

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 11 March 2020

**Public Authority:** Department for Transport  
**Address:** Ashdown House  
Sedlescombe Road North  
Hastings  
East Sussex  
TN37 7GA

#### **Decision (including any steps ordered)**

---

1. The complainant requested information from the Department for Transport (DfT) relating to complaint letters sent to Chris Grayling, former Secretary of State for Transport. DfT stated that it did not hold a central list of such cases and to conduct a manual search for the information requested would exceed the cost limit under the FOIA.
2. The Commissioner's decision is that DfT did not read the request correctly and therefore it did not comply with section 1(1)(a) of the FOIA as it has not issued a response based on the correct reading of the request.
3. The Commissioner requires the DfT to take the following steps to ensure compliance with the legislation.
  - Issue a fresh response in accordance with the FOIA.
4. The DfT must take this step within 35 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 15 March 2019 the complainant wrote to DfT and requested information in the following terms:

*"Please disclose all letters of complaint sent to Chris Grayling about his conduct from January 1st 2017 to 15.03.2019."*

6. On 11 April 2019 DfT responded. It confirmed that it had not received any *"maladministration complaints about the conduct of The Secretary of State Chris Grayling."*
7. DfT stated however, that it receives thousands of items of correspondence each year and that these may contain personal views on the Department and Ministers, in addition to the main subject of the correspondence. It explained that it does not hold a central list of such cases, and that a manual search of each piece of correspondence would exceed the cost limit under the FOIA. This response was not clear about whether DfT held the requested information. Neither did it specify section 12; the relevant provision of the FOIA relating to the cost limit.
8. On 16 April 2019 the complainant asked DfT for an internal review. He said that *"A complaint could also include the minister's personal conduct, as well as his professional conduct in office, which your initial response did not take into account"*.
9. He argued that it was not clear that a sufficiently comprehensive search method had been used for this response. He also suggested to DfT a search *"by keyword"*, through which he believed that the information he had requested would be located.
10. On 19 May 2019 DfT provided its internal review outcome to the complainant. DfT maintained its original position and reiterated that *"no maladministration complaints were made about the Secretary of State during the period stipulated."* It explained (in response to the complainant's suggested search method) that *"However, what was perhaps not clear to you in the original response is that the Department's correspondence database cannot be searched by the keyword 'complaint' or 'complain' in a manner that will return all results within the scope of your request"*.
11. DfT's internal review response again did not clearly specify whether or not it held the requested information, and neither did it cite section 12 of the FOIA at this stage.

12. DfT did state that each of the thousands of items of correspondence covered by the request would need to be read individually and, therefore, it considered that an estimated total cost for the request could not be calculated.

### Scope of the case

---

13. The complainant contacted the Commissioner on 20 May 2019 to complain about the way his request for information had been handled.
14. Specifically, the complainant disputed that DfT had made an adequate attempt to search its records for the requested information. He also argued that DfT had *"provided little in the way of advice and assistance."* Therefore, the complainant specified that he wanted the ICO to investigate whether an adequate search for the requested information had been completed by DfT, and that he wished for any of the requested information that was located to be provided to him.
15. During the Commissioner's investigation of this case, DfT was asked to confirm whether or not it held any information within the scope of the request, which in the Commissioner's view was broader than only covering *"maladministration complaints"*. DfT responded and maintained its position that it did not hold the requested information. It explained that DfT *"had not received any maladministration complaints regarding the conduct of Chris Grayling. A maladministration complaint is a complaint about the conduct of a member of staff."* DfT said that complaints of this kind are logged on to its correspondence system separately to other correspondence, and that DfT is able to easily identify these. Therefore, it considered that it was able to confirm that following a search of the system, DfT had not received any complaints relating to the request.
16. DfT reported that it receives a very large volume of correspondence each year, some of which will include comments about the Government and Ministers. However, DfT indicated that correspondence containing comments on Ministers, but not primarily about a Minister's conduct, would not be recorded as maladministration complaints. DfT therefore believed that such correspondence would not be within the scope of the request. DfT considered that an expanded search would breach the cost limit as DfT would have to manually search 40,000 pieces of correspondence.

17. The following analysis will not consider whether a manual search of the requested information would exceed the cost limit under the FOIA. The analysis will instead consider whether DfT has identified the correct objective reading of the request and complied with section 1(1)(a) of the FOIA.

## Reasons for decision

---

### Section 1 – general right of access

18. Section 1 of the FOIA states that:

*"(1) 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."*
19. As covered in the Commissioner's guidance on interpreting and clarifying requests<sup>1</sup>, an information request must be read objectively. In this case the question for the Commissioner is whether the reading of the complainant's request by the DfT was an accurate objective reading of that request.

---

<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1162/interpreting-and-clarifying-a-request-foia-eir-guidance.pdf>

20. At paragraph 6 above, it is noted that the DfT's response to the request focussed on "*maladministration complaints*". Throughout its handling of the request and the Commissioner's investigation, it has maintained this focus on what, in the Commissioner's view, may only be a subset of the information covered by the request. It is notable that at various points the DfT has referred to how time consuming it would be for it to search more widely through correspondence it received during the period specified in the request. DfT appears to accept that correspondence not recorded as a maladministration complaint may contain content about the conduct of Chris Grayling, but it has maintained that such correspondence would be outside the scope of the request.
21. DfT explained to the Commissioner that within correspondence received, there may be parts that contain remarks about the correspondent's personal view of particular Ministers. DfT said that these are not specifically letters of complaint against the specified Minister but that they are remarks or views made as part of a wider issue. DfT referred by way of example to correspondence where the main issue is rail fares, but that also contained criticism of the former Secretary of State, and stated that these would not be considered to be in scope of this request. It added that if they were to be considered in scope of the request, then the cost limit would apply due to the fact that DfT receives very large volumes of correspondence.
22. The Commissioner's view is that the DfT has applied an artificial limit to the scope of the request by focussing on "*maladministration complaints*". Her view is that a correct objective reading of the request would cover both correspondence recorded as a maladministration complaint, and other correspondence that was focussed primarily on another matter, but also contained a complaint about the former Secretary of State. Whilst it may be the case that to supply such information, or even to establish whether or not it is held, may exceed the cost limit, that is not relevant to the question here.
23. Therefore, the Commissioner's conclusion is that the DfT did not identify the correct objective reading of the complainant's request and so it has not complied with section 1(1)(a) in relation to this request.
24. At paragraph 3 above the DfT is now required to issue a fresh response to this request. This response should cover both correspondence recorded as a maladministration complaint and other correspondence received within the date parameters specified by the complainant that includes a complaint about the former Secretary of State, but that was not recorded as a maladministration complaint.

## Right of appeal

---

25. 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@justice.gov.uk](mailto:grc@justice.gov.uk).

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

26. 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.
27. 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 .....**

**Ben Tomes**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**