

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 June 2020

Public Authority: Cabinet Office

Address: 70 Whitehall

London

SW1A 2AS

Decision (including any steps ordered)

1. The complainant requested information from the Cabinet Office about a senior government adviser.
2. The Commissioner's decision is that the Cabinet Office has breached section 10(1) of the FOIA in that it failed to provide a valid response to the request within the statutory time frame of 20 working days.
3. The Commissioner requires the Cabinet Office to take the following step to ensure compliance with the legislation.
 - The Cabinet Office must provide a substantive response to the request in accordance with its obligations under the FOIA.
4. The Cabinet Office must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 3 February 2020, the complainant wrote to the Cabinet Office and requested information in the following terms:

"I would be grateful if you could provide the following information under the Freedom of Information Act 2000 about Dominic Cummings during his time at the Cabinet Office:

1. Have any complaints been made to HR about Mr Cummings (yes or no)?

2. If yes to (1), please provide a figure for the number of complaints.

3. If yes to (1), please confirm whether any resulted in written warnings or disciplinary action (yes or no).

4. Were any HR-related complaints made to or shared with Mr Cummings' line manager/s (yes or no)?

5. If yes to (4), please provide a figure for the number of complaints.

6. If yes to (4), please confirm whether any resulted in written warnings or disciplinary action (yes or no).

7. Were any HR-related complaints about Mr Cummings made to or shared with senior civil servants, including the permanent secretary, senior HR staff, or to lawyers (yes or no)?

8. If yes to (7), please provide a figure for the number of complaints.

9. If yes to (7), please confirm whether any resulted in written warnings or disciplinary action (yes or no)."

6. The Cabinet Office acknowledged the request on 4 February 2020. The complainant contacted the Cabinet Office several times in March 2020 to ask for an update on the request. To date, a substantive response has not been issued.

Scope of the case

7. The complainant contacted the Commissioner on 5 March 2020 to complain about the Cabinet Office's failure to respond to their request.

8. The Commissioner has considered whether the Cabinet Office has complied with its obligations in relation to the time for compliance at section 10(1) of the FOIA.

Reasons for decision

9. Section 1(1) of the FOIA states that:

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

10. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and *"not later than the twentieth working day following the date of receipt"*.
11. During the Covid-19 global health crisis, as a reasonable and proportionate regulator, the Commissioner took the decision to amend her casework approaches to reduce the burden on public authorities. On 15 April 2020 the Commissioner wrote to the Cabinet Office, reminding it of its responsibilities and asking it to provide a substantive response to the complainant as soon as it could, if it had the capacity to do so. The Commissioner also invited the Cabinet Office to inform her if it was unable to comply with the FOIA due to any difficulties posed by the Covid-19 crisis.
12. The Commissioner wrote again to the Cabinet Office on 26 May and 8 June 2020 to repeat her enquiries about its capacity to respond to the request and to highlight that a response was still outstanding.
13. Despite these interventions the Cabinet Office has failed to respond to the complainant or to provide the Commissioner with any information on its ability to process the request.
14. From the evidence provided to the Commissioner in this case, it is clear that the Cabinet Office did not deal with the request for information in accordance with the FOIA. The Commissioner finds that the Cabinet Office has breached section 10(1) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with the FOIA.

Other matters

15. The Commissioner wishes to place on record her understanding of the immense pressures placed on public authorities during the coronavirus pandemic. She is sympathetic to the difficult decisions such authorities must make, between prioritising front-line services and continuing to meet their obligations under the FOIA.
16. The Commissioner notes, however, that a response to a request made on 3 February 2020 would be due several weeks before the worst of the coronavirus disruption began. This has been a necessary consideration in her decision to issue this notice.
17. When invited to do so by the Commissioner, the Cabinet Office did not submit any mitigating arguments to justify its continuing failure to comply with the FOIA in relation to this request. This lack of engagement by the Cabinet Office has also informed the Commissioner's issuing of this notice.

- 18. Right of appeal
- 19. 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: 0300 1234504
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

- 20. 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.
- 21. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

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