

Written evidence from Jenna Corderoy (FOI 28)

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

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SUMMARY:

My name is Jenna Corderoy, and I am a reporter for the investigations team at openDemocracy. As part of my journalistic processes, I submit Freedom of Information (FOI) requests to central government departments and government agencies, and I have taken several FOI appeals to the Information Tribunal and Upper Tribunal. Earlier this year, I went to the Tribunal over the Clearing House (*Cabinet Office v (1) Information Commissioner and (2) Jenna Corderoy*)¹.

The right to information is essential to a properly functioning democracy. However, the current system is not working, particularly within central government departments, and above all, the Cabinet Office. Over the last few years, many users of the Freedom of Information Act (the Act), including myself, have noticed a marked change. Compliance is worsening, waiting times are increasing, and some public authorities apply exemptions questionably or simply do not respond to requests at all. This was happening before the pandemic; the pandemic has only exacerbated it. These behaviours have damaged the ability of journalists to access information. Delays mean that information loses its newsworthiness, and frustrating requests for information means that journalists can't properly inform their readers.

At openDemocracy, we were so concerned about the current state of FOI in the UK that we commissioned a report: *'Art of Darkness: How the government is undermining Freedom of Information'* by FOI expert Lucas Amin.² The report finds that central government granted fewer and rejected more FOI requests in 2019 than ever before.³ This is a huge concern and has been raised in parliamentary written questions, yet there has been a lack of a proper explanation from the Cabinet Office as to why more and more requests are being rejected.⁴ This trend in secrecy has been led by the largest and most powerful Whitehall departments, including the Cabinet Office.⁵ The first part of my submission will demonstrate the Cabinet Office's particularly poor record of compliance with the Act.

openDemocracy also learned about how the Cabinet Office operates a "Clearing House", which "coordinates" and "advises" on FOI requests referred to it by government departments and agencies. Earlier this year, my attempt to obtain documents about the Cabinet Office's "Clearing House" went before the Tribunal.⁶ Specifically, I succeeded in obtaining a "FOI Round Robin List", which contains FOI requests that were forwarded to the Cabinet Office's Clearing House in 2018. In addition, the Tribunal Judge found that there is a "*profound lack of transparency about the operation of the Cabinet Office*" and criticised the Cabinet Office for a "*lacuna in public information*".⁷ The round robin lists can be viewed here: <https://unredacted.uk/deviewer.php?dcid=20734490>

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<https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2848/Cabinet%20Office%20%20EA.2020.0240%20Open%20Decision.pdf>

² <https://www.documentcloud.org/documents/20415987-art-of-darkness-opendemocracy>

³ Add page number

⁴ <https://questions-statements.parliament.uk/written-questions/detail/2020-01-24/7588>

⁵ We found that in the last five years, the Cabinet Office granted the fewest (26%) and withheld the most (60%) requests across all of Whitehall (please see: <https://www.documentcloud.org/documents/20415987-art-of-darkness-opendemocracy>).

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<https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2848/Cabinet%20Office%20%20EA.2020.0240%20Open%20Decision.pdf>

⁷ <https://www.opendemocracy.net/en/freedom-of-information/foi-clearing-house-michael-gove-cabinet-office->

My submission to this inquiry addresses the alarming evidence uncovered by openDemocracy in the course of our lengthy investigations into the Clearing House. The Cabinet Office, which has overseen FOI policy since 2015, has a terrible compliance record, and frequently “stonewalls” – the act of failing to respond – FOI requests and requests for internal reviews. The Cabinet Office’s practices suggest that it has a clear tendency to reject requests. If this is the approach being followed, I feel very uncomfortable that the department is providing “advice” to other government departments.

My submissions demonstrate why, within this context, it is questionable whether other government departments should really be seeking out the advice of a department whose own FOI compliance is poor. If the Cabinet Office is struggling to (a) deal with its own FOI requests in a timely fashion and (b) properly interpret the Act, it cannot possibly deal with other requests referred to it in a timely fashion, nor provide accurate advice.

Our investigations at openDemocracy – and my subsequent tribunal hearing – have established the following about the Clearing House:

Coordinating FOI requests

1. **“Sensitive” Requests:** When a government department receives a “sensitive” request, they may refer this to the Cabinet Office Clearing House. The Clearing House provides “advice” on how that government department should respond. Triggers for sensitive requests were published by the Cabinet Office only a few weeks before my Tribunal hearing.⁸ Up until this point, the official gov.uk website did not host a webpage containing a list of these triggers and government departments have failed to communicate effectively to the requester when their request might be flagged to the Clearing House.
2. **Round Robin Requests:** When a government department receives a so-called “round robin” request – a request which has been received by multiple departments – this is flagged to the Clearing House which adds that request to a “FOI Round Robin List”. This list is circulated to government departments and agencies, and includes the name of the requester, the request, which departments have received the request, and advice from the Clearing House on how government departments should respond. We were initially told by the Cabinet Office and the ICO that this List contained both round robin requests AND “sensitive” requests. As the judgment makes clear (at paras 6, 23 and 30), the Cabinet Office subsequently changed its position, stating that the List only contained round robin requests (causing the Tribunal to conclude that it had been misled by the Cabinet Office). However, the evidence which emerged from the Tribunal hearing demonstrated that even the Cabinet Office’s revised position was incorrect: numerous requests that were placed on the List were *not* round robin requests, but instead appeared to be “sensitive” requests (including a significant proportion of requests from journalists, campaigners, academics, and researchers). As this submission explains, it appears that “sensitive” requests are still being regularly flagged for Clearing House consideration. For an example of these FOI Round Robin Lists, please see: <https://unredacted.uk/dcviewer.php?dcid=20734490>

[opendemocracy-wins-court-case-uk-government/](https://www.opendemocracy.org/uk/courts-and-tribunals/court-cases/court-cases-uk-government/)

⁸

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/970672/Cabinet_Office_FOI_Referral_Criteria_FINAL_.pdf

3. **Events of significant public interest:** The Clearing House has screened FOI requests relating to events of significant public interest, including the Grenfell Tower tragedy⁹, Exercise Cygnus¹⁰, the Westferry Printworks scandal¹¹, and the infected blood scandal¹². These requests are of significant public interest.

Advising on requests referred to the Clearing House

4. **Draft responses:** The Clearing House regularly signs off on draft responses to FOI requests, and there is evidence to suggest that the Clearing House advises on requests for internal reviews and complaints received by the ICO.¹³
5. **Delays:** The Clearing House has actively blocked the release of information and has caused – and is continuing to cause – huge delays.
6. **National Security Liaison Group:** When there are national security issues with FOI requests, the Clearing House advises departments to flag their requests to the National Security Liaison Group. It is not entirely clear who makes up the NSLG.

Additional major concerns about the continued lack of transparency over the Clearing House, include:

1. There is evidence to suggest that the Clearing House does not write down the advice which it gives to other departments.
2. There are concerns over the nature and quality of the advice given by the Clearing House to other government departments.
3. The Clearing House does not keep statistics on the number of requests that have been flagged. The statistics that it has sent to PACAC recently are misleading and wrong.
4. There is inconsistency over the triggers which are said to apply in order to determine whether government departments should flag “sensitive” FOI requests.
5. There is no documentation on the official government website which sets out the procedure to be followed where a department does not agree with the Cabinet Office Clearing House advice. These conflicts do occur, as charted by openDemocracy and the news outlet Politico.
6. The Cabinet Office continues to block FOI requests which ask for documents/information about its operation of the Clearing House.
7. There are data protection concerns over the circulation of the FOI Round Robin Lists.

⁹ https://drive.google.com/drive/u/1/folders/1oxi1dj3xUg_wMExPsFAUEBSuSQT81O52

¹⁰ https://drive.google.com/drive/u/1/folders/1Vy-8I5WK0mEG_XIngvorHJFmhYAz7TOx

¹¹ https://drive.google.com/drive/u/1/folders/1ZJDyq4zr9VIO_YauY7HN0OrxJkf1AEW6

¹² <https://drive.google.com/drive/u/1/folders/1hjUFkJTH82vaVol5soyTILo8iRuZs7eU>

¹³

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/970672/Cabinet_Office_FOI_Referral_Criteria_FINAL_.pdf.

Key recommendations:

It is my hope that at the conclusion of this Inquiry, PACAC will have found that the evidence presented to it more than substantiates the concerns I have raised about the Cabinet Office and in particular the Clearing House, and the ways in which I believe they are frustrating the spirit and the letter of the Freedom of Information legislative regime. Some key recommendations I would hope to see included in the final report are that:

On compliance:

- The Cabinet Office meets its legal obligation to respond to FOI requests within 20 working days, and that it responds to requests for internal reviews within 20 working days.
- The Cabinet Office fairly and properly processes requests for information in accordance with the letter and spirit of the legislation.
- The Cabinet Office fully engages with enquires made by the Information Commissioner's Office during the course of investigating a FOI complaint.

On the Clearing House:

- The Cabinet Office comprehensively reviews the operation of the Clearing House and understands the concerns associated with it.
- The Cabinet Office publishes all documents on how the Clearing House operates, including guidance on the procedure to be followed when there is a conflict between the Clearing House and government departments.
- The Cabinet Office publishes any guidance it has circulated on FOI requests that relate to the pandemic, as well as guidance it has circulated for other significant public interest events like the Grenfell Tragedy and the infected blood scandal.
- The Cabinet Office fully records the advice on FOI responses that it provides to other government departments.
- The Cabinet Office accurately records and publishes the number of FOI requests – including “sensitive” requests – it has received from other government departments.
- The full membership of the National Security Liaison Group is published.
- The Cabinet Office and other government departments and agencies properly communicate to the requester that their request – as well as their details – could be circulated across Whitehall.
- The Cabinet Office and other government departments and agencies stop making references to the identities of journalists, campaigners, researchers and so on.
- Where an information request that has been subjected to the Clearing House is referred to the Information Commissioner, it is disclosed to the Information Commissioner that the Clearing House was a party to the decision-making process for that request, together with all correspondence between the Cabinet Office and relevant department(s).

THE CABINET OFFICE'S COMPLIANCE WITH AND IMPLEMENTATION OF THE FOI ACT:

1. Stonewalling and delays

The FOI Act states that requests should be answered “promptly and in any event not later than the twentieth working day following the date of receipt” (section 10). The intention of the legislation is clear: to give requesters reasonably fast access to information – within a month at most.

Yet public authorities undermine this process by “stonewalling” requests i.e. they do not respond to a request at all. ICO rulings – known as Decision Notices - about stonewalling have increased by 70% in the last five years. We found that the Cabinet Office is a repeat offender.¹⁴

Alternatively, public authorities often seek to exploit a loophole which allows authorities to extend the 20 working-day deadline by another 20 working days to consider the public interest in disclosure. These extended requests are still considered to be ‘on time’.¹⁵

The Cabinet Office regularly uses this ‘public interest extension’ in order to seek to extend the time for its response indefinitely. In a letter to William Wragg MP, Chair of the Public Administration and Constitutional Affairs Committee, Chloe Smith MP, then Minister of State for the Constitution and Devolution, stated that “*the timeliness of Cabinet Office responses has improved quarter on quarter in the last year, and was 92% in Q1 2021.*”¹⁶ However, following analysis by openDemocracy, I believe that this statistic does not give the full picture: it includes not only cases where the Cabinet Office met the 20-day deadline, but also cases in which it used the public interest extension to extend that deadline. My colleague at openDemocracy has calculated that only 73% of requests were actually responded to within the default deadline of 20 working days. In my own experience, the public interest test has regularly been used to extend the time which the Cabinet Office has to respond to my requests.

For example, on 21st July I submitted a FOI request to the Cabinet Office asking for correspondence and communications held by Sue Gray and Michael Gove in regards to PACAC’s inquiry into Greensill. I made this request as I wanted to delve deeper into why Michael Gove offered to appear in her place.¹⁷ On 19th August, the Cabinet Office extended the deadline and said it would respond by 17th September. I waited, and then on 17th September, I was informed by the Cabinet Office it was extending the deadline again and said it would respond by 15th October. I have yet to receive a substantive response to my July request at the time of writing. This is unacceptable.

Further, I have analysed hundreds of Information Commissioner’s Office Decision Notices since 2015, when the Cabinet Office took over FOI policy from the Ministry of Justice. The Decision Notices which involve the Cabinet Office paint a troubling picture of what is happening within the very department responsible for FOI policy.

Time and time again, the ICO finds that the Cabinet Office fails to respond on time to FOI requests (please see annex number one) – requests that are in the public interest. By forcing

¹⁴ <https://www.documentcloud.org/documents/20415987-art-of-darkness-opendemocracy> p.6

¹⁵ A requester can complain to the ICO that they have not yet received a response.

¹⁶ <https://committees.parliament.uk/publications/7145/documents/75490/default/>

¹⁷ <https://committees.parliament.uk/committee/327/public-administration-and-constitutional-affairs-committee/news/156535/gove-blocks-greensill-ethics-supremo-committee-appearance/>

requesters to play a waiting game, authorities can take the sting out of an embarrassing disclosure. I believe this is a tactic especially used by the Cabinet Office. I should also note that available evidence only offers a snapshot of the true extent of the Cabinet Office's failings, since only a very small percentage of FOI requests end up being taken to the ICO.

2. Internal Reviews

When an FOI request is refused, a requester can ask the public authority to conduct an internal review of its decision. However, the internal review is not described anywhere in law and there are no formal rules, tests or time limits for the procedure. The FOI Code of Practice, a non-binding set of guidelines issued by the Cabinet Office, encourages public bodies to “provide a fair and thorough review of procedures and decisions taken in relation to the Act” by “someone other than the person who took the original decision” within twenty working days.

In the last ten years, there have been 20,803 internal reviews conducted by departments of state and other central agencies.¹⁸ Of these, just 57% were completed within twenty working days.¹⁹ Again, by not responding to internal reviews promptly, it frustrates the requester's right to access information. It also acts as a barrier to the requester accessing the next step of an appeal.

My analysis of hundreds of ICO Decision Notices relating to the Cabinet Office's lack of response to internal reviews was very troubling (please see annex two).

The Cabinet Office cannot properly respond to requests for internal reviews.

3. Case studies

A good example is provided by the case which was recently determined by the Tribunal. I submitted my request for information about the Clearing House in August 2018. The Cabinet Office refused the request the following month, so I asked for an internal review. I submitted this request in November 2018. After the Cabinet Office failed to respond to my request for an internal review, I had to complain to the ICO. I submitted a complaint in May 2019, and received a response from the ICO, informing me that they had prompted the Cabinet Office into action. I eventually received a response from the Cabinet Office - eight months after it received my request for an internal review.

It was still a refusal, so I appealed to the ICO. The ICO said I was entitled to the information I requested in July 2020, but the Cabinet Office appealed against that decision in August 2020.

Weeks before the tribunal hearing - in March 2021- the Cabinet Office decided to release certain information to me, but it was still withholding some information. So I had to go to the Tribunal, where it was found that I was entitled to the vast majority of the information I originally sought. That Tribunal hearing took place in late April.

¹⁸ <https://www.documentcloud.org/documents/20415987-art-of-darkness-opendemocracy> p.14

¹⁹ <https://www.documentcloud.org/documents/20415987-art-of-darkness-opendemocracy> p.8

From my original request to the result of my Tribunal hearing, this process lasted close to three years.

I'm sure PACAC would agree with me that these delays are completely unacceptable.

In a separate FOI request about the Clearing House, where I have tried to obtain more documents about its operation, I asked for an internal review in January 2021. I have yet to receive a response from the Cabinet Office at the time of writing, and I have complained to the ICO. Again, this is completely unacceptable.

4. *Stonewalling the ICO*

When a requester is unsatisfied with the outcome of an internal review, they can complain to the ICO, which assesses whether the public authority was right to refuse the request. When a complaint is made, the ICO investigates and asks for submissions from the public authority. The ICO then issues a Decision Notice, setting out the course of action the public authority must take (if any). But sometimes public authorities stonewall the ICO and fail to respond to their enquiries. The ICO may then issue an Information Notice to compel the public authority to respond. The Cabinet Office is one of such authority. In 2019, 17 Information Notices were issued against public authorities: out of the 17, 11 were issued against the Cabinet Office.²⁰ Once again, this all frustrates the requester's right to access information.

Please see annex three for numerous examples where the Cabinet Office has simply ignored the ICO's enquiries.

5. *Conclusions on Cabinet Office compliance*

The Cabinet Office has a bad reputation of not complying with the FOI Act. It will argue that the pandemic has had an impact on responding to requests – but they were doing this long before March 2020, as I hope my evidence contained in the annexes shows.

When I analysed hundreds of ICO Decision Notices involving the Cabinet Office, I have noticed some other worrying trends. It appears that the Cabinet Office have improperly refused requests, improperly handled FOI requests or have not acted in spirit of the FOI legislation. Please see annex four.

I have very little confidence in the Cabinet Office's ability to process FOI requests fairly and properly. With this Cabinet Office's poor compliance with FOI, and not its failure to act in accordance with the law or spirit of the legislation, one must question whether it should be running the "Clearing House".

THE CABINET OFFICE'S CLEARING HOUSE, AND ITS ROLE IN "ADVISING" AND "COORDINATING" FOI CASES ACROSS GOVERNMENT:

Despite the many years over which I have been submitting FOI requests to central government departments, I had no idea that such an operation existed. When I began to

²⁰ <https://ico.org.uk/action-weve-taken/information-notices/>

examine the Clearing House, there was no guidance authored or published by the Cabinet Office about how the Clearing House operates under its remit.

Through my research, I now understand that there has been a Clearing House since 2004. The Cabinet Office assumed responsibility for the Clearing House from the Ministry of Justice in 2015. I did come across some documents about the Clearing House, but these were written before the Cabinet Office took over the Clearing House in 2015 (please see annex five for background information on the Clearing House).

(1) “SENSITIVE” REQUESTS:

As we know now, when a government department receives a “sensitive” request, they may refer this to the Cabinet Office Clearing House. The Clearing House provides advice on how that government department should respond.

Official criteria

The referral criteria published by the Cabinet Office suggest that the process is likely to capture many journalists’ requests. They are the ones who will submit requests on ‘*cases involving high political sensitivity*’ and information relating to ‘*ministers/very senior officials*’ and requests with a ‘*Royal interest*’. Journalists are the ones who are very likely to submit requests relating to ‘*current or former Prime Ministers*’ and for ‘*correspondence with No 10*’. Their requests are also likely to result in significant wider interest in the topic of the request at the time.²¹

“Sensitivity” based on a requester’s identity and breaches of the ‘applicant blind’ principle

But even more worrying, a journalist’s request in 2020 was flagged to the Cabinet Office because his profession was deemed “sensitive”. A *Times* journalist submitted a Subject Access Request (SAR) to obtain a copy of his personal information from the Cabinet Office.²² After a nine-month battle to access his own information, he discovered that the Environment Agency had flagged his FOI request to the Clearing House as “*sensitive because the customer is a journalist*”. Other departments also flagged his profession to the Cabinet Office. His SAR also showed that the Cabinet Office were making remarks internally about the character of the requester, calling him “*ever active*”. The *Times* journalist wrote: “*While the Cabinet Office maintains that “all FOI requests are treated exactly the same”, the sharing of such details risks creating a culture of targeting journalists.*”

When I submitted a FOI request to the Department for International Trade, it forwarded the request to the Cabinet Office, flagging my profession as well. Another openDemocracy colleague, who submitted a SAR to the Cabinet Office, found that the FCO and DfID had flagged his details to the Clearing House and sent a link to his profile page on the Guardian website.

²¹ The triggers were only published a few weeks before my tribunal hearing:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/970672/Cabinet_Office_FOI_Referral_Criteria_FINAL_.pdf

²² <https://www.thetimes.co.uk/article/a-transparent-foi-system-is-vital-for-good-government-drk2p8zgh>

This problem is a long-standing one. The Cabinet Office assumed responsibility for the Clearing House from the Ministry of Justice in 2015. Even prior to the Cabinet Office taking over the Clearing House, departments were flagging requests to the Clearing House based on the identity of the requester. In 2014, a requester submitted a FOI request on *WhatDoTheyKnow.com*, asking for a copy of the Scotland Office’s guidance on processing FOI requests. The requester obtained an FOI procedure note where there are numerous references to the Clearing House, which was the responsibility of the Ministry of Justice around this time. The document contains a list of Clearing House triggers, including “*High likelihood of harmful media interest/story running at the time*”. Yet the document also advises that: “*advice should also be sought from the Clearing House on how to handle cases in the following circumstances: Campaigning initiatives falling short of round robins or suspected round robin requests; Applications from news media, MPs, organised campaigns and groups; Exemptions and case law advice*”.²³

This is worrying as it appears journalists’ requests are subject to extra scrutiny by the Clearing House, and as established by openDemocracy’s investigations, the Clearing House causes lengthy delays and has actively blocked requests. Not only does this frustrate the requester’s right to information, but it is a barrier to journalism. There are also concerns relating to the ‘applicant blind’ principle, as there appears to be a degree of looking up the background of the requester. However, when considering FOI requests, the ‘applicant blind’ principle requires that requests for information should generally be considered without reference to the identity of the requester or the motives behind the request.

openDemocracy’s investigations, and a recent Politico investigation, have previously revealed government departments regularly examining the background of the requester. When I submitted SARs to various government departments, it was clear that they were looking into my background. For example, staff at the Attorney General’s Office wrote: “*just flagging that Jenna Corderoy is a journalist*”.²⁴ Politico also revealed that the Department for International Trade has been triaging FOI requests based in part on the identity of the applicant.²⁵

Lack of transparency over referral to the Clearing House

Furthermore, the requester is not told that their request has been flagged to the Cabinet Office Clearing House, and they are not informed of what advice the Cabinet Office Clearing House has provided to the department dealing with the request for information. If the requester complains about their FOI request, the Information Commissioner’s Office is not informed of the role that the Cabinet Office Clearing House has played.

(2) THE CLEARING HOUSE’S FOI ROUND ROBIN LIST:

What is a round robin list and which requests appear on them?

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https://www.whatdotheyknow.com/request/202315/response/497322/attach/4/FOI%20Procedure%20Note.pdf?cookie_passthrough=1 (page 17)

²⁴ <https://www.opendemocracy.net/en/freedom-of-information/i-sent-fois-to-uk-government-departments-then-they-shared-my-personal-data/>

²⁵ <https://www.politico.eu/article/uk-trade-department-referred-to-information-watchdog-over-data-breach/>

When a government department receives a so-called “round robin” request – a request which has been received by multiple departments – this is flagged to the Clearing House, which adds that request to a “FOI Round Robin List”. These lists contain the name of the requester, the text of the request, which departments have received the request, and advice from the Clearing House on how government departments should respond. The Cabinet Office Clearing House circulates this list of FOI requests across Whitehall. It used to be circulated on a daily basis, but I now understand that as a result of the Tribunal the lists are circulated every other day.

At openDemocracy, we have established that these lists contain the names of journalists, researchers, and campaigners. This leads me to have concerns about the ‘applicant blind’ principle and data protection, as well as journalistic concerns in general.

After receiving the first FOI Round Robin List, I then submitted further FOIs to get hold of more recent FOI Round Robin Lists and more information on how the Cabinet Office Clearing House operates. At the time of making my requests, there was nothing hosted on the official government website on how requests might end up on the FOI Round Robin list.

The concern is shared by the ICO, which has previously stated: *“We do not consider the general public sufficiently aware of the CO’s circulation of the Round Robin list for it to be presumed that all requestors whose details are included on the Round Robin list are going to be aware of the Round Robin list and the possibility that their details may be both passed to the CO by the public authority to whom they made their request, and then be added to the Round Robin list to then be circulated around particular public authorities.”*²⁶

In records that I eventually obtained, the Clearing House is clearly advising other central government departments on how to respond to requests, in a way in which I believe goes against the spirit of FOI. It appears that it is a method for centralising - and controlling - what should and should not be disclosed by central government departments. Each public authority should be able to decide what they are obliged to disclose for themselves.

The Cabinet Office claims that the Clearing House is used for consistency, but when one submits a round robin request, it is richer from a journalistic perspective to compare different results rather than every response coming back with the same reply.

Requests on the lists that do not fit the definition of ‘round robin’

What is perhaps even more worrying is that there doesn’t appear to be a consistent use of the FOI Round Robin List. As set out above, I was initially told by the Cabinet Office and the ICO that this List contained both round robin requests AND sensitive requests, but the department now says that this Round Robin List only contains round robin requests and that any requests appearing on the Lists that were not round robin in nature, were there in error.

It emerged from the tribunal hearing that numerous requests which had been placed on the List were not round robin requests. When I received a FOI Round Robin List covering a couple of months in 2018, a third of requests within that list were singular - they had not been sent to multiple departments. Often, these requests were of high public interest. For example, the 2018 List contains a FOI request received by the Ministry of Defence where a requester

²⁶ <https://www.foi.directory/governments-foi-round-robin-list-doesnt-comply-with-data-protection-rules/>

asked for a list of ‘go cold’ events concerning UAV (unmanned aerial vehicle) or drone missions. So why are singular requests ending up on a list meant for round robins? If by error, then why is this error repeated with such frequency?

Lack of transparency over referral to the round robin lists

And requesters are not informed if their requests have ended up on the Round Robin List. There are applicant blind concerns around this. FOI expert Matt Burgess - who set up the website FOI Directory and wrote the book *‘Freedom of Information: A Practical Guide for UK Journalists’* - has also raised concerns regarding the ‘applicant blind’ principle when the Clearing House came under the jurisdiction of the MOJ. He wrote:

“The Department has confirmed the existence of a request sharing scheme where a ‘round robin list’ is sent to other officials and occasionally centrally provided advice for answering the requests is given. On face value this would go against the FOI Act’s principles of being applicant blind as the details of those asking for information will be known – their details may even be shared before they have made a similar request to another department.”²⁷

I agree with this.

(3) SCREENING FOI RESPONSES:

As well as the list of criteria published by the Cabinet Office, from information I have seen, there is a suggestion that in fact particular subjects are flagged as immediately sensitive.

A disclosure I received from the Department for Transport (DfT) shows that the coronavirus is a subject given as a reason for referral, suggesting a request related to the coronavirus must immediately be flagged as possibly sensitive. However, nothing in the published information I have seen to date suggests that the coronavirus is being used as a trigger for referral.

In a heavily redacted disclosure from the Ministry of Housing, Communities & Local Government (MHCLG), the department forwarded FOI requests related to the Grenfell Tower Tragedy to the Cabinet Office Clearing House. On 20th June 2017, the Cabinet Office wrote: *“...it would be helpful if we could see a list of responses you have received so far along with how you intend to reply to each individual request. Please note that if you have not settled your approach, we would be happy to share our views”*. Another email dated 13th July 2017, the Cabinet Office writes: *“With sincere apologies for the delay, please find attached some suggested advice regarding your FOI requests”*. Other emails from the Cabinet Office includes the sentences *“we would like to see drafts for all responses please”* and *“We’re content with these drafts responses apart from [REDACTED]”*.

The MHCLG refused to reveal what was underneath those redactions – including the Clearing House’s advice – because it *“would unacceptably erode the thinking space...Officials must feel able to consider the information and advice before them and be able to reach objective, fully-informed decisions without impediment and free from distraction that such information will be made public.”*

²⁷ <https://www.foi.directory/government-operates-a-round-robin-list-to-share-your/>

In another disclosure from MHCLG, numerous requests relating to the Westferry Printworks – including one from myself and other journalists – were forwarded to the Cabinet Office Clearing House.

I also obtained a FOI disclosure where the Department of Health and Social Care forwarded FOI requests to the Cabinet Office about Exercise Cygnus - a 2016 government simulation of a flu outbreak to test the UK's pandemic readiness. The government has previously been criticised over how it has handled requests for information about Exercise Cygnus. The DHSC "*had repeatedly refused to publish the reports into Exercise Cygnus following a Freedom of Information request by Dr Qureshi and Mr Greene, saying that it needed more time to weigh up whether it would be in the public interest.*"²⁸ The DHSC refused to release the advice the Cabinet Office gave to DHSC because "*the public interest in withholding this information outweighs any public interest that there might be in releasing the information you seek.*" I believe that government departments are deliberately withholding information about their interactions with the Clearing House in order to avoid scrutiny.

Again, this suggests a degree of control by the Cabinet Office over what should and what shouldn't be disclosed to the public.

(4) SIGNING OFF ON DRAFT RESPONSES:

From documents obtained by openDemocracy, I know that the Cabinet Office Clearing House asks to see drafts of FOI responses regularly, and signs off on them too.

I noticed in a job advertisement for FOI Clearing House advisers that the candidate is tasked with "*forwarding drafts for clearance, reverting to departments with advice and **negotiating redrafted responses***" (emphasis added).²⁹ On the website *Whatdotheyknow*, I found emails between the Treasury and the Clearing House, where the Clearing House says: "*HMT should bear in mind whether releasing information might prejudice the course of the inquiry. We would like to see draft responses*" ... "*Thanks for the below and we are happy to clear your draft responses. We are currently doing the same for DH and we will refer on if we think it is necessary.*"³⁰

Departments also seek advice from the Cabinet Office Clearing House on how to handle internal reviews and complaints received by the ICO, as well as Tribunal cases. One has to ask – to what extent does the Cabinet Office Clearing House get involved with such cases? I was always under the impression that when an internal review is conducted, it is conducted by someone within the department to which the request was made - not the Cabinet Office.

Clearing and signing off on responses has all the hallmarks of centralising control across Whitehall. I find this to be totally unacceptable and not in the spirit of openness and transparency which underpins the Act.

²⁸ <https://www.leighday.co.uk/latest-updates/news/2020-news/campaign-to-have-cygnus-report-published-is-successful/>

²⁹ <https://cabinetofficejobs.tal.net/candidate/so/pm/1/pl/16/opp/4942-4942-Multiple-B1-roles-PBT-Office-Manager-FOI-Clearing-House-Adviser/en-GB>

³⁰

https://www.whatdotheyknow.com/request/532895/response/1337049/attach/6/1.FOI%20Request%20correspondence%20relating%20to%20HMT%20request%20string%201.pdf?cookie_passthrough=1

In a FOI Round Robin List covering a couple of months in 2018, for almost a half of FOI requests on this list the Clearing House wanted to see drafts. That is a significant proportion and indicates control. There is also a concern that by seeing drafts, this adds another step in the handling of requests, thereby creating further delays.

In another example, a DfT employee forwarded a request from a freelance journalist writing for the Times to the Clearing House. An email states: *“Please find attached a draft FOI response... I’d be grateful for clearance to allow us to meet our deadline of the 28th Feb.”*³¹

On the 28th February 2020, a DfT employee wrote again to the Clearing House and stated: *“sorry to chase but any news on this one? If we cannot obtain clearance today, we could always [Public Interest Test] extend again for a few days”. Grateful for confirmation.”*

The request was refused and the journalist made a complaint to the ICO. DfT then liaised with the Clearing House over its submissions to the ICO. An email dated 20th October 2020 states: *“Please find attached a draft ICO response and accompanying documents which engages the [redacted] exemptions... Can you please arrange for CO and [redacted] to clear this by cop Friday 23rd October to allow us to meet the ICO’s deadline.”*

The approval of the Clearing House was sought again when the ICO caseworker reverted with follow-up questions. Another email from 24th November states: *“The ICO case officer has come back with some follow-up questions (first attachment) and our policy officials have drafted a reply (second attachment)... I’d be grateful for Cabinet Office and [redacted] clearance of our reply to the ICO”.*

(5) THE CLEARING HOUSE BLOCKS THE RELEASE OF INFORMATION AND CAUSES DELAYS:

Case study 1: infected blood

My colleague at openDemocracy and I have reported on documents obtained by Jason Evans, a campaigner on the issue of infected blood.^{32 33} Mr Evans sought information from the Treasury on historic documents about litigation taken by haemophiliacs infected by HIV in the early 1990s.

Rather than respond to his request directly, the Treasury sent the FOI request to the Clearing House, which asked to see drafts of any responses before they were sent to Mr Evans. Correspondence between the Clearing House and the Treasury paints a picture of continual foot-dragging and, in my view and that of others, obstruction.

The Treasury told the Clearing House that it was *“keen to release the information”*. However, on numerous occasions over several months, Cabinet Office staff from the Clearing House urged against immediate disclosure. Further, when HMT initially got in touch with the Clearing House, it was cautioned by the Clearing House to *“bear in mind whether releasing information might prejudice the course of the inquiry. We would like to see draft responses”*.

³¹ <https://drive.google.com/drive/u/1/folders/1ECJmDLv4PQ2TTOqoIfLvzpeSx822B8pU>

³² <https://www.opendemocracy.net/en/freedom-of-information/revealed-governments-orwellian-unit-blocked-infected-blood-scandal-disclosure/>

³³ <https://drive.google.com/drive/u/1/folders/1hjUFkJTH82vaVol5soyTILo8iRuZs7eU>

On 6th August 2018, almost three months after Evans' request, the head of the Clearing House, Eirian Walsh Atkins, wrote internally: *"the information is very much of its time, and is unpalatable when viewed alongside the Inquiry and the very many letters I know you will have read from infected parties"*. The following week the Cabinet Office's director general of propriety and ethics, Sue Gray, wrote internally: *"Personally I would favour the Inquiry releasing the information in a managed way"* and *"The HMT team will need to do a lot of consultation with former Ministers who I suspect will be very sore about this. Much better to do as part of a release with the Inquiry. And I would use [Section]31 for now. Can always revisit if goes to ICO."*

Another official said that they *"liked the idea"* of waiting for the National Archives to publish the documents. This idea was dropped when it emerged that the files were not being transferred to the National Archive and that *"were it not for the (infected blood) review they would be destroyed."*

Mr Evans submitted the request in May 2018 but did not receive a substantive answer and disclosure of the information he sought until October 2018. This is a clear example of how the Clearing House at best contributes to delays and at worst is downright obstructive.

Case study 2: Sabisky

At the beginning of 2020, I submitted a request for information to the Ministry of Defence, to obtain further information about possible meetings between Andrew Sabisky - the controversial Downing Street adviser who stepped down in 2020 over his past comments on eugenics and race - and senior defence officials.

After several months of delay, I had to complain to the ICO to prompt the MOD into action. I then submitted a SAR, and I was able to obtain internal communications over the treatment of the FOI request. A disclosure stated: *"Please note that due to the time spent in getting an approval from Clearing house, the FOI requestor has put in a complaint to the ICO."*³⁴

Case study 3:

In an FOI disclosure from the Department for Transport, I was provided with emails which showed the department chasing the Cabinet Office Clearing House for clearance over a particular FOI request. The email says: *"Sorry to chase but any news on this one? If we cannot obtain clearance today we could always PIT extend again for a few days."* 'PIT' stands for public interest test – it appears that because the Cabinet Office Clearing House cannot turn around requests quickly, other government departments are having to breach the FOI deadline. This completely undermines the spirit of the Act.

Case study 4: information about the Clearing House

In a more recent example, on 10th May 2021, I asked the Department for Transport for documents regarding their engagement with the Cabinet Office Clearing House. On 8th July (the deadline for a response), I did not receive a response – instead I was told by DfT: *"We are presently awaiting an answer from the Cabinet Office on certain facets of our response. I*

³⁴ <https://www.opendemocracy.net/en/freedom-of-information/uk-government-running-orwellian-unit-to-block-release-of-sensitive-information/>

did issue a reminder to the Cabinet Office yesterday, but am still awaiting a reply. I will endeavour to follow up this matter again with them, as we are also very conscious of the time it is taking to issue a substantive response to you.”

On 3rd August, the DfT said: *“I’m afraid that we are still awaiting a final response from the Cabinet Office.”*³⁵ I eventually received a partial disclosure on 12th August.

Lengthy, persistent and routine delays in FOI disclosure goes against both the spirit and the letter of the Freedom of Information Act. Greater transparency is needed over the operation of the Clearing House so that such activity can be monitored and scrutinised by Parliament.

(6) NATIONAL SECURITY LIAISON GROUP:

After my Tribunal case, the Cabinet Office released further documents to me that had previously been redacted. The disclosures revealed how the National Security Liaison Group (NSLG) also wanted to see draft responses to FOI requests.

There is very little information available about the NSLG. According to “Does FOI work? The impact of the Freedom of Information Act on central government in the UK” by Ben Worthy, Robert Hazell and Mark Glover³⁶, the NSLG is *“a body over and above the clearing house which has a similar function, but specifically for national security. It was described by one official as “a small community across government that looks at national security issues to ensure that the views of appropriate agencies are taken into account [and they are given] the opportunity to say whether they consider the information to be sensitive in a way that we wouldn’t necessarily pick up”.*

This process of flagging requests to the NSLG may cause further delays.

As raised earlier in my submission, the NSLG plays a role in the handling of FOI requests, however, I have yet to find which specific organisations make up the NSLG. I have submitted various FOI requests on this point, but they have not been useful.

I asked the Cabinet Office the following: *“(1) Please provide a list of people who currently make up the National Security Liaison Group. Please provide their full name, as well as the organisation that they represent.*

(2) Please provide a list of people who used to be members of the National Security Liaison Group. Please provide their full name, as well as the organisation that they represented. Please restrict this to 1st January 2018 to the current day.”

But they replied: *“I am writing to inform you that the Cabinet Office does not hold information in scope of Question 1 and Question 2 of your request.”*

It appears that the National Police Chiefs’ Council is represented on the NSLG. Its website states, as part of the National Police Freedom of Information and Data Protection Unit’s key deliverables: *“~~Represent UK Police forces at the National Security Liaison Group (NSLG).~~”*³⁷

³⁵ <https://drive.google.com/drive/u/1/folders/1PuSdNIP14z4IJVutznd-UmMa3YSA-FnG>

³⁶ P.119

³⁷ <https://www.npcc.police.uk/NationalPolicing/NationalPoliceFreedomofInformationandDataProtectio.aspx>

I submitted a request to the Ministry of Defence, asking:

“(1) Please provide a list of people who currently make up the National Security Liaison Group. Please provide their full name, as well as the organisation that they represent.

(2) Please provide a list of people who used to be members of the National Security Liaison Group. Please provide their full name, as well as the organisation that they represented. Please restrict this to 1st January 2018 to the current day.

(3) Please indicate how often the National Security Liaison Group meets to discuss FOI requests.”

The MOD responded, in respect of questions one and two:

“No information is held regarding the people who make up the National Security Liaison Group (NSLG), this is because NSLG is not comprised of people but organisations. Individuals are not considered members, as different people from member organisations contribute to the work of the Group. The organisations who make up NSLG are:

- Cabinet Office*
- Foreign, Commonwealth and Development Office*
- Home Office*
- Ministry of Defence*
- National Police Chiefs Council.”*

The department added: *“any further organisations who make up NSLG are withheld. S23(1) is an absolute exemption and therefore not subject to public interest test.”*

I don't understand why we don't know who exactly makes up the NSLG. It is not being transparent to the public.

For question three, the government department said: *“The National Security Liaison Group meets bi-monthly, with the exception of July and August when they meet once every three weeks.”*

ADDITIONAL CONCERNS OVER THE CLEARING HOUSE:

(1) THE CLEARING HOUSE IS NOT WRITING DOWN FULLY THE ADVICE GIVEN TO OTHER DEPARTMENTS:

As previously explained, the FOI Round Robin List contains the name of the requester, the content of the request, a list of which departments have received the request, and advice from the Clearing House on how government departments should respond.

But not all the Cabinet Office Clearing House's advice is written down. In an ICO Decision Notice published in response to my FOI challenge over obtaining copies of the FOI Round Robin Lists, I was informed of the following:

*"As the list is updated and issued on a daily basis, the information and advice it contains is constantly changing to take account of evolving policy options and advice. The list itself is an aid memoire to departments devoid of the fuller advice and discussions that occurs daily between departments and the Clearing House in other correspondence and advice (much of which is often verbal)."*³⁸

If advice is not being written down, it cannot be subject to scrutiny at a later date.

(2) THE NATURE AND QUALITY OF THE ADVICE GIVEN BY THE CLEARING HOUSE TO GOVERNMENT DEPARTMENTS:

I'm concerned at the nature and quality of the advice given by the Clearing House. From my analysis of hundreds of ICO Decision Notices referred to above, there are patterns of misunderstanding and flawed application of the exemptions under the Act. I am unclear why FOI teams in each department, which presumably have their own experts in this field, cannot address issues without input from the Cabinet Office.

In the FOI Round Robin List that was eventually disclosed to me through FOI, at times, the Clearing House goes from providing advice to giving what seem like in practice or are in fact direct instructions. For example, one entry on a Round Robin List stated that departments were advised to *"strongly consider applying s.27(1)(a-d) and s.35(1)(a)"*. That reads very close to being an instruction.

In another example, the Cabinet Office Clearing House advised departments to handle requests outside the FOI regime: *"Refer to publicly available information including Contracts Finder. Some parts of this RR are questions rather than a FOI request. Departments may answer outside of FOIA if they wish"*.

In another, the Clearing House advised departments *"Significant parts of this request are not valid - FOI requests should seek recorded information rather than as a series of questions. Section 31 may apply if information is held in relation to the latter parts of the request"*. However, according to ICO guidance, the Information Commissioner says *"a question can be a valid request for information."*³⁹

Worryingly, a journalist asked for information relating to asset registers from government departments. The advice provided by the Clearing House to government departments was to *"consider whether section 14 applies to this request, which appears to have no discernible purpose"*. However, there is clearly a discernible purpose to this request. An information asset register is a register that records assets, systems, applications and databases. It indicates how information is stored and structured by government departments. The journalist also asked for cost codes – codes that are used to help record costs. I and other journalists in the past have put in FOI requests to obtain this information. The purpose is to further understand how government departments operate – one would say this is an essential purpose.

³⁸ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2618028/fs50841228.pdf>

³⁹ <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/receiving-a-request/>

A request which has no serious purpose or value can of course trigger a s14 refusal as vexatious, but this example comes nowhere close and indeed is quite the opposite. A request asking for data such as this – which is required to understand how government is operating in a democracy society – is not pointless. Indeed, transparency over governance is a crucial pillar of a functioning democracy, and journalists are key to this.

The advice from the Clearing House was followed by several government departments. The journalist subsequently complained and was eventually provided with the information from some departments.

Many further inadequacies in Clearing House advice can be found in the FOI Round Robin List I obtained. For example, in relation to one request, the advice was: *“Assume no information is held for most departments. If information is held please contact Clearing House. CH would like to see draft responses.”* The use of the word ‘assume’ worries me. How can the Cabinet Office know how or whether government departments hold information? How does it know their information records management?

Some of the advice fails really to engage with the specifics of the request. An environmental campaigner asked for correspondence like invitations, emails, and meeting notes from several departments. The Clearing House advised: *“Refer to published information where appropriate. Clearing House to see drafts”*. I know from experience that very little information would already have been published.

In further documents I obtained, for one request, the Clearing House advised: *“Section 12 is likely engaged at the initial stage. If a follow up request is received departments should bear in mind s27 when responding. CH to see non s12 draft responses.”* It is almost as if the Clearing House is pre-empting further challenges or advising departments on how to avoid having to give out information by first suggesting one exemption and then, failing that, an alternative.

With one of the requests submitted by campaigner Jason Evans himself, departments were told: *“Departments should initially consider if section 12 is engaged”*. After having seen the request, it has a tight timeframe, and it is difficult to understand why the Clearing House is advising this.⁴⁰

This is problematic for a couple of reasons. Firstly, I do not think it is possible for the Clearing House to judge that a department can apply section 12 (exemption where cost of compliance exceeds appropriate limit) or advise a department that information is not held, since the Cabinet Office is not familiar with how a department stores information, and whether the department holds the requested information. Secondly, I fear that by providing this advice, the responding department(s) will simply follow what the Cabinet Office says and not conduct appropriate searches for requested information, nor carry out the proper calculations to determine whether s12 can actually be applied. I believe this undermines the spirit of the FOI legislation.

⁴⁰ The request covers only a short period, making it less likely that the cost of complying with the request would have been greater than the statutory threshold (which, when exceeded, entitles a public authority to refuse to disclose information pursuant to section 12 of the Act).

(3) THE CLEARING HOUSE DOES NOT KEEP STATISTICS ON THE NUMBER OF REQUESTS THAT HAVE BEEN FLAGGED:

In March the Cabinet Office wrote to MPs claiming that only less than 2% of FOI requests are referred to the Clearing House. In a letter to William Wragg MP, Chair of the Public Administration and Constitutional Affairs Committee, Michael Gove wrote: “*The Cabinet Office does not keep a log of all the requests referred for advice by other departments... All requests made to central government departments, those identified as ‘round robins’ and on which the Cabinet Office provides cross-Government advice, is under 2%, underlining the fact that the focus here is on the most complex or potentially sensitive matters.*”⁴¹

If the government “*does not keep a log of all the requests referred*”, then providing statistics like this is unhelpful. The public simply does not know the full picture of how many requests are referred to the Clearing House. We do not know how many sensitive requests are flagged to the Clearing House like the ones forwarded about the Westferry Printworks scandal or the infected blood inquiry.

In the sample of the 2018 List alone which was disclosed to me as a result of my FOI Tribunal, the Clearing House had advised on at least 778 requests from central government departments and other bodies according to openDemocracy analysis – and this List only covered a couple of months from 2018.

In Michael Gove’s letter to William Wragg, the Cabinet Office claimed for the entirety of 2018, there were just over 500 requests referred to the Clearing House.⁴²

It is very unclear how the Cabinet Office arrived at the statistics it provided to MPs.

The Cabinet Office must disclose its methodology.

(4) THERE IS INCONSISTENCY OVER THE TRIGGERS WITHIN THE CRITERIA REFERRAL LIST:

Prior to the Cabinet Office publishing a list of Clearing House referral criteria in March 2021, I had tried to find out whether government departments had a list of sensitive subjects which would prompt them into flagging requests to the Cabinet Office Clearing House.

The response to my investigations varied across government departments, which I find worrying. It appears that, despite the criteria that have recently been made public, a number of departments have no lists of sensitive subjects nor criteria to which they refer in order to flag requests to the Clearing House. Others do appear to follow some guidance, though it is unclear to me whether this is consistent with the criteria published by the Cabinet Office in March this year.

As part of my investigations, I asked each government department for the following information:

⁴¹ <https://committees.parliament.uk/publications/5093/documents/50425/default/>

⁴² <https://committees.parliament.uk/publications/5093/documents/50425/default/>

“(1) What criteria does the department use - or refer to - when it flags requests to the round robin list? Please provide a copy of the criteria, or guidelines.

“(2) What criteria does the department use - or refer to - when it flags requests to the Cabinet Office Clearing House? Please provide a copy of the criteria, or guidelines.

“(3) Does the department have a list of sensitive subjects which prompt requests being flagged to the Cabinet Office Clearing House? Please disclose if it exists.”

In response to question one, the Department for International Trade said: *“The Department considers each Freedom of Information request based on the contents. The Department will refer a request to the round robin list if the request is generic in nature and could apply to government departments or if the request is for sensitive information such as recent media releases”*.

The phrasing *“sensitive information such as recent media releases”* is quite unclear to me, which prompted me to probe this further with DIT. Is it more likely to capture journalists’ requests, which then get forwarded to the Clearing House, therefore resulting in greater scrutiny placed on journalists’ requests as compared to those submitted by people from other categories of occupations? Is it because these requests might be potentially politically embarrassing? I sent DIT a media enquiry asking what was meant by the phrase *“recent media releases”* I received the response *“Recent media releases are press releases.”* In the criteria published by the Cabinet Office last month, I do not see *“press releases”* as a trigger for referral to the Clearing House.

In relation to question two, DIT said: *“the Department will refer round robin requests to the Cabinet Office Clearing House with regards to the information requested. The Department will consider any sensitivities in the information requested and request guidance from Cabinet Office Clearing House.”*

For question three, DIT said: *“The Department does not hold a list of sensitive subjects which prompts requests being flagged to Cabinet Office Clearing House.”*

The Department for Transport’s response was very different. When asking DfT, I was told: *“the Department does not hold a list of criteria used to flag requests to the round robin lists or the Cabinet Office Clearing House, and neither does it keep a list of sensitive subjects to determine whether requests should be flagged. In all cases, the decision on whether a request is flagged is made by the FOI experts in our Information Rights team on the basis of their knowledge and experience.”*

Furthermore, I am of the belief that the Cabinet Office’s list of criteria is – at best – an extremely recent development. As recently as November 2020, David Davis MP asked Chloe Smith, then Minister of State for the Cabinet Office, *“what criteria are used to determine whether a Freedom of Information Request is sufficiently sensitive to be referred to the Cabinet Office Freedom of Information Clearing House.”* His specific question was not answered.⁴³

(5) THERE ARE QUESTIONS OVER HOW CONFLICT RESOLUTION OCCURS:

⁴³ <https://www.theyworkforyou.com/wrans/?id=2020-11-25.120770.h&s=%22freedom+of+information%22>

There is no documentation on the official government website which sets out what procedure should be following in situations where a department does not agree with the Cabinet Office Clearing House.⁴⁴ These conflicts do occur, and I want to draw attention to a recent Politico story.

On 12th June 2021, Politico reported that there was a data breach at the Department of International Trade, which revealed how the department triages FOI requests based in part on the identity of the requester. It also revealed how the Clearing House has been working to block the release of documents to journalists against the advice of the Department's information officers.⁴⁵

It is still very unclear what the next steps are when a department disagrees with the Cabinet Office Clearing House – does the Cabinet Office overrule the department? Do the Cabinet Office and the department “*negotiate*” a redrafted response (as indicated in the job description for a Clearing House FOI adviser, as explained above)? If that is the case, that is extremely concerning.

(6) THE CABINET OFFICE IS CONTINUING TO BLOCK ACCESS TO DOCUMENTS ABOUT THE CLEARING HOUSE:

Even though a Tribunal ruled in my favour and criticised the Cabinet Office over the lack of transparency about the Clearing House operation, I am still struggling to access information about it.

As set out above, I was successful in accessing FOI Round Robin Lists for 2018. I subsequently requested 2019 and 2020 versions. The Cabinet Office decided to redact the advice within the 2019 and 2020 Lists, and I asked for an internal review of that decision in January 2021. I am yet to receive a response.

I know that the Cabinet Office circulated a document called “*FOI Guidance for Departments - COVID-19 Requests.pdf*” to other government departments, and I requested this document. However, my request has been refused. I want to know what the Cabinet Office was advising other government departments to do when they received requests relating to the coronavirus.

I also know that the Cabinet Office circulated a file titled ‘*2020 02 25 Round Robin FOI Guidance for departments (1).docx*’ across Whitehall. I asked for a copy of this, but it was refused.

I believe that the Cabinet Office is not willing to subject itself to scrutiny. I will appeal all these refusals.

(7) DATA PROTECTION CONCERNS:

In a written piece for openDemocracy last year, Jon Baines, a senior data protection specialist at the law firm Mishcon de Reya and chair of the National Association of Data Protection Officers, highlighted how according to the GDPR, data processing should be “*transparent*”

⁴⁴ <https://www.gov.uk/government/publications/cabinet-office-and-freedom-of-information>

⁴⁵ <https://www.politico.eu/article/uk-trade-department-referred-to-information-watchdog-over-data-breach/>

so that data subjects are aware “*that personal data concerning them are collected, used, consulted or otherwise processed*”.⁴⁶

According to Baines, government webpages do not offer an explanation to the requester that their request might be shared across all government departments. The Cabinet Office, however, has a webpage which says: “*For information about how we handle your personal information when you make a freedom of information request, please see our Personal Information Charter,*” to which it links to on a different webpage. That Charter also links to a ‘*Cabinet Office Freedom of Information request and Subject Access request privacy notice*’, which says: “*In relation to freedom of information requests, your data may be shared with other government departments and public bodies. This is in order that we can provide cross-government advice, support and coordination in responding to freedom of information requests.*”

I believe the majority of requesters are unaware of the Cabinet Office privacy notice which, as explained above, is not displayed on the relevant webpage, such that a requester will have to search to find it.

This view is shared by the ICO. The ICO received a complaint from Matt Burgess in 2016 about the operation of the Round Robin Lists. The ICO came to the conclusion that: “*We do not consider the general public sufficiently aware of the CO’s circulation of the Round Robin list for it to be presumed that all requestors whose details are included on the Round Robin list are going to be aware of the Round Robin list and the possibility that their details may be both passed to the CO by the public authority to whom they made their request, and then be added to the Round Robin list to then be circulated around particular public authorities. We have therefore asked the CO to revisit the fair processing measures in place around the Round Robin list.*”⁴⁷

The ICO even recommended that government departments should notify requesters in FOI acknowledgements that their details would be passed on to be included in the Clearing House Round Robin Lists.⁴⁸

THE CABINET OFFICE’S REACTION TO OUR CLEARING HOUSE INVESTIGATIONS:

We started investigating the Cabinet Office Clearing House in 2018, and the way that the Cabinet Office handled my request for information to try to obtain documents about its operation has been wholly unacceptable. The length of the delays has had a severe impact on my ability to communicate to the public about the Clearing House. I am continuing to fight for information about the Clearing House to this day.

When we published our first story on the Clearing House in November 2020, and our story about the treatment of Jason Evans’ request in December, Michael Gove denied the existence of the Cabinet Office Clearing House in front of PACAC. He said: “*The idea that there is a secret clearing house or any sort of blacklist is, I am afraid, not correct. Actually, I am glad it is not correct.*”⁴⁹

⁴⁶ <https://www.opendemocracy.net/en/freedom-of-information/is-the-governments-secretive-clearing-house-lawful-an-expert-explains/>

⁴⁷ <https://www.foi.directory/governments-foi-round-robin-list-doesnt-comply-with-data-protection-rules/>

⁴⁸ <https://www.foi.directory/governments-foi-round-robin-list-doesnt-comply-with-data-protection-rules/>

When we published more stories in February this year, the Cabinet Office published a blogpost attacking our journalism.⁵⁰ A few weeks before my Tribunal hearing, the Cabinet Office released certain information about the operation of the Clearing House and has claimed to be transparent about its processes – but at the Tribunal it offered an out-of-date Wikipedia page as evidence that information about the Clearing House is publicly available and accessible.

The way that the Cabinet Office has handled itself through this entire ordeal has been totally unacceptable.

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⁴⁹ <https://committees.parliament.uk/oralevidence/1397/default/>

⁵⁰ <https://www.gov.uk/government/news/response-to-points-raised-in-opendemocracy-article-080221>

ANNEXES:

ANNEX ONE: examples of the Cabinet Office failing to respond to FOI requests

These are just some examples where the Cabinet Office has failed to provide substantive responses to FOI requests:

ICO Decision Notice published 29th June 2021: a requester asked for information about PPE contracts on 15th January 2021. The Cabinet Office “exceeded working 40 days” and failed to provide a substantive response.⁵¹

ICO Decision Notice published 18th January 2021: a requester asked for information about ministerial meetings on 26th September 2020, yet the Cabinet Office did not respond to the request.⁵²

ICO Decision Notice published 15th January 2021: a requester asked for information about a consultation on the Gender Recognition Act on 26th September 2020. The Cabinet Office failed to respond to the request.⁵³

ICO Decision Notice published 19th November 2020: a requester asked for information about the Covid press conferences on 24th May 2020, yet the Cabinet Office failed to respond to their request.⁵⁴

ICO Decision Notice published 16th November 2020: a requester asked for information about Hanbury Strategy contracts on 17th July 2020. The Cabinet Office failed to respond to the FOI request.⁵⁵

ICO Decision Notice published 2nd November 2020: a requester asked for information about a free trial provided by Palantir Technologies to the Cabinet Office on 15th June 2020. The department failed to respond to the request.⁵⁶

ICO Decision Notice published 2nd November 2020: a requester asked for information about a Public First contract on 7th July 2020. The Cabinet Office failed to respond to the request.⁵⁷

ICO Decision Notice published 13th October 2020: the Cabinet Office failed to respond to an FOI request sent on 3rd July 2020.⁵⁸

ICO Decision Notice published 7th October 2020: the requester asked for information from the Cabinet Office about Brexit on 20th June 2020. The department failed to respond to the request.⁵⁹

⁵¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2021/2620239/ico-111879-b9y4.pdf>

⁵² <https://ico.org.uk/media/action-weve-taken/decision-notice/2021/2619130/ico-75450-n5p1.pdf>

⁵³ <https://ico.org.uk/media/action-weve-taken/decision-notice/2021/2619124/ico-75660-j0z9.pdf>

⁵⁴ <https://ico.org.uk/media/action-weve-taken/decision-notice/2020/2618670/ico-64746-s9j3.pdf>

⁵⁵ <https://ico.org.uk/media/action-weve-taken/decision-notice/2020/2618633/ico-55690-m5y5.pdf>

⁵⁶ <https://ico.org.uk/media/action-weve-taken/decision-notice/2020/2618545/ico-55695-v2h9.pdf>

⁵⁷ <https://ico.org.uk/media/action-weve-taken/decision-notice/2020/2618543/ico-55691-d6f5.pdf>

⁵⁸ <https://ico.org.uk/media/action-weve-taken/decision-notice/2020/2618438/ico-50959-v0s1.pdf>

⁵⁹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2020/2618410/ico-52766-l8p1.pdf>

ICO Decision Notice published 1st October 2020: the requester asked for information about Palantir on 28th June 2020. The department failed to respond to the request.⁶⁰

ICO Decision Notice published 28th September 2020: the requester asked for specific records on 6th December 2019. The Cabinet Office failed to respond.⁶¹

ICO Decision Notice published 14th September 2020: a requester asked for information about the Covid press conferences on 25th May 2020. The Cabinet Office failed to respond.⁶²

ICO Decision Notice published 2nd September 2020: a requester asked for information about contracts on 9th October 2019. The department failed to respond.⁶³

ICO Decision Notice published 16th June 2020: the requester asked for information from the Cabinet Office about the Prime Minister on 7th January 2020. The department failed to respond.⁶⁴

ICO Decision Notice published 16th June 2020: a requester asked for information about Dominic Cummings on 3rd February 2020. The department failed to respond.⁶⁵

ICO Decision Notice published 1st April 2020: a requester asked for the identities of members of an accreditation committee. The department had failed to respond to the request: "The Commissioner wishes to place on record that the complainant has had to wait almost 11 months for the Cabinet Office to provide some of the 14 names he originally sought. A situation the Commissioner considers to be unacceptable. At no point has the Cabinet Office attempted to offer any explanation for this delay or any reasoning as to why the names were particularly sensitive. The Commissioner also wishes to place on record the repeated and unreasonable delays in the Cabinet Office meeting statutory and informal deadlines."⁶⁶

ICO Decision Notice published 4th March 2020: a requester asked for information about by Priti Patel on 3rd August 2019. The department failed to respond: "The Commissioner's guidance states that a "reasonable" extension will normally be an additional 20 working days. The Cabinet Office has had an additional six months to consider this request. The Commissioner is not aware of any circumstances which would be likely to justify such a lengthy delay and the Cabinet Office has been unable to offer any justification of its own."⁶⁷

ICO Decision Notice published 26th February 2020: the requester asked for information about a commercial tender on 2nd August 2019. The department failed to respond to the FOI request.⁶⁸

ICO Decision Notice published 8th January 2020: the requester submitted a FOI request for information relating to a study by the Behavioural Insight Team on 19th June 2019. The department failed to respond.⁶⁹

⁶⁰ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2618407/ic-51637-s3h8.pdf>

⁶¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2618357/ic-47525-n0k6.pdf>

⁶² <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2618309/ic-45650-d1t8.pdf>

⁶³ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2618249/ic-39736-p2k3.pdf>

⁶⁴ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2617893/fs50917051.pdf>

⁶⁵ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2617891/fs50915253.pdf>

⁶⁶ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2617602/fs50886126.pdf>

⁶⁷ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2617422/fs50906944.pdf>

⁶⁸ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2617329/fs50887241.pdf>

ICO Decision Notice published 15th November 2019: the requester submitted a FOI request concerning the number of Joint Intelligence Committee papers written on Ukraine on 18th June 2019. The Cabinet Office failed to respond to the request.⁷⁰

ICO Decision Notice published 14th October 2019: the requester submitted a FOI request concerning the timing of the publication of 21 contracts relating to “EU Exit” on 8th May 2019. The Cabinet Office failed to provide a substantive response.⁷¹

ICO Decision Notice published 14th October 2019: the requester asked for information relating to the way the Cabinet Office had handled a previous request for information on 11th May 2019. The Cabinet Office failed to provide a substantive response.⁷²

ICO Decision Notice published 27th September 2019: the requester asked for information concerning the Cabinet Office’s role in changes made to documents related to the Employment Support Allowance on 5th April 2019. The Cabinet Office failed to provide a substantive response to the requester.⁷³

ICO Decision Notice published 21st August 2019: the requester asked for information on 21st February 2019 concerning asbestos reports on buildings used and managed by the Cabinet Office along Whitehall, as well as information about asbestos related health claims made against the Cabinet Office. The Cabinet Office failed to provide a substantive response.⁷⁴

ICO Decision Notice published 18th July 2019: the requester asked for the names of the people on an accreditation committee on 11th April 2019. The Cabinet Office failed to respond to the request.⁷⁵

ICO Decision Notice published 8th May 2019: the requester submitted an FOI request on 3rd February 2019 for information relating to the infected blood scandal. The Cabinet Office failed to respond to the request.⁷⁶

ICO Decision Notice published 9th November 2018: the requester asked for information regarding the Prime Minister’s visit to the US in January 2017 following the inauguration of President Trump. The requester submitted an FOI on 30th January 2017 and did not receive a response until 20th June 2017, exceeding the statutory time limit by 98 working days.⁷⁷

ICO Decision Notice published 2nd November 2018: the requester asked for information about a decision to release information about a cancelled procurement process. The Cabinet Office failed to provide a substantive response: “At the point of issuing this decision notice, the Cabinet Office has already had more than 80 additional working days to respond to this request. It has not provided, to either the complainant or the Commissioner, any explanation or justification as to why such a lengthy delay is “reasonable in the circumstances.””⁷⁸

⁶⁹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2020/2616942/fs50889098.pdf>

⁷⁰ <https://ico.org.uk/media/action-weve-taken/decision-notice/2019/2616389/fs50878106.pdf>

⁷¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2019/2616116/fs50873740.pdf>

⁷² <https://ico.org.uk/media/action-weve-taken/decision-notice/2019/2616111/fs50860320.pdf>

⁷³ <https://ico.org.uk/media/action-weve-taken/decision-notice/2019/2615910/fs50863232-1.pdf>

⁷⁴ <https://ico.org.uk/media/action-weve-taken/decision-notice/2019/2615715/fer0858411.pdf>

⁷⁵ <https://ico.org.uk/media/action-weve-taken/decision-notice/2019/2615471/fs50846805.pdf>

⁷⁶ <https://ico.org.uk/media/action-weve-taken/decision-notice/2019/2614960/fs50829656.pdf>

⁷⁷ <https://ico.org.uk/media/action-weve-taken/decision-notice/2018/2553801/fs50732552.pdf>

ICO Decision Notice published 9th November 2016: in this case, the requester's FOI request was acknowledged by the Cabinet Office on 1st April 2015. The Cabinet Office refusal to the request came on 14 July 2015, some 71 working days after receipt of the request.⁷⁹

ICO Decision Notice published 8th November 2016: the requester asked for information relating to the funding of the charity Keeping Kids Company widely referred to as Kids Company. The Cabinet Office responded to the request five months after it was submitted on 10th August 2015.⁸⁰

ICO Decision Notice published 3rd November 2016: the requester asked for information regarding social media analysis on 21st June 2016. The department failed to respond at the time of this ICO Decision Notice.⁸¹

ICO Decision Notice published 3rd November 2016: the requester asked for information regarding the EU referendum on 10th June 2016. The department failed to respond at the time of this ICO Decision Notice.⁸²

ICO Decision Notice published 13th April 2016: the Cabinet Office failed to provide a substantive response to the requester: "At the time of writing the Cabinet Office has had **in excess of 200 working days** to consider the balance of the public interest test. In addition, it has not provided any explanation for this extreme delay."

ANNEX TWO: examples of the Cabinet Office failing to respond to internal reviews

These are just some examples where the Cabinet Office has failed to provide responses to requests for internal reviews:

ICO Decision Notice published 6th July 2021: the department took five months to conduct an internal review. The Commissioner said this is "excessive and not in accordance with the section 45 code. She considers this to be an unsatisfactory period of time."⁸³

ICO Decision Notice published 28th June 2021: a requester asked for information over the funding of the Prime Minister's holiday to Mustique. The requester asked for an internal review on 24th April 2020. The Cabinet Office did not provide the internal review outcome until 27th August 2020.⁸⁴

ICO Decision Notice published 15th April 2021: in relation to a request over correspondence between the Cabinet Office and the University of Southampton about the Broadlands Archive, the Commissioner held "the Cabinet Office failed to complete an internal review into this request."⁸⁵

⁷⁸ <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2614936/fs50790527.pdf>

⁷⁹ https://ico.org.uk/media/action-weve-taken/decision-notices/2016/1625392/fer_0587279.pdf

⁸⁰ https://ico.org.uk/media/action-weve-taken/decision-notices/2016/1625399/fs_50606089.pdf

⁸¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2016/1625354/fs50644184.pdf>

⁸² <https://ico.org.uk/media/action-weve-taken/decision-notices/2016/1625352/fs50637379.pdf>

⁸³ <https://ico.org.uk/media/action-weve-taken/decision-notices/2021/2620242/ic-40221-k0w2.pdf>

⁸⁴ <https://ico.org.uk/media/action-weve-taken/decision-notices/2021/2620183/ic-66627-n5f4.pdf>

⁸⁵ <https://ico.org.uk/media/action-weve-taken/decision-notices/2021/2619671/ic-47499-x8x1.pdf>

ICO Decision Notice published 1st April 2021: it took the Cabinet Office almost three months to provide the requester the outcome of an internal review after intervention from the Commissioner. The Commissioner said this period of three months “predated the administrative and resource problems caused by the pandemic and was manifestly excessive and unreasonable. The Commissioner would urge and expect the Cabinet Office to comply with the established time-scales for the provision of internal reviews in future.”⁸⁶

ICO Decision Notice published 13th July 2020: the requester submitted a request for information in relation to the Cabinet Office Clearing House. It took eight months for the department to conduct an internal review. The Commissioner stated: “There is simply no justifiable reason in the Commissioner’s view for the public authority to have taken nearly 8 months to carry out the internal review.”⁸⁷

ICO Decision Notice published 29th March 2021: in this case, the complainant requested an internal review on 19 March 2019 but did not receive the outcome until 12 December 2019.⁸⁸

ICO Decision Notice published 15th February 2021: in this case, the requester asked for information relating to Carrie Symonds. It took 73 working days for the department to complete an internal review: “The Commissioner has already repeatedly asked the Cabinet Office to ensure that future requests for internal reviews are handled appropriately and in accordance with her guidance. She expects the Cabinet Office to also take this into account in assessing its request handling processes.”

ICO Decision Notice published 8th July 2020: a requester asked for an internal review over the handling of their request on 22nd August 2019. As at the date of the notice, the Cabinet Office had failed to respond. The Commissioner remarked: “The Cabinet Office has not offered an explanation or apology for this delay. The Commissioner considers this to be extremely unsatisfactory.”⁸⁹

ICO Decision Notice published 8th July 2020: A requester asked for information prepared for Gordon Brown in the event he became Prime Minister again following the 2010 general election. The Commissioner found “In this case, the request for an internal review was made on 28 September 2018 but no internal review was undertaken. The Cabinet Office sought to explain in mitigation that delay arose because it was trying to locate the requested information. The Commissioner finds that this delay is unacceptable particularly given that it failed to engage with the Commissioner in a timely manner.”⁹⁰

ICO Decision Notice published 9th June 2020: A requester asked for correspondence between the Cabinet Office and the University of Southampton. It took the Cabinet Office 59 days to complete an internal review: “The Commissioner has recorded this delay for her own purposes of monitoring the Cabinet Office’s performance in terms of completing internal reviews in a timely manner.”⁹¹

⁸⁶ <https://ico.org.uk/media/action-weve-taken/decision-notices/2021/2619625/ic-48534-18f9.pdf>

⁸⁷ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2618028/fs50841228.pdf>

⁸⁸ <https://ico.org.uk/media/action-weve-taken/decision-notices/2021/2619604/ic-47343-p2t8.pdf>

⁸⁹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2618002/fs50883623.pdf>

⁹⁰ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2617996/fs50831429.pdf>

⁹¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2617850/fs50867955.pdf>

ICO Decision Notice published 2nd March 2020: the requester asked for information regarding the information shared between HMRC and the Cabinet Office with regards to the awarding of Honours. The Cabinet Office took 68 working days to provide a response to an internal review. The Commissioner said: “It is not apparent why the Cabinet Office required this long to perform its internal review and the Commissioner is disappointed that the Cabinet Office did not perform this in a more timely manner. As the Government department responsible for the Freedom of Information Act, the Commissioner would expect the Cabinet Office to take its responsibilities seriously and ensure that internal reviews are conducted in an appropriate length of time.”⁹²

ICO Decision Notice published 15th October 2019: the requester asked for correspondence between Tony Blair and the then Attorney General regarding Extraordinary Rendition. The Cabinet Office failed to conduct an internal review. The Commissioner said: “When challenged on this failure, the Cabinet Office admitted its error and argued staffing changes had given rise to administrative difficulties during this period. The Commissioner acknowledges that this may have been the reason but finds it is a wholly unsatisfactory excuse given the age of the legislation and the Cabinet Office’s experience of handling FOIA requests.”⁹³

ICO Decision Notice published 15th October 2019: the requester asked for correspondence between Tony Blair and Jack Straw regarding Extraordinary Rendition. Again, the Cabinet Office failed to conduct an internal review. The Commissioner said: “When challenged on this failure, the Cabinet Office admitted its error and argued staffing changes had given rise to administrative difficulties during this period. The Commissioner acknowledges that this may have been the reason but finds it is a wholly unsatisfactory excuse given the age of the legislation and the Cabinet Office’s experience of handling FOIA requests.”⁹⁴

ICO Decision Notice published 14th October 2019: in this case, the Cabinet Office took 115 working days to complete its internal review response.⁹⁵

ICO Decision Notice published 5th June 2019: in this case, the Cabinet Office failed to conduct an internal review: “Although it does not form part of the Commissioner’s decision, the Commissioner wishes to record her concern at the way the Cabinet Office has approached this complaint. Firstly, the Commissioner is disappointed that the Cabinet Office failed to conduct an internal review. In the Commissioner’s opinion the value of an internal review is that it allows a public authority to check that its response to a request is correct, both in terms of technical compliance and in terms of the decision made. It is therefore extremely disappointing that the Cabinet Office failed to follow the recommendations as set out in the code of practice issued under section 45 of the FOIA and published by the Cabinet Office itself.”

The Commissioner added: “The Commissioner considers it unacceptable for a public authority with the experience of the Cabinet Office to handle a valid request for information in such an inadequate manner.”⁹⁶

⁹² <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2617391/fs50823104.pdf>

⁹³ <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2616108/fs50844713.pdf>

⁹⁴ <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2616094/fs50815020.pdf>

⁹⁵ <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2616093/fs50806638.pdf>

⁹⁶ <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2615099/fs50822667.pdf>

ICO Decision Notice published 20th December 2018: the requester submitted a request for information about the threat of terrorism if the UK intervened in Libya in 2011. The requester asked for an internal review on 15th August 2016 and the Cabinet Office informed him of the outcome of the internal review on 13th March 2018.⁹⁷

ICO Decision Notice published 18th December 2018: in this case, the requester submitted his internal review request on 29 August 2017. The Cabinet Office did not respond until 26 March 2018, 146 working days later.⁹⁸

ICO Decision Notice published 9th November 2018: the Cabinet Office took 186 working days to complete its internal review. In total it took the Cabinet Office 284 working days to conclude its handling of the request. The Commissioner said: “Needless to say, the Commissioner is extremely concerned at the length of time taken to complete the internal review and the request more generally.”⁹⁹

ICO Decision Notice published 23rd August 2018: in this case, the Cabinet Office took almost seven months to complete an internal review: “The Commissioner considers this to be an unsatisfactory period of time.”¹⁰⁰

ICO Decision Notice published 17th August 2018: the requester was seeking information about the Cabinet Office’s discussions with Southampton University about the Broadlands Archive. It took the Cabinet Office 68 working days to complete an internal review.¹⁰¹

ICO Decision Notice published 10th July 2018: in this case, it took the Cabinet Office eight months to complete an internal review: “The Commissioner clearly considers this to be an unsatisfactory period of time.”¹⁰²

ICO Decision Notice published 7th June 2018: In this case, the Commissioner “considers that four months is an excessive and unacceptable amount of time to be continuing to review the handling of a request.”¹⁰³

ICO Decision Notice published 15th May 2018: the Cabinet Office failed to conduct an internal review or even to provide the complainant with an acknowledgment that it had received his request for internal review. It offered no explanation as to why the internal review was not conducted to the Commissioner: “The Cabinet Office’s handling of this internal review request therefore clearly fell short of the way in which the Commissioner expects public authorities to conduct such reviews and in the future she expects the Cabinet Office to adhere to the procedures set out in her guidance.”¹⁰⁴

ICO Decision Notice published 30th August 2017: in this case, a requester asked for an internal review on 9th February 2017. The Cabinet Office informed him of the outcome of

⁹⁷ <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2614066/fs50739624.pdf>

⁹⁸ <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2614062/fs50733082.pdf>

⁹⁹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2553801/fs50732552.pdf>

¹⁰⁰ <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2259679/fs50703310.pdf>

¹⁰¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2259634/fs50693473.pdf>

¹⁰² <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2259431/fs50700072.pdf>

¹⁰³ <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2259189/fs50662308.pdf>

¹⁰⁴ <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2259038/fs50713221.pdf>

the internal review on 5th May 2017. The Cabinet Office took 59 working days to complete its internal review: "The Commissioner considers this to be an excessive period of time."¹⁰⁵

ICO Decision Notice published 26th July 2017: a requester asked for an internal review on 20th September 2016. The Cabinet Office informed him of the outcome of the internal review on 1st February 2017. It took the Cabinet Office 93 working days to complete its internal review.¹⁰⁶

ICO Decision Notice published 3rd April 2017: in this case, the Cabinet Office took 82 working days to issue its internal review to the requester: "The Commissioner's guidance expects a review to take no longer than 20 working days in most cases, or 40 in exceptional circumstances. The Commissioner reminds the Cabinet Office of the importance of following this guidance."¹⁰⁷

ICO Decision Notice published on 12th January 2017: in this case, the requester asked for an internal review on 7th August 2015 and the Cabinet Office responded on 4th January 2016. It took the Cabinet Office 102 working days to complete its internal review: "The Commissioner considers this to be unsatisfactory. In the future he expects the Cabinet Office to ensure that internal reviews are completed within the timeframes set out within his guidance."¹⁰⁸

ICO Decision Notice published 8th November 2016: in this case, the Commissioner remarked: "The Commissioner is concerned at the extremely lengthy delay by the public authority in issuing an internal review in this case. Although the Commissioner cannot conceive of any justification for such a lengthy delay, she notes that the public authority has not even sought to provide one and that is also extremely concerning."¹⁰⁹

ICO Decision Notice published 26th May 2016: in this case, it took the Cabinet Office 107 working days to complete its internal review: "The Commissioner considers this to be unsatisfactory. In the future he expects the Cabinet Office to ensure that internal reviews are completed within the timeframes set out within his guidance."¹¹⁰

ICO Decision Notice published 25th April 2016: the requester asked for an internal review on 14th July 2015. The Cabinet Office informed him of the outcome of the internal review on 23 October 2015. It took the Cabinet Office 72 working days to complete its internal review: "The Commissioner considers this to be unsatisfactory. In the future he expects the Cabinet Office to ensure that internal reviews are completed within the timeframes set out within his guidance."¹¹¹

ICO Decision Notice published 8th March 2016: the requester asked for information about spending over £25,000. The requester submitted an internal review on 18 June 2015 and the response was issued on 4 September 2015 following a letter from the Commissioner on 25 August 2015. The time it took to respond was 56 working days: "The Commissioner

¹⁰⁵ <https://ico.org.uk/media/action-weve-taken/decision-notice/2017/2014764/fs50671517.pdf>

¹⁰⁶ <https://ico.org.uk/media/action-weve-taken/decision-notice/2017/2014570/fs50667128.pdf>

¹⁰⁷ <https://ico.org.uk/media/action-weve-taken/decision-notice/2017/2013904/fs50611073.pdf>

¹⁰⁸ <https://ico.org.uk/media/action-weve-taken/decision-notice/2017/1625676/fs50601833.pdf>

¹⁰⁹ https://ico.org.uk/media/action-weve-taken/decision-notice/2016/1625393/fs_50623128.pdf

¹¹⁰ https://ico.org.uk/media/action-weve-taken/decision-notice/2016/1624277/fs_50597373.pdf

¹¹¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2016/1624105/fs50600524.pdf>

therefore finds that this delay is unreasonable and asks the Cabinet Office to ensure that future requests for internal reviews are handled appropriately and in accordance with his guidance."¹¹²

ICO Decision Notice published 11th January 2016: in this case, the request for an internal review was made on 11th May 2015 and the response was issued on 27th July 2015. It took the department 55 working days to respond.¹¹³

ICO Decision Notice published 30th September 2015: it took the Cabinet Office three months to handle a request for an internal review.¹¹⁴

ICO Decision Notice published 25th August 2015: in this case, it took 69 working days for an internal review to be completed. The Commissioner remarked: "the Cabinet Office fell short of the standards of good practice by failing to complete its internal review within a reasonable timescale. He would like to take this opportunity to, once again, remind the Cabinet Office of the expected standards in this regard and recommends that it aims to complete its future reviews within the Commissioner's standard timescale of 20 working days."¹¹⁵

ICO Decision Notice published 12th February 2015: the requester asked for polling information collected in advance of the referendum on independence for Scotland in 2014. The requester submitted a request for an internal review, and it took the Cabinet Office 64 working days to complete it.¹¹⁶

ANNEX THREE: examples where the Cabinet Office has failed to engage with the Information Commissioner's Office

Here are just some examples where the Cabinet Office has failed to engage with the Information Commissioner:

ICO Decision Notice 8th July 2020: while investigating the Cabinet Office's failure to respond to an internal review, the Commissioner remarked: "The Commissioner is equally dismayed by the absence of any engagement with her in the investigation of this complaint."¹¹⁷

ICO Decision Notice 8th July 2020: in this case, the Commissioner had to serve an Information Notice on the department: "Given protracted delays in obtaining a response from the Cabinet Office, the Commissioner served an Information Notice on 18 December 2019. She is disappointed to note that it was necessary to do so and that the Cabinet Office did not respond to the Commissioner's informal attempts at engaging with it. She is also disappointed that the Cabinet Office did not meet the deadline for response to the Information Notice although it responded shortly after."¹¹⁸

¹¹² https://ico.org.uk/media/action-weve-taken/decision-notices/2016/1623742/fs_50591411.pdf

¹¹³ https://ico.org.uk/media/action-weve-taken/decision-notices/2016/1560494/fs_50589544.pdf

¹¹⁴ https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1432939/fs_50558880.pdf

¹¹⁵ https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1432431/fs_50571873.pdf

¹¹⁶ https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1043298/fs_50549082.pdf

¹¹⁷ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2618002/fs50883623.pdf>

¹¹⁸ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2617996/fs50831429.pdf>

ICO Decision Notice 17th June 2020: in this case, the requester asked for a copy of the report provided to the Cabinet Office by the Intelligence and Security Committee to Parliament. During the ICO's investigation, the Commissioner was "disappointed at the tone of the correspondence received from the Cabinet Office". The had department refused to provide submissions to the ICO: "The Cabinet Office, as the department responsible for government Freedom of Information policy, is well aware of its obligations to provide detailed submissions when its use of an exemption is challenged under section 50 of the Act. The Commissioner expects to see an improvement in the level of engagement with her officers and the quality of submissions provided."¹¹⁹

ICO Decision Notice 2nd March 2020: in this case, the Cabinet Office "did not engage with her officer as she would expect a public authority to do so. The Commissioner's officer requested the Cabinet Office's submissions on 25 July 2019 but did not receive them until 10 Jan 2020 following the issue of an information notice requiring the Cabinet Office to respond. The Commissioner expects the Cabinet Office to improve its engagement with her officers."¹²⁰

ICO Decision Notice 2nd March 2020: The requester asked for a specific file. The Commissioner said: "The Commissioner's investigation incurred delays due to the Cabinet Office's lack of engagement. She does not expect to have to issue two information notices in order to obtain a public authority's submissions."¹²¹

ICO Decision Notice 23rd January 2020: the requester asked for information on Cabinet Sub-Committee minutes on devolution from 1997 and 1998: "The Commissioner did not receive a substantive response to her correspondence or any acknowledgement, despite several emails requesting a response."¹²²

ICO Decision Notice 6th November 2019: in this case, the Commissioner had to threaten serving an Information Notice due to a lack of engagement from the Cabinet Office: "During the course of the investigation, the Cabinet Office provided a response but did not readily provide access to the withheld information. The Commissioner threatened service of an Information Notice in order to see a copy of the information to which the exemptions had been applied. Eventually, the Cabinet Office invited a senior representative of the Commissioner to view the withheld information and to discuss the detail of its response."

The Commissioner added: "The Commissioner is extremely disappointed that the Cabinet Office did not provide the Commissioner with access to the withheld information upon request. It was only after protracted correspondence including the threat of service of an Information Notice that the Commissioner obtained full cooperation from the Cabinet Office in her investigation of this complaint."

ICO Decision Notice 4th September 2019: the requester submitted a request to the Cabinet Office seeking information about the decision to cancel a procurement framework by the Crown Commercial Service. The Commissioner criticised the lack of engagement from the Cabinet Office: "The Commissioner wishes to note that she wrote to the Cabinet Office on 8 April 2019 and asked it to provide her with a copy of the withheld information and submissions to support the application of section 43(2) of FOIA. She asked for a response to

¹¹⁹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2617888/fs50902636.pdf>

¹²⁰ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2617391/fs50823104.pdf>

¹²¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2617389/fs50803801.pdf>

¹²² <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2617095/fs50811968.pdf>

this letter within 20 working days. Having failed to receive a response the Commissioner served an Information Notice on the Cabinet Office on 18 June 2019 under section 51 of FOIA which formally required it to provide her with a response to her previous letter within 30 calendar days, i.e. by 18 July 2019. The Cabinet Office's response was sent on 23 July 2019. The Commissioner considers its regrettable that it took the Cabinet Office over three months to provide her with a response to her enquires, and in doing so also failed to comply in time with the Information Notice that was issued. (Such delays, it should be noted, follow the 118 days the Cabinet Office took to complete its public interest considerations).

The ICO added: "The Commissioner expects the Cabinet Office to provide her with timely responses to her enquiries and moreover that if she does issue an Information Notice under section 51 of FOIA that such a notice is complied with in time."¹²³

ICO Decision Notice 30th July 2019: the requester asked for files relating to the Lockerbie bombing. The Cabinet Office failed to engage with the Commissioner: "The Commissioner is extremely disappointed that she had to serve an Information Notice in this case on 28 March 2019 in order to obtain access to both the withheld information and the Cabinet Office's submissions in support of its position. She is also extremely disappointed that there was a further delay in compliance with that Notice. Failure to comply with a notice may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act, and the matter may be dealt with as a contempt of court. Unfortunately, the Cabinet Office's further protracted delay after service of the Information Notice meant that the Commissioner considered this course of action in this case. Ultimately, it was not necessary for her to do so in this case in order to obtain the Cabinet Office's compliance with the Information Notice."

ICO Decision Notice 7th March 2019: in this investigation, the Commissioner was "disappointed" with the Cabinet Office's submissions and the time it took for the Cabinet Office to respond to the inquiries: "The Commissioner does not expect to have to issue an information notice in order to obtain confirmation of a public authority's position and she expects the Cabinet Office to improve its engagement with the Commissioner's officers. The Commissioner would also like to remind the Cabinet Office that, particularly where specific questions are asked, the Cabinet Office should provide detailed and focussed explanation in response to the Commissioner's enquiries. It is not sufficient to provide information that is "reasonably implicit". Public authorities should provide the Commissioner with detailed submissions which clearly set out the public authority's position and its reasons for this position."¹²⁴

ICO Decision Notice 18th December 2018: in this investigation, the Commissioner had to issue an Information Notice after the Cabinet Office failed to response to her inquiries.¹²⁵

ICO Decision Notice 11th December 2018: again, the Commissioner had to serve an Information Notice after the Cabinet Office failed to response to her inquiries: "The Information Notice required the Cabinet Office to respond within 30 calendar days, ie by 26 October 2018. The Cabinet Office failed to meet this deadline and it did not provide the Commissioner with a response until 16 November 2016. This was three weeks after the deadline for complying with the Information Notice and some 83 working days since the

¹²³ <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2615780/fs50810011-1.pdf>

¹²⁴ <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2614493/fs50742373.pdf>

¹²⁵ <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2614062/fs50733082.pdf>

Commissioner first contacted the Cabinet Office on 24 July 2018 and asked for a detailed response in relation to this complaint.”

The Commissioner added: “The Commissioner also wishes to note that this is not the first recent instance in which the Cabinet Office has failed to comply with an Information Notice within the time specified in that notice. The Commissioner wishes to place on record the fact that the Cabinet Office’s failure to respond to her enquires about complaints made under section 50 of FOIA in a timely manner significantly undermines her ability to reach a decision in a swift and efficient manner.”¹²⁶

ICO Decision Notice 10th July 2018: in this case, the Commissioner had to serve an Information Notice over the Cabinet Office’s delays in responding to her enquiries: “As is clear from the above, the Cabinet Office’s delays in responding to the Commissioner’s enquiries followed a delay in it initially responding to the request and the delay in it completing the internal review. The cumulative effect of these delays meant that it was not until some 18 months after his request that the complainant was provided with the parts of the requested information to which he was entitled under FOIA. In the Commissioner’s view such delays clearly undermine the purpose and value of the legislation and a requester’s right of access to information.”¹²⁷

ICO Decision Notice 7th June 2018: in this case, the Commissioner’s investigation encountered significant delays in waiting for the Cabinet Office to provide its submissions: “The Commissioner is also concerned at the quality of the submissions provided to her. She considers that as the department responsible for Freedom of Information policy across government, the Cabinet Office is aware of its obligations under the Act and the Commissioner is disappointed that the Cabinet Office has fallen short of the standards she would expect in a case such as this.”¹²⁸

ICO Decision Notice published 19th September 2016: the Commissioner had to serve an Information Notice on the Cabinet Office as it was ignoring inquiries: “She wrote on three occasions to the Cabinet Office to ask for its arguments in support of its position. She served the Information Notice on 25 August 2016, when these informal attempts at obtaining a response proved fruitless.”¹²⁹

ICO Decision Notice published 23rd May 2016: the Cabinet Office failed to respond to the Commissioner’s enquiries, and the Commissioner had to serve an Information Notice to force the department to respond: “The Commissioner is extremely disappointed that he had to issue an Information Notice to the Cabinet Office in order to obtain a response to his enquiries so that progress could be made on this case.”¹³⁰

ICO Decision Notice published 12th October 2015: a requester asked for information relating to a speech by the then Minister for the Civil Service on 10th December 2014. The Commissioner asked the Cabinet Office to provide its submissions to justify its use of section 12(1). However, the Cabinet Office was not forthcoming with its response, so the Commissioner had to resort to an information notice. “By delaying its submissions the

¹²⁶ <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2614012/fs50750061.pdf>

¹²⁷ <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2259431/fs50700072.pdf>

¹²⁸ <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2259189/fs50662308.pdf>

¹²⁹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2016/1625057/fs50623562.pdf>

¹³⁰ https://ico.org.uk/media/action-weve-taken/decision-notices/2016/1624274/fs_50592040.pdf

Cabinet Office caused the Commissioner's investigation to run on unnecessarily and delayed the Commissioner in fulfilling his statutory obligations. The Commissioner asks that the Cabinet Office take greater steps to ensure that it provides its submissions more promptly in the future."¹³¹

ICO Decision Notice published 23rd July 2015: in this case, a requester asked for information relating to Sir Jeremy Heywood's meetings with a number of newspapers. The Commissioner had to serve an Information Notice to get a response from the Cabinet office.¹³²

ANNEX FOUR: examples where the Cabinet Office improperly refused requests or have not acted in spirit of the legislation

The Cabinet Office has failed to objectively read and interpret requests for information properly. ¹³³ ¹³⁴ In a ICO Decision Notice published on 25th May 2021, a requester was seeking information over a blog post published by the Cabinet Office. The Commissioner found that the department did not interpret the request properly. The Commissioner said: "She considers that this initial handling of the request showed disregard by the Cabinet Office for its obligations under the FOIA".¹³⁵

Time and time again, the Cabinet Office wrongly deems FOI requests as vexatious. ¹³⁶ ¹³⁷ ¹³⁸ ¹³⁹ ¹⁴⁰ In an ICO Decision Notice published 9th December 2020, a requester asked for information about how the Cabinet Office handles FOI requests. The department deemed their request as vexatious, but the Commissioner held: "The Commissioner is satisfied that there is both purpose and value in the request in this case. The way in which government departments have managed the FOI requests they receive is a matter of general interest, and is frequently reported on."¹⁴¹ In another ICO Decision Notice published 20th June 2017, the requester asked for information relating to polling data from the 2014 Scottish independence referendum from the Cabinet Office. The Cabinet Office deemed the request as vexatious as it considered it was a repeat request. The Cabinet Office's position was based on a case of mistaken identity with the requester and another requester with a similar name.¹⁴²

Public authorities have a duty to provide advice and assistance to requesters, and explain to requesters why exemptions have been applied to their requests. But the ICO fails to do this. ¹⁴³ ¹⁴⁴ ¹⁴⁵ ¹⁴⁶ In an ICO Decision Notice published 29th March 2021, the requester asked for information relating to a meeting between the UK Prime Minister and the Dalai Lama in May 2008. When the Cabinet Office refused the request, the Commissioner found that the department

¹³¹ https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1433053/fs_50579066.pdf

¹³² https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1432183/fs_50556590.pdf

¹³³ <https://ico.org.uk/media/action-weve-taken/decision-notices/2021/2619879/ic-47340-y0m6.pdf>

¹³⁴ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2618987/ic-43073-b3w7.pdf>

¹³⁵ <https://ico.org.uk/media/action-weve-taken/decision-notices/2021/2619879/ic-47340-y0m6.pdf>

¹³⁶ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2618919/ic-37793-m5j4.pdf>

¹³⁷ <https://ico.org.uk/media/action-weve-taken/decision-notices/2021/2619610/ic-75310-y7c6.pdf>

¹³⁸ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2619249/ic-38217-l4p4.pdf>

¹³⁹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2618182/ic-45402-h6s2.pdf>

¹⁴⁰ <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2553795/fs50704099.pdf>

¹⁴¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2618919/ic-37793-m5j4.pdf>

¹⁴² <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2014306/fs50651133.pdf>

¹⁴³ <https://ico.org.uk/media/action-weve-taken/decision-notices/2021/2619604/ic-47343-p2t8.pdf>

¹⁴⁴ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2618164/ic-43798-y5t9.pdf>

¹⁴⁵ <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2013808/fs50654647.pdf>

¹⁴⁶ https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1560283/fs_50559082.pdf

“merely reproduced the wording of the exemptions, and did not to any degree explain how they applied in this particular case.”¹⁴⁷ In another ICO Decision Notice published 16th December 2020, the requester asked for information with regards to two reports relating to the impact of Covid on people from black and minority ethnic backgrounds. The Commissioner remarked: “The Commissioner notes that the Cabinet Office, in its responses to the complainant, has stated that he needs to refine the request, but has not offered any explanation as to why it considers the request would be over the appropriate limit to respond.”¹⁴⁸

In an ICO Decision Notice published 23rd March 2017, the requester, who is sight impaired, experienced difficulties making a request to the Cabinet Office. The Commissioner held the department “failed to provide adequate advice and assistance to the complainant in this case” and remarked: “It cannot be the case that a sight impaired requester has to overcome a number of obstacles before making meaningful contact with a public authority about a request.”¹⁴⁹

The Cabinet Office has often failed to conduct adequate searches for information, or tell the requester that they do have the information and then later claim that they don’t.^{150 151 152 153} In an ICO Decision Notice published 6th July 2021, the department originally relied on section 35(1)(a) exemption to withhold the requested information. But it was later found that the Cabinet Office didn’t have the information in the first place, and the Commissioner said that the Cabinet Office failed to make it clear to the requester that no information was held: “She considers that it is not satisfactory for responses to be provided to the complainant without appropriate searches being correctly conducted.”¹⁵⁴

In another ICO Decision Notice published 17th August 2020, a requester submitted a request for emails sent to and from specified personal email addresses. The Commissioner reminded the Cabinet Office of the following: “The Cabinet Office should ensure that it does not unduly restrict its searches by only focusing on .gov email accounts. If the named individuals have used their private emails accounts for official government business, these emails will fall within the scope of the request.”¹⁵⁵ In another ICO Decision Notice published 17th December 2015, at the beginning of the Commissioner’s investigation into the handling of the request, the Cabinet Office said that there was only one document within scope of the requester’s request for information. But the document indicated that more information would be held by the Cabinet Office and “indeed further checks and searches carried out by the Cabinet Office (at the Commissioner’s request) confirmed this to be the case.” The Commissioner remarked: “The Commissioner would impress upon the Cabinet Office the important need to ensure that appropriately thorough and comprehensive checks and enquiries are made as to the actual extent of relevant information held at an early stage of receiving an information request. It is neither acceptable nor resource efficient for the position to only be ascertained during the course of the Commissioner’s investigation and following his own inspection of the information concerned.”¹⁵⁶

¹⁴⁷ <https://ico.org.uk/media/action-weve-taken/decision-notices/2021/2619604/ic-47343-p2t8.pdf>

¹⁴⁸ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2618985/ic-52977-y1p8.pdf>

¹⁴⁹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2013808/fs50654647.pdf>

¹⁵⁰ <https://ico.org.uk/media/action-weve-taken/decision-notices/2021/2620242/ic-40221-k0w2.pdf>

¹⁵¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2618182/ic-45402-h6s2.pdf>

¹⁵² <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2614493/fs50742373.pdf>

¹⁵³ https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1560394/fs_50570303.pdf

¹⁵⁴ <https://ico.org.uk/media/action-weve-taken/decision-notices/2021/2620242/ic-40221-k0w2.pdf>

¹⁵⁵ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2618182/ic-45402-h6s2.pdf>

The Cabinet Office has also struggled to apply exemptions correctly, or formulate coherent reasons as to why information should be withheld.^{157 158 159 160} In an ICO Decision Notice published 9th December 2020, the requester asked for information generated by a tendering exercise. The Commissioner held that the Cabinet Office incorrectly applied section 43 and found that there was an “absence of any persuasive evidence or submissions that commercial harm will ensue on releasing the disputed withheld information”.¹⁶¹

In another ICO Decision Notice published 5th February 2020, the requester asked for information on communications in 2003 between Prime Minister Tony Blair and Chancellor Gordon Brown referring to a referendum on whether the UK should join the Euro: "The Commissioner is concerned at the Cabinet Office’s suggestion that disclosure may result in Ministers and officials seeking to avoid recording matters on which they disagree, other than in formal contexts. She would hope that Ministers would conduct and record their discussions appropriately irrespective of any future disclosures. Moreover she believes that the public has a right to expect that government Ministers will fulfil their responsibilities in the proper manner and maintain appropriate records."¹⁶²

In ICO Decision Notice 15th March 2019, the requester asked for information regarding ministerial misconduct complaints. The Cabinet Office refused to provide the information due to costs (section 12), yet the ICO said this does not apply in this case. In a very critical decision, the Commissioner said: "The Cabinet Office has not provided any information regarding the nature of the emails that would need to be reviewed or why it would be necessary to review such a large number of emails." The Commissioner added: "She also notes that the Cabinet Office’s estimate of three minutes per email is flawed in that it includes time to evaluate the information for release or exemption. The permitted activities do not allow for redaction time to be included in an estimate for the purposes of section 12 and the Commissioner considers that the Cabinet Office should be aware of this well-established aspect of the legislation."¹⁶³

ANNEX FIVE: limited information available in the public domain about the Clearing House before March 2021

When I made my request for information about the Clearing House in 2018, I knew very little about the Clearing House. There was information available from publicly available documents online, which I collated during the course of my research, showing that the unit has been in operation since 2004, though not always run out of the Cabinet Office. According to one document:

“Full information on the processes and remit of the Clearing House can be found in its toolkit which was issued to departments in November 2004 and is published on the DCA website at <http://www.foi.gov.uk/clearinghouse.htm>”

¹⁵⁶ https://ico.org.uk/media/action-weve-taken/decision-notice/2015/1560394/fs_50570303.pdf

¹⁵⁷ <https://ico.org.uk/media/action-weve-taken/decision-notice/2020/2618942/ic-46432-x3k0.pdf>

¹⁵⁸ <https://ico.org.uk/media/action-weve-taken/decision-notice/2020/2617095/fs50811968.pdf>

¹⁵⁹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2017/2172817/fs50676679.pdf>

¹⁶⁰ <https://ico.org.uk/media/action-weve-taken/decision-notice/2019/2614558/fs50810878.pdf>

¹⁶¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2020/2618942/ic-46432-x3k0.pdf>

¹⁶² <https://ico.org.uk/media/action-weve-taken/decision-notice/2020/2617187/fs50844661.pdf>

¹⁶³ <https://ico.org.uk/media/action-weve-taken/decision-notice/2019/2614558/fs50810878.pdf>

In 2006, the Select Committee on Constitutional Affairs published a report in which concerns were raised over the operation of a Clearing House. For example, Professor Alasdair Roberts explained two problems that had arisen in Canada associated with the coordinating of FOI responses:

“The first is delay...there is a real danger that co-ordination procedures will consume large amounts of time, resulting in a failure to respond to requests within statutory time limits...This has proved to be the case in Canada, which adopted its FOI law ... in 1982. The second problem may be the abuse of co-ordination procedures for political purposes. Routines that are set up for perfectly legitimate reasons - to advise on FOI policy in difficult cases - could soon be bent to serve illegitimate purposes... an excessive preoccupation with damage control and 'spin' can...lead once again to unjustified delay in processing FOI requests.”¹⁶⁴

The report includes reference to the BBC, stating:

“On occasions FOI officers in government departments have complained informally to BBC journalists that referring requests to the DCA's central clearing house has caused substantial delays (for which the department itself is then blamed), and in some cases the clearing house has stopped them from releasing information which they themselves would be happy to disclose.”¹⁶⁵

The report goes on to say:

“There is no evidence either to support the allegations that the clearing house causes delays and blocks information requests, or to refute those allegations. This is primarily because the clearing house has not provided information about its activities, even in response to specific FOI requests.”¹⁶⁶

As a result of its investigatory work, openDemocracy has obtained evidence to support allegations that the Clearing House *has* blocked requests, which I have addressed in my submission.

In its report, the select committee recommended:

“The clearing house must comply fully with the letter and the spirit of the FOI Act, be openly accountable for its work and respond to any individual requests for information which it receives in full accordance with the Act.”¹⁶⁷

...

“We recommend that the clearing house publish quarterly statistics about its case handling so as to provide clear information about its role.”¹⁶⁸

¹⁶⁴ <https://publications.parliament.uk/pa/cm200506/cmselect/cmconst/991/99109.htm>

¹⁶⁵ <https://publications.parliament.uk/pa/cm200506/cmselect/cmconst/991/99109.htm>

¹⁶⁶ <https://publications.parliament.uk/pa/cm200506/cmselect/cmconst/991/99109.htm>

¹⁶⁷ <https://publications.parliament.uk/pa/cm200506/cmselect/cmconst/991/99111.htm>

¹⁶⁸ <https://publications.parliament.uk/pa/cm200506/cmselect/cmconst/991/99111.htm>

Yet these recommendations were rejected by the government in its response to the Report. It stated:

“The Government does not accept the Committee’s view that the Clearing House is failing to comply fully with the letter and spirit of the FOI Act. The Government is satisfied that there is sufficient information in the public domain about the activities of the Clearing House”

...

“DCA’s 2005 annual report on FOI lists the number of referrals made by each Department of State and other bodies in each month of 2005 ... the statistics [and] information on the website is sufficient to provide clear information about the role of the Clearing House”¹⁶⁹

In 2006, on 22 May, the Clearing House was raised in the House of Lords, with Baroness Wilcox asking:

“My Lords, it is my understanding that problematic requests for information are referred to a clearing house run by the Department for Constitutional Affairs, where specialist lawyers vet them and draft responses. What proportion of requests for information from Members of Parliament is referred to the so-called clearing house? Is there any policy of automatic referral of such requests to that office?”¹⁷⁰

The answer to which was provided by Baroness Ashton, as follows:

“My Lords, there is no process of automatic referral. As I have already indicated, we do not keep statistics on who is making the requests. However, I can tell the noble Baroness that, because of self-identification of the media requesters, we know that, of the 2,000 cases referred to the clearing house by last year, about 830—42 per cent—had come from journalists and 130—7 per cent—had come from Members of Parliament.”¹⁷¹

42% of requests coming from the media is sizable, and concerning, since it indicates that a large number of requests from the media were subjected to extra scrutiny as long as 15 years ago, in 2006. There is no indication of how many requests originated from campaign organisations or researchers.

Due to the lack of information about the current day Clearing House, we have no idea whether that figure in relation to journalists has increased or decreased.

In 2009, the Reuters Institute published a report highlighting the Clearing House. It reported on the likelihood that a high proportion of journalistic requests would be referred to the Clearing House as follows:

“A ‘Clearing House’ for FOI requests was created in Whitehall in 2004 to ensure consistency in departmental responses as well as efficient management of inquiries. This system coordinated response-making is managed by the Cabinet Office and based on an

¹⁶⁹

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/272355/6937.pdf

¹⁷⁰ <https://publications.parliament.uk/pa/ld200506/ldhansrd/vo060522/text/60522-02.htm>

¹⁷¹ <https://publications.parliament.uk/pa/ld200506/ldhansrd/vo060522/text/60522-02.htm>

obligation on the part of departments to refer requests on if they meet criteria laid in published procedural guidance. According to the Department of Constitutional Affairs in 2005 only 10 per cent of all FOI inquiries to government departments were referred to the Clearing House. Since the criterion of 'high likelihood of media interest' is sufficient to prompt such a referral it follows that media inquiries are significantly more likely to be handled via this route and with greater consideration. Anecdotal evidence from former civil servants supports this."¹⁷²

In July 2012, the Campaign for Freedom of Information submitted evidence on FOI to the Commons Select Committee, writing:

"Another source of delay affecting journalists resulted from the requirement that departments refer sensitive FOI requests to the Clearing House established by the then Department for Constitutional Affairs to advise departments. Its involvement typically added significantly to the delays facing requesters. One category of request required to be referred to the Clearing House was "Requests relating to high profile issues, whether current or historical"—which would clearly be likely to catch many media requests. This category has since been replaced by one referring to "High likelihood of harmful media interest/story running at the time"."¹⁷³

¹⁷² <https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2017-11/A%20Shock%20to%20the%20System.pdf>

¹⁷³ <https://publications.parliament.uk/pa/cm201213/cmselect/cmjust/96/96we19.htm>