



House of Commons
Public Administration
and Constitutional Affairs
Committee

**The Cabinet Office
Freedom of Information
Clearing House**

Ninth Report of Session 2021–22

*Report, together with formal minutes relating
to the report*

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Public Administration and Constitutional Affairs Committee

The Public Administration and Constitutional Affairs Committee is appointed by the House of Commons to examine the reports of the Parliamentary Commissioner for Administration and the Health Service Commissioner for England, which are laid before this House, and matters in connection therewith; to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service; and to consider constitutional affairs.

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Committee staff

The current staff of the Committee are Gavin Blake (Clerk), Dr Matthew Fright (Committee Specialist), Iwona Hankin (Committee Operations Officer), Gabrielle Hill (Committee Operations Manager), Dr Philip Larkin (Committee Specialist), Lizzie Shelmerdine (Committee Specialist), Susanna Smith (Second Clerk), Dr Patrick Thomas (Committee Specialist), Christopher Watson (Assistant Clerk) and Gina Degtyareva (Senior Select Committee Media Officer).

Contacts

All correspondence should be addressed to the Clerk of the Public Administration and Constitutional Affairs Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 3268; the Committee's email address is pacac@parliament.uk.

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Contents

| | |
|---|-----------|
| Summary | 3 |
| 1 Introduction | 5 |
| Background | 5 |
| Terms of Reference and Evidence | 6 |
| 2 The role and operation of the Cabinet Office Freedom of Information Clearing House | 8 |
| Greater Clearing House transparency is needed to restore trust | 8 |
| The Information Commissioner's Office's audit and the Cabinet Office's forthcoming internal review | 10 |
| 3 The Cabinet Office's compliance with and implementation of the Freedom of Information Act 2000 | 14 |
| Concerns with Freedom of Information processing in Central Government | 14 |
| Non-applicant-blind handling | 14 |
| Public Interest Test | 15 |
| Delays and wider Central Government Freedom of Information performance | 16 |
| Cabinet Office Freedom of Information leadership | 17 |
| Setting the tone for the rest of Government | 18 |
| Cabinet Office's relationship with the Information Commissioner's Office | 21 |
| Cabinet Office engagement with the Information Commissioner's Office | 22 |
| Conclusions and recommendations | 24 |
| Formal minutes | 27 |
| Witnesses | 28 |
| Published written evidence | 29 |
| List of Reports from the Committee during the current Parliament | 31 |

Summary

In April 2021, the Cabinet Office lost a case before the First Tier Tribunal in relation to data held by its 'Clearing House'—a body which coordinates responses to certain Freedom of Information ("FOI") requests across Government. Prior to the Tribunal proceedings, the Clearing House had an opaque status. Following the Tribunal, the Committee launched this inquiry to provide a view on the transparency surrounding the Clearing House, the Cabinet Office's efforts to review the Clearing House, and the Cabinet Office's oversight of and attitude towards the FOI Act 2000 more generally.

In 2006, our predecessor Committee recommended the Clearing House needed to be more transparent and publish performance data. The Government however did not follow those recommendations. Details on the Clearing House's operations, including how effectively it operates, cannot be seen based on existing disclosures, and the Cabinet Office has been unable to provide complete and comprehensive data on the Clearing House. The Committee echoes the call of our predecessor Committee by emphasising the need for more casework data to be made public. The Committee also notes with concern a lack of effective record keeping in the Clearing House itself.

Following the First Tier Tribunal judgment, the Information Commissioner's Office (ICO) requested to undertake an FOI audit of the Clearing House. The Committee was disappointed to learn that this offer was rejected, and the Cabinet Office has not provided convincing justifications for this rejection. The Committee finds this decision to be misjudged given the expertise and independence of the ICO, and the Cabinet Office has yet to provide a satisfactory justification for the rejection.

The Cabinet Office has instead announced a short internal review following the launch of this inquiry. As of April 2022, the Cabinet Office still has not established who will undertake the review, what their Terms of Reference are or their expected timetable for completion. This is an unacceptable delay. From the limited amount we know, the suggested direction of the review's Terms of Reference lacks the same depth as the ICO's proposed FOI audit approach. To reassure the public and this Committee, we recommend that the Cabinet Office should instead expose itself to rigorous external third-party scrutiny from the ICO and accept the ICO's offer of an audit. The findings of this audit should be completed by October 2022 and put in the public domain, after which the Cabinet Office should publish an action plan.

During this inquiry, the Committee has received evidence of poor FOI administration in the Cabinet Office and across Government which appears to be inconsistent with the spirit and principles of the FOI Act. Notably in relation to non-applicant blind handling, how Public Interest Tests are evaluated and delays in FOI handling. The Committee recommends the Cabinet Office should review these and its own practises to ensure it models best practise and implements robust procedures to prevent reoccurrence.

As the lead department on FOI, we believe that the Cabinet Office should be held to a higher standard as an example of best practice to other Departments, to ensure a vibrant FOI culture across Government. Evidence submitted to the Committee suggests up to 2019 the Cabinet Office granted fewer FOI requests and withheld more information than other Departments, though this may have improved in recent years.

The Committee takes the view that leadership matters. The Cabinet Office needs to work harder to ensure a strong and enthusiastic tone from the top that supports FOI. Recent statements by the Cabinet Office emphasising the importance of FOI do not go far enough given actions elsewhere in Government to critique and limit the FOI Act notably in relation to the Advanced Research and Invention Agency (ARIA). The Committee recommends a more proactive and forward-looking approach which improves responses to FOI requests across Government and addresses concerns about the use of WhatsApp and other private messaging systems to evade the FOI Act.

The ICO plays an important advocacy and enforcement role in the FOI landscape. The ICO explained to the Committee that its stretched FOI resources are impacting the deliverability and timeliness of its FOI services. Whilst policy responsibility for the Information Commissioner's FOI work lies with the Cabinet Office, its financial resourcing lies with the Department for Culture Media and Sport. This is an unsatisfactory arrangement as there should be a greater alignment between resourcing and policy. As the departmental sponsor for FOI policy, the Cabinet Office should work more closely with the ICO and ensure the recent improvement in working relations is sustained.

1 Introduction

Background

1. The Freedom of Information Act 2000 (“FOIA”) received Royal Assent in November 2000 and the full provisions of the Act came into force on 1 January 2005. It established two statutory rights for citizens: (i) the right to query government if information is held or not, and, (ii) if it is held, to gain access to it (subject to limitations).¹ The Supreme Court has emphasised the importance of the FOIA, noting its great constitutional significance to the UK due to the fact that it had “created a prima facie right to the disclosure of all such information, save in so far as that right was qualified by the terms of the Act or the information in question was exempt”.²
2. Under the Act, anyone can request information from a public authority, but it also includes provisions granting those authorities certain exemptions from the obligation to release information, for example where the cost of complying is above a pre-set threshold or the request is vexatious.
3. In April 2021, a judgment by a First Tier Tribunal required the Government to release information on a body known as the ‘Clearing House’—a body within the Cabinet Office which assists with the processing of Freedom of Information (“FOI”) requests—citing a “profound lack of transparency about the operation” of that body (“the First Tier Tribunal Case”).³
4. The Tribunal heard the case following a FOI request on 20 August 2018 by the journalist Jenna Corderoy. The FOI request was rejected by the Cabinet Office under Section 35(1)(a) and (b) of the FOIA, stating it would impact on the formulation of policy and communication between Ministers. After appeal and following delays,⁴ Ms Corderoy raised a complaint with the Information Commissioner’s Office, which upheld the complaint on 13 July 2020. The Cabinet Office appealed to the Tribunal. By the time the Tribunal concluded, the nature of the case had changed as the Cabinet Office released 145 out of the 159 rows of information that were being sought under the original FOI request.⁵ However, the Cabinet Office sought to withhold fourteen pieces of advice it judged to be sensitive on the grounds of national security and personal information.⁶ In its final decision, the Tribunal granted release of a further six rows of data. Following the Tribunal decision, the Cabinet Office did not appeal the judgement and released the relevant information.
5. The initial data request by Jenna Corderoy related to a “round robin” list operated by the Clearing House which coordinated certain Freedom of Information requests across

1 Ministry of Justice, ‘[Memorandum to the Justice Select Committee: Post-Legislative Assessment of the Freedom of Information Act 2000](#)’, p.3 para 2

2 First-tier Tribunal (General Regulatory Chamber) Information Rights, [Decision notice fs50841228](#), 29/30 April 2021, p.13 para 37

3 First-tier Tribunal (General Regulatory Chamber) Information Rights, [Decision notice fs50841228](#), 29/30 April 2021, p.13 para 35

4 First-tier Tribunal (General Regulatory Chamber) Information Rights, [Decision notice fs50841228](#), 29/30 April 2021, p.2 paras 1–2

5 First-tier Tribunal (General Regulatory Chamber) Information Rights, [Decision notice fs50841228](#), 29/30 April 2021, p.8 para 18

6 [Letter from Chloe Smith MP, then Minister of State, Cabinet Office – PACAC inquiry into the Cabinet Office FOI Clearing House, dated 31.08.21 2021](#)

government.⁷ “Round robin” lists are created when similar requests for information are made to multiple departments simultaneously by the same individual or on similar topics. Prior to the Tribunal proceedings, there was limited public information about the Clearing House, what it is, and how and why it exists. The Tribunal decision drew attention to both the Cabinet Office’s stated responsibility to make the way government works more transparent and the absence of information on the Clearing House. As the Tribunal noted in its judgement, the Secretary of State for the Home Department at the time of the FOI Bill’s introduction, Rt Hon. Jack Straw MP, stated at its introduction:

Unnecessary secrecy in Government and our public services has long been held to undermine good governance and public administration...the Bill will not only provide legal rights for the public and place legal duties on Ministers and public authorities, but will help to transform the culture of Government from one of secrecy to one of openness. It will transform the default setting from “this one should be kept quiet unless” to “this should be published unless”⁸

6. OpenDemocracy, who brought the case, accused the Clearing House of obstructing access to information they are entitled to seek under the FOI rules. During questioning by the Committee previously on a separate inquiry, the then Chancellor of the Duchy of Lancaster, Rt Hon. Michael Gove MP, defended the Clearing House operation, stating that its role was to ensure consistency across Government in complying with the FOIA.

7. As part of its role in overseeing and scrutinising the work of the Cabinet Office, the Committee [launched an inquiry on 8 July 2021](#) following the findings of the First Tier Tribunal. The Committee’s aim in conducting this inquiry is not to consider the FOIA in and of itself, or to revisit the details of the First Tier Tribunal judgment. Instead, the Committee aims to provide a view on the transparency surrounding the Clearing House, the Cabinet Office’s efforts to review the Clearing House, and the Cabinet Office’s oversight of and attitude towards the FOIA more generally.

Terms of Reference and Evidence

8. The Committee received over 40 written submissions. We held several oral evidence sessions with a range of stakeholders: journalists, Whitehall and academic experts; the Information Commissioner’s Office; and the Chancellor of the Duchy of Lancaster, Rt Hon. Steve Barclay MP and Cabinet Office Permanent Secretary and Civil Service Chief Operating Office, Alex Chisholm.

9. The inquiry proceeded within the following Terms of Reference, agreed on 29 June 2021 and published on 8 July 2021:

- The Cabinet Office’s compliance with and implementation of the Freedom of Information Act 2020;
- The role and operation of the Cabinet Office Freedom of Information Clearing House including;
- Its handling of the cases that come to it; and

7 Jenna Corderoy ([FOI28](#))

8 HC Deb, 7 December 1999, [col 714](#) [Commons Chamber]

- Its role in advising on and coordination of the handling of Freedom of Information cases across Government.

2 The role and operation of the Cabinet Office Freedom of Information Clearing House

Greater Clearing House transparency is needed to restore trust

10. Our predecessor Committee first looked at the Clearing House in 2006.⁹ At that time, it recommended greater transparency about the role of the Clearing House, including publishing performance data. The Government however did not follow those recommendations, and by the time of the First Tier Tribunal case, there had been no new information on the Clearing House added to the public domain for eight years.¹⁰ On 18 March 2021, the Government published a limited amount of information on the Clearing House on GOV.UK.¹¹

11. The paradox of withholding information about a body charged with administering Government transparency has been a source of unease for journalists and FOI groups alike for some time. Whilst the First Tier Tribunal case drew attention to the Clearing House, a full evaluation of that entity was beyond the parameters of the case and could not be thoroughly investigated therein: basic questions about its size and operation remain unanswered and FOI requests on this by journalists have been refused.¹² The Committee received multiple submissions from journalists and third sector bodies raising concerns about the Clearing House. These included: its poorly defined and vague remit,¹³ ambiguity over whether it is advising or directing departments,¹⁴ a lack of clarity over lines of accountability within the Clearing House, its location within the Cabinet Office rather than as an independent body,¹⁵ and whether access to information is being hindered by political rather than legal judgement.¹⁶

12. Appearing before the Committee in December 2020, in the context of our ongoing inquiry into the work of the Cabinet Office, the then Chancellor of the Duchy of Lancaster, Mr Gove, criticised the accuracy of press reporting on the operations of the Clearing House.¹⁷ Similarly, Chloe Smith MP, then Minister for the Constitution and Devolution at the Cabinet Office, wrote to the Chair on 31 August 2021 rejecting the basis of media reports that the Cabinet Office operates a “blacklist” of journalists who submit FOI requests and directs departments to block such requests.¹⁸

9 Constitutional Affairs Select Committee [Freedom of Information—one year on](#) 7th Report of Session 2005–06 HC 991, paras 86–91

10 First-tier Tribunal (General Regulatory Chamber) Information Rights, [Decision notice fs50841228](#), 29/30 April 2021, p.12 para 34

11 [Cabinet Office and Freedom of Information – GOV.UK \(www.gov.uk\)](#) published 18.03.21

12 “Cabinet Office loses battle to sit on details of ‘secret unit’” [Times](#) 9 June 2021

13 Martin Rosenbaum ([FOI 12](#)), MySociety ([FOI 16](#)), openDemocracy ([FOI 28](#)) and Transparency International UK ([FOI25](#)).

14 MySociety ([FOI 16](#)), Dr Ben Worthy, openDemocracy ([FOI 28](#)) and Jenna Corderoy ([FOI28](#)).

15 MySociety ([FOI 16](#))

16 openDemocracy ([FOI 28](#)) and Transparency International UK ([FOI25](#)).

17 [Q551](#)

18 [Letter from Chloe Smith MP, then Minister of State, Cabinet Office – PACAC inquiry into the Cabinet Office FOI Clearing House, dated 31.08.21 2021](#)

13. On 18 March 2021, the Government published information on the Clearing House on GOV.UK, setting out its remit,¹⁹ the criteria for referral to the Clearing House,²⁰ and a pro forma referral form.²¹ In parallel, Mr Gove wrote to the Guardian and the Society of Editors challenging the claim the Clearing House is “Orwellian” or that the Government opposes transparency.²²

14. The information placed on GOV.UK on 18 March 2021 fell short of earlier public disclosures on the Clearing House, when responsibility for the Clearing House rested with the Ministry of Justice (“MOJ”). In particular, it fell short in the following ways compared to the previously available information:

- The Quarter 4, 2011 figures for the MOJ displayed monthly referrals to the Clearing House split by the relevant referring Department.²³ This enabled the public to see the volume of cases considered by the Clearing House.
- The Ministry of Justice website previously had a page which outlined a toolkit for practitioners for working with the Central Clearing House, a list of Departments and bodies within the remit of the Clearing House, referral triggers and an exemplar referral form.²⁴

15. Beyond the information made available on 18 March 2021, information on the Clearing House and its structures within the Cabinet Office and within Government itself is limited—though some details on its structure can be gathered from job adverts from April 2020.²⁵ These suggest the Clearing House is administered by the FOI & Transparency Team in the Cabinet Office, which is a body within the Private Office Group and ultimately overseen by the Director General for Propriety and Ethics. On 9 March 2021, the then Chancellor of the Duchy of Lancaster, Mr Gove, wrote to the Committee explaining the Clearing House is a three-person team.²⁶

16. Further details on its operations and how effectively it operates cannot be seen based on existing disclosures. Appearing before the Committee, the then Information Commissioner, Elizabeth Denham, was unable to answer questions such as whether the existence and operation of the Clearing House made a necessary or helpful contribution to cross-Government FOI processing:

I wish I could answer that question, but we simply do not know, because the actual operations of the Clearing House are opaque to our office.²⁷

19 Cabinet Office, [‘Departments within the Clearing House Remit’](#), 18 March 2021

20 Cabinet Office, [‘Cabinet Office Referral Criteria’](#), 18 March 2021

21 Cabinet Office, [‘Clearing House Referral form’](#), 18 March 2021

22 [Letter from Rt Hon Michael Gove MP, then Chancellor of the Duchy of Lancaster, Cabinet Office to the Guardian – handling of FOI requests from journalists, dated 18.03.21](#), [Letter from Rt Hon Michael Gove MP, then Chancellor of the Duchy of Lancaster, Cabinet Office to the Society of Editors – handling of FOI requests from journalists, dated 18.03.21](#)

23 Ministry of Justice, [‘Freedom of Information Act 2000 – Statistics on implementation in central government 2011 Annual and Q4: October – December 2011’](#), 26 April 2012, p.50

24 Ministry of Justice – archived webpage stored on the National Archives, [‘Referring to the Clearing House’](#), 7 April 2010

25 Cabinet Office recruitment website, [4942 – Multiple B1 roles – PBT Office Manage / FOI Clearing House Adviser’](#), 26 April 2020

26 [Letter from Rt Hon Michael Gove MP, then Chancellor of the Duchy of Lancaster, Cabinet Office: openDemocracy correspondence, dated 09.03.21](#)

27 [Q82](#)

17. In 2006, the Constitutional Affairs Committee recommended “that the clearing house publish quarterly statistics about its case handling so as to provide clear information about its role”.²⁸ To date, however, the Cabinet Office has been unable to provide complete and comprehensive data on the Clearing House. The current Chancellor of the Duchy of Lancaster, Mr Barclay, reiterated to the Committee, on 20 January 2022, a point raised by his predecessor:

The Cabinet Office does not routinely capture data on the number of requests which are referred to the Clearing House.²⁹

18. Despite this lack of complete performance data, limited data on the volume of “round robin” requests is in fact monitored by the Cabinet Office and in 2020, the Clearing House gave advice on 516 “round robin” requests.³⁰ This is, however, a subset of the full range of operations performed by the Clearing House.³¹

19. **Through disclosures about the Clearing House over time, the Government has sought to make amends for the absence of information regarding a core component of the Government’s Freedom of Information machinery. However, the level of disclosure falls short of what was previously available, and what was requested by our predecessor Committee. We note that data on the volume of cases was previously available, showing number of references by Department on a monthly basis. Experts in Freedom of Information—including the Information Commissioner’s Office itself—still find themselves unable to comment on whether the Clearing House provides a necessary or helpful role in that landscape. We note with concern the lack of effective record keeping in the Clearing House on its performance, which falls below the standard expected for a central Government body.**

20. *A greater level of transparency is required about the Clearing House. To further allay concerns about the Clearing House, a greater volume of data on its performance should be published. As a minimum, the Cabinet Office needs to publish the same level of Clearing House information as previously on the number of referrals to the Clearing House split by Department and month. Echoing our predecessor Committee, this should be disclosed on a quarterly basis. The Cabinet Office should also publish data on casework volume split by referral category and timeliness against ICO and legal guidelines.*

The Information Commissioner’s Office’s audit and the Cabinet Office’s forthcoming internal review

21. Following the First Tier Tribunal judgment in April 2021, the Information Commissioner’s Office (ICO) offered to undertake an external FOI audit of the Clearing House in May 2021.³² The ICO proposed a bespoke audit, modelled on a process audit that would use controls tests from several of the ICO’s standard toolkits. The proposed audit would have checked compliance with Data Protection and FOI laws in the areas

28 Constitutional Affairs Committee, *Freedom of Information – one year on*, HC 991–2006, June 2006. Paragraph 92

29 [Letter from Rt Hon Steve Barclay MP, Chancellor of the Duchy of Lancaster, Cabinet Office – follow up to the oral evidence session of 20 January 2022, dated 1.02.22](#)

30 [Letter from Rt Hon Steve Barclay MP, Chancellor of the Duchy of Lancaster, Cabinet Office – follow up to the oral evidence session of 20 January 2022, dated 1.02.22](#)

31 Cabinet Office, ‘[Cabinet Office Referral Criteria](#)’, 18 March 2021

32 Information Commissioner’s Office ([FOI 46](#))

of Governance and Accountability, Records Management, Informational Security, Data Sharing, and, Training and Awareness.³³ This offer for independent external public assurance was ultimately rejected by the Cabinet Office.³⁴ ICO Audits under the FOIA are on a voluntary basis so can be refused by bodies,³⁵ unlike the Scottish Information Commissioner who has greater powers and can undertake mandatory FOI audits.³⁶

22. Following the launch of this Committee's inquiry in July 2021, the Cabinet Office wrote to inform the Committee on 31 August 2021 that it was undertaking an internal review into the Clearing House. The then Cabinet Office Minister, Ms Smith, wrote stating that she had commissioned a "short assessment of the role of the Clearing House" which would identify improvement areas for FOI guidance.³⁷ The Cabinet Office did not at that time inform the Committee of the ICO's offer of an external audit of the Clearing House.

23. On 14 September 2021, five months after the initial offer by the ICO, and after the launch of our inquiry and the correspondence from the then Minister, Ms Smith, the Cabinet Office informed the ICO of its decision to reject the proposed audit.³⁸ The Cabinet Office has provided to the Committee a copy of this decision letter.³⁹ In it, the Cabinet Office Director General for Propriety & Ethics, Darren Tierney, acknowledged some of the perception challenges surrounding the Clearing House and the need to ensure an accurate understanding of the Clearing House be made publicly.

24. The two main justifications put forward in the letter for rejecting the audit referenced the restricted role of the Clearing House and the preference of Ministers for an internal review rather than an independent audit. From the evidence submitted to the Committee to date, it is unclear what the Cabinet Office meant by the "restricted role" of the Clearing House. Both the remit and referral criteria referenced above demonstrate the Clearing House's remit spans Government and covers topics ranging from "round robins" to security matters. The Committee has yet to see the detailed reasons why it was that Ministers preferred an internal review as a way to addressing the concerns about transparency perceptions admitted to by Cabinet Office officials.

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- 33 [Letter from Elizabeth Denham, Information Commissioner to Darren Tierney DG Propriety and Ethics, Cabinet Office. 19 July 2021](#)
- 34 Letter from Darren Tierney to the Information Commissioner, 14 September 2021 – provided to the Committee in an attachment to a [Letter from Chancellor of the Duchy of Lancaster to William Wragg MP, Chair PACAC, 1 February 2022](#)
- 35 Information Commissioner's Office (FOI 46) p.1. A consensual audit of the Northern Ireland Civil Service Departments was carried out under Sections 47 of the FOIA – ICO, [Findings from the ICO's consensual audits of the Northern Ireland Civil Service Departments](#), October 2020 to April 2021, p.3
- 36 Information Commissioner's Office (FOI 46) p.3, [Letter from the Scottish Information Commissioner to Joe Fitzpatrick MSP November 2017](#)
- 37 [Letter from Chloe Smith MP, then Minister of State, Cabinet Office – PACAC inquiry into the Cabinet Office FOI Clearing House, dated 31.08.21 2021](#)
- 38 Letter from Darren Tierney to the Information Commissioner, 14 September 2021 – provided to the Committee in an attachment to a [Letter from Chancellor of the Duchy of Lancaster to William Wragg MP, Chair PACAC, 1 February 2022](#)
- 39 Letter from Darren Tierney, Director General, Propriety & Ethics, Cabinet Office to the Information Commissioner, dated 14.09.21 – supplied to the Committee in an attachment to a [Letter from Rt Hon Steve Barclay MP, Chancellor of the Duchy of Lancaster, Cabinet Office – follow up to the oral evidence session of 20 January 2022, dated 1.02.22](#)

25. The Cabinet Office still has not set out key details about the proposed internal review, including the name of the internal reviewer, their Terms of Reference or their expected timetable for completion.⁴⁰

26. From what we have been told previously the Cabinet Office is seeking an independent reviewer “who can command the confidence of both the public and the Committee”.⁴¹ In earlier correspondence between the Cabinet Office and the ICO, the Cabinet Office anticipated that the review would be undertaken by a Non-Executive Director from within Government.⁴² Yet, arguably, an external reviewer would have greater independence than an in-house reviewer. The former Information Commissioner, Elizabeth Denham, noted “I just think people will continue to be suspicious until an independent agency can have a look.”⁴³ The former Information Commissioner also emphasised the importance of an independent audit as a mechanism for easing concerns about the opacity of the Clearing House.⁴⁴ The Cabinet Office Permanent Secretary, Alex Chisholm, acknowledged to the Committee that in-house enquiries may not be as well accepted as an independent audit.⁴⁵

27. A full copy of the internal review’s Terms of Reference has not been supplied to the Committee as we understand they have yet to be finalised.⁴⁶ From the limited amount we know, the Committee has concerns about the planned review. In early correspondence, the Cabinet Office proposed its internal review could:

Review the functions of the Clearing House, note the practices under successive administrations, consider recent criticisms made and assess those against evidence of current practice.⁴⁷

The Cabinet Office’s early thinking anticipated that future recommendations may require changes to the FOI Section 45 Code of Practice – a code which is set out by the Chancellor of the Duchy of Lancaster which outlines the guidance for public authorities to follow in connection with the FOIA.⁴⁸ Whilst broader in scope than the ICO’s proposed FOI audit, the suggested direction of the Terms of Reference lacked the same depth of thinking on compliance with the Data Protection Act 2018 and FOI Act than the ICO’s proposed FOI audit approach. This level of scrutiny is necessary to help identify the extent to which any of the FOI compliance issues highlighted in Chapter 3 are impacting FOI handling.

28. It is disappointing that the Cabinet Office rejected the Information Commissioner’s Office’s offer to undertake a Freedom of Information Audit, and we are concerned

40 [Qs 190 - 194, Letter from Rt Hon Steve Barclay MP, Chancellor of the Duchy of Lancaster, Cabinet Office – follow up to the oral evidence session of 20 January 2022, dated 1.02.22](#)

41 [Letter from Rt Hon Steve Barclay MP, Chancellor of the Duchy of Lancaster, Cabinet Office – follow up to the oral evidence session of 20 January 2022, dated 1.01.22](#)

42 Letter from Darren Tierney to the Information Commissioner, 14 September 2021 – provided to the Committee in an attachment to a [Letter from Chancellor of the Duchy of Lancaster to William Wragg MP, Chair PACAC, 1 February 2022](#)

43 [Q82](#)

44 [Q77](#)

45 [Q197](#)

46 [Letter from Rt Hon Steve Barclay MP, Chancellor of the Duchy of Lancaster, Cabinet Office – follow up to the oral evidence session of 20 January 2022, dated 1.01.22](#)

47 Letter from Darren Tierney to the Information Commissioner, 14 September 2021 – provided to the Committee in an attachment to a [Letter from Chancellor of the Duchy of Lancaster to William Wragg MP, Chair PACAC, 1 February 2022](#)

48 Information Commissioners Office, [Section 45 – Code of Practice, request handling](#)

both by this refusal itself and by the precedent this may set across Government. The Cabinet Office's decision was misjudged given the Information Commissioner's Office's Freedom of Information expertise and, importantly, the Commissioner's independence. The Information Commissioner's Office, as the official statutory regulator for Freedom of Information and Data Protection, is better placed than any other organisation to undertake a review of this kind. The basis for this rejection therefore remains unclear, and we are unconvinced by the explanations from the Cabinet Office. The Cabinet Office's internal review, launched only after the Committee initiated this inquiry, is no substitute for the independent assurance that the Information Commissioner's Office would be able to provide.

29. Further, the Committee notes with concern the Cabinet Office's failure to deliver on its promise of a short internal review. The Cabinet Office also missed an opportunity to expose itself to a rigorous third-party review which could have improved its own Freedom of Information operations. It is now eight months since the Cabinet Office promised its review to the Committee during which time it has failed to secure an internal reviewer or finalise Terms of Reference. This is an unacceptable delay.

30. *The Cabinet Office should accept the Information Commissioner's offer to undertake its proposed audit to reassure the public that the Government's approach to Freedom of Information requests is compliant with the Freedom of Information Act and that they are handled with the utmost professionalism. The Cabinet Office and the Information Commissioner's Office should agree a timetable for the audit to be completed by the end of October 2022, and should commit to publishing its findings.*

31. *The Cabinet Office should produce and publish an action plan in response to the findings of the Information Commissioner's Office's audit, and provide it to this Committee no later than the end of this year.*

3 The Cabinet Office's compliance with and implementation of the Freedom of Information Act 2000

Concerns with Freedom of Information processing in Central Government

32. The Cabinet Office has responsibility for FOI policy in England, Wales and Northern Ireland.⁴⁹ The Cabinet Office is also responsible for setting the FOI Code of Practice, which provides guidance to public authorities on best practice for FOI request handling. The latest version of the Code of Practice was issued in 2018.⁵⁰ As such it plays a vital role in ensuring compliance with the Freedom of Information Act across Government.⁵¹ During this inquiry, the Committee has received evidence of poor FOI administration in the Cabinet Office and across Government which appears to be inconsistent with the spirit and principles of the FOIA.

Non-applicant-blind handling

33. As the ICO explains, information disclosed under the FOIA is sometimes described as being 'purpose and applicant blind'.⁵² The ICO also makes clear that, with certain very specific exceptions, such as repeated or vexatious requests, "no matter who the requestor is...they should receive the same response, in terms of substantive outcome, as anyone else making an identical request".⁵³

34. In spite of this we received evidence detailing multiple examples of Departments treating of FOI cases submitted through the Clearing House process in a non-blind manner. For example, we received evidence of situations where:

- Departments deciding FOI requests are sensitive because the applicant was a journalist and referring them to the Clearing House on this basis.⁵⁴
- Following a Subject Access Request—whereby individuals can request to see all data held on them by a public body—a journalist identified he had been flagged as being "ever active" by a department in its internal correspondence with the Clearing House.⁵⁵
- Departments highlighting the name and profession of the applicant, as well as links to professional profile pages in their referral to the Clearing House.⁵⁶

49 [Freedom of Information statistics – GOV.UK \(www.gov.uk\)](https://www.gov.uk). For details on the FOI law in Scotland see [FOI law in Scotland \(itspublicknowledge.info\)](https://itspublicknowledge.info)

50 Information Commissioner's Office, [Section 45 – Code of Practice, request handling](#)

51 Cabinet Office, [Cabinet Office and Freedom of Information](#)

52 Information Commissioner's Office, [What is the Freedom of Information Act?](#)

53 Information Commissioner's Office, [Consideration of the applicant's identity or motives](#)

54 Jenna Corderoy (investigations reporter, openDemocracy) ([FOI 28](#)) p.9, George Greenwood (investigations reporter, The Times) ([FOI 6](#)) p.4

55 George Greenwood (investigations reporter, The Times) ([FOI 6](#)) p.4

56 Jenna Corderoy (investigations reporter, openDemocracy) ([FOI 28](#)) p.9

- Departments documenting the profession of applicants in their FOI triage processes.⁵⁷

35. The examples above show weaknesses in the “round robin” process. Evidence shown to the Committee indicates that the “round robin” list issued to departments by the Clearing House does use FOI applicants’ names. This led to concerns about whether Clearing House “round robin” list is truly “applicant-blind”. The then Chancellor of the Duchy of Lancaster, Mr Gove, explained this practice to the Committee:

This list does use the name of the requestor to help identify the request; each department will have their own reference numbers, so the name is used to practically help with the multiple requests being grouped into a table. The identity of the requestor is not a material consideration and the occupation of the requestor is not included in the list.⁵⁸

Public Interest Test

36. FOI legislation grants citizens a right to access official information, and in principle, the default position when an FOI request is received is that the requested information should be disclosed. As ICO guidance makes clear “information should be kept private only when there is a good reason and it is permitted by the Act”.⁵⁹

37. The FOIA outlines two categories of exemptions that enable public bodies to prevent the release of information: qualified and absolute exemptions.⁶⁰ Absolute exemptions operate to allow the public body in question to refuse to release the requested information without the need for further consideration or explanation. Qualified exemptions on the other hand require a “Public Interest Test” to be undertaken determine if it is in the public interest to release the requested information.⁶¹ When a public body undertakes a Public Interest Test, it is permitted a ‘reasonable’ extension of time to assess whether the information should be placed in the public domain. The ICO’s view is that a ‘reasonable’ extension of time should be no more than an additional 20 working days.⁶²

38. The Committee has received evidence which questions the processes currently being undertaken within Government for determining public interest decisions. For instance, in one case, a departmental FOI team, in communication with the Clearing House, seemingly referenced the Public Interest Test as a potential stalling tactic whilst waiting on a Clearing House decision.⁶³ Journalists appearing before the Committee informed us that this process can be lengthy and there is inconsistency as to whether applicants are notified that their case is subject to a Public Interest Test and that therefore they can expect a delay in the response to their request.⁶⁴

39. Evidence submitted to the Committee also suggests a wide range of parties can and do feed into the decision making on the release of information including Special Advisers

57 Graham Lanarktree (reporter, POLITICO) ([FOI 33](#))

58 [Letter from Rt Hon Michael Gove MP, Chancellor of the Duchy of Lancaster, Cabinet Office: correspondence from openDemocracy, 9.03.21.](#)

59 Information Commissioner’s Office, [What is the Freedom of Information Act?](#)

60 Information Commissioner’s Office, [the_public_interest_test](#)

61 Information Commissioner’s Office, [the_public_interest_test](#)

62 Information Commissioner’s Office, [time-for-compliance-foia-guidance](#) para 62

63 openDemocracy ([FOI 24](#)) p.6

64 [Qs 16–19](#)

(SpAds).⁶⁵ The involvement of SpAds in the decision making process has led to concerns about political involvement in what is in essence a statutory process.⁶⁶ When questioned via correspondence about the concerns expressed to us regarding the involvement in a statutory process of Ministers and SpAds (i.e. political actors), the Chancellor of the Duchy of Lancaster, Mr Barclay informed us in response that:

- Ministers can become involved in FOI requests when evaluating section 36 exemptions relating to whether publication will prejudice or inhibit the effective conduct of public affairs.
- Under the Code of Conduct for Special Advisers, SpAds may assist on any area of public business including the FOI Act and to convey ministerial decisions to officials.⁶⁷

Delays and wider Central Government Freedom of Information performance

40. Delays to accessing public information frustrate FOI applicants and can significantly impact the relevance and media impact of news stories, in turn making it harder for journalists to hold the Government to account. As the then Information Commissioner Elizabeth Denham observed to the Committee, “Information delayed is information denied”.⁶⁸

41. The Institute for Government’s Whitehall Monitor 2022 shows that across Government, departments struggled to deliver timely outcomes due to a greater pace of FOI demands during the pandemic—particularly those whose work was closely linked to the pandemic response, such as the Department for Health and Social Care. As the IFG Whitehall Monitor notes, in the first two quarters of 2021, seven of nineteen departments, 37%, failed to meet the ICO’s threshold for timely responses.⁶⁹ Separately, over the lifetime of the FOIA since it came into force in 2005, the IFG notes there has been a steady long-term trend to either fully or partially withhold information requests.⁷⁰

42. Under the FOIA, as ICO guidance sets out, should a public body lack legitimate grounds for an exemption, the information should be supplied to an FOI applicant within 20 working days.⁷¹ Only under certain circumstances can a public authority take additional “reasonable” time to decide if an exemption can be applied. The ICO believed a reasonable time counts as 20 days meaning in total a applicant should have to wait no longer than 40 days for a response.⁷²

43. However, should an FOI applicant seek to review a decision made by a Department, there is no statutory time limit on internal reviews.⁷³ This means that, in theory, should

65 [openDemocracy \(FOI 24\) p.8](#)

66 [Tory advisers allowed to ‘approve’ government Freedom of Information replies | openDemocracy](#)

67 [Letter from Rt Hon Steve Barclay MP, Chancellor of the Duchy of Lancaster, Cabinet Office – follow up to the oral evidence session of 20 January 2022, dated 1.02.22.](#)

68 [Q113](#)

69 IFG, [Whitehall Monitor 2022](#), p.100

70 IFG, [Whitehall Monitor 2022](#), p.101

71 Information Commissioner’s Office, [‘Time limits for compliance under the Freedom of Information Act \(Section 10\)’](#), paragraphs 15 to 20

72 Information Commissioner’s Office, [‘Time limits for compliance under the Freedom of Information Act \(Section 10\)’](#), paragraphs 51 to 63

73 [Q114](#)

a department want to take six months to review, neither FOI applicants nor the ICO can intervene.⁷⁴ Such lengthy delays lead to considerable frustration on the part of applicants and concerns that they are being stonewalled.⁷⁵ Such delays may be the result of poor administration. For example, the ICO submitted evidence citing cases where initially the Cabinet Office states it doesn't hold information, only for it to transpire following ICO investigation that it does: "such cases are evidence of insufficient care and attention being taken when processing a request".⁷⁶ Between 2016–20, it took an average of 106 calendar days for complaints about delayed requests to reach the ICO. The ICO then took an average of 82 calendar days to process the complaint and issue a decision.⁷⁷

44. It should be noted that this prolonged review does not occur in Scotland because Scotland operates a system of "deemed refusals" whereby an absence of response within a timeframe is taken as a refusal which can then be appealed by applicants.⁷⁸

45. During the inquiry, the Committee received multiple examples of poor Freedom of Information handling in central Government departments, particularly in relation to non-applicant blind handling, how Public Interest Tests are evaluated and delays in Freedom of Information handling.

46. The Cabinet Office should review these practices and their own compliance with the Freedom of Information Act to model best practice. This should include, in particular, the adoption, where possible, of applicant-blind processing of requests; clear guidance on the very limited circumstances under which it may be appropriate for Ministers and Special Advisers to become involved in responding to Freedom of Information requests; and the establishment of appropriate timetables for the completion of internal reviews. Where it finds evidence that practices in Government departments are falling short of best practice, it should implement robust procedures to prevent their reoccurrence.

Cabinet Office Freedom of Information leadership

47. As the lead department on FOI, experts suggested that the Cabinet Office should be held to a higher standard as an example of best practice to other Departments. As Dr Ben Worthy observed:

the poor performance of leading departments at the Cabinet Office can encourage others to deprioritise and neglect FOI, and signal that poor performance invites no repercussions...This neglect can lead to a kind of 'collective irresponsibility', whereby broad non-compliance means delay and non-compliance go unpunished and spread further in a negative spiral of neglect".⁷⁹

48. The Committee received submissions critical of the Cabinet Office's timeliness and performance responding to FOI requests. In 2019 and 2020, the Cabinet Office missed the 20-day deadline for responding to FOI requests more often than the average across

74 [Q114](#)

75 [Iain Overton \(FOI01\)](#), [Jenna Corderoy \(FOI28\)](#), [John Lubbock \(FOI10\)](#), [Tim Tate \(FOI08\)](#), [openDemocracy \(FOI24\)](#), [Liberty \(FOI32\)](#) and [Transparency International UK \(FOI25\)](#)

76 Information Commissioner's Office ([FOI 46](#)) p.8

77 Open Democracy, [Art of Darkness](#), p.28

78 MySociety ([FOI 16](#)) p.21

79 Dr Ben Worthy ([FOI21](#)) p.4

other departments.⁸⁰ In 2018, in analysis of ICO Decision Notices against the Cabinet Office, the BBC repeatedly found complaints about Cabinet Office processes: This included references to delays which were “excessive”, “unacceptable” and “clearly against the spirit and intention of FOIA”. And the Cabinet Office was reprimanded by the ICO for its “poorly conceived submissions”, lack of “meaningful detail”, arguments which were “illogical”, “erroneous”, “unsustainable” or “generic”, and casework handling which “clearly fell short”.⁸¹

49. Evidence submitted to the Committee shows that between January 2010 and December 2019, the Cabinet Office granted the fewest (26%) and withheld the most (60%) FOI requests in full across Whitehall. Whilst this might in part be attributable to the sensitivity of certain topics given the nature of the work of the Department, Dr Worthy noted to the Committee that “other departments dealing with similarly sensitive issues, such as the Ministry of Defence, have performed better and been more open”.⁸² The Cabinet Office states that its timeliness has improved more recently and in 2021 achieved responses to 91% of all FOI requests within either the 20 working day time limit, or using permitted extensions.⁸³

Setting the tone for the rest of Government

50. Oral evidence heard by the Committee emphasised the importance of “tone from the top” on FOI culture across Government. As Dr Worthy noted, “the enthusiasm or the lack of enthusiasm of senior politicians towards transparency and openness has a huge influence on how others regard it”.⁸⁴

51. To that end, the Committee welcomes the Cabinet Office’s recent strong tone and repeated restatements of its commitment to transparency and freedom of information. For example, in a statement to the Society of Editors the then Chancellor of the Duchy of Lancaster, Mr Gove stated he recognised “the importance of a fair and consistent approach to freedom of information and the role the legislation plays in upholding our democracy”.⁸⁵ Similar sentiments on the Government’s commitment to transparency and FOI were emphasised by the Cabinet Office Permanent Secretary and current Chancellor of Duchy of Lancaster appearing before the Committee in January 2022.⁸⁶

52. Nevertheless, there remain gaps between the Government’s words and action. For example, the Committee notes with concern that, in the legislation establishing the new Advanced Research and Innovation Agency, ARIA, the Government chose to exempt it from the scope of the FOIA, claiming it would reduce administrative time of the new body.⁸⁷ The former Information Commissioner raised concerns about this decision and the way it exempted ARIA from the same transparency requirements as other bodies.⁸⁸ In

80 MySociety (FOI 16) p.7

81 Martin Rosenbaum (FOI 12) p.4

82 Dr Ben Worthy (FOI21) p.1

83 [Letter from Chloe Smith MP, then Minister of State, Cabinet Office – PACAC inquiry into the Cabinet Office FOI Clearing House, dated 31.08.21](#)

84 [Q53](#)

85 [Letter from Rt Hon Michael Gove MP, then Chancellor of the Duchy of Lancaster, Cabinet Office to the Society of Editors – handling of FOI requests from journalists, dated 18.03.21](#)

86 [Q195, Q200](#)

87 “Bill introduced to create high risk, high rewards research agency ARIA”, Department for Business, Energy & Industrial Strategy press release [2021](#), 2 March 2021

88 [Q65](#)

the former Information Commissioner's view this meant that "the tone from the top is not a respectful tone about the importance of freedom of information".⁸⁹ For example, when introducing legislation to underpin ARIA, the Business Minister, Lord Callanan stated that FOI is a "truly malign piece of legislation".⁹⁰ As Dr Worthy explained, his research showed that tone on FOI matters: "politicians and institutions send signals across the rest of Government", signals which can inform how other Government bodies regard, think about and implement FOI.⁹¹

53. The former Information Commissioner also raised questions about whether the greater use of outsourced of public services has made it more difficult for the public to access the information that affects their day to day lives.⁹² In the ICO's report "Outsourcing Oversight?" the ICO highlighted the case of a applicant seeking information on television services provided to inmates at a private run provision – the MOJ said it did not hold the information. By outsourcing the service, this meant that the MOJ could say it didn't have it. Further as private bodies are not subject to FOI in same way, the FOI applicant was unable to get access to the information. This meant that through outsourcing the service, information on the service provision now sat outside the FOIA and leaves a lacuna in the transparency regime. As the ICO concluded "These matters are dealt with according to the contractor's discretion".⁹³

54. The Committee asked the current Chancellor of Duchy of Lancaster what steps he had taken to ensure a strong FOI culture across Government, given that ownership of FOI policy as a whole rests with the Cabinet Office. The one example he identified was the Government's decision to follow the advice of the ICO to not bring forward proposals to charge fees for FOI requests.⁹⁴ This policy was seemingly mooted at an earlier period but details on the amount or even when the Government considered it are scant. Whilst the Committee is of the view that this is the correct position, we do note that a decision to forego an action which would weaken FOI is not the same as a proactive approach to further and deepen the effectiveness of the FOIA. We also note that the Chancellor of the Duchy of Lancaster did not outline what steps he plans to take to ensure a thriving FOI culture across Government.

55. Evidence to the Committee highlighted the types of actions and processes needed for the UK to improve its administration of FOI. Appearing before the Committee, the then Information Commissioner commented on the expectations gap that has emerged between the public expectation for instant information and a statutory process that has at a minimum a 20 working day response time.⁹⁵ A greater effort is required to ensure timely responses in the review and appeal process. Appearing before the Committee, Dr Ben Worthy outlined three components to a good FOI system, namely heavy external use, a strong appeal system, and, "crucially, has a lot of political support within".⁹⁶ To improve the tone from the top and drive stronger FOI culture, Dr Ben Worthy observed practical steps which were needed:

89 [Q67](#)

90 HL Deb 22 November 2021 [Column 147GC](#)

91 [Q53](#)

92 [Q65](#)

93 ICO, [Outsourcing Oversight?](#) p.79

94 [Q202](#)

95 [Q120](#)

96 [Q54](#)

Greater support and championing of FOI by senior politicians should be encouraged, especially Ministers in charge of poor performing departments. This should involve speeches, articles and other initiatives underlining the importance of compliance with law.⁹⁷

56. The Committee notes that in recent years new problems have emerged with the implementation of the FOIA. We are concerned about the emergence of new technologies which have led to a change in the way data is generated, stored and used in Government decision-making. The wide proliferation of private communication systems like WhatsApp have raised significant questions over what counts as ‘the public record’. The Committee has noted the challenges posed by this in other inquiries.⁹⁸ In the view of the former Information Commissioner “there needs to be a root-and-branch review of the legislation and the question of whether it is fit for purpose”.⁹⁹ The Government should have been more alive to this issue and responded quicker to these changes.

57. A strong functioning Freedom of Information system requires proactive leadership with a strongly supportive culture and an enthusiastic tone at the top of Government. We therefore welcome the strong tone adopted by the Government in response to critical press coverage of the Clearing House. However, we note a lack of consistency in the Government’s overall approach to Freedom of Information—for example the new proposed statutory arrangements for the Advanced Research and Invention Agency. This example evidences a slide away from transparency being viewed as helpful towards a view that it is a hindrance of Government being able to get on with work. This is a concerning trend and a wrong characterisation that should be challenged at the very top of Government. The Government lacks an approach that advocates for the Freedom of Information Act, and ensures that Government business is carried out in a way that helps to preserve the public record. A more proactive approach could see Ministers championing the Act through speeches, articles and other initiatives that underline the importance of the Act.

58. The Cabinet Office should drive a cultural shift from mere baseline compliance with the Freedom of Information Act to a greater advocacy for the core principles and tenets of the Act through proactive leadership across Government including examining whether there is best practice to learn from international comparisons. The Committee expects to see stronger tone on the benefits to good government from Freedom of Information, and greater demonstrable action on steps taken to improve outcomes for Freedom of Information applicants. The Government should, for example, drive stronger timeliness by responding to reviews within the 20 days suggested by the Information Commissioners Office.

59. The Cabinet Office should also issue clearer cross-government guidance on the need to maintain public record to take into account the rise of private messaging systems. Finally, the Government needs to revisit its decision to exempt the Advanced Research and Invention Agency from the Freedom of Information Act, to ensure that this is not a precedent. It should set out clearly that this is an exception and why it is so.

97 Dr Ben Worthy (FOI21) p.4

98 [Q278, Q256, Q180, Letter from William Wragg, Chair of PACAC to Rt Hon Lord Geidt, Independent Adviser on Ministers’ Interests – Follow up to PACAC Evidence Session and Queries Around Scope of Role, dated 14 December 2021](#)

99 [Q120](#)

Cabinet Office's relationship with the Information Commissioner's Office

60. The ICO is an independent body with responsibility in the UK for promoting and enforcing the FOIA, which means it plays an important role in the FOI landscape.¹⁰⁰ The ICO regulates FOIA compliance by:

issuing guidance on how to apply the legislation correctly; considering complaints under the legislation and issuing Decision Notices about whether the request has been dealt with in accordance with it by the public authority; and by auditing compliance with the provisions of the legislation.¹⁰¹

61. The ICO intervenes in FOI cases using powers under Section 50 of the FOIA. When FOI applicants submit their request to a Department, the Department can either release the information or partially or fully withhold information using one of the exemptions outlined in the Act. As discussed earlier, Departments can delay their decisions through use of Public Interest Tests, and slow responses to review requests. Once a decision is issued, if the applicant is unhappy, they can complain to the ICO who will seek early resolution. If, however, this is not possible, an ICO case officer contacts the Department requesting details and additional context about the decision and to check compliance with relevant guidance. Departments are expected to reply within 20 working days. If a case cannot be resolved informally, a Decision Notice will be issued which will either uphold or not uphold the complaint. The ICO also has the power to issue an Information Notice or Enforcement Notice where Departments fail to comply with them. Should a body fail to comply with a Decision Notice within 35 days the ICO may take the body to court. Should either the applicant or Department seek to appeal a Decision Notice an appeal can be made within 28 days of the notice.¹⁰²

62. The timely issuing of Decision Notices is therefore important to ensure that FOI applicants are not unduly held up when seeking to review decisions by bodies that have initially rejected an FOI request. Timelier decisions by the ICO also reduce the wait for FOI applicants should they need to appeal decisions to a Tribunal.

63. The ICO explained to the Committee that its stretched FOI resources are impacting the deliverability and timeliness of its FOI services. The then Information Commissioner emphasised that over the past decade the ICO has faced a double pinch of decreasing budgets and increasing caseload.¹⁰³ As the ICO Head of FOI Casework and Appeals stated to the Committee, “the elastic only stretches so far” and casework queues have built up over the past 18 months.¹⁰⁴ Whilst concerted action to address the challenges of the pandemic means that the ICO has returned to its pre-pandemic output levels, it notes that “that is trailing the input, because cases continue to come through the door at significant levels”.¹⁰⁵ Whilst a triaging process means that priority FOI cases with the greatest public interest can be responded to as a priority—as in the case of Exercise Cygnus reports and preparedness—the then Information Commissioner was emphatic about the urgency

100 Information Commissioner's Office ([FOI 46](#))

101 Information Commissioner's Office ([FOI 46](#)) p.2

102 ICO, [How we deal with complaints](#)

103 [Q118, Q123](#)

104 [Q123](#)

105 [Q123](#)

of the situation.¹⁰⁶ Both the then Information Commissioner and the ICO Head of FOI Casework and Appeals described the ICO to be at a tipping point.¹⁰⁷ In the decade between 2009–10 and 2019–20, FOI cases received by the ICO increased by approximately 70% from 3,734 cases to 6,367.¹⁰⁸ Meanwhile, over the same time period, grant-in-aid funding decreased by approximately 33% from £5.58 million to £3.75 million.¹⁰⁹ None of the ICO’s FOI work is funded through the Cabinet Office’s budget.¹¹⁰ The ICO’s FOI work is funded by grant-in-aid from the budget of the ICO’s sponsor department, the Department for Digital, Culture, Media and Sport (DCMS). When considering an increase to the grant-in-aid, DCMS would consult with the Cabinet Office on value for money, as the department with responsibility for FOI policy and performance across Government.

Cabinet Office engagement with the Information Commissioner’s Office

64. As a key stakeholder for the ICO and as the sponsor-department for the FOIA, the Cabinet Office should cultivate a strong working relationship with the ICO. Evidence submitted to the Committee suggests that at times this has not been the case. ICO evidence highlighted issues with how Cabinet Office previously engaged with the ICO with some FOI casework: with “additional delays in the handling of requests at various stages” and until late 2020:

the Cabinet Office routinely failed to inform the allocated ICO case officer in good time of any delay and/or failed to provide the case officer with a realistic timescale for responding in full.¹¹¹

65. In spite of this, the ICO has praised the efforts taken to improve FOI outcomes and ICO relations as of late,¹¹² and commented on the need for them to be sustained—particularly on internal reviews and quality of materials submitted to the ICO.¹¹³

66. The Information Commissioner’s Office plays an important enforcement and advocacy role for Freedom of Information. The Committee notes with concern the financial pressures facing the organisation which are not commensurate with the caseload it faces. The Committee notes the unsatisfactory Machinery of Government split with financial responsibility for the Information Commissioner’s Office’s Freedom of Information budget sitting with the Department for Digital, Culture, Media and Sport whilst the policy responsibility for Freedom of Information lies with the Cabinet Office.

67. The Cabinet Office is the departmental sponsor of the Freedom of Information Act, and Freedom of Information policy more generally. We therefore expect that there should be a stronger working relationship between the Information Commissioner’s Office and the Cabinet Office. Evidence submitted to the Committee suggests that until

106 [Q124, Q125](#)

107 [Q118, Q123](#)

108 [Information Commissioner’s Annual Report 2009/10 Upholding information rights in a changing environment HC 220 \(publishing.service.gov.uk\) p.28; hc-354-information-commissioners-ara-2020–21.pdf \(ico.org.uk\) p.42](#)

109 [Information Commissioner’s Annual Report 2009/10 Upholding information rights in a changing environment HC 220 \(publishing.service.gov.uk\) p.80; hc-354-information-commissioners-ara-2020–21.pdf \(ico.org.uk\) p.130](#)

110 [Letter from Paul Arnold, Deputy Chief Executive and Chief Operating Officer, Information Commissioner’s Office – Information Commissioner’s Office grant in aid funding, dated 14.03.22](#)

111 Information Commissioner’s Office (FOI 46) p.4–5

112 Information Commissioner’s Office (FOI 46) p.8–9

113 Information Commissioner’s Office (FOI 46) p.8–9

recently the Cabinet Office has engaged poorly with the Information Commissioner's Office; working-level relations were characterised by poor communication and additional delays, though we note that the Information Commissioner's Office says this has improved recently.

68. To ensure clearer lines of accountability and to aid the Freedom of Information responsibilities of the Information Commissioner's Office, the Government should consider how to better align departmental policy responsibility and financial responsibility for the Information Commissioner's Office's Freedom of Information work. The Government can achieve this by either moving budgetary responsibility for such matters to the Cabinet Office or by transferring policy responsibility for Freedom of Information from the Cabinet Office to the Department for Digital, Culture, Media and Sport.

Conclusions and recommendations

The role and operation of the Cabinet Office Freedom of Information Clearing House

1. Through disclosures about the Clearing House over time, the Government has sought to make amends for the absence of information regarding a core component of the Government's Freedom of Information machinery. However, the level of disclosure falls short of what was previously available, and what was requested by our predecessor Committee. We note that data on the volume of cases was previously available, showing number of references by Department on a monthly basis. Experts in Freedom of Information—including the Information Commissioner's Office itself—still find themselves unable to comment on whether the Clearing House provides a necessary or helpful role in that landscape. We note with concern the lack of effective record keeping in the Clearing House on its performance, which falls below the standard expected for a central Government body. (Paragraph 19)
2. *A greater level of transparency is required about the Clearing House. To further allay concerns about the Clearing House, a greater volume of data on its performance should be published. As a minimum, the Cabinet Office needs to publish the same level of Clearing House information as previously on the number of referrals to the Clearing House split by Department and month. Echoing our predecessor Committee, this should be disclosed on a quarterly basis. The Cabinet Office should also publish data on casework volume split by referral category and timeliness against ICO and legal guidelines.* (Paragraph 20)
3. It is disappointing that the Cabinet Office rejected the Information Commissioner's Office's offer to undertake a Freedom of Information Audit, and we are concerned both by this refusal itself and by the precedent this may set across Government. The Cabinet Office's decision was misjudged given the Information Commissioner's Office's Freedom of Information expertise and, importantly, the Commissioner's independence. The Information Commissioner's Office, as the official statutory regulator for Freedom of Information and Data Protection, is better placed than any other organisation to undertake a review of this kind. The basis for this rejection therefore remains unclear, and we are unconvinced by the explanations from the Cabinet Office. The Cabinet Office's internal review, launched only after the Committee initiated this inquiry, is no substitute for the independent assurance that the Information Commissioner's Office would be able to provide. (Paragraph 28)
4. Further, the Committee notes with concern the Cabinet Office's failure to deliver on its promise of a short internal review. The Cabinet Office also missed an opportunity to expose itself to a rigorous third-party review which could have improved its own Freedom of Information operations. It is now eight months since the Cabinet Office promised its review to the Committee during which time it has failed to secure an internal reviewer or finalise Terms of Reference. This is an unacceptable delay. (Paragraph 29)
5. *The Cabinet Office should accept the Information Commissioner's offer to undertake its proposed audit to reassure the public that the Government's approach to Freedom of*

Information requests is compliant with the Freedom of Information Act and that they are handled with the utmost professionalism. The Cabinet Office and the Information Commissioner's Office should agree a timetable for the audit to be completed by the end of October 2022, and should commit to publishing its findings. (Paragraph 30)

6. *The Cabinet Office should produce and publish an action plan in response to the findings of the Information Commissioner's Office's audit, and provide it to this Committee no later than the end of this year. (Paragraph 31)*

The Cabinet Office's compliance with and implementation of the Freedom of Information Act 2000

7. During the inquiry, the Committee received multiple examples of poor FOI handling in central Government departments, particularly in relation to non-applicant blind handling, how Public Interest Tests are evaluated and delays in Freedom of Information handling. (Paragraph 45)
8. *The Cabinet Office should review these practices and their own compliance with the Freedom of Information Act to model best practice. This should include, in particular, the adoption, where possible, of applicant-blind processing of requests; clear guidance on the very limited circumstances under which it may be appropriate for Ministers and Special Advisers to become involved in responding to Freedom of Information requests; and the establishment of appropriate timetables for the completion of internal reviews. Where it finds evidence that practices in Government departments are falling short of best practice, it should implement robust procedures to prevent their reoccurrence. (Paragraph 46)*
9. A strong functioning Freedom of Information system requires proactive leadership with a strongly supportive culture and an enthusiastic tone at the top of Government. We therefore welcome the strong tone adopted by the Government in response to critical press coverage of the Clearing House. However, we note a lack of consistency in the Government's overall approach to Freedom of Information—for example the new proposed statutory arrangements for the Advanced Research and Invention Agency. This example evidences a slide away from transparency being viewed as helpful towards a view that it is a hindrance of Government being able to get on with work. This is a concerning trend and a wrong characterisation that should be challenged at the very top of Government. The Government lacks an approach that advocates for the Freedom of Information Act, and ensures that Government business is carried out in a way that helps to preserve the public record. A more proactive approach could see Ministers championing the Act through speeches, articles and other initiatives that underline the importance of the Act. (Paragraph 57)
10. *The Cabinet Office should drive a cultural shift from mere baseline compliance with the Freedom of Information Act to a greater advocacy for the core principles and tenets of the Act through proactive leadership across Government including examining whether there is best practice to learn from international comparisons. The Committee expects to see stronger tone on the benefits to good government from Freedom of Information, and greater demonstrable action on steps taken to improve outcomes for Freedom of Information applicants. The Government should, for example, drive stronger timeliness by responding to reviews within the 20 days suggested by the Information*

Commissioners Office. (Paragraph 58)

11. *The Cabinet Office should also issue clearer cross-government guidance on the need to maintain public record to take into account the rise of private messaging systems. Finally, the Government needs to revisit its decision to exempt the Advanced Research and Invention Agency from the Freedom of Information Act, to ensure that this is not a precedent. It should set out clearly that this is an exception and why it is so.* (Paragraph 59)
12. The Information Commissioner's Office plays an important enforcement and advocacy role for Freedom of Information. The Committee notes with concern the financial pressures facing the organisation which are not commensurate with the caseload it faces. The Committee notes the unsatisfactory Machinery of Government split with financial responsibility for the Information Commissioner's Office's Freedom of Information budget sitting with the Department for Digital, Culture, Media and Sport whilst the policy responsibility for Freedom of Information lies with the Cabinet Office. (Paragraph 66)
13. The Cabinet Office is the departmental sponsor of the Freedom of Information Act, and Freedom of Information policy more generally. We therefore expect that there should be a stronger working relationship between the Information Commissioner's Office and the Cabinet Office. Evidence submitted to the Committee suggests that until recently the Cabinet Office has engaged poorly with the Information Commissioner's Office; working-level relations were characterised by poor communication and additional delays, though we note that the Information Commissioner's Office says this has improved recently. (Paragraph 67)
14. *To ensure clearer lines of accountability and to aid the Freedom of Information responsibilities of the Information Commissioner's Office, the Government should consider how to better align departmental policy responsibility and financial responsibility for the Information Commissioner's Office's Freedom of Information work. The Government can achieve this by either moving budgetary responsibility for such matters to the Cabinet Office or by transferring policy responsibility for Freedom of Information from the Cabinet Office to the Department for Digital, Culture, Media and Sport.* (Paragraph 68)

Formal minutes

Tuesday 26 April

Members present:

Mr William Wragg, in the Chair

Ronnie Cowan

Mr David Jones

John McDonnell

Tom Randall

Karin Smyth

Draft Report (*The Cabinet Office Freedom of Information Clearing House*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 68 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Ninth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order 134.

[Adjourned till Tuesday 17 May 2022 at 9.30am

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

Tuesday 26 October 2021

Martin Rosenbaum, former BBC political journalist and specialist in using the Freedom of Information (FOI) Act; **Mr George Greenwood**, data journalist, The Times and Sunday Times; **Jenna Corderoy**, FOI specialist journalist, Open Democracy [Q1-41](#)

Dr Ben Worthy, Senior Lecturer, Department of Politics, Birkbeck, University of London; **Dr Mária Žuffová**, Postdoctoral Researcher, European University Institute; **Gavin Freeguard**, Former Programme Director, Institute for Government [Q42-60](#)

Thursday 25 November 2021

Andrew White, Head of FOI Complaints and Appeals, Information Commissioner's Office; **Elizabeth Denham CBE**, Information Commissioner, Information Commissioner's Office [Q61-138](#)

Published written evidence

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

FOI numbers are generated by the evidence processing system and so may not be complete.

- 1 Ashton, Professor Nigel (Professor of International History, London School of Economics and Political Science) ([FOI0022](#))
- 2 Briant, Dr Emma (Adjunct Professor, American University) ([FOI0031](#))
- 3 Centre for Investigative Journalism ([FOI0036](#))
- 4 Coombs, James (Solution Designer, Three (mobile phone operator)) ([FOI0014](#))
- 5 Corderoy, Jenna (Journalist, openDemocracy) ([FOI0028](#))
- 6 Culture Unstained ([FOI0035](#))
- 7 Davis, Mr David (MP for Haltemprice and Howden, Member of Parliament) ([FOI0040](#))
- 8 Docherty, George ([FOI0045](#))
- 9 Dyer, Henry ([FOI0043](#))
- 10 Evans, Mr Jason (Founder, Factor 8) ([FOI0007](#))
- 11 Greene, Mr Tommy (Journalist, Freelance) ([FOI0041](#))
- 12 Greenwood, Mr George (Data Journalist, The Times and Sunday Times) ([FOI0006](#))
- 13 Guardian News & Media ([FOI0038](#))
- 14 Information Commissioner's Office ([FOI0046](#))
- 15 Lanktree, Mr. Graham (UK Trade Reporter, Politico) ([FOI0033](#))
- 16 Liberty ([FOI0032](#))
- 17 Lubbock, Mr John (Journalist, The Citizens) ([FOI0010](#))
- 18 Moss, Mr Derek ([FOI0042](#))
- 19 MySociety ([FOI0016](#))
- 20 News Media Association ([FOI0020](#))
- 21 openDemocracy ([FOI0024](#))
- 22 Overton, Mr Iain (Writer, All The Citizens) ([FOI0001](#))
- 23 Roper-Newman, Mr David (Information Governance Officer, Higher Education Institution) ([FOI0037](#))
- 24 Rosenbaum, Martin ([FOI0012](#))
- 25 Rowberry, Mr Pete (n/a, None) ([FOI0002](#))
- 26 Sheaff, Dr Mike (Visiting Research Fellow (Sociology) School of Law, Criminology & Government, University of Plymouth) ([FOI0027](#))
- 27 Sheppard, Tommy (Member of Parliament, House of Commons) ([FOI0039](#))
- 28 Spotlight on Corruption ([FOI0030](#))
- 29 Tate, Tim (Journalist & author, Self-employed) ([FOI0008](#))
- 30 The National Union of Journalists (NUJ) ([FOI0026](#))
- 31 Transparency International UK ([FOI0025](#))

32 Worthy, Dr Ben (Senior Lecturer, Birkbeck College) ([FOI0021](#))

33 Wyeth, Ms ([FOI0009](#))

34 Žuffová, Mária (Postdoctoral research associate, European University Institute) ([FOI0029](#))

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website.

Session 2021–22

| Number | Title | Reference |
|-------------|--|-----------|
| 1st | The role and status of the Prime Minister's Office | HC 67 |
| 2nd | Covid-Status Certification | HC 42 |
| 3rd | Propriety of Governance in Light of Greensill: An Interim Report | HC 59 |
| 4th | Appointment of William Shawcross as Commissioner for Public Appointments | HC 662 |
| 5th | The Elections Bill | HC 597 |
| 6th | The appointment of Rt Hon the Baroness Stuart of Edgbaston as First Civil Service Commissioner | HC 984 |
| 7th | Coronavirus Act 2020 Two Years On | HC 978 |
| 8th | The appointment of Sir Robert Chote as Chair of the UK Statistics Authority | HC 1162 |
| 1st Special | Government transparency and accountability during Covid 19: The data underpinning decisions: Government's response to the Committee's Eighth Report of Session 2019–21 | HC 234 |
| 2nd Special | Covid-Status Certification: Government Response to the Committee's Second Report | HC 670 |
| 3rd Special | The role and status of the Prime Minister's Office: Government Response to the Committee's First Report | HC 710 |
| 4th Special | The Elections Bill: Government Response to the Committee's Fifth Report | HC 1133 |

Session 2019–21

| Number | Title | Reference |
|--------|--|-----------|
| 1st | Appointment of Rt Hon Lord Pickles as Chair of the Advisory Committee on Business Appointments | HC 168 |
| 2nd | Parliamentary and Health Service Ombudsman Scrutiny 2018–19 | HC 117 |
| 3rd | Delivering the Government's infrastructure commitments through major projects | HC 125 |
| 4th | Parliamentary Scrutiny of the Government's handling of Covid-19 | HC 377 |

| Number | Title | Reference |
|---------------|---|------------------|
| 5th | A Public Inquiry into the Government's response to the Covid-19 pandemic | HC 541 |
| 6th | The Fixed-term Parliaments Act 2011 | HC 167 |
| 7th | Parliamentary and Health Service Ombudsman Scrutiny 2019–20 | HC 843 |
| 8th | Government transparency and accountability during Covid 19: The data underpinning decisions | HC 803 |