



Cabinet Office

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Jolyon Maugham  
By email:

FOI Reference: FOI2020/06729  
24/06/2020

Dear Jolyon Maugham

I refer to your request where you asked:

*“Request for information under the Freedom of Information Act 2000*

*On 25<sup>th</sup> 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 Cabinet 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.”*

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 or Solicitor General to the cabinet regarding potential breaches of the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020, or the procurement of such advice, would relate to the their function as a Law Officers and chief legal advisers 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.

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 have any queries about this letter, please contact the FOI Team quoting the reference number above.

If you are unhappy with the service you have received in relation to your request or wish to request an internal review, you should write to:

Eirian Walsh Atkins  
Cabinet Office  
70 Whitehall  
London  
SW1A 2AS

email: [foi-team@cabinetoffice.gov.uk](mailto:foi-team@cabinetoffice.gov.uk)

You should note that the Cabinet Office will not normally accept an application for internal review if it is received more than two months after the date that the reply was issued. If you are not content with the outcome of your internal review, you may apply directly to the Information Commissioner for a decision. Generally, the Commissioner cannot make a decision unless you have exhausted the complaints procedure provided by Cabinet Office. The Information Commissioner can be contacted at:

The Information Commissioner's Office  
Wycliffe House

Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

*Yours sincerely*



*FOI Team  
Cabinet Office*