

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 November 2017

Public Authority: Department for Business, Energy and Industrial Strategy

Address: 1 Victoria Street
London
SW1H 0ET

Decision (including any steps ordered)

1. The complainant has requested from the Department of Business, Energy and Industrial Strategy ("DBEIS") correspondence between itself and other parties about Transport for London's Private Hire Vehicle regulations from September – December 2015. DBEIS denied holding this information.
2. The Commissioner's decision is that DBEIS, on the balance of probabilities, does not hold the requested information.

Request and response

3. On 19 April 2016, the complainant requested information of the following description from DBEIS. This public authority was previously known as the Department for Business, Innovation and Skills ("DBIS" or "BIS") :
4. "I am however willing to **narrow the scope of my request to** copies of email or written correspondence between BIS Ministers, Special Advisers and senior civil servants and other Government departments or public bodies relating to TfL's Private Hire Vehicle regulations issued during **the period from 30th September – 23rd December 2015** inclusive. I trust this narrowed scope will reduce any costs associated with the task, and await your response."
5. This followed a previous broader request which was refused on the grounds of the cost of complying with it.

6. On 10 June 2016, DBEIS responded. It denied holding the requested information.

Scope of the case

7. The complainant contacted the Commissioner on 5 April 2017 to complain about the way their request for information had been handled. It should be noted that the complainant had requested similar information from other public authorities who had advised that they held (and subsequently disclosed) this information.
8. The Commissioner has looked at whether DBEIS holds the requested information. In the circumstances of this case, she has done so without requiring the complainant to first seek an internal review of the DBEIS' initial response and despite the passage of time between the date of the request and the date of the complaint.

Reasons for decision

9. Section 1(1) of the FOIA states:

Any person making a request for information to a public authority is entitled

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.

10. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes might be held, including cases where an "information not held" response is disputed, the Commissioner – in accordance with a number of First Tier Tribunal decisions – applies the civil standard of the balance of probabilities.
11. The Commissioner will consider the scope, quality and thoroughness of the searches performed, and whether the searches were appropriate and adequate. She will consider any other explanations provided by the public authority for why the information is not held. The Commissioner will also consider the arguments or evidence provided by the complainant as to why they consider the requested information must be held.
12. DBEIS explained to the Commissioner that it had searched its electronic records management system and its electronic correspondence management system. It also searched Ministerial email accounts. It

explained that it underwent an IT transformation between 2012 and 2015. This meant that any shared drives across the department were closed and information was transferred onto its electronic records management system. When asked whether it searched information held locally on personal computers such as laptops, it said that “[i]f the information was held electronically by the Department it would either be held in [its electronic records management system] or on networked resources and emails”.

13. It set out the search terms it had used to locate electronically any information within the scope of the request, such as: “Uber” and “Taxi” and it listed for the Commissioner the ministerial email accounts that it searched.
14. As noted above, the complainant submitted evidence which showed that another non-central government public authority held two notes of telephone conversations its representatives had had with DBIS in October 2015. The public authority in question argued that these were exempt and did not disclose them. However, the public authority concerned did confirm their existence in its refusal of the request.
15. While the Commissioner recognises that this is suggestive that DBEIS (formally DBIS) may hold further information, it is not conclusive evidence that it holds similar records or other records within the scope of the request. Other public authorities may have different record creation policies and different retention and destruction timescales.
16. The Commissioner is satisfied that DBEIS conducted adequate searches for the requested information and that these searches yielded nothing within the scope of the request.
17. The Commissioner is aware from other cases of a similar nature that it is standard recommended practice within central government to destroy trivial information, such as emails to arrange meetings, within three months of the date of creation. For example, guidance for central government public authorities such as DBEIS from 2013 on the use of private email states:

“Departments should adhere to the Lord Chancellor’s Code of Practice on the management of records and departmental records management procedures found at <http://www.nationalarchives.gov.uk/information-management/projects-andwork/recordsmanagement-code.htm>. Departmental Records officers can advise further on the requirements for maintaining public records. The responsibility for deciding whether emails should be retained rests with the originator and recipient. In general terms, a record need only be retained if it is needed for substantive discussions or decisions in the course of conducting official business. Multiple copies of the same record should be avoided as they

burden record stores. Ephemeral or trivial emails need not be retained even if generated in the course of conducting Government business, and should be deleted on a routine basis."¹

18. It may well be that anything trivial that was initially recorded, was destroyed in accordance with standard practice in central government before this request was made. The request, made in April 2016 specified December 2015 as the end date for any recorded information within its scope. Anything non-trivial would, of course, have been retained. However, DBEIS searches for such information within the scope of the request did not yield any information.
19. In light of the above, the Commissioner is satisfied, on the balance of probabilities that DBEIS does not hold any information within the scope of the request.

Other matters

20. A decision notice under section 50 of the FOIA can only look at a public authority's compliance with Part I of the FOIA in respect of a specific request. It cannot address, for example, records management issues which are caught by other parts of the FOIA (such as the Code of Practice on record keeping referred to in section 46 which is in Part III of the FOIA). As a general observation, the Commissioner would encourage all public authorities to regularly review their policies and procedures on how they record information, how they retain or delete information and how they handle information requests.
21. The general subject of the request was a matter of public interest. The Commissioner observes DBEIS could hold other information outside the scope of this request on the subject of the regulations that govern London's private hire trade. That said, the Commissioner suggests there would have been a reasonable expectation that some information, at least regarding the October telephone 2015 meeting, would have been held. This therefore raises questions about records management.
22. Whilst she acknowledges this is just one example, the Commissioner will liaise with the National Archives (TNA) to consider whether any further steps should be taken to consider the records management issues arising from this case, in line with the section 46 Code of Practice and the MoU between the Commissioner and the Keeper of Public Records.

1

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/207131/Private_Email_guidance.pdf

The Commissioner also acknowledges that DBEIS has been subject to an Information Management Assessment by TNA in 2013 and a progress review in 2015².

² <http://www.nationalarchives.gov.uk/information-management/manage-information/ima/ima-reports-action-plans/>

Right of appeal

23. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504
Fax: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

24. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
25. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Steve Wood
Deputy Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF