



**Information Commissioner's Office**  
Promoting public access to official information  
and protecting your personal information

## **Freedom of Information Act 2000 (Section 50)**

### **Decision Notice**

**Dated 7 July 2006**

**Public Authority: Cabinet Office ('CO')**

**Address: Admiralty Arch  
The Mall  
London  
SW1A 2WH**

### **Summary Decision and Action Required**

#### **The Request**

**The complainant requested the following information from the Cabinet Office:**

- a) "complete copies of any and all documents setting out the instructions which were drawn up by the Prime Minister and/or his staff and sent to the Attorney General requesting him to give advice on the legality of military intervention against Iraq. I believe this request covers documents drawn up at any time since January 1 2001".**
- b) "whether legal advisers other than the Attorney General and law officers of the Crown were involved in giving advice to the Prime Minister on the legality of military intervention against Iraq. If this is the case, I would also like to ask for a complete list of these advisers, the dates on which each of these legal advisers provided advice and what was the nature of their advice. I would also like to request complete copies of the advice provided by each of these legal advisers to the Prime Minister".**
- c) "complete copies of all documents drawn up by the Attorney General and received by the Prime Minister which gave the**

**Prime Minister advice on the legality of the military intervention against Iraq”.**

**The Commissioner’s decision in this matter is that the public authority has partly dealt with the complainant’s request in accordance with Part I of the Act. In failing to confirm that no information relevant to sections a) and b) of the request was held within twenty working days the Cabinet Office contravened the requirements of sections 1 (1) (a) and 10. However the Cabinet Office confirmed at the internal review stage that such information was not held and therefore the Commissioner has not specified any remedial steps in this Decision Notice.**

**The Commissioner is satisfied that the Cabinet Office has appropriately refused to supply information that it holds which is relevant to section c) of the request on the basis that the exemptions in sections 42 and 35 apply and that the public interest favours maintaining the exemptions. Therefore the Cabinet Office was not under an obligation to provide that information to the complainant and has acted in accordance with Part I of the Act in refusing to release it.**

**1. Freedom of Information Act 2000 (the ‘Act’) – Applications for a Decision and the Duty of the Commissioner**

1.1 The Information Commissioner (the ‘Commissioner’) has received an application for a decision whether, in any specified respect, the Complainant’s request for information made to the public authority has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 (the ‘Act’).

1.2 Where a complainant has made an application for a decision, unless:

- a complainant has failed to exhaust a local complaints procedure, or
- the application is frivolous or vexatious, or
- the application has been subject to undue delay, or
- the application has been withdrawn or abandoned,

the Commissioner is under a duty to make a decision.

1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.

**2. The Complaint**

2.1 The Complainant has advised that on 20 December 2004 the following information was requested from the public authority by email in accordance with section 1 of the Act,

- d) “complete copies of any and all documents setting out the instructions which were drawn up by the Prime Minister and/or his staff and sent to the Attorney General requesting him to give advice on the legality of military intervention against Iraq. I believe this request covers documents drawn up at any time since January 1 2001”.
- e) “whether legal advisers other than the Attorney General and law officers of the Crown were involved in giving advice to the Prime Minister on the legality of military intervention against Iraq. If this is the case, I would also like to ask for a complete list of these advisers, the dates on which each of these legal advisers provided advice and what was the nature of their advice. I would also like to request complete copies of the advice provided by each of these legal advisers to the Prime Minister”.
- f) “complete copies of all documents drawn up by the Attorney General and received by the Prime Minister which gave the Prime Minister advice on the legality of the military intervention against Iraq”.

- 2.2 A Refusal Notice was issued to the complainant on 25 January. This stated that the CO did not consider that there was an obligation to disclose part a) of the requested information. In doing so it cited the following exemptions as being relevant, sections 42 (1) (Legal Professional Privilege), 35 (1) (a), (b) and (c) (Formulation of government policy etc.), 41 (1) (Information provided in confidence) and 27 (1) and (2) (International relations).
- 2.3 The CO also indicated that it would revert to the complainant regarding part b) of the request when all the information, if held had been located and collated.
- 2.4 On 26 January the complainant requested an internal review of the decision to refuse access to the requested information. The complainant also wrote to the CO on 27 January to point out that the response of 25 did not address part c) of the request. In the same letter the complainant also requested a schedule listing the documents (‘the schedule’) which were refused in the reply of 25 January. Specifically the complainant requested that the schedule include the title of each document, the date of each document and a brief description of each document. The complainant asserted that such a schedule should be provided in order to comply with the obligation under section 16 to provide advice and assistance.
- 2.5 On 2 February the CO wrote to the complainant regarding the information in part b) of the request. It stated that a number of exemptions applied to the information within the scope of part b) of the

request, namely sections 42, 35 and 27. It also stated that it required an additional 20 days to consider the public interest test.

- 2.6 On 11 March 2005 the CO wrote to the complainant to communicate the outcome of its internal review. In that letter it stated that information within the scope of parts a) and b) of the request was not in fact held by the CO.
- 2.7 The CO also clarified that due to an administrative error the wording of the request was not accurately stated at the beginning of the letter dated 25 January. However the refusal to disclose information and the reasons set out in the Annex applied to the information in part c) of the request. The CO also explained that the decision not to disclose information was made after very detailed consideration. This included consideration of public interest arguments in favour of disclosure. Those considerations were also applied to the release of the schedule. The CO upheld the decision to refuse access to the information within the scope of part c) of the request and the schedule.
- 2.8 On 2 February 2005 the complainant made an application to the Commissioner for a decision under section 50 of the Act about whether the CO acted in accordance with its statutory obligations in refusing to disclose the requested information.

### **3. Relevant Statutory Obligations under the Act**

#### **3.1 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.”

#### **3.2 Section 10(1)** provides that –

“...a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt”.

#### **3.3 Section 16** provides that –

“(1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

- (2) Any public authority which, in relation to the provision of advice and assistance in any case, conforms with the code of practice under section 45 is taken to comply with the duty imposed by subsection (1) in relation to that case”.

#### **4. Review of the case**

- 4.1 The Commissioner is aware that the request was made prior to the 1 January 2005 when the right of access to information came into effect. However as the request has been treated as valid under the Act by the CO the Commissioner has decided that it is appropriate to consider the application for a decision under Section 50. In a letter dated 11 April the CO confirmed that the request had been treated at all times as a valid request under the Act. Therefore it agreed that it would not object to the Commissioner investigating the complaint nor would it appeal any decision on the basis of the validity of the original request.
- 4.2 During the investigation the government released the Attorney General’s advice dated 7 March 2003 (“the 7 March advice”), following a partial leak in April 2005. As that information is now in the public domain the Commissioner has not given further consideration to whether that information should have been disclosed, given that there are no remedial steps which he could order the Cabinet Office to take in that regard. Therefore the decision set out in this notice relates only to other information within the scope of the request which is held by the CO.
- 4.3 In addition the CO has stated that reliance is no longer placed on section 41 as a possible exemption in relation to the information within the scope of the request. Therefore he has not considered whether or not reliance on section 41 was justified.

#### **The Commissioner’s Investigation**

- 4.4 The Commissioner has collectively investigated a number of similar requests made to the CO and the LSLO for information related to the Attorney General’s advice about military intervention in Iraq. That investigation covered the information that the complainant requested from the CO.
- 4.5 Details of the inspections that the Commissioner has carried out and of the information that he has taken into account in reaching his decision, can be found in paragraphs B1, B2, B5 and B6 of the Enforcement Notice issued to the LSLO on 22 May 2005 and attached in Annex A.

## **The Commissioner's Analysis**

- 4.6 The CO relied upon the same exemptions and public interest arguments as the LSLO when refusing to disclose information relevant to the complainant's request. Therefore the Commissioner's analysis of whether or not the exemptions (other than Section 41) cited by the LSLO have been appropriately applied is also relevant to the CO material. This analysis is presented in section B of the Enforcement Notice attached in Annex A.
- 4.7 The Commissioner does not consider that section 27 is relevant to any of the information which is within the scope of the complainant's request. However the analysis of the applicability of sections 35 and 42 in the Enforcement Notice is relevant to the information held by the CO. This analysis is provided in paragraphs B9 to B12 and C8 to C27.
- 4.8 The Commissioner has also given specific consideration to the CO's refusal to provide the schedule to the complainant. In a letter to the Commissioner dated 20 May 2005 the CO confirmed that it does hold a schedule fitting the description in the complainant's request. As mentioned in paragraph 2.7 above the CO relied upon the same exemptions and public interest considerations in respect of the schedule as it had in relation to the other requested information in part c) of the request.
- 4.9 The Commissioner has considered the complainant's assertion that the CO should have provided the schedule in order to comply with its obligations under section 16 of the Act. The section 45 code of practice does not include any requirement that public authorities supply requesters with a list of information where it has been withheld.

## **5. The Commissioner's Decision**

- 5.1 The Commissioner's decision in this matter is that the public authority has not dealt with the complainant's request in accordance with Part I of the Act. In failing to confirm that no information relevant to sections a) and b) of the request was held within twenty working days the Cabinet Office contravened the requirements of sections 1 (1) (a) and 10.
- 5.2 In respect of part c) of the request and the schedule, the conclusions that the Commissioner has reached about the public interest test and sections 35 and 42 in the Enforcement Notice also apply to the information held by the CO. Those conclusions are set out in paragraphs D4 to D16 inclusive. The Commissioner is satisfied that the CO does not hold any material relevant to the complainant's request which he has determined should be disclosed. He is satisfied that the CO has appropriately maintained the exemptions in sections 35 and 42

and therefore it was not under any obligation to supply the information to the complainant under section 1 of the Act.

- 5.3 The Commissioner does not consider section 16 of the Act to be relevant to the request for the schedule.

## **6. Action Required**

- 6.1 Although the Cabinet Office failed to comply with sections 1 (1) (a) and 10 of the Act when responding to parts a) and b) of the request, the Commissioner has not ordered any remedial steps as the CO confirmed at the internal review stage that such information was not held.
- 6.2 In relation to part c) of the request and the schedule the Commissioner has concluded that the CO acted in accordance with the Part I of the Act in refusing to supply that information and has not ordered any remedial steps.

## **7. Right of Appeal**

- 7.1 Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "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](mailto:informationtribunal@dca.gsi.gov.uk)

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

**Dated the 7th day of July 2006**

**Signed .....**

**Richard Thomas  
Information Commissioner**

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



Ref. FS50062881

Annex A – Enforcement Notice dated 22 May 2006