

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 March 2025

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

Decision (including any steps ordered)

1. The complainant submitted two requests to the Cabinet Office seeking information about a 'Five Eyes' meeting which took place in May 2023. The Cabinet Office responded by stating that it did not hold the requested information and refused one part of one of the requests on the basis of section 14(2) (repeated requests) of FOIA.
2. The Commissioner's decision is that on the balance of probabilities the Cabinet Office does not hold information falling within the scope of the complainant's requests and that it is entitled to rely on section 14(2) in the manner in which it has.
3. The Commissioner does not require further steps.

Request and response

4. The complainant submitted the following request to the Cabinet Office on 21 August 2024:

"You will be aware, as it has released been released by the MOD earlier this month, that two MOD officials represented the UK in attending a Five Eyes (FVEY) meeting at the Pentagon on 24th May 2023. The meeting was entitled "FVEY Inaugural UAP Caucus Working Group".

As you may also be aware, an agenda of this meeting was published recently as part of a FOI request in the US. In this agenda, timetabled for 1015-1130 (i.e for 75 minutes), each of the other four FVEY partners (Australia, Canada, United Kingdom and New Zealand) were asked to provide 'partner UAP Updates' suggesting a UK briefing time of 15-20 minutes.

I am writing to request under the terms of the FOIA (2000) all details in all formats i.e. notes, presentation slides, videos etc from the United Kingdom UAP update section only, relating to information provided by the two MOD officials and any questions they received and responses they gave which may have been briefed to the cabinet office."

5. The Cabinet Office responded on 19 September 2024, under its reference number FOI2024/11256, and explained that the requested information was not held. It suggested that the complainant may wish to redirect his request to the MOD and provided contact details for that department.
6. The complainant contacted the Cabinet Office on 21 September 2024 and explained that he wished to be provided with the following clarification in relation to its response:

"1.) Confirmation as to whether the Cabinet office and/or associated government bodies, possibly in this case the Defence Select Committee a.) authorised the presence of the two MOD employees at the Five Eyes UAP Caucus of May 2023, and b.) authorised the associated costs to the UK tax payer of the trip?

2.) Confirmation that the Cabinet Office or government employees of cabinet members were briefed following the Five Eyes UAP Caucus of May 2023.

3.) If such a briefing as set out in point 2 above took place, I would appreciate details in all formats i.e. notes, presentation slides, videos etc from the United Kingdom UAP update section only, relating to information provided by the two MOD officials and any questions they received and responses they gave which may have been briefed to the cabinet office or government employees of cabinet members. It is reasonable to assume if a briefing took place, such notes would have been taken by the cabinet office and/or associated cabinet member public servants as a matter of appropriate procedure.

4.) Based on the specific response in your previous letter, I respectfully request the Cabinet office to contact the MOD on my behalf to provide the information I requested previously, specifically all details in all formats i.e. notes, presentation slides, videos etc from the United

- Kingdom UAP update section only, relating to information provided by the two MOD officials and any questions they received and responses they gave which may have been briefed to the cabinet office. I made this request directly to the MOD in August 2024, but have not as yet received this information, hence this request to the cabinet office to facilitate this in a more efficient and effective way on my behalf.”
7. The Cabinet Office handled this letter as a further request for information and responded to this on 17 October 2024, under reference number FOI2024/12611. The Cabinet Office explained that it did not hold any information falling within the scope of this request. It also stated that it was unable to request or chase information from the MOD on the complainant's behalf. It again provided the MOD's contact details and suggested that the complainant contact them directly.
 8. The complainant contacted the Cabinet Office on the same day and asked for an internal review of this response to be undertaken. He explained that this response did not address parts 1 and 2 of his letter of 21 September 2024. He also explained that he was surprised that the Cabinet Office did not hold the information sought at part 3 of that request and that he was unhappy with the Cabinet Office's refusal to liaise with the MOD in order to access this information on his behalf.
 9. The Cabinet Office informed him of the outcome of the internal review on 3 December 2024. The Cabinet Office concluded that information falling within the scope of parts 1 and 2 of his letter of 21 September 2024 was not held. In relation to part 3, the Cabinet Office explained that this was a repeat of his original question of 21 August 2024, to which it had previously confirmed information was not held, and therefore it was seeking to refuse to comply with part 3 on the basis of section 14(2) (repeated request) of FOIA. In relation to part 4, the internal review concluded that this was not a valid request for the purposes of section 8(1)(c) of FOIA.

Scope of the case

10. The complainant contacted the Commissioner on 13 December 2024 in order to complain about the Cabinet Office's handling of his requests. More specifically, he raised the following grounds of complaint:
 - i) He disputed the Cabinet Office's position that it did not hold the information sought by his original request of 21 August 2024.
 - ii) He disputed the Cabinet Office's position that it did not hold the information sought at parts 1, 2 and 3 of his request of 21

September 2024.

- iii) He disputed the Cabinet Office's position that section 14(2) of FOIA applied to part 3 of his request of 21 September 2024.
 - iv) He was unhappy with the Cabinet Office's refusal to request the information sought from the MOD, which he believed was in contravention of the section 45 Code of Practice (the Code).¹
 - v) Furthermore, he considered that the Cabinet Office's handling of this request does not comply with paragraphs 1.6, 1.9 and 1.12 of the Code because in his view if the requested information was stored offsite that in line with these provisions of the Code, it was the Cabinet Office's responsibility to source it for him.
 - vi) In addition, he considered that the Cabinet Office did not comply with paragraph 2.1 of the Code which concerns advice and assistance as 'in terms of a.) the lack of advice and assistance to find the information, b.) to answer my reasonable questions and c.) as the 'parent' department of the subsidiary department - the MoD - to seek the information I have requested from that department.'
11. The Commissioner has considered the complainant's concerns regarding the Cabinet Office's compliance with the Code in the Other Matters section of this decision notice because such matters are not requirements of Part I of FOIA.

Reasons for decision

Complaint i) and complaint ii) (parts 1 and 2 of the request of 21 September 2024)

12. In cases such as this where there is some dispute as to whether information falling within the scope of the request is held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.

1

https://assets.publishing.service.gov.uk/media/5bacc7eb40f0b62dbe5321ba/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

13. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request.
14. In applying this test the Commissioner will consider the results of the searches undertaken by the public authority and/or other explanations offered as to why the information is not held.

The complainant's position

15. The complainant explained that the meeting which is the focus of his requests took place is a fact confirmed by the UK government by virtue of previous FOI disclosure by the MOD. In his view it was 'inconceivable' that the MOD did not brief the Cabinet Office on this issue. Furthermore, the complainant argued that it was inconceivable that at least one member of Cabinet Office personnel did not record the briefings, which should have been kept on file. The complainant argued that if the requested information was not available then it had been lost or deliberately withheld, and that as a request the Cabinet Office had a responsibility to search more thoroughly in onsite and offsite records to find the information and demonstrate that it had not deliberately withheld it.

The Cabinet Office's position

16. The Cabinet Office explained that in order to locate information falling within the scope of the request of 21 August 2024 and parts 1 and 2 of the request of 21 September 2024, staff members from the relevant teams thoroughly searched their inboxes using the search term 'Five Eyes UAP Caucus of May 2023'. The Cabinet Office explained that the most relevant teams that is, the teams handling the relationships with the US, Five Eyes and Defence, thoroughly searched all of their inboxes, shared drives and personal drives and computers. The Cabinet Office explained that searches of digital records using this key term means any and all relevant documents would have been identified. The Cabinet Office argued that the fact no information was located meant that this information was not held.
17. With regard to its record management policy, the Cabinet Office explained that in line with this policy - such information - if held would have been retained for seven years. Therefore if the relevant information had been held originally it would still be held, and moreover would have been returned by the searches conducted as detailed above.
18. The Cabinet Office confirmed that there was no business need for it to hold this information.

The Commissioner's position

19. Whilst the Commissioner acknowledges the complainant's position that it is inconceivable that the MOD did not brief the Cabinet Office on this meeting, he is not clear on what basis this assertion is made. With regard to the searches undertaken by the Cabinet Office to locate any relevant information the Commissioner considers these to be sufficiently logical and focused to ensure that if any relevant information was held then this would have been returned by such searches. The Commissioner notes the complainant's point that searches should include offsite records. However, the Commissioner is satisfied that such records would be held in digital form given the date of their creation (and limited passage of time since the meeting took place) and that searches of offsite storage would not be necessary or proportionate in response to this request.
20. Therefore, on the balance probabilities, the Commissioner is satisfied that the Cabinet Office does not hold information falling within the scope of the original request of 21 August 2024 nor any information falling within the scope of parts 1 and 2 of the request of 21 September.

Complaint iii)

21. Under section 14(2) of FOIA, a public authority does not have to comply with a request which is identical, or substantially similar to a previous request submitted by the same individual, unless a reasonable period has elapsed between those requests. Section 14(2) only applies where a public authority has:
 - previously provided the same requester with the information in response to an earlier FOIA request; **or**
 - previously confirmed that it does not hold the information, in response to an earlier FOIA request from the same requester.
22. A request is identical if both its scope and its wording precisely matches that of a previous request.
23. A request is substantially similar if:
 - the wording is different but the scope of the request is the same; or
 - the scope does not differ significantly from that of the previous request.
24. The reasonable interval is largely dependent on how likely it is that any of the information caught within the scope of the request differs or has

changed since the public authority previously provided it (or stated previously stated that the information was not held).

The complainant's position

25. The complainant argued that the Cabinet Office's reliance on section 14(2) of FOIA was inappropriate on the basis that it did not answer his request in the first place, and in his further correspondence of September he was simply trying to help define precisely what was being requested.

The Cabinet Office's position

26. The Cabinet Office noted that the wording of the 21 August 2024 request was as follows:

'I am writing to request under the terms of the FOIA (2000) all details in all formats i.e. notes, presentation slides, videos etc from the United Kingdom UAP update section only, relating to information provided by the two MOD officials and any questions they received and responses they gave which may have been briefed to the cabinet office.'

27. And that the wording of part 3 of the 21 September 2024 request was as follows:

'If such a briefing as set out in point 2 above took place , I would appreciate details in all formats i.e. notes, presentation slides, videos etc from the United Kingdom UAP update section only, relating to information provided by the two MOD officials and any questions they received and responses they gave which may have been briefed to the cabinet office or government employees of cabinet members. It is reasonable to assume if a briefing took place, such notes would have been taken by the cabinet office and/or associated cabinet member public servants as a matter of appropriate procedure.'

28. The Cabinet Office noted the text underlined in the September request is an additional request not present in the August request.
29. The Cabinet Office argued that the subject of both requests is, in its view, sufficiently similar to bring part 3 of the September request within section 14(2) of FOIA. It noted that the requested information concerns a meeting in 2023, and it is more likely than not that any information, if held, would be static, i.e. it would have been created at the time and not subsequently added to.
30. However, the Cabinet Office acknowledged that this outcome is predicated on reading the September request as a fresh request, rather than as a request for an internal review of its response to the August

request. In its view new information is being sought in the September request, ie parts 1 and 2 - apart from the repeated element, ie part 3 - as it asks about matters such as authorisation, and as such is a fresh request. Nevertheless, the Cabinet Office explained that the fact remains that the Cabinet Office holds no information in scope of the August request nor for *any* part of the September request.

The Commissioner's position

31. The Commissioner is satisfied that section 14(2) can be applied to part 3 of the September request. The Commissioner appreciates the complainant's point that the Cabinet Office did not provide him with the information sought by his original request in August (on the basis that this was not held). However, as explained above a public authority can refuse a request as repeated if it has previously confirmed the same (or substantially similar) information is not held. In other words, a correct reliance on section 14(2) is not predicated on public authority previously having actually provided the requested information.
32. In terms of the information being sought by part 3 of the September request the Commissioner notes the vast majority of this is a direct copy of the wording of the August request. This part of it is therefore clearly a repeat request. Furthermore, the Commissioner agrees that the underlined text in the quote above is a 'new' piece of information being sought, but he accepts the Cabinet Office's assessment that such new information is clearly substantially similar to that sought by the original request of August.
33. In any event, even if part 3 of the request of September had not been refused on the basis of section 14(2), the Commissioner notes the Cabinet Office's position that no such information is held in any part of this request, a position the Commissioner accepts based on his findings in relation to complaints i) and ii). In other words, the Commissioner is satisfied that if the Cabinet Office held information falling within the scope of part 3 of the September request it would also have been located as part of the searches set out above, but was not.

Other matters

34. The Commissioner has considered each of complainant's concerns that the Cabinet Office has not complied with Code as detailed at paragraph 10 above.

Complaint iv)

35. The complainant explained that he was unhappy with the Cabinet Office's refusal to request the information sought from the MOD, which he believed was in contravention of the Code.
36. It is not immediately clear to the Commissioner which part of the Code the complainant considers to be relevant here.
37. The Cabinet Office, in its submissions to the Commissioner also noted that there is nothing in the Code to suggest that a public authority is required to seek information from a third party where that information is not held on the public authority's behalf. The Commissioner agrees with this position.
38. Nevertheless, in the Commissioner's view the most relevant parts of the Code here are:

'2.11 There will be occasions when a public authority is not able to comply with a request (or to comply with it in full) because it does not hold the information requested.

2.12 In most cases where a public authority does not hold the information, but thinks that another public authority does, they should respond to the applicant to inform them that the requested information is not held by them, and that it may be held by another public authority. The public authority should, as best practice where they can, provide the contact details for the public authority they believe holds the requested information.'

39. However, the Commissioner notes that the Cabinet Office's responses of 19 September 2024 and 17 October 2024 explained that the requested information may be held by the MOD and provided that organisation's contact details. The Commissioner is therefore satisfied that the Cabinet Office complied with parts 2.11 and 2.12 of the Code in handling this request.

Complaint v)

40. The complainant argued that the Cabinet Office's handling of this request did not comply with paragraphs 1.6, 1.9 and 1.12 of the Code because in his view if the requested information was stored offsite then in line with these provisions of the Code, it was the Cabinet Office's responsibility to source it for him.
41. These parts of the Code are as follows:

'1.6 The Act provides a right to information. Disclosing existing documents will often be the most straightforward way of providing information. However, in other cases it may be appropriate to extract the relevant information for disclosure and put in a single document rather than redact the existing document that contains it.'

'1.9 Section 3(2) sets out the criteria for when information is held by a public authority for the purposes of the Act. This includes:

- information held by a public authority at the time of the request;
- information stored in off-site servers or cloud storage; and
- information held by other organisations and authorities on behalf of the public authority including, for example, off-site storage or information provided to lawyers for the purposes of litigation.'

'1.12 Public authorities need to search for requested information in order to communicate to the applicant whether the information they are seeking is held or not held by that public authority. These searches should be conducted in a reasonable and intelligent way based on an understanding of how the public authority manages its records. Public authorities should concentrate their efforts on areas most likely to hold the requested information. If a reasonable search in the areas most likely to hold the requested information does not reveal the information sought, the public authority may consider that on the balance of probabilities the information is not held.'

42. In its submissions to the Commissioner the Cabinet Office noted that paragraph 1.6 discusses the disclosure of information that the public authority holds, and paragraph 1.9 sets out what 'held by' means in FOIA. However, it argued that as it does not hold the requested information, compliance with these two paragraphs is not relevant. The Commissioner agrees with this assessment and notes his findings above, that if information was held by the Cabinet Office it would be held in digital records in its own possession and therefore section 3 of FOIA, in particular a scenario where the requested information is stored offsite, is not relevant.
43. The Cabinet Office noted that paragraph 1.12 provides guidance on reasonable searches. However, it argued that as described in the decision notice above, it considered that it had carried out reasonable searches, and it had confirmed to the complainant that the Cabinet Office does not hold the requested information. The Cabinet Office argued that it had therefore complied with this part of the Code. Again, the Commissioner agrees with this assessment and for the reasons set out in the decision notice itself is satisfied that on the balance of probabilities the Cabinet Office does not hold the requested information.

Complaint vi)

44. The complainant considered that the Cabinet Office did not comply with paragraph 2.1 of the Code which states that:

'2.1 Section 16 of the Act sets out a duty for public authorities to provide reasonable advice and assistance to applicants requesting information. This duty to advise and assist is enforceable by the Information Commissioner. If a public authority does not meet this duty, the Commissioner may issue a decision notice under section 50, or an enforcement notice under section 52.'

45. In support of this position the complainant argued that:

'in terms of a.) the lack of advice and assistance to find the information, b.) to answer my reasonable questions and c.) as the 'parent' department of the subsidiary department - the MoD - to seek the information I have requested from that department.'

46. In respect of a) the Cabinet Office did not accept that there was a lack of advice and assistance. It argued that its suggestion to the complainant that he may wish to contact the MOD was reasonable, and it provided contact details to allow him to do so.
47. In respect of b) the Cabinet Office argued that it had answered the complainant's questions in compliance with the legislation by stating that no information was held.
48. In respect of c) the Cabinet Office explained that it does not expect applicants to know how government departments are organised. However, it explained that it is, of course, not the case that the Cabinet Office is the 'parent' department of the MOD. The Cabinet Office highlighted that there is a significant amount of information online explaining how the government is organised into separate ministerial and non-ministerial departments.
49. Furthermore, the Cabinet Office highlighted that the MOD and Cabinet Office are separate public authorities for the purposes of the FOIA (i.e. each is a government department as per Schedule 1, Part I). It argued that regardless of the complainant's view for there to be a relationship between the two departments, they are separate public authorities and FOIA does not require the Cabinet Office to seek the information from the MOD. The Cabinet Office explained that in its view it considered that it had been sufficiently clear in advising the complainant that he should contact the MOD if he wished to progress his request for information.
50. The Commissioner agrees with the above assessments. In particular, he would emphasise the latter point – ie that the Cabinet Office and MOD

are separate public authorities. Furthermore, for the avoidance of any doubt, there is no evidence to suggest that the requested information was held by the MOD on the Cabinet Office's behalf.

51. The Commissioner is therefore satisfied that to the extent there was a duty on the Cabinet Office to provide advice and assistance in this case it complied with it.

Right of appeal

52. 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

53. 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.
54. 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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