

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 May 2016

Public Authority: Home Office
Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant requested information relating to a named individual, who died in 1985. The Home Office stated that it did not hold information falling within the scope of the request.
2. The Commissioner's decision is that the Home Office stated correctly that it did not hold the requested information, but also that the Home Office handled the request poorly and in so doing breached section 10(1) of the FOIA.
3. The Commissioner does not require the Home Office to take any steps.

Request and response

4. On 29 July 2015 the complainant wrote to the Home Office and requested information in the following terms:

"I am making a Freedom of Information request regarding a Mr William McRae (Born: 18 May 1923, Falkirk; Died: 7 April 1985, Aberdeen).

I would like to know the following:

1) a) For the Home Office to confirm or deny whether it has any documentation in relation to Mr William McRae. (Alternative spelling could also be 'MacRae')

1) b) If so, could the Home Office confirm what the nature of this documentation is?

- 1) c) Additionally, I request that the Home Office please release this documentation - should it exist within its records.*
- 2) a) For the Home Office to confirm or deny whether it has any record of the police liaison officer - an Under-Secretary of State at the Home Office - or any of their staff being informed about Mr McRae's car crash on April 5th 1985 and his subsequent death on April 7th 1985.*
- 2) b) If so, when was this officer/Under-Secretary of State notified?*
- 3) a) For the Home Office to confirm or deny whether or not it released directions of any kind to the Northern Constabulary or agents of the Crown Office and Procurator Fiscal Service that may have affected any sort of police or Crown investigation into Mr McRae's death.*
- 3) b) If so, what was the purpose of these directions and why were they given?"*
5. A lengthy exchange followed during which, due to what appears to have been mishandling by the Home Office, the complainant was obliged to pursue a response to his information request. The Home Office eventually responded substantively on 13 October 2015. It stated that it did not hold the requested information and advised the complainant that files are either destroyed or transferred to the National Archives (TNA) when they are 30 years old.
6. The complainant responded on 13 October 2015 and requested an internal review. The Home Office responded with the outcome of the review on 11 December 2015 and indicated that it believed that an error had resulted in the complainant's request initially not being recorded correctly. It maintained that the requested information was not held and again advised the complainant that information over 30 years old may be held by TNA.

Scope of the case

7. The complainant contacted the Commissioner initially to complain about the failure by the Home Office to respond to his request. Following the response to his request and the internal review, the complainant contacted the ICO again on 21 December 2015 to complain about the handling of his request. The complainant indicated that he was dissatisfied with the failure by the Home Office to respond to his request initially and by the response that the information he had requested was not held.

8. An exchange of correspondence followed in which the complainant was advised that this notice would record the breach of the FOIA through the failure by the Home Office to respond promptly initially and whether the Home Office was correct to state that it did not hold the information the complainant had requested, but that the ICO would not investigate the detailed cause of the failure to respond to his request initially.
9. The Commissioner comments further on the poor handling of this request by the Home Office in the "Other matters" section below.

Reasons for decision

Section 10

10. Section 10(1) of the FOIA requires that an information request must be responded to within 20 working days of receipt. In this case the complainant has supplied evidence that his 29 July 2015 request was made to FOIRequests@homeoffice.gsi.gov.uk and the Home Office has not denied receiving this request. In failing to respond to this request within 20 working days of receipt, the Home Office breached section 10(1) of the FOIA.

Section 1

11. Section 1(1)(a) of the FOIA provides that a public authority is obliged to confirm or deny whether it holds information that has been requested. Clearly this means that a public authority is required to establish accurately whether it holds information that has been requested.
12. In this case the complainant alleges that the Home Office has stated incorrectly that it does not hold the information he requested, which would be a breach of section 1(1)(a). The task for the Commissioner here is to make a decision as to whether the Home Office was, on the balance of probabilities, correct and in compliance with section 1(1)(a) to state that it did not hold the information requested by the complainant. Making this decision on the basis of the balance of probabilities is in line with the approach taken by the First-tier Tribunal (Information Rights).
13. During the investigation of this case, the Home Office was asked to provide to the ICO an explanation of the searches that were carried out in response to the complainant's request, as well as any other reasons it had for concluding that it did not hold the requested information. It was emphasised to the Home Office that this case concerned the situation at the time that the request was made – 29 July 2015 - rather than at the time that it eventually responded to the request.

14. The Home Office stated that it carried out a search of its database Record Management System (RMSys), which is used to track paper files. It stated that a search was carried out for files with the name of the individual specified in the request, including searches with possible variations on the spelling of that individual's name. It stated that these searches did not identify any relevant paper file.
15. As to why it focussed on paper files, the Home Office stated that this was due to the likely age of any relevant information; it believed that any information dating from 1985 would be likely to be held in paper, rather than in electronic form.
16. The Home Office also gave an explanation as to why it did not believe it should be expected that it would hold information within the scope of the request. It stated that, in 1985 as now, it did not have responsibility for policing in Scotland. At that time, responsibility for this was with the Scottish Office. The Home Office stated that it *"has and had no authority to issue directions to a Scottish police force or agents of the Crown Office or the Procurator Fiscal's office"*.
17. Turning to the Commissioner's view on the reasoning of the Home Office, he accepts that it was appropriate for the Home Office to focus on hard copy records when searching for information of this age. He is also of the view that carrying out searches using the name of the individual referred to in the request, including possible variations on the spelling of that name, was a sensible search strategy.
18. The explanation provided by the Home Office as to why it should not be expected to hold this information is also relevant – this explanation is strongly suggestive that the Home Office would not at any time have held information falling within the scope of requests 3(a) to (c). The Commissioner's view is that the fact that the Home Office was not involved in policing matters in Scotland at the time specified in the request also reduces the likelihood that the Home Office would ever have held any of the other information requested by the complainant.
19. On the basis of the explanations provided by the Home Office of the searches it carried out for relevant information, and as to why it did not believe that it was likely it had ever held this information, and the absence of any evidence suggestive that the Home Office does hold this information, the conclusion of the Commissioner is that, on the balance of probabilities, the Home Office did not at the time of the request hold any information within its scope. It therefore dealt with the complainant's request in accordance with the requirements of section 1(1)(a) of the FOIA.

Other matters

20. Whilst the Commissioner's decision is as above, he wishes to note here his concern at the very poor handling of this request by the Home Office. Clearly it should not have been necessary for the complainant to repeatedly contact the Home Office in order to secure a response to his request. In the internal review response, the Home Office stated that *"it would appear that your request was not acknowledged or actioned in the usual way"*. The Commissioner finds it surprising that a request that specifically referenced the FOIA and was for recorded information, and that was sent to FOIRequests@homeoffice.gsi.gov.uk, was not dealt with correctly. The Home Office should ensure that there is no repeat of these issues in the handling of other requests.
21. The Commissioner's view is also that the refusal notice and internal review responses eventually sent to the complainant were unhelpful, firstly by failing to recognise that the relevant time was when the request had been made, not the date at which the Home Office eventually responded to it. Secondly, the responses put too much focus on TNA. Whilst it would have been relevant to advise the requester that information of that age may have been held at TNA, the request had been made to the Home Office. It is not the case that the Home Office does not hold any historical records – some of these are retained by it rather than being destroyed or passed to TNA – and the responses should have stated clearly that it had been established that the Home Office did not hold the requested information at the time of the request, whilst also advising the complainant that TNA was a possible alternative location for that information. The Home Office should ensure that it always establishes whether it holds requested information and makes this clear to the complainant, whatever the age of the information and before separately suggesting to the requester that TNA is a possible alternative location for the requested information.
22. A separate record of the various issues in the handling of this request has been made as part of the ICO's ongoing monitoring of Home Office compliance with the FOIA.

Right of appeal

23. 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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

24. 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.
25. 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

Ben Tomes
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