

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 January 2024

Public Authority: Department for Environment, Food & Rural Affairs (Defra)

Address: Seacole Building
4th Floor
2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant has requested costs associated with an internal investigation. Defra stated the information was not held.
2. The Commissioner's decision is that, on the balance of probabilities, Defra does not hold information within the scope of the request and has therefore complied with section 1(1) of FOIA.
3. The Commissioner does not require Defra to take any further steps.

Request and response

4. On 4 August 2023, the complainant wrote to Defra and requested information in the following terms:

"The information I request is the cost/anticipated costs of the internal investigation being launched this year into the use of free period products. Please break down cost to include the cost of salaries of the investigation team, travel and subsistence for any visit and cost of technology used by the investigation team and any other costs associated with the investigation."

5. Defra responded on 1 September 2023. It stated that the information was not held as it did not account for staff time to specific project codes to allow for interrogation of the information. Defra was able to confirm no travel or subsistence costs were incurred as the work was being conducted virtually/online.
6. Following an internal review Defra wrote to the complainant on 11 September 2023. It stated that it upheld its position but added no outside consultant had been used.

Scope of the case

7. The complainant contacted the Commissioner on 11 September 2023 to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of his investigation is to determine if Defra holds any of the requested information.

Reasons for decision

9. Sections 1(1)(a) and (1)(1)(b) of the FOIA state that any person making a request for information is entitled to be informed by the public authority whether it holds the information and if so, to have that information communicated to them .
10. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant's request.
11. The complainant has argued that they asked for costs or anticipated costs and it is not accurate to state the information is not held. They consider that as the investigation is being conducted virtually, if the cost of the investigation is not allocated to one cost code the information is still held as Defra will have information on who has been assigned to conduct the investigation. Alongside this information on the individual(s) pay or average pay for their salary band will be held and the cost of IT infrastructure supplied to the individual(s) for the duration of the investigation.
12. The complainant considers that Defra has knowledge of the staff assigned to conduct the investigation and the duration of their

engagement on the investigation from start to reporting so associated cost in terms of staff hours is held.

13. Defra's position is that the time spent on any particular piece of work within the department is not cost accounted for. There is no recorded information to establish how much time has been spent on any such investigation. Time spent on the investigation is not recorded so Defra argues it cannot work out the hourly cost for staff time or break it down to any feasible figure for IT usage.
14. In summary, the complainant believes Defra holds information from which it could calculate the cost of work done by its staff on the investigation. Defra's position is that it does not.
15. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed some or all of the information that a complainant believes it holds, it is seldom possible to prove with absolute certainty that it holds no relevant information. However, as set out in paragraph 10, the Commissioner is required to make a finding on the balance of probabilities.
16. The Commissioner is satisfied that Defra has provided a cogent explanation for stating it does not hold the requested information. Staff are paid on a salaried basis to perform a range of tasks and, realistically, there is no way of separating out the time spent on an investigation from their other work.
17. The Commissioner cannot envisage a business need for recording the time at the outset of work on an internal investigation by internal staff. If an external consultant or expert were used it would be reasonable to expect that the time taken would be recorded as their pay would be intrinsically linked to the time taken to work on the investigation. However, internal staff will realistically be working on normal course of business activities alongside any additional investigation work, as Defra has indicated in this case. As such, calculating costs or anticipated costs associated with the investigation could not be done with any degree of accuracy.
18. The Commissioner is satisfied in this case that Defra has demonstrated that it has reasonable grounds for considering that it does not hold the requested information, and therefore that it has complied with the requirements of section 1 of the FOIA in this case.

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.

Signed

Jill Hulley
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF