

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 15 December 2006

Public Authority: Foreign & Commonwealth Office
Address: Old Admiralty Building
London
SW1A 2PA

Summary

The complainant requested information related to the Scott Inquiry. The public authority responded that it does not hold this information. Having considered the representations of the both the complainant and the public authority, the Commissioner accepts that no information falling within the scope of the information request is held by the public authority. Therefore the Commissioner considers that the public authority dealt with the complainant's request for information in accordance with section 1(1) of the Act. The Commissioner does not require the public authority to take any steps.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 ('the Act'). This Notice sets out his decision.

The Request

2. On 18 March 2005, the complainant made the following information request:

"Please provide copies of the full information provided by Sir Nicholas to Sir Richard now Lord Scott or provide me with the facility to see and copy the full information."
3. The public authority responded to this on 18 April 2005. This letter stated that it could not locate any information falling within the scope of the request.
4. The complainant contacted the public authority again on 22 April 2005. The complainant attached to that letter, a copy of a letter written by Sir Nicholas Bonsor in which Sir Nicholas states that he had passed information to the Scott Inquiry.

5. The public authority responded on 8 November 2005. In this letter, the public authority stated that its position remained unchanged in that no information falling within the scope of the information request was held.
6. The public authority also advised the complainant that Sir Nicholas Bonsor joined it as a Minister in 1995. The public authority suggested that the letter in which Sir Nicholas Bonsor refers to passing information to the Scott Inquiry may refer to the period prior to Sir Nicholas joining the public authority during which he was Chairman of the House of Commons Select Committee on Defence.
7. The complainant contacted the public authority by letter dated 8 March 2006 and requested an internal review of the public authority's response to his information request. The public authority responded, giving the outcome of its internal review, on 7 July 2006.
8. In this letter the public authority provided further information about the steps it had taken to attempt to locate the requested information. These steps were explained as follows:

"A search amongst Sir Nicholas's Private Office papers from when he was an FCO minister found nothing. Another search found nothing attributed to Sir Nicholas Bonsor in the indexes of the individuals who gave evidence to, and the documents submitted to the Scott Inquiry."
9. The conclusion of the internal review upheld the initial response to the information request that information falling within the scope of the request was not held.

The Investigation

Scope of the case

10. The complainant contacted the Commissioner on 12 July 2006 to complain about the way in which the public authority had handled his information request. In particular the complainant was dissatisfied with the public authority's response that information falling within the scope of his request was not held.

Chronology

11. The Commissioner contacted the public authority on 25 September 2006. In this letter, the Commissioner informed the public authority that the complaint had been made and asked it to respond to the following questions:
 - Was the information requested ever held?
 - If so, what was the date of creation of the record and its deletion, and was this deletion in line with the records management policy of the FCO?
 - What steps were taken to attempt to locate the information requested?
 - Is information similar to that requested held and, if so, has the complainant been advised of this in accordance with the requirement of section 16 of the Act to provide appropriate advice and assistance?

12. The public authority responded by letter dated 16 October 2006. In their response, the public authority stated that the information requested by the complainant had never been held by the public authority. The public authority also stated that its searches had not located information similar to that requested.
13. The public authority provided further information about the searches that they had carried out for the requested information. These searches included going through the indexes of documents submitted to the Scott Inquiry for references to Sir Nicholas Bonsor. In addition searches were carried out of the indexes on individuals who gave evidence to the Scott Inquiry.
14. The public authority referred to the letter provided by complainant, and written by Sir Nicholas Bonsor in which Sir Nicholas refers to passing information related to the complainant to the Scott Inquiry. The complainant asserts that this letter represents proof that the public authority must hold the information that he is seeking. The letter in question is dated 4 April 1996 and Sir Nicholas was a Minister within the public authority at that time.
15. However, the public authority asserts that this letter, in which Sir Nicholas refers to having passed materials relating to the complainant to the Scott Inquiry, was not written in his capacity as a Minister. The public authority stated further that the evidence gathering for the Scott Inquiry largely took place between 1992 and 1994. This period was prior to Sir Nicholas Bonsor joining the public authority. The public authority believes that this decreases the likelihood that it would have retained information passed by Sir Nicholas to the Scott Inquiry.
16. Further to this, the public authority supplied the following Hansard extract from 19 June 1995:

"... I have met Mr. James. He provided a lot of papers to me about the Iraqi gun affair when I was appointed Chairman of the Select Committee on Defence, and asked me to instigate the inquiry into it. I told the House that I was deeply disturbed by some of the things that I saw. I did not feel that the Defence Committee had the proper resources to look into that matter. After discussion with the other members, I passed all those papers on to Sir Richard Scott."
(Commons Opposition Debate, 19 June 1995, Hansard Official Report, Column 56)
17. This was a statement made by Sir Nicholas Bonsor in the House of Commons. The public authority states that Sir Nicholas Bonsor joined it in July 1995. According to the above Hansard extract, Sir Nicholas provided information to the Scott Inquiry prior to joining the public authority.

Findings of fact

18. The complainant asserts that the information he has requested is held by the public authority. In support of this view, the complainant argues that the fact that Sir Nicholas Bonsor was previously a Minister within the public authority and has confirmed that he did pass information relating to the complainant to the Scott Inquiry demonstrates the likelihood that the public authority does hold information falling within the scope of his request.

19. The public authority asserts that it does not hold information falling within the scope of the information request. In support of its view, the public authority explained that Sir Nicholas Bonsor was not a Minister within the public authority at the time that he refers to passing information to the Scott Inquiry and that he did not pass information relating to the complainant to the Scott Inquiry in his capacity as a Minister.

Analysis

Procedural matters

20. The Commissioner appreciates the position of the complainant in that it is clear that information provided by him to Sir Nicholas Bonsor was passed to the Scott Inquiry. However, the Commissioner notes that the public authority in this case is not the primary holder of the records of the Scott Inquiry.
21. In its responses to the complainant and to the Commissioner, the public authority refers to its own records relating to the Scott Inquiry. Given that the public authority does hold records relating to the Scott Inquiry, if it were the case that the information sought by the complainant had been passed to the Scott Inquiry by Sir Nicholas Bonsor during his time as a Minister within the public authority and in that capacity, the Commissioner may have expected that the public authority would retain a copy of this information, or some record of it.
22. However, the Commissioner notes firstly that on the basis of the Hansard record it appears that Sir Nicholas Bonsor passed information to the Scott Inquiry in his capacity as Chairman of the House of Commons Defence Committee. In the Commissioner's view this supports the public authority's contention that it would not hold such information as Sir Nicholas was not a Minister within the public authority during this period. It is unlikely that the public authority would have any record of the disclosure of these papers to the Scott Inquiry if this was carried out by an individual who, at that time, was not involved with the public authority in any capacity.
23. Secondly, the Commissioner has reviewed the letter submitted by the complainant as evidence that the public authority holds the requested information. Whilst this shows that the information sought by the complainant was passed to the Scott Inquiry, there is nothing within the content of this letter that would suggest that this information is held by the public authority. The Commissioner also notes that the public authority had no responsibilities in respect of the work carried out by the Scott Inquiry.

The Decision

24. The Commissioner accepts the representations of the public authority concerning the thoroughness of the searches it carried out for the information requested. In this case the Commissioner is also sufficiently persuaded by the evidence

provided by the public authority in support of its contention that it does not hold the information requested. There is no evidence available to the Commissioner that suggests that the information in question is likely to be held by the public authority. Therefore, the Commissioner's decision is that the public authority dealt with the complainant's request for information in accordance with the section 1(1) of the Act.

Steps Required

25. The Commissioner requires no steps to be taken.

Right of Appeal

26. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 15 day of December 2006

Signed

**Graham Smith
Deputy Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**