

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: **16 November 2017**

Public Authority: Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant has requested copies of communications between former Prime Minister Tony Blair, his former Communications Director, Alastair Campbell, and Diana Princess of Wales, from 2 May 1997 to 31 August 1997. Following a search, the public authority established that it did not hold the requested information.
2. The Commissioner has concluded on the balance of probabilities that the public authority does not hold the requested information.
3. No steps required.

Request and response

4. On 3 April 2017, the complainant wrote to the public authority and requested information in the following terms:

"I would like to request the following information under the Freedom of Information Act.....Please do treat any environmental information as a request for information under the Environmental Information Regulations (EIRs).

Please note that I am only interested in information which relates to the period 2 May 1997 to 31 August 1997.

Please note that the reference to the late Diana Princess of Wales should include the Princess herself and or her private office and or anyone else specifically acting on her behalf.

Please note that the reference to the Prime Minister should include the Prime Minister himself and or his private office and or anyone acting specifically on his behalf.

1....During the aforementioned period did Tony Blair the Prime Minister exchange correspondence and communications including emails with Diana Princess of Wales.

2....If the answer is yes can you please provide copies of this correspondence and communications including emails and the transcripts of any relevant telephone conversations....Please note that I am interested in receiving both sides of the correspondence and communication.

3....During the aforementioned period did Alastair Campbell exchange correspondence and communications including emails with Diana Princess of Wales.

4....If the answer is can you please provide copies of this correspondence and communications including emails and the transcripts of any relevant telephone conversations....Please note that I am interested in receiving both sides of the correspondence and communication."

5. The public authority responded on 4 May 2017. It explained that following a search of its paper and electronic records it had established that the requested information was not held.

6. Following an internal review the public authority wrote to the complainant¹ advising him that the review had upheld the response provided to him on 4 May.

Scope of the case

7. The complainant contacted the Commissioner in a letter dated 13 June 2017 to complain about the way his request for information had been handled, specifically the public authority's conclusion that it did not hold the requested information. He explained that his request was "inspired by a TV interview in which Mr Blair's former Communications Director Alastair Campbell claimed the former Prime Minister had been in touch with the Princess in the months leading up to her death." However, he was unable to locate the TV interview in question pursuant to a query by the Commissioner.
8. The scope of the Commissioner's investigation therefore was to determine whether the public authority was entitled to conclude that it did not hold the requested information.

Reasons for decision

9. A public authority is required by virtue of section 1 FOIA to inform an applicant in writing whether it holds information of the description requested by the applicant, and if that is the case, to have that information communicated to the applicant, subject to application of other provisions in the FOIA.²
10. When a public authority claims (as is the case in relation to this matter) that it does not hold the requested information, the Commissioner will apply the normal civil standard of proof in determining whether this is the case, ie she will decide on the balance of probabilities whether the information is held. In applying this test the Commissioner will consider the scope, quality, thoroughness and results of the searches, as well as any other reasons explaining why the information is not held.

¹ An undated copy of this letter was supplied by the complainant.

² Regulation 5 of the EIR contains an equivalent requirement for a public authority to disclose requested environmental information subject to other provisions in the EIR.

11. The public authority's submission in support of its position is summarised below.
12. During the period the request is concerned with (ie 2 May 1997 to 31 August 1997), the practice was still that electronic correspondence would have been printed off and put in hardcopy files for retention. Therefore, any information within the scope of the request would have been held manually in the relevant files.
13. The relevant files are those falling within the period in question (2 May to 31 August 1997) where the title has any link to the royals, including Diana Princess of Wales. A detailed search of these files was conducted and no information within the scope of the request was found. Officials also looked through the archives index to see if there would be any additional files for consultation.
14. The relevant files were searched as they were the only ones that could possibly hold information within the scope of the request. To search all other files held from the period in question would engage the cost limit³ and would in any event be looking for the proverbial needle in a haystack.
15. It is unlikely that the requested information was ever held. If it was held it should have been retained under the retention policy which states that the Cabinet Office will always preserve correspondence between the Government and the Royal Family.

The Commissioner's position

16. The Commissioner is satisfied with the scope and thoroughness of the searches conducted in the circumstances of this case. The public authority has correctly identified the files most likely to contain information within the scope of the request. She is satisfied that the subsequent searches of the files was thorough.
17. The searches conducted were adequate and proportionate in view of how such records would have been retained and archived by the public authority, ie manually in files holding communications between the Government and the Royal Family.

³ By virtue of section 12 FOIA, a public authority may not exceed the appropriate limit in complying with a request for information.

18. The complainant was unable to refer the Commissioner to the broadcast interview in which the former communications director is alleged to have said that the former Prime Minister had been in touch with Diana Princess of Wales in the months leading up to her death. Even if he could, it would not prove determinative in the circumstances of this case. Having being identified and searched, the files which fall within the timeline of his request did not yield the requested information.
19. The Commissioner has therefore concluded on the balance of probabilities that the public authority does not hold the requested information.

Right of appeal

20. 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: www.justice.gov.uk/tribunals/general-regulatory-chamber

21. 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.
22. 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

Terna Waya
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