

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

### **Decision notice**

**Date:** 5 October 2021

**Public Authority:** Foreign, Commonwealth & Development Office  
**Address:** King Charles Street  
London  
SW1A 2AH

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

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1. The complainant submitted a request to the Foreign and Commonwealth Office (FCO, now part of the Foreign, Commonwealth & Development Office, FCDO) seeking information about a 'Corporate and Programme Effectiveness Team' set up by the Department for International Development. The FCO explained that it did not hold any information falling within the scope of the request. The complainant argued that the FCO was likely to hold such information.
2. The Commissioner's decision is that on the balance of probabilities the FCO did not hold any information falling within the scope of the request.
3. No steps are required.

## Request and response

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4. The complainant submitted the following request to the FCO<sup>1</sup> on 16 June 2020:

*'From December 2002 till June 2018 I was under FCO employment contract working for DFID.*

*In 2017 a DFID Corporate and Programme Effectiveness Team (CPET), was set up in New-Dehly [sic], India.*

*In 2018 I was told that because of the CPET my position was redundant.*

*I recall in 2017 the ToRs (terms and references) for the CPET was circulated, including for the staff based in the British Embassy in Dushanbe.*

*In line with the FOI Act, I request :*

- A. A copy of the original ToRs for the CPET,*
- B. Copies of all changes to the CPET ToRs,*
- C. Copies of correspondence on the CPET ToRs and the changes, including suggestion for changes to the CPET [CPET] ToRs.'*

5. The FCO responded on 3 July 2020 and explained that it did not hold any information falling within the scope of this request.
6. The complainant contacted the FCO on 3 July 2020 and asked it to conduct an internal review of this response. The complainant explained why he believed the FCO would hold information falling within the scope of his request.
7. The FCDO (following the merger of the FCO and DFID) informed the complainant of the outcome of the internal review on 6 October 2020. The FCDO explained that as the request was made to the former FCO, i.e. prior to the creation of the FCDO, the response only took into account any relevant information held by the FCO at the time the request was received. The FCDO explained that it was satisfied that an

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<sup>1</sup> The FCO merged with the Department for International Development on 2 September 2020 to form the FCDO. This decision notice is therefore served on the FCDO but refers to the FCO where it was the body that took certain actions in relation to the request.

appropriate search was conducted and that the FCO did not hold any information falling within the scope of the request.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 7 October 2020 in order to complain about the way his request for information had been handled. He argued that it was likely that the FCO would have held information falling within the scope of his request.

## **Reasons for decision**

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### **Section 1 – Right of access to information**

9. 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.
10. 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.
11. In applying this test the Commissioner will consider the scope, quality, thoroughness and results of the searches, and/or other explanations offered as to why the information is not held.

### The complainant's position

12. In support of his view that the FCO was likely to hold information falling within the scope of his request the complainant made the following points:
13. Firstly, his contract was with the British Embassy/FCO, and his redundancy letter was sent by the British Embassy/FCO in Dushanbe. The complainant noted that the letter referred to the CPET hub, and stressing that 70 percent of his role was covered by the CPET hub. Therefore, the complainant argued that CPET ToRs was the basis for making such a statement in his redundancy letter.
14. Secondly, the complainant argued that the ToRs for the CPET was shared with the British Embassy in Dushanbe back in 2017, when the hub was created.

### The FCDO's position

15. In order to investigate this complaint the Commissioner asked the FCDO a number of questions about the steps it had taken to locate information falling within the scope of the request. The Commissioner has set out the questions below and then summarised the FCDO's answers:

16. Questions:

- *What searches were carried out to locate information within the scope of the request and why would these searches have been likely to retrieve any relevant information if it was held?*
- *Please describe thoroughly any searches of relevant paper/electronic records and include details of any staff consultations.*
- *If searches included electronic data, what search terms were used and what types electronic records were searched (ie emails, databases, etc)*
- *If the information were held would it be held as manual or electronic records?*

17. FCDO response:

As part its response to the above questions, the FCDO explained that it was necessary to clarify that although the complainant had an FCO employment contract, he worked as an in-country member of staff for the DFID Central Asia Team in their Dushanbe office, which was located within the British Embassy in Dushanbe, Tajikistan. The FCDO explained that the complainant was managed by, and reported to, the DFID Central Asia Team.

The FCDO explained that although co-located, the DFID team in Dushanbe worked on separate DFID systems, and only FCO colleagues with a specific business need had access to DFID systems. (In this case, only one FCO colleague, the Accountant/IT support officer, required such access.)

The FCDO confirmed that at the point that the request was made, DFID and FCO were two separate public authorities for the purposes of FOIA and therefore as a result its searches for relevant material focussed only for information on FCO systems.

The FCDO explained that as the request asked for information relating to the relatively recent creation of DFID's CPET in New Delhi, any relevant information would have been held on electronic systems. (The CPET was created in 2017.)

In terms of the searches undertaken, the FCDO explained that it had

consulted staff in Dushanbe, and searches were carried out on relevant FCO systems there, including within the Corporate Services Team who handle local HR issues. The FCDO explained that for completeness it also consulted staff at the British High Commission in New Delhi, and searches were carried out on relevant FCO systems there, including within their Corporate Services Team. (The FCDO noted that at the time of the request, DFID's offices in New Delhi were in a separate location.)

The FCDO explained that searches were made within relevant personal and shared emails accounts, as well as electronic folders in personal and shared areas. The FCDO explained that the search terms used included Corporate and Programme Effectiveness Team/CPET, as well as the complainant's name. The FCDO argued that given the context of the request such searches would have retrieved any relevant information.

18. Questions:

- *Was any recorded information ever held relevant to the scope of the complainant's request held but deleted/destroyed?*
- *Would the FCO have had any business need to hold any of the requested information?*

19. FCDO response:

The FCDO confirmed that there was never a business need for FCO colleagues in Dushanbe to hold information relevant to the scope of the request. The FCDO explained that this was because the CPET was a DFID unit set up to provide support to smaller DFID country offices. The FCDO explained that as a result, discussions on the unit's terms of reference were conducted on DFID systems, and there were no FCO stakeholders involved in that process.

20. Question:

- *Furthermore, are you able to advise whether it is likely that some, or all, of the information would have been held by DFID at the time of the request? If so, did the FCO consider transferring the request or advising the complainant to submit his request to DFID instead?*

21. FCDO response:

The FCDO explained that when it received the request it contacted DFID who explained that the complainant had also submitted the same request, on the same day, to DFID. The FCDO explained that in the circumstances it did not consider transferring the request to DFID as the requester was clearly seeking information held by each separate public authority. (The FCDO explained that DFID responded to the complainant by confirming that it held information falling within the scope of his

request and releasing material to him with a number redactions on the basis of section 40, the personal data exemption of FOIA.)

The Commissioner's position

22. Having considered the FCDO's responses the Commissioner is satisfied that on the balance of probabilities that the FCO did not hold any recorded information falling within the scope of the request. The Commissioner has reached this conclusion for two reasons.
23. Firstly, in the Commissioner's view the searches the FCO undertook for the information were detailed, focused and logical and it is reasonable to assume that if any relevant information was held then these searches would have located it.
24. Secondly, the Commissioner accepts that the FCO did not have a business need to hold information falling within the scope of the request. This is on the basis of the complainant's role: although he had a FCO employment contract, he actually worked for the DFID Central Asia Team, and he reported to, was managed by, that DFID team. In the Commissioner's view the FCO's position that it did not have a business need to hold the requested information is supported by the fact DFID did hold information of relevance to the request.
25. The Commissioner can understand why the complainant believes that the FCO would have been likely to hold information falling within the scope of his request. That is to say, he had an employment contract with the FCO and the establishment of the CPET was the reason he was being made redundant. It is therefore not unreasonable for him to assume that the FCO may have held some information about the CPET. However, in the Commissioner's view the thoroughness of the searches conducted by the FCO for the requested information, and the FCDO's clarification about the complainant's role, are sufficient to address the complainant's assumption that the FCO would have held the requested information.

## Right of appeal

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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: 0203 936 8963  
Fax: 0870 739 5836  
Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**