

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 2 November 2010

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

Summary

On 28 October 2009 the complainant requested from the Cabinet Office information relating to contact between the Prime Minister, and Mr Rupert Murdoch and Mr Brian Crozier, within the period 1985-1990. The Cabinet Office responded providing information held pertaining to the request. However, the complainant remained dissatisfied and requested an internal review. The Commissioner has decided on the balance of probabilities that, with the exception of the information supplied, the Cabinet Office does not hold the requested information. He therefore finds that the Cabinet Office complied with section 1(1) of the Act and requires no further steps to be taken.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 28 October 2009 the complainant contacted the Cabinet Office to request the following information:

"This is a request under the Freedom of Information Act. It relates to a book I am writing as part of my academic research.

I seek briefing papers, minutes, diary notes and other material relating to contact between the Prime Minister and Mr. Rupert Murdoch and Mr. Brian Crozier in the period 1985-1990. I am particularly interested in the following events:

- 1. A discussion between Prime Minister Thatcher and Rupert Murdoch which occurred on or about October 29 1990. As the attached newspaper articles and extract from Richard Belfield et al (Murdoch: the Great Escape, Warner Books, 1991) note, this discussion mainly concerned international affairs and also the merger of BSkyB and Sky television companies. I am particularly interested in discussions over international affairs between Mrs. Thatcher and Mr. Murdoch (rather than television matters).*
- 2. A dinner at Chequers with a number of businessmen on or around 26 February 1985, referred to in the accompanying pages from the book 'Free Agent' (Harpercollins, 1994) by Brian Crozier.*
- 3. A subsequent meeting between the Prime Minister and Mr. Brian Crozier on 28 February 1985. This meeting discussed support from the private sector organizations for 'counter-subversion' activities. Among these private sector bodies were the Coalition for Peace through Security (page 255) and the Campaign Against Council Corruption (p.256).*

I would be grateful if you were able to supply me with the information in the form of photocopies."

3. The request was received by the Cabinet Office on 16 November 2009.
4. On 14 December 2009 the Cabinet Office responded and disclosed the information it stated it held pertaining to the request. Typed advisory notes to the Prime Minister concerning a proposed meeting with Mr Crozier were provided along with the relevant background to the meeting. A note from an adviser concerning Mr Crozier's request that the Prime Minister do an interview with *Politique Internationale* was also provided along with a copy of that interview.
5. On 5 January 2010 the complainant requested an internal review of the Cabinet Office's decision.
6. On 22 March 2010 the Cabinet Office provided the outcome of the internal review to the complainant. The internal review upheld its original decision.

The Investigation

Scope of the case

7. On 10 April 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the fact that information he deemed reasonable to assume existed had not been provided to him.

Chronology

8. On 6 August 2010 the Commissioner wrote to the Cabinet Office with a series of questions regarding how the information was held and the searches that had been carried out to locate it, in order to determine what information if any the Cabinet Office held falling within the scope of the request.
9. On 31 August 2010 the Cabinet Office responded to the Commissioner providing the details and clarification he sought.

Analysis

Section 1 – general right of access

10. In determining this case, the Commissioner has taken into account the submissions of both the public authority and the complainant. The full wording of the extracts of the Act included in this Notice can be found in the Legal Annex.
11. Section 1 of the Act states that any person making a request for information is entitled to be informed in writing whether the information is held, and if this is the case, to have the information provided to them.
12. In investigating cases involving a disagreement as to whether or not information is held, the Commissioner has been guided by the approach adopted by the Information Tribunal in the case of *Linda Bromley & Others and the Information Commissioner v Environment Agency* (EA/2006/0072). In that case the Tribunal indicated that the test for establishing whether information was held by a public authority was not certainty, but rather whether, on a balance of probabilities, the information was held.

13. In discussing the application of the balance of probabilities test, the Tribunal in the *Bromley* case stated that:

"We think that its application requires us to consider a number of factors including the quality of the public authority's initial analysis of the request, the scope of the search that it decided to make on the basis of that analysis and the rigour and efficiency with which the search was then conducted. Other matters may affect our assessment at each stage, including for example, the discovery of materials elsewhere whose existence or content point to the existence of further information within the public authority which had not been brought to light. Our task is to decide, on the basis of our review of all of these factors, whether the public authority is likely to be holding relevant information beyond that which has already been disclosed."

The Commissioner has therefore taken this into account in determining whether or not the requested information is held on the balance of probabilities.

14. The Commissioner is also mindful of the case of *Ames v the Information Commissioner and the Cabinet Office* (EA/2007/0110). In this case the complainant had requested information relating to the September 2002 "Iraq's Weapons of Mass Destruction" dossier. The Tribunal stated that the Iraq dossier was *"...on any view an extremely important document and we would have expected, or hoped for, some audit trail revealing who had drafted what..."*. However, the Tribunal stated that the evidence of the Cabinet Office was such that it could nonetheless conclude that it did not *"...think that it is so inherently unlikely that there is no such audit trail that we would be forced to conclude that there is one..."*. Therefore the Commissioner is mindful that even where the public may reasonably expect that information should be held this does not necessarily mean that information is held.

Reasons for believing information is held

15. In his complaint to the Commissioner the complainant stated that he believed the Cabinet Office had failed to provide him with information which could be *"reasonably assumed to exist"*. The complainant's arguments that information pertaining to his request must exist focussed on the *"extensive business dealings in the UK"* that Mr Murdoch carried out in the specified time period and his *"publically acknowledged contact with Mrs Thatcher over a decade"*.
16. Moreover the complainant stated that there were *"a number of instances reported in reputable books...to show that Mrs Thatcher and*

Mr Murdoch met and held discussions on a number of occasions". He informed the Commissioner that these examples had been provided to the Cabinet Office at the time of the request as evidence that it should hold some information.

17. In investigating this case the Commissioner has taken into account the complainant's reasoning that information of the nature requested should exist and his concerns regarding the quality of the searches the Cabinet Office carried out in order to locate the information. To ensure a balanced investigation the Commissioner sought details of the searches in question from the Cabinet Office along with further arguments from the public authority that no information, other than that which had already been provided, was held.

Attempts made to locate the information

18. The Cabinet Office explained to the Commissioner in its response of 31 August 2010 that the records held for the period of 1985-90 were *"exclusively paper records"* although an excel spreadsheet detailing the physical location of such records (the PREM series) is used to assist searches for relevant information. Details of the 14 terms used to search the spreadsheet were given to the Commissioner.
19. The Commissioner also sought details of the information's possible deletion or destruction. The Cabinet Office explained that, although it was not known for certain if any information had been destroyed, it would be highly unlikely as information concerning Mrs Thatcher's premiership is such an important public record. The Cabinet Office provided the Commissioner with general retention details, explaining that files of the nature requested are:

"retained until they are 30 years old. At that point they are reviewed and about 40 per cent are transferred to the National Archives under the Public Records Act. Until that time all of the PREM records are preserved and may be searched."

The Commissioner understands that if records of the type requested existed it is likely that they would have been preserved and that this preservation is governed by the National Archives' guidance.

Reasons for believing the information is not held

20. After providing the Commissioner with details surrounding the searches carried out for the information, the Cabinet Office went on to explain that it was more likely that no records of the type requested were ever created. A strong argument was made about the personal nature of

Mrs Thatcher's and Mr Murdoch's relationship which even the complainant's correspondence had noted. Of the examples given by the complainant where he expected information to have been recorded, one was a dinner party at Chequers and another was an informal or social gathering. The Cabinet Office asserted that it was therefore unlikely that a formal record was made of any discussions which took place on those occasions.

21. Moreover, the Commissioner believes that this informal character to the specified meetings and the overall nature of the relationship is mirrored in the evidence quoted by the complainant in his initial request to the Cabinet Office. The literature to which the Cabinet Office's attention was drawn as providing reasons why information should be held stated, for example, that "*mention of the merger came 'at the end of a general chat about international affairs'*". In his complaint to the Commissioner the complainant gave as evidence of possible meetings between the Prime Minister and Mr Murdoch guest lists at Chequers and a lunch at Downing Street. The Commissioner is aware that the examples given are not an exhaustive list; however, the informal nature of those examples does lend weight to the arguments that no recorded information was held by the Cabinet Office pertaining to the request.

Balance of probabilities

22. The Commissioner has taken into account all the arguments and evidence provided by both parties to come to his decision. Although the complainant's arguments supporting his position that information should be held by the Cabinet Office have some merit, after due consideration the Commissioner has decided that the examples provided do not offer any concrete leads on which to base further investigation.
23. The Cabinet Office's assertion that the relationship between the Prime Minister, Mr Murdoch and Mr Crozier was often an informal one adds weight to the public authority's arguments that the information requested was never created. The Commissioner is also satisfied that the searches carried out for the requested information were reasonable and indeed did locate a small amount of information which was provided to the complainant.
24. On the balance of probabilities, the Commissioner believes that the requested information, except that which was provided to the complainant, was not held by Cabinet Office.

The Decision

25. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

26. The Commissioner requires no steps to be taken.

Other matters

27. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his *'Good Practice Guidance No 5'*, published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible.
28. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner is concerned that in this case, it took over 50 working days for an internal review to be completed, despite the publication of his guidance on the matter.

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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 2nd day of November 2010

Signed

**Jon Manners
Group Manager, Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

The Act - General Right of Access

Section 1(1) provides 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."

Section 1(2) provides that -

"Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14."

Section 1(3) provides that –

"Where a public authority –

- (a) reasonably requires further information in order to identify and locate the information requested, and
- (b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information."

Section 1(4) provides that –

"The information –

- (a) in respect of which the applicant is to be informed under subsection (1)(a), or
- (b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request."

Section 1(5) provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

Section 1(6) provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.”