

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 July 2020

Public Authority: Department for International Development
Address: 22 Whitehall
London
SW1A 2EG

Decision (including any steps ordered)

1. The complainant submitted a request to the Department for International Development (DFID) seeking information about a gold mining project in Armenia. DFID explained that it held two documents falling within the scope of the request, both of which were in the public domain, and it provided the complainant with a link to both. The complainant questioned whether DFID held further information falling within the scope of the request.
2. The Commissioner's decision is that on the balance of probabilities DFID does not hold any further information falling within the scope of the request beyond the two documents already located.
3. No steps are required.

Request and response

4. The complainant submitted the following request to DFID on the 31 October 2019:

'I am writing to you under the Freedom of Information Act 2000 to request the following from the Department for International Development:

- a list of internal communications, briefing documents, reports or memos relating to Lydian International's Amulsar gold mining project in Armenia, which have been held or created by the UK Department for International Development over the period 2014-2019.

If the Department does hold information of this nature, please provide the information in the form of a list, including the date on which the document was created or received, the nature/purpose of the document, and whether the document was created internally or provided by an external partner. If the latter, please indicate who the partner is.'

5. DFID contacted him on 28 November 2019 and explained that it needed additional time to consider its response to the request.
6. It provided him with a substantive response to his request on 9 December 2019. It explained that it did not hold any information falling within the scope of the request.
7. The complainant contacted DFID on 10 December 2019 and asked it to conduct an internal review of its position and outlined why he considered it likely that some information would be held.
8. DFID informed him of the outcome of the internal review on 10 January 2020. It explained that it had conducted further searches of its records and located two reports falling within the scope of the request, both received from external partners namely the European Bank for Reconstruction and Development (EBRD) and the African Development Bank Group (AFDB). DFID explained that both reports were in the public domain and provided the complainant with a link to each.

Scope of the case

9. The complainant contacted the Commissioner on 14 January 2020 in order to complain about DFID's handling of his request. He argued that it was likely that DFID would more information falling within the scope of his request than the information located at the internal review stage. His grounds of complaint to support this position are set out below.

Reasons for decision

Section 1 – Right of access to recorded information

10. In cases such as this where there is some dispute as to whether information falling within the scope of the request is held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
11. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any further information which falls within the scope of the request beyond that already located.
12. In applying this test the Commissioner will consider the scope, quality, thoroughness and results of the searches, or other explanations offered as to why the information is not held.

The complainant's position

13. The complainant noted that DFID is responsible for the UK's relationship with the European Bank for Reconstruction and Development (EBRD), a major investor in Lydian International. He explained that given the EBRD's financial commitment to the mine in question, and the potential for serious environmental impacts, it is difficult to believe that DFID holds nothing more substantial than the two documents identified at the internal review stage.
14. He explained that he wanted to be sure that DFID held no further information on the matter because if it does not it could appear that a serious breach of departmental oversight of a British-funded financial institution has taken place. He therefore suggested that DFID checked the relevant records held by the unit responsible for the UK's relationship with the EBRD once again, or any other relevant unit, and confirm that it holds no further documents on this matter.

DFID's position

15. As part of her investigation of this complaint the Commissioner asked DFID to explain the nature of the searches that it had undertaken to locate information falling within the scope the request, to clarify the nature of DFID's relationship with the EBRD and to explain whether there was a business reason why DFID would hold further information falling within the scope of this request.

16. In response DFID explained that when it initially received the request its Information Rights Team conducted a search of its corporate electronic document and records management system (Vault) for the period 1 January 2014 to 31 October 2019 using the search terms set out below.

DFID noted that the Information Rights Team have access to all areas of Vault so the search would have been a comprehensive view for the whole of DFID.

The search terms used were as follows, with the number of documents located recorded in brackets:

- 'Amulsar' (118 items contained the name)
 - 'Lydian International & Armenia' (41 items contained both terms)
17. DFID explained that after removing all duplication, the remaining 127 items were reviewed in order to identify if any were in scope of the terms of the request for 'internal communications, briefing documents, reports or memos' relating to the project. DFID explained that no relevant information was identified as a result of that review as the items were made up of the following examples: external communications, excel spreadsheets and 44 items that were linked to a previous FOI request submitted to it by the complainant (which included around 40 versions of DFID's FOI live list spreadsheet which contained the wording of that request).
18. DFID explained that it also contacted a member of staff who has engagement with mining companies who carried out further searches of Vault, emails and his team's workspaces and he also found no relevant information. However, DFID explained that this member of staff confirmed that as DFID does not fund any projects or have a presence in Armenia there would be no specific department to contact to carry out further searches. At this point DFID issued its initial response stating that it did not hold the information requested.
19. In response to the complainant's request for an internal review another member of the Information Rights Team carried out a further search of Vault using the same search terms. A further review with similar results identified two reports that were found to be in scope of the request that were initially not considered relevant. These were the two documents identified in the internal review response, namely:
- The [EBRD Memorandum - Project Complaint Mechanism Annual Report 2014](#) which was sent to DFID and HM Treasury by the EBRD along with various other documents relating to EBRD's work in general to enable DFID to carry out its regular assessment of UK funded Multilateral Organisations namely its [Multilateral Aid Review](#).

- The [Glass Half Full report](#) which was requested by DFID from the African Development Bank (AfDB) as part of an assessment the [Independent Review Mechanism](#) of the African Development Bank Group.
20. DFID explained to the Commissioner that neither of the reports were used to make any assessment of the Amulsar gold mining project in Armenia or of the International Finance Cooperation.
 21. DFID explained that it then checked with its International Relations Department who lead on DFID's work with the multilateral development banks. After they had searched their emails and workspaces they confirmed that they did not hold any further information other than the two documents held in Vault, ie the two documents identified in the internal review response. DFID explained that they also stated that given that HM Treasury were responsible for the UK's Government's relations with the EBRD and that DFID has not funded any projects or had a presence in Armenia for over a decade it would be unlikely that DFID would hold information relevant to the request.
 22. DFID also explained to the Commissioner that it had found no record of any further relevant information ever having been deleted or destroyed by DFID.
 23. It in its response DFID emphasised that HM Treasury is the lead government department for the UK Government's relationship with the EBRD. It explained that the Chancellor of the Exchequer is the UK Governor of the EBRD and sits on the Board of Governors, its highest decision-making body (the Secretary of State for International Development is the Alternate Governor). DFID explained that in practice, day to day oversight of EBRD is delegated to the Board of Directors, where the UK is represented at the EBRD's HQ by a senior Treasury official on secondment to the EBRD.
 24. DFID explained that given that DFID's Secretary of State had no role to play other than to stand in for the HM Treasury representative, there would be no business reason for DFID to hold any relevant information other than that linked to the more general Multilateral Aid Review mentioned above as it was not the department responsible for the UK's relationship with EBRD.

The Commissioner's position

25. The Commissioner is satisfied that on the balance of probabilities DFID does not hold any further information falling within the scope of the request. In reaching this view she has taken into account the nature of the searches undertaken by DFID which she considers to be sufficiently

focused and logical to locate any relevant information. In particular, the Commissioner notes that DFID's searches included its International Relations Department who lead on DFID's work with the multilateral development banks. Furthermore, the Commissioner notes that it is HM Treasury, rather than DFID, that is responsible for the UK's relations with the EBRD. Therefore, she accepts that there would be no obvious business need for DFID to hold information of the nature requested.

Right of appeal

26. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

27. 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.
28. 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

Jonathan Slee
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