

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 6 March 2019

Public Authority: Foreign and Commonwealth Office
Address: King Charles Street
London
SW1A 2AH

Decision (including any steps ordered)

1. The complainant has requested a report that he believes was provided to the Foreign and Commonwealth Office (FCO) between 1998 and 2000. The FCO says it does not hold the requested information.
2. The Commissioner's decision is that the public authority does not hold the requested information. The Commissioner does not require any steps to be taken.

Request and response

3. On 10 December 2017, the complainant requested the following information from the FCO:

"I am making this FOI request to the FCO concerning a report that was done by [named individual] which was handed to a representative from the FCO in London when [named individual] was a serving MLA member in the Cayman Islands government, The report was said to be done between the years 1998/2000. The report was to do with the [named individual] estates within the Cayman Islands and that it was misappropriated by a past government Minister namely [named individual]. I look forward to hearing from you in a timely manner.

I would also like to request a copy of the reply to [named individual] report and to know what action was taken by the UK and Cayman Islands governments regarding this matter."

4. The FCO responded on 30 January 2018, advising that it had searched its electronic and paper records but did not hold the requested information.
5. The complainant requested an internal review, and the FCO provided him with the outcome of that review on 20 March 2018. The FCO maintained that it did not hold the requested information.

Scope of the case

6. On 22 May 2018 the complainant contacted the Commissioner to complain about the way the FCO had handled his request. The complainant did not accept that the FCO did not hold the information he had requested.

Reasons for decision

Section 1: information not held

7. Section 1 of the FOIA says that public authorities are required to respond to requests for information. The authority is required to disclose information in response to a request, unless an exemption or exclusion applies. If a public authority does not hold recorded information that would answer a request, the Commissioner cannot require the authority to take any further action.
8. In cases where there is a dispute as to the information held by a public authority, the Commissioner will use the civil standard of proof, ie the balance of probabilities. Accordingly her investigation will consider the public authority's reasons for stating that it does not hold the information in question, as well as the extent and reasonableness of any search conducted. The Commissioner will also consider any arguments put forward by the complainant as to why the information is held (as opposed to why it ought to be held). Finally, the Commissioner will consider whether there are any further steps she could require the public authority to take if the complaint were upheld.
9. The complainant provided the Commissioner with a large volume of information in support of his complaint. This included maps, correspondence and other documents relating to a dispute over land in the Cayman Islands. The complainant had also made requests to public authorities in the Cayman Islands, and had complained to the Caymanian Ombudsman.

10. The Commissioner examined all the information provided by the complainant and noted references to a report having been provided to the FCO in 1998. In addition the complainant provided a copy of a letter from a UK MP acknowledging receipt of a report in 2000. However the Commissioner considered that this information did not constitute evidence that the FCO held the report at the time of the request, nearly 20 years later.
11. The Commissioner asked the FCO to explain the steps it had taken to search for the requested information. The FCO set out that it had conducted a search of electronic and paper records. It retrieved ten archive files, covering three years around the dates specified by the complainant. The FCO also consulted the Office of the Governor of the Cayman Islands. These searches were conducted again for the purposes of the internal review, but the requested information was not located.
12. The FCO further explained that, following the Commissioner's enquiries, it undertook a further review of the files. It conducted an extended search to cover a broader time period and geographical area. Finally, the FCO contacted the Governor's Office again. However, none of these searches identified the requested information.
13. The FCO provided the Commissioner with a copy of its retention schedule and clarified that it was standard practice to dispose of information after ten years unless the information was considered to be of historic interest. The FCO did not hold a record of the destruction of files, but concluded that if the requested information had ever been held, it must have been destroyed in line with this policy.
14. The Commissioner has considered the FCO's explanation of its position, and the information provided by the complainant. The Commissioner is of the opinion that it is reasonably likely that the requested information may have been held by the FCO in the past. However, the Commissioner can only investigate whether or not information is held by a public authority at the time of the request. In this case the FCO has provided evidence of having undertaken appropriate, reasonable searches. The Commissioner is satisfied that these searches would have identified the requested information, if it were held by the FCO at the time of the request.
15. In addition, the Commissioner is unable to identify any further action that the FCO could reasonably be expected to take in order to comply with the request. As has been set out above, if information is not held then it cannot be disclosed in response to a request. In conclusion, the Commissioner finds, on the balance of probabilities, that the FCO does not hold the requested information.

Right of appeal

16. 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 1234504

Fax: 0870 739 5836

Email:

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

17. 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.
18. 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

Sarah O'Cathain
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Information Commissioner's Office
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SK9 5AF