

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

### **Decision notice**

**Date:** 23 September 2024

**Public Authority:** Ministry of Justice

**Address:** 102 Petty France  
London  
SW1H 9AJ

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

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1. The complainant requested details of a named Permanent Secretary's specified expenses over a particular time period. The Ministry of Justice (the 'MOJ') cited section 21 of FOIA (information accessible to the applicant by other means). During the course of the Commissioner's investigation, the MOJ clarified that it had originally interpreted the request and the meaning of "expenses" differently, namely as being for expenses claimed by the named individual through the MOJ's expenses system during the period specified in the request. The Commissioner has commented on this aspect in the 'Other matters' part of this notice.
2. At internal review, the MOJ provided the complainant with details of a taxi fare undertaken by the named individual in the specified period. It said that no sustenance expense claims had been made during that time, and that travel booked by its contracted supplier and invoiced directly to the MOJ (as opposed to being claimed as an expense) was out of scope of the request. The MOJ also advised that vendor data does not form part of reporting for expenses. In the course of the Commissioner's investigation, the MOJ confirmed that it was no longer relying on section 21 of FOIA and that it had provided all the information held. The complainant disputed that he had been provided with all of the requested information.
3. The Commissioner's decision is, on the balance of probabilities, that the MOJ does not hold any further information than has been provided.
4. No steps are required as a result of this notice.

## Request and response

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5. On 2 March 2024, the complainant wrote to the MOJ and requested information in the following terms:

“Please provide an extract from your expenses system for all of [name redacted] expenses from 01/09/2022 to 31/05/2023.

Ensure this includes:

1. Item(s) purchased
2. Amount spent
3. Vendor
4. If it is a travel expense, please provide the class of travel booked (e.g. first, business etc.).”

6. The MOJ responded on 3 April 2024 and refused to provide the requested information citing section 21 of FOIA, the exemption for information accessible to applicant by other means. The MOJ provided the applicable URL<sup>1</sup>, explaining how the complainant could filter the information after selecting the appropriate year; this data includes expenses by name and the class of any travel booked.

7. The complainant requested an internal review on 6 April 2024 which included the following:

“You have not provided a full response, not all of the requested information has been provided. Did [redacted] not eat on [their] trips? What airlines/train companies did [redacted] book with?”

8. Following its internal review the MOJ wrote to the complainant on 2 May 2024 and partly revised its position. The MOJ provided details of a taxi fare claimed by the named individual on 29 September 2022. It also confirmed that vendor information is not held for expenses purposes and now said that the class of travel is out of scope. Additionally, the MOJ explained:

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<sup>1</sup> <https://www.gov.uk/government/collections/moj-gifts-hospitality-travel-and-meetings#2022>

"There are no expense claims for sustenance during this time frame, it is an individual's responsibility to claim for sustenance expenses.

Travel is booked via a contracted supplier's online booking system, and directly invoiced to the MOJ, and therefore is not an expense. This information is not within the scope of the FOI request and therefore will not be released."

## Scope of the case

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9. The complainant contacted the Commissioner on 25 May 2024 to complain about the way his request for information had been handled. His grounds of complaint were as follows:

"The public body says it does not hold the information and I disagree, or I believe it holds more information than it has sent, I disagree with the public body's refusal to provide the information I requested. I have made a request for details on expenses. However, this goes above what is already published by the authority as I wish to see travel class and vendor etc".

10. The complainant told the Commissioner he was seeking:

"The information requested, not just a subset they have already published."

11. The Commissioner found it necessary to make further enquiries with the MOJ as its position was unclear.

12. The MOJ responded on 13 September 2024, and said it had initially:

'interpreted the request as relating to all costs associated with [the named individual's] travel booked via MOJ's business travel supplier during the period in question. These include travel costs that are booked in advance through MOJ's business travel provider, CTM, which are paid by the business. As this information is published, a Section 21 response was provided.

However, when an internal review was requested, the official responding interpreted the request to mean expenses that were incurred directly by [the named individual] and reclaimed through the "expenses system". This interpretation would mean that costs incurred through travel bookings made via CTM, would be out of scope of the response.

In the internal review response, the MOJ provided only expenses claimed by [the named individual] through the MOJ expense system for the period in question.

The £7.00 taxi fare forms part of the expenses report as interpreted by the internal review, and that is why it was provided. The £7.00 was disclosed because it was an expense incurred directly by [the named individual].

The fare is published in a later data set due to it not being a cost paid directly by MOJ and it being an expense reclaimed by the individual'.

13. The Commissioner does not consider that the internal review outcome clearly sets out the MOJ's revised interpretation of the request, nor does it explicitly state that the MOJ no longer wished to rely on section 21 of FOIA (see paragraph 8 above). Had it done so, the Commissioner would not have found it necessary to make further enquiries. The Commissioner has commented on this matter further in the 'Other matters' section of this notice.
14. In this case, the Commissioner has considered the MOJ's latest position, namely that the request was interpreted as being for expenses incurred directly by the named individual and claimed by them through the MOJ's expenses system during the period specified in the request. The MOJ has advised the complainant that the only "expense" made by the named individual during the specified time period was for a taxi fare costing £7.00.
15. Therefore, the Commissioner has considered, whether, on the balance of probabilities, any further information is held by the MOJ other than that already disclosed in response to this request.
16. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of FOIA.
17. FOIA is concerned with transparency of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.

## **Reasons for decision**

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### **Section 1 – general right of access**

18. Section 1(1) of FOIA states that:

“Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.”

19. The Commissioner is mindful that when he receives a complaint alleging that a public authority has stated incorrectly that it does not hold any further requested information, it is seldom possible to prove with absolute certainty whether the requested information is held. In such cases, the Commissioner will apply the normal civil standard of proof in determining the case and will decide on the ‘balance of probabilities’ whether more information is held.

20. The Commissioner will consider the complainant’s evidence and arguments. He will also consider the actions taken by the public authority to check whether any further information is held and any other reasons offered by the public authority to explain why no further information is held. He will also consider any reason why it is inherently likely or unlikely that additional information is not held. For clarity, the Commissioner is not expected to prove categorically whether any further information is held; he is only required to make a judgement on whether further information is held on the civil standard of proof of the balance of probabilities.

21. In this case, the MOJ’s final position is that the only “expense” incurred by the named individual during the time specified in the request was a £7.00 taxi fare. This is based on the MOJ’s revised interpretation of “expenses” at internal review.

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24. In this case, the Commissioner recognises that the MOJ's interpretation of the request differed from its initial response to that at internal review. The Commissioner found it necessary to make further enquiries to elicit the MOJ's intended position and, as stated earlier in this notice, he does not feel that the MOJ explained its revised position clearly as part of its internal review.
25. Against this background, the Commissioner recognises that the MOJ may have inadvertently caused confusion regarding its handling of this request, which may have in turn contributed to the complainant doubting whether he has been provided with all the requested information held.
26. The Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the public authority to check whether any information is held, and any other reasons offered by the public authority to explain why no further information is held. He will also consider any reason why it is inherently likely or unlikely that further information is not held. For clarity, the Commissioner is not expected to prove categorically whether any further recorded information is held; he is only required to make a judgement on whether information is held on the civil standard of proof of the balance of probabilities.
27. Therefore, the Commissioner has sought to determine whether, on the balance of probabilities, the MOJ holds any further recorded information within the scope of the request in light of its revised interpretation. Accordingly, he asked the MOJ to explain what enquiries it had made in order to reach the view that it did not hold any further information.
28. In reply, the MOJ said:

'For the avoidance of doubt, we have interpreted the request as meaning "all expenses", and not just those mentioned. As part of the original FOI request and internal review, a search was

completed of internal databases by SSCL<sup>2</sup> who manage the MOJ payroll and expenses data. SSCL therefore provided an expense report as requested, which was documented within the internal review response.'

29. The MOJ explained that electronic expense reports were checked by SSCL for the date range selected within the original request. The MOJ confirmed there would be no other expenses other than those published, but caveated this with stating that there can be a delay between the incurring of expenses and their publication due to claims for expenses being submitted at a later date.
30. The Commissioner understands that the taxi fare was not publicly available online at the time of the request which is why it was provided at internal review and, given the revised interpretation of the request at that stage, section 21 of FOIA was no longer applicable. Although this is not clear to the Commissioner from the wording of the internal review, he has since had confirmation from the MOJ that this is its position.
31. The MOJ said the information would be held in electronic form, explaining that:

"All records are held electronically on SSCL systems as expense claims are uploaded via the internal system SOP (single operating platform). Search terms used by SSCL to collect the data included name and national insurance number. The data was then filtered down to the dates that the requester had selected. All records are held digitally on supplier systems.

Adequate searches were completed, and information found within was deemed to be already accessible in the public domain. All MOJ HR [Human Resources] records are to be kept for 7 years and then destroyed in accordance with the Human Resources Records Retention and Disposition Schedule (HR RRDS) published on GOV.UK here<sup>3</sup>."

32. The MOJ told the Commissioner that there is a business purpose for which the requested information should be held, namely that expense information such as subsistence claims are held for spending reconciliation and NAO [National Audit Office] and HMRC [His Majesty's Revenue and Customs] audit purposes for seven years.

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<sup>2</sup> <https://sscl.com>

<sup>3</sup> <https://assets.publishing.service.gov.uk/media/64785863b32b9e000ca95fe7/human-resources-records-rrds.pdf>

33. In terms of statutory requirements upon the MOJ to retain the requested information, the MOJ said it is obliged to comply with the following pieces of legislation:

- “- Data Protection Act 2018 (DPA) and the UK General Data Protection Regulation (GDPR) which requires us to protect the rights of an individual (data subject).
- Freedom of Information Act 2000 (FoIA) and the Environmental Information Regulations which sets out the types of information that we must provide to any requestor, as well as the types of information that should not be disclosed.
- Public Records Act 1958 and amending legislation which sets out the governance for managing the corporate and public record.
- Copyright, Designs & Patents Act 1988 which sets out the framework for reusing information that was created by someone else.”

## Conclusion

34. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed the information that a complainant believes it must hold, it is seldom possible to prove with absolute certainty that it holds no further relevant information. However, as set out in the paragraphs above, the Commissioner is required to make a finding on the balance of probabilities.

35. In this case, the Commissioner recognises that the original interpretation of the request differed to that at the later internal review stage which has, in his view, added complexity.

36. The MOJ confirmed that the only requested data that is not published is the ‘vendor name’ as this does not form part of its expense reporting. It said that all travel is booked through CTM which is the MOJ’s contracted supplier for business travel.

37. In its submissions to the Commissioner, the MOJ explained that:

“All information regarding expenses can be found by using a google search of ‘MOJ Senior Leader expenses’, then clicking ‘Ministry of Justice data: ministers’ hospitality, gifts, travel and meetings.’ There are published data spreadsheets for each financial quarter which list in name order any expense claims made by senior leaders and the amount including what the expense was for.”



38. The MOJ also said:

“The data is published on a quarterly basis per financial year, so for the purpose of the request, the data for 1st September 2022-31st May 2023 will have been published in Q[Quarter]4 of FY[Financial Year]2022-23 and Q2&3 of FY2023-24.

As submissions of expenses claims can be delayed, there may be some delay between the expense being incurred, and it appearing on the above link. In this instance the information [sic] accessible and so exempt by way of section 21 of the FOIA was accurate based on the information held by the MOJ at the time the request was made.”

39. The Commissioner is mindful of the MOJ’s approach to this request (primarily set out under paragraph 15 of this notice). He has reviewed the information available at the URL and is satisfied that this contains the ‘expenses’ related information requested by the complainant. Based on the accepted revised interpretation of the request, the Commissioner acknowledges that the taxi fare of £7.00 was not available online at the time of the request and was therefore provided by the MOJ at internal review.

40. Having considered the explanation provided by the MOJ, whilst also taking account of the complainant’s view, the Commissioner is satisfied that the MOJ undertook appropriate searches in order to ascertain whether or not it held any further relevant recorded information. In conclusion, based on the later interpretation of the request and on the civil standard of the balance of probabilities, the Commissioner finds that no further recorded information within the scope of the request is held by the MOJ.

## **Other matters**

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41. The Commissioner accepts that there is more than one objective reading of the request in this case. He would remind the MOJ that it should have considered clarifying the request with the complainant prior to simply reinterpreting the request at internal review. This would have enabled the complainant to specify exactly what information he was seeking by using the term “expenses”. Furthermore, the MOJ should have made its position regarding the revised interpretation and the removal of section 21 of FOIA clear in its internal review result.

42. If the complainant has a broader interpretation of “expenses” and is instead seeking all costs incurred/generated by the named individual during the dates specified, the Commissioner is satisfied that the

additional information can be accessed via the URL previously provided by the MOJ as part of its substantive response.

43. Although ultimately not relevant to the decision given the MOJ's revised interpretation of the request, the MOJ provided some details during the course of the Commissioner's further enquiries, which the complainant may find helpful:

"The published data, which the requester was given the link to, provides the type and class of travel, the duration of the trip, the destination and purpose for travel as well as the cost. The published data is also segmented into quarterly data sets for each financial year so can be filtered to the specific dates required. The only data that is not published which was part of the request is the Vendor name as it doesn't form part of the expense reporting. All travel is booked through CTM which is the MOJ contracted supplier for business travel.

The published data provides all expenses including the class of travel, the destination, the duration, and the cost. The MOJ policy on rail travel is defaulted to standard class; first class is prohibited but allowed only in specific circumstances and with the correct approvals. The MOJ can access data on business travel such as hotel bookings and travel class for rail and air through the business travel provider CTM."

## **Right of appeal**

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44. 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)

45. 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.
46. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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