

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 July 2024

Public Authority: Department for Business and Trade
Address: Old Admiralty
Building
London
SW1A 2DY

Decision (including any steps ordered)

1. The complainant has requested correspondence from the Department for Business and Trade ("DBT"), that were sent or received by Ed Davey and related to the Post Office Horizon IT news item of interest.
2. The Commissioner's decision is that DBT holds one further document located during its additional searches following the Commissioner's investigation. DBT, on the balance of probabilities, does not hold any further additional information within the scope of the request.
3. The Commissioner requires DBT to take the following steps to ensure compliance with the legislation.
 - Disclose the further document identified or issue an appropriate refusal notice which complies with FOIA.
4. DBT must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 11 January 2024, the complainant wrote to DBT and requested information in the following terms:

"...Please note that I am only interested in information generated between the 21 May 2010 and 31 October 2010.

My request concerns communications which were sent and or received by Ed Davey at a time when he was a minister with responsibility for the post office.

Please note that on this occasion the reference to communications in the question below should include all emails irrespective of whether they were sent and or received via official or private accounts, all Gmail messages, all telephone text messages, all messages sent through encrypted messaging services including but not limited to WhatsApp and all internal communications which were either sent and or which continue to be held electronically.

Please note I'm interested in receiving actual copies of these communications rather than just excerpts from these communications. These copies should include any original design features and the layout. If the department feels the need to redact material from any communications can it redact the material where it appears. That way I will be able to judge the extent and location of any redaction.

Please also include all messages which for the purposes of access legislation are now classed as 'destroyed' but which continue to be held in another form.

1... Can you please provide copies of all communications sent by Ed Davey which mentioned and or in any way relate to the following individuals and issues listed below. I am only interested in all communication which mentioned and or in any way related to any of the following...

(i)... Alan Bates the former sub postmaster. Mr Bates played prominent role and continues to play a prominent role in the so-called post-office IT scandal.

(ii)... Mr Bates's concerns about the [Horizon] computer/IT system and or his concerns about the treatment of post office employees past and present.

(iii)... The Horizon computer/IT system being used by the Post Office.

(iv)... The Justice for [Sub postmasters] Alliance and or the work of the Alliance and or any member of the Alliance.

(v)... The Post Office's treatment of Mr Bates and or other employees slash former employees of the post office. This will include but not be

limited to any disciplinary and or legal action mounted by the post office.

2... Can you please provide copies of all communications sent to Mr Davey which mentioned and or in any way related to the issues listed in question one. I am interested in all information which mentioned and or in any way related to any of the individuals/issues listed in question one..."

6. DBT responded on 6 February 2024. It provided some of the requested information, but withheld some of the information under section 40(2).
7. The complainant advised DBT that they wanted an internal review as they believed further information would be held by DBT. Following an internal review DBT wrote to the complainant on 6 March 2024. It stated that no further information was held.

Scope of the case

8. The complainant contacted the Commissioner on 7 March 2024 to complain about the way their request for information had been handled.
9. The Commissioner considers that the scope of his investigation is to determine, on the balance of probabilities, whether DBT holds any additional information within the scope of the request.

Reasons for decision

Section 1 – general right of access

10. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to them.
11. In cases where a dispute arises over whether recorded information is held by a public authority at the time of the request, the Commissioner - following the lead of a number of First-tier Tribunal decisions - applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant's request.
12. Following the Commissioner's enquiries, DBT explained on receipt of the request, it engaged with the Post Office team directly. DBT advised that the requested information would be held by Post Office team. DBT also

confirmed that any recorded information within the scope of the request would be held in a digital format. DBT therefore requested that the Post Office team conduct searches for the requested information.

13. DBT explained that the searches were conducted on E-mail inboxes, policy team OneNote and SharePoint sites. It advised that the requested information was expected to be held in these areas only.
14. At the time of receiving the request, DBT conducted searches using the search terms of "Davey" AND "Bates", "Davey" AND "Horizon", "Davey" AND "letter" within the requested timeframes. DBT confirmed that these searches produced 5 Annexes, which have since been disclosed to the complainant.
15. DBT explained that following the intervention of the ICO, it conducted a further search for the requested information. It advised the Commissioner that this additional search was conducted to ensure thorough and reasonable searches had taken place. The search terms used for the new search were as follow:
 - "Davey" AND "Bates"
 - "Davey" AND "Horizon"
 - "Davey" AND "letter"
 - "Davey" AND "Bates" AND "letter"
 - "Davey" AND "Bates" AND "Horizon"
 - "Davey" AND "Bates" AND "IT Scandal"
 - "Davey" AND "Bates" AND "Post Office"
 - "Davey" AND "Bates" AND "Computer"
 - "Davey" AND "Bates" AND "Sub postmaster Alliance"
 - "Davey" AND "Bates" AND "Alliance"
 - "Davey" AND "Bates" AND "Legal"
 - "Davey" AND "Bates" AND "Disciplinary"
16. DBT confirmed that during this search it had located one additional document within the scope of the request.
17. When questioned by the Commissioner regarding the possibility of any information within the scope of the request being deleted, DBT advised

that the requested information was inherited by two former departments. As the information was inherited, it was unable to confirm whether any previous information has been deleted or destroyed in line with former Departments' retention and deletion policies.

18. DBT did advise that there is a business purpose in holding the requested information. In line with the Department's retention and disposal policy it is outlined that Ministerial correspondence posing potential historical significance has a retention period of 15 years.

The Commissioner's decision

19. The Commissioner has determined that, other than the one document which has been referred to, on the balance of probabilities, DBT does not hold any additional information within the scope of the request.
20. Having reviewed the DBT position, search terms and considering the further search that DBT has conducted, the Commissioner is satisfied that if any additional information was held, it would have been located during these searches. The fact that DBT has located a further document within the scope of the request demonstrates that the search conducted was adequate and would locate the requested information.
21. As DBT has confirmed that it has located a further document within the scope of the request, the Commissioner requires DBT to either disclose the document, or issue an appropriate refusal notice.

Right of appeal

22. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

23. 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.
24. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Michael Lea
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