

# Freedom of Information Act 2000 (Section 51) Information notice

Date: 17 September 2024

**Public Authority: Department for Business and Trade** 

Address: Old Admiralty Building

**Admiralty Place** 

London SW1A 2DY

#### Section 51

Under section 51 of the Freedom of Information Act 2000 (FOIA), which is set out below, the Information Commissioner (the Commissioner) has the power to serve a notice on a public authority requiring it to furnish him with any information he requires to enforce the requirements of FOIA.

- 51. (1) If the Commissioner -
  - (a) has received an application under section 50, ...

he may serve the authority with a notice (in FOIA referred to as "an information notice") requiring it, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to the application, to compliance with Part I or to conformity with the code of practice as is so specified.

#### **Application under section 50**

1. The Commissioner has received an application under section 50, reference IC-320670-S5B1, for a decision whether a request for information made by the complainant to the Department for Business and Trade (DBT) on 18 February 2024, has been dealt with in accordance with the requirements of Part I of FOIA.



## **Nature of complaint**

2. The complainant submitted the following request to DBT on 18 February 2024:

"Under the Freedom of Information Act 2000 I wish to see a full copy of the minutes, call readout, agenda, action log, briefing materials and list of attendees for the conference call held with Kemi Badenoch, Henry Staunton and others referenced in this article: <a href="https://www.telegraph.co.uk/politics/202...">https://www.telegraph.co.uk/politics/202...</a>"

- 3. DBT contacted him on 20 February 2024 and asked him to clarify the scope of his request as it could not access the link cited in the request. In response the complainant provided DBT with a different link to the call in question.
- 4. DBT contacted him on 19 March 2024 and explained that it considered the qualified exemption contained at section 36(3) (effective conduct of public affairs) of FOIA to apply, by virtue of sections 36(2)(b)(i) and (ii) and section 36(c), and it needed additional time to consider the balance of the public interest test. DBT issued a similar letter on 18 April 2024.
- 5. DBT issued its substantive response to the request on 16 May 2024. It explained that the readout of the call was exempt from disclosure on the basis of section 21 (information reasonably accessible to the applicant by other means) of FOIA as it could be accessed online at this link: <a href="https://depositedpapers.parliament.uk/depositedpaper/2286129/files">https://depositedpapers.parliament.uk/depositedpaper/2286129/files</a> With regard to the remaining parts of the request, DBT refused to confirm or deny whether it held any such information on the basis of section 36(3) of FOIA, and explained that its public interest considerations had concluded that this exemption should be maintained.
- 6. The complainant contacted DBT on the same day in order to challenge the decision to apply section 36(3) of FOIA.
- 7. DBT informed him of the outcome of the internal review on 15 July 2024. This upheld the application of sections 21 and 36(3). It also explained that the information redacted from the document which was exempt on the basis of section 21 had been made on the basis of section 40(2) (personal data) of FOIA.
- 8. The complainant contacted the Commissioner on 18 July 2024 in order to complain about DBT's reliance on section 36(3) of FOIA to refuse to confirm or deny whether it holds any of the other information specified in his request, beyond a readout of the call.



9. The Commissioner contacted DBT on 26 July 2024 and asked for a copy of the submissions given to the qualified person in order for them to reach their opinion, a copy of the opinion which was subsequently provided, and any further public interest arguments beyond those set out to the complainant to support its view that the public interest favoured maintaining the exemption contained at 36(3). The Commissioner asked for a response to his letter within 10 working days.

- 10. Having not received a response to his letter, the Commissioner contacted DBT on 10 September 2024. DBT responded on 11 September 2024 and explained that due to an administrative oversight it had not actioned the Commissioner's letter of 26 July 2024, and was unaware that this was outstanding due to the Commissioner not sending any follow up correspondence. DBT explained that it would now action this letter but asked for 20 working days, ie until 8 October 2024, to respond given the complex nature of this case.
- 11. The Commissioner contacted DBT on 12 September 2024 and explained that he was content to extend the deadline until 8 October but that he would issue this Notice to act as a 'backstop' to ensure that DBT's response to him did not slip further.

## Information required

- 12. In view of the matters described above the Commissioner hereby gives notice that in the exercise of his powers under section 51 of FOIA he requires that DBT shall, within 30 calendar days of the date of this notice, furnish the Commissioner with a copy of the following information:
- 13. A full and complete response to his letter of 26 July 2024.

### Failure to comply

14. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of FOIA, and may be dealt with as a contempt of court.



# Right of appeal

15. There is a right of appeal against this information notice to the First-tier Tribunal (Information Rights). Information about the appeals process can 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: <a href="mailto:grc@Justice.gov.uk">grc@Justice.gov.uk</a>

Website: <a href="https://www.justice.gov.uk/tribunals/general-regulatory-">www.justice.gov.uk/tribunals/general-regulatory-</a>

chamber

16. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this information notice is sent. If Notice of Appeal is served late the Tribunal will not accept it unless it is of the opinion that it is just and right to do so by reason of special circumstances.

#### Signed by

Jonathan Slee
Senior Case Officer
Information Commissioner's Office
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