

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

### **Decision notice**

**Date:** 30 August 2022

**Public Authority:** Commissioner of Police of the Metropolis  
**Address:** New Scotland Yard  
Broadway  
London  
SW1H 0BG

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

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1. The complainant has requested the Metropolitan Police Commissioner's Conferences notes and minutes 1937-1939 and report for 1939.
2. The Commissioner's decision is that, on the balance of probabilities, the requested information is not held by the Metropolitan Police Service (MPS). However, the Commissioner finds that the MPS breached section 10(1) of FOIA as it failed to provide its response to the request within the statutory timeframe of 20 working days.
3. The Commissioner does not require the MPS to take any steps.

#### **Request and response**

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4. On 8 June 2021, the complainant wrote to the MPS and requested information in the following terms:  
  
"Commissioner's report for the year 1939.  
  
Commissioner's conferences: notes and minutes of meetings with senior officers 1937-1939"
5. The MPS responded on 19 July 2021. It stated that its searches had failed to yield any results for the Commissioner's report for the year

1939, and that it no longer holds the information relating to the Commissioner's conferences for 1937-1939 as it is now held by The National Archives.

6. Following an internal review the MPS wrote to the complainant on 14 January 2022. It stated that it was upholding its original decision, that it does not hold the requested information.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 6 February 2022 to complain about the way their request for information had been handled.
8. The complainant argued that the MPS Record Management system does not seem fit for purpose.
9. The MPS informed the complainant the requested information was held by the National Archives and provided them with the relevant references.
10. The Commissioner considers that the scope of this case is to determine whether the MPS holds any information within the scope of the request.

### **Reasons for decision**

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11. Section 1(1) of the 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.
12. Where there is a dispute between the information located by a public authority, and the information a complainant believes should be held, the Commissioner follows the lead of a number of First-tier Tribunal (Information Rights) decisions in applying the civil standard of the balance of probabilities.

### **The Complainant's position**

13. In the complainant's letter to the Commissioner they argued that; "just because the MPS cannot find a file does not mean they do not have it nor that it should be denied to a requestor."
14. The complainant went on to suggest that now staff are back in their offices, the MPS should have another look for the requested information.

### **The MPS's position**

15. The MPS argues that it has conducted the relevant searches with the relevant departments and wishes to maintain its original position that none of the requested information is held by the MPS.
16. The searches included; key word searches using their corporate records management system, Records Management Branch and eArchive. The search results identified relevant information to the request, but advised this information was deposited and now held at The National Archives.
17. The MPS argued that The Commissioner's Annual Report 1939 was not an MPS record, but an official publication of His Majesty's Stationary Office, and therefore would not have been indexed on the corporate records management system. The MPS advised that a publicly available copy was deposited at the National Archives.
18. The MPS conducted an additional search at The National Archives and confirmed that The Commissioner's Annual Report 1939 is held there under Reference: MEPO 4/187 within the Discovery catalogue.
19. The MPS key word search for the conference notes did identify relevant records, so far as the MPS had previously held the information, but the search identified that these records were now also held by The National Archives.
20. The MPS also argued due to the age of the information, there would be no business purpose for them to hold the information. The Public Records Act 1958 also requires the MPS to make arrangements for public records to be permanently preserved to a Public Record Office approved by the Lord Chancellor under the Act.
21. The MPS complied with the Public Records Act 1958 when transferring the relevant information to The National Archives to hold permanently. <sup>1</sup>

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<sup>1</sup> [ic-84621-y4c9.pdf \(ico.org.uk\)](#)

## **The Commissioner's view**

22. The Commissioner has considered the MPS's position, in conjunction with the request.
23. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. Finally, he will consider any reason why it is inherently likely or unlikely that information is not held.
24. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
25. The Commissioner recognises that the complainant believes that the MPS does hold the relevant information.
26. The Commissioner gave the complainant an opportunity to provide any evidence that may suggest that the MPS does hold the requested information, however the complainant did not supply evidence that the MPS held the information. The complainant advised that other files have been released to The National Archives and provided an example of this by means of a website link.
27. The Commissioner viewed the file which the complainant supplied showing the file location for the Commissioner's report for the year 1939. The Commissioner notes that the link provided was for The National Archives website and the summary on the website also suggests that the report is held by The National Archives only.
28. The MPS have advised that the Commissioner's Annual Report 1939 is not a MPS record but an official publication of His Majesty's Stationery Office, which is published by Command and the Commons. The MPS advised this is available at The National Archives after they conducted a search for the document.
29. The MPS also advised that the Commissioner's conference notes and minutes for 1937-1939 are not held by them, and is in fact also held by The National Archives.
30. The Commissioner is satisfied that the MPS has undertaken all necessary searches for the requested information and has supplied the Commissioner with details of such.

31. The Commissioner has taken the chance to also search The National Archives website for the requested information and can see that all requested information is accessible from The National Archives by request.
32. The National Archives has a discovery page which allows users to search for archived documents, the Commissioner searched the database using the requested information provided by the complainant. The MPS Commissioner notes for 1937 is referenced by the National Archived as MEPO 2/10407<sup>2</sup>. For 1938 the MPS Commissioner notes and minutes is referenced under MEPO 2/10408<sup>3</sup> and for the 1939 MPS Commissioner notes and minutes is reference as MEPO 2/10409<sup>4</sup>.
33. Finally the MPS Commissioner conference notes is referenced under MEPO 2/3145<sup>5</sup>. All documents are able to be viewed by members of the public by request.
34. The Commissioner would also like to draw attention to the fact that on each summary of requested information, the user is informed that the information is held by The National Archives and not the MPS.
35. For these reasons it is the Commissioner's decision that, on the balance of probabilities, the requested information is not held by the MPS.

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<sup>2</sup> [Commissioner's Conferences: notes and minutes of meetings with senior officers | The National Archives](#)

<sup>3</sup> [Commissioner's Conferences: notes and minutes of meetings with senior officers | The National Archives](#)

<sup>4</sup> [Commissioner's Conferences: notes and minutes of meetings with senior officers | The National Archives](#)

<sup>5</sup> [Commissioner's report for the year 1939 | The National Archives](#)

## **Other matters**

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36. The Commissioner would like to take this opportunity to remind the MPS that when a complainant submits multiple unrelated requests for information, each request should be dealt with individually and not as a combined request. This will allow the MPS to provide clear responses and avoid any unnecessary mistakes or confusion.

### **Section 10**

37. Section 1(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."

38. Section 10 of FOIA states that: "...a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

39. The complainant submitted their request for information, to the MPS, on 8 June 2021.

40. The MPS issued its response to the complainant on 19 July 2021.

41. Therefore, the MPS failed to meet the 20 working day deadline and breached section 10(1) of FOIA.

## Right of appeal

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42. 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)

43. 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.
44. 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 .....**

**Claire Churchill**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**