

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 February 2014

Public Authority: Foreign and Commonwealth Office
Address: King Charles Street
London
SW1A 2AH

Decision (including any steps ordered)

1. The complainant requested information about the whereabouts of a book of condolence arising from the death of Prince Albert. The Foreign and Commonwealth Office (the 'FCO') said that it did not hold the information.
2. The Information Commissioner (the 'Commissioner') has decided that, on the balance of probabilities, the FCO does not hold the requested information. The FCO breached section 10(1) of FOIA, however, because it did not provide its initial response within 20 working days. The Commissioner requires no steps to be taken.

Request and response

3. On 17 February 2013 the complainant wrote to the FCO and requested information in the following terms:

"This was the whereabouts (and perhaps identity) of:

A volume of 'Condolences' on the death of Prince Albert submitted to the British Consul in Pau in 1861, which was exhibited in Pau at an exhibition on 'Pau Ville Anglaise' in 1978".

4. The FCO responded on 2 April 2013. It referred to the complainant having made a similar request in March 2009, at which time a thorough search of the FCO archives had found no material relating to the request. At that time, the FCO advised it understood that books or

letters of condolence from overseas posts relating to the death of a member of the Royal Family are usually sent to the Royal Household and were likely to be kept at the Royal Archives at Windsor Castle.

5. In response to the request of 17 February 2013 the FCO acknowledged that the complainant had said he had contacted the Royal Archives but they had been unable to assist. The FCO confirmed that it had carried out "*a further search of the FCO holdings*" and had not been able to trace the requested book of condolence.
6. Following an internal review the FCO wrote to the complainant on 13 May 2013. It stated that a thorough search of the FCO's archives and its Embassy in Paris had been undertaken and in both instances there was no trace of any relevant information.

Scope of the case

7. The complainant contacted the Commissioner on 22 October 2013 to complain about the way his request for information had been handled.
8. The Commissioner has considered whether, on the balance of probabilities, the FCO holds the requested information.

Reasons for decision

9. 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."

10. The task for the Commissioner here is to determine whether, on the balance of probabilities, the FCO holds any information relevant to the request. Applying the civil test of the balance of probabilities is in line with the approach taken by the Tribunal when it has considered the issue of whether information is held in past cases.
11. The Commissioner asked the FCO about the searches it had undertaken for the requested information. In reply, the FCO said it had searched across its archive, which it estimated currently holds in the region of around 1.2 million files. It advised that it had inspected a detailed

inventory of the archive which was completed in July 2013 and which had not identified the book of condolence.

12. The FCO confirmed that the document itself, if held, would be a manual hard copy record, and that information about the requested document could either be held electronically (such as in the FCO archive inventory) or in hard copy (such as in a file register).
13. The search also included hard copy file registers in order to identify files which might contain relevant information for the period in question, including an entry for the document of interest. The FCO also searched the National Archives ('TNA') catalogue with a view to identifying files held by the TNA.
14. The FCO advised that its archive inventory is held on a shared drive on its corporate system and that the TNA catalogue is accessible over the internet, whereas the 'document of interest' is in hard copy. The FCO stated that FCO staff who might have handled the document in 1978 or thereabouts (when the complainant said it was loaned to Pau) would not have had access to electronic filing systems at that time. Therefore, it said searching the personal computers of current officials in the Archive Management team would serve no useful purpose.
15. Search terms used on the TNA catalogue and inventory included "*Condolences AND Prince Albert*", "*Condolence book AND Prince Albert*", "*Condolence book 1861*", and "*Exhibition AND Pau Ville Anglaise AND 1978*". The FCO broadened its search during the investigation using the keywords "*Pau*", "*Ville Anglaise*", "*Prince Albert*", "*Prince Consort*" and "*Condolence*" and confirmed that these broader search terms had not yielded any results.
16. In addition, the FCO confirmed that it had asked the British Embassy in Paris for any relevant correspondence. Specifically the FCO had contacted four bodies, the Médiathèque in Pau (formerly Bibliothèque Municipale) and the Académie de Béarn (which jointly organised the exhibition in Pau in 1978, entitled "*Pau Ville Anglaise: du Romantisme à la Belle Époque*"), the Departmental Archives in Pau, and the British Consulate in Bordeaux.
17. The FCO had spoken with the archivist at the Médiathèque who confirmed that the complainant had already contacted her and she sent the FCO a copy of the information she had sent him, which did not include information within the scope of the above information request. The main points which the archivist at the Médiathèque had made as part of her response to the complainant were that he may wish to contact the Bordeaux Consulate, as the heading in the exhibition catalogue referred to the British Consulate. She also confirmed to him

that there was no correspondence in the exhibition file on this and that no copies of the artefacts had been made due to lack of affordable technical facilities at the time. She also sent an email to the FCO confirming that the book is not at the Médiathèque or in the local archives (Archives Communales).

18. She further pointed out that to the best of her knowledge the Médiathèque has not received any demand from the FCO or the Consulate in Bordeaux regarding information within the scope of the complainant's request in the last 35 years.
19. The archivist had searched through the 800 entries of the exhibition catalogue and confirmed that the Bordeaux Consulate does not appear anywhere. However, in the text of the general presentation the then director of the Académie de Béarn, and main organiser of the exhibition, explained that he was in charge of the exhibition and thanked a variety of people including the British, American and Canadian Consuls in Bordeaux. The archivist concluded that she is increasingly convinced that the book had been directly lent for the exhibition by the Consulate in Bordeaux and brought back (or not) directly to the Consulate. The then director died about 20 years ago. With this in mind the FCO contacted the Consulate in Bordeaux who have confirmed it does not have the book of condolence.
20. The FCO had also spoken with the current director of the Académie de Béarn who was elected in 2011 and therefore does not have direct knowledge of the exhibition in 1978. He explained that the Académie de Béarn has the ownership of and access to its own records deposited in the Departmental Archives at Pau. He has confirmed that after consulting all the people who could have any useful information he is now convinced that the document did not remain with the Académie de Béarn, nor in their archives.
21. The FCO had already been in contact with the Departmental Archives (Archives Départementales [note that those are different from the Archives Communales mentioned above]), who have the papers belonging to the Académie de Béarn, and at its request, the FCO sent them an email on 16 January 2013 explaining the nature of request. Subsequently the FCO received confirmation from the Departmental Archives that it does not hold the requested information.
22. The Commissioner asked the FCO about the complainant's contention that the document is recorded in the 1978 exhibition catalogue. In reply, the FCO said that it does not hold a copy of the exhibition catalogue and has not seen the entry in question.

23. In addition the FCO advised that it had not been able to identify any correspondence from 1977-79 which the complainant claimed must exist to cover the period of the loan and return of the book of condolence.
24. Furthermore, the FCO said it could not identify any record indicating that the document had once been held but subsequently been destroyed.
25. The Commissioner is satisfied that the FCO has conducted a thorough search for the information and he has concluded that, on the balance of probabilities, the FCO holds no information relevant to the request.
26. However, the FCO breached section 10(1) of FOIA in that it did not respond to the request within 20 working days.

Other matters

27. As well as finding above that the FCO is in breach of section 10 of the FOIA, the Commissioner has also made a record of the delay in this case. This may form evidence in future enforcement action against the FCO should evidence from other cases suggest that there are systemic issues within the FCO that are causing delays.

Right of appeal

28. 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

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

29. 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.
30. 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