

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

### **Decision notice**

**Date:** 19 October 2023

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

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

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1. The complainant has requested the date that specific files will be released to the National Archives. The Cabinet Office denied holding the requested information.
2. The Commissioner's decision is that, on the balance of probabilities, the Cabinet Office doesn't hold the requested information and complied with section 1(1) of FOIA.
3. The Commissioner does not require further steps.

#### **Request and response**

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4. On 22 March 2022, the complainant requested the release of four files relating to the Lockerbie bombing. The Cabinet Office refused to disclose the files, citing several exemptions including section 22 (information intended for future publication). The Commissioner has considered this request under the reference IC-202135-K5L6.

5. The complainant disputed the application of section 22 and on 27 October 2022 they submitted another request for information:  
  
"I understand that in the Cabinet Office temporary possession are various folders to do with the Pam Am 103 bombing. They are listed on the National Archives website and comprise of the following:  
  
<https://discovery.nationalarchives.gov.uk/details/r/C16748009><sup>1</sup>  
  
<https://discovery.nationalarchives.gov.uk/details/r/C16854833><sup>2</sup>  
  
<https://discovery.nationalarchives.gov.uk/details/r/C17325988><sup>3</sup>  
  
<https://discovery.nationalarchives.gov.uk/details/r/C16561828><sup>4</sup>  
  
I wish to know what date these folders and other related to the case will be released to the National Archive?"
6. The Cabinet Office responded on 27 November 2022. It stated that the requested information wasn't held.
7. The complainant requested an internal review on the same day, stating "you cannot rely on section 22 on withholding these documents if you have no intention of ever releasing them."
8. The Cabinet Office provided the outcome to its internal review on 2 March 2023. It upheld its previous position.
9. The Commissioner wrote to the complainant on 25 August 2023. He provided his preliminary view and encouraged the complainant to withdraw the complaint. The complainant declined.

## Scope of the case

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10. To reiterate, the Cabinet Office's decision to withhold the files in question has been considered by the Commissioner in a separate case, IC-202135-K5L6.

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<sup>1</sup> [DISASTERS. Lockerbie: Pan Am 747 air crash; part 3b | The National Archives](#)

<sup>2</sup> [DISASTERS. Lockerbie: Pan Am 747 air crash; part 4 | The National Archives](#)

<sup>3</sup> [DISASTERS. Lockerbie: Pan Am 747 air crash; part 5 | The National Archives](#)

<sup>4</sup> [DISASTERS. Lockerbie bombing: Pan Am 747 air crash, 21 December 1988; part 3a | The National Archives](#)

11. The scope of this investigation is to determine whether the Cabinet Office is correct when it says that it doesn't hold the date requested.

## Reasons for decision

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### Section 1 – information not held

12. 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.
13. The complainant argues that, in order for section 22 to be engaged, a public authority must have determined the date on which the exempt information will be published. This is the only argument the complainant has put forward.
14. In its internal review outcome, the Cabinet Office explained to the complainant:

"Section 22(1)(a) of FOIA provides that information is exempt information if it held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not.) For this reason there is no requirement to hold information about the date of transfer."
15. The Commissioner's guidance<sup>5</sup> on section 22 clarifies that section 22(1)(a) can be engaged where:

"(a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),

(b) the information was already held with a view to such publication at the time when the request for information was made, and

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<sup>5</sup> [information-intended-for-future-publication-and-research-information-sections-22-and-22a-foi.pdf \(ico.org.uk\)](https://ico.org.uk/information-intended-for-future-publication-and-research-information-sections-22-and-22a-foi.pdf)

(c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).”

16. The Commissioner’s guidance also clarifies:

“Although the public authority must hold the information at the time of the request with a view to its publication, the exemption does not require a set publication date to be in place.”

17. So, the Cabinet Office isn’t required to have determined the date of the transfer of the files to the National Archives in order to successfully engage section 22. Since the Cabinet Office has explained to the complainant that this date hasn’t been determined, it logically follows that the date (that doesn’t exist) isn’t held by the Cabinet Office.

18. The complainant has submitted no further arguments as to why the requested information would be held. Therefore the Commissioner is satisfied that, at the time that the request was made, the requested information wasn’t held by the Cabinet Office.

## Right of appeal

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19. 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)

20. 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.
21. 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**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**