



Attorney General's Office

Attorney General's Office
102 Petty France
London
SW1H 9EA

020 7271 2492

www.gov.uk/ago

Jolyon Maugham QC

By email only

23 June 2020

Dear Mr Maugham,

RE: Your Freedom of Information request: FOI/98/20

I am writing in response to the Freedom of Information request you submitted to this office dated 27 May 2020, which is copied in bold below:

On 25th May 2020 a story was published on the website of the *Daily Telegraph* including the following passage:

Dominic Cummings has been a victim of persecution and did not break the law by travelling to Durham with his family, the Cabinet was told on Monday.

Suella Braverman, the Government's chief legal adviser, said there had been no legal breaches by Mr Cummings despite his travelling 264 miles with his wife and four-year-old child to his parents' farm in Durham at the end of March at the height of the Government's lockdown.

"No laws have been broken," she told ministers, adding that the Cabinet should back Mr. Cummings, Boris Johnson's senior adviser.

Please state whether the Attorney General's Office holds any of the following information. If so, please provide a copy.

1. Any record of whether Suella Braverman has at any time given any advice (including, but not confined to, advice given to the Cabinet) as to whether any conduct by Dominic Cummings in March or April 2020 constituted:
 - (i) a breach of the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020; or
 - (ii) a breach of any Government guidance as to how individuals should behave during the emergency period referred to in those Regulations.
2. Any record of the content of any such advice as is referred to in question 1 above.
3. Any record of whether any such advice as is referred to in question 1 above was given on the basis of factual information provided by Dominic Cummings for the purpose of enabling Suella Braverman to give such advice.
4. Any record of the content of any such factual information as is referred to in question 1 above.

The Freedom of Information Act 2000 ("FOI Act") gives individuals and organisations the right of access to all types of recorded information held, at the time the request is received, by public authorities such as the Attorney General's Office (AGO).

Section 1 of the FOI Act places two duties on public authorities. Unless exemptions apply, the first duty (contained in section 1(1)(a)) is to confirm or deny whether the information specified in a request is held. If confirmed, the

second duty (contained in section 1(1)(b)) is, unless one or more of the exemptions contained in Part II of the FOI Act applies, to disclose the information that has been confirmed as being held.

Section 35(1)(c) of the FOI Act provides that information is exempt information if it relates to the provision of advice by any of the Law Officers or any request for the provision of such advice. Section 35(3) and section 2(1)(b) together provide that the duty to confirm or deny does not arise in respect of information which is exempt (or would be exempt) under section 35(1) if the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether or not this department holds the information.

We take the view that your request falls within the terms of this exemption. Any documents that may or may not be held in relation to advice provided by the Attorney General to the Cabinet or wider Government regarding potential breaches of the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020, or the procurement of such advice, would relate to the Attorney General's function as a Law Officer and chief legal adviser to the Government.

We also take the view that the public interest is not in favour of confirming or denying whether any such documents are held. It would undermine the long-standing Convention, observed by successive Governments, that information about the seeking, preparation or content of advice relating to the Law Officers' advisory function is not disclosed outside Government. This Convention is recognised in paragraph 2.13 of the Ministerial Code. Furthermore, we do not comment on purported leaks of cabinet discussions such as the story cited in your request.

The Law Officers' Convention protects fully informed decision making by allowing Government to seek, and Law Officers to prepare, legal advice in private, without fear of any adverse inferences being drawn from either the content of the advice or the fact that it was sought. It ensures that Government is neither discouraged from seeking advice in appropriate cases, nor pressured to seek advice in inappropriate cases. It is also important to note that Law Officer advice is different from other legal advice within Government, not in its fundamental underpinnings, but because it may be sought in relation to issues of particular complexity, sensitivity and constitutional importance. It is of obvious pressing importance that the seeking of and provision of legal advice in such circumstances should be facilitated and protected in the public interest. While recognising that there is a public interest in citizens knowing whether matters have been considered with the benefit of sound legal advice, in the circumstances of this case, this public interest does not outweigh the strong public interest in maintaining the Convention.

If you are dissatisfied with the handling of your request, you have the right to ask for an internal review. Internal review requests should be submitted within two months of the date of receipt of the response to your original letter and should be addressed to the above address. Please quote the reference number above in any future communications.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

Yours sincerely,

FOI Officer



FOI Officer

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