

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 November 2019

Public Authority: Attorney General's Office
Address: 5-8 The Sanctuary
London
SW1P 3JS

Decision (including any steps ordered)

1. The complainant requested information relating to communications on the subject of John Stonehouse. The Attorney General's Office (AGO) denied holding the requested information.
2. The Commissioner's decision is that, on the balance of probabilities, the AGO did not hold information within the scope of the request. She therefore considers that the AGO complied with its obligations under section 1(1) (general right of access to information) of the FOIA.
3. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

4. On 28 March 2019 the complainant wrote to the AGO and requested information in the following terms:

"Under the Freedom of Information Act I am requesting to see the correspondence between the Attorney General and the Crown Prosecution Service [relating to John Stonehouse] between the dates 1st January 1975 and 28th February 1977.

This correspondence will include....".

5. Following correspondence from the AGO explaining that the Crown Prosecution Service (CPS) did not exist until 1986, on 8 April the complainant confirmed that she wished to amend the request to replace

references to the CPS with references to the Director of Public Prosecutions' office.

6. The AGO provided its substantive response on 29 April 2019. It denied holding the requested information.
7. Following an internal review the AGO wrote to the complainant on 9 May 2019 maintaining its original position.

Scope of the case

8. The complainant contacted the Commissioner on 19 July 2019 to complain about the way her request for information had been handled. She explained that the information she was seeking included communications such as letters, memorandums and minutes of meetings.
9. During the course of the Commissioner's investigation the AGO confirmed that it did not hold any recorded information falling within the scope of the request.
10. The analysis below considers whether, on the balance of probabilities, the AGO held information within the scope of the request.

Reasons for decision

Section 1 general right of access

11. Section 1 of the FOIA states that:

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

12. In scenarios such as this one, where there is some dispute between the public authority and the complainant about the amount of information that may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities.

13. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
14. In this case, the Commissioner has sought to determine whether, on the balance of probabilities, the AGO held the requested information.
15. In deciding where the balance of probabilities lies, the Commissioner will consider the complainant's evidence and arguments. She will also consider the searches carried out by the public authority, in terms of the extent of the searches, the quality of the searches, their thoroughness and the results the searches yielded. In addition, she will consider any other information or explanation offered by the public authority which is relevant to her determination.
16. During the course of her investigation, the Commissioner asked the AGO to describe the searches it had carried out for information falling within the scope of the request, and the search terms used. She also asked other questions, as is her usual practice, relating to how the AGO established whether or not it held information within the scope of the request.
17. In correspondence with the complainant, the AGO confirmed that it had carried out a search of its electronic and paper-based records.
18. In its submission to the Commissioner, the AGO provided further details about the nature of the searches it had conducted, the search terms used and the locations searched.
19. Acknowledging the timeframe of the request – 1 January 1975 to 28 February 1977 – the AGO recognised that information, if it was ever held, would have originally been in hard copy format.
20. In that respect, the AGO advised that its searches had included:

"... an electronic records management spreadsheet that records the title, 'theme,' and storage location of all electronic and hard-copy files that are held by the office, or that have been held but have been destroyed".
21. It confirmed that the searches carried out, both in the process of responding to the initial request and the internal review, were unsuccessful in identifying any information falling within the scope of the request.
22. The AGO also explained to the Commissioner:

"The Attorney General's Office's Retention Schedule ensures that information that may be required is retained by the office and that information that is no longer required is disposed of in a timely manner".

23. It also told the Commissioner:

"The Schedule provides that routinely, the office should retain and destroy records in line with this retention Schedule unless there is a business reason to retain the record for a longer period, or the record has a long term historic interest value and therefore should be retained for future transfer to the National Archives to become a public record".

The Commissioner's view

24. The Commissioner acknowledges that the information is clearly of interest to the complainant.

25. However, while appreciating the complainant's frustration that the AGO did not hold information within the scope of her request, the Commissioner is mindful of the comments made by the Information Tribunal in the case of *Johnson / MoJ (EA2006/0085)*¹ which explained that the FOIA:

"... does not extend to what information the public authority should be collecting nor how they should be using the technical tools at their disposal, but rather it is concerned with the disclosure of the information they do hold".

26. Having considered the AGO's response, and on the basis of the evidence provided to her, the Commissioner is satisfied that, on the civil standard of the balance of probabilities, the AGO did not hold information within the scope of the request.

27. The Commissioner therefore considers that the AGO complied with its obligations under section 1(1) of the FOIA.

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<http://informationrights.decisions.tribunals.gov.uk//DBFiles/Decision/i90/Johnson.pdf>

Other matters

28. The Commissioner acknowledges that, in accordance with section 16 (duty to provide advice and assistance) of the FOIA, the AGO advised the complainant:

"Whilst we do not hold the information you have requested, you may wish to make a similar enquiry of the National Archives and/or the Crown Prosecution Service".

Right of appeal

29. 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: grc@justice.gov.uk

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

30. 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.
31. 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

Carolyn Howes
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