

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 August 2024

Public Authority: Department for Environment Food and Rural Affairs (DEFRA)

Address: 2 Marsham Street
London
SW1P 4DF

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 in the Department for Environment Food and Rural Affairs (DEFRA).
2. DEFRA initially relied on section 40(5B)(a)(i) 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 (information not held) for information falling in scope of the request.
3. The Commissioner's decision is that DEFRA 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 15 July 2014 to 14 July 2016, she was Secretary of State for Environment, Food and Rural Affairs.
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 public authority 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. DEFRA 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)(a)(i) of FOIA.
10. On 2 November 2023, the complainant requested an internal review. He argued that section 40 had been misapplied.
11. DEFRA provided the outcome of that internal review on 28 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 2 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 a similar NCND position, identical in respect of section 40 to that adopted by DEFRA 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. The Commissioner then sought representations from DEFRA on this case, including on revising its position given the time period in which Liz Truss served in DEFRA. DEFRA responded to say that, having reconsidered its position, it no longer wished to rely on section 40(5B)(a)(i) of the FOIA and that, in line with section 1, it confirmed that it does not hold any information within scope of the request. However, the Commissioner also needed to be satisfied that no relevant

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

information was held by DEFRA. In this context, the Commissioner asked DEFRA to provide its own reasoned account and sufficient evidence to enable the Commissioner to reach a decision about whether DEFRA 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 DEFRA. As part of its response DEFRA duly provided its submissions about section 1.

18. The Commissioner considers that the scope of his investigation is to establish whether the requested information is held by DEFRA for the time period of Liz Truss's ministerial career at DEFRA

Reasons for decision

Section 1 – information not held

19. The complainant requested information about complaints concerning the conduct of Liz Truss received, considered and formally investigated by DEFRA in her ministerial role at DEFRA.
20. During the course of the Commissioner's investigation, as set out above, DEFRA revised its position and stated that it did not hold the requested information, citing section 1 (information not held) of FOIA.
21. 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.
22. 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.
23. Accordingly the investigation will consider the scope, quality, thoroughness and results of searches, and/or other explanations offered by DEFRA 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).

24. This part of the decision notice deals with the complainant's request for information about complaints concerning the conduct of Liz Truss considered and formally investigated by DEFRA in her ministerial role at DEFRA from 15 July 2014 to 14 July 2016. 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.
25. The complainant set out in his correspondence with the Commissioner that he wished to know:

“what searches DEFRA has conducted to assure themselves no information is held in relation to her pre-PM roles, or if DEFRA 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. ”
26. DEFRA set out its evidence in support of its revised position on section 1 in submissions to the Commissioner (alongside its confirmation that it had reconsidered its position).
27. DEFRA explained to the Commissioner that searches were co-ordinated - at the time of the original request - by staff within DEFRA's Professional Standards Unit, which is part of the Human Resources (HR) team. In order to carry out the searches DEFRA's third-party casework provider searched their database using key terms. DEFRA explained that this is where such information would be held, as all information relating to HR casework is recorded here. In addition, searches were carried out by staff in DEFRA's Permanent Secretary's Private Office, as complaints about ministers within a department will often be made or escalated to the relevant Permanent Secretary.
28. DEFRA explained that thorough searches were carried out within the teams set out above at the time of the original request. The searches were conducted on the relevant electronic systems using keywords.
29. DEFRA explained that the following search terms were used: “Liz Truss” and “Elizabeth Truss”.
30. DEFRA explained that there were no searches of staff mailboxes or staff consultations - because senior leaders who were in post during the period in question are no longer in post and junior staff would not have had access to such sensitive information. In addition, DEFRA advised that information on personal computers was not searched as the requested information would be highly confidential and would not be shared outside of DEFRA's third-party casework provider and senior

leaders within DEFRA (although it explained that those senior leaders are no longer in post).

31. DEFRA further explained that the third-party casework provider which holds records on DEFRA's behalf destroys its records in line with its records retention policy – namely, the information held about DEFRA casework records are destroyed after 3 years. DEFRA's own formal records management policy states that HR records have "a business life of longer than 7 years" and should not be deleted or destroyed until that period has expired.
32. DEFRA advised the Commissioner that it considered if anyone else could hold any of the information within scope of the request on its behalf. It said "Yes, we have asked our third-party casework provider and the Cabinet Office to search its records and have confirmed they do not hold any information within scope of the request. We are content with their response."
33. Therefore, DEFRA is of the view that it does not hold any information requested for the time period of Liz Truss's ministerial career at DEFRA.
34. The Commissioner has carefully considered the points made by the complainant and DEFRA.
35. Having reviewed the submissions of both parties, the Commissioner is persuaded that, on the balance of probabilities, DEFRA does not hold information falling within the scope of the request. The Commissioner is satisfied that adequate and appropriate searches of DEFRA's electronic records were carried out by DEFRA's third-party case work provider and the relevant parts of DEFRA to determine whether recorded information within the scope of the request was held. He has also taken into account that Liz Truss's tenure as a minister at DEFRA ended more than 7 years before the request was submitted and that, if any relevant information had been held, it may have been destroyed in line with the third party casework provider policy after 3 years or DEFRA's retention policy after 7 years and that there is no statutory need to hold this information.
36. The Commissioner accepts DEFRA'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 DEFRA 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 DEFRA's position that it does not hold any recorded information falling within the scope of the request. As such, the Commissioner has decided that DEFRA 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.

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