

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

### **Decision notice**

**Date:** 4 October 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 a copy of correspondence from the Metropolitan Police (the MPS) to the FBI regarding a historical murder.
2. The Commissioner's decision is that, on the balance of probabilities the requested information is not held by 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 1 March 2021 the complainant wrote to the MPS and requested information in the following terms:

"I am requesting under FOI a copy of the letter of February 21 1945 from the Commissioner of the Metropolitan Police to the FBI concerning the possible additional evidence in the case involving the murder of [redacted]."
5. The MPS responded on 1 April 2021. It stated that its searches located information relevant to the request but that its system was unable to identify if it held the letter from the MPS Commissioner to the FBI dated 21 February 1945. The MPS said that the cost of complying with the request would exceed the appropriate limit.

6. The complainant contacted the MPS on 29 April 2021. They requested confirmation of the information located relevant to the request and suggested a more focused search, including some key terms which they suggested would help in the search for the information.
7. Following an internal review, the MPS wrote to the complainant on 14 January 2022. The MPS reiterated its view that the cost limit would be exceeded in determining whether it held the requested letter. It advised that The National Archives held relevant information.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 6 February 2022 to complain about the way his request for information had been handled.
9. During the course of the investigation, the MPS has revised its original position which relied on section 12 (costs) and advised that it does not hold any information within the scope of the request.
10. The Commissioner considers that the scope of the investigation is to determine whether the MPS holds any information within the scope of the request.

### **Reasons for decision**

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#### **Information held/not held**

11. 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.
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 said that the requested letter must be part of a file relating to the murder and searchable.
14. They further suggested that there was likely to be files for the 1940s under various specified subject headings and that the MPS should expand the search to include dates outside of February 1945.
15. The complainant also argued that the MPS did not look for Special Branch files where the material may lie.
16. The complainant said that the requested letter was not in the National Archives and must therefore have been retained by the MPS. They suggested that the MPS should have another look for the requested material.
17. The complainant said that there was evidence that the requested letter existed as it was referenced in an FBI file which he was aware of.

### **The MPS's Position**

18. Having initially relied on section 12, the MPS have now argued that, on the balance of probabilities, the requested information is not held by the MPS.
19. In support of this position, the MPS explained that it has made enquires with its records management unit and that searches were made on its electronic system, eArchive, which records metadata relating to archived records. Searches conducted on eArchive, using the name in question, identified one archived file. A further search showed that the file is now held by The National Archives and is open to the public to view.
20. The MPS carried out further searches on eArchive that identified 2,540 'live' files created between 1940-1949 which were files that had not been destroyed and may either be held by MPS or transferred to the National Archives. The metadata containing the file reference numbers, descriptions and creation dates were exported to an Excel spreadsheet to facilitate further searches.
21. Further searches, that were conducted by the MPS, based on keywords suggested by the applicant, discovered some records, however the searches did not identify any records containing descriptions relevant to the request.
22. In response to the appeal made by the complainant, the MPS also carried out open searches via internet search engines and online

newspaper archives with a view to identifying information that could assist in locating the requested information. These searches did not locate any mention or reference to the specific letter requested.

Enquires were also carried out with the Archive Review team within the National Counter-Terrorism Policing Headquarters directorate. The requested information was not located there, nor was there anyone working at the MPS with direct, personal knowledge of the requested information due to the length of time that had passed.

23. MPS advised that as of 1958 (i.e. the date of the Public Records Act 1958), a public record created in 1945 would have been considered for permanent preservation by 1975 (i.e. after 30 years). As of December 2005, all MPS records created up to 1975 (with the exception of Special Branch records dated 1955-1975) have already been reviewed and either selected for preservation at The National Archives, destroyed, retained for continuing operational use or passed to the MPS historical store. The MPS said that there was no reason to believe that the requested information would be held within the historical MPS archives, particularly since the comparable file relating to the same incident had previously been transferred to The National Archives.
24. The MPS concluded that there is no statutory requirement to retain the requested information if it were held by the MPS, on the contrary, the MPS would have to justify the reasoning as to why it was still retaining the information for longer than 30 years. The MPS argued there would be little to no reason for it to retain correspondence related to an incident outside of MPS's jurisdiction for 77 years.

### **Commissioner's View**

25. The Commissioner has considered the MPS's position, in conjunction with the request.
26. 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.
27. 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.

28. The Commissioner recognises that the complainant believes that the MPS does hold the relevant information.
29. The Commissioner gave the complainant an opportunity to provide any evidence to support their suggestion that the requested document existed and if so, that it was held by the MPS. The complainant advised that he was aware of an FBI case file which made reference to the letter but was unable to provide any evidence to demonstrate that it was held by the MPS.
30. The Commissioner is satisfied, from the information presented to him, that the searches conducted by the MPS to locate the requested letter were reasonable and that it has not identified files which are likely to contain the requested information.
31. The Commissioner also notes the MPS's assertion that there would be no reason for it to retain a letter relating to an incident outside its jurisdiction for such a long period of time and that any correspondence and related information would have already been deleted or transferred to The National Archives. The MPS did find that they had previously held a file relating to the same incident, which was of a similar age as the requested information, with similar content (i.e. correspondence) but that this was transferred to the National Archives in 2005.
32. If the requested letter was ever held, therefore, the Commissioner considers that it is more likely than not that it would have been treated in a similar way and transferred to The National Archives. From the information provided to the Commissioner, he is satisfied that there were no other files located which would be relevant to the request, other than the file referred to in paragraph 31 above, that is now held by the National Archives.
33. The MPS also advised the Commissioner that correspondence and papers relating to the office of Commissioner in 1945 have been transferred to The National Archives and are ready to view.
34. Having undertaken searches of The National Archives discovery page and website, it is apparent that The National Archives may hold some relevant information within the scope of the request under reference MEPO 2/9532, MEPO 2/9533 and potentially MEPO 2/6040 but the Commissioner has been unable to find any reference to a letter from 21 February 1945 from the Commissioner of MPS to the FBI.
35. For the reasons set out above, it is the Commissioner's decision that, on the balance of probabilities, the requested information is not held by the MPS.

## **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.

## Right of appeal

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37. 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)

38. 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.
39. 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**