

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 March 2023

Public Authority: Department for Transport
Address: Great Minster House
33 Horseferry Road
London
SW1P 4DR

Decision (including any steps ordered)

1. The complainant has requested information from the Department for Transport ("DfT") in relation to all communication between the DfT and the Maritime and Coastguard Agency between 1 June 2015 and 31 October 2015.
2. The Commissioner's decision is that, on the balance of probabilities, the DfT does not hold the requested information. However, the DfT has breached section 10(1) of FOIA as it failed to respond to the request within 20 working days.
3. The Commissioner does not require the DfT to take any steps as a result of this decision notice.

Request and response

4. On 4 January 2023, the complainant wrote to the DfT and requested information in the following terms:

"Further to this matter, please see attached copy of two letters sent by the department directly to me, dated 26th March 2015 and 16 June 2015. Both letters are signed by [named person]. The March letter advises that there will be no inspection of pilotage at operational level and that harbour authorities will be allowed to assess their own merits, which is plainly

improper. No man can properly or accurately assess his own merits.

In the letter of 16th June 2015, [named person] acknowledges warnings given by [named person and job role/title] and by me to the department as to misconduct in the administration of pilotage at Londonderry since 1st June 2015 and also pledges "best support" (in express terms) to be given to the harbour authority.

The Annual Report of the harbour authority at Londonderry published on 31st March 2016 and available on the internet discloses that a "Clean Bill of Health" was granted to the Londonderry harbour authority in October 2015, four months after the warnings given by [named person] and by me as to misconduct. The Clean Bill of Health was issued by the MCA, which is an agency properly in the control of the department.

As a matter of propriety and the proper disclosure of information, will you please provide without delay copy of all communications passing between the department and the MCA relative to Londonderry during the period 1st June 2015 to 31st October 2015? Your help would be much appreciated."

5. The DfT responded on 6 February 2023, following the Commissioner reminding it that a response was overdue. It stated that the requested information is not held.
6. Following an internal review the DfT wrote to the complainant on 8 March 2023. It stated that it upholds its original position; no information is held that falls within the scope of the request.

Scope of the case

7. The complainant contacted the Commissioner on 30 January 2023 to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of this complaint is to determine if the DfT was correct to say it does not hold the requested information.

Reasons for decision

Section 1 of FOIA – information held/not held

9. Section 1 of FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request and, if so, to have that information communicated to him.
10. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).
11. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of proof of the balance of probabilities.
12. The DfT has explained to the complainant that following the original search for the information, it reviewed the request again with colleagues in the Aviation, Maritime, International and Security Group during the internal review process, and is content that a thorough search was completed and no information was found that falls within the scope of the request.
13. The DfT explained that it is possible that the department may have held the information relevant to the request during the date range specified, however, due to accounts being deactivated following staff moves and the standard retention periods, they are satisfied that any information that may have existed, is no longer held by the department.
14. The DfT has also advised that the Maritime and Coastguard Agency confirmed that the searches they completed did not identify any information in relation to the request.
15. The Commissioner has reviewed the DfT's response and the explanations provided as to why additional information is not held; he is satisfied the DfT has taken reasonable and proportionate steps to establish what information is held.
16. The Commissioner acknowledges that the complainant considers that further information is held. However, as explained in the paragraph above, he is satisfied that the DfT has taken reasonable steps to search for the requested information. He also notes the amount of time that has passed since the dates within the scope of the request and is satisfied it is likely that if any information were ever held, it is likely that

due to retention policies, it will have been disposed of significantly before the current request.

17. Based on the above, the Commissioner finds, on the balance of probabilities, that the council holds no further information falling within the scope of the request.

Section 10(1)

18. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and “not later than the twentieth working day following the date of receipt”.
19. The complainant contacted the DfT on 4 January 2023 and a response was not received until 6 February 2023. As such, the DfT failed to respond within 20 working days and as such, it has breached section 10 of FOIA.

Right of appeal

20. 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

21. 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.
22. 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

Michael Lea
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