

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 March 2023

Public Authority: The Council of the University of Southampton

Address: University Road
Southampton
SO17 1BJ

Decision (including any steps ordered)

1. The complainant made a three-part request for correspondence and documentation which is part of the Lord Mountbatten archive at the University of Southampton.
2. The Commissioner's decision is that the Council of the University of Southampton (the University) has correctly applied section 21 of FOIA to part two of the request. In respect of part three of the request, he is satisfied that, on the balance of probabilities, the University does not hold the information. However, the Commissioner has recorded a procedural breach of section 17 of FOIA.
3. The Commissioner does not require the University to take any steps as a result of this decision notice.

Request and response

4. On 1 September 2021, the complainant made the following request for information:

“My request concerns items in the University's archive/collection of papers relating to the life and work of the late Lord Mountbatten. Please note that I am only interested in those

items which are currently closed to staff and or researchers and or students and or authors and or members of the public.

Please note that the reference to the Prince of Wales in question three should include the Prince himself (irrespective of which title he used) and or the Prince's Principal Private Secretary (ies) and or anyone in his private office able to send and or receive correspondence and communication on his behalf.

Please note that the reference to the Lord Mountbatten in question three should include Lord Mountbatten himself and or any private secretary and or anyone in his private office able to send and or receive correspondence on his behalf.

- 1) Could the University please state how many individual items which have been transferred to the University as part of the Lord Mountbatten archive / collection are currently unavailable to view.
- 2) In the case of each individual item which is closed and or restricted are you able to provide an appropriate classification reference/number. If so, can you, please provide the number/reference?
- 3) Are any letters written by the Prince of Wales to Mountbatten and or any letters written by Lord Mountbatten to the Prince of Wales among the items that are closed or restricted. If the answer is yes, can you, please provide copies of this correspondence and communication.

Please note that the Information Commissioner and the Information Tribunal have ruled that the Prince's advocacy correspondence (and similar) should be disclosed particularly if it relates to the environment or has implications for the environment. In the case of each piece of correspondence and communication can you provide an actual copy of that correspondence and communication rather than excerpts. I would like the copies to include any letter headings, any other design features and any signatures. If you must redact any information, can you redact it where it appears so I can judge the extent and location of the redacti[on]."

5. The University responded on 1 October 2021 as follows:
 - 1) The Broadlands archive (of which the Mountbatten Papers form a part) is a collection that occupies approximately 370 linear metres of space. 99.8% of the archive is publicly available (0.8 linear metres is currently unavailable).
 - 2) The Cabinet Office has been carrying out a review of the closed Mountbatten Papers held by the University. As part of that review the Cabinet Office continues to clear further releases of these papers. You may have seen our statement on our website, concerning the additional releases which have recently been made and further releases are anticipated in the near future. As this information is also part of an information tribunal hearing, and both the information sought and the decisions of the first-tier tribunal about the exemptions being applied in respect of the withheld material will be available in the reasonable near future, it would not be of the greater public interest to disclose this data prior to the completion of the clearance process by the Cabinet Office.
 - 3) The University does not hold any closed or restricted files of correspondence between Lord Mountbatten and the Prince of Wales.
6. On 10 October 2021, the complainant requested an internal review of the University's handling of their request for information. The complainant specifically asked "if the reviewer could look again at the request in its entirety."
7. The complainant also stated:

"With regard to your response to question two I think it is highly likely that the Cabinet Office has identified a series of files it is not willing to make public. I therefore think the University can provide the relevant file reference numbers.
8. The complainant also asked the reviewer to look again at the issue of correspondence involving the Prince of Wales.
9. The University provided the outcome of its internal review on 15 November 2021, in which it confirmed that it believed it had complied with its obligations under sections 1 and 10 of FOIA. However, it accepted that it had not complied with section 17(1)(b) because it had not issued a refusal notice. The University stated that:

"[The complainant has] not stated any grounds upon which [their] request for review is based and the University is satisfied with the substance and entirety of the response it provided to [them]. I would also add that in connection with the Mountbatten Papers being withheld, this information is available to you by other means as the items have been numbered and each page foliated as part of our preparation for the digitisation of these materials and where papers are withheld, they are nonetheless listed in our archived catalogue with their access status shown as "closed" and with the FOI exemption being relied upon listed. As the information you have requested is available at this time as indicated above, it is reasonably accessible to you by other means, and the disclosure is exempt by virtue of section 21 of the Act."

Scope of the case

10. The complainant contacted the Commissioner on 4 December 2021 to complain about the way their request for information had been handled.
11. The Commissioner considers that the scope of his investigation is to consider whether the University has complied with sections 1, 21 and 17 of FOIA.

Reasons for decision

Section one – information held/not held

12. Under section 1(1) of FOIA, anyone who requests information from a public authority is entitled:
 - (a) to be told if the authority holds the information and,
 - (b) to have the information communicated to them if it is held and is not exempt information.
13. With regards to part three of the request, the complainant considers it highly likely that the University holds examples of the correspondence between Lord Mountbatten and the Prince of Wales, given the close relationship between both men.
14. The University explained that whilst it is possible that it holds correspondence between Lord Mountbatten and the Prince of Wales, this correspondence would be open, not closed. It stated that the complainant was very specific in their request, asking for the

correspondence items that are closed or restricted. The University's response is that it does not hold any closed or restricted files of correspondence between Lord Mountbatten and the Prince of Wales.

15. The University confirmed that the Broadlands Archives are catalogued in the online Archive Catalogue. It stated that a search was carried out for material relating to "Prince of Wales" which yielded 19 results, none of which are correspondence between Lord Mountbatten and the Prince of Wales.
16. The complainant has not put forward any compelling argument that would undermine the University's assertions that it does not hold any correspondence that are closed or restricted.
17. The Commissioner's conclusion is therefore that, on the balance of probabilities, the University does not hold information within the parameters of part three of the complainant's request.

Section 21 – information accessible to applicant by other means

18. Information is exempt from disclosure if it is accessible to the applicant by other means.
19. Section 21 is an absolute exemption which means there is no requirement to carry out a public interest test if the requested information is exempt.
20. Unlike most exemptions, the circumstances of the applicant can be considered as the information must be reasonably accessible to the particular applicant.
21. It is reasonable for a public authority to assume that information is reasonably accessible to the applicant as a member of the general public until it becomes aware of any particular circumstances or evidence to the contrary.
22. With regards to part two of the request, the complainant does not accept that the information is readily available to them through other means, as they stated that they are having difficulty identifying documents in the catalogue which are closed.
23. The University has explained that the information that is redacted or restricted in the Broadlands Archives is set out in the Archive Catalogue of the main collection description of this collection, as well as with the individual records to which the redactions, restrictions and/or closures apply.

24. In this case, the complainant was provided with links to access the information on the University's website. The complainant has not provided the University with any specific circumstances that mean they are unable to access the information.
25. The Commissioner has been able to access the information on the University's website and followed its instructions to identify whether the information redactions, restrictions and/or closures apply.
26. With regard to the matter of the information being difficult to identify, the Commissioner accepts that it may be time consuming to go through the records listed individually in order to determine whether a particular record is closed or not. However, FOIA does not require a public authority to take this into consideration when citing section 21.
27. It is therefore the Commissioner's view that the University has correctly cited section 21 of FOIA in response to part two of the complainant's request.

Procedural matters

28. Section 17(1) of FOIA states that where a public authority intends to refuse a request for information on the grounds that it is subject to an exemption in Part II of FOIA, it must issue the requester with a refusal notice explaining the exemptions relied upon and why they apply (if not apparent), no later than 20 working days after the date on which the request was received.
29. In this case, the University failed to issue the requester with a valid refusal notice with respect to part two of the request within 20 working days. The Commissioner therefore finds that the University breached section 17 of FOIA with regards to part two of the request.

Right of appeal

30. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

31. 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.
32. 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

Pamela Clements
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