

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 November 2023

Public Authority: Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant has requested information about the scope of the Prime Minister's delegation of powers as the Minister for the Civil Service. The Cabinet Office denied holding the requested information.
2. The Commissioner's decision is that, on the balance of probabilities, the Cabinet Office does not hold the requested information and has complied section 1(1) of FOIA.
3. The Commissioner does not require further steps.

Request and response

4. On 4 July 2022, the complainant wrote to the Cabinet Office and requested information in the following terms:

“According to an Internet article published by Wikipedia at the address in the first link below, the Minister for the Civil Service is the Prime Minister. It goes on to say, however, that the Prime Minister has delegated his powers as the Minister for the Civil Service under the Civil Service (Management Functions) Act 1992. According to the article, these powers were delegated to Michael Gove when he became the Minister for the Cabinet Office, powers which transferred to Stephen Barclay when he succeeded Michael Gove in that role.

In support of these conclusions, the article provides a link (the second link in italics below) to a statement by Michael Gove in Parliament on 3 March 2020, in which he confirmed that he was ‘the Minister responsible for the civil service’.

In relation to these statements:

(1) does the Prime Minister’s Office have any documentation which sets out the scope of this delegation in general terms?

(2) does the Prime Minister’s Office have any documentation, which sets out the scope of this delegation in relation to the Principal Civil Service Pension Scheme? and,

(3) would the Prime Minister’s Office kindly release copies of the documents relating to (1) and (2) above, redacted as necessary, in the form of two single pdfs in OCR format, one relation to (1) and a second one relating to (2).

First Link

https://en.wikipedia.org/wiki/Minister_for_the_Civil_Service#:~:text=Minister%20for%20the%20Civil%20Service%20From%20Wikipedia%20C%20the,the%20United%20Kingdom%20in%20formulating%20and%20implementing%20policies

Second Link

<https://hansard.parliament.uk/Commons/2020-03-02/debates/ACE798E4-1624-4BF6-95EC-DFD60C266F05/MinisterialCode#contribution-A3D4B966-A718-4935-AB51-7E5A2111A2BD>”

5. The Cabinet Office responded on 3 August 2022. It stated that the requested information was not held.
6. Following an internal review, Cabinet Office wrote to the complainant on 5 September 2022. It maintained its position that no information was held.

Reasons for decision

Section 1 – Information not held

7. 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.
8. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
9. In other words, in order to determine such complaints, the Commissioner must decide whether on the balance of probabilities a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request).
10. In this case, the Commissioner understands that the request relates to the Prime Ministers delegation of powers as the Minister for the Civil Service.
11. In response to the request, the Cabinet Office has stated it does not hold the information sought by the request, and that searches had been undertaken by the relevant teams to establish this. The Cabinet Office referred the complainant to the legislation that allows the delegation.
12. The complainant has challenged the Cabinet Office's position on the basis that the request had been made to the Prime Minister's Office, and not the Cabinet Office. The complainant further disputes that the Prime Minister's Office must hold documents setting out the scope of the delegation.

The Cabinet Office's position

13. The Cabinet Office has provided the following background summary to the Commissioner:

"Section 1 of the Civil Service (Management Functions) Act 1992 states that the functions of the Minister of the Civil Service can be delegated from the Prime Minister. Section 1(2) states "The Minister for the Civil Service may, to such extent and subject to such conditions as the Minister thinks fit, delegate a function to which this section applies to any other servant of the Crown." The functions to which this section applies are functions of managing the civil service, excluding the diplomatic service. The functions can also be exercised on the Minister of the Civil Service's behalf under the Carltona Principle."

14. The Cabinet Office has stated to the Commissioner that searches have been undertaken in relevant business areas to identify any held information that would fall within scope of the request. These searches have included:

- A review of files held (and specifically relating to the topic of delegated ministerial functions) by the Office of the Parliamentary Council.
- A review of files held by the Office of the Prime Minister.
- A search of the electronic records deriving from the two former Ministers for the Cabinet Office (which are now managed by the Digital Records Management Team).
- A review of the files held by the team with responsibility for the List of Ministerial Responsibilities.
- A review of the files held by the Civil Service Pensions team.

15. The Cabinet Office has elaborated that, whilst it is not possible to give a definitive answer as to why there is no information held on this particular issue, it would not necessarily expect information to be held. This is because not every delegation under the Carltona Principle needs to be recorded, and to so would be almost impossible due to the range of ministerial duties.

The Commissioner's Conclusion

16. Firstly, the Commissioner notes that the Prime Minister's Office is part of the Cabinet Office, and that the Cabinet Office is the relevant public authority for the purposes of FOIA. The Commissioner therefore

recognises that the Cabinet Office is responsible for undertaking searches for held information.

17. Secondly, the Commissioner notes that the Cabinet Office has undertaken searches for electronic and hardcopy information across the most relevant business areas, including the Office of the Prime Minister, and the team responsible for Civil Service Pensions. The Commissioner understands that no information has been identified by these searches. There is no evidence available to the Commissioner that suggests that these searches have been deficient, or which suggests that information must be held.
18. Therefore, the Commissioner is satisfied that, at the time that the request was made, the requested information was not held by the Cabinet Office.

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: 0203 936 8963

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

Daniel Perry
Senior Case Officer
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