

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 25 November 2008

Public Authority: Foreign and Commonwealth Office
Address: Old Admiralty Building
London
SW1

Summary

The complainant made a request to the Foreign and Commonwealth Office (the 'FCO') concerning a Governor's book that was signed by those loyal to Britain at the time of the Unilateral Declaration of Independence in Rhodesia in 1965. The FCO conducted a search and concluded that it did not hold this information. The Commissioner has investigated the FCO's handling of the request and is satisfied that the FCO did comply with the requirements of the Act. The Commissioner does not therefore require the FCO to take any further steps.

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. The complainant has advised the Commissioner that she is seeking access to a book or register created by the then Governor of Southern Rhodesia in 1965 (the 'Governor's book'). The book apparently contained the signatures and comments of individuals, including the complainant's parents, in relation to the Unilateral Declaration of Independence ('UDI') in 1965. At this time Southern Rhodesia was a British colony, but its government declared independence by way of the UDI, signed on 11 November 1965. In response, individuals signed the Governor's book to demonstrate their loyalty to Britain. The complainant explained to the Commissioner that she believed her parents signed the Governor's book, and she was particularly interested in accessing her parents' comments in the book.

3. The complainant has made several requests to the FCO for the Governor's book, over a number of years. However, the Commissioner can only consider requests made on or after 1 January 2005, when access rights under the Act came into force. The complainant wrote to her MP on 24 March 2006 to ask for assistance in locating the Governor's book. On 31 March 2006 the complainant's MP wrote to the then Secretary of State for Foreign and Commonwealth Affairs to enquire about the book. The FCO responded to this letter on 18 April 2006, advising that it had made an extensive search for the book, but had been unable to locate it. The FCO advised that it had contacted the Zimbabwean National Archives (the 'Zimbabwean Archives') to ascertain whether it held the book, and that it would advise the complainant when a response was received.
4. On 3 May 2006 the complainant wrote to the FCO, referring to its letter of 18 April 2006. The complainant did not accept that the FCO did not hold the Governor's book, and asked how she could make a formal complaint. On 25 May 2006 the complainant wrote to the new Secretary of State, again indicating that she was not satisfied with the FCO's response to her enquiry.
5. On 1 June 2006 the FCO advised the complainant that it had now received a response from the Zimbabwean Archives. The Zimbabwean Archives had indicated that it did hold the Governor's Book, although it was not yet open to the public. On 13 June 2006 the complainant advised the FCO of her view that the Zimbabwean Archives did not in fact hold the book. The complainant further requested confirmation from the FCO as to whether the book had been found, or that the FCO had exhausted its search. On 7 July 2006 the complainant repeated her request for confirmation from the FCO, and referred to the access rights under the Act. The complainant was of the view that being unable to find a piece of information was not an adequate reason to refuse access under the Act. The complainant therefore asked the FCO how it intended to proceed with her request.
6. The FCO responded to the complainant on 28 July 2006. The FCO confirmed that it did not hold the Governor's book, and provided the complainant with contact details for the Zimbabwean Archives, in case she wished to contact that authority.
7. The complainant was dissatisfied with this response, and wrote to the FCO on 21 July 2006. The complainant advised the FCO that she had received written confirmation from the Zimbabwean Archives that it did not hold the Governor's book. The complainant referred to her comments about the Act in her letter of 7 July, and asked the FCO to transfer her complaint to the Open Government Liaison Officer.
8. The FCO responded to the complainant on 28 July 2006, and again confirmed that it did not hold the Governor's book. The FCO explained its complaints procedure under the Act, and advised the complainant of her right of appeal to the Commissioner. The FCO also suggested that the complainant pursue her enquiry with the Zimbabwean Archives. The complainant remained dissatisfied, and wrote to the FCO on 22 August. The FCO treated this as a request for an internal review.

9. The FCO wrote to the complainant on 30 August 2006 confirming its view that it had fulfilled its requirements under the Act. The FCO advised that the Zimbabwean Archives had indicated verbally that it did in fact hold the Governor's book, although it had not yet provided written confirmation. The FCO again suggested that the complainant contact the Zimbabwean Archives directly. The complainant wrote to the FCO on 7 September 2006, again indicating dissatisfaction with the way her request had been handled. The complainant advised the FCO that she intended to ask the Commissioner to investigate whether an offence had been committed by the FCO in failing to produce the requested information, namely the Governor's book.

The Investigation

Scope of the case

10. On 23 November 2006 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant expressed her view that there were grounds for the Commissioner to conduct an investigation under section 77 of the Act. The complainant alleged that the FCO may have destroyed or concealed the Governor's book, as other information from that period had been provided to the Zimbabwean Archives by the UK government before Rhodesia (now called Zimbabwe) became fully independent in 1980. However, an offence is only committed if the public authority holds the information at the time of the request, and this is the issue of dispute in this case.
11. Therefore, the Commissioner's decision in this case relates solely to the issue of whether or not the requested information (the Governor's book) was in fact held by the FCO at the time of the request.

Chronology

12. The Commissioner contacted the FCO on 29 November 2007 to advise it of the complaint. The Commissioner asked the FCO for a detailed account of its handling of the complainant's request, and the searches undertaken for the requested information.
13. The FCO responded to the Commissioner on 15 February 2008. The FCO advised the Commissioner that the complainant had originally requested access to the Governor's book in 1998 and 2001 and at these times the FCO had been unable to locate the information. The FCO advised the Commissioner that a further search was carried out on 11 April 2006 in response to the letter from the complainant's MP dated 31 March 2006 (see paragraph 3 above). The FCO explained that these searches included the FCO archives, stores and libraries, other government departments, The National Archives and the British Embassy in Zimbabwe. Again, the FCO was unable to locate the Governor's book.

14. Additionally, the FCO provided the Commissioner with details of its contact with the Zimbabwean Archives in 2006 (see paragraph 5 above). The FCO explained to the Commissioner that it had searched extensively for the Governor's Book, and had concluded that it was not held by the FCO. The FCO was of the view that it had done all it reasonably could to locate the information.

Analysis

Date of the request

15. The Commissioner notes that the correspondence between the complainant and the FCO has continued for a number of years. However, the Commissioner may only make a decision in relation to a request made after 1 January 2005. Any written request for information made after that date should be treated as a request under the Act, and the Commissioner is mindful of the fact that the complainant's MP made a request on her behalf on 31 March 2006. Therefore the Commissioner concludes that the request of 31 March 2006 is the starting point for his decision in this case, rather than later requests made directly by the complainant, which explicitly referred to the Act.

Was the requested information held at the time of the request?

16. Section 1(1) of the Act places a general duty on public authorities to confirm or deny whether they hold information in response to a request. The FCO in this case claimed that it did not hold the requested information, which the complainant has disputed. The Commissioner is therefore required to consider whether the FCO did in fact hold the information at the time of the complainant's request. In considering this issue, the Commissioner has been assisted by the Information Tribunal's decision in the case of *Bromley, Lowe, Coombe and Lewis v the Information Commissioner and the Environment Agency*¹. In this case the Tribunal clarified that, when considering whether disputed information is held by a public authority, the standard of proof to be applied in that process is the balance of probabilities².
17. The Commissioner has considered the information provided by the FCO, and is satisfied that extensive searches took place in response to the request of 31 March 2006. The Commissioner notes that the FCO searched not only its own records and archives, but also contacted other authorities and organisations, both in the UK and in Zimbabwe. The Commissioner also notes the FCO's indication that official documents relating to a newly independent country, would usually have been left with that country, rather than be removed by the UK. The Zimbabwean Archives has confirmed that it holds Governor's books from 1965, and that one book holds information dated 5 November followed by 23 December. The book does not contain any information dated 11 November 1965, and the complainant has advised that her parents signed the book on this

¹ Appeal no EA/2006/0072

² Paragraph 13

particular date. Therefore the Zimbabwean Archives has suggested that there may be a further Governor's book, the whereabouts of which is unknown. This is however outside the scope of the Commissioner's remit.

18. The Commissioner appreciates the complainant's view that the Governor's book is of great historical significance, given that it contained the signatures of those loyal to Britain at the time of the UDI. However the Commissioner can only make a decision as to whether information is in fact held, rather than whether it ought to be held, by a public authority.
19. Given the extent of the searches carried out by the FCO, the Commissioner is satisfied that there is no evidence to suggest that the information was in fact held by that authority at the time of the complainant's request. Therefore the Commissioner concludes that on the balance of probabilities the FCO does not hold the requested information.

The Decision

20. The Commissioner's decision is that the FCO did deal with the request for information in accordance with the Act.

Steps Required

21. The Commissioner does not require the FCO to take any remedial steps in relation to this request.

Right of Appeal

22. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

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

Dated the 25th day of November 2008

Signed

**Graham Smith
Deputy Information Commissioner**

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

Legal Annex: Relevant statutory obligations

1. **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.