

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 22 February 2007

Public Authority: Department for Transport ('DfT')
Address: Great Minister House
76 Marsham Street
London
SW1 4DR

Summary

The complainant requested information relating to a visit Alistair Darling, the then Secretary of State for Transport, had made in March 2003 to the site of the proposed A57/A628 Tintwistle and Mottram bypass. The public authority responded to this request stating that it did not hold the information requested, but the complainant disputed this. Following investigations, the Commissioner is satisfied that public authority does not hold any information covered by the scope of the request and therefore the complainant's request has been dealt with in accordance with Part 1 of the Act.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On the 16 April 2006 the complainant contacted the DfT and submitted an FOI request. The complainant emailed Alistair Darling, the then Secretary of State for Transport, directly and asked:

'With respect Minister would you kindly offer me under the Freedom of Information Act 2000, full details as to who you met with full details of any disclosures and any notes which were taken, plus any information whatsoever which emerged from the "secret" visit made to the Mottram region'.

3. The reference to secret visit referred to a visit Mr Darling had made in March 2003 to the site of the proposed A57/A628 Tintwistle and Mottram bypass. This visit had been publicised on the website of the local MP, Tom Levitt. In his request of 16 April 2006 the complainant referred to a passage on Mr Levitt's website which said: 'I was delighted to be present in Parliament last April [2003] when Alistair Darling, the Labour Transport Secretary, announced that the bypass was being restored to the government's roads programme. He made the decision after a secret visit to the area himself'.
4. The DfT replied to the complainant on 27 April 2006. In this response the DfT explained that 'you have requested information regarding a suggested visit that the Secretary of State made to the Mottram region, as referred to on Tom Levitt MP website. I am writing to advise you that following a search of our paper and electronic records, the Department has not been able to find any information of such a visit or any information that you request'. The DfT's response also explained to the complainant that he had the right to ask for an internal review of this decision and the right to complain to the Information Commissioner.
5. On 25 May 2006 the complainant informed the DfT that he was unhappy with its response to his request. The complainant referred the DfT to a letter he had received from Sir Philip Mawer, Parliamentary Commissioner for Standards regarding the visit Mr Darling had made to the area. In this letter Sir Philip explained to the complainant that the visit was not secret in the sense that Mr Darling had referred to the visit during Parliamentary Questions on 1 April 2003 and therefore the visit was on the public record. The complainant explained to the DfT that given the fact that the visit was on the public record, he considered it likely that the DfT would hold some record of the visit and therefore asked the DfT to conduct a further search. The complainant restated his request asking 'I repeat my request relating to the Minister's visit which requested any/all information as to who accompanied the Minister on his survey of the area concerned? And did the Minister meet "any" local or national politicians during the period of time he spent in the area in March 2003? and were any Highways Agency members associated with the visit?'
6. The DfT informed the complainant of the outcome of the internal review on 1 August 2006. The DfT apologised to the complainant for not noting in its original response that in Hansard dated 1 April 2003, the Secretary of State informed the House of Commons that he had visited the area in March 2003. The DfT provided the complainant with a website link to the relevant section of Hansard. However, the DfT also explained to the complainant that 'as my previous response to you explained, following a search of our paper and electronic records, the Department is still unable to find any information regarding the visit'. The DfT also informed the complainant that 'the Department does not keep records of every location that the Secretary of State may visit as he travels around the country'. The DfT did inform the complainant that it was aware of a separate FOI request the complainant had submitted to the Highways Agency and in response to this request the Highways Agency had confirmed that Mr Darling was met by two Highways Agency personnel on the visit in question.

The Investigation

Scope of the case

7. On 17 August 2006 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
8. The complainant explained to the Commissioner that he believed Mr Darling had met with supporters of the bypass which included Tameside Councillors, Tameside MPs, Highways Agency staff and others because to make the announcement in Parliament which sanctioned the building of the bypass without meeting such officials would have been a 'totally irrational decision'. Therefore the complainant argued that assuming the Minister had met with these parties during the visit in question, the DfT must have a record of who the Minister met and details of the meetings.

Chronology

9. The Commissioner contacted the DfT on 12 October 2006 in order to discuss its handling of the complainant's request. In order to establish whether the DfT held information covered by the complainant's request the Commissioner asked the DfT to answer a number of questions about their records management policies and its attempts to locate any of the requested information.
10. The Commissioner asked the DfT the following questions:
 - (i) *Was any of the information requested ever held?*
 - (ii) *If so, when did you cease to retain this information?*
 - (iii) *Does the DfT have a record of the documents destruction?*
 - (iv) *What does the DfT formal records management policy say about the retention and deletion of records of this type?*
 - (v) *What steps were taken to locate the requested information?*
 - (vi) *For what business purposes would you have held the information?*
 - (vii) *Would any of the information have been recorded in the Minister's official diary?*
 - (viii) *Are there any statutory requirements to keep the information requested?*
11. The DfT responded to the Commissioner in a letter dated 8 November 2006. The DfT provided the Commissioner with a summary of the correspondence that had been exchanged between itself and the complainant. The DfT also answered the eight questions listed above. The DfT's responses to each of these questions are quoted below:

(i) Not to our knowledge and certainly not on the files that we had called back from Records Management at the time of the request. In addition, we also asked both the Private Office and the Special Advisers Unit, as to whether they had any evidence of such a visit and the answer was that they could not seem to see a diary entry for such a visit. The Highways Agency also did not seem to have a record on file of the visit, although a person within the Agency, when we reviewed our original response to Mr Hall in August did suggest that two personnel were present at the time of such a visit. This is exactly what the Agency had also said in response to a separate request from [the complainant] in July 2006.

(ii) We do not know whether any of the information was ever held on our files. The Department is, therefore, unable to answer this question.

(iii) See answer to Q2 above.

(iv) If papers were on the files that were retrieved from our storage facility, then we would expect that they would fall under the 25 year retention period.

(v) When the Department received the first request from [the complainant], an email request was sent to both the Highways Agency, Secretary of State's office and DfT Special Advisers requesting whether they had a record of such a visit and also who the Secretary of State would have met during the visit and whether there was a record of any discussions that may have taken place during the visit. This was in line with the request from [the complainant] for this information. We also retrieved from records storage, the relevant files which may have held the said information. We were informed by all of the relevant officials that no record of such a visit was held. Our files also did not locate anything which would have been captured as part of the request for information.

(vi) None. The only reason why we would have kept the information on files was if the Secretary of State had made any decision or announcement as part of the visit or if he met external stakeholders and held a discussion in his official capacity as Secretary of State for Transport. If the visit was purely political then we would have no reason to know or hold documents relating to the visit.

(vii) If an official visit had been undertaken then, yes, it is expected that an entry would have been recorded in the Official Diary. I was informed by the Secretary of State's office that no such visit was recorded.

(viii) No.

12. Having analysed these responses, the Commissioner contacted the DfT again on 22 November 2006 and asked it to clarify one outstanding issue. The Commissioner asked the DfT to clarify its response to question 6. In this response the DfT had explained that if the visit was purely political then it would have no need to know or hold the documents relating to the visit. The Commissioner

asked the DfT to clarify the differences between the political and official roles of the Secretary of State and explain why the DfT would have no obligation to hold information if the Minister had conducted this visit in a purely political role.

13. The DfT responded to the Commissioner on 1 February 2007. In this response the DfT explained that when the Secretary of State undertakes a political visit, no departmental support is provided and details would not routinely be recorded in the Official Ministerial diary. This is because the Ministerial Code states that Departmental resources should not be used when Ministers are undertaking political activity.

Analysis

14. Section 1 of the Act creates a general right of access to information held by public authorities. Section 1(1) states that:

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

15. In investigating whether the DfT holds any information which falls within the scope of the complainant's request the Commissioner has considered two issues. Firstly, the Commissioner has analysed how thoroughly the DfT searched for information it may hold which is covered by the request. Secondly, the Commissioner has considered whether there is any evidence to suggest that DfT would have a reason to hold information covered by the scope of the request.
16. The Commissioner is satisfied that the DfT undertook a sufficiently detailed and comprehensive search of its records in order to establish if it held any information which fell within the scope of the request. The Commissioner has noted that this search included reviewing both paper and electronic files held by the sections of the DfT which would record details of such a visit, namely the Minister's Private Office and Special Advisers Unit, as well as recalling any relevant files from the DfT's records storage facility.
17. The Commissioner notes that the DfT undertook two separate searches for relevant information, one when the DfT received the initial request, and a second further search when the DfT completed its internal review. The Commissioner is satisfied that these searches were thorough enough to locate any information which may have fallen within the scope of the request. The Commissioner believes that it is important to note the DfT did not find any reference to the visit in question in its records, let alone any details about who the Minister met, issues discussed etc, etc.

18. Secondly, although the Commissioner is satisfied that the searches conducted by the DfT were adequate to locate any relevant information held by the DfT, he has gone on to consider whether it is likely that the DfT would have held this information.
19. With regard to this point the Commissioner believes that the key issue is the difference between the roles undertaken by Mr Darling acting as senior political figure within the Labour Party and the tasks undertaken by Mr Darling acting in his official role as Secretary of State for Transport. As the DfT response to question (vii) implies, if Mr Darling undertook this visit as part of his official role then an entry would have been made in the Official Ministerial Diary. As no such entry exists, the Commissioner accepts that Mr Darling therefore undertook this visit within his political capacity. The Commissioner is satisfied that because the visit was a political, rather than an official one, in line with the Ministerial Code referred to in paragraph 13, the DfT would have no need to record details of the visit. Therefore, the Commissioner is satisfied that the DfT does not hold any information which falls within the scope of the complainant's request.
20. The Commissioner believes that this conclusion is given further weight by a statement made in Sir Philip Mawer's letter to the complainant of 11 May 2004. In this letter Sir Philip explained to the complainant that although 'it is normal practice when a Government Minister is to visit a particular area for his Private Office to inform in advance the local MP. This did not happen, Mr Levitt informs me, on the occasion of Mr Darling's visit to Derbyshire'.

The Decision

21. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

22. The Commissioner requires no steps to be taken.

Right of Appeal

23. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 22nd day of February 2007

Signed

**Graham Smith
Deputy Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**