



House of Commons  
Public Administration  
and Constitutional Affairs  
Committee

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**The Cabinet Office  
Freedom of Information  
Clearing House:  
Government Response  
to the Committee's  
Ninth Report of Session  
2021–22**

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**Second Special Report of  
Session 2022–23**

*Ordered by the House of Commons  
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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.

### Current membership

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[Rachel Hopkins MP](#) (*Labour, Luton South*) was also a Member of the Committee during this inquiry.

### Powers

The committee is a select committee, the powers of which are set out in House of Commons Standing Orders, principally in SO No 146. These are available on the internet via [www.parliament.uk](http://www.parliament.uk).

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### Committee staff

The current staff of the Committee are Gavin Blake (Clerk), 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) and Gina Degtyareva (Senior Select Committee Media Officer).

### Contacts

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You can follow the Committee on Twitter using [@CommonsPACAC](https://twitter.com/CommonsPACAC).

## Second Special Report

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The Public Administration and Constitutional Affairs Committee published its Ninth Report of Session 2021–22, [The Cabinet Office Freedom of Information Clearing House](#) (HC 505), on 29 April 2022. The Government’s Response was received on 29 June 2022 and is appended below.

## Appendix: Government Response

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The Government is grateful for the work of the Public Administration and Constitutional Affairs Committee for their work into reviewing The Cabinet Office Freedom of Information Clearing House. The response to the Committee’s recommendations are below.

**1. 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)**

### Response

The Government notes the Committee’s concerns about the level of transparency about the Cabinet Office’s Clearing House function. Information about the Cabinet Office’s role in Freedom of Information (FOI) and the Clearing House function, including a list of departments within the Clearing House’s remit, the referral criteria and an exemplar referral form, is available on gov.uk and is in line with information published by previous administrations.

The Clearing House in operation today is a small-scale advisory function, rather than the standalone unit that existed in the Ministry of Justice and the then Department for Constitutional Affairs. As such, the Government’s present view is that creating statistics on the number of cases referred to be published on a quarterly basis would be a disproportionate use of resources for a de minimis function.

The Government has previously released the figures to the Committee of the number of “round robins” in 2020.<sup>1</sup> Round robins are requests made to more than one department and that have repeat characteristics. The figures for this category of referral are available because each newly identified round robin is allocated a unique reference number for the list which is circulated to departments twice-weekly. To illustrate further the minimal scale of this function, of the 35,279 FOI requests made to government departments in 2021,<sup>2</sup> only 250 were identified as round robins.

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1 Letter from Rt Hon Steve Barclay MP, Chancellor of the Duchy of Lancaster on Cabinet Office’s Freedom of Information Clearing House, dated 1 February 2022

2 <https://www.gov.uk/government/statistics/freedom-of-information-statistics-annual-2021/freedom-of-information-statistics-annual-2021-bulletin>

The Committee will note that the terms of reference of Sue Langley OBE's review include the question as to whether there is sufficient information available to the public and what further information should be published, and we look forward to receiving her recommendations on this point.

**2. 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)

**3. 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)

## Response

FOI compliance statistics for all government departments (excluding the devolved administrations), including those for the Cabinet Office, are published on a quarterly basis on gov.uk. The statistics are designated National Statistics in accordance with the Statistics and Registration Service Act 2007 and comply with the Code of Practice for Official Statistics. In 2021, the Cabinet Office's performance consistently met and exceeded the ICO's published standard, achieving a timeliness rate of 92% across the year. In the same time period, timeliness rates across government also rose from 86% in 2020 to 89% in 2021. This is despite the pressures created by Covid and is a testament to the seriousness with which both officials and ministers across government approach their statutory duties. Cabinet Office will work with the small number of departments which have poorer performance.

The Government has shared with the Committee the letter from the Director General for Propriety and Ethics to the then Information Commissioner setting out the reasons why we believe that an internal review rather than an external audit is a proportionate response. We agree it is important to acknowledge the challenge of some of the perceptions of the Clearing House's role and remit, and to ensure an accurate understanding of the function is available and understood. The review will provide further reassurance about the nature and role as well as looking to provide a positive opportunity to enhance practice where possible.

On 28 April 2022, Lord True, Minister of State, announced that the review would be led by Sue Langley OBE and shared with the Committee the terms of reference. We have every confidence that Sue Langley will provide the independent challenge necessary to address the concerns that have been raised through your inquiry and we will update Parliament and the Committee in due course.

**4. 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)

## Response

All FOI requests are handled on an applicant blind basis. Clearing House's processes are completely in line with relevant legislation and we work closely with the ICO to ensure our approach remains fully compliant with our obligations to protect personal data.

The Cabinet Office's handling of casework complies with the legislation as well as the underlying intention that requests are treated as applicant and motive blind except in those circumstances permitted by the legislation (sections 12 and 14 FOI Act). All FOI requests are treated exactly the same, regardless of the identity or occupation of the requester. Departments may take the occupation or interests of the requester into account when considering if press teams should be prepared to respond to any queries arising from a FOI response, but this is separate from the consideration of the request under FOI and is not contrary to the applicant-blind principle. As set out in the ICO guidance, this principle means that requests for information should generally be considered without reference to the identity of the requester or the motives behind the request. It does not mean that the public authority should not make sensible preparations for possible media interest in information it is proposing to release. We are unaware of any ICO or Tribunal decision made against the Cabinet Office or any other government department which substantiates the un-evidenced allegations that the identity of the requestor influenced the outcome.

The Cabinet Office circulates to departments a list of those requests made to more than one department that have repeat characteristics (sometimes referred to as 'the round robin list'). 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.

We welcome the Committee's recognition of the leading role that the Cabinet Office should play in setting standards, and maintaining the direction across all government departments. Outside the context of Clearing House, the Cabinet Office already offers guidance and assistance through regular catch-ups with departments, by hosting a twice-yearly forum for FOI practitioners across government and facilitating regular meetings between departmental FOI teams and the Information Commissioner's Office. We also provide guidance on cross cutting policy issues.

The Code of Conduct for Special Advisers sets out, among other things, that Special Advisers may give assistance on any aspect of departmental business, and give advice. In working with other civil servants, Special Advisers can, on behalf of their Minister, convey to officials Ministers' views, instructions and priorities, including on issues of presentation. Special Advisers must not, though, exercise any statutory or prerogative power. It is completely legitimate and in line with the FOI Act for Special Advisers to give assistance and advice on any aspect of department business, including on requests for

information made under the Act, and to convey a minister's views to officials. This has been the case under successive Administrations. Annexed is the relevant guidance note that was circulated to cross-government FOI practitioners in 2021.

Also in line with the FOI Act 2000, officials will refer to Ministers any requests which require the opinion of a qualified person as to whether or not the exemption at section 36 of the Act is engaged. If the Minister decides that it is, then officials will proceed to weigh up the public interest test and will decide whether or not to release the information sought. Occasionally and where appropriate, Ministers may be made aware of specific FOI requests in the context of discussions about the handling of wider policy issues.

With regard to the suggested robust approach to compliance, departments are listed as public authorities in their own right and it would be wrong for the Cabinet Office to intervene in another department's procedures and decisions. The Cabinet Office will continue to offer advice and guidance, but it is for individual departments to account for their compliance with the Act through the mechanisms set up by Parliament, i.e. the Information Commissioner's Office and the Tribunal system.

**5. 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 Commissioner's Office. (Paragraph 58)**

**6. The Cabinet Office should also issue clearer cross-government guidance on the need to maintain the 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)**

## Response

This Government is fully committed to transparency. In 2021, monitored government departments and their agencies responded to over 49,000 FOI requests. We routinely disclose information well beyond our FOI obligations, and release more proactive publications than ever before. Since 2010, the Government has been at the forefront of opening up data to allow Parliament, the public and the media to hold public bodies to account. Despite the need to reprioritise resources to respond to the COVID-19 pandemic, central government departments continued to publish core transparency data. Such online transparency is crucial to delivering value for money, cutting waste and inefficiency, and ensuring every pound of taxpayers' money is spent in the best possible way. Following the Declaration on Government Reform,<sup>3</sup> the Government will continue to look at how the range of information published can be improved and made as useful as possible to the public, press and Parliament.

3 <https://www.gov.uk/government/publications/declaration-on-government-reform>

Under section 45 of the Freedom of Information Act 2000 (“the Act”), the Minister for the Cabinet Office issues a Code of Practice which provides guidance for public authorities on best practice in meeting their responsibilities under Part I (Access to Information held by Public Authorities) of the Act. It sets the standard for all public authorities when considering how to respond to FOI requests and Chapter 5 specifically refers to the expectations regarding internal reviews. The Information Commissioner has a statutory duty to promote good practice by public authorities, including following this Code of Practice. In addition to this Code of Practice, public authorities should also consult the Commissioner’s own guidance regarding best practice which can be found at [www.ico.org.uk](http://www.ico.org.uk).

Modern messaging services (such as WhatsApp) are useful tools for speedy and informal communication across organisational boundaries. They have a role in government, as in many other areas of the economy. The use of such tools supports flexible, modern ways of working. This was particularly important during the Covid pandemic. All government information, irrespective of format or communication channel, is subject to the Freedom of Information Act.

Cross government guidance on the use of private email and other forms of non-corporate communication channels was issued in 2013. In spring 2021 work commenced to revise the guidance. That work was put on hold in October 2021 when permission was granted for a judicial review in this area. Judgement in the judicial review was handed down in April 2022 where the High Court held that the Government approach was lawful. Work to revise the guidance has now resumed.

This Government remains committed to carrying out Parliament’s intentions with respect to the coverage of the Act. The Committee will note that the Cabinet Office has recently made and laid statutory orders ensuring that organisations which satisfy the legal criteria are named in Schedule 1 as ‘public authorities’ for the purposes of the Act.

The Advanced Research and Invention Agency (ARIA) will be a lean, streamlined agency, which employs a small team of exceptional individuals. In designing ARIA, the Government has aimed to reduce the administrative burden on ARIA’s staff wherever possible. ARIA’s exemption from the Freedom of Information Act 2000 was debated extensively and agreed to by both Houses of Parliament during the passage of the ARIA Act 2022. The Government has no plans to revisit this decision.

**7. 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)**

## Response

The Government believes it is important that the Information Commissioner’s Office is funded at a sufficient level to enable the Commissioner to carry out his statutory

functions. The ICO's sponsor department within the Government is the Department for Digital, Culture, Media and Sport (DCMS). DCMS works with the Cabinet Office to remain updated on Freedom of Information policy and to discuss budgetary responsibility where appropriate. This governance structure helps to avoid any perception that there is a potential conflict of interest with FOI policy. We would remind the Committee that the Information Commissioner has a number of regulatory and legislative duties including Data Protection.

## Annex: Freedom of Information Requests: Guidance on the role of Special Advisers

The Freedom of Information Act 2000 (“the FOI Act”) gives a right of access to information held by a public authority. Any person who makes a request to a public authority for information is entitled: to be informed in writing by a public authority whether it holds information meeting the description set out in the request; and to have information the public authority holds relating to the request communicated to them. These rights apply unless an exemption in the FOI Act applies, or the request can be refused as set out in the legislation. This guidance sets out the roles of special advisers in the process of responding to requests for information under the FOI Act.

### Summary

- Special advisers are a critical part of the team supporting Ministers
- Special advisers may give assistance and advice on any aspect of department business, including on requests for information made under the FOI Act, and may convey the Minister’s views and instructions to officials
- Special advisers cannot exercise any statutory or prerogative power on behalf of the Minister, including making decisions on whether or not to withhold the information requested
- There may be restrictions on the types of information to which special advisers can have access
- Departments should design their FOI processes to make sure that special advisers are fully integrated into that process
- FOI requests for information relating to special advisers should be handled in line with the usual departmental procedures

### The role of special advisers

Special advisers play a critical part of the team supporting Ministers.<sup>1</sup> Their role is set out at sections 7.11–7.13 of [the Cabinet Manual](#). Special advisers are employed as temporary civil servants to help ministers on matters, where the work of government and the work of the party, or parties of government overlap and where it would be inappropriate for permanent civil servants to become involved.<sup>2</sup>

The [Code of Conduct for Special Advisers](#) sets out that, among other things, special advisers may give assistance on any aspect of departmental business, and give advice. In working with other civil servants, special advisers can, on behalf of their Minister, convey to officials Ministers’ views, instructions and priorities, including on issues of presentation. Special advisers must not, though, exercise any statutory or prerogative power.

<sup>1</sup> [Special Advisers Code of Conduct](#)

<sup>2</sup> Cabinet Manual, section 7.11

## Special advisers and FOI Requests

Special advisers may give advice and assistance to their Minister on requests for access to information under the FOI Act. They may also, on behalf of their Minister, convey to officials their Minister's views and requests relating to the response to the FOI request, including on issues of presentation such as the drafting and associated press lines, or on factual accuracy and consistency with recent Parliamentary answers. Special advisers are also able to advise on the assistance provided to requesters under the duty in section 16; for example by suggesting the provision of additional information to place the disclosed information in context. Formal decisions by Ministers relating to FOI requests must be relayed via the Minister's private secretary.

Special advisers cannot make decisions on whether or not to release information in response to a request. Such decisions are for the Secretary of State and any Minister or senior civil servant to which they have authority according to the Carltona principle (see sections 3.40 -3.45, Cabinet Manual).

### *Access to papers*

Special advisers are not entitled to have access to sensitive, security or intelligence reports unless cleared to the appropriate level, or to have access to the personnel files of civil servants. Subject to these exceptions and the convention on access to papers of a previous Administration of a different political party (see sections 11.23 - 11.24, Cabinet Manual), special advisers may, at the discretion of their appointing Minister, have access to all papers submitted to ministers.

### *Process design*

Departments should design their process for deciding FOI requests with a view to meeting the 20 working day time-limit set out in section 10 of the FOI Act. In doing so they should build in adequate time to make sure that there is time to seek advice from all those relevant in the department, including from special advisers and private office. We would encourage FOI teams to work with the private offices and special advisers to determine how this can best be achieved.

FOI teams should also establish with private offices alternative processes for those infrequent instances where it would be inappropriate to involve special advisers because of the nature of the information requested. This would include where: the special adviser does not have sufficient security clearance to consider the information requested; where the information forms part of the personnel files of a civil servant; and/or the information relates to papers of a previous administration.

### *FOI requests about special advisers*

FOI requests for information relating to special advisers should be handled in line with the usual departmental procedures.

## ***Clearing House***

Departments should consult the Cabinet Office [REDACTED] further advice on a specific request is required.

Related documents

- [The Cabinet Manual](#)
- [The Code of Conduct for Special Advisers](#)
- [Freedom of Information Code of Practice](#)

FOI Policy Team, Cabinet Office, April 2021