

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 September 2023

Public Authority: Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant has requested copies of correspondence and communication between the former Prime Minister Harold Wilson and the former Prince of Wales (now King Charles) from 1 November 1968 to 1 November 1969, about matters relating to the Prince's Investiture of Prince of Wales in 1969; campaigns for Welsh independence; the Welsh language; Welsh devolution; the Prince's role as Prince of Wales, and; the Prince's education at Aberystwyth University. The Cabinet Office stated that it did not hold the requested information, and advised the complainant to redirect their search to The National Archives as records from the time period specified in the request had been transferred.
2. The Commissioner's decision is that, on the balance of probabilities, the Cabinet Office does not hold the requested information.
3. The Commissioner does not require further steps.

Request and response

4. On 29 December 2020 the complainant made an information request to the Cabinet Office. Due to length, the request will not be reproduced in the body of this notice but a copy will be appended in an annex.

5. The Cabinet Office responded on 28 January 2021. It stated that it did not hold the requested information. In line with its duties under the Public Records Act, it advised the complainant that records from Harold Wilson's premiership will have been transferred to The National Archives ("TNA"), and provided the complainant with a link to TNA's website.
6. On the same day the complainant requested an internal review. They asked the Cabinet Office to provide answers to questions [4] and [5] of the request. They also asked the Cabinet Office to confirm whether it held "actual copies of any material transferred and whether the Cabinet Office could therefore provide copies of any relevant material still held."
7. The complainant stated that they had been unable to locate relevant files on TNA's catalogue, and stated that "if the department has indeed transferred material relevant to the request to the National Archives, it should be able to provide the appropriate file details."
8. Following an internal review the Cabinet Office wrote to the complainant on 11 November 2021. It stated that it was upholding its original decision. In response to parts [4] and [5] of the original request, the Cabinet Office stated:

"Our response of 28 January 2021 did not claim that relevant information was transferred to The National Archives. We simply advised that the information requested was not held and suggested you redirect your search to The National Archives because records from the time frame specified in you [sic] original request were transferred. To assist you, we would suggest that you might like to undertake a refined keyword search via The National Archives online catalogue for PREM 13 – the records of Harold Wilson.

Prime Minister's Office: Correspondence and Papers, 1964-1970
<https://discovery.nationalarchives.gov.uk/details/r/C11906>

You also requested an answer to question 5 of your original request. In line with the requirements of s.3(6) of the Public Records Act 1958, all records undergo a selection process to determine the historical value of a record and whether they merit permanent preservation and the Cabinet [Office] destroys records that do not meet that threshold and are no longer required for business purposes. Records of their destruction are not retained indefinitely and are themselves destroyed when they are no longer needed for current business purposes.

Communications between the Prime Minister of the day and the Prince of Wales would meet the threshold for permanent preservation. A further search of the Cabinet Office records was been conducted and no record

of destruction is held by the Cabinet Office matching information within scope of your request.”

Scope of the case

9. The complainant contacted the Commissioner on 12 November 2021 to complain about the way their request for information had been handled.
10. The Commissioner considers that the scope of his investigation is to determine whether the Cabinet Office holds the information falling within scope of the request.

Reasons for decision

11. 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.”

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. The complainant believes it is highly likely that the requested information is held by the Cabinet Office. They explained their position in the following terms:

“It is a matter of public record that Mr Wilson corresponded with the Prince on matters relating to the countryside, conservation and the Prince's Investiture during this period.

My own searches in the National Archives have uncovered three direct exchanges between the Prince and Harold Wilson.

I therefore believe further information is likely to be held.

I must assume that if the information is not held by the National Archives in Kew it must remain with the Cabinet Office.”

The Cabinet Office's position

14. In a letter to the Commissioner the Cabinet Office explained that, due to its age, the information requested by the complainant would have been held in paper files. At the end of an administration, the Prime Minister's office transfers the whole collection or Prime Minister's papers to the Cabinet Office archives team, removing any records where there is no discernible Prime Minister involvement. The Cabinet Office's formal records management policy states that it will always preserve correspondence between the Government and Royal Family in compliance with the Public Records Act to preserve records worthy of permanent preservation at TNA.
15. In response to the complainant's assertion that information further to that identified in their searches must exist and be held by the Cabinet Office, it explained that it does not keep an inventory of what papers are contained in files transferred to TNA. The Cabinet Office stated that it is therefore not the case that if the information exists it will be possible to identify where it is held. It further stated that it can only identify information it holds in retained files and cannot identify individual items held at TNA.
16. The Cabinet Office explained the circumstances under which files may be retained by the department:

“Section 3(4) of the Public Records Act 1958 requires departments to transfer to TNA, or to an approved place of deposit, those records which have been selected for permanent preservation. This must take place by the time the records are 20 years old (previously 30 years, amended by the Constitutional Reform and Governance Act 2010), unless departments receive authorisation to retain them for longer.

Departments must obtain approval not only to retain records selected for permanent preservation but also to retain records not so selected but which departments need to retain for administrative purposes. Records cannot be retained without the Secretary of State's approval which is given only after applications have been reviewed by the Advisory Council on National Records and Archives. Retained records that have been selected for permanent preservation (as would be the case with PREM files) are listed on TNA's catalogue, Discovery, as 'retained by department'. Records not approved for retention must be destroyed.

None of the PREM 13 files from the period in question are listed as retained by the department.”

17. The Cabinet Office outlined the searches it had undertaken to identify whether information falling within scope of the request was held within the department. It explained that it had focused its searches on determining whether there were any retained PREM 13 files, and had checked the database of files in its retained archive using the date parameters given by the complainant and the search term 'PoW', which is one of TNA's recognised search terms for retentions relating to the Prince of Wales. The search produced a nil return.
18. The Cabinet Office explained that it had limited its search to retained files as current business units do not hold information for longer than seven years, and most of their records are destroyed as they are not selected for permanent preservation. Those that are generally selected – Cabinet and Cabinet Committees and supporting records, national security and intelligence coordination – are unlikely to contain Prime Minister correspondence with the Prince of Wales so it would not have been reasonable to search them.

The Commissioner's position

19. The Commissioner relies on his position taken in previous decision notices¹ issued in respect of similar requests for correspondence between the Prince of Wales and former Prime Ministers.
20. The Commissioner acknowledges that there is a legitimate public interest in correspondence sent from the then heir to the Throne to the Government of the day. The Commissioner further acknowledges that the complainant has made arguments to support his assertion that the Prince of Wales corresponded with the Prime Minister regarding the issues described in the request.
21. However, the Commissioner must reiterate that he is required to decide whether the requested information was held by the Cabinet Office at the time of the request. He is not required to determine whether the information exists, or has ever existed.
22. The Commissioner considers that the Cabinet Office has provided a detailed and persuasive account of its response to the request. The

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2022/4022755/ico-106630-z8m2.pdf>, <https://ico.org.uk/media/action-weve-taken/decision-notice/2022/4022752/ico-104466-r4cy.pdf> and <https://ico.org.uk/media/action-weve-taken/decision-notice/2021/2619410/ico-66220-q5s7.pdf>

Commissioner accepts that the Cabinet Office has transferred to TNA the records it hold from the time period specified by the complainant.

23. The Commissioner notes that the Cabinet Office specifically preserves royal correspondence for transfer for TNA. He further notes that the complainant has been able to access information of the type described in the request via searches of TNA.
24. The Commissioner is of the opinion that the complainant has not provided any evidence to suggest that the Cabinet Office holds information relevant to his request. Rather, the complainant has speculated that the Cabinet Office may not have transferred all the relevant records to TNA. However the Commissioner cannot attach any weight to such speculation without supporting evidence. It is always possible that relevant information has been misplaced or misfiled, but the Commissioner has not seen evidence to suggest that this is the case here.
25. The Commissioner is not persuaded that further searches would be likely to identify the requested information. He does not therefore consider it reasonable or proportionate to require the Cabinet Office to extend its searches in respect of the request.
26. Accordingly, on the balance of probabilities the Commissioner accepts that the Cabinet Office does not hold any information relevant to the request.
27. Section 16 of FOIA requires a public authority to provide advice and assistance to requesters. Public authorities are taken to have complied with section 16 if they have followed the recommendations set out in the Code of Practice (the Code) issued under section 45 of FOIA².
28. Paragraph 2.12 of the Code recommends that:

"2.12 In most cases where a public authority does not hold the information, but thinks that another public authority does, they should respond to the applicant to inform them that the requested information is not held by them, and that it may be held by another public authority. The public authority should, as best practice where they can, provide the

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

contact details for the public authority they believe holds the requested information.”

29. As set out at paragraphs 7 and 10 above, the Cabinet Office directed the complainant to TNA in respect of transferred records. The Cabinet Office provided explanatory information to assist the complainant in searching TNA’s online catalogue.
30. In light of the above the Commissioner considers that the Cabinet Office has complied with the requirements of section 16 of FOIA in offering appropriate advice and assistance to the complainant.

Right of appeal

31. 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

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

32. 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.
33. 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

Jonathan Slee
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex

34. I would like to request the following information under the Freedom of Information Act and the Environmental Information Regulations (EIRs).

"Please note that the reference to Prince Charles in the questions below should include the Prince himself (irrespective of which of his titles were used), his Principal Private Secretary (ies), his Assistant Private Secretary (ies) and anyone in his private office able to correspond and communicate on his behalf.

Please note that the reference to Harold Wilson, the then Prime Minister should include Mr Wilson himself, any Principal Private Secretary (ies), any Assistant private Secretary (ies) and anyone in his private office able to correspond and communicate on his behalf.

Please note that the reference to correspondence and communications should include any letters, telegrams, memos as well as any documents sent through private Whitehall/Diplomatic communication channels.

Please note that I am only interested in information generated between 1 November 1968 and the 1 November 1969.

Please note that in each instance I would like to request a copy of the actual letter, fax, memos, telegram etc complete with any dates, introductory greetings, letter heads and signatures.

If a particular piece of correspondence and communication touches upon issues other than those outlined in 1 a to f please redact them from the letter. But given that I have requested an actual copy of the original piece of communication I should be able to see the extent and placing of the redactions.

1...During the aforementioned period did Prince Charles write to Harold Wilson about any or all of the following issues.

a...The Prince's Investiture of Prince of Wales in 1969. I am interested in receiving all correspondence and communication relating to the event. This might include information about the planning of the event? Information about protests leading up to the event? It might include information about the event itself? It might include information about the public's response to the event.

b...The various campaigns for Welsh Independence which were prevalent at the time. This will include but not be limited to correspondence and communications about the activities of the various

nationalist groups and correspondence and communication about the level of support for these groups. It will also include correspondence and communications about Plaid Cymru, correspondence and communication about the Welsh Language Society, correspondence and communications about the Free Wales Army and correspondence and communications about the Movement for the Defence of Wales.

c...The Welsh language, threats to the future of the language, measures to safeguard the language.

d...Welsh devolution

e...The Prince's role as Prince of Wales.

f...The Prince's education at Aberystwyth University.

2...If the answer to question one is yes can you please provide copies of the correspondence and communication.

3...During the aforementioned period did Harold Wilson write to Prince Charles about any of the issues outline in points a to f. If the answer is yes can you please provide copies of this correspondence and communication.

4...If relevant documentation has been transferred to a public archive. Can you please identify the archive. Can you please provide the names of any files which have been transferred together with any relevant references and the dates of their transfer

5...If relevant documentation has been destroyed can you please provide the following details.

a...In the case of each destroyed piece of correspondence and communication can you state when it was destroyed and why.

b...In the case of each destroyed piece of correspondence and communication can you identify author (s), recipient (s) and date generated.

c...If destroyed information continues to be held in another form can you please provide copies of that correspondence and communication.

Thank you for dealing with my request and I look forward to hearing from you."