

Guidance on Freedom of Information and the role of Special Advisers

The Freedom of Information Act 2000 (“the FOI Act”) gives a right of access to information held by a public authority. Any person who makes a request to a public authority for information is entitled: to be informed in writing by a public authority whether it holds information meeting the description set out in the request; and to have information the public authority holds relating to the request communicated to them. These rights apply unless an exemption in the FOI Act applies, or the request can be refused as set out in the legislation.

This guidance has been written for FOI practitioners across central Government. It sets out the roles of special advisers in the process of responding to requests for information under the FOI Act.

Summary

- Special advisers are a critical part of the team supporting Ministers
- Special advisers may give assistance and advice on any aspect of department business, including on requests for information made under the FOI Act, and may convey the Minister’s views and instructions to officials
- Special advisers cannot exercise any statutory or prerogative power on behalf of the Minister, including making decisions on whether or not to withhold the information requested
- There may be restrictions on the types of information to which special advisers can have access
- Departments should design their FOI processes to make sure that special advisers are fully integrated into that process
- FOI requests for information relating to special advisers should be handled in line with the usual departmental procedures

The role of special advisers

Special advisers play a critical part of the team supporting Ministers.¹ Their role is set out at sections 7.11-7.13 of [the Cabinet Manual](#). Special advisers are employed as temporary civil servants to help ministers on matters, where the work of government and the work of the party, or parties of government overlap and where it would be inappropriate for permanent civil servants to become involved.²

The [Code of Conduct for Special Advisers](#) sets out that, among other things, special advisers may give assistance on any aspect of departmental business, and give advice. In working with other civil servants, special advisers can, on behalf of their Minister, convey to officials Ministers’ views, instructions and priorities, including on issues of presentation. Special advisers must not, though, exercise any statutory or prerogative power.

¹ [Special Advisers Code of Conduct](#)

² Cabinet Manual, section 7.11

Special advisers and FOI Requests

Special advisers may give advice and assistance to their Minister on requests for access to information under the FOI Act. They may also, on behalf of their Minister, convey to officials their Minister's views and requests relating to the response to the FOI request, including on issues of presentation such as the drafting and associated press lines, or on factual accuracy and consistency with recent Parliamentary answers. Special advisers are also able to advise on the assistance provided to requesters under the duty in section 16; for example by suggesting the provision of additional information to place the disclosed information in context. Formal decisions by Ministers relating to FOI requests must be relayed via the Minister's private secretary.

Special advisers cannot make decisions on whether or not to release information in response to a request. Such decisions are for the Secretary of State and any Minister or senior civil servant to which they have authority according to the Carltona principle (see sections 3.40 -3.45, Cabinet Manual).

Access to papers

Special advisers are not entitled to have access to sensitive, security or intelligence reports unless cleared to the appropriate level, or to have access to the personnel files of civil servants. Subject to these exceptions and the convention on access to papers of a previous Administration of a different political party (see sections 11.23 - 11.24, Cabinet Manual), special advisers may, at the discretion of their appointing Minister, have access to all papers submitted to ministers.

Process design

Departments should design their process for deciding FOI requests with a view to meeting the 20 working day time-limit set out in section 10 of the FOI Act. In doing so they should build in adequate time to make sure that there is time to seek advice from all those relevant in the department, including from special advisers and private office. We would encourage FOI teams to work with the private offices and special advisers to determine how this can best be achieved.

FOI teams should also establish with private offices alternative processes for those infrequent instances where it would be inappropriate to involve special advisers because of the nature of the information requested. This would include where: the special adviser does not have sufficient security clearance to consider the information requested; where the information forms part of the personnel files of a civil servant; and/or the information relates to papers of a previous administration.

FOI requests about special advisers

FOI requests for information relating to special advisers should be handled in line with the usual departmental procedures.

Related documents

- [The Cabinet Manual](#)
- [The Code of Conduct for Special Advisers](#)
- [Freedom of Information Code of Practice](#)

If you have any questions, please contact the Cabinet Office FOI Policy Team