

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 January 2024

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

Decision (including any steps ordered)

1. The complainant has requested information relating to the Lockerbie bombing. The Cabinet Office ('the public authority') confirmed that it didn't hold any information that fell within the scope of the request.
2. The Commissioner's decision is that, on the balance of probabilities, the public authority doesn't hold any information that would fall within scope of the request.
3. The Commissioner does not require further steps.

Request and response

4. On 20 February 2022, the complainant wrote to the public authority and requested:

'I understand that in March 1995, the late Tam Dalyell passed to John Major MP an alleged telex apparently sourced from the Drug Enforcement Agency claiming external agencies involvement in the Pan Am 103 bombing of December 1988. I understand that after serious investigation, it was determined in June 1995 that the document was confirmed as a forgery. I would like any documents concerning this issue to be sent to me.'

5. On 9 March 2022, the complainant clarified that they just wished to receive:

 'Just documents/correspondence relating to the forged telex.'
6. Then, on 15 March 2022, the complainant further clarified that:

 'The timeframe is March-June 1995.'
7. The public authority responded on 21 March 2022 confirming that it didn't hold any information that fell within the scope of the request.
8. On 28 March 2022 the complainant requested an internal review. They noted the public authority is in possession of a specific file¹ and queried whether this file had been searched for information relevant to their request.
9. On 21 June 2022 the public authority provided the outcome to its internal review. It upheld its previous position.

Reasons for decision

10. 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.
11. In order to make his determination, the Commissioner asked the public authority to explain the searches it had undertaken to locate any information that would fall within the scope of this request and to explain why these searches would have been likely to locate all of the information in scope.
12. The public authority explained that, upon receipt of the request and clarifications from the complainant, the Cabinet Office Public Records and Archives Team ('COPRA') identified:

¹ <https://discovery.nationalarchives.gov.uk/details/r/C17325988>

'only a single file (PREM 19/5955) held by the Cabinet Office covering the time frame of the request, that would be likely to hold relevant information.

The file was reviewed and no information was found in scope of the request. The same file was checked again as part of the internal review response.'

13. The public authority further explained:

"As part of the internal review consideration, a further search of TNA's online catalogue using the search term 'Lockerbie' and the year 1995 was conducted. This generated five hits, but only two of these related to Cabinet Office records - PREM 19/5955 and CAB 128/113/3 (which relates to Conclusions of Cabinet Meetings).

PREM 19/5955 is held by the Cabinet but contains no information in scope of this request. CAB 128/113/3 was open on transfer to TNA as of 18/07/2019."

14. Finally, the public authority confirmed it does hold other files relating to the Lockerbie bombing, but they were not searched as part of this request as the date range of these records are outside the timeframe specified by the complainant.

15. The public authority has raised the possibility that information relevant to the request might be held by the FCDO. Or, if the complainant is correct that the request relates to a forged document – no recorded information might be held at all. However, neither of these issues are for the public authority to consider in its handling of the request.

16. Ultimately, all the public authority can do is conduct appropriate and targeted searches for information it holds. The Commissioner is satisfied that COPRA carried out targeted and appropriate searches which would have been likely to locate any relevant information.

17. Therefore, in the absence of any further steer from the complainant, on the balance of probabilities the Commissioner is satisfied that the requested information isn't held.

Other matters

18. The Commissioner's guidance states that a public authority must provide its internal review outcome within twenty working days of receipt. This can be extended to forty working days in complex cases. The public authority exceeded this time limit in providing its internal review outcome.

Right of appeal

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

Website: 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
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