



Rt Hon Steve Barclay MP  
Chancellor of the Duchy of Lancaster  
and Minister for the Cabinet Office  
Cabinet Office 70 Whitehall London  
SW1A 2AS

Our reference: MC2022/01219

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

By email: [pacac@parliament.uk](mailto:pacac@parliament.uk)

February 2022

Thank you for your letter of 25 January 2022, regarding the Cabinet Office's Freedom of Information (FOI) Clearing House function.

I would like to apologise to the Committee for the delay in appointing a reviewer of the Clearing House function. Officials are working hard to secure the services of an individual who can command the confidence of both the public and the Committee to carry out this short assessment. I expect to be able to provide the Committee with a name and the full terms of reference once those have been agreed with the person identified. In the meantime, I am providing the Committee with a letter sent by the Director General of Propriety and Ethics to the then Information Commissioner setting out the reasons why we felt a short internal assessment was more proportionate to the issue.

### **Ministers and Special Advisers**

You have asked for details of circumstances when Ministers and Special Advisers are involved in FOI casework. Decisions on whether or not to release information in response to FOI requests rest with officials in the Department. In line with the Freedom of Information 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.

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.

### **Departmental referrals to the Clearing House function**

Also, I am happy to clarify that the figure I gave for the number of cases dealt with by the Clearing House function relates to 'round robins', i.e. requests made to more than one department and that have repeat characteristics. In 2020, the Cabinet Office, via its Clearing House function, gave advice on 516 aggregated 'round robins'. This is a small proportion of over 30,000 requests received by government departments in the same time period. The Cabinet Office does not routinely capture data on the number of requests which are referred to the Clearing House.

### **Funding of the Information Commissioner's Office (ICO)**

With regard to your question about the funding of the ICO, the Secretary of State for the Department of Digital, Culture, Media and Sports may make payments to the Information Commissioner out of money provided by Parliament under Paragraph 9 of Schedule 12 to the DPA 2018. After consultation with the Information Commissioner, DCMS will pay to the Information Commissioner appropriate sums (the grant in aid) for the ICO's administrative costs and the exercise of the Information Commissioner's functions in relation to a number of specific functions, including FOI. None of the money allocated to the Information Commissioner comes from the Cabinet Office's budget.

**Yours Sincerely,**

A handwritten signature in blue ink, appearing to be 'Steve Barclay', with a long horizontal flourish extending to the right.

**Rt Hon Steve Barclay MP  
Chancellor of the Duchy of Lancaster  
and Minister for the Cabinet Office**



Darren Tierney  
Director General, Propriety & Ethics

Elizabeth Denham CBE  
UK Information Commissioner

14 September 2021

Dear Elizabeth

### **Cabinet Office FOI Clearing House**

Thank you for your letter of 19 July suggesting an audit of the Clearing House function. I am sorry for the delay in responding. As you know we have been looking at a range of options in this space, and have now had the opportunity to test the position with Ministers. I know our teams have also been in touch over the summer and have explored questions of proportionality, and how we ensure any next steps are properly reflective of the restricted nature of the role currently undertaken by the Clearing House.

Ministers have indicated that their preference at this stage is to commission a short assessment of the role of the Clearing House and to identify if or where guidance might be improved or clarified to support best practice across all Government departments. The assessment will 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. We would expect this process to provide any recommendations for improvement and further guidance, including any revisions which may seem desirable to make to the Section 45 Code of Practice or which are pertinent to practice in other Departments. In doing so, it will make full reference to ICO guidance and the legislative framework. We anticipate that the assessment will be undertaken by a Non-Executive Director from within Government.

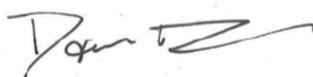
We recognise that there has been a growing interest in the role of the Clearing House - but as you know, we have challenged many of the assertions made which do not provide an accurate reflection of either the role or intent. We agree that it is important to acknowledge some of the perception challenges here, and to ensure an accurate understanding of the function is available and well understood. The recent additions to Gov.uk on the role of the Clearing House will help with this. The proposed review will go further in providing reassurance about the nature and role as well as look to provide a positive opportunity to enhance practice where possible.

You highlighted in particular a potential focus on data protection considerations. You will be aware that our teams have corresponded about the operation of the Clearing House, and in particular the 'Round Robin' list, on several occasions and of the steps we have taken to ensure compliance with data protection provisions. This has included revising our privacy notice to ensure that requesters are aware of the Round Robin list (asking other departments to do the same), instituting a formal deletion policy by departments who receive the list, and agreeing to only keep requests on the list for a limited period of time. I would emphasise again that the list only uses the name of the requester as an identifier and the occupation of the requestor is not included as previously agreed with your office. The assessment of the Clearing House will of course provide an opportunity to ensure that those measures as previously agreed with your office are effective and appropriate.

We are grateful to the Commission for its offer of support in this area. We believe that a review rather than an external audit is a proportionate response at this stage. Once the Terms of Reference are finalised, they will be shared with you.

The Minister has written to the Public Administration and Constitutional Affairs Committee informing them of the above and I will write to confirm who will be leading this review shortly.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Darren Tierney', with a stylized flourish at the end.

**Darren Tierney**

**Director General, Propriety & Ethics**