

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 September 2024

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 copies of specific email chains. The Department for Transport ('DfT') disclosed a redacted email and denied holding any further information that fell within the scope of the request.
2. The Commissioner's decision is that, on the balance of probabilities, the DfT has identified all of the information that falls within the scope of the request. However, the DfT breached section 10 (timescale for compliance) in failing to disclose all non-exempt information within twenty working days.
3. The Commissioner does not require further steps.

Request and response

4. On 8 March 2024, the complainant wrote to the DfT and requested information in the following terms:

"I'm requesting a number of Gatwick drone e-mails identified in F0021336-2, I've deliberately targeted this request to minimise any work for yourselves.

- 1) I'd like a copy of the e-mail chain "DfT & Aviation Cyber Security – Potential discussion points" this is to put an end to the conspiracy theories about a cyber attack which is in everyone's interest.

19/12/2018 (plus any earlier parts of the chain if this e-mail began before the 19th)

- 2) The e-mail chain: Off Sen: Letter & attachments on Drone Disruption 22/12/2018
- 3) The e-mail chain: Horsehill drone photos 23/12/2018
- 4) The e-mail chain [OFF SEN] Update – Drone incident at London Gatwick Airport [DLM=For-Official-Use-O 24/12/2018

Please include any attachments for the above.”

5. The DfT responded on 10 April 2024. It denied holding the email chains 1 – 3. It confirmed holding email chain 4 but refused to provide it, citing section 27(2) (international relations).
6. The complainant requested an internal review on the same day. They raised two specific concerns:
 - If the DfT had been able to produce the titles for email chains 1 – 3, as this information had been disclosed in response to a previous FOI request, it must be able to access the actual emails themselves;
 - The DfT should redact any information that engages section 27(2), and disclose the rest of email chain 4.
7. The DfT provided the outcome to its internal review on 3 May 2024. It upheld its previous position in relation to emails 1 – 3. It disclosed a copy of email 4, with redactions made under section 27(2).

Scope of the case

8. The complainant contacted the Commissioner on 23 May 2024 to complain about the way their request for information had been handled, specifically that the DfT denied holding email chains 1 – 3.
9. The complainant didn't raise any concerns with the Commissioner about email chain 4, so the Commissioner won't consider it any further.
10. The Commissioner considers that the scope of his investigation is to be to determine whether the DfT is correct when it says it doesn't hold email chains 1 – 3.

Reasons for decision

Section 1 – information held/not held

11. This investigation concerns section 1 of FOIA. Full details of the exemption can be found in the Commissioner's [decision notice support materials](#).

12. The DfT responded to the complainant's specific concerns about why email chains 1 – 3 should be held:

"Further enquiries have revealed that the emails are no longer held on the Department's IT system. A likely reason for this is the files were removed by whichever user had relevant emails within their Outlook account in the time that has elapsed between FOI request referenced FOI0021336-2 and your request submitted on 8 March 2024.

Another likely possibility is that the individuals who may have held the emails are no longer employed by the Department in the time since you submitted the request referenced FOI0021336-2 and this latest one."

13. According to What Do They Know (a platform through which requestor's can make FOI requests), FOI0021336-2 was submitted to the DfT on 26 April 2022 and the DfT's internal review outcome was provided on 11 October 2022.

14. Most government departments use Microsoft Office 365¹ which includes Outlook. The default retention period for emails in an Outlook inbox is one year.

15. It's really important that public authorities ring-fence any information that's subject to an ongoing request for information at the time. This is so no information that's been requested is deleted whilst the request is ongoing.

16. However, there's absolutely no requirement for public authorities to retain all information that's ever related to, or been the subject of a request for information. There's also no requirement for a public authority to extend or amend the retention period of information because it suspects it might be the subject to a request for information in the future.

¹ [Microsoft 365 Guidance for UK Government - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/microsoft-365-guidance-for-uk-government)

17. The Commissioner agrees with the DfT when it explained to the Commissioner:

“There was no business need to keep the emails and, in line with our good records management policy, email accounts of employees who may have left the Department were deleted. Moreover, there was no legal requirement to retain the information.

The ICO recognises that it is neither practical nor desirable for public authorities to indefinitely retain every piece of information created or acquired. Good records management requires authorities to delete information that no longer serves a useful purpose.”

18. If there was no business or statutory purpose to keep the requested information, and it's not the subject of an active request, information should be deleted in line with a public authority's retention policy.
19. The Commissioner notes that the subject of drones is important to the complainant but it's not the Commissioner's role to comment on whether the emails in question should have been retained, only whether they were retained.
20. The Commissioner is satisfied that the searches the DfT conducted (using the keywords of the subjects of the email chains and the dates in the inboxes of individuals' who were named in FOI0021336-2) would have been likely to yield all information within the scope of the request. The searches were logical and targeted and, since the email chains 1- 3 weren't identified, the Commissioner is satisfied, on the balance of probabilities, that this information isn't held. This is because it's since been deleted in line with the DfT's retention policy.

Procedural matters

21. Section 10 of FOIA states that a request must be dealt with as soon as possible and no later than 20 days after the receipt of the request.
22. In disclosing non-exempt information outside of this timescale, the DfT breached section 10

Right of appeal

23. 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

24. 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.
25. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Alice Gradwell
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
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Cheshire
SK9 5AF