



Chloe Smith MP
Minister of State for the Constitution and Devolution
Cabinet Office 70 Whitehall London SW1A 2AS

William Wragg MP
Chair, Public Administration and
Constitutional Affairs Committee
House of Commons
London
SW1A 0AA

Our reference: MC2021/17664

31 August 2021

Dear William,

I note the Committee's inquiry into how the Cabinet Office meets its obligations under the Freedom of Information Act, and the ongoing support the Clearing House function continues to give to central government departments. As the Committee has opened a call for evidence for this inquiry, I thought it might be helpful to provide you with an update on the Department's work in this area.

Further to the letter from the Chancellor of the Duchy of Lancaster to the Committee of 9 March 2021, we have now published information about the Cabinet Office and Freedom of Information, which includes information about the Clearing House function. That information is available at <https://www.gov.uk/government/publications/cabinet-office-and-freedom-of-information>.

Statistics on the Government's performance on Freedom of Information, including that of the Cabinet Office, are publicly available at <https://www.gov.uk/government/collections/government-foi-statistics>. You will be reassured to note that the timeliness of Cabinet Office responses has improved quarter on quarter in the last year, and was 92% in Q1 2021. This improvement has been effected against a background of significant and continuing increases in the volume and complexity of FOI requests made to the Cabinet Office, rising from 1,600 requests in 2018 to 2,200 requests in 2020, and reflects the importance that the Government places on the effective operation of the FOI act.

I also note that in its call for evidence the Committee states that it has launched its inquiry in the light of the Cabinet Office losing "a legal bid to withhold information about aspects of the way in which the Clearing House operates". I take it that you are referring to the First Tier Tribunal case, EA/2020/0240. In that case, the Cabinet Office had previously released 145 out of 159 pieces of advice in the information requested. The Cabinet Office sought to withhold fourteen pieces of advice which we believed were particularly sensitive on the grounds of national security and personal information. The decision of the Tribunal was that "the appeal succeeds with respect to a small part of the withheld information". It agreed that the Cabinet Office should withhold eight sensitive extracts, in line with relevant exemptions, but release a further six.

As it may assist your inquiry, I am providing the Committee with a copy of the letter sent to Jenna Corderoy of openDemocracy in compliance with that judgment. As I am sure the Committee will recognise, Parliament legislated for exemptions to the right of access under FOI in a number of different areas, and it is appropriate and legitimate for the Government to seek to withhold information where it believes it is in the public interest to do so. The Tribunal decision also welcomed the information that had been placed into the public domain which set out the operation of the Clearing House.

We do not recognise the basis of media reporting, which incorrectly asserted that journalists and other users of the Act are being 'blacklisted', and that the Clearing House directs departments to block requests. As we have previously set out, there is no such blacklist. All FOI requests are treated exactly the same, regardless of the identity or occupation of the requester. The names of requesters are only included in Round Robin guidance to identify the shared applicant, not as a material consideration in itself.

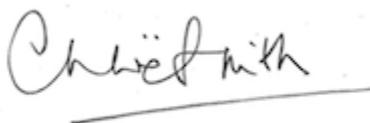
The Clearing House provides an advisory function, and does not direct departments on how they should respond to particular requests, or 'block' requests. Departments may take the occupation or interests of the requester into account when considering if press lines should be prepared to respond to any 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.

I am sure that you will agree it is vital to continue to ensure the Freedom of Information Act is being implemented as effectively as possible, and particularly in the light of a continuing increase in the volume of cases being received by Departments. To this end, I have commissioned a short assessment of the role of the Clearing House, and to identify if or where guidance might be improved or clarified and to support best practice across all Government departments. I will write to the Committee to confirm who will be leading this review shortly.

This assessment will review the operation of the Clearing House, note the practices under successive administrations, and provide any recommendations for improvement and further guidance, including any revisions which may seem desirable to make to the Section 45 Code of Practice.

I thank the Committee for its ongoing work in this area, and look forward to any invitations to give oral evidence. I would be happy to provide further information in the course of the Committee's inquiry (including oral evidence) and as the Committee identifies key areas of focus arising from any evidence submitted.

Yours ever,

A handwritten signature in black ink, appearing to read 'Chloe Smith', written over a horizontal line.

Chloe Smith MP
Minister of State for the Constitution and Devolution



Cabinet Office

1 Horse Guards Road
London
SW1A 2HQ

www.cabinetoffice.gov.uk
foi-team@cabinetoffice.gov.uk

Ms Jenna Corderoy
By email: jenna.corderoy@opendemocracy.net

22 June 2021

Dear Ms Corderoy,

Re: Disclosure of information following the decision of EA/2020/0240

In line with the decision of the First-tier Tribunal (Appeal Reference: EA/2020/0240) promulgated 25 May 2021, please find below the information previously withheld under section 36 of the Freedom of Information Act (2000) provided as extracts for ease of reference:

RR851 – 'NSLG and'

RR857 – 'NSLG would like to see drafts.'

RR910 – 'NSLG would like to see the response.'

RR953 – 'NSLG and'

RR962 – 'Please send draft responses to NSLG and'

RR991 – 'NSLG to see drafts.'

If you would prefer to receive these as extracts with the accompanying information from the round robin lists already provided to you, please do let us know.

Yours sincerely

Cabinet Office FOI Team

E foi-team@cabinetoffice.gov.uk