

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

### **Decision notice**

**Date:** 18 July 2019

**Public Authority:** Department of Finance

**Address:** Room 26 Dundonald House  
Upper Newtownards Road  
Belfast BT4 3SB

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

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1. The complainant has requested information from the Department of Finance (DoF) in relation to business related e-mails. The DoF informed the complainant that it does not hold information within the scope of his request.
2. The Commissioner's decision is that the DoF does not hold any information within the scope of the complainant's request and has therefore complied with section 1 of the FOIA. Therefore the Commissioner requires no steps to be taken.

### **Request and response**

3. On 21 December 2018 the complainant made a request for information to the DoF. Most of that request was for information which constituted the complainant's own personal information and was treated accordingly by the DoF as a Subject Access Request (SAR). However, part of the complainant's request, as outlined below, was a request for information under the FOIA:-

"a copy of all business related e-mails which have been issued to you during the period of July 2018 to the present by the individuals named in Subject Access Request reference [details redacted]."

"If [name redacted] or [name redacted] have deleted/destroyed e-mail correspondence please access the deleted/destroyed correspondence

- from my work email account [\[details redacted\]](#) and provide confirmation of the e-mails deleted/destroyed by the aforementioned.”
4. The DoF responded to the FOIA element of the complainant’s request on 31 January 2019, stating that, in relation to business related e-mails, it could confirm that the requested information was not held by the DoF.
  5. In relation specifically to the part of the request regarding deleted/destroyed e-mails, the DoF stated that it had followed the guidance of the Commissioner and of the Cabinet Office in relation to access to deleted e-mails, and further stated that it implemented a three month rule in relation to deleting e-mails, which complies with best practice in Records Management.
  6. The complainant sought an internal review on 6 February 2019 of how his request had been handled. The DoF provided a response to that request for internal review on 18 February 2019. The reviewer upheld the original findings.

### **Scope of the case**

7. The complainant contacted the Commissioner on 20 February 2019 to complain about the way his request for information had been handled.
8. The Commissioner has carefully considered the DoF’s handling of the complainant’s request, in particular whether it holds information within the scope of the complainant’s request.

### **Reasons for decision**

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9. Section 1(1) of the 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.”*

10. In scenarios where there is some dispute between the public authority and a complainant as to whether the information requested is held by the public authority, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of proof, which is the balance of probabilities. In other words, 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 (or was held at the time of the request).
11. The Commissioner wrote to the DoF for its explanation of the efforts made by it to locate information falling within the scope of the complainant's request. The Commissioner's questions were focused on the DoF's searches conducted in relation to the complainant's request, and whether any of the information falling within the scope of the requests was held at one time but either deleted or destroyed.
12. The DoF has informed the Commissioner that, in order to determine if there was any business related correspondence between the individuals and the complainant, the individuals carried out a search of their mailboxes to identify relevant correspondence within the scope and timespan of the request.
13. The DoF stated that no correspondence information relevant to the scope of the request was held in the mailboxes i.e. there were no business related emails to or from the individuals and the complainant. To determine any business related correspondence between the complainant and individuals which may have been retained for business purposes in HPRM would require an extensive search of HPRM. The request did not specify a subject matter i.e. correspondence from/to the individuals and the complainant, on a subject of information, and therefore no appropriate parameters could be applied to enable a search to be carried out in HPRM.
14. The DoF has also informed the Commissioner that there is no formal record or reports held of emails deleted by an individual, or emails automatically deleted from their mailbox in line with DoF's Records Management Policy. The DoF is committed to openness and transparency and has provided the Commissioner with a copy of its Records Management Policy.
15. The DoF states that it is difficult for it to confirm if there is a business purpose for which the requested information should be held without knowing what the subject matter of the information is. The Retention and Disposal schedule sets out the categories of information which should be retained for business purposes and their final action. Therefore if the information is relevant to what is set out in the DoF's

Retention and Disposal Schedule there would be a requirement for the information to be retained. As the complainant has not specified a subject of what the business related information is, the DoF is unable to set out any specific statutory requirements for why the information should be retained.

16. The DoF states that it is unable to confirm if there is information held that is similar to that requested without knowing what the complainant is seeking. The Business Area sought clarification from the requester on receipt of his initial request and no business related correspondence was specified.
17. Whilst the Commissioner recognises that the complainant does not consider that the DoF has fulfilled his request, the DoF has provided a clear explanation of the searches that underlay its response. No evidence is available to the Commissioner which would indicate that the DoF's searches were insufficient, or that it holds recorded information falling within the scope of the complainant's request. The DoF has also provided the complainant with considerable advice and assistance and the opportunity to clarify his request.
18. In light of the above, the Commissioner is satisfied, on the balance of probabilities, that the DoF does not hold recorded information within the scope of the complainant's request. The Commissioner's decision is, therefore, that the DoF has complied with section 1 of the FOIA.

## Right of appeal

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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: 0300 1234504  
Fax: 0870 739 5836  
Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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.

**Signed .....**

**Deirdre Collins**

**Senior Case Officer**

**Information Commissioner's Office**

**Wycliffe House**

**Water Lane**

**Wilmslow**

**Cheshire**

**SK9 5AF**