

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

### **Decision notice**

**Date:** 17 February 2023

**Public Authority:** Department for Environment Food & Rural Affairs (Defra)

**Address:** Nobel House  
17 Smith Square  
London  
SW1P 3JR

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

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1. The complainant has requested a copy of a Qualitative Pilot Study report. Defra stated the information was not held.
2. The Commissioner has found that the requested information is not held by Defra for the purposes of the FOIA by virtue of section 3(2). He requires no steps to be taken by Defra.

### **Request and response**

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3. On 15 April 2022 the complainant made an information request to Defra in the following terms:

"Please treat this email as a request for a copy of the Qualitative Pilot Study report under the Freedom of Information Act. Alternatively please merely confirm that you are content to treat the document as having been released to me under the FOIA. I know that Defra has this document because I sent a copy of it by email to [name redacted] on 4 February. A further copy of attached in case there is any confusion on Defra's part."

4. On 10 May 2022 Defra responded and stated the requested document was not held. A position it upheld following an internal review.

### **Reasons for decision**

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5. Section 1 of the FOIA states that any person making a request for information is entitled to be told whether the public authority holds the information requested and, if held, to be provided with it.
6. Section 3(2) sets out the two legal principles that establish whether information is held for the purposes of the FOIA:

“For the purposes of this Act, information is held by a public authority if—

  - (a) it is held by the authority, otherwise than on behalf of another person, or
  - (b) it is held by another person on behalf of the authority.”
7. This sets out a two part definition. Information is held by the public authority, and therefore within scope of a FOIA request, if the authority holds it (but not if it holds it only on behalf of another person), or if another person holds it on behalf of the authority.

### **The complainant's view**

8. The complainant accepts that Defra does not hold the information simply because a requester gives the document to them. However, they argue that this is not the case here and that the document was Defra's to begin with. The complainant referred to an email in which it was stated:

“This documents is produced/owned by the civil service/Defra ...”
9. The complainant considers that the document is held by Defra for the purposes of FOIA. They argued:

“The Information Commissioner's interpretation of s3(2) is that because information does not qualify for release if it is held on behalf of another person, then if it is held otherwise than on behalf of another person then the only remaining possibility is that it is held by the body for FOIA purposes. The formulation used by the ICO is that information is held by the body if it is held "to any extent for its own purposes" (emphasis added). The Information Commissioner also suggests that in order for the "on behalf of another person" exclusion to apply the public organisation must be in possession of it "solely" on behalf of that other person. In other words, it is a very low bar.”

10. The complainant referred to having requested permission to use the document under Civil Procedure Rule (CPR) 31.22 after they found it had been inaccurately characterised in the Equality Impact Assessment submitted by Defra to the Cabinet Office in 2010 or 2011. The complainant argues that in order for Defra to consider the request under the CPR 31.22 Defra would have to consider the contents of the document and assess the consequences of its prospective release – therefore in order to do this Defra would have to be, to some extent, holding the document for its own purposes to do this.
11. Defra had informed the complainant that “prior to Defra obtaining the information from you it would have been destroyed in line with our retention procedures as there was no need to keep it as part of Defra business”. The complainant reviewed Defra’s document retention procedures and argued it was high profile and would fall into the ‘do not destroy’ category.
12. Finally, the complainant suggested even if Defra rejected the other arguments it should consider whether the information is held by Defra by virtue of it being held by the original creator of the document i.e. held by another person on Defra’s behalf. The complainant was of the understanding the creator of the document was an outside consultant who was, at the time, seconded to Defra. The complainant also stated he originally obtained the document from the Treasury Solicitor’s Department and suggested Defra should check if the Government Legal Department (GLD) still held the document on Defra’s behalf.

### **Defra’s view**

13. Defra argued that information is held by a public authority if it is held to any extent for its own purposes. In terms of the ‘to any extent for its own purpose’ Defra considers this particularly important in order to determine whether it holds information for its own purpose, or solely on behalf of another person. In this case Defra states it is not considering information held solely on behalf of another person.
14. Defra fully acknowledges that at the time the information was produced it was held by Defra but it was subject to retention schedules and was destroyed in accordance with its records management policies. Defra considers as soon as the document is destroyed the information is then not held by Defra as it is no longer needed by the Department. This would still be the case even if a third party continued to hold it – Defra is not accountable for the records management practices of other parties and documents they continue to hold are held for their own purposes, not on behalf of Defra.

15. Defra has conducted searches to make absolutely certain the information is not still held, looking at localised electronic records and paper records in storage using keywords and has returned no results. Defra's policy team has also confirmed the study was not something they would have retained information on as it has no relevancy to current work.
16. Defra does not consider being provided with a copy of the information by a requester after it has been destroyed results in the information being 'held' again. Similarly it cannot be said that Defra holds the information every time it receives it from a third party after it has been destroyed.
17. The information is not physically held by Defra and if it is held by another public authority such as the GLD it would only be held 'solely' by that public authority and not for Defra's purposes. Accordingly, when considering subsection 3(2)(b) the information can be held if it is held by another person on behalf of Defra, Defra has concluded this is not applicable as Defra has destroyed the information so the information would not be held on Defra's behalf by GLD and would only be held for its own purpose.

### **The Commissioner's view**

18. The Commissioner recognises that each case needs to be viewed individually to determine whether a public authority holds information for its own purposes.
19. His guidance<sup>1</sup> explains that there are various factors that will assist in determining whether the public authority holds the information for the purposes of the FOIA and that the weight attached to each factor will vary from case to case.
20. From the evidence he has seen, the Commissioner is satisfied that the requested information in this case was not held by Defra for the purposes of the FOIA.

### **Is the information or any part of it held by another person on behalf of Defra?**

21. In order to comply with the requirements of the FOIA, public authorities clearly need to know what information they hold for the purposes of

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<sup>1</sup> [Information you hold for the purposes of FOIA | ICO](#)

FOIA. This means, for example, that they need to be aware of information that is being held on their behalf by other persons.

22. The Commissioner recognises that there are several circumstances in which information is held by another person on behalf of a public authority and therefore held by the public authority for FOIA purposes. Often this is for contractual reasons which is not the case here.
23. In reaching his decision in this case, the Commissioner has taken into account the fact that Defra has no business need to still have access to the information required by the complainant. In his guidance on outsourcing<sup>2</sup> the Commissioner outlines circumstances in which third parties, such as the GLD or the contractor who may have been the creator of the document, could hold information on behalf of Defra. However, in this case the fact remains that Defra has no business reason or requirement to retain the information and has destroyed it in line with its policies so there is no reason for another party to be holding the information on Defra's behalf. If either the contractor or the GLD hold the document this is for their own purposes.
24. Turning to the complainant's arguments around CPR 31.22; the Commissioner understands this allows that a party to whom a document has been disclosed can generally only use that document for the purpose of the proceedings in which it was disclosed unless
  - "(a)the document has been read to or by the court, or referred to, at a hearing which has been held in public;
  - (b)the court gives permission; or
  - (c)the party who disclosed the document and the person to whom the document belongs agree."
25. The complainant argues that they asked for permission to use the document under CPR 31.22 and Defra rejected this and in order to make the decision Defra must have held the document for its own purpose to do this. The Commissioner rejects this argument as there is no evidence Defra had sight of the document again to make this determination, nor is there any requirement on Defra to have had sight of the document to do so.

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<sup>2</sup> [Outsourcing – FOIA and EIR obligations | ICO](#)

26. Even if Defra could have been said to have temporarily held the information because the complainant provided it alongside their request, Defra would in any case have been entitled to have relied upon section 21 of FOIA to "withhold" the information as it was self-evidently reasonably accessible to the requester. As such the Commissioner sees no purpose in determining this particular matter either way.
27. In conclusion, having considered all of the points above, the Commissioner is satisfied, in this case, that Defra does not hold the requested information as it has been destroyed and the information is not held by another party on behalf of Defra. Furthermore, the information is already reasonably accessible to the complainant and therefore would be exempt, even if it were held.

## **Right of appeal**

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

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

29. 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.
30. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Jill Hulley**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**