 2022:

“How many times has Suella Braverman sent official home office correspondence from her personal e-mail address during her two stints as Home Secretary?”

9. The Commissioner’s decision in that case was that the Home Office was entitled to rely on section 21 of FOIA to refuse the request.

## Request and response

---

10. On 12 July 2024, the complainant wrote to the Home Office and requested information in the following terms:

“Please state the number of occasions that Suella Braverman forwarded emails from her ministerial email account to one of her privately held email accounts, over the term of her position as Home Secretary”.
11. The Home Office responded on 26 July 2024, citing section 12(1) (cost of compliance) of FOIA.
12. Following an internal review, the Home Office wrote to the complainant on 10 October 2024, revising its position. It confirmed it held the requested information but stated that it was exempt from disclosure by virtue of section 21(1).

---

<sup>1</sup> <https://www.gov.uk/government/publications/letter-to-hasc-from-home-secretary/letter-to-hasc-from-home-secretary-accessible-version>

<sup>2</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4025014/ic-208249-q2c6.pdf>

## Scope of the case

---

13. The complainant contacted the Commissioner to complain about the way their request for information had been handled. They disputed whether section 21 can be validly applied to the request in this case.
14. While they acknowledge that the Home Office considers that the requested information is contained in the letter to the HASC, they questioned whether the number of emails forwarded "is in fact six".
15. They told the Commissioner that, in order to demonstrate whether or not the number contained in the published letter satisfies their request, the requested information "could be located with a simple search of Braverman's preserved email account".
16. In light of the grounds of complaint put forward by the complainant, the Commissioner considers that they dispute whether the information the Home Office has confirmed it holds, and which it considers to be exempt by virtue of section 21, comprises **all** of the information within the scope of the request.
17. As is his practice, the Commissioner wrote to the Home Office with questions about its handling of the request. Mindful of the complainant's grounds for bringing their complaint, the Commissioner tailored his questions to ensure they addressed the specific concerns the complainant had raised. Accordingly, his correspondence with the Home Office included questions relating to the timeframe of the request, the searches conducted by the Home Office and the relevance of a previous decision referred to by both parties, namely IC-208249-Q2C6.
18. The analysis below first considers whether the Home Office has correctly identified the information it holds that matches the information described in the request.
19. If the Commissioner is satisfied on that point, in other words that the Home Office has complied with section 1(1)(a) (general right of access to information) of FOIA, he will go on to consider its application of section 21 to the information in scope of the request.

## Reasons for decision

---

### Section 1 - general right of access to information

20. Under section 1(1) of FOIA anyone who requests information from a public authority is entitled, under subsection (a), to be told if the authority holds the information and, under subsection (b), to have the

information communicated to them if it is held and is not exempt information.

### **The complainant's view**

21. In their grounds of complaint, the complainant disputed the nature of the searches that had been undertaken. For example, they told the Commissioner:

"The Home Office does not appear to have at any point attempted to search the preserved departmental account of Suella Braverman in response to this request ...".

22. They also told the Commissioner:

"The Home Affairs Select Committee letter covers only Braverman's first period in office. It is not clear if the Home Office has checked if she forwarded emails to a private email after writing to the committee".

23. The complainant also argued:

"It is not clear why the seniority of the Home Affairs Select Committee would prevent the Home Office from, for example, making an honest mistake in its analysis, which a further search of the records would easily establish".

24. In support of their concern about the amount of information the Home Office considers falls within the scope of the request, they told the Commissioner:

"... there is new evidence of the scale of Braverman's forwarding of official documents to private email accounts".

### **The Home Office's view**

25. With respect to the timeframe of the request, the Home Office told the Commissioner:

"..., we have conducted searches up until the date of the request itself, i.e. 12 July 2024".

26. The Home Office told the Commissioner that it was confident that it has undertaken "the relevant searches".

27. Describing the nature of the searches it had conducted, the Home Office told the Commissioner it had contacted its IT department and asked them to conduct a search of Suella Braverman's archived email account. It confirmed that the parameters of the search included the period after she had written to the Home Affairs Select Committee.

28. It also confirmed that, following the Commissioner's intervention, it had contacted the former Home Secretary about this matter and that a helpful reply had been received.
29. In its submission, the Home Office also addressed its reference to IC-208249-Q2C6 in its correspondence with the complainant. While recognising that the wording of the request in that case "is vice versa to the current case", the Home Office nevertheless maintained that it was correct to rely on the decision in that case.
30. In summarising its position regarding the handling of the request in this case, the Home Office told the Commissioner:

"... it is our view that the number of occasions that Suella Braverman forwarded emails from her ministerial email account to one of her privately held email accounts remains at six, as stated in her letter to the HASC dated 31 October 2022. Further searches have provided [stet] negative".
31. Acknowledging that his investigation was in relation to the complainant's concerns about the amount of information located, the Home Office told the Commissioner it was confident that it had taken "all reasonable steps to try and identify any further information", but had been unable to locate any. It therefore maintained that, on the balance of probabilities, no further information is held.

### **The Commissioner's view**

32. In cases where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – following the lead of a number of First-tier Tribunal decisions – applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant's request.
33. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of proof of the balance of probabilities.
34. In reaching his decision, the Commissioner has taken account of the views put forward by the complainant. He has also considered the explanation the Home Office provided as to why it does not hold further information.

35. In accordance with his published guidance<sup>3</sup>, as well as the circumstances of the case, the Commissioner has taken into account the following:
- whether the Home Office correctly identified the scope of the request
  - the searches it undertook
  - is there any evidence suggesting that it holds further information?
  - how reasonable the searches were, in light of new information.
36. Based on the evidence provided to him, and having considered the actions taken by the Home Office to check whether it holds further information within the scope of the request, the Commissioner is satisfied that, on the balance of probabilities, the Home Office does not hold further information falling within the scope of the request.
37. He is therefore satisfied that the Home Office has complied with the requirements of section 1(1)(a) of FOIA in this case.
38. The Commissioner has next considered the Home Office's application of section 21 to the requested information.

### **Section 21 - information accessible to the applicant by other means**

39. Section 21 of FOIA provides that information which is reasonably accessible to the applicant, otherwise than under section 1, is exempt information. The purpose of section 21 is to remove information which an applicant can access via another route, from the general right of access under section 1 of FOIA.
40. Section 21 is an absolute exemption which means there is no requirement to carry out a public interest test if the requested information is exempt.
41. In this case, the Home Office explained that the requested information is contained in the former Home Secretary's letter to the HASC, following her reappointment in October 2022. It confirmed that the letter was published and provided the complainant with a link to where the published letter can be found.

---

<sup>3</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/determining-whether-we-hold-information/>

42. The Commissioner is satisfied that the link provided by the Home Office was, and is, reasonably accessible to the complainant. He is also satisfied that the complainant's correspondence shows that they have been able to view the letter and are aware of its contents.
43. In light of the above, the Commissioner considers that section 21 of FOIA was correctly applied in this case.

### **Other matters**

---

44. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of FOIA. Rather, they are matters of good practice which are addressed in the code of practice issued under section 45 of FOIA which suggests that internal reviews should be responded to within 20 working days, and if complex it is best practice for any extension to be no longer than a further 20 working days.
45. The Commissioner expects the Home Office to ensure that the internal reviews it handles in the future adhere to those timescales. This concern will be logged for monitoring purposes.

## **Right of appeal**

---

46. 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)

47. 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.
48. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Michael Lea**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**