

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 January 2012

Public Authority: Department for Energy and Climate Change
Address: 3 Whitehall Place
London
SW1A 2AW

Decision (including any steps ordered)

1. The complainant made a request to the Department for Energy and Climate Change (DECC) for a list of all individuals, or any other entities, that have received copies of a particular letter from Chris Huhne to George Osborne. The DECC provided the complainant with a list of individuals and entities to which it had distributed the letter to. The complainant does not consider that the DECC has provided him with all of the information it holds relevant to this request.
2. The Commissioner's decision is that the DECC has provided the complainant with all of the information it holds relevant to the scope of this request.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 7 October 2010 the complainant requested the following information:
"1) Please provide me with a copy of George Osborne's reply to Chris Huhne's letter.
2) Please provide me with a list of all individuals, or any other entities, that have received copies of Chris Huhne's letter either at the time that it was written, or since then."
5. The DECC provided a response to the complainant on 26 October 2010. In relation to point 1 of the request it explained that this information was not held. In relation to point 2 of the request it withheld the

information on the basis of the exception contained at regulation 12(4)(e) of the Environmental Information Regulations (EIR) to the parts of the information which was environmental information and in relation to the parts of the information which was not environmental information it applied section 35(1)(b) of the Freedom of Information Act (FOIA).

6. The complainant requested an internal review of the DECC's decision to withhold the information it held under regulation 12(4)(e) and section 35(1)(b) on 27 October 2010. On 5 January 2011 the DECC wrote to the complainant with the details of the result of the internal review it had carried out. It upheld its original decision.
7. During the course of the Commissioner's investigation, on 16 August 2011, the DECC disclosed the requested information to the complainant.
8. The complainant remained dissatisfied and considers that the DECC holds further information relevant to the scope of the request.

Scope of the case

9. The complainant contacted the Commissioner to complain about the way his request for information had been handled. The Commissioner will consider whether there is any further information held by the DECC relevant to point 2 of the request.

Reasons for decision

10. Section 1(1)(a) of FOIA states that, any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request.
11. In this case the DECC reiterated that the complainant requested any information held by the DECC about the distribution list of a letter. It explained that as would be standard practice for such correspondence, the letter had been sent to all recipients by email. It said that a search of the email accounts of relevant officials enabled the DECC to identify the letter in question. It said that details of the distribution list for the letter were extracted from the covering email sent. This provided the information that had been requested by the complainant, and which has been provided to him. It confirmed that the final paragraph of the letter in question also listed all the recipients of the letter. This allowed the

information described above (the electronic distribution list) to be verified.

12. It said that a further search of the DECC's Electronic Records Management System (known as Matrix) and the email account and local records of relevant officials confirmed that no further information in the scope of the request was held. It confirmed that the DECC did not hold any recorded information about further individuals who had been sent copies of the letter and officials in the DECC had not provided copies of the letter to wider distribution lists.
13. The DECC said that the searches therefore included both information held locally and in email accounts, and in the DECC's Electronic Records Management System. It explained that the search terms used by the DECC included the message title and the title of the committee report. It said that if any further information were held it would be held electronically as the official communication was handled electronically.
14. The DECC explained that it maintains records in accordance with the DECC records management policy. Final records and any emails that are part of the final record are stored electronically (in Matrix), unless classified above the limits of the electronic system, in which case they are held in paper files. Ephemeral information such as drafts and inputs to documents are not normally retained once the final version is agreed as DECC has no business reason to keep this information. Emails not filed in Matrix are stored for up to 12 months, and then deleted in accordance with the DECC's email management policy. It provided the Commissioner with the DECC's policy on storing corporate records. It confirmed that as an official 'write round' letter, prior to the submission of a Government Response to a Parliamentary Committee, the letter sent from the DECC's Secretary of State was an official record and is held in accordance with the DECC's records management policy. The recipients of this letter are listed within this letter, and it would therefore continue to be held as an official record. It said that the DECC has not deleted any records stored in Matrix or destroyed any information held in paper files. All relevant records in relation to this request have been searched and the information supplied.
15. The complainant argued that as the letter had been referred to by the chairman of the House of Commons Science and Technology Select Committee, the DECC must have further recorded information about further recipients of the letter as the Chair of the Select Committee was not on the list of recipients which the DECC had disclosed to the complainant.
16. The DECC confirmed that the information sent to the complainant on 16 August 2011 was all of the recorded information held by the DECC

relevant to the request. It said that the DECC was aware that the Chair of the House of Commons Science and Technology Select Committee had made reference to the letter in September 2010. However it confirmed that the DECC does not hold any information on how the Chair received the letter. It clarified that this did not mean that the Chair's access was unauthorised but the DECC does not hold any record of having authorised its release by any other party.

17. The Commissioner became aware and was provided with evidence to show that the withheld letter was available on UK.Parliament at the time of the request. The Commissioner therefore asked the DECC whether it had any recorded information which would refer to the letter being distributed onto this website. The DECC said that it held no recorded information which would explain how the letter was received by the Parliamentary Committee however it explained that it would appear that it was published on UK.Parliament in error.
18. After considering the explanation provided by the DECC the Commissioner considers that on the balance of probabilities there is no further information held by the DECC relevant to the scope of the request.
19. In this case the DECC did not provide the complainant with the information it held relevant to the scope of the request within the statutory time for compliance. The DECC therefore breached section 1(1)(b) and section 10(1) in its handling of this request.

Other matters

20. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his *'Good Practice Guidance No 5'*, published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by FOIA, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner is concerned that in this case, it took over 40 working days for an internal

Reference: FER0377841

review to be completed, despite the publication of his guidance on the matter.

Right of appeal

21. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

22. 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.
23. 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

Pam Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF