

Written evidence from Graham Lanktree¹ (FOI 33)

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

A data breach at the U.K.'s Department of International Trade starting in May revealed how the ministry triages Freedom of Information Act requests based in part on the identity of the applicant — in apparent breach of FOI rules.

Over two weeks on May 28 and June 4 emails with spreadsheet attachments containing the full caseload of the department's FOI team [were sent](#) in "error" to a POLITICO journalist.

The documents confirm that some FOI requests received by the department are referred to a "Clearing House" or "CH" in the Cabinet Office, which centralizes decisions on how to handle each request.

In early June, a tribunal in a three-year-long court case brought by the ICO and campaigners [overturned](#) the Cabinet Office's attempt to withhold information about the "Clearing House" unit and [criticized it](#) for a "profound lack of transparency" about its operations.

That judgment highlighted the Clearing House holds a list identifying journalists and campaigners making FOI requests. This is significant because FOI applications [are meant](#) to be dealt with in an "[applicant-blind](#)" fashion, "without reference to the identity of the applicant."

TRADE DEPARTMENT REQUESTERS

The spreadsheet documents sent in error to POLITICO do not contain names but do identify where requests came from under the heading "requester." The column in both documents includes references to a "Guardian Journalist" and "Media (Politico)" and BBC journalists, as well as the office of Shadow Trade Secretary Emily Thornberry and the NGO "Pressure Group (Campaign Against Arms Trade)."

The list also includes (but is not limited to) The Times and Financial Times and "Pressure Group (Taxpayers Alliance)" Earthsight and Spotlight on Corruption.

FOI2021/03427	Hilda	Visits undertaken by the Secretary of State for International Trade to: (a) Japan, from 21-24 October 2020; and (b) Singapore and Vietnam, from 6-11 December 2020. I would like to request the following information in relation to these trips: 1. Details of the number, positions and grades of officials or advisers who accompanied the Secretary of State on her visit to Japan from 21-24 October 2020; 2. A breakdown of the total £18,701.64 cost of the return tickets for each individual taking part in the visit, including the Secretary of State; 3. Details of the accommodation used by the visiting party during their three-day visit to Japan, and of any hospitality, meals and refreshments provided free of charge during their visit; 4. Details of the number, positions and grades of officials or advisers who accompanied the Secretary of State on her visits to Singapore and Vietnam from 6-11 December 2020; 5. A breakdown of the total £23,359.24 cost of the flights from London to Singapore, Singapore to Vietnam, and Vietnam to London, for each individual taking part in the visit, including the Secretary of State; and 6. Details of the accommodation used by the visiting party during their visits to Singapore and Vietnam, including a breakdown of the total £2,340 costs incurred, and of any hospitality, meals and refreshments provided free of charge during their visits.	Member of Parliament (Shadow Secretary of State's Office)	
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¹ Graham Lanktree, UK Trade Reporter at Politico

In [answer](#) to parliamentary questions from Thornberry about the identifications, **Trade Policy Minister Greg Hands said:**

“The Department has a standard set of processes to respond to all Freedom of Information (FOI) requests and these are applied regardless of who the request is from. **The case management system does not categorise the workplace of individual requestors. The Department tracks timeliness and progress of responses in addition to the sensitivity of the information in all FOI cases. The Department’s case management system helps evidence our compliance with our FOI obligations.**”

Thornberry also [asked about](#) “how many” FOI requests the trade department has sent “for advice on handling to the Cabinet Office’s clearing house for Freedom of Information requests in each year since 2016.”

Hands responded: “The Department may seek advice from Clearing House experts on an ad hoc basis. As this is an informal process, these interactions are not recorded.”

CLEARING HOUSE EVIDENCE

The trade department data breach shows the Clearing House working to block the release of documents to journalists against the advice of the trade department’s information officers in recorded notes attached to POLITICO request **FOI2021/01332** in the spreadsheets.

The request has been delayed multiple times and on these spreadsheets under the heading “RAG rating - Timeliness” the box for this request is black, indicating it is “overdue or unachievable.”

The request is an "enquiry about a joint DIT & FCDO post mortem of Liam Fox’s WTO director-general candidacy. 1. All briefings and memos prepared by DIT for the post-mortem. 2. All reports compiled by DIT and/or jointly with the FCDO for the post-mortem.”

The existence of this “joint DIT-FCDO post mortem” [was revealed](#) by former Trade Secretary Liam Fox during parliamentary committee testimony on November 20, 2020. A similar FOI was lodged with the FCDO and given the identifier **FOI2021/04895**.

Under the heading “RAG rating - Presentational risk” in the spreadsheets **FOI2021/01332** has a red box, marking it as "high-risk" according to a key in the document. “High risk – Information is held and is highly contentious topic, with significant public interest and/or multiple sensitivities.”

In a box with the heading “notes,” officials record the FOI has been sent by the trade department through the Clearing House, indicated as "CH". Two “notes” appended to FOI2021/01332 appear in the separate documents:

RAG Grid WC 24 - 28 May (2).xlsx

“25/05/2021 - Clarification from No.10 received. Speaking with FCDO and policy area tomorrow to discuss next steps. 25/05/2021 - **Email CH for additional clarification on s.36/35** 26/05/2021 - **FCDO and DIT agree with approach, and not with the advice from No.10. We have agreed to send an email to CH COP Friday.**”

RAG Grid WC 31 - 4 June (1).xlsx

"28/05/2021 - Email to CH following discussion with FCDO. CH to provide comment on advice/approach following our email. Do not agree with advice from No.10 or CH.
03/06/2021 - CH confirmed that it maintains its position and that we should apply s.36 to the entire document. I will inform FCDO of the advice and speak to Salma and Chrissy on DIT's position and how to proceed. Should DIT respond against advice CH have advised to seek approval from Perm Sec.
04/06/2021 - Email Adam on advice, to discuss next steps before meeting with FCDO next week."

Screenshot:

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DELAYS TO FOIS

Both FOI2021/01332 and FCDO FOI2021/04895 saw more than four-month delays (more than 121 days when FOI response is 20 days).

FOI2021/01332 was filed February 24, 2021. The trade department sent three separate notifications pushing back the due date, citing delays for a public interest test under the Freedom of Information Act.

The third delay note on April 23 says "We hope to let you have a response by 24 May 2021." The department, it states, "has not yet reached a decision on the balance of the public interest. Due to the need to consider, in all the circumstances of the case, where the balance of the public interest lies in relation to the information that you have requested, the Department will not be able to respond to your request in full within 20 working days."

A final refusal of FOI2021/01332 was issued on July 1 more than months since it was filed citing FOIA exemptions "Section 35(1)(b) (Formulation of Government Policy) Section 36(2)(b) and (c) (Prejudice to the effective conduct of public affairs), and Section 27(1) (International relations).

A final refusal for FOI2021/04895 on July 13 states "all the relevant information has been withheld under the following exemptions: section 27 (International Relations), section 36 (Prejudice to the effective conduct of public affairs) and section 40 (Personal Information).

The note attached to RAG Grid WC 31 - 4 June (1).xlsx states that "CH confirmed that it maintains its position and that we should apply s.36 to the entire document."

Exemption Section 36 of the Freedom of Information Act prevents disclosure where it would prejudice the conduct of public affairs. It is meant to prevent a "chilling effect" on free and frank policy debates between politicians and civil servants, protecting "unsettled" advice and opinions of government officials. Section 36 is prejudice based so the authority needs to demonstrate disclosure would likely cause prejudice or harm. Section 36(2) states that the "reasonable opinion" of a "qualified person" must be sought in order to establish whether

disclosure would cause harm or damage and is therefore engaged. Advice can be sought even from the person that could be “exposed” by a release.

For **FOI2021/01332** the disclosure refusal states: “Section 36 can only apply where in the opinion of ‘a qualified person’ the exemption applies. We can confirm that in the reasonable opinion of a ‘qualified person’ section 36 is engaged.”

For **FOI2021/04895** the disclosure refusal states: “It is the opinion of an FCDO minister that, in this case, the disclosure of the information concerned would be likely to inhibit the free and frank discussion and exchange of views of officials and would be likely to prejudice the effective conduct of public affairs.”

Efforts to reveal the communications between Clearing House and the trade department and FCDO through FOI with respect to request **FOI2021/01332** and **FOI2021/04895** have met with similar delays while public interest tests are conducted.

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