

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 November 2024

Public Authority: Ministry of Housing, Communities and Local Government

Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant has requested information about 'New Burdens' funding for two public authorities. The Ministry of Housing, Communities and Local Government ("the MHCLG") denied that the information was held.
2. The Commissioner's decision is that no information is held.
3. The Commissioner does not require further steps.

Request and response

4. On 22 April 2024, the complainant wrote to the MHCLG and requested information in the following terms:

“Under the FOIA, I would like to request the following information: Since 1st January 2023, please provide details of any legislation has triggered New Burdens funding from DHLUC to the councils listed below, and for each different legislative new burden, how much funding have they been offered or given to cover this new burden?

1 Gloucestershire County Council
2 Cheltenham Borough Council”

5. The MHCLG responded on 21 May 2024. It stated that the information was not held.
6. Following an internal review the MHCLG wrote to the complainant on 2 July 2024. It maintained that the requested information was not held.

Reasons for decision

Section 1 – General right of access to information

7. 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.
8. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
9. In other words, in order to determine such complaints, the Commissioner must decide whether on the balance of probabilities a public authority holds any – or additional – information which falls within the scope of the request (or was held at the time of the request).

The Commissioner's investigation

10. The information sought by the request relates to extra funding that is made to public authorities under the 'New Burdens doctrine'¹. This funding is to allow for any new responsibilities that the public authorities hold, such as from new legislation, or changes in how they must apply existing legislation.
11. The MHCLG has explained to the Commissioner that this funding is incorporated into wider financial settlements and is not a separate payment.

¹ <https://www.gov.uk/government/publications/new-burdens-doctrine-guidance-for-government-departments/new-burdens-doctrine-guidance-for-government-departments#responsibility-for-new-burdens>

12. The MHCLG has further explained that "Section 2.5 of the New Burdens Doctrine states that funding for new burdens can take various forms, such as increases in general or specific grants, adjustments to grant distribution, or other mechanisms like increased charging powers. Because of this flexibility, New Burdens payments are often incorporated into wider financial settlements and not recorded as standalone figures at local authority level."
13. The MHCLG has confirmed that it has established its position by conferring within those officers most familiar with the subject (the New Burdens team).
14. The MHCLG has further confirmed that there is no business or statutory reason for which it should hold the information.
15. The Commissioner has considered the MHCLG's explanation and understands that the funding is not calculated, or recorded, as a separate amount based on legislation and public authority. The Commissioner also understands that there is no business or statutory reason for the MHCLG to do so.
16. There is no evidence available to the Commissioner that suggests the MHCLG's position is incorrect.
17. The Commissioner is therefore satisfied, on the balance of probabilities, that no information is held.
18. As such, the Commissioner has decided that the MHCLG has complied with section 1 of FOIA.

Right of appeal

19. 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

20. 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.
21. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Daniel Perry
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