

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 May 2016

Public Authority: Home Office
Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant requested information relating to a named individual who was part of an aircrew that deserted from the German air force and flew to an RAF base in May 1943. The Home Office stated that it did not hold any information falling within the scope of this request.
2. The Commissioner's decision is that the Home Office stated correctly and in accordance with section 1(1)(a) of the FOIA that it did not hold the requested information and so he does not require it to take any steps.

Request and response

3. On 29 October 2015 the complainant wrote to the Home Office and requested information in the following terms:

"...the complete Alien Department File and any other files held on [Helmut Paulsen, d.o.b. 16/10/1913 also known as Karl Paul Rosenberger]".
4. The Home Office responded on 26 November 2015 and stated that it did not hold any information falling within the scope of the request.
5. The complainant responded on 8 December 2015 and requested an internal review. The Home Office responded with the outcome of the review on 18 January 2016. The conclusion was that the initial response that the information was not held was correct, although the complainant was at this stage directed to a specific open file at the National Archives

(TNA)¹ and it was acknowledged that this advice should have been given in the initial response.

Scope of the case

6. The complainant contacted the Commissioner by letter received on 9 February 2016 to complain about the response to his information request. The complainant gave some background about the individual named in his request, stating that he was part of a German air force crew that had, in May 1943, deserted and flown to Scotland. The complainant stated that this individual was later given a new identity and granted British citizenship. The complainant indicated that he did not accept that the Home Office did not hold any information falling within the scope of his request.

Reasons for decision

Section 1

7. Section 1(1)(a) of the FOIA requires that a public authority in receipt of a request for recorded information must confirm or deny whether it holds the information specified in the request. Clearly, part of the requirement of this subsection is that the public authority must establish accurately whether it holds the requested information.
8. In this case the complainant disputes the accuracy of the response from the Home Office that it does not hold any information falling within the scope of his request. In this situation, the role of the Commissioner is to make a decision as to whether the Home Office was correct to state that it did not hold the requested information. In doing so, he applies the civil standard of the balance of probabilities, which is in line with the approach taken in a number of cases by the First-tier Tribunal (Information Rights).
9. The Commissioner has taken into account here the explanation provided by the Home Office of the searches it undertook in response to the request, as well as reasoning it gave as to why there should not have been a strong expectation that it would hold information of relevance to the request. He has also addressed reasoning given by the complainant

¹ <http://discovery.nationalarchives.gov.uk/details/r/C14207543>

as to why he believed the Home Office should be expected to hold this information.

10. The first point to cover here is that, as mentioned above, the Home Office passed a file relating to the named individual to TNA in 2003, where it is publicly available. The Home Office does not, therefore, deny that it created and maintained a file on this subject, instead its position is that it no longer holds this file since it was transferred to TNA. The question for the Commissioner here is whether the Home Office continues to hold any other files relating to that individual.
11. Turning to the explanation given by the Home Office of the search it carried out, it stated that it had *"carried out a thorough search of the Departmental Records Management System and Casework Immigration Database"*. It stated that electronic searches were carried out for files with titles that included the two names mentioned in the request, including variations on those names. For example, it stated that the electronic search that it carried out would have captured files in the name "H Paulsen" or "K P Rosenberg", as well as the full names as written by the complainant. It stated that these searches would have identified any files of interest, including any historical files, which are stored elsewhere from the Home Office main office. It also stated that a search was carried out of paper files that are held at its main office – the *"Marsham Street record store"*.
12. The Home Office stated that its searches identified only the file that was transferred to TNA in 2003. It stated that it found no references to any other file, including no references to any other file that may have been deleted or destroyed. The Home Office acknowledged that it could not state with certainty that it had never held other files on the named individual, but that it believed it would be *"almost certain"* that such files would have had that individual's name in their title and that its searches had found no trace of any file with such a title.
13. The Home Office gave further reasoning as to why there should not be a strong expectation that it would hold information within the scope of the request, an explanation that had also been given to the complainant in the 29 October 2015 response. This was that *"around two thirds of historical naturalisation files were destroyed in the 1960s"* and that it was only due to an oversight that they were not all destroyed. The Home Office was suggesting, therefore, that even had it held a naturalisation file on the named individual, it is probable that it would have been destroyed in the 1960s.
14. As to the points made by the complainant, in his submission to the ICO the complainant included a copy of a certificate of naturalisation for *"Karl Paul Rosenberger known as Helmut Paulsen"*, which the

complainant had procured from TNA. It included the reference number P.18658. The complainant was particularly concerned that the Home Office had been unable to confirm whether it held a file with that reference number.

15. The response from the Home Office on this point was that it had identified a file with this reference number, but that this related to a historical document titled *"Handbook – Air Raid Precautions"*. It stated that this file is now held at Royal Postal Museum and Archive under file reference POST 33/5110². It stated that it had found no record of any file with that reference number that relates to either of the names specified in the request.
16. The complainant also suggested when requesting an internal review that the Home Office should check with the Security Service whether it held information relevant to his request, as he believed that any such file would have been passed between the Home Office and the Security Service.
17. Turning to the Commissioner's view, based on the description provided by the Home Office, he accepts that it carried out a reasonable search for the requested information. This search was carried out both electronically and manually in relation to locally held hard copy files. He agrees with the Home Office that carrying out searches based on the names specified in the request, including variations on these, was an appropriate search strategy. He also notes the explanation from the Home Office concerning the destruction of files in the 1960s and accepts that this reduces the likelihood of it holding relevant information.
18. The Commissioner acknowledges the points made by the complainant, but is not of the view that they amount to convincing evidence that the Home Office should be expected to hold relevant information. On the issue of the reference number on the naturalisation certificate, this is understandably a point of frustration for the complainant, but it has been addressed by the Home Office as covered above. Why the only other identified record of that reference number is on a document on an unrelated matter is a question unlikely to ever be answered at this remove, but there is simply no evidence available to the Commissioner suggesting that the Home Office holds any other information relating to that reference number.

² http://www.postalheritage.org.uk/collections/getrecord/GB813_P_33_7787

19. On the point made by the complainant about the Security Service, information held by the Security Service would not be considered held by the Home Office for the purposes of the FOIA. In any event, information that relates to, or was supplied by, the Security Service is absolutely exempt from the FOIA by virtue of section 23(1).

20. In summary, the Commissioner's view is that the Home Office carried out a reasonable search for information falling within the scope of the request. It has also given other valid reasoning as to why it should be considered unlikely that it would hold such information. Whilst the Commissioner believes that it was also reasonable for the complainant to have expected when making his request that the Home Office would hold relevant information, on the basis of the evidence available to him, the Commissioner's conclusion is that, on the balance of probabilities, the Home Office does not hold any information falling within the scope of the complainant's request. Therefore, when stating as much in response to the request, it complied with section 1(1)(a) of the FOIA.

Right of appeal

21. 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@hmcts.gsi.gov.uk

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

22. 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.
23. 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

Ben Tomes
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF