

Written Evidence from George Greenwood (FOI 06)

Public Administration and Constitutional Affairs Committee The Cabinet Office Freedom of Information Clearing House inquiry

- 1) This submission summarises my personal experience as a reporter at The Times and Sunday Times of attempting to obtain information from the Cabinet Office under the Freedom of Information Act.
- 2) I am George Greenwood, a data journalist at The Times and Sunday Times Data and Digital Storytelling Team. Since I joined the BBC in 2016 as their Freedom of Information researcher, I have specialised in the use of Freedom of Information requests to work on public interest reporting.

CABINET OFFICE REQUEST HANDLING

- 3) In my experience, the Cabinet Office has among the worst approaches to Freedom of Information compliance of any public authority that I have requested information from.
- 4) This is reflected in their performance in government FOI tracking data, with just 22 per cent of resolvable requests receiving a full response. However, these statistics tell only part of the story.
- 5) The delays I have experienced with the Cabinet Office have been extreme. They routinely breach the FOI code of practice in their approach to FOI requests. They are able to delay at different stages of the process in the following ways, which I have experienced many times as a requestor and I have come to know as their usual practice.
- 6) The department very often gives themselves an additional 20 working days to consider the public interest test of providing a response wherever possible. Unless their response is that they do not hold the requested information, they almost uniformly do this in response to my requests. They rarely provide any evidence as to why they need this additional time.
- 7) Often the department will break ICO guidelines by extending this consideration period by additional periods of twenty working days. This is only permitted in extreme extenuating circumstances that must be made clear to the requestor. The department rarely provides any reasoning for these further delays. In the case of one of my requests, the department gave itself five separate 20 working day extensions, despite a complaint having already been lodged with the ICO.
- 8) When providing a substantive request, the department will often claim that a request is in breach of a qualified exemption. Under the act, these exemptions must be considered in terms of a public interest test, a balancing test that judges whether the public interest lies in disclosure. However, in almost all cases, the department will use its discretion under the Act to argue that withholding the information is in the public interest.

- 9) Sometimes the justifications for use of such discretion can be somewhat detached from reality. Examples of requests which the department has argued that the public interest lay in the withholding of the information include correspondence between Michael Gove and a personal donor of his, David Meller, whose firm was given millions of pounds' worth of contracts. The correspondence between the two about PPE ahead of the award of these contracts was too commercially sensitive to release, according to the Cabinet Office.
- 10) Others include the work diary of former Johnson chief adviser Eddie Lister, who has been accused of conflict of interests due to his links to property developer Delancey, who employed him whilst in office; as well as the correspondence within the Cabinet Office press office relating to a blog rebutting Sunday Times reporting.
- 11) This blog accused Sunday Times Insight of publishing "a series of falsehoods and errors [which] actively misrepresents the enormous amount of work which was going on in government" as part of the paper's investigation into government failures in the lead up to the pandemic.
- 12) The department will also often initially apply exemptions in a blanket manner, refusing to release any records in relation to a request, rather than redacting the parts they think actually breach an exemption and disclosing the rest. This is also in breach of the Act. UK FOIA is an information regime, not a documents regime. As such, information that does not trigger an exemption must be disclosed in full, not withheld in a blanket manner.
- 13) At this point, an experienced requestor will submit an internal review if they fail to see solid reasoning in the Cabinet Office response.
- 14) However, the department may also attempt to delay the completion of an internal review. Under the Act, departments must be given a chance to review their decision to see if it correctly exempted the requested records.
- 15) The Cabinet Office at this point may either fail to provide a response within the 20 working days normally required for a review time under the code of practice, or fail to acknowledge the review request at all. It often takes an ICO complaint to ensure a substantive response.
- 16) Despite the extended time taken to consider the request, in my experience, the department rarely changes its response in any substantive manner, or makes additional disclosure. Sometimes it adds a slight extension to the reasoning that it uses to exempt the information, sometimes its response is more or less a copy and paste of the previous response. Often it is not clear how the department has used the extended time to respond to conduct its internal review.
- 17) In cases of potentially embarrassing disclosures, the department may hope that the requestor will not appeal to the ICO. Given the extreme delay times currently experienced at the ICO due to insufficient funding of its FOI compliance functions by the DCMS, it can be a year before it will issue a decision notice in response to a complaint.

- 18) The ICO can struggle to obtain information from the Cabinet Office about how it handled requests. Often deadlines for submissions on appeals are missed, and sometimes the ICO is forced to issue the department with information notices to allow it to conclude its investigations. In my own case, this occurred in relation to a request I made about records prepared to brief Gordon Brown in case he became Prime Minister in 2010. The case is currently with the Upper Tier Tribunal, after the Cabinet Office managed to lose the records after having originally located them.
- 19) If the ICO orders substantive disclosure, in some cases, the department may take a case to the First Tier Tribunal. While it has the right to do so under legislation, the decision to do this is another potential way to delay disclosure. This is what happened in the OpenDemocracy case of a request for information related to the handling of requests by the Clearing House.
- 20) In this case, in ordering disclosure by the Cabinet Office, the judge exercised his discretion to invite OpenDemocracy to apply for costs, something they can only do under information laws if the appeal by the public body is judged to have been made without a reasonable chance of success.
- 21) As such, forcing a substantial disclosure from the Cabinet Office about a topic about which there might be a political or institutional incentive in the Cabinet Office to withhold can take up to two years.
- 22) The Cabinet Office has also started to try to refuse requests about FOI process itself. In two recent requests, the department claims that the release of correspondence around how my request was handled would prejudice the conduct of public affairs. It did this in relation to correspondence between Conservative donor and PPE contractor David Meller and Michael Gove, and it did the same for a submission about how my request for details about how the Insight blog was handled.
- 23) When I asked for information about how this blog meta request itself was rejected, the department labelled me a “vexatious requestor” that was showing “unreasonable persistence”, and refused the request on these grounds.
- 24) These are routine requests, answered regularly by other departments and agencies without exemption, and so routine refusals make it harder to understand whether the Cabinet Office system is working within the rules or FOIA. It is hard to see a good case not to disclose these records.
- 25) The above issues are well known among those that attempt to obtain information from the Cabinet Office for reporting and research and must be well known to the Information Commissioner, who regulates FOI.
- 26) However, the Commissioner has not issued a public practice notification about the activities of the Cabinet Office, nor has it publicly engaged in any kind of extended monitoring. In the past, when a department was falling short of its transparency obligations, the ICO would put it on a list of non-complying public bodies, and engage in extended monitoring of its compliance. While the pandemic has put a strain

on public bodies, given sufficient concern has been raised, it is not clear why this has not happened in regards to the Cabinet Office.

- 27) I currently have eight ICO complaints lodged with the Information Commissioner's Office for Cabinet Office non-compliance with FOIA. These include requests for:
- a) Internal correspondence related to the rebuttal blog which accused the Sunday Times insight team of reporting falsehoods. A further request for information on how this request was handled has also been blocked, and is currently with the ICO.
 - b) Correspondence between Lee Cain and Dominic Cummings relating to his trip to Durham
 - c) Copies of media monitoring reports in relation to Dominic Cummings trip to Durham
 - d) A copy of Lord Undy-Lister's work diary for his period in office
 - e) A request for details of the cost, structure, and guidance issued to officers in relation to the Cabinet Office Clearing House
 - f) Correspondence between Michael Gove and his donor David Meller around PPE contracting
 - g) A complaint about the Cabinet Office failing to respond to a request about Number 10 refurbishment plans funded by Conservative donors.

The oldest of these outstanding requests was first filed in April last year, and disclosure has still not been made. I believe there is a strong objective case for disclosure on all these matters.

- 28) The long delays experienced in trying to obtain information from the Cabinet Office has made attempting to request information based on current events nearly impossible, significantly undermining the power of the Act in relation to the authority which it is most important to have teeth with.

OPERATION OF THE CABINET OFFICE CLEARING HOUSE.

- 29) The Cabinet Office's Clearing House has been the subject of considerable concern. Reporting by OpenDemocracy has shown how journalist requests had been screened by the system in a different manner to other requests, with their status as journalists asking for potentially sensitive material specifically flagged to officials.
- 30) You can see examples of how the Cabinet Office has failed to treat my requests as applicant blind in the attached Annex A. the response of the department to a subject access request I filed last year.
- 31) One civil servant asked an official at the Clearing House whether they had received a request from the "ever-active Mr Greenwood". One Environment Agency official referred to my request about safety issues at dams, made after the partial collapse of Whaley Bridge reservoir in Derbyshire, as "sensitive because the customer is a journalist". A request I made whilst I was previously employed at BBC News, for the number of sexual assaults recorded in a department was flagged as being from "George Greenwood, a BBC journalist".

- 32) The Cabinet Office maintains that all requests are handled in the same applicant blind matter, but it is hard to see how this could hold true in practice, given these and many other examples. Such widespread sharing of personal details of journalists leaves information officials at greater threat of the quiet phone call or note pressuring them to stymie a journalistic inquiry without a paper trail showing this occurred.
- 33) We have seen reporting on the involvement of special advisers in the Scottish political system, who have asked FOI officers to withhold certain material from requestors. There is a high risk such activity is going on within the Cabinet Office Clearing House.
- 34) There is an almost complete lack of transparency about how the Clearing House operates, or how its role in advising other departments how to respond to requests works in practice. When I filed an FOI request for basic details of how the Clearing House operated late last year, how many staff it employs, what the cost is, and for guidance issued to Clearing House staff, it was blocked, with the department arguing this lack of transparency served the public interest. The case is currently with the ICO.
- 35) The disclosures as part of the OpenDemocracy case showed that at least one of my own requests to central government departments had been blocked on Clearing House advice. Officials there advised departments not to disclose spreadsheets listing what databases each departments maintained, documents known as “information asset registers”. This was on the grounds that the request “appears to have no discernible purpose”. That information was later released after appeal.
- 36) While the existence of a Clearing House function to offer advice is not necessarily a problem, in itself there needs to be much greater transparency about how that system works. There does not seem to be sufficient safeguards to avoid potential inference by the Cabinet Office through the Clearing House of other department’s FOI operations.

CONCLUSION

- 37) Freedom of information is crucial to our democracy. It is a depressing reality that while we fund work to improve transparency abroad, and encourage other countries to improve public information infrastructure such as open company filings and person of significant control registers, the Cabinet Office often fails to meet basic transparency requirements back home.
- 38) A combination of Cabinet Office’s intransigence, and the lack of a strong regulatory intervention by the ICO to force compliance, has significantly weakened the public’s rights to information held by the Cabinet Office.

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ANNEX A: EXERPTS OF MY SUBJECT ACCESS REQUEST TO THE CABINET OFFICE

For awareness: NR151681 - Environment Agency reservoir request	Email of 29 May 2020 @ 17:56	<p>The request was deemed sensitive because the customer is a journalist (George Greenwood) requesting inspection reports for the 5 reservoirs of any category that have the longest outstanding measures in the interests of safety (MIOS).</p> <p>Original request / enquiry: In response to previous correspondence]</p> <p>"I am happy to amend my request to the 5 longest overdue dams of any category" ... and "any records or analysis held of how many people would be affected should the reservoir collapse or otherwise fail."</p> <p>George Greenwood</p>	Environment Agency – CO	FOI Casework
Fwd: For awareness: NR151681 - Environment Agency reservoir request	Email of 1 June 2020 @ 13:58	<p>Please find attached a draft response the EA concerning the Toddbrook reservoir incident.</p> <p>EA deemed the request sensitive because the customer is a journalist (George Greenwood) requesting inspection reports for the 5 reservoirs of any category that have the longest outstanding measures in the interests of safety (MIOS).</p>	Internal CO	FOI Casework
Fwd: TO FLAG - FOI on expenses related to working from home	Email of 1 June 2020 @ 14:45	<p>I hope you're well. Are you able to confirm whether this FOI received by BEIS (by the ever active Mr Greenwood) is a round robin or has also been received by CO?</p> <p>Case title - Expenses claimed to assist with or set up home working environments Applicant name - Mr George Greenwood</p>	Internal CO	FOI Casework
FOI Requests re Westferry Printworks	Email of 3 June 2020 @ 11:33	<p><u>EIR - [M1] [P2] Westferry Printworks (Ref. 7869300)</u> George Greenwood</p>	MHCLG – CO	FOI Casework

RE: NEW IR FOI 0277-17 George Greenwood – Madrid / Brexit - RESPONSE REQUIRED BY 1200 ON 15 MAY	Email of 12 May 2017 @ 12:31	Subject: NEW IR FOI 0277-17 George Greenwood – Madrid / Brexit George Greenwood has requested an Internal Review of our response to the above request.	FCO – CO	FOI Casework
Information request (ref: 3315245)	Email of 23 May 2017 @ 11:05	Please see attached draft response to RR375 from George Greenwood as requested.	DCLG – CO	FOI Casework
CH referral JCP closures and SOS Corr with SG FOI 1850	Contained in attachment to email of 23 May 2017 @ 09:35	George Greenwood a BBC journalist seeks ...all communications and the minutes of meetings between the ministers of the Scottish Government and ministers of the Department of Work and Pensions concerning the closure of job centres in Scotland. Please provide information from April 1 st 2016 to date.	DWP – CO	FOI Casework
FW: ACTION BY 24/5: FOI release: Jobcentre closures in Scotland	Email of 23 May 2017 @ 13:35	----- Forwarded message ----- From: George Greenwood <George.Greenwood@bbc.co.uk> To: Cc: Bcc: Date: Thu, 27 Apr 2017 13:53:36 +0000 Subject: Request under the Freedom of Information Act: Job centre cuts Dear FOI Officer, I am sending this request under the Freedom of Information Act.	DWP – CO	FOI Casework