

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 August 2024

Public Authority: Ministry of Justice
Address: 102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainant has requested information relating to complaints about the conduct of Liz Truss in her role as Secretary of State for the Ministry of Justice.
2. The Ministry of Justice (MOJ) initially relied on section 40(5B) of FOIA (third party personal information) to neither confirm or deny the information was held. During the course of the Commissioner's investigation, it changed its position to rely on section 1 of FOIA (information not held) for information falling in scope of the request.
3. The Commissioner's decision is that MOJ has complied with section 1 in respect of the requested information.
4. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

Background

5. The Commissioner is aware that Liz Truss was elected as an MP in 2010 and held various ministerial and cabinet positions from 2012 to 2022.
6. From July 2016 to June 2017, she held the position of Secretary of State for Justice and Lord Chancellor.
7. Her ministerial career culminated as Prime Minister and Leader of the Conservative Party from 6 September 2022 to 25 October 2022.

Request and response

8. On 5 October 2023, the complainant wrote to MOJ and requested information in the following terms:

“This request concerns the conduct of Liz Truss in relation to her role as secretary of state of your department.

Please state the number of formal complaints received by the department concerning the conduct of Liz Truss.

Please state the number of these complaints that were upheld by the department.

Please state, if any, the number of these complaints which alleged sexual harassment, or other sexual misconduct, by Liz Truss.

Please state, if there were any of these complaints relating to sexual misconduct by Liz Truss, the number that were upheld by the department.”

9. MOJ responded on 2 November 2023 and neither confirmed nor denied that it held information falling within the scope of the request by virtue of section 40(5B) of FOIA.
10. On 2 November 2023, the complainant requested an internal review. He argued that section 40 had been misapplied.
11. MOJ provided the outcome of that internal review on 4 December 2023, maintaining its position to neither confirm nor deny (NCND) whether it held the requested information under section 40(5) FOIA.

Scope of the case

12. The complainant contacted the Commissioner on 10 January 2024 to complain about the way his request for information had been handled.
13. During the course of his investigation the Commissioner became aware that the complainant had submitted similar requests to other departments where Liz Truss held ministerial roles including a request to the Cabinet Office. The Commissioner designated the Cabinet Office case as the 'lead case' and the decision notice in that case is: IC-277904-H5D0.
14. When commencing his investigation in IC-277904-H5D0, the Commissioner provided the Cabinet Office with a link to a news article¹ and asked it if it wished to maintain its NCND position, identical in respect of section 40 to that adopted by MOJ in this case.
15. The news item reported that on 23 July 2022 the Cabinet Secretary had made the following statement:

'After hearing about media queries relating to the alleged existence of complaints about the foreign secretary's conduct, the cabinet secretary sought confirmation from colleagues that there had been no formal or informal complaints raised with officials about the foreign secretary. We can confirm that neither the Foreign Office nor the Cabinet Office have received any such complaints. Claims that the cabinet secretary has discussed with colleagues 'personal issues' surrounding Ms Truss are not true.' (the 'Statement')
16. The Cabinet Office advised the Commissioner that, in light of the Statement, it could now confirm that no information was held by the Cabinet Office in scope of the request in the period covered by the Statement - i.e. for the time period up to the date of the Statement, 23 July 2022.
17. Further to this, the Commissioner contacted MOJ to explore it amending its position. However, the Commissioner also needed to be satisfied that – in the event that MOJ's position changed to a not held one - no relevant information was held by MOJ. Therefore, the Commissioner asked MOJ – in the event of such a revised position - to provide its own reasoned account and sufficient evidence to enable the Commissioner to reach a decision about whether MOJ does or does not hold information,

¹ <https://www.independent.co.uk/news/uk/politics/liz-truss-tory-leadership-complaints-b2129814.html>

on the (civil standard of the) balance of probabilities, for the time period of Liz Truss's ministerial career at MOJ.

18. MOJ duly provided submissions to the Commissioner. MOJ revised its position from section 40(5) FOIA to confirm that the MOJ did not hold any information in scope of the request. MOJ wrote to the complainant to inform him of its revised position.
19. The Commissioner considers that the scope of his investigation is to establish whether the requested information is held by the MOJ for the time period of Liz Truss's ministerial career at MOJ.

Reasons for decision

Section 1 – information not held

20. The complainant requested information about complaints concerning the conduct of Liz Truss received, considered and formally investigated by MOJ in her role at MOJ.
21. During the course of the Commissioner's investigation, as set out above, MOJ revised its position and stated that it did not hold the requested information, citing section 1 (information not held) of FOIA.
22. Under section 1(1) of FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the information communicated to them if it is held and is not exempt information.
23. In cases where there is a dispute as to the information held by a public authority, the Commissioner will use the civil standard of proof, i.e. the balance of probabilities. In order to determine such complaints the Commissioner must decide whether, on the balance of probabilities, a public authority holds any information which falls within the scope of the request. His remit is not to determine whether information should be held, but only whether, on the balance of probabilities, the requested information was held at the date of the request.
24. Accordingly the investigation will consider the scope, quality, thoroughness and results of searches, and/or other explanations offered by MOJ as to why the information is not held. The Commissioner will also consider any arguments put forward by the complainant as to why the information is likely to be held (as opposed to why it ought to be held).

25. This decision notice deals with the complainant's request for information about complaints concerning the conduct of Liz Truss considered and formally investigated by MOJ in her role at MOJ from July 2016 to June 2017. Simon Case, the Cabinet Secretary, issued the Statement on 23 July 2022, confirming that neither the Foreign Office nor the Cabinet Office had received any such complaints.
26. The complainant set out in his correspondence with the Commissioner that:

"I am trying to stand up suggestions I have heard about Liz Truss' conduct. As a responsible investigative journalist, rather than reporting based on rumour or a single source, I am attempting to stand up whether any official information is held by government departments that could confirm this suggestion."
27. MOJ confirmed to both the Commissioner (and the complainant) that in line with section 1 of FOIA, it did not hold any information within scope of the request.
28. MOJ explained to the Commissioner that it carried out fresh searches and once completed, this found no information in scope of the request.
29. MoJ advised that these searches involved the reinstatement and searching of historical archived mailboxes of previous very senior individuals at MoJ. Active group and individual mailboxes of current senior individuals were also searched. This was because MoJ said that if information were held, it would very likely be held electronically in one of these mailboxes.
30. MOJ explained that information held in the electronic mailboxes was searched and the following search terms were used:
 - a. "Liz Truss" + "Complaint"
 - b. "Liz Truss" + "Sexual harassment"
 - c. "Liz Truss" + "Sexual misconduct"
31. MOJ explained that:

"searches of the inboxes have been carried out by the owners or their immediate teams and has meant that the period from 2016-2017 is covered by a relevant senior official who would be likely to hold such records, if they existed. No information within the scope of the request was found as part of the searches carried out. All reasonable searches have been undertaken and there are no further places to search or people to approach to carry out searches."
32. In addition, MoJ explained that the same searches were carried out in the SharePoint files of a number of very senior individuals at MoJ but no

information was found. MoJ further said: "There is no specific retention or destruction policy for handling records of complaints about ministers, but ... had there been any exchange on the issues raised by the requestor, there would have been evidence thereof in one or more of the searched mailboxes and archives". MoJ also said that, as far as MoJ are aware through comprehensive searches, there is no information which has ever existed and been destroyed in scope of the relevant part of this FOI request.

33. Therefore, MOJ is of the view that it does not hold any information requested for the time period of Liz Truss's ministerial career at MOJ.
34. The Commissioner has carefully considered the points made by the complainant and MOJ.
35. The Commissioner is persuaded that, on the balance of probabilities, MOJ does not hold information falling within the scope of the request. The Commissioner is satisfied that adequate and appropriate searches of MOJ's electronic records were carried out by MOJ to determine whether recorded information within the scope of the request was held.
36. The Commissioner accepts that MOJ's conclusion that it does not hold information falling within the scope of the request is an acceptable one in the circumstances. No evidence is available to the Commissioner which would indicate that MOJ holds recorded information falling within the scope of the request.
37. Having considered all the circumstances, on the balance of probabilities, the Commissioner therefore accepts MOJ's position that it does not hold any recorded information falling within the scope of the request. As such, the Commissioner has decided that MOJ has complied with section 1(1)(a) of FOIA.

Right of appeal

38. 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

39. 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.
40. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Alexander Ganotis
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