

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 April 2024

Public Authority: Department for Business and Trade
Address: Old Admiralty Building
London
SW1A 2DY

Decision (including any steps ordered)

1. The complainant has requested copies of letters issued to Secretary of State Kemi Badenoch by the Cabinet Secretary or Propriety and Ethics Team at the Cabinet Office. The Department for Business and Trade ("DBT") stated that it did not hold information within scope of the request.
2. The Commissioner's decision is that DBT does not hold information within scope of the request.
3. The Commissioner does not require further steps.

Request and response

4. On 8 November 2023, the complainant wrote to DBT and requested information in the following terms:

"Please provide a copy of any letters issued to the secretary of state, Kemi Badenoch, by the cabinet secretary or the Propriety and Ethics Team, setting out any matters from which Kemi Badenoch should recuse themselves owing to a conflict of interest.

Please provide information from 1st September 2022 to date."
5. DBT responded on 23 November 2023. It stated that it does not hold information within scope of the request.

6. On 6 December 2023 the complainant requested an internal review. The complainant asked DBT to provide them with advice and assistance in accordance with its duties at section 16 of FOIA.
7. Following an internal review DBT wrote to the complainant on 12 December 2023. It stated that it was maintaining its position that the requested information was not held. DBT advised the complainant that the Cabinet Office is the policy holder of Ministerial Conflicts of Interest and that they should contact the Cabinet Office FOI Team for further information regarding how Ministerial Conflicts of Interest are communicated.

Scope of the case

8. The complainant contacted the Commissioner on 13 December 2023 to complain about the way their request for information had been handled.
9. The complainant outlined their grounds of complaint in the following terms:

"I am writing to appeal against the decision by the Department for Business and Trade that it holds no information on recusal letters issued to its secretary of state setting out what matters that the Propriety and Ethics Team has advised that minister to recuse themselves from, based on interests declared during their vetting process.

The department argues that it holds no information, and upheld this position at internal review.

Having discussed the matter with former members of the PET team, I am told that the general process for ministerial vetting is as follows.

A minister submits a list of their interests to the PET team for review. The minister then receives advice from the PET team on what actions to take, such as recusals, to avoid any perceptions of a conflict of interests in the exercise of their duties as minister.

The most obvious way for that information to be communicated with the minister in question would be by letter or email.

The department says it does not hold a copy of any letter, suggesting in its advice that I contact the Cabinet Office.

It is very unlikely no information is held by the department. Even if the records in question originated with the Cabinet Office, the department will inevitably hold a copy of such a letter for its own business purposes,

such as ensuring it avoids conflicts in relation to any quasi-judicial decisions made by the minister.

There is a very clear public interest in transparency about such advice. It is often the case that occasions where ministers have recused themselves will only come to light when journalists ask a department how an apparent conflict of interest has been handled.

This process, however, is needlessly reactive, and there seems no good reason that where a conflict has been identified in relation to a minister, that this should not be a public record.

It is also the case that the publicly disclosed declaration of ministerial interests list is at best partial.”

10. The Commissioner considers that the scope of his investigation is to determine whether, on the civil standard of the balance of probabilities, DBT holds information within scope of the request. For clarity, the Commissioner is not expected to prove categorically whether DBT holds the requested information.

Reasons for decision

11. Section 1(1) of FOIA states that a requester is entitled to be informed whether a public authority holds information of the type described in their request and, if so, have that information communicated to them.

DBT's position

12. In a letter to the Commissioner DBT explained that the officer that had conducted the initial searches on receipt of the request no longer worked for the department, therefore it was unable to consult with them directly. However, DBT confirmed that the Secretary of State, Permanent Secretary and Ministerial Operations team were contacted to thoroughly search email inboxes, calendars and OneNote workbooks, as these were the most likely places for information to be located, were it held. The search terms used were: “Kemi Badenoch AND propriety and ethics”, “kemi Badenoch AND recuse”, “Kemi Badenoch AND Mitigations” “Kemi Badenoch AND conflict of interest” and, “Kemi Badenoch AND interests”. DBT confirmed that any information, were it held, would have been held as an electronic record and that the Cabinet Office would also have held a copy as there is a Ministerial and Permanent Secretary responsibility to consider any interests that could result in a conflict of interest between the Minister and Departmental Portfolios. DBT stated that the Cabinet Secretary and Propriety and Ethics Team do not send out physical letters to individual Secretary of States or Ministers setting out matters in which they should recuse themselves owing to conflict of

interests. DBT stated that the Permanent Secretary's office has a correspondence tracker, and if the Department held the information it would have been submitted to the Permanent Secretary, Special Advisers and Secretary of States office. There are no records of this correspondence on the tracker or in email inboxes. The offices do not delete emails and any letters would be stored on internal electronic systems.

13. DBT set out the department's formal records management and retention policy and explained that it does not currently have a specific retention period for declaration of interest forms, but it has a retention period of 15 years for similar types of information such as gifts and hospitality registers and ministerial transparency returns.

14. DBT also explained the following process for recusals:

"The process referred to by the requestor is not the official recusal process; and specifically, there were no mitigations agreed between the SoS and relevant parties.

The Department further confirms that when a new Minister is appointed, the ministerial private office will consider any necessary steps for their appointment including working with the Permanent Secretary's office on a Ministerial declaration of interest form. If there are no conflict of interests, as in this case, then there is no requirement to recuse themselves or take mitigations. These conversations are undertaken between the Departmental Permanent Secretary and Minister. The Department would inform the Cabinet Office Independent Advisors on any mitigations taken if they are required.

The Department, has sourced and shares the official Cabinet Office guidance which the Department follows from the Cabinet Office Ministerial Code starting from 7.1¹ and outlines the process which Ministers undertake to declare any conflict of interests."

The Commissioner's position

15. The Commissioner considers that, on the civil standard of the balance of probabilities, DBT does not hold information within scope of the complainant's request.

16. On review of the searches and consultations conducted by DBT, the Commissioner considers that the measures taken were reasonable and

¹ <https://www.gov.uk/government/publications/ministerial-code/ministerial-code#ministers-private-interests>

proportionate for the purposes of identifying information within scope of the request. The searches described are comprehensive and were directed to the appropriate places, and he takes the position that they would have returned any information sought by the request, were it held.

17. Furthermore, he considers that the explanation provided by DBT, as outlined at paragraph 14, suitably details why the requested information is not held.
18. The Commissioner is therefore satisfied that DBT has complied with section 1(1) of FOIA. He does not require any steps.

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.

Jonathan Slee
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
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