

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 January 2024

Public Authority Cabinet Office
Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant has requested information about a 1999 Sunday Times Article. The Cabinet Office ("the public authority") confirmed that it didn't hold any information that fell within the scope of the request.
2. The Commissioner's decision is that, on the balance of probabilities, the public authority doesn't hold any information that would fall within scope of the request.
3. The Commissioner does not require further steps.

Request and response

4. On 20 June 2022 the complainant requested:

"I understand that several government departments were concerned with a Sunday Times article published on the 23rd May 1999 alleging Colonel Gaddafi's personal involvement in the bombing of Pan Am 103. The incident was documented in several newspapers for that week. I would like any documents and internal correspondence regarding this incident to be released to me that cover the period March-June 1999."

5. On 12 July 2022 the Cabinet Office requested clarification which the complainant provided.
6. On 19 July 2022 the Cabinet Office confirmed that information was held and exempt under section 27 (international relations) and that an extension was required in order to conduct the public interest test.
7. On 28 July 2022 the Cabinet Office changed its position and confirmed that no information was held.
8. The complainant requested an internal review on 26 August 2023.
9. The Cabinet Office provided the outcome to its internal review on 14 December 2022. It confirmed its previous reliance on section 27 was an error and reiterated that no information within scope of the request was held.

Reasons for decision

10. In cases where a dispute arises over the recorded information held by a public authority at the time of a request, the Commissioner, following the outcome of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities. This means that the Commissioner will determine whether it is likely, or unlikely, that the public authority held information relevant to the complainant's request at the time that the request was received.
11. In order to make his determination, the Commissioner asked the public authority to explain the searches it had undertaken to locate any information that would fall within the scope of this request and to explain why these searches would have been likely to locate all of the information in scope.
12. The public authority explained that, upon receipt of the request, the Cabinet Office Public Records and Archives Team ('COPRA') conducted searches of files which had been identified as most likely to hold relevant information.
13. These files all relate to the subject of the request itself; Colonel Gaddafi and the Lockerbie bombing.
14. The public authority noted that the article with which the complainant is concerned was published on 24 May 1999, and the complainant is concerned with the government's response to said article, COPRA searched records created several weeks after 24 May 1999.

15. The public authority noted:

"If relevant information had been found within this date range it might have pointed to further relevant information in other subject files or outside this date range but no such information was found."

16. The public authority also confirmed:

"We also searched relevant Cabinet Minutes, though these are publicly available, in case the article had been discussed at that level."

17. No relevant information was identified from the files searched, including the Cabinet minutes.

18. The Commissioner is satisfied that COPRA carried out targeted and appropriate searches which would have been likely to locate any relevant information.

19. Therefore, in the absence of any further steer from the complainant, on the balance of probabilities the Commissioner is satisfied that the requested information isn't held.

Procedural matters

20. Section 1 of FOIA states that a requestor is entitled to to be informed, in writing, by a public authority whether it holds information relevant to their request.

21. Section 10 of FOIA states that section 1 must be complied with promptly and within twenty working days of receipt of the request.

22. In failing to deny that information was held outside of this timeframe, the public authority breached section 10.

23. The Commissioner would like to stress the importance of ascertaining if any information is held in response to a request first and foremost, before going onto consider whether the information is exempt. The Commissioner believes the public authority's erroneous application of section 27 contributed to this complaint being brought to him.

Other matters

24. The Commissioner's guidance states that a public authority must provide its internal review outcome within twenty working days of receipt. This can be extended to forty working days in complex cases. The public

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authority grossly exceeded this timelimit in providing its internal review outcome.

Right of appeal

25. 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

26. 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.
27. 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

Alice Gradwell
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Information Commissioner's Office
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Wilmslow
Cheshire
SK9 5AF