

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

### **Decision notice**

**Date:** 29 January 2024

**Public Authority:** Foreign, Commonwealth & Development Office

**Address:** King Charles Street  
London  
SW1A 2AH

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

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1. The complainant has submitted a request to the Foreign, Commonwealth & Development Office (FCDO) seeking copies of telegrams between the then FCO and the UK Embassy in Bahrain dating from 2002 concerning the Duke of York's visit to Bahrain. The FCDO responded by stating that it did not hold any information. The complainant disputed this and argued that the FCDO should have provided him with advice and assistance, under section 16 of FOIA, to assist him in accessing the information he wanted.
2. The Commissioner's decision is that on the balance of probabilities the FCDO does not hold any information falling within the scope of the request. The Commissioner has also concluded that the FCDO were not under a section 16 duty to offer advice and assistance in response to this request.
3. The Commissioner does not require further steps.

### **Request and response**

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4. The complainant submitted the following request to the FCDO on 31 May 2023:

'Under FOI, please supply copies of FCO telegrams from RMU (Royal Matters Unit) and MED (Middle East Dept) to Bahrain between 2002 & 2005 relating to visits by the Duke of York.'

5. The FCDO responded on 28 June 2023. It explained that for administrative reasons the request was being processed in two parts and that this response (its reference FOI2023/11203) only covered the year 2002. The FCDO explained that a separate reply, FOI2023/11104, would be sent covering the period 2003-2005.<sup>1</sup> The FCDO explained that it had interpreted the request as being for telegrams from the FCO in London to Bahrain, rather simply from the two departments referred to in the request. This was because at the time telegrams were routinely sent from the FCO rather than a specific internal department. The FCDO also explained that to ensure that the request remained within the cost limits (ie section 12 of FOIA) it had searched for telegrams regarding visits by the Duke of York to Bahrain, rather to other locations where the UK Embassy in Bahrain may have been a copy addressee for information. The FCDO explained that having conducted such searches it had not identified any telegrams from the FCO in London to the UK Embassy in Bahrain dated 2002 relating to visits by the Duke of York to Bahrain.
6. The complainant contacted the FCDO on 29 June 2023 and asked it to undertake an internal review of this decision. He set out why he considered telegrams falling within the scope of his request would be held.
7. The FCDO informed him of the outcome of the internal review on 27 July 2023. The review explained that following searches of both paper and electronic holdings, including the records of the departments listed in the request, no telegrams dating from 2002 were located.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 4 August 2023. He explained that he did not accept the FCDO's position that it did not hold any information falling within the scope of his request for the year 2002. During the course of the Commissioner's investigation of this matter the
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<sup>1</sup> The FCDO response to FOI2023/11104 does not form part of the complaint to which this decision notice relates.

complainant also raised concerns that the FCDO had failed to provide him with advice and assistance, under section 16 of FOIA, to allow him to formulate a request that would capture information that it did hold on this subject matter.

9. The Commissioner considers that the scope of his investigation is two fold. Firstly, to consider whether the FCDO holds any information dating from 2002 falling within the scope of the request. And secondly, whether the FCDO was under a duty to provide any advice and assistance to the complainant in response to this request, and if so, whether it has fulfilled that duty.

## **Reasons for decision**

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### **Section 1**

10. In cases such as this where there is some dispute as to whether information falling within the scope of the request is held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
11. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request.
12. In applying this test the Commissioner will consider the scope, quality, thoroughness and results of the searches, and/or other explanations offered as to why the information is not held.

### The complainant's position

13. In his request for an internal review the complainant stated that:

“I find it difficult to believe that no telegrams were sent from the FCO to Bahrain about the Duke of York's visit and would like a review. There will have been a file in MED about Royal Visits, if not a specific one about Duke of York's visit. There are myriad issues relating to Royal Visits that will have been covered by telegrams : reccy visit, PPOs, security issues around the visit, suggestions for the programme etc, etc”
14. During the course of the Commissioner's investigation the complainant explained that the FCDO's continued insistence that it did not hold any recorded information falling within the scope of this request was inconsistent with the responses (and disclosures) he had received in

response to other requests on this subject matter. More specifically he explained that:

"Perhaps you could ask FCDO how does this square with FCDO/HRI response to me of 23/8/23 re my FOI 12801 which finally released a BahrainTeleletter (T/L) dated 4/11/02 about DOY's visit? This T/L contained refs to 9 earlier Bahrain Telegrams, and one T/L dated 29/10/02. What has happened to all these docs? Have they all been closed or destroyed? What happened to the MED or Bahrain files on which they would have been kept as hard copies? Why can't this file be released to me under FOI with the various sections redacted as necessary?"<sup>2</sup>

15. The complainant also explained that he had discussed this matter with diplomats who had handled the visit who found it difficult to accept that no information was held as they had drafted and read numerous communications which would fall within the scope of the request which is the focus of this notice. The complainant suggested that the FCDO were relying on semantics to exclude information from his request if a telegram had also been addressed to other points. Similarly, the complainant explained that he was dissatisfied with the FCDO's decision to exclude egrams, emails or letters from this request. In his view whether the communication in question was a telegram, telegraphic or email communication, the inference is on the communication and not the form that it took.
16. The complainant also explained that he had repeatably asked where the telegrams were if they were not held at the FCDO but this point had not been addressed. He noted that he been previously been informed that Royal papers are not routinely destroyed and therefore the telegrams must have been sent somewhere if they were no longer held by the FCDO.

### The FCDO's position

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<sup>2</sup> Request FOI 2023/12801 was "I would like to make an FOI request for all communications (e mail, letter or telegraphic) between FCDO, UK Trade and Investment and the British Embassy in Bahrain , including any requests made by or on behalf of him by his staff, made by Prince Andrew as Special Trade Envoy together with a list of those he requested accompany him on his visit to Bahrain in October 2002." The complainant clarified this to "I would like to see telegraphic communication and emails between FCO & British Embassy in Bahrain May to November 2002, both in advance of DOY's visit and after he had departed with details of the recce team and their visit, proposals for the programme, request for PPO weapons clearance, list of HRH's party, list of his specific requests etc and the final reporting telegrams".

17. In its submissions to the Commissioner the FCDO emphasised that this request specifically sought “telegrams”. The FCDO explained that it considered this to be a specific, targeted request from an experienced and regular requester, who had shown some knowledge of the FCO departments that had led on the visit. The request did not seek other types of communication and therefore the FCDO considered any such information to fall outside the scope of the request. Furthermore, the FCDO noted that the request only sought telegrams from the FCO (as was) **to** Bahrain; telegrams **from** Bahrain to the FCO in London were not requested.
18. The FCDO confirmed that it had interpreted the request as being for telegrams from the FCO in London, not just the specific departments cited by the complainant, because it was aware that telegrams were routinely shown as being sent from the FCO rather than the internal department that generated the telegram.
19. The FCDO also highlighted that in its responses to the complainant it had explained that it had not searched for telegrams about visits to other locations where the UK Embassy in Bahrain was the copy addressee only. The FCDO clarified this approach in its submissions to the Commissioner. It explained that it had searched for **all** telegrams from the FCO to Bahrain, which had information on the visit of the Duke of York to Bahrain specifically in 2002 but did not search for FCO telegrams about visits by the Duke of York **to other locations**, which may have had Bahrain as an information only addressee (FCDO emphasis).
20. With regard to this approach the FCDO explained that there were many official visits during that year by the Duke of York in his role as the United Kingdom’s Special Representative for International Trade and Investment and his representational duties regarding the Golden Jubilee. They covered a wide range of geographical locations and often the geographical locations were copied for information on telegrams regarding visits to different countries. The FCDO explained that if it had not limited its searches (details of which are below) to the visit to Bahrain, then a search in its electronic repository returned a significant number of documents. In its view searching these documents, and any additional paper records, to locate any information relevant to the visit to Bahrain would have exceeded the cost limit. Therefore, it did not undertake a wider search for telegrams on all the visits in 2002, where a post may have been copied for information only. The FCDO noted that this approach, which was explained to the complainant in the refusal notice, was not challenged at internal review.

21. The Commissioner asked the FCDO to clarify the searches that it had undertaken to locate information falling within the scope of the request. In response the FCDO explained that:

"We have conducted proportionate searches to identify if the FCDO holds the relevant information. We conducted both electronic and paper searches in the lead FCDO (then FCO) departments for this subject: Middle East Department (the department with geographic responsibility for Bahrain) and Protocol Department (the department responsible for Royal Matters). Both of these departments were the FCO departments named in the FOI request. However, to assist the requester, we expanded the search to Commonwealth Co-ordination Department (as the department that led on the Late Queen's Golden Jubilee events and relevant correspondence), Policy Planning Department (Department concerned with the Royal Visits Committee), Economic Relations Department (Some trade matters). We also searched relevant Private Office files (PUS John Kerr, PUS Michael Jay and Foreign Secretary Jack Straw) for relevant information. Outside of searches for records created by FCO held in the UK, we also contacted the Embassy in Bahrain to request a search of their holdings. The Embassy in Bahrain confirmed that they did not hold information relevant to the request. We used the following keywords, The key words we used, singly or in combination, to search our electronic holdings (including the archive inventory) were:

"Duke of York"

"Bahrain"

"DOY"

"Bahrain"

"Prince Andrew""

"2002"

"Gulf Visit"

"Bahrain"".

22. In its submissions to the Commissioner the FCDO explained that it had not identified any evidence that the specific telegrams in scope of this request were ever created nor any evidence that any were ever destroyed. The FCDO explained that it did hold recorded information on both paper file and electronically on the subject of the request but not in the specific format requested, ie telegrams from the FCO to Bahrain dated 2002.
23. The Commissioner explained to the FCDO that the complainant had identified a communication described as "Wilson's T/Letter of 29 October 2002" in a telegram sent from UK Embassy in Bahrain to the FCO in

London on 4 November 2002.<sup>3</sup> The Commissioner asked the FCDO to clarify whether this document was located by it as part of its searches for this request. In response the FCDO agreed that teleletters from the FCO to Bahrain in 2002 relating to the visit of the Duke of York would fall in scope of this request when searching for information it holds.

24. However, it explained that it had established that the "Wilson's T/Letter of 29 October 2002" refers to Simon Wilson, who was Deputy Head of Mission in Bahrain at the time. The FCDO noted that in the telegram that there is a copy addressee named Dr Robert Wilson who was working in the Middle East and Near East Research Group (FCO), but it had not identified any teleletter issued by him for that date. For thoroughness (although not in scope of this request) the FCDO have identified the teleletter from Simon Wilson dated 29 October 2002. The FCDO explained that this teleletter is titled "SUBJECT: GCC" [Gulf Co-operation Council] and there is no reference in its content to the Duke of York's Visit to Bahrain. The FCDO considered that this teleletter was referenced in the document provided to the complainant in response to request FOI2023/12081, as it was a monthly round up for October 2002 provided by the PPAO (Press and Public Affairs Officer) in Bahrain. The Duke of York's visit was mentioned in this round up (and provided to the complainant) as well other matters relating to Bahrain (which were not provided to the requester, as they were not in scope of FOI2023/12081). The FCDO explained that the search terms used (electronically) to identify the teleletter were "Wilson Teleletter "29 October 2002" to ensure that any teleletter sent from the FCO or Bahrain meeting those parameters would have been identified.

#### The Commissioner's position

25. As is clear from above submissions from each party, a key issue in this matter is the form of communications sought by the request.
26. In the Commissioner's view it is perfectly reasonable for the FCDO to simply interpret this request as only seeking communications in the form of telegrams. The Commissioner considers the request to be clear and unambiguous on this point. The Commissioner is aware that the complainant has submitted other requests to the FCDO on this subject matter, ie the Duke of York's visit to Bahrain, which have described the information being sort in different ways. For example, the request in FCDO reference FOI2023/12801 sought "telegraphic and email communication" and the requests in references FOI2023/12802 &

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<sup>3</sup> See paragraph 14.

FOI2023/12803 sought "all communications (email, letter or telegraphic)". Taking these further requests into account, the Commissioner considers it reasonable for the FCDO to have assumed that this request was a targeted one, simply intended to locate "telegrams" as opposed to communications in another, or indeed any other, format.

27. Furthermore, given the wording of the request in the Commissioner's view this request clearly only seeks information which was sent from the FCO in London to the UK Embassy in Bahrain; it does not include any communication sent from the UK Embassy in Bahrain to the FCO in London.
28. The Commissioner accepts the FCDO's explanation and rationale as to why its searches for information did not extend to telegrams to which the UK Embassy in Bahrain was only a copy addressee. Based on the FCDO's submissions to him he is satisfied that searching for telegrams to which Bahrain was simply a copy addressee would have been likely to exceed the cost limit. Furthermore, the Commissioner does not consider this approach to have been an attempt by the FCDO to frustrate the complainant's request but a genuine attempt to ensure that the request could be processed within the cost limit. Moreover, the Commissioner notes that the FCDO's searches still sought all telegrams from the FCO to Bahrain, which had information on the visit of the Duke of York to Bahrain in 2002. The information excluded was simply FCO telegrams about visits by the Duke of York to other locations, which may have had Bahrain as an information only addressee.
29. The Commissioner also notes that in terms of the FCDO's approach to this request it actually broadened this from the two specific departments cited in the request to the entirety of the FCO in ensure that information of interest to the complainant – if held - would be located.
30. With regard to the actual searches undertaken by the FCDO the Commissioner considers these to be logical and sufficiently focused to ensure that if it held any information falling within the scope of this request then such information would have been located.
31. The Commissioner appreciates that the complainant has raised the apparently contradictory position of the FCDO not locating information falling within the scope of this request compared to the fact that it held (and disclosed) information in response to request FOI2023/12801. However, the Commissioner considers it important to note that request FOI2023/12801 sought wider types of communications, namely 'telegraphic and email communication' and sought both sides of correspondence, ie communications sent and received by the FCO in London.



32. With regard to the nine Bahrain 'teleletters' referred to in the material disclosed by the FCDO in response to request FOI2023/12801 (see paragraph 14) in the Commissioner's view these fall outside the scope of the complainant's request of 31 May 2023 as they were sent from Bahrain to London. Furthermore, the Commissioner accepts the FCDO's explanation (see paragraph 24) as to why the teleletter of 29 October 2002 is not in the scope of this request.
33. The Commissioner appreciates that the complainant has asked the FCDO to clarify where the telegrams sought by his request are if they are not held by the FCDO. However, as noted above, the FCDO has explained that it has not located any evidence that such telegrams were in fact ever created.
34. In view of the FCDO's submissions, the Commissioner is satisfied that on the balance of probabilities, it does not hold any information falling within the scope of the request submitted on 31 May 2023 in relation to the year 2002. In reaching this conclusion the Commissioner stresses that this finding is limited to the specific parameters of this request, namely that no telegrams on this subject were sent directly to Bahrain from the FCO in London for the time period in question regarding the Duke of York's visit. The Commissioner considers that the fact that the FCDO does hold other information on this topic, albeit in a format other than telegrams, arguably adds support to this conclusion. In other words there is not a complete absence of information on this topic; simply that communications of the specific nature sought by this request are not held.

## **Section 16 – advice and assistance**

35. Section 16 of FOIA states that:

“(1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.”

The complainant's position

36. The complainant argued that the FCDO had a duty to advise and assist him in response to his request of 31 May 2023. He argued that the FCDO clearly had information that he was seeking and it was simply adopting a semantic approach to stating that it did not hold telegrams. In his view the position adopted by the FCDO was not in the spirit of FOIA and should it assist him in obtaining the information he wanted.

The FCDO's position

37. The FCDO argued that the complainant made a specific request for information. He asked for FCO telegrams from RMU (Royal Matters Unit) and MED (Middle East Department) to Bahrain between 2002 and 2005 relating to visits by the Duke of York. As noted above, in the FCDO's view a request framed in this manner demonstrated some knowledge of FCO departments that would have led on the visit at the time and was the type of targeted request it would expect from an experienced and regular requester.
38. The FCDO noted that its response, as well as confirming that it had not identified any telegrams, also explained how it had interpreted his request to conduct its search. As the requester received a no information held response for that specific request the FCDO argued that it was open to him to submit a new request expanding on his original parameters. He could have, for example, submitted a new request asking for all information from those departments cited in his original request that may relate to the visit of the Duke of York to Bahrain in 2002. Alternatively, the FCDO suggested that he could have submitted a new request requesting all written communication regarding the Duke of York's visit to Bahrain in 2002. Once received, the FCDO explained that it would have advised on refinement or clarification, if required.
39. However, the FCDO noted that the complainant's request for an internal review focussed on his disbelief that it did not hold telegrams from the FCO to Bahrain and insistence that there would have been a myriad of issues covered by telegrams. The FCDO noted that the review asked it to confirm what had happened to the telegrams and MED's 2002 file relating to Duke of York's visit to Bahrain and the Gulf. It did not ask the FCDO to expand its search or whether information was held in other formats. The FCDO explained that its internal review response answered his queries and to further assist, it explained that did not search for any other types of documents on the topic of interest.
40. As a general approach the FCDO explained that when it receives a request for information, it does not make assumptions as to the information the requester is seeking. On receipt of a request that asks

for specific information in a specific format, it searches for material that falls in scope of that request. Therefore, if asked for telegrams from specific departments to an overseas post, it will fulfil its obligations and search for that information. On receipt of a request for an internal review, it will take note of the queries the requester has and will look at its handling of the FOI request. The internal review will also ensure that its response was accurate and carried out in accordance with best practice. In this case, as noted, the FCDO emphasised that in his request for an internal review, the complainant continued to assert that it held telegrams when it had informed him that it did not hold telegrams relevant to his request. It also informed him in the internal review response that it had not searched for other types of documents on this topic.

41. The FCDO explained that given the volume of FOI requests it receives, it would not search for information that does not fall in scope of the parameters provided by the requester. As such, it could not be specific about the types of documents it held outside the scope of the request or make assumptions as to the information the requester requires. If it did so, there is a serious risk of inadvertently misleading the requester by omitting a type of document that contained information, which may have been of interest.
42. The FCDO also noted that in response to other subsequent responses to requests the complainant had submitted on this topic, it had identified the need to provide advice and assistance to the requester and had done so.
43. In response to one of those requests, it had suggested to the complainant that he submit an FOI request for the MED 2002 file relating to the Duke of York visit to the Persian Gulf (FCDO response to IR2023/13821 dated 5 September 2023.)
44. The FCDO also explained that it provided refinement advice to the complainant's request of 28 June 2023 (FOI2023/12801) which was:

"I would like to make an FOI request for all communications ( e mail, letter or telegraphic) between FCDO, UK Trade and Investment and the British Embassy in Bahrain , including any requests made by or on behalf of him by his staff, made by Prince Andrew as Special Trade Envoy together with a list of those he requested accompany him on his visit to Bahrain in October 2002."
45. The FCDO explained that in its email of 12 July 2023, it confirmed it was processing his request and asked for clarification to ensure it was searching for the information of interest to him. The FCDO asked if he was seeking all communications (email, letter or telegraphic) made

by/on behalf of Prince Andrew to the FCDO, UK Trade and Investment, or the British Embassy in Bahrain relating to his visit to Bahrain in October 2002, together with a list of those he requested accompany him on his visit to Bahrain in October 2002. The FCDO explained that it also requested he confirm a focused time frame for the date of the information he sought.

46. In summary, the FCDO's argued that the original request for information was a valid request and there was no reason to provide advice and assistance to the requester. Nevertheless, the FCDO explained that in its view, via its responses to the further requests that the complainant made on this subject, it had provided him with adequate advice and assistance in respect of framing requests on this subject matter.

#### The Commissioner's view

47. Having given careful consideration to the nature of this request, the Commissioner is persuaded by the FCDO's position that the duty contained at section 16(1) was not triggered in respect of this request. The request was clear and unambiguous. The Commissioner accepts that it was open to the complainant, following the initial response, to submit a reframed request that sort communications of a different type or indeed all communications on this subject. In any event, in the Commissioner's view the FCDO has subsequently provided the complainant, via its responses to his later requests, with sufficient guidance that he would be able to formulate a further request should he wish to do so at this stage.

## Right of appeal

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48. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

49. 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.
50. 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 .....**

**Jonathan Slee**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**