

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

### **Decision notice**

**Date:** 14 November 2022

**Public Authority:** Department for Transport  
**Address:** Great Minster House  
33 Horseferry Road  
London  
SW1P 4DR

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

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1. The complainant has requested a copy of the ministerial diary of Rt Hon Grant Shapps MP during a 16-month period when Mr Shapps was Secretary of State for Transport.
2. The Department for Transport ('DfT') refused to comply with the request, citing section 14(1) (vexatious requests) of FOIA.
3. The Commissioner's decision is that the request is vexatious and the DfT was entitled to refuse it under section 14(1). However, in failing to confirm that it held information or issue its refusal notice within 20 working days, the DfT breached section 10 (time for compliance with the request) and section 17 (refusal of request).
4. The Commissioner does not require the public authority to take any steps.

#### **Request and response**

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5. On 29 March 2021 the complainant wrote to the DfT and requested the following information:  
  
"From 1st December 2019 to the day this request is processed, please provide a copy of Secretary of State for Transport Grant Shapps' ministerial diaries."

6. On 9 July 2021 the DfT responded and refused to comply with the request, citing section 14(1). The DfT explained that to comply with the request would impose a grossly oppressive burden.
7. The complainant requested an internal review on 31 August 2021.
8. The DfT sent the outcome of its internal review on 5 October 2021. It upheld its original position.

## **Reasons for decision**

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### **Section 14(1) (vexatious requests)**

9. Section 14 of FOIA states that:

“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.”

10. The Commissioner has dealt with identical requests for other central government departments, including the DHSC,<sup>1</sup> IC-127984-W0M1. In that case, the Commissioner agreed that compliance with the request would impose a grossly oppressive burden and was therefore vexatious.
11. A request might be vexatious if the public authority can make a case that the amount of time required to review and prepare the information for disclosure would impose a grossly oppressive burden. When providing an estimate as to how long compliance with the request would take, the Commissioner expects this estimate to be based on cogent evidence which usually involves the public authority conducting a sampling exercise.
12. In this case, the DfT explained to the Commissioner that the timeframe of the request ‘covers 485 days and approximately 335 working days. On a typical day the Secretary of State would have 10 appointments in his calendar.’ The DfT was concerned that the diary entries were not stored elsewhere and could not be extracted. Therefore, the diary entry ‘would need to be extracted manually in order to prepare it for disclosure, including redacting any exempt information.’

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<sup>1</sup> [ic-127984-w0m1.pdf \(ico.org.uk\)](https://www.ico.org.uk/our-work/cases/127984-w0m1)

13. The DfT provided the Commissioner with a sample of the diary entries, in outlook form, and explained that the following exemptions would apply to some of the diary entries: section 40(2) (personal information), section 38 (health and safety) and section 24 (safeguarding national security).
14. The application of section 40(2) and section 38 were discussed in IC-127984-WOM1 and the Commissioner doesn't consider it necessary to replicate that analysis here. From the diary samples he has been provided with, he is satisfied that these exemptions would apply to certain entries.
15. When the DfT provided its first estimate to the Commissioner, it explained:

“On a typical day there are around 10 appointments. If we estimate that it takes around 3-5 minutes to read each entry and determine if it can be released, then the total time to determine would be:

3 minutes per entry, 10 appointments per day x 335 working days = 3350 appointments.

3350 minutes = 10,050 minutes (167.5 hours)

3350 x 5 minutes = 16750 minutes (279 hours).”
16. The DfT explained that it couldn't extract the diary entries because attachments within diary entries could not be transferred to excel. However, the Commissioner explained that the details within the diary entries alone would be sufficient to meet the request. He explained to the DfT that he could not accept the above estimate, because it was not based on the quickest method of extracting the information.
17. The Commissioner provided the DfT with instructions on how to convert an outlook calendar to a spreadsheet format which would allow individual entries to be scanned electronically for regularly recurring items such as names, email addresses or appointments.
18. The DfT did so and explained it was able to filter out some entries that show regular patterns of Mr Shapps' travel and location, which the Commissioner agrees would engage section 38. The DfT was left with '1,975 entries which we feel would need to be searched line by line to determine if the information could be disclosed and apply any exemptions if needed.'
19. The DfT's final estimate was '1975 x 3 minutes =98.75 hours,' a significant decrease from its original estimate. The Commissioner notes that, upon extracting the data and looking at the matter again, the DfT

has revised its estimate from 3-5 minutes to review each diary entry to 3 minutes.

20. Clearly, each case and request must be taken on its own merits and, in order to verify whether the DfT's estimate of three minutes per diary entry is a reasonable one, the Commissioner requested the data in its extracted form.
21. The Commissioner notes that there are several recurring entries in the extracted data –which occur 205, 25 and 29 times. These entries appear to be the SoS blocking out time in his calendar for a specific task. As recurring entries, they don't need reviewing line by line. Furthermore, as the only attendee is the SoS, the Commissioner doesn't consider these entries would need any redaction. Therefore, he has immediately removed 254 entries from the 1975 total which is now 1721.
22. Of the remaining 1721 entries, the Commissioner notes that the DfT would have to spend the most time redacting third party data under section 40(2). However, he doesn't consider it would take long to do so, since it appears the majority of this information is contained in one column 'required attendees.'
23. The Commissioner is satisfied that some entries would take three minutes to review. However, looking at the extracted data, he is not satisfied that these entries are in the majority. To the Commissioner, it seems that some diary entries that involve minimal information could be reviewed twice as fast. Therefore, he has conducted his own estimate based on how long compliance would take if it took an average of 1.5 minutes to review each diary entry:  
  
$$1721 \times 1.5 \text{ minutes} = 43.025 \text{ hours}$$
24. The DfT has explained to the Commissioner that 'Some entries may take less time to review but some could take significantly longer, especially if the content needs to be reviewed by policy colleagues to apply exemptions and conduct public interest tests.'
25. A lot of the remaining diary entries only contain the basics of the appointment, for example, the date, time, duration and attendees of the appointment and therefore would not need much reviewing or redacting. However, the Commissioner notes that descriptions of some of the meetings contain agenda items which may need to be considered for exemptions, including section 24 (national security), section 38 (health and safety) and public interest tests.
26. The Commissioner conducted a search for the word "agenda" in the extracted data and it occurs 111 times. Not all of these results actually contained a detailed agenda (some related to an attachment which has not been extracted) and, of the ones that did, some are too vague,

obvious or routine to require redacting. However, the Commissioner agrees that some would need redacting or, at least, time taken to consider whether they require redacting.

27. With the above in mind, the Commissioner is satisfied that 43 hours is a reasonable estimate and, whilst it is substantially less than the DfT's own estimate, still grossly exceeds the 24 hour limit that section 12 (cost of compliance exceeds appropriate limit) imposes upon the DfT. The Commissioner is also mindful that this is a conservative figure, as it does not include the time needed to undertake any of the further work associated with the exemptions.
28. In order for section 14(1) to be engaged, compliance with the request must be 'grossly oppressive' in relation to the purpose and value that the request holds. When determining if this is the case, the Commissioner must consider the circumstances at the time that the request was made.
29. When they made their request to the DfT, the complainant explained 'It is absolutely essential for the public to know - in full detail - the calls, events and meetings that took place across the year when the pandemic gripped the UK and beyond.'
30. The Commissioner is not dismissing the request as without purpose or value and he notes that, when it comes to the government's response to the pandemic, public authorities should be as transparent as possible. He would note, however, that compliance with the request would not provide the 'full detail' of the events and meetings that took place. The meetings referred to are done so in brief, with reference to emails which are not included in the extracted data. However, compliance with the request would provide a better picture of the type of work the SoS, and the DfT, undertook during the pandemic.
31. Keeping in mind the strain on the DfT's resources, and its vital role during the pandemic, the Commissioner believes that compliance with the request, at the time that it was made, would be grossly oppressive. Whilst he recognises that 43 hours may be on the lower scale of what could be considered 'grossly oppressive', he doesn't consider it would have been reasonable to expect the DfT to divert resources away from the coronavirus effort to comply with the request.

### **Procedural matters**

32. The Commissioner finds that the DfT breached section 10 of FOIA as it failed to confirm whether it held information within 20 working days of receiving the request.

33. The Commissioner also finds that the DfT breached section 17 of FOIA as it failed to issue its refusal notice within 20 working days of receiving the request.

## Right of appeal

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34. 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)

35. 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.
36. 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

**Alice Gradwell**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**