

Freedom of Information Act 2000

Decision notice

Date: 21 December 2016

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

Decision (including any steps ordered)

1. The complainant requested supporting information relating to a military medal review from the Cabinet Office. The Cabinet Office confirmed that information was held and could be found on its website, and provided the complainant with a link to the location of the information. The complainant considered further information is held and appealed to the Commissioner.
2. The Commissioner's decision is that for the purposes of the Act the Cabinet Office does not hold further information. No steps are required.

Request and response

3. On 8 July 2015, the complainant wrote to the Cabinet Office and requested information in the following terms:

"Having provided a full and comprehensive submission on behalf of the 'British Cold War Veterans' to the recent Government Medal Review and met with Sir John Holmes, we are disappointed that the decision was made not to fully and comprehensively review our submission.

...

Therefore on behalf of the 'British Cold War Veterans' I submit this official request under the Freedom of Information Act:

1. *Why wasn't the British Cold War Veterans Submission reviewed fully and comprehensively as promised?*
2. *Who was responsible for the decision not to review the BCWV submission fully and comprehensively?*

3. *What were the processes and justification for not reviewing the BCWV submission fully and comprehensively?"*
4. The Cabinet Office responded on 22 July 2015. It stated that the relevant information for this request was available online, and provided the complainant with a link to the location of the information.¹
5. The complainant submitted a second request to the Cabinet Office on 22 July 2015 for the following information:

"In light of the statement made by the Military Medal Review Team to the Advisory Military Sub-Committee on 29 August 2013 about Claims for Medallic Recognition. Can you please supply; documentary notes, written evidence, minutes of meetings and any other statements, which led to the decision for the Military Medal Review Team to reach other conclusions that the claim for a 'Cold War Medal' was not suitable for a detailed review."
6. The Cabinet Office responded on 29 July 2015 and refused the request under section 21 of the Act (information reasonably accessible to the requester), and confirmed that the only held information could be located in the link provided previously.
7. The complainant requested an internal review for the Cabinet Office's response of 29 July 2015, as he considered that further information was held in the Cabinet Office's records. The Cabinet Office issued its internal review on 7 September 2015. The internal review upheld the decision of the Cabinet Office's refusal notice of 29 July 2015.

Scope of the case

8. The complainant contacted the Commissioner on 24 September 2015 to complain about the way his request for information had been handled. Specifically, that he considers the Cabinet Office holds further information than that which is available online.
 9. The Commissioner considers the scope of the case to be whether the Cabinet Office holds information relevant to the scope of the
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¹ http://www.parliament.uk/business/publications/business-papers/commons/deposited-papers/?y=2014&house=2&search_term=Leader+of+the+House+of+Lords&itemId=119861#toggle-1168 see DEP2014-1168

complainant's request of 22 July 2015, outside of that which has already been provided.

Reasons for decision

Section 3(2) – information held by a public authority

10. Section 3(2) of the Act states that:

"(2) For the purposes of this Act, information is held by a public authority if –

(a) it is held by the authority, otherwise than on behalf of another person, or

(b) it is held by another person on behalf of the authority."

11. The Commissioner's guidance on section 3(2)(a) provides the following criteria for determining whether information is not held for the purposes of the Act:

- the authority has no access to, use for, or interest in the information;
- access to the information is controlled by the other person;
- the authority does not provide any direct assistance at its own discretion in creating, recording, filing or removing the information;
- the authority is merely providing storage facilities, whether physical or electronic.

12. The medal review referred to in the request was established under the then Prime Minister David Cameron MP, who appointed Sir John Holmes to conduct an independent review which would "consider the current medallic situation and examine the rationale for existing guiding principles".² The review was established in April 2012, and Sir John's report was issued on 12 July 2012. The last action for the review was

² <https://www.gov.uk/government/news/review-of-military-medals>

the depositing of the papers referred to in footnote 1, along with a written statement provided to the House of Lords by Baroness Stowell.³

13. The Commissioner acknowledges that the review was established to be independent of government, and that there were entirely valid reasons for this. However, by the time of the request the review had long since completed its primary task, and the reason for its independence were potentially no longer relevant.
14. Section 3(2)(a) of the Act means that information is held by a public authority unless it is held on behalf of another "person" – where person means any legal person, and can refer to organisations as well as individuals. It is evident that the review was established by government, and from the Cabinet Office's own submissions it is clear that the review was funded by government as well.
15. The review team also received administrative support from the Cabinet Office in its activities. The Commissioner is mindful of the First-Tier Tribunal decision in the case of *McBride v Information Commissioner and Ministry of Justice EA/2007/0105*, which determined the Ministry of Justice did hold information on behalf of the 'Visitor' named in the request in part because of the administrative support provided:

*"This is not a situation where the information was simply on the PCO's [Commissioner's note: Privy Council Office – now the Ministry of Justice] premises because, for example, the Visitor had left it there. The PCO managed and controlled the information, and in fact the PCO itself produced much of the information contained in Visitor files. The PCO could edit or delete the information, and it could decide whom to send it to or whom to withhold it from. Indeed, in response to the Appellant's requests, it could have provided the information to the Appellant, and in fact, did provide some information."*⁴

16. However, in this case none of these factors apply. The Cabinet Office is clear that it did provide support but it had no ability to amend the information held by the Review Team. The review was independent, so by its very nature the Cabinet Office did not have the right to alter the information at its choosing. Any support offered was to assist the review

³ <http://www.publications.parliament.uk/pa/ld201415/ldhansrd/text/140729-wms0001.htm#14072935000015>

⁴

<http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i98/McBride.pdf#page=8>

in reaching its findings but there is nothing to suggest that there was a degree of collaboration that would afford the Cabinet Office control of the requested information.

17. In the Commissioner's view, the information will at some point be held by government for the purposes of the Act. From the information available about the review online and the Cabinet Office's own submissions, it is clear that if it was held by any public authority then it would be the Cabinet Office – as opposed to any other interested party such as the Ministry of Defence.
18. The Commissioner has contained part of her analysis of this within a Confidential Annex. She appreciates that this does not give all parties full oversight of the arguments, but it is essential in this instance.
19. The conclusion from the arguments within the Confidential Annex is that the Commissioner considers the Review Team was still independent of the government – and therefore the Cabinet Office – at the time of the request. This is in keeping with the Commissioner's recent decision on similar information concerning the Review Team.⁵ The Cabinet Office does not have control or access to the information as per the Commissioner's section 3(2)(a) criteria, therefore the Review Team's papers are not held by the Cabinet Office for the purposes of the Act.
20. No steps are required.

⁵ <https://ico.org.uk/media/action-weve-taken/decision-notices/2016/1625340/fs50620631.pdf>

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 123 4504

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

Alexander Ganotis
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