

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

### **Decision notice**

**Date:** 26 March 2024

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

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

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1. In a four part request, the complainant requested information about companies or sectors exporting to the European Union post Brexit.
2. The Department for Business & Trade ("DBT") initially disclosed some information for questions 3 and 4 of the request and relied on section 1 (information not held) of FOIA for questions 1 and 2. In subsequent correspondence the complainant further clarified his request and DBT responded again citing section 12 (cost of compliance) of FOIA.
3. During the course of the Commissioner's investigation DBT confirmed that it sought to rely on section 12 (cost of compliance) of FOIA to refuse the entire request.
4. The Commissioner's decision is that DBT was entitled to rely on section 12(1) of FOIA to refuse the entire request. The Commissioner also finds that DBT complied with its section 16 obligation to offer advice and assistance.
5. The Commissioner does not require further steps to be taken.

#### **Request and response**

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6. On 21 April 2023, the complainant wrote to DBT and requested information in the following terms (FOI2023/02176):

"At an International Trade Committee hearing on 19 April, the chair of the committee asked the Secretary of State for Business and Trade whether she thought companies find it easier or harder to export to the European Union post Brexit. In response, the Secretary of State said "It depends on the company...There are some companies that do [find it easier] then there are some companies who have difficulty."

The Secretary of State added "What my job is at the moment – and it is one of the priorities which I set out – is what can we do to make life easier...".

This implies that on balance companies are now finding it harder to export to the EU.

I would be grateful to know:

- The names of at least three companies that are finding it easier to export to the European Union post Brexit. **'Question 1'**
- The names of at least three companies that are finding it more difficult to export to the European Union post Brexit. **'Question 2'**
- Without naming specific companies, at least three examples of the types of companies or nature of the sector in which companies are finding it easier to export to the European Union post Brexit **'Question 3'**
- Without naming specific companies, at least three examples of the types of companies or nature of the sector in which companies are finding it more difficult to export to the European Union post Brexit **'Question 4'**.

As regards identifying specific companies, I would note that many companies have made public the effect of Brexit on their ability to export to the EU and I would not expect the Department to refuse to provide examples on grounds of prejudice to commercial interests. I would also note that there is overwhelming public interest in full transparency of the effect of Brexit on UK exporters." **(the 'initial request')**

7. On 21 April 2023 DBT acknowledged the request explaining that, due to a machinery of government change announced on 7 February 2023, it was treating requests as specifically for information held by the former Department for International Trade ("DIT"). However, if the complainant felt the request fell under the former Department for Business, Energy and Industrial Strategy ("BEIS"), DBT would communicate with its counterparts in BEIS.

8. On 24 May 2023, when the complainant did not receive a response to his request, he chased DBT by post and he also said, "if searches for any aspect of my request failed to identify relevant information within the DIT remit, then I would of course expect you to search through former BEIS records." However, this letter crossed with DBT's response of the same day.
9. On 24 May 2023, DBT responded to the request (assigning it a reference number 02176) within the statutory deadline. DBT's refusal notice reiterated that it was "currently treating requests as specifically for information held by the former DIT." The Commissioner accepts that, at this stage, DBT was not aware that the complainant also wanted ex-BEIS records to be searched.
10. DBT confirmed that it did not hold information falling within questions 1 and 2 of the request (*names of at least three companies that are finding it easier/harder to export to the European Union post Brexit*). Outside FOI it provided the following explanation:

"DBT regularly engages with businesses, and we record some specific issues reported to us by companies so that we can provide export support. However, we do not currently record the company level information requested to answer your first two questions, which are subject to many complex factors affecting a business. We have verified this with relevant teams and data owners. However, officials may have had conversations with businesses where these aspects were discussed but may not have been recorded. To be helpful beyond our FOI obligations there has been comment which can be sourced in the media about the effects on specific businesses."

11. DBT also confirmed the information requested in questions 3 and 4 was held (*at least three examples of the types of companies or nature of the sector in which companies are finding it easier /harder to export to the European Union post Brexit*) and set out its response in two paragraphs in the letter. DBT provided export figures which it has told the Commissioner was the closest analysis held to meet the request and said:

"Analysis held by the Department for Business and Trade using data in the public domain shows that after EU Exit, different commodity groups and service types exported by UK businesses to the EU varied in their trends.

Official statistics show *UK exports to the EU of fuels (+£16.8bn)*, *business services (+£12.4bn)* and *mechanical machinery (+£5.7bn)* were greater in 2022 compared to 2018. Over the same time, *UK exports to the EU of clothing and footwear (- £4.4bn)*, *road vehicles (- £4.1bn)* and *aircraft (-£2.9bn)* were lower in 2022 compared to 2018.

ONS (Office of National Statistics) data used is in current prices and so is not adjusted for inflation

However, the interpretation of these trading patterns is not straightforward. Since the beginning of 2020 UK businesses have faced several persistent trade shocks, including the COVID-19 pandemic, adjusting to the new trading relationship with the EU, the global impacts of Russia's invasion of Ukraine and price inflation. It is challenging to disentangle the impact of all these factors alongside several changes to customs handling and trade data collection processes which complicate interpretation of observed trade trends."

12. On 26 May 2023, the complainant replied to DBT saying he did not wish his letter to be treated as an internal review but rather as a clarification of his previous request. In summary:

- He said (for the first time) he expected all of DBT, ex-DIT and ex-BEIS's records to be searched;
- He said DBT misunderstood the information he was seeking. He clarified that the scope of his request was not simply a time reference to post Brexit but "whether our departure from the EU has made it easier or harder to export irrespective of other factors."
- He said he was surprised that DBT did not hold any information at company level.
- He said he was grateful for the export figures but said that they did not specifically shed light on the effect of Brexit on exports as distinct from other factors. As such the figures were "not records held regarding the effect of Brexit at a sectorial level".
- He suggested two ways that DBT might find the requested information:
  1. that the Secretary of State was asked what companies she had in mind in responding to the Chair's questions and then see if that information is contained in your records; and
  2. that "DBT and its precursor departments will have had meetings with trade associations and other representative organisations at which the effect of Brexit will have been discussed." He therefore suggested that "From the notes of the meetings with these bodies you must presumably have an indication at a sectorial level of whether Brexit has had a beneficial or detrimental effect on the ability to export to the EU." (**the 'request clarification'**)

13. DBT treated the complainant's request clarification as a new information request (assigning it a reference number 02847). However, in the Commissioner's opinion, it was not a new request but rather a clarification of the complainant's initial request. This is because the clarification was in respect of how to search for the information, and the complainant's views as to why such information would be both held and easily accessible – as opposed to the clarified request seeking different information from that previously sought.
14. On 22 June 2023, DBT responded to the request clarification as follows. It confirmed that:
  - when responding to the complainant's initial request, ex-DIT and ex-BEIS officials had met and established that ex-BEIS did not hold the information. DBT therefore said it investigated the most relevant DBT systems - the ex-DIT customer relationship management data base – and established that the information was not available in this data base.
  - it had interpreted the request in the same way that the complainant had clarified but that it was “..challenging to disentangle multiple factors..”
  - regarding “your request for the names of at least three companies that are finding it easier and three finding it more difficult to export to the EU after EU exit”, DBT said it refused to provide the information citing the cost limit of section 12 of FOIA.
  - It said that approximately 500 DBT officials are in regular contact with businesses and DBT estimated that it would take a minimum of 30 minutes for officials to search their emails and documents to find if they hold any information or 250 hours work, plus 22.5 hours to identify the individuals holding this information in the first place.
  - DBT suggested, by way of advice and assistance, that the complainant narrow the scope of this request and suggested he be more specific about what information he particularly wished to obtain, such as suggesting a specific or appropriate team, focusing on a particular type of export support, or narrowing the timeframe to a particular time period.
  - As regards, the complainant's first suggestion (*ask the Secretary of State what companies she had in mind in responding to the Chair's questions*), DBT said this was outside its FOI responsibilities as FOI requests relate to recorded information only, not information in individual's heads.
15. The Commissioner observes that DBT's response to the request clarification letter was unclear. There was a confusing explanation of the

search strategy used by DBT and the results of it. There was a unsatisfactory explanation of how DBT was now responding to his initial 4 part request. As regards questions 1 and 2, it appears that section 12 was only applied to this part of the request. As regards, questions 3 and 4, it appears that DBT did not hold the information that the complainant wanted but DBT did not state this.

16. On 27 June 2023, the complainant sought advice from DBT on making a refined request within the cost limit. He referred to his original four questions and asked whether or not each question individually could be dealt with within the cost limit. He also asked DBT to clarify if it still maintained that DBT did not hold information for any of the questions.
17. DBT informed the complainant on 30 June 2023 that any one strand of the request would exceed the cost limit and that he should narrow the scope of his request. The Commissioner notes that DBT did not respond to his query about whether DBT did not hold information for any of the questions and this lead to further confusion.
18. The complainant requested an internal review on 7 July 2023. He emphasised that there were four questions in his initial request dated 21 April 2023 and then subsequent correspondence. He argued that:
  - “the Department’s replies to me have been inconsistent and contradictory; and it stretches credulity that at least part of the information requested is not readily available.”;
  - it was unclear which information DBT holds and which it does not. DBT’s letter of 24 May states for questions 1 & 2 DBT holds no information and that it has only considered information held by ex-DIT. However, DBT’s letter of 22 June states that BEIS records were also considered and that “ex-Beis does not hold this information”. It is unclear what “this information” referred to – company level information or all the information requested? As it seems that only the ex-DIT customer relationship management data base was interrogated, it cannot be said that DBT does not hold the information;
  - Question 3 & 4 of my request have been unaddressed as DBT accept that it is not possible to infer from trade figures whether our departure from the EU, irrespective of other factors, has had a beneficial or detrimental effect on a sectors ability to export to the EU; and
  - he did not believe that section 12 could apply to the questions in his initial request.
19. On 19 July 2023, DBT explained to the complainant that although it considered that he had made two separate requests for information (on

21 April 2023 and 26 May 2023), it would issue one internal review response covering both requests.

20. On 8 August 2023, in response to a chasing email for an internal review response, the complainant received an email from DBT applying a Public Interest Test extension - saying section 10(3) of FOIA allows the time for response to be extended due to the need to consider where the balance of the public interest lies in relation to the information requested. He received another similar email on 7 September. That same day, the complainant wrote to DBT querying the reason for the delay saying that "for the record, I found rather confusing as to the reasons for the delay."
21. The Commissioner is concerned by DBT's incorrect use of a PIT extension to delay responding to an internal review. This is addressed further below.
22. DBT provided the outcome of the internal review on 4 October 2023 as follows:
  - In relation to the initial request dated 21 April 2023, for questions 1 and 2, DBT confirmed that the information was 'not held'. For questions 3 and 4, DBT said "I agree with the Department's response." (ie the provision of export figures etc)
  - In relation to the clarification request dated 26 May 2023, DBT said that it agreed that section 12 applied.
23. The Commissioner observes that DBT's internal review response was imprecise and lacked a satisfactory explanation of DBT's response to the complainant's request and the search strategy. It did not attempt to clarify for the complainant any of the issues he raised in his request for internal review. The Commissioner notes that the internal review simply upholds all the contradictions identified by the complainant.

## **Scope of the case**

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24. The complainant contacted the Commissioner on 14 October 2023 to complain about how the requests had been handled by DBT. He said:

"The [internal review] response was a cut and paste restatement of the preceding confused correspondence with no evidence of independent scrutiny. Although not entirely clear, The IR concludes they do not hold information related to strands one and two of my request and it would exceed the cost limit to deal with strands three and four. I dispute this..

Is it truly the case that it would exceed the cost limit to deal with any one of the four strands of my request as stated in DBT's email of 30 June?

The IR holding replies refer to the public interest being considered. How is that relevant to the cost limit? For which exemption/s was the public interest being considered and for which strands of my request? And why was I not informed of the outcome of that consideration? Do DBT have documentary evidence that the public interest was being considered?

I sense an unwillingness on DBT's part to engage in a straightforward manner with my request e.g. it is quite implausible that it would exceed the cost limit for DBT to find examples of sectors which are finding it more difficult to export to the EU post Brexit; and why did the IR take so long, when it is simply a restatement of the preceding correspondence?

I would ask that you press DBT on the content and retrieval capabilities of their record management systems and have them provide whatever information they hold in response to my request."

25. On 21 November 2023, the complainant wrote to the Commissioner with his suggestions for how DBT should have responded to his request, saying:

"My strong belief is that 'information not held' is indeed the correct answer for Question 1. However, it is the correct answer not because DBT do not record EU-related information at a company level but rather because they have no knowledge of any company finding exporting to EU countries easier because of Brexit (as companies now face the costs and bureaucracy of exporting across the EU's external border.)

In contrast, as regards Question 2,... given the difficulties companies now face exporting to EU countries there must be many examples of companies that would provide the answer. For Question 2, I would therefore not accept the answer 'information not held'.

To be clear, for the reasons given above, I expect the answer to Question 3 to be 'information not held' and I expect information should be readily available to answer Question 4.

Regarding DBT's reliance on the cost limit in respect of Question 3, to do so they should believe that there are, or may possibly be, records indicating such companies/sectors within their system. You might challenge DBT with the following question: in what possible circumstances might Brexit have made it easier for a UK company to export to EU countries? I believe you will not be given a reasonable



answer – even a hypothetical answer, regardless of what company information they hold - as there are no such circumstances, hence no such companies/sectors or records. Thus it is inappropriate to invoke the cost limit and 'information not held' is the appropriate answer for both Questions 1 and 3."

26. As is the Commissioner's practice, on 20 November 2023, he asked DBT to provide a more detailed explanation of its position.

27. In submissions dated 4 February 2024, DBT's position remained unclear to the Commissioner. DBT said:

"5. The Department interpreted his second request to ask the following 2 questions:

- a) ask the Secretary of State what companies she had in mind in responding to the Chair's questions then see if that information is contained in your records,
- b) search ex-BEIS records or confirm that ex-BEIS records had already been searched.

For **b) this information** was the information that took the Department over the cost limit as quoted in our FOI response...

"9. The Department should have been clearer in its FOI response FOI2023/02847 (the request clarification) by stating which questions actually fell under the cost limit. For reference and as stated above in point 5, it was in fact the information for **b)** that the Department relied on Section 12." (bold emphasis added)

28. However, the Commissioner was unclear what part of the complainant's request was being referred to as b). In the Commissioner's view, DBT's submissions were not sufficient for him to proceed to a Decision Notice as he was unable to determine what part or parts of the request took DBT over the cost limit. The Commissioner was therefore obliged to ask DBT further questions on 27 February 2024 in order to make sense of DBT's position.

29. DBT responded to the Commissioner on 6 March 2024. DBT said:

"The approach we took was to convene a group of senior analysts who had good knowledge of Europe trade analysis and data/information sources. This group would have a good working knowledge of departmental systems, what was stored where and how i.e. if DBT did hold the information asked for by the requestor, they would know. Specifically, they would know about analysis that could meet the requestor's criteria in questions 3 & 4 for types of companies affected

by EU exit. This group would also have a good knowledge of any record level data that could be used to answer 1 & 2 on specific companies.

The only relevant database identified at this meeting was the ex-DIT Customer Relationship Management (CRM) system for recording business interactions on trade and investment. The Chief Data Officer for DBT (ex-DIT) subsequently provided assurance that this information was not held on the CRM system. DBT's CDO has a comprehensive knowledge of DBT data sources and systems, and was therefore able to provide this assurance....

We did not perform any searches because we took the view that if analysts didn't hold information of this type or have access to it, or know of sources, and with a good representation of both ex-BEIS and ex-DIT colleagues at the meeting, then searches would not reveal anything further...

We did not rely on section 12 for the first request as we did not believe that DBT held the information. The subsequent use of section 12 was in response to the new approach the requestor was suggesting i.e. to search email boxes and papers etc,...

We consider the use of section 12 was compatible with our first approach which was to target the most likely areas where the information might be held. In response to the second request, we wanted to demonstrate that we were directly addressing the requestors suggestions ...

By "this information" we are referring to all of the information the requestor originally asked i.e. for questions 1 & 2, and 3 & 4. For clarification, the cost estimates were for searching the inboxes of all relevant DBT staff, whether ex-BEIS or ex-DBT."

30. DBT therefore explicitly confirmed to the Commissioner for the first time that it had changed its position between its two responses. DBT confirmed that its position since 22 June 2023, was that by considering the approach suggested by the complainant in the request clarification, section 12 applied to the entire 4 part request and that all of DBT, ex-DIT and ex-BEIS's records falling within the scope of the request had been considered.
31. The Commissioner acknowledges that public authorities may at any stage seek to rely on an exemption or exclusion not previously claimed. This was confirmed by the Upper Tribunal in the case of [McInerney v IC and Department for Education \[2015\] UKUT 0047 \(AAC\)](#).
32. In light of this the Commissioner's investigation in this case has focused on whether DBT has correctly cited section 12(1) of FOIA in relation to the entire 4 part request.

33. The Commissioner has also considered whether DBT met its obligations to offer advice and assistance, under section 16 of FOIA and any other procedural issues.

## **Reasons for decision**

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### **Section 12 – cost of compliance exceeds the appropriate limit**

34. The following analysis covers whether complying with the request would have exceeded the appropriate limit.
35. Section 12(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the “appropriate limit” as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”)
36. The appropriate limit is set in the Fees Regulations is at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for DBT is £600.
37. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 24 hours for DBT.
38. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
- determining whether the information is held;
  - locating the information, or a document containing it;
  - retrieving the information, or a document containing it; and
  - extracting the information from a document containing it.
39. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. The Commissioner considers that any estimate must be sensible, realistic and supported by cogent evidence. The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
40. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under

FOIA to consider whether there is a public interest in the disclosure of the information.

41. The Commissioner's guidance<sup>1</sup> states that if a public authority estimate that complying with one part of a request would exceed the cost limit then it does not need to comply with the remaining parts of the request. Furthermore, it is not obliged to search for and provide information up to the cost limit.
42. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of FOIA.

### **Would the cost of compliance exceed the appropriate limit?**

43. As is the practice in a case in which the public authority has cited the cost limit under section 12(1) of FOIA, the Commissioner expects the public authority to provide a detailed estimate of the time or cost required to provide the information falling within the scope of this request.
44. The Commissioner has received arguments from the complainant in support of their complaint. In his internal review request and initial complaint to the Commissioner, he disputed DBT's argument it would exceed the cost limit to deal with any one of the four strands of his original. He said most recently that:

"Regarding DBT's reliance on the cost limit in respect of Question 3, to do so they should believe that there are, or may possibly be, records indicating such companies/sectors within their system. You might challenge DBT with the following question: in what possible circumstances might Brexit have made it easier for a UK company to export to EU countries? I believe you will not be given a reasonable answer – even a hypothetical answer, regardless of what company information they hold - as there are no such circumstances, hence no such companies/sectors or records. Thus it is inappropriate to invoke the cost limit

45. The Commissioner has also considered the submissions from DBT about its handling of this request.

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<sup>1</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/request-handling-freedom-of-information/#cost>

46. During the course of the Commissioner's investigation DBT confirmed that compliance with the request would exceed the cost limit.

47. In its initial response DBT said:

"the Department for Business and Trade (DBT) regularly engages with businesses, and we record some specific issues reported to us by companies so that we can provide export support. However, we do not currently record the company level information requested to answer your first two questions, which are subject to many complex factors affecting a business."

48. In his request clarification, the complainant suggested that:

"DBT and its precursor departments will have had meetings with trade associations and other representative organisations at which the effect of Brexit will have been discussed."

49. He therefore suggested that:

"From the notes of the meetings with these bodies you must presumably have an indication at a sectoral level of whether Brexit has had a beneficial or detrimental effect on the ability to export to the EU"

50. In its clarification response DBT said "to search emails and/or notes of officials who have had contact or meetings with businesses":

"We estimate that approximately 500 BDT officials are in regular contact with businesses. It would take a minimum of 30 minutes for officials to search their emails and documents to find if they hold any information within the scope of the request, this would quate to approximately 250 hours of work."

51. DBT explained to the Commissioner that DBT has many interactions with businesses and business representative organisations, this would cover a very large number of staff in the department who have business facing roles where they are in contact with businesses or analyse business intelligence.

52. DBT further explained to the Commissioner that it considered that the complainant's suggestion to search emails and notes of meetings was an untargeted approach that would likely be unfeasible due to cost.

53. DBT clarified that:

"Our former estimate in the FOI response was that approximately 500 DBT officials are in regular contact with businesses. We calculated that it would take a minimum of 30 minutes for officials to search their emails and documents to find if they held any information within the

scope of the request. This would equate to approximately 250 hours work. In addition, time would also be needed to identify the individuals who would hold this information. We estimate that this will take an additional 3 days of an official's time (approximately 22.5 hours)."

54. At the Commissioner's request, to verify this estimate, DBT have now conducted a sampling exercise. This involved one HEO policy officer in a business engagement team, and one HEO and one Grade 7 in an analysis team which support business engagement. The instructions given were to search all electronic records, whether held on personal drives or the department's information system, where there might be a written record, including email conversations, minutes of meetings etc, and any paper records. Those in this exercise were asked to use search terms to see if they held information falling in scope of questions 1 or 2 of the initial request. (DBT confirmed to the Commissioner that the same search terms would also be relevant to questions 3 and 4).
55. Search terms used included:
  - EU Exit, Europe/European Union/EU, Trade, Export, Import, Companies/Firms, Industry/Sector, Barriers, Challenges, Supply chains, Logistics
56. DBT reported that the HEO policy official in business engagement's search time was 40 minutes. The Grade 7 business sectors analyst's search time was 20 minutes. The HEO business sectors analyst's search time was 25 minutes.
57. DBT therefore estimated that the average search time recorded was 28 minutes.
58. DBT went on to state that, even taking the lowest estimate of 20 minutes, this would equate to 167 hours of search time for an estimated 500 individuals in the department to search for information in scope of this request.
59. DBT's conclusion, therefore, was that this request, termed in the way the complainant suggested DBT search for the information, would far exceed the threshold of 24 hours, and be disproportionate.

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

60. The Commissioner notes that the 4 part request seeks information about the names of at least three companies that are finding it easier or harder to export to the European Union post Brexit and at least three

examples of the types of companies or nature of the sector in which companies are finding it easier/harder to export to the European Union post Brexit.

61. The Commissioner notes that DBT have explained that it does not currently record the company or sector information requested to answer the complainant's questions in, for example, a customer management data base. The Chief Data Officer for DBT (ex-DIT) subsequently provided assurance that this information was not held on the ex-DIT Customer Relationship Management (CRM) system for recording business interactions on trade and investment.
62. In light of this, the Commissioner notes that the complainant suggested that DBT and its precursors would have emails or notes of meetings with trade associations and other representative organisations at which the effect of Brexit will have been discussed.
63. In its clarification response to the complainant's suggestion DBT explained that to search email boxes and papers etc, was unfeasible due to cost. This is because there are 500 staff who have business facing roles where they are in contact with businesses or analyse business intelligence and that in order to identify information falling in scope of the complainant's request, DBT & its precursors would need to search emails and/or notes of all these officials who have had contact or meetings with businesses.
64. The Commissioner is satisfied that a very large number of staff (500) will need to search for information in emails/notes to identify information falling within the scope of the request.
65. The Commissioner therefore accepts that the situation is more complex, and the work required by DBT more involved, than it would initially appear.
66. DBT are expected to search those areas where it is reasonable to expect that the information (if it existed) would be found. The broader the request, the more areas they are likely to be required to search. Case law<sup>2</sup> in this area confirms that DBT are required to search for all the information it holds – not just the information which can most easily be found or the information it thinks is most relevant to the request.

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<sup>2</sup> Reuben Kirkham v Information Commissioner [2018] UKUT 126 (AAC)

67. Therefore the Commissioner accepts that DBT are required to search for records anywhere within its organisation where it considers the information may be held.
68. Given the wide nature of the request, the way the information is held in emails and meeting notes, and the large number of individuals involved, the Commissioner is not convinced that responding to this request could realistically be brought down to a reasonable size to bring it within the cost limit. On its face, the 167 hour estimate is grossly above the 24 hour limit. Even if DBT staff were able to perform the searches in half the time (10 minutes on average), complying with the request would still take in excess of 83 hours of staff time.
69. With this in mind the Commissioner is satisfied that complying with this request would exceed the appropriate cost limit.
70. Complying with the request would therefore exceed the cost limit and so the public authority was entitled to rely on section 12(1) of FOIA to refuse the request.
71. As section 12 applies to the entirety of the request, there is no requirement for the Commissioner to consider section 1 as cited by DBT in its initial response.

## **Section 16 – advice and assistance**

72. Section 16 of FOIA requires public authorities to provide reasonable advice and assistance to those making, or wishing to make, information requests.
73. When a public authority refuses a request because the cost of compliance exceeds the appropriate limit, it should explain, to the requester, how they could refine their request such that it would fall within that limit. In rare cases, it will be appropriate for the public authority to explain to the requester why their request cannot be meaningfully refined.
74. The Commissioner notes that in its request clarification response of 22 June 2023, DBT advised the complainant to revise the request by narrowing it down to make it more specific. For example, it encouraged the complainant to identify a specific team, focus on a particular type of export support or narrow the time frame.
75. On 27 June 2023, the complainant sought advice from DBT on making a refined request within the cost limit. He referred to his original four questions and asked whether or not each question individually could be dealt with within the cost limit. DBT informed him on 30 June 2023 that any one strand of the request would exceed the cost limit and that he should narrow the scope of his request.



76. The Commissioner considers these were appropriate responses in the circumstances given the broad nature of the initial request and the suggestion provided by the complainant for DBT to search email boxes and papers etc.
77. The Commissioner is therefore satisfied that the public authority did comply with section 16 of FOIA when dealing with this request.
78. Before making a further request the Commissioner suggests that the complainant may wish to narrow the time frame of his request and to phrase his question in a different way. The request could then be limited to this information, rather than requesting 'all recorded information.' He may also wish to consider and review the information available online in the media about the effects on specific businesses as suggested by the DBT.

## **Procedural matters**

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### **Public Interest Test extension ('PIT extension')**

79. Under section 17(3) a public authority can, where it is citing a qualified exemption, have a 'reasonable' extension of time to consider the balance of the public interest. This section only permits extensions for further consideration of the public interest, DBT cannot ask for any additional time to respond to an internal review.
80. DBT have not appropriately relied on section 17(3) of FOIA as far as it allows a public authority more time to conduct a public interest test. The excessive length of time to carry out the internal review is discussed below.
81. The Commissioner notes that DBT have confirmed that reliance on a PIT extension was an error in this case. The Commissioner welcomes the fact that DBT has since relooked at the extension lines provided at the internal review stage and have taken steps to change this.

## **Other matters**

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82. The Commissioner wishes to express his dissatisfaction with DBT's handling of the complainant's request, both in respect of the delays incurred and the unclear and contradictory nature of the refusal notices/responses provided to the complainant. The Commissioner draws particular attention to the unclear explanation of the search strategy used by DBT and its predecessor departments, incorrect reliance on a PIT extension, inadequate internal review and the unclear submissions provided to the Commissioner.

83. The overall standard of DBT's responses has been disappointing and has led to unnecessary increased pressure on both DBT's and the Commissioner's resources.
84. The Commissioner's guidance<sup>3</sup> says that if the reasons for the decision are particularly complex or several exemptions are applied, it may be advisable to split the refusal notice into shorter subsections with headings to help the requester follow it. Providing a good quality refusal notice that separately addresses all the different parts of the request and exemptions, if being relied on, can help satisfy a requester that their request has been properly considered and that a public authority's use of the various provisions within the legislation are justified.
85. In addition, the FOIA section 45 Code of Practice provides good practice guidance to public authorities on their responsibilities under the FOIA<sup>4</sup>. Paragraphs 5.8 – 5.10 explain that the internal review procedure should provide a fair and thorough review of procedures and decisions taken in relation to the FOIA. It says that the public authority should "in all cases re-evaluate their handling of the request and pay particular attention to concerns raised by the applicant".
86. While DBT may have conducted an internal review, the Commissioner agrees with the complainant about "the cut & paste nature" of the internal review and the lack of any critical reassessment of the previous responses provided to him. The Commissioner also notes the fact that many questions the complainant raised in the internal review request were not responded to and it would have been appropriate to have done so in the circumstances of this case.
87. Finally, FOIA does not contain a time limit within which public authorities have to complete internal reviews. However, the Commissioner's guidance explains that in most cases an internal review should take no longer than 20 working days, or 40 working days in exceptional circumstances. In this case DBT took just over 88 working days to complete its internal review response which is excessive.
88. The Commissioner will take account of this case when assessing any further concerns about DBT's responses and internal reviews.

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<sup>3</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-17-refusing-a-request-writing-a-refusal-notice/>

<sup>4</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/744071/CoP\\_FOI\\_Code\\_of\\_Practice\\_-\\_Minor\\_Amendments\\_20180926\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf)

## **Right of appeal**

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89. 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)

90. 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.

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

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