

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 January 2016

Public Authority: Home Office
Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant requested information relating to a meeting that occurred on 23 March 2011. The Home Office denied holding any relevant information.
2. The Commissioner's decision is that, on the balance of probabilities, the Home Office does not hold the requested information. No steps are required as a result of this decision notice.

Request and response

3. On 23 May 2015 the complainant made the following request for information under the FOIA:

"Under the Freedom of Information Act 2000, I request to see information concerning records from a meeting that occurred on 23rd March 2011. The meeting would most probably have been held at Portcullis House, otherwise at the Home Office building.

Present at the meeting were:

Lynne Featherstone MP (Equalities Minister at the time)

Simon Hughes MP

Julian Huppert MP

Civil servants from the Home Office and the Government Equalities Office (GEO)

I would like to see:

A copy of meeting notes and/or minutes taken by Home Office personnel and held on record;

A written transcript of any audio recording of the meeting, or an audio version of recording;

Copies of further notes and written communications between ministers, MPs and the Home Office that concerns follow-up from the meeting.

I would like the information in electronic format (or audio recording of audio record as indicated above)".

4. The Home Office provided its response, dated 17 July 2015, on 21 July 2015. It denied holding the requested information. It also cited section 12 of FOIA (cost of compliance exceeds appropriate limit).
5. The complainant requested an internal review on 22 July 2015. At that stage, the complainant put the request in context, explaining:

"I was informed that notes were taken throughout the formal meeting by a Home Office civil servant.....

A policy decision was taken by the Home Office following the meeting that would have involved written communication between the Home Office and HM Passport Office (previously the Identity and Passport Service), the GEO and other government departments. The decision concerned official Government response to its handling of the needs of non-gendered British citizens".

6. Following the Commissioner's intervention the Home Office wrote to the complainant on 22 December 2015. It confirmed that, having conducted a further search of its records, the requested information is not held. No reference was made to section 12 FOIA.

Scope of the case

7. Following earlier correspondence, the complainant contacted the Commissioner on 22 December 2015 to complain about the way their request for information had been handled.
8. Explaining why they dispute the Home Office's response, the complainant told the Commissioner:

"I am not convinced the information I have requested under the Freedom of Information Act 2000 does not exist. I am not satisfied

with this response because notes were taken by Home Office and GEO civil servants at the meeting that took place on 23/03/11 and subsequent Government actions would suggest there was considerable departmental and interdepartmental discussion surrounding issues raised in this meeting over the following weeks and months. It is not credible there are no email chains or documentation to that effect...".

9. The Commissioner has therefore considered in this decision notice the Home Office's assertion that the information described in the complainant's request is not held.

Reasons for decision

Section 1 general right of access

10. Section 1 of 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."

11. 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 Information Rights Tribunal decisions, applies the civil standard of the balance of probabilities. In other words, he must decide whether, on the balance of probabilities, a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
12. In this case, the Commissioner has sought to determine whether, on the balance of probabilities, the Home Office holds the requested information relating to a meeting on 23 March 2011.
13. In deciding where the balance of probabilities lies, the Commissioner will 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 results the searches yielded. He will also consider any other

information or explanation offered by the public authority which is relevant to his determination.

14. In correspondence with the Commissioner, the complainant described the requested information as "*departmental and inter-departmental email correspondence and notes of any follow-up actions*" pertaining to the meeting.
15. In correspondence with the complainant, the Home Office acknowledged that, following their request for an internal review - in which they provided information about the subject matter of the meeting specified in the request – it had been able to conduct "*a much more thorough search*".
16. In its substantive response to the Commissioner, the Home Office detailed the searches that had been conducted. It told the Commissioner that an electronic search of its centrally managed shared drive had been carried out using specific search terms:

"The search ensured that all relevant folders where the type of information requested would usually be held were checked, for example folders entitled 'Briefing' and 'Meeting Notes'. All information dating from 2011 was searched and now that the subject matter had been identified, specific search terms were used. These were "non-gendered British Citizens", "gender" and "non-gendered".

17. The Home Office also stated that:

"enquiries were made with Her Majesty's Passport Service (HMPO) as the Government Equalities Office (GEO) was part of the Home Office until 4 September 2012 and it was thought that HMPO might still hold some information".

18. However, it confirmed that no information was held.
19. The Commissioner has considered the arguments put forward by the complainant, and details and evidence of the scope of the search undertaken by the Home Office. He considers that the Home Office conducted both a reasonable and proportionate search of its records, and has therefore concluded, on the basis of this evidence, that on the balance of probabilities the Home Office does not hold the requested information.
20. The Commissioner therefore considers that the Home Office has complied with its obligations under section 1(1) of the FOIA.

Other matters

21. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of the FOIA. Rather they are matters of good practice which are addressed in the code of practice issued under section 45 of the FOIA. However, the Commissioner considers that internal reviews should take no longer than 20 working days to complete, and even in exceptional circumstances the total time taken should not exceed 40 working days.
22. The Commissioner expects the Home Office to ensure that the internal reviews it handles in the future adhere to those timescales.

Right of appeal

23. 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@hmcts.gsi.gov.uk

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

24. 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.
25. 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

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