

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 August 2024

Public Authority: Department for Education
Address: Sanctuary Buildings
Great South Street
London
SW1P 3BT

Decision (including any steps ordered)

1. The complainant has requested information relating to complaints about the conduct of Liz Truss in her role as Parliamentary Under-Secretary of State at the Department for Education (DFE).
2. DFE 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 DFE 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 4 September 2012 to 15 July 2014, she was Parliamentary Under-Secretary of State for childcare and education, a junior ministerial position in the DFE.
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 the DFE and requested information in the following terms:

“This request concerns the conduct of Liz Truss in relation to her role as parliamentary undersecretary 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. DFE responded on 27 October 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 30 October 2023, the complainant requested an internal review. He argued that section 40 had been misapplied.
11. DFE provided the outcome of that internal review on 14 November 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 14 November 2023 to complain about the way his request for information had been handled. In doing so he made representations related to the position of DFE at that juncture.
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 DFE 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 of Liz Truss's ministerial career up to the date of the Statement, 23 July 2022.
17. Relying on the Statement alone, DFE subsequently changed its position and provided brief submissions to the Commissioner confirming its revised position that it did not hold any such complaints made against

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

Liz Truss during her time as Parliamentary Under-Secretary at the DfE, from 2012-2014 saying:

“The Cabinet Office has previously confirmed in a statement that no formal or informal complaints had been raised with officials about Ms Truss in her Ministerial roles prior to that date. Confirmation that no information is held in scope of the request should therefore be seen in the specific context of this Cabinet Office statement.”

18. However, the Commissioner determined that he needed to be satisfied that no relevant information was held by DFE as per the threshold required by section 1 of FOIA. Therefore, during the course of his investigation, the Commissioner wrote to DFE and asked it to carry out its own searches in order to provide sufficient evidence to enable the Commissioner to reach a decision about whether DFE does or does not hold information, on the (civil standard of the) balance of probabilities, for the time period of Liz Truss's ministerial career at DFE. DFE duly provided submissions to the Commissioner.
19. The Commissioner considers that the scope of his investigation is to establish whether the requested information is held by DFE for the time period of Liz Truss's ministerial career at DFE.

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 DFE in her role at DFE.
21. During the course of the Commissioner's investigation, as set out above, DFE 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 DFE 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 DFE relating to her role at DFE from 4 September 2012 to 15 July 2014. 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 he wished to know:

"what searches DFE has conducted to assure themselves no information is held in relation to her pre-PM roles, or if DFE is relying on Case's statement alone. That would not constitute a reasonable search in and of itself, I would argue. The public interest in knowing if complaints had been made, and most importantly, upheld against a serving prime minister is very clear, especially as she is still playing an active role in public life. "
27. DFE confirmed in its submissions to the Commissioner that "Although we are still confident that any such complaints will have been raised and handled directly with the Cabinet Office, to assist the Commissioner, additional searches were undertaken by the Permanent Secretary's Private Office, covering the period 2012-2014, when Liz Truss held a ministerial post at the DfE." Further, in line with section 1 of FOIA, it confirmed that it did not hold any information within scope of the request.
28. DFE explained to the Commissioner that searches were undertaken by the Permanent Secretary's Private Office. DFE advised that officials confirmed that it was not necessary to contact other Private Offices to undertake a search of their records, as any complaints would have been routed to the Permanent Secretary at the time, and would therefore have been part of the Permanent Secretary's email archives. In addition, DFE said that the Human Resources (HR) department within DfE did not undertake a search of complaints raised, as this was deemed unnecessary, as any complaints made against Ministers would be out of scope of the Civil Service HR casework service, which supports the department's internal complaints process. It was also deemed unnecessary as any such complaints would have been referred directly

from Private Office to the Cabinet Office, for Cabinet Office to consider as appropriate.

29. DFE explained that information held in the electronic email archive was searched and the following search terms were used:
 - a. "Liz Truss" + "Complaint"
 - b. "Liz Truss" + "Sexual harassment"
 - c. "Liz Truss" + "Sexual misconduct"
30. DFE explained that the searches resulted in no records being found.
31. DFE provided the Commissioner with a copy of DFE's formal HR Document and Data Management and Retention Guidance policy. It is not clear which part of the policy DFE wished to direct the Commissioner to. The Commissioner notes that in the Disputes and Discipline Management section the retention period is for 6 years.
32. Therefore, DFE is of the view that it does not hold any information requested for the time period of Liz Truss's ministerial career at DFE.
33. The Commissioner has carefully considered the points made by the complainant and DFE in respect of compliance with section 1.
34. The Commissioner is persuaded that, on the balance of probabilities, DFE does not hold information falling within the scope of the request. The Commissioner is satisfied that adequate and appropriate searches of DFE electronic records were carried out by DFE to determine whether recorded information within the scope of the request was held and that these searches were sufficient in the circumstances of this case. He has also taken into account that Liz Truss's tenure as a minister at DFE ended more than 9 years before the request was submitted and that, if any relevant information had been held, it may have been destroyed in line with the DFE's retention policy and that there is no statutory need to hold this information.
35. The Commissioner accepts that DFE'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 DFE holds recorded information falling within the scope of the request.
36. Having considered all the circumstances, on the balance of probabilities, the Commissioner therefore accepts DFE's position that it does not hold any recorded information falling within the scope of the request. As such, the Commissioner has decided that DFE has complied with section 1(1)(a) of FOIA.

Right of appeal

37. 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

38. 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.
39. 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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