

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 December 2011

Public Authority: Ministry of Justice
Address: 102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainant has requested information relating to the sentencing of three individuals convicted of the murder of Nelly Bubb at Exeter Crown Court in 1973.
2. The complainant requested court records relating to the case. The Ministry of Justice (MOJ) explained that, due to their age, such records would have been sent to The National Archives (TNA). While the complainant successfully obtained most of the information from TNA one document – *the indictment* – was not available. The MOJ has explained that it does not hold any information relating to this case.
3. The Information Commissioner's decision is that the MOJ has complied with the Freedom of Information Act 2000 (the FOIA) in this case in that it stated correctly that the information requested was not held.

Request and response

4. On 10 October 2010 the complainant wrote to the MOJ and requested information in the following terms:

"Can you please tell me how I go about tracing details of a 1973 conviction of (redacted names 1, 2 and 3)?"

The three were originally jointly charged with the murder of Nellie Bubb at Teignmouth on, or about, the 9th of September 1972 which may have been reduced to manslaughter on conviction. They appeared before Exeter Crown Court in 1973."

5. The MOJ responded on 05 November 2010. It stated that the MOJ no longer holds the information. The MOJ advised that it had transferred information relating to the trial in question to The National Archives (TNA).
6. Following an internal review the MOJ wrote to the complainant on 23 February 2011. It stated that, having conducted a thorough search of its paper and electronic records, the MOJ did not hold the information requested.

Scope of the case

7. The complainant contacted the Information Commissioner to complain about the way his request for information had been handled.
8. The complainant wrote to the Information Commissioner on 24 February 2011 explaining that, while the TNA website held the court records the MOJ referred to, they did not contain the indictment.

Reasons for decision

9. Section 1 of FOIA states that:

"Any person making a request for information to a public authority is entitled –

a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

b) if that is the case, to have that information communicated to him."

10. In scenarios where there is some dispute about the amount of information which a public authority confirms holding and the amount of information that a complainant believes may be held, the Information Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities. In other words, in order to determine such complaints the Commissioner must decide, on the balance of probabilities, whether a public authority held at the time of the request any information falling within its scope.
11. The Commissioner considered the following in reaching a decision in this case:

- that the normal procedure would have been for the MOJ to transfer the documents to TNA;
 - the age of the information sought; and
 - the searches the MOJ has conducted.
12. The Commissioner contacted the MOJ to enquire about the searches it made when responding to the information request. The MOJ explained its handling of the request and reiterated that it did not hold the information which the complainant had requested. The MOJ said that indictments are sent to TNA under a separate reference number from other court files and it was therefore quite normal for the document to have been separated from the rest of the records relating to the case. In any event, the age of the indictment indicated that, according to the normal procedure, it should have been sent to TNA.
13. Nevertheless, the MOJ said that it had searched the locations in which the indictment may have existed but had not found it. This search took the form of officials within the MOJ physically searching through other indictments awaiting transfer to the MOJ. This search did not locate the indictment in question.
14. Given that the information the complainant requested is over 30 years old the Information Commissioner considers it understandable that the MOJ would no longer retain it. The MOJ explained that its procedure dictates that the information would have been transferred to the TNA. The MOJ did not expect that it would hold this information and, having searched for it, is certain that this is the case.
15. On the basis that information should have been transferred to TNA, and that the MOJ nevertheless searched for this information and was unable to locate it, the Commissioner's conclusion is that, on the balance of probabilities, the MOJ does not hold the information in question.

Other matters

16. Part of the reasoning for the conclusion above is that the information in question has been passed by the MOJ to TNA. However, the complainant has stated that he has been unable to locate this information within TNA, and he may therefore be dissatisfied with this conclusion.
17. In response to this the Information Commissioner would note that the focus of this notice is on whether the information in question is held by the MOJ, and the conclusion on this point is given above. The question

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of whether and where this information is held by TNA is not covered within this notice.

Right of appeal

18. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

19. 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.
20. 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

Jon Manners
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