

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 23 November 2022

**Public Authority:** Ministry of Defence

**Address:** Whitehall  
London  
SW1A 2HB

#### **Decision (including any steps ordered)**

---

1. The complainant submitted a request to the Ministry of Defence (MOD) seeking specific information about the bombing of McGurk's bar in Belfast in 1971. The MOD explained that it could not locate any information falling within the scope of the request.
2. The Commissioner's decision is that on the balance of probabilities the MOD does not hold any information falling within the scope of the request.
3. No steps are required.

#### **Background**

---

4. The request which is the focus of this complaint concerns the bombing in December 1971 of McGurk's bar in Belfast, Northern Ireland. The bomb was planted by loyalist terrorists and in 1978 an Ulster Volunteer Force member was convicted in relation to the attack. However, in the aftermath of the attack police gave briefings to the media and local politicians that this was a republican 'own goal'.

5. In 2008 the government apologised for its part in the disinformation 'for the extraordinary additional pain caused to both the immediate families and the wider community by the erroneous suggestions made in the immediate aftermath of the explosion about who was responsible.'<sup>1</sup>

## Request and response

---

6. The complainant submitted the following request to the MOD on 5 November 2021:

'Background Information to Request – see attached: Serial 12, 0100 hours 5th December 1971. Message from then Brigadier Frank Kitson (now General Sir Frank Kitson retired) to 39 Brigade. This is a sheet from Annex A of the 39 Brigade Commander's Diary accessed in the National Archives, reference WO 305/4733. This request refers to information which should be in MoD stores, though.

Request:

May I have a digital copy of the notes, minutes, intelligence and/or background information relating to the agreement between then Brigadier Frank Kitson and the Royal Ulster Constabulary which led to the Brigadier Kitson telling Brigade:

"RUC have a line that the bomb in the pub was a bomb designed to be used elsewhere, left in the pub to be picked up by Provisional IRA. Bomb went off and was a mistake. RUC Press Office have a line on it – NI should deal with them."

7. The MOD responded on 30 November 2021 and explained that after extensive searches it could not locate any information falling within the scope of the request.
8. The complainant contacted the MOD on 30 November 2021 and asked it to conduct an internal review of this response.
9. The MOD informed him of the outcome of the internal review on 10 January 2022. It confirmed its position that it did not hold any information falling within the scope of this request.

---

<sup>1</sup> <https://www.bbc.co.uk/news/uk-northern-ireland-12524214>

## Scope of the case

---

10. The complainant contacted the Commissioner on 13 December 2021 to complain about the MOD's handling of his request. The complainant argued that in his view it was likely that the MOD would hold information falling within the scope of his request.

## Reasons for decision

---

### Section 1 – Right of access to information

11. In cases such as this where there is some dispute as to whether information falling within the scope of the request is held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
12. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request.
13. In applying this test the Commissioner will consider the scope, quality, thoroughness and results of the searches, and/or other explanations offered as to why the information is not held.

### The complainant's position

14. In his request for an internal review the complainant explained that 'This was a big decision for Brigadier Kitson at the time due to the significance of the incident and the usual operating procedures for the British Army so I'd expect preceding and following information regarding his decision. We now know too, of course, that the information was false so its provenance is especially important.'
15. In his submissions to the Commissioner the complainant emphasised that the false information was the genesis of a lie that criminalised the victims of the bombing and the decision was taken by one of the most important British soldiers in the north of Ireland at the time. He explained that he considered that the police and British Army were guilty of fabricating the lie in 1971 and the organisations today are helping to perpetuate the cover-up.

### The MOD's position

16. The MOD has explained that Headquarters 38 (Irish) Brigade conducted a search within their archive database for an agreement of the type specified in the request and no such information, or reference to such

information, was located. The MOD also explained that keyword searches were conducted within the MOD Main Archive and the MOD's Sensitive Archive at Portsmouth without any information being located. Furthermore, the MOD explained that, based on the file description, the most likely papers files to hold this information were recalled and manually searched. In addition, enquiries were made to staff at Army Historical Branch. However, no information meeting the description of the request was found as result of the various searches.

17. The MOD was therefore satisfied that all relevant areas of the organisation where material of the age requested would likely to be held had been searched. However, no agreement, or reference to such an agreement, had been located.

#### The Commissioner's position

18. The Commissioner is satisfied that on the balance of probabilities the MOD does not hold any recorded information falling within the scope of the request. He has reached this conclusion because the MOD has conducted detailed searches of all locations within the organisation where recorded information, ie information about the agreement, would be located. In conducting these searches the Commissioner notes that not only has the MOD not located any agreement of the nature sought by the complainant, neither has it located any references to any such agreement. In the Commissioner's view this, along with the detailed searches conducted, supports the MOD's position that it does not hold any recorded information falling within the scope of the request.
19. The Commissioner acknowledges the significance of matters referred to in the quote from the Brigade Commander's Diary. However, for the reasons set out above he is satisfied that no recorded information falling within the scope of the request is held, and moreover, he is satisfied that there are no further steps that the MOD could reasonably take to locate information which did fall within the scope.

**Right of appeal**

---

20. 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](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

- 21. 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.
- 22. 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 .....**

**Jonathan Slee  
Senior Case Officer  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**