

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 03 December 2020

Public Authority: Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant requested information relating to the 2005 volume of the MISC 13 series of Cabinet committee records.
2. The Commissioner's decision is that on the balance of probabilities, the public authority does not hold any information within the scope of the complainant's request.
3. No steps are required.

Request and response

4. On 2 July 2019 the complainant submitted a request to the public authority in the following terms:

"Please provide the following

1. From MISC 13 committee records¹ (1 July 2005 – 31 December 2005)

Any reference to EDO MBM Technology Ltd

2. An index of any destroyed files from MISC 13 records dated 2005 showing dates documents were destroyed and reasons for destruction."

5. The public authority responded on 22 July 2019 stating that it did not hold any information within the scope of the request in the following terms: "I am writing to advise you that following a search of our paper records, I have established that the information you requested for both your queries is not held by the Cabinet Office."

6. On 23 July 2019 the complainant requested an internal review of the public authority's response in the following terms:

"These are documents that relate to a Cabinet committee which should have been preserved for the historical record. The Cabinet Office has provided no assistance as to where these documents may be found as required by the FOIA 2000. The Cabinet Office now needs to explain why these documents are not held, where they may be found, if in fact they have been destroyed, and if so when, by who, and why. This is of great concern as these documents are of relevance to the ongoing Undercover Policing Inquiry into secret police abuses of political activists, including animal rights activists."

7. The public authority wrote back to the complainant on 28 August 2019 with details of the outcome of the internal review. The review upheld the original decision concluding as follows: "The titles...appear in sequential order within the CAB 186 series, hence the cover note you supplied with this internal review request. I am able to confirm that the report you have requested was on a special circulation list, and can be found within

¹ The Commissioner understands that the MISC 13 Cabinet committee was 'the Ministerial Committee on Animal Rights Extremism'. [https://hansard.parliament.uk/Commons/2006-06-29/debates/06062967000024/MinisterialCommitteesOfTheCabinet\(MISC13\)](https://hansard.parliament.uk/Commons/2006-06-29/debates/06062967000024/MinisterialCommitteesOfTheCabinet(MISC13))

CAB 186/38. You may wish to revise your original request in light of this information."

Scope of the case

8. The complainant contacted the Commissioner on 10 October 2019 to complain about the way his request for information had been handled. He specifically disputed the Cabinet Office's claim that it did not hold any information within the scope of his request.

Reasons for decision

Section 1 FOIA - General right of access to information held by public authorities.

9. When a public authority claims that the information requested by a complainant is not held, the Commissioner will decide whether this is the case on the balance of probabilities. She will reach a decision based on the adequacy of the public authority's search for the information and/or any other reasons explaining why the information is not held.

Complainant's submission

10. The complainant's substantive submissions are reproduced below.
11. "These are documents that relate to a Cabinet committee which should have been preserved for the historical record.
12. The Cabinet Office has provided no assistance as to where these documents may be found as required by the FOIA 2000.
13. The Cabinet Office now needs to explain why these documents are not held, where they may be found, if in fact they have been destroyed, and if so when, by who, and why.
14. This is of great concern as these documents are of relevance to the ongoing Undercover Policing Inquiry into secret police abuses of political activists, including animal rights activists."
15. "I do not believe the IR [internal review] response has been made properly as it does not make any sense to me. It may be a cut and paste from another IR response to someone else." The complainant advised that he asked the public authority to clarify its internal review response but had not received a response.

Public authority's submission

16. The public authority's submissions are summarised below.
17. The minutes and papers of various Cabinet committees are bound at the end of each calendar year. The papers are not destroyed but preserved until their release under the 20 year rule.
18. For the period since the end of the second World War, MISC records have been collated into the CAB 130 series. The National Archives (TNA) note that these are arranged chronologically year by year and then in ascending order of MISC number.
19. The 2005 volume for the MISC 13 series was bound in line with the above standard practice. An electronic search was not required as the bound volume is the final historical record. No information within the scope of the request is contained within the bound volumes. The MISC 13 volume for 2005 is held by the public authority pending its transfer to TNA by the end of 2025 subject to sensitivity reviews.
20. The public authority provided additional contextual information in confidence which the Commissioner has reproduced in a confidential annex to this decision notice but for obvious reasons cannot be shared with the complainant.
21. The text in the internal review reproduced at paragraph 7 above was included erroneously in the response to the complainant.

Commissioner's considerations

22. In view of the explanation provided by the public authority in confidence, the Commissioner is satisfied that the public authority does not hold any information within the scope of the first part of the complainant's request.
23. Furthermore, the 2005 volume for the MISC 13 series has been preserved pending its transfer to TNA. Documents from the 2005 volume for the MISC 13 series have not been destroyed.
24. The Commissioner has not seen a copy of the correspondence² from the complainant to the public authority requesting clarification following the internal review response. However, there is no reason for the

² Unfortunately the link to the page on WhatDoTheyKnow where the request was submitted is no longer accessible.

Commissioner to doubt that the complainant asked the public authority to clarify its internal review response.

25. It is regrettable therefore that given its clearly deficient response on 28 August 2019, the public authority waited until it was contacted by the Commissioner before confirming that the text at paragraph 7 above had no relevance to the complainant's request.

Right of appeal

26. 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@justice.gov.uk

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

27. 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.
28. 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

Gerrard Tracey
Principal Adviser
Information Commissioner's Office
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