

4 March 2024

**Case Reference IC-286742-L7Q3**

**Request**

You asked us:

*"1...Does for whatever reason the Information Commissioner's Office hold a copy of a letter described by the BBC in FOI disclosures as letter from the Palace to DG dated 16 November 1995.*

*2...If the answer is yes can you please provide a copy of this letter.*

*3...Has the ICO ever held but since destroyed a copy of the letter. If the letter was destroyed by the ICO can you say when and why it was destroyed.*

*4...If the destroyed letter continues to be held in another form can you please provide a copy of the document."*

We received your request on 6 February 2024.

We have handled your request under the Freedom of Information Act 2000 (the FOIA).

## **Our response**

There are multiple possible locations that the letter could be stored in, including casework systems, legacy systems and files, SharePoint sites and physical records. The information could be held by one or more of our various teams, including our FOI Complaints, Data Protection Complaints, Investigations, and Legal teams.

Our FOI complaint cases are held on our case management system, and we have an account for the BBC ("British Broadcasting Corporation") on the system. We also still have an area for preserved complaint cases on our previous case management system, which may hold information that could be searched through.

On our current system, we have around 250 FOI complaint cases logged against the BBC's account.

Unfortunately, our system does not have the functionality to allow us to quickly search for documents via specific keywords. Manual searches would be required to provide official confirmation if we hold it or not.

For each complaint case, this would require searching through emails, attachments (55% of the thousands of emails for FOI complaint cases across all public authorities in financial year 2022/23 contained attachments), and individual documents that have been uploaded to the case. We would not know exactly how the letter would be titled, or structured within the case file, or in what context it would have been provided to us.

More broadly, it would also require significant efforts to establish if the letter has ever been held. There is no straightforward way to determine this, and it would require accessing the various possible locations and approaching various teams or colleagues who could have knowledge or potential sources of information to provide any indication if we have ever held it.

## **Section 12 of the FOIA – Cost limit**

Conducting the searches necessary to confirm if we hold the information you have asked for would exceed the cost limit set out by section 12 of the Freedom of Information Act 2000 (FOIA).

The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 states that the 'appropriate limit' for the ICO is £450. We have determined that £450 would equate to 18 hours work.

Assuming that the search on our case management system, in itself, would involve searching for approximately 10 minutes per case – and it is certain that some searches would take much longer than that – this would equate to over 40 hours' worth of searching.

The additional searches of all other locations, such as SharePoint (eg to search through previous Tribunal case files where a copy of the letter might be held), would also, in itself, be likely to require searches that would exceed 18 hours, as we do not know exactly where the information would be held, how it would be titled, or in what context it would have been shared to or held by us, if it is or was ever held at all.

This clearly exceeds the 18 hours which would accrue a charge of £450 or more, triggering the provisions of section 12 of the FOIA.

## **Advice and assistance**

Notwithstanding the above, I have done a high-level search of our FOI complaints cases on our case management system, as this is a primary source of our interaction with other organisations from a casework perspective. I only checked the initial complaint submissions (or key documents if more accessible), to see if there was an obvious link to the letter you are looking for.

From my search, I could see that most cases did not have obvious indications that they were about the relevant subject matter or letter you are looking for, but I could not be sure without going deeper into the cases and branching off to other information searches if needed. I found no obvious evidence that the BBC (or any complainants or anyone else) have ever shared the letter with us.

There are a small number of cases which seemed to relate to the subject matter which you are exploring, for example, FOI complaint case IC-121535-F9N6 which went to the First Tier Tribunal (case EA/2022/0069). However, out of them potentially relevant cases, there was no indication that the letter you are looking for is held by us, or has ever been shared with us by anyone.

Some relevant cases included your own cases brought to the ICO, for example, IC-98962-Z3R2, and your data protection complaint IC-120738-Q5S8. However, as mentioned, the letter is not held on those cases and there is no indication it ever has been held.

It is also worth noting that we only hold information for set periods, so even if the information has ever been held, it may no longer be in our possession. Some of our information gets destroyed when it reaches its retention period, and other information is transferred to the National Archives. This may be something you wish to look into.

Lastly, I want to emphasise the fact that, if we did hold the letter, it would be likely that section 44 (Prohibition on disclosure) of the Freedom of Information Act 2000 would apply. This is because we are bound by the confidentiality provisions of section 132 of the Data Protection Act 2018. It states:

*"(1)A person who is or has been the Commissioner, or a member of the Commissioner's staff or an agent of the Commissioner, must not disclose information which—*

- a) has been obtained by, or provided to, the Commissioner in the course of, or for the purposes of, the discharging of the Commissioner's functions,*
- b) relates to an identified or identifiable individual or business, and*
- c) is not available to the public from other sources at the time of the disclosure and has not previously been available to the public from other sources,*  
*unless the disclosure is made with lawful authority."*

It is highly likely that this particular letter would meet the conditions for confidentiality set out in section 132.

Nevertheless, in terms of refining your request to bring it under the FOIA cost limit, if you could provide us any specific references, dates, or other contextual information, or if you want us to search for BBC cases only within a narrower time range, then it is more likely that your request would not exceed the cost limit.

## Next steps

You can ask us to review our response. Please let us know in writing if you want us to carry out a review. Please do so within 40 working days.

You can read a copy of our full [review procedure](#) on our website.

If we perform a review but you are still dissatisfied, you can complain to the ICO as regulator of the FOIA. This complaint will be handled just like a complaint made to the ICO about any other public authority.

You can [raise a complaint](#) through our website.

## Your information

Our [privacy notice](#) explains what we do with the personal data you provide to us, and sets out [your rights](#). Our [Retention and Disposal Policy](#) details how long we keep information.

Yours sincerely



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