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## Judge slams Michael Gove's office as openDemocracy wins transparency court case

Exclusive: UK government accused of 'profound lack of transparency' as openDemocracy wins legal victory over 'Orwellian' Freedom of Information unit

[Peter Geoghegan](#)

[Jenna Corderoy](#)

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The documents Michael Gove's department presented in court were 'misleading' | Henry Nicholls/Reuters/Alamy. All rights reserved

**O**penDemocracy has won a significant legal victory against the UK government. The judgement forces transparency on a secretive unit accused of 'blacklisting' Freedom of Information requests from journalists, campaigners and others.

After a three-year battle, judge Chris Hughes found that the documents the Cabinet Office presented in court about the controversial Clearing House unit were 'misleading'. He added that there is a "profound lack of transparency about the operation", which might "extend to ministers".

Finding in openDemocracy's favour, Hughes also criticised the Cabinet Office for a "lacuna in public information" about how the Clearing House coordinates Freedom of Information (FOI) requests referred to it by government departments and agencies.

The Cabinet Office had offered an out-of-date Wikipedia entry as evidence that information about the Clearing House, which circulates lists of journalists across



Whitehall, was available to the public.

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The ruling came in an information tribunal case taken by openDemocracy, with public interest law firm Leigh Day, in a bid to bring transparency to the Cabinet Office Clearing House. The case was heard in April but the judgement was published only late last month.

openDemocracy had previously revealed that the Clearing House has blocked the release of politically sensitive information, in one instance comparing the handling of an FOI request to the Chilcot Inquiry into the Iraq war.

Cabinet minister Michael Gove had previously called openDemocracy's journalism "ridiculous and tendentious" but his department has now been ordered to release further details of how the Clearing House blocked FOI requests.

**Tory MP David Davis called for change, saying the ruling 'demonstrates what we have known all along'**

The judge said that "given all the circumstances" including "a lack of accurate publicly available information about the constitutionally significant role in coordinating FOI responses there is real weight in the public interest in disclosure". The Cabinet Office has yet to release the documents to openDemocracy.



The tribunal judgment has been hailed as a major victory by politicians and transparency campaigners.

Shadow cabinet office secretary Angela Rayner urged Gove to “intervene and set out how he will be ensuring that this government abides by the law and upholds the right of citizens, journalists and campaigners to access information under Freedom of Information”.

Conservative MP David Davis called for immediate change, claiming the ruling “demonstrates what we have known all along”.

He said the Cabinet Office had “failed to meet its obligation either to the letter or the principle of the Freedom of Information Act and has withheld important information about government activity from the public domain”.

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Michelle Stanistreet, general secretary of the National Union of Journalists, said: “This is an important win in an FOI battle to get the Cabinet Office to come clean about the tracking of FOI requests made by journalists and NGOs.”

The judge also noted that the Cabinet Office had “minimised the significance of” the Clearing House FOI list, which is circulated daily across Whitehall and which has



contained the names and details of journalists from openDemocracy, The Guardian, The Times, the BBC, and many others, as well as researchers and campaigners. These lists also contain the Cabinet Office's advice to departments on how to handle FOI requests.

Freedom of Information requests are supposed to be 'applicant-blind', meaning who makes the request should not matter. Data protection experts have warned that the Clearing House could be breaking the law.

## **'High political sensitivity'**

The Clearing House has existed since FOI legislation was introduced. The Cabinet Office took responsibility for the unit in 2015, which started to receive significant attention only after openDemocracy revealed extensive details about its operation late last year. In February, more than a dozen former and serving Fleet Street editors signed an open letter calling for an inquiry into its operation.

The tribunal ruling comes almost three years after openDemocracy first asked for a sample of the Clearing House lists, in August 2018. When the Cabinet Office appealed against an order from the Information Commissioner's Office (ICO) to disclose details of the Clearing House, openDemocracy took a case to the information tribunal.

The Cabinet Office had previously insisted that the FOI unit was fully compliant with all legislation. Ahead of the tribunal in April, Michael Gove wrote to The Guardian and the Society of Editors criticising openDemocracy's reporting on the Clearing House.

But behind the scenes, the Cabinet Office backtracked. Gove's department published information about the Clearing House, including criteria by which FOI requests – such as those regarding "cases involving high political sensitivity" – were referred for review.

The unit also released some of its lists, which showed that the Clearing House had encouraged departments to dismiss information requests.

In one case, the unit said that an FOI for details of government records systems from Times journalist George Greenwood "appears to have no discernible purpose".



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At the hearing, the Cabinet Office said the Clearing House handled round robin requests sent to multiple government departments but stated that these lists did not include requests deemed 'sensitive'.

Noting that the Cabinet Office had "changed its position radically", the judge found that Gove's department had "misled" the tribunal by originally stating that the Clearing House lists included 'sensitive' data, which would have justified withholding the information.

However, questions have been raised about the Cabinet Office's argument at the tribunal. Analysis conducted by openDemocracy has found that a third of requests



a sample Clearing House list released under FOI were individual requests that had not been sent to multiple departments. Often these requests were of high public interest.

Documents obtained by openDemocracy also show that Whitehall departments have routinely flagged 'sensitive' requests to the Clearing House. In one instance, the Cabinet Office unit instructed the Treasury to withhold information from infected blood campaigner Jason Evans, whose father died after being given blood contaminated with HIV.

Katherine Gundersen, deputy director of the Campaign for Freedom of Information, said: "The Cabinet Office's handling of this request raises questions about its fitness to advise other departments on FOI.

"It inaccurately described the contents of its 'round robin' lists, misleading its own minister, the Information Commissioner and the tribunal by suggesting the information was more sensitive than it actually was."

### **Noting that the Cabinet Office had 'changed its position radically', the judge found that it had 'misled' the tribunal**

An openDemocracy report, 'Art of Darkness', which was published last year, found that the Cabinet Office is the worst performing Whitehall department on key FOI metrics.

Since the report was written, the Cabinet Office has stonewalled a number of requests from openDemocracy about the Clearing House operation.

A Cabinet Office spokesperson told openDemocracy: "A Clearing House function has existed since 2004 to help ensure there is a consistent approach across government to requests for information which go to a number of different departments or where requests are made for particularly sensitive information.

"We remain committed to transparency and always balance the need to make information available with our legal duty to protect sensitive information.

"In order to be as transparent as possible we have released the vast majority of information that was requested in this case and have already published a considerable



amount of information on Clearing House, including a [gov.uk](#) page explaining its purpose and remit.”

An ICO spokesperson said: “We welcome the decision of the tribunal”.

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*The round robin lists released to openDemocracy can be viewed [here](#), which are being hosted at a new research project at the University of Westminster, UK Unredacted.*

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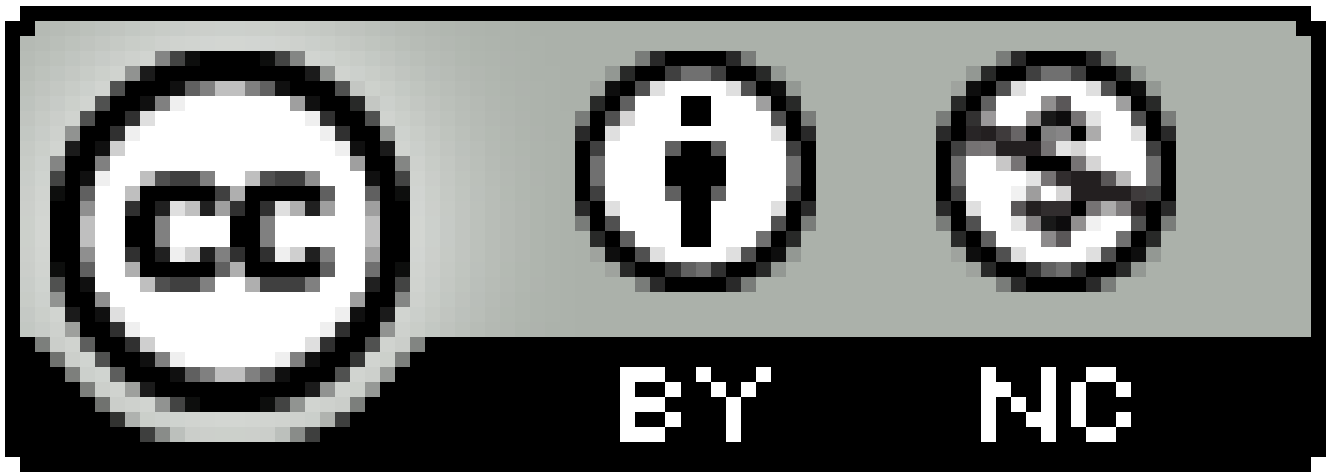
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