

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 June 2020

Public Authority: Commissioner of the Metropolitan Police Service

Address: New Scotland Yard
Broadway
London
SW1H 0BG

Decision (including any steps ordered)

1. The complainant has requested Special Branch reports from 1937 from the Metropolitan Police Service (the "MPS"). The MPS advised that it did not hold the requested information.
2. The Commissioner's decision is that, on the civil standard of the balance of probabilities, the requested information is not held. No steps are required.

Request and response

3. On 1 September 2020, the complainant wrote to the MPS and requested information in the following terms:

" ... may I have a copy of the Special Branch report on Charles Bedaux dated 22nd October 1937, a copy of which is in the Royal Archives GV1 42/81 quoted in Philip Ziegler's biography of Edward VIII p395, and all Special Branch reports not hitherto released to the National Archives on the Duke and Duchess of Windsor for period 1st January 1937 to 31st December 1937".
4. On 16 September 2020 the MPS responded. It denied holding the requested information.

5. The complainant requested an internal review on 17 September 2020.
6. The MPS provided an internal review on 1 October 2020 in which it revised its position, advising that it would exceed the cost limit to ascertain definitively whether or not it held the requested information, citing section 12(2) (Cost of compliance) of the FOIA.
7. During the course of the Commissioner's investigation the MPS revised its position. It again advised that, on the civil standard of the balance of probabilities, no information was held. On 13 May 2021, it advised the complainant accordingly.

Scope of the case

8. The complainant initially contacted the Commissioner on 20 October 2020 to complain about the way his request for information had been handled. He asked her to consider whether the MPS was entitled to rely on section 12(2) of the FOIA. Following the MPS's change of position he advised the Commissioner as follows:

"A copy of the Special Branch Report on Bedaux was sent to the Royal Archives where it remains unavailable. It's an important historical document and it must have been kept by the Met. ... On a balance of probabilities, MPS would have retained a copy of the report and not destroyed it. It should, therefore, be now at TNA [the National Archives]] or retained by MPS. As it is not at TNA, MPS should still have it if they look hard enough for it".

Reasons for decision

Section 1 – general right of access

9. Section 1 of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds that information and, if so, to have that information communicated to them.
10. In this case, the complainant suspects that the MPS holds information from which it could answer the request. The MPS's position is that it does not. In cases where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – following the lead of a number of First-tier Tribunal decisions – applies the civil standard of the balance of probabilities. In essence, the Commissioner

will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant's request.

11. The Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the public authority to check whether the information is held and any other reasons offered by the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that information is not held. 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 proof of the balance of probabilities.
12. Therefore, the Commissioner has sought to determine whether, on the balance of probabilities, the MPS holds any recorded information within the scope of the request. Accordingly, she asked the MPS to explain what enquiries it had made in order to reach the view that it did not hold the information.
13. The MPS advised the Commissioner that it believed it had undertaken reasonable searches with the most relevant business areas in an effort to locate any information held. In doing so it explained that it had:

"... contacted our Counter Terrorism Policing Headquarters (CTPHQ) who manage the database NSBIS (National Special Branch Intelligence System) to progress this appeal afresh and to locate any information relevant to this request. Searches on their database using different keywords, resulted in no trace of the requested information.

I also contacted the MPS Heritage Centre whom confirmed searches resulted in no trace of the requested information.

Finally, I contacted our Data Governance Team. The Data Governance Team is responsible for the retention and disposal policy for all registered files within the MPS. Our Data Governance Team searched our Records Management System (RMS), which indexes all our registered files. This system has now been replaced with a new records management system called eArchive, which has also been searched for the relevant information.

Our Data Governance Team use four source searches in order to establish whether we hold the requested information relating to Special Branch:

- *The Records Management System. This system has now been replaced with a new records management system called*

eArchive, which has also been searched for the relevant information.

- *A list/spreadsheet of Special Branch files, which have been nominally transferred to The National Archives (TNA) (these files are listed on TNA's public catalogue, though the physical file may not have been transferred to TNA).*
- *A spreadsheet of Special Branch files that have been approved for transfer to TNA but have not been transferred to TNA or listed on its public facing catalogue.*
- *TNA's public facing catalogue, Discovery.*

In light of [the complainant]'s interest/request(s) within the subject matter and for the sake of completeness, searches were conducted on all surviving files relating to the Prince of Wales, Edward VIII, Duke of Windsor and Sir Philip Game.

Please find below a summary of the outcome of the searches. In total 30 files are listed, most of them are now with The National Archives (TNA) with the exception of 4 ... which are shown as held by the MPS".

14. The MPS provided the complainant with a list of the 30 files, including the four which it retained. It advised the complainant that it had:

"... reviewed all four files held by the MPS and the outcome of my enquiries have resulted in 'No Information Held' relating to Charles Bedaux and the Duke and Duchess of Windsor for the period 01/01/1937-31/12/1937 which is in scope of your request".

15. Regarding the other 26 files listed, it suggested:

"In relation to the files held by TNA, you would need to liaise directly with TNA regarding these files as they are not held by the MPS".

The Commissioner's conclusion

16. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed some or all of the information that a complainant believes it holds, it is seldom possible to prove with absolute certainty that it holds no relevant information. However, as set out in the paragraphs, above, the Commissioner is required to make a finding on the balance of probabilities.
17. It is not the Commissioner's role to make a ruling on how a public authority deploys its resources, on how it chooses to hold its information, or the decisions it makes to hold some, but not other, information. Rather, in a case such as this, the Commissioner's role is

simply to decide whether or not, on the balance of probabilities, the public authority holds the requested information.

18. The Commissioner considers that the MPS contacted the relevant departments to consider whether or not any information was held in respect of the request, and that the searches conducted were capable of locating the requested information, if it was held. Based on the information provided, the Commissioner is satisfied that, on the balance of probabilities, no recorded information within the scope of the request is held. She is therefore satisfied that the MPS has complied with the requirements of section 1 of the FOIA in this case.

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: 0300 1234504

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

Carolyn Howes
Senior Case Officer
Information Commissioner's Office
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Wilmslow
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