Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 November 2025

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

Decision (including any steps ordered)

1. The complainant submitted a request to the Cabinet Office asking whether any current ministers declared a criminal conviction to officials during their appointment process and if so, how many. The Cabinet Office refused to confirm or deny whether it held information falling within the scope of the request on the basis of sections 40(5B)(a)(i) (personal data), 41(2) (information provided in confidence) and 36(3) (effective conduct of public affairs).

2. The Commissioner's decision is that the Cabinet Office is entitled to refuse to confirm or deny whether it holds any information on the basis of section 40(5B)(a)(i) of FOIA.

3. The Commissioner does not require further steps.

Request and response

4. The complainant submitted the following request to the Cabinet Office on 5 December 2024:

> "Please state whether any current ministers declared a criminal conviction to officials during their appointment process. If any, please state the number of current ministers declared a criminal conviction to officials during their appointment process."

5. The Cabinet Office responded to the request on 8 January 2025 and refused to confirm or deny whether it held any information falling within the scope of the request on the basis of section 40(5B) (personal data) and section 41(2) (information provided in confidence) of FOIA. In respect of the application of section 40(5B) the Cabinet Office explained that "we believe confirming or denying whether we hold the information would contravene principle A under article 5(1)(a) of the UK General Data Protection Regulation (GDPR) which requires that personal data should be processed lawfully, fairly, and transparently."

6. The complainant contacted the Cabinet Office on 15 January 2025 and challenged the application of both exemptions.

7. The Cabinet Office informed him of the outcome of the internal review on 7 March 2025. With regard to its reliance on section 40(5B) of FOIA the Cabinet Office explained that:

> "The processing of criminal offence data requires one of the conditions for the processing of such data under Schedule 1 of the Data Protection Act 2018 to be met. The relevant conditions are i) that the data subject has consented to the processing (schedule 1, part 3, paragraph 29) and ii) the processing relates to personal data which has clearly been made public by the individual concerned (schedule 1, part 3, paragraph 32). Neither of these apply. It therefore follows that processing would be unlawful and that disclosure would contravene the principle in Article 5(1)(a) of the UK GDPR, that processing must be lawful.
>
> The Cabinet Office's original response sets out that "we believe confirming or denying whether we hold the information would contravene principle A under article 5(1)(a) of the UK General Data Protection Regulation (GDPR) which requires that personal data should be processed lawfully, fairly, and transparently." Having considered your request for an internal review, I therefore consider that the Cabinet Office can further rely on Article 10 of UK GDPR (separate safeguards for personal data about criminal convictions and offences) and Section 11(2) of the DPA 2018. We therefore consider that the exemption has been applied correctly."

8. The internal review also concluded that section 41(2) had been applied correctly to the request.

Scope of the case

9. The complainant contacted the Commissioner on 17 March 2025 to complain about the Cabinet Office's refusal of his request.

10. During the course of the Commissioner's investigation the Cabinet Office explained that it also considered section 36(3) (effective conduct of public affairs) by virtue of section 36(2)(c) to provide a basis upon which it could refuse to confirm or deny whether it held information falling within the scope of this request.

11. In relation to this complaint it is important to note that the right of access provided by FOIA set out in section 1(1) is separated into two parts. Section 1(1)(a) gives an applicant the right to know whether a public authority holds the information that has been requested. Section 1(1)(b) gives an applicant the right to be provided with the requested information, if it is held. Both rights are subject to the application of exemptions.

12. As explained above, the Cabinet Office is seeking to rely on sections 36(3), 40(5) and 41(2) to neither confirm nor deny (NCND) whether it holds information falling within the scope of the request. Therefore, this notice only considers whether the Cabinet Office is entitled, on the basis of these exemptions, to refuse to confirm or deny whether it holds the requested information. The Commissioner has not considered whether the requested information – if held – should be disclosed.

Reasons for decision

Section 40 – personal data

13. Section 40(5B)(a)(i) of FOIA provides that the duty to confirm or deny whether the authority holds the information does not arise if it would contravene any of the principles relating to the processing of personal data set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').

14. There are two stages to determining whether this exemption applies:

- whether giving the confirmation or denial in response to the request would involve a disclosure of personal data and, if so
- whether confirmation or denial would result in a breach of any of the data protection principles.

15. Section 3(2) of the Data Protection Act 2018 (DPA) defines personal data as:

> "any information relating to an identified or identifiable living individual."

16. As to whether giving the confirmation or denial in response to the complainant's request would involve a disclosure of personal data, the two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

17. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

18. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

Would confirming whether or not information is held involve a disclosure of personal data?

19. In its refusal notice the Cabinet Office stated that:

> "If a confirmation or denial was given under the Act this could enable an inference to be drawn about Ministers' personal data which was processed during the appointments process. There are only around 120 Ministers in government at any one time. If a similar request had been received in the past or were received in future, providing a confirmation or denial of whether the information is held now could allow for identification of any individual Minister who previously, currently or in future declared such a conviction."

20. In response, in his internal review request, the complainant argued that:

> "As argued above, there are 120 ministers and this [is] a large pool, and as a result of this disclosure it would not be possible to identify any specific ministers. The number is also likely to be relatively small, if there are any.
>
> The disclosure of the number alone cannot trigger section 40, as it is not personally identifiable information that can reasonably be linked to a specific person.
>
> Even if the number is small, that is no justification not to provide an exact figure.

As the First-Tier Tribunal ruled in Information Commissioner v Miller (GIA/2444/2017), withholding small numbers is only justified if there's a reasonable risk that disclosing the number would identify an individual.

As Judge Taylor found in Miller: "It is not clear why in this case an individual would be identifiable from the data requested (together with any other data available). Whilst suppression or barnardisation of data may be relevant in some cases, for instance concerning sophisticated systems for collecting medical data, we think this case is very different."

The department further advances the argument that disclosure of this information could lead to jigsaw identification of convicted ministers.

For jigsaw identification to be a relevant issue, material must be in the public domain that could allow for the release of this information to pose a risk in conjunction with that information.

To my knowledge, this information has not been disclosed by the department in the past, and no equivalent information sits in the public domain.

As such, even if jigsaw issues could potentially occur in future, that is a matter to be determined in relation to future requests, not this one.

This request must be assessed on its own merits and given the lack of other material in the public domain, there is no jigsaw issue in relation to this specific request.

Even if material had been disclosed, it is not at [all] clear whether even a motivated searcher would be able to establish which ministers had convictions by making multiple requests after a ministerial change.

Reshuffles normally involve multiple ministerial moves, and a new request would not reveal the status of any individual minister.

Secondly, convictions may have been appealed in the interim, and thus the method suggested by the Cabinet Office would not be able to establish conclusively that a recently resigned minister had a conviction through a change in number of convictions recorded."

21. The Cabinet Office's internal review stated:

"You reference the Upper Tier Tribunal judgement of GIA/2444/2017. As set out in our original response, there are only around 120 Ministers in government at any one time. Further requests for the same information could lead to the release of further information, which,

when combined, would allow individuals to be identified. Following appointments or resignations of ministers, releasing the information again could identify individuals that may have declared criminal convictions in confidence, were there to be any. Ministers are named, and therefore identifiable. The disputed information subject to GIA/2444/2017 did not coincide with a list of named individuals.

You further state that 'reshuffles normally involve multiple ministerial moves'; however, as you also note, this is not always the case, and even where there are multiple moves, the number of specific individuals entering or leaving the government (rather than remaining within the government but moving to a new role) can be very low. Ministers are able to resign at any point, and it cannot be expected that there will always be multiple simultaneous departures from office. Indeed, this is evidenced by a ministerial resignation taking place between the issuing of your FOI response and your request for an internal review."

22. In his submissions to the Commissioner the complainant argued that the Cabinet Office's position involved speculating about a series of hypothetical requests, rather than dealing with the request in question. He emphasised that this request must be considered on its own merits.

23. In the complainant's view, given the current absence of other material in the public domain that could facilitate the jigsaw effect envisaged by the Cabinet Office, this argument could not attract significant weight.

24. In any event, the complainant argued that even if a series of requests was made, it was not clear how it could be established that a given minister who joined or left government had a criminal conviction. Firstly, reshuffles often involve multiple ministerial moves, making identifying which minister had a conviction impossible in these cases. Secondly, even when a single minister leaves or joins government, convictions can later be overturned or appealed. That makes it impossible to establish, even using a series of requests, whether a given minister resigning or joining had a conviction.

25. In view of the above, the complainant argued that there was no way even for a motivated intruder to extrapolate from the number of convictions the identity of those with a conviction, and therefore the information requested is not personal information. As a result he argued that section 40 cannot therefore be applied either to NCND whether information is held, or if it is held, to refuse to disclose it.

26. In its submissions to the Commissioner the Cabinet Office addressed the complainant's arguments that confirmation or denial as to whether it

held the requested information would not reveal personal data as follows.

27. The Cabinet Office argued that confirming or denying if the information is held provides a snapshot of the data as it stands at the time of the request, and subsequent requests could be used to identify personal data of ministers. For example:

- The Cabinet Office confirms that information is held (which infers that a minister has declared a criminal conviction).
- A single minister then resigns from government (this is not uncommon[1]; since the original request was received and the Cabinet Office's submissions to the Commissioner, there have been three separate instances where a minister has resigned or been removed from their role).
- A repeat request then confirms that no information is held.
- It could reasonably be determined that the minister that left the government had a criminal conviction. This therefore reveals the personal data of that minister.

28. The Cabinet Office emphasised that this example is entirely hypothetical and should not be taken as confirmation or denial that information falling within the scope of the request is held.

29. The Cabinet Office argued that it did not understand the complainant's point regarding the convictions potentially being overturned and in its view seemed to contradict the other points put forward about why it is in the public interest to obtain this information.

30. With regard to the complainant's position that hypothetical future cases cannot be taken into account, the Cabinet Office argued that the 'mosaic' effect is a well known FOI approach that enables requesters to establish information through multiple requests. The Cabinet Office argued that it was highly likely that this, or other requesters, would use information disclosed through this request as a 'baseline' from which to establish whether new or departing ministers had declared criminal convictions on appointment.

31. Furthermore, the Cabinet Office argued that given that this is a request for information relating to the declaration of criminal convictions, the information clearly 'relates to' serving ministers at the time of the request and would be considered to reveal personal data. As set out

[1] https://www.instituteforgovernment.org.uk/data-visualisation/ministerial-resignations-outside-reshuffles-prime-minister

above, repeat requests could then be used to identify individual ministers.

32. Having considered the submissions of both parties the Commissioner is satisfied that the confirming or denying whether the Cabinet Office holds information falling within the scope of this request would result in the disclosure of personal data.

33. The Commissioner accepts the complainant's point that there are a significant number of ministers, and that when changes to ministerial appointments occur these often result in the entry and exit of a number of different individuals from ministerial office. However, as the examples cited by the Cabinet Office demonstrate there are occasions when simply one individual leaves ministerial office and another joins.

34. Furthermore, the Commissioner is persuaded that the hypothetical example set out by the Cabinet Office above describes a specific and clear way in which confirmation or denial, via a series of requests, as to whether information is held could result in it being revealed whether a specific minister has declared a criminal conviction. The Commissioner is satisfied that such information in that scenario is personal data as it clearly relates to an identifiable individual.

35. On the basis of the hypothetical example, the Commissioner is therefore satisfied that confirming or denying whether information is held could, with a reasonable degree of certainty, result in the disclosure of personal data.

36. In reaching this finding, the Commissioner fully recognises that such a scenario is dependent on further requests being submitted to the Cabinet Office and its response to this request acting as a baseline by which to determine whether, at the point of a future request or requests, information was held or not. The Commissioner acknowledges that such a position is different to a request where a public authority simply complying with section 1(1)(a) of FOIA would result in the disclosure of personal data on the basis of a motivated intruder using other information already in the public domain to identify an individual or individuals.

37. However in the context of the request which is the focus of this decision notice the Commissioner does not agree with the complainant that consideration of this request has to be solely on its own merits. Rather he agrees with the Cabinet Office that in considering the consequences of disclosure in one request it is appropriate to take into account the 'mosaic' effect and consider how responses to similar requests, in the future, could also be used to determine if particular ministers had declared criminal convictions. In the Commissioner's view, failure to

take account of such possible further requests, and the consequences of complying with them, fails to give due regard to the risks of disclosure in this request. Such an approach would also fail to take into account the importance of public authorities taking a consistent approach to applying NCND exemptions.

38. Furthermore, the Commissioner wishes to emphasise that his decision that confirming or denying would result in the disclosure of personal data does not rest solely on the hypothetical example described at paragraph 27. Rather, in his view if the Cabinet Office complied with section 1(1)(a) and if it was the case – at the point that the request was submitted – that no information was held, then revealing that would still involve the disclosure of personal data regardless of any mosaic effect of future requests. This is because such a response would confirm that each current minister had not declared any current convictions.

Would confirming whether or not information is held involve a disclosure of criminal offence data?

39. The Cabinet Office has also argued that confirming or denying whether it holds the requested information would result in the disclosure of information relating to the criminal convictions and offences of a third party.

40. Information relating to criminal convictions and offences is given special status in the UK GDPR.

41. Article 10 of the UK GDPR defines 'criminal offence data' as being personal data relating to criminal convictions and offences. Under section 11(2) of the DPA, personal data relating to criminal convictions and offences includes personal data relating to:

> (a) The alleged commission of offences by the data subject; or
> (b) Proceedings for an offence committed or alleged to have been committed by the data subject or the disposal of such proceedings including sentencing.

42. Given the nature of the information being sought by the request, namely whether ministers have declared a criminal conviction during their appointment process, the Commissioner is satisfied that as well as confirmation or denial with the request allowing for the disclosure of personal data of ministers this would also result in the disclosure of criminal offence data.

Whether confirmation or denial would result in a breach of any of the data protection principles

43. The next step is to consider whether confirmation or denial of whether the information is held would breach any of the data protection principles.

44. The Commissioner has focussed on principle (a), which states:

> "Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject."

45. Furthermore, criminal offence data is particularly sensitive and therefore warrants special protection. It can only be processed, which includes confirming or denying whether the information is held in response to a FOI request, if one of the stringent conditions of Schedule 1, Parts 1 to 3 of the DPA 2018 can be met.

46. The Commissioner accepts, as the Cabinet Office explained in its internal review, that the relevant conditions are i) that the data subject has consented to the processing and ii) that processing has clearly been made public by the data subject. The Commissioner accepts that neither of these conditions are met in this case.

47. As a result there can be no legal basis for confirming whether or not the requested information is held; providing such a confirmation or denial would breach data principle (a) as disclosure would not be lawful and therefore the second criterion of the test set out above at paragraph 14 is met.

48. It follows that the Cabinet Office is entitled to refuse to confirm or deny whether it holds the requested information on the basis of section 40(5B)(a)(i) of FOIA.

49. In reaching this finding the Commissioner recognises that the complainant has provided detailed submissions to support his view that there is a compelling public interest in the Cabinet Office confirming whether or not it holds the requested information (and if it does, then disclosing this). However, as the Commissioner has found that complying with section 1(1)(a) of FOIA would involve the processing of criminal conviction data, and that none of the conditions in Schedule 1, Parts 1 to 3 of the DPA 2018 are met, he is not able, given the law as it stands, to go on to consider the legitimate interests in relation to this request.

50. Finally, given that the Commissioner has concluded that section 40(5B)(a)(i) applies to this request he has not considered the Cabinet Office's reliance on sections 36(3) and 41(2) of FOIA.

Other Matters

51. As noted above the complainant provided detailed public interest arguments to support his position. These arguments are accurately reflected in the points he made in his request for an internal review in respect of a public interest defence in the context of section 41(1):

> "The department does not appear to have given sufficient weight to the specific public interest reasons presented in my initial request.
>
> There is a clear public interest in transparency in this case, given two recent examples of historic convictions of Members of Parliament.
>
> The resignation of Louise Haigh as Transport Secretary, following revelations that she had previously had a conviction for fraud, was a matter which attracted significant public attention.
>
> The Nolan Principles request ministers to be open with information not to be withheld from the public unless there are clear and lawful reasons for doing so, and honest.
>
> Not publicly disclosing a criminal conviction would put a minister at risk of being in breach of these principles, strengthening the public interest in transparency.
>
> For highly sensitive jobs, such as solicitors, police officers and those working with children, convictions cannot be spent, and may serve as a bar on employment depending on the severity, due to the risks this would involve.[2]
>
> Though being a government minister would appear to be as highly a sensitive role as these, ministerial roles are not currently subject to the same regime.
>
> Where such statutory protections are weaker, there is an enhanced public interest in transparency about the number of ministers who are serving having faced a criminal conviction.
>
> There is also a wider issue, that all MPs are not required to publicly disclose previous criminal convictions before standing in elections… [In

[2] With regard to this particular argument the Commissioner wishes to clarify that convictions are either spent or unspent. However, for the jobs of the nature cited by the complainant both spent and unspent convictions can required to be declared to the employer, and the employer is entitled to take both into account.

support of this point the complainant cited the example of an MP who did not disclose a prior conviction for assault.]

…Where there is no statutory requirement that MPs disclose previous convictions, this elevates the public interest in transparency.

Even if the answer to this request was zero, or the answer was unknown there would still be significant public interest in disclosure.

As ICO guidelines state: "There is always an argument for presenting the full picture and allowing people to reach their own view. There is also a public interest in the public knowing if you have based an important decision on limited information."

Knowing that checks were conducted, and no persons with criminal convictions were appointed, would reassure the public that current processes for vetting were robust.

If, for example, the department relied solely on self-disclosure by ministers, and could not conclusively answer the question, this would serve the public interest of showing a potential weakness in the vetting process.

Disclosure would therefore usefully serve a number of important public interests and provide a sufficient basis to successfully resist a confidence claim."

52. The Commissioner does not seek to dispute the validity and weight of these arguments in relation to this request which seeks information about the appointment of minsters. However, given the restrictions that the DPA places on criminal offence data such factors do not, and cannot, alter the Commissioner's position that the Cabinet Office is absolved from complying with section 1(1)(a) of FOIA in response to this request by virtue of 40(5B)(a)(i) of FOIA.

Right of appeal

53. 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)
    General Regulatory Chamber
    PO Box 11230
    Leicester
    LE1 8FQ

    Tel: 0203 936 8963
    Fax: 0870 739 5836
    Email: grc@justice.gov.uk
    Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

54. 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.

55. 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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