

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 24 December 2020

**Public Authority:** Commissioner of the Metropolitan Police  
Service

**Address:** New Scotland Yard  
Broadway  
London  
SW1H 0BG

### Decision (including any steps ordered)

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1. The complainant has requested information about alleged investigations involving the Duke of Windsor during 1938, from the Metropolitan Police Service (the "MPS").
2. The MPS advised the complainant that it did not hold the requested information. The Commissioner's decision is that, on the civil standard of the balance of probability, the information is not held. No steps are required.

### Background

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3. The MPS has explained the following about an ongoing administrative operation called 'Operation Filesafe':

*"The MPS implemented Operation Filesafe to address the issues of records management within the MPS. Operation Filesafe commenced in 2014, which consisted of a small team of records management experts. It was put into effect to review the document handling and records management, which included a complete, and through [sic] assessment of all physical records held across the MPS estate. Part of Operation Filesafe involved the searching of all police buildings and recovering files/papers and identifying what they relate too [sic]. They were tasked with sweeping buildings and archives to ensure that all records requiring retention and or*

*disposal were properly logged and archived. Any records located would have been recovered.*

*If the file had survived, it would have been on a file registered with General Registry. As previously explained we have searched our RMS [Records Management System], which indexes all our registered files using different keywords unfortunately unable to find any trace. We have no other corporate system for indexing paper records therefore; if it is not within our RMS then we do not hold the file.*

*By way of clarification, I have also asked our Data Quality Team to provide some explanation of the basic principles that govern the management and disposal of MPS records. They have provided the following:*

*"Prior to 2000, the Metropolitan Police Service was a public record body as defined by the Public Records Act 1958, and as such had a legal obligation to manage its records in accordance with the Act. One of the principal aims of this legislation was to ensure that those departments subject to the Act regularly reviewed and where necessary destroyed those records that no longer had any ongoing business value. In the case of the Metropolitan Police Service, this means that the vast majority of the records it created would have been destroyed within 10 years of their creation, and this remains the case as the Service still conforms and will continue to conform to the principles of the Public Records Act.*

*The Act requires departments to review their records after a pre-determined number of years to assess their ongoing value. The initial review is called First Review, and in the case of the Metropolitan Police Service, this originally took place 10 years after creation in the case of crime files. This has now been reduced to 6 years in many instances.*

*First Review allows for three possible outcomes: -  
Destruction. General administrative matters that are no longer current. Minor criminal matters where the sentence has expired.*

*Further retention for administrative reasons. Administrative matters still current. Criminal cases involving lengthy custodial sentences. Unsolved cases of serious crime. Specific requests for retention.*

*Retention for Second Review. Record likely to be of historical value, and therefore to be considered for transfer to The National Archives.*

*Second Review commences, this has been reduced by legislation, 15-20 years after creation with the aim that by the time the record is 20 years old one of three possible outcomes has been determined: -*

*The record is selected for transfer to The National Archives. Selection is in accordance with The National Archives Operational Selection Policy for the Metropolitan Police Service (No 29).*

*Destruction.*

*Further retention because there is a business case to do so. In order for a record to be retained by a department beyond 20 years, the authority of the Secretary of State, for Digital, Culture, Media and Sport must be sought and obtained. The Secretary of States [sic] authority does not allow departments to retain records indefinitely. Authority to retain is granted only for a specific period of time.*

*By the time the Second Review phase has been reached over 95% of records created by the Metropolitan Police Service will have been destroyed".*

## **Request and response**

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4. On 16 April 2020, the complainant wrote to the MPS and requested information in the following terms:

*"I'm making an FOI request for the 1938 file relating to the investigations into Madame Maroni. This includes the statement given by Constance Coolidge to a Metropolitan police officer in Paris and the revelations about Prince Philipp of Hesse".*

5. On 20 May 2020, the MPS responded. It denied holding the requested information.

6. On 22 May 2020 the complainant submitted a revised request:

*"MPS are saying you couldn't find any trace of a file per my request; had there ever been such a file, it would probably have been destroyed.*

*My request just mentions 1938, an unnamed Metropolitan police officer, 'Madame Maroni', 'Constance Coolidge', and 'Prince Philipp of Hesse'. It is certainly possible that any file on this matter didn't include any of those names in the title, Coolidge was Constance's maiden name; it's not clear that Maroni was the real name of the woman in question, etc.*

*I am trying to find out about investigations during 1938 by, reputedly, Sir Philip Game in Paris in conjunction with the Paris police of allegations of blackmail involving the Duke of Windsor. Can MPS check again with this extra information, as any file dealing with such a matter should have been retained”.*

7. On 5 June 2020, the MPS responded. It again denied holding the requested information.
8. On 5 June 2020, the complainant requested an internal review.
9. On 26 June 2020, the MPS provided an internal review. It maintained its position.

## **Scope of the case**

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10. The complainant contacted the Commissioner on 27 June 2020, to complain about the way his request for information had been handled.
11. He asked the Commissioner to consider whether or not the MPS held any of the requested information. The Commissioner will consider this below.

## **Reasons for decision**

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### **Section 1 – general right of access**

12. Section 1 of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds that information and, if so, to have that information communicated to them.
13. In this case, the complainant suspects that MPS holds information from which it could answer the request. The MPS's position is that it does not.
14. In cases where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes might be held, 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.

15. The Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the public authority to check whether the information is held and any other reasons offered by the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of proof of the balance of probabilities.
16. Therefore, the Commissioner has sought to determine whether, on the balance of probabilities, the MPS holds any recorded information within the scope of the request.
17. In his grounds of complaint, the complainant has argued

*"The bottom line re a complaint to ICO is that the blackmail issue in March/April 1938 is clearly documented in Constance Coolidge's diaries, and recounted in Charles Higham's 'best-selling' biography of the Duchess of Windsor. At this time, Windsor (ex-King) still had Storrier as his detective in France. He was a senior MPS officer and reported directly (per press reports) to Game. Indeed, press report stated that Storrier was the ONLY official contact between the government and HRH.*

*Coolidge's diaries expressly record a meeting at the Crillon with the Windsors and a Paris and MPS police 'chief'. Whether this was Game or Storrier, it beggars belief that written reports of the matter were not produced by Game and/or Storrier (the latter came back briefly to the UK in April 38 as noted by the press).*

*In view of extant MPS files on the Windsors at TNA, [The National Archives] it is also likely that such reports would have been kept - i.e. not destroyed.*

*To date, nothing that MPS have told me evinces an efficient or comprehensive search of its records. Indeed, they have emphasised the difficulties of searching during 'lockdown'. Now the 'review' emphasises the mass of old records they've had to sort out over the last few years. (Are they still plodding on?) It's all a mess and too difficult and expensive for us to waste time on.*

*The matter is of considerable historical significance and it is reasonable to seek reassurance that MPS have truly complied with*

*their statutory obligations to ascertain whether the requested information is held”.*

18. As is customary when investigating such matters, the Commissioner asked the MPS a series of questions about its reasons for believing that it did not hold any of the requested information.
19. The MPS responded as follows:

*“On receipt of the ICO’s email, I contacted our Data Governance Team to progress this appeal afresh. The Data Governance Team is responsible for the retention and disposal policy for all registered files within the MPS. Our Data Governance Team searched our Records Management System (RMS), which indexes all our registered files. Using different keywords, the searches carried out have failed to locate any information held.*

*We have also made enquiries with our Intelligence Management and Operational Support (IMOS) who manage the database NSBIS (National Special Branch Intelligence System) for our counter terrorism command SO15 which also resulted in no trace.*

*The outcome of my enquiries have revealed ‘No Information is held’ by the MPS”.*

20. Regarding the actual searches undertaken, the MPS explained as follows:

*“Data Governance Team searches used three sources of information to search for the named individuals:*

*The Records Management System (RMS). This system indexes all corporate paper registered files that are still ‘live’. This will not include files created by Special Branch except where such files have been approved for transfer to The National Archives (TNA) and have been included on RMS for administrative convenience. If a file had survived which included the subjects’ names in the file description indexed on RMS, then it would have returned a result. A search of RMS using the names in the applicant’s request returned no results relevant to the applicant’s request.*

*A word document listing Special Branch files that have been approved for transfer to TNA. This list has been uploaded onto the TNA’s public catalogue, Discovery, and is available to the public. The subjects’ names were not on the file descriptions contained within this document.*

*An Excel spreadsheet listing Special Branch files that have been approved for transfer to TNA. This list has not been uploaded onto TNA's public catalogue, Discovery, and is not available to the public. The subject's names were not on the file descriptions contained within this document.*

*Counter Terrorisim [sic] Command (SO15) searches:*

*Heritage Centre<sup>1</sup> – No trace.*

*IMOS - There are **no files** in the IMOS file store that hold any mention of or intelligence surrounding the actions of the former king – Edward VIII (latterly the Duke of Windsor) or his wife Wallis Simpson, and no mention of Sir Philip Game in the IMOS computer database”.*

21. Answering the Commissioner' specific investigation enquiries, the MPS explained that it had searched electronic data, namely: RMS, a database; a word document, held in a folder on network drive; an excel spreadsheet, held in a folder on a network drive and IMOS, a database. When conducting its searches it had used the search terms: "Marconi\*, Coolidge, Constance Coolidge, Con\*, Coolidge\*, Philipp\* and Hesse\*". It also confirmed that, were any data held, it would be held as manual records.
22. MPS advised that it was unable to determine whether or not it had ever held any recorded information relevant to the scope of the request as there was no data available to answer this question. Likewise, no data was held to indicate whether or not any relevant data had destroyed.
23. Regarding its formal records management policy about the retention and deletion of this type of data, the MPS advised that comparable records would be managed in accordance with the Public Records Act 1958. It provided a link to the relevant Operation Selection Policy 29<sup>2</sup>, which is an agreement between the MPS and The National Archives concerning the management of such records. It also confirmed that there would be no other business / policing purpose for holding the requested information.

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<sup>1</sup> <https://fomphc.com/heritage-centre/>

<sup>2</sup> <https://www.nationalarchives.gov.uk/documents/information-management/osp29.pdf>

*The Commissioner's conclusion*

24. 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 the paragraphs, above, the Commissioner is required to make a finding on the balance of probabilities.
25. When dealing with a complaint to her under the FOIA, it is not the Commissioner's role to make a ruling on how a public authority deploys its resources, on how it chooses to hold its information, or the decisions it makes to hold some, but not other, information. Rather, in a case such as this, the Commissioner's role is simply to decide whether, on the balance of probabilities, it is more likely than not that the public authority holds the requested information.
26. While appreciating the complainant's frustration that the MPS says it does not hold information within the scope of his request, the Commissioner is mindful of the comments made by the Information Tribunal in the case of *Johnson / MoJ* (EA2006/0085)<sup>3</sup> which explained that the FOIA:  
  

*"... does not extend to what information the public authority should be collecting nor how they should be using the technical tools at their disposal, but rather it is concerned with the disclosure of the information they do hold".*
27. The Commissioner considers that the MPS contacted relevant parties to consider whether or not any information was held in respect of the request, and also that it conducted searches of relevant systems using search terms that were most likely to reveal whether or not any of the requested information was held. Based on the information provided, the Commissioner is satisfied that, on the balance of probabilities, no recorded information within the scope of the request is held. She is therefore satisfied that the MPS has complied with the requirements of section 1 of the FOIA in this case.

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<sup>3</sup><http://informationrights.decisions.tribunals.gov.uk//DBFiles/Decision/i90/Johnson.pdf>



## Other matters

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28. The Commissioner notes that the complainant considers it unlikely that the MPS has made a thorough search in this case, partly based on how it dealt with another case which the complainant also referred to the Commissioner for her consideration (and which has been since been informally resolved).
29. In the other case, he requested access to a specific file by reference and was advised that the file was only held in hard copy in an MPS building. Under the COVID-19 lockdown restrictions in place at that time, the MPS found that request to be vexatious because it was unable to retrieve the file. It advised him:
- "... in order to comply with your request, it would necessitate a staff member to travel to a MPS building for the specific purpose of viewing related information. Alternatively, it would require the tasking of MPS staff or officers currently working from an MPS location. However, as these individuals are supporting essential front line services, they would have to be additionally tasked to view or scan documents for any relevant information. This would have to be conducted whilst observing social distancing measures".*
30. The complainant was concerned that whilst that request had been deemed vexatious because the MPS could not search for the file, in this request (which would also be for paper records), the MPS had been able to advise him that the information was not held without making any physical searches.
31. The Commissioner notes that there is a difference in how the requests are worded. The other request required access to a referenced paper file, which the MPS was unable to retrieve at that time. This request specifies a subject matter, which meant it was able to search its electronic records to ascertain whether anything was held on that subject matter prior to considering any physical retrieval. Had any link to its paper files actually been found, then access to the hard copy material may have also caused it difficulties.

## Right of appeal

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32. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

33. 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.
34. 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** .....

**Carolyn Howes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**