

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 14 April 2014

**Public Authority:** Cabinet Office

**Address:** 70 Whitehall

London

SW1A 2AS

### **Decision (including any steps ordered)**

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1. The complainant requested copies of texts between the Prime Minister and Rebekah Brooks. The Cabinet Office stated that it did not hold this information. The complainant disputed this response and asked the Commissioner to investigate.
2. The Commissioner's decision is that, on the balance of probabilities, the Cabinet Office stated correctly and in accordance with section 1(1)(a) of the FOIA that this information was not held.

### **Request and response**

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3. On 15 November 2012 the complainant wrote to the Cabinet Office and requested the following information:

*"Prime Minister's texts with Rebekah Brooks"*

4. The Cabinet Office responded on 14 December 2012. It stated that it did not hold any information falling within the scope of this request.
5. The complainant responded on 7 January 2013 and requested an internal review. The Cabinet Office responded with the outcome of the internal review on 30 January 2013 and maintained that the requested information was not held.

## **Scope of the case**

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6. The complainant contacted the Commissioner initially on 25 April 2013 to complain about the response to his information request. An exchange of correspondence between the complainant and the ICO followed during which the chronology of the complainant's communication with the Cabinet Office was clarified and the potential scope of his complaint was made clear.
7. In an email of 14 October 2013 the complainant confirmed that he wished the ICO to consider whether the Cabinet Office was correct in stating that it did not hold the information which he had requested.

## **Reasons for decision**

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### **Section 1**

8. Section 1(1)(a) of the FOIA provides that, upon receipt of an information request, a public authority must respond confirming or denying whether it holds information falling within the scope of the request. This means that upon receipt of a request a public authority should take steps to identify all relevant information that it holds.
9. The task for the Commissioner in this case is to determine whether the Cabinet Office was justified in stating that it did not hold the requested information. In line with the approach of the First-tier Tribunal (Information Rights), the test to be applied by the Commissioner is whether on the balance of probabilities the Cabinet Office holds this information.
10. Where there is a dispute between public authority and requester as to whether relevant information is held, the Commissioner will take into account a description of the searches carried out by the public authority, and / or any explanation provided by the public authority as to why it should not be expected to hold relevant information.
11. The explanation provided by the Cabinet Office focussed on searches that had been carried out for the purposes of the Leveson Inquiry. In relation to the possibility of the Prime Minister holding relevant information, the Cabinet Office referred to a statement given by the Prime Minister to the Leveson Inquiry in which he denied holding any such information.

12. As to whether relevant information may have been held by the Cabinet Office, it referred to a search carried out by relevant staff members for the purposes of the Leveson Inquiry. It described this search as "*thorough and full*" and stated that it had not located any information of relevance to the request.
13. In the Prime Minister's statement and in the description provided by the Cabinet Office of searches carried out for the purposes of the Leveson Inquiry, specific reference is made to the searches having been for information relevant to the "*BSKYB takeover bid*". This is a reference to the subsequently abandoned attempt by News Corporation to take full control of BSKYB. The Commissioner takes the representations from the Cabinet Office that it does not hold the requested information as an assurance that these searches would have covered any information falling within the scope of the complainant's request.
14. The Commissioner is aware that texts between Rebekah Brooks and the Prime Minister were supplied to the Leveson Inquiry. This issue was raised with the Cabinet Office, in response to which it stated specifically that the Cabinet Office did not provide such texts to the Leveson Inquiry. The Commissioner accepts this assurance from the Cabinet Office that the relevant text messages supplied to the Leveson Inquiry came from elsewhere.
15. The evidence provided to the Commissioner is that searches carried out for the purposes of a judicial public inquiry would have covered any information held that fell within the scope of the complainant's request, and that these did not locate any such information. Whilst the complainant has maintained that he does not accept that the Cabinet Office does not hold this information, the Commissioner has been provided with no evidence to that effect.
16. The Commissioner's decisions are based on the available evidence. In this case the evidence is that, on the balance of probabilities, the Cabinet Office did not hold information falling within the scope of the complainant's request. The Commissioner's decision is, therefore, that the Cabinet Office stated correctly and in accordance with section 1(1)(a) of the FOIA that it did not hold the requested information.

## Right of appeal

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17. 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: 0116 249 4253

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

18. 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.
19. 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 .....**

**Graham Smith**  
**Deputy Commissioner**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**