



**Information Commissioner's Office**  
Promoting public access to official information  
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## **Freedom of Information Act 2000 (Section 50)**

### **Decision Notice**

**Dated 7 July 2006**

**Public Authority: Foreign and Commonwealth Office ('FCO')**

**Address: Old Admiralty Building  
Whitehall  
London  
SW1A 2PA**

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

**The Commissioner's decision in this matter is that the FCO has not dealt with the complainant's request in accordance with Part I of the Act.**

**The FCO breached section 1 (1) (a) and section 10 in failing to confirm or deny whether information relevant to parts a) to c) of the request were held within twenty working days.**

**The FCO also breached section 1 (1) (b) and section 10 in failing to supply the complainant with information relevant to part b) of the request within twenty working days.**

**The Refusal Notice dated 26 April 2005 did not comply with the requirements of section 17(1) (a) or (b) as it did not state that information relating to part c) of the request was exempt or specify that section 40 (2) was the relevant exemption.**

**In respect of part d) of the request the Commissioner has concluded that the additional time taken by the FCO to consider the public interest was reasonable in the circumstances of this case. The FCO has complied with section 17 (3) of the Act in providing the response to the complainant dated 20 May 2005.**

**The Commissioner has not ordered the FCO to take any remedial steps.**

## **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 FCO 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- the application has been withdrawn or abandoned,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 24 March 2005 the following information was requested from the FCO in accordance with section 1 of the Act.

“(a) a copy of the Attorney General's letter accepting Elizabeth Wilmschurst's resignation in March 2003 and

b) a copy of her line manager's letter (if he/she is someone other than the Attorney-General) and

c) copies of all other letters from Foreign Office officials (including the Attorney-General) to Elizabeth Wilmschurst in connection with her resignation, from the date of her resignation letter up to the present day.

d) A copy of all internal reports, memos and letters from Elizabeth Wilmschurst and/or her colleagues setting out the considered opinion and advice, either individually or as a team(s), to the Attorney-General up to the first day of the war and invasion of Iraq”.

2.2 The FCO received the complainant's request on 29 March 2005. A Refusal Notice was sent to the complainant on the 26 April 2005 stating that the FCO was close to completing their response to the first three sections of the request. The notice also advised the complainant that the exemptions in sections 35 (1) (a), 35 (1) (c) and 42 (1) of the

Act applied to the information in the final section of the request and that an additional 10 working days would be needed to consider the public interest test.

- 2.3 The complainant replied to the Refusal Notice on the 26 April asking the FCO to revise its timescale for a reply as they were requesting the information to inform their decision on which way to vote in the General Election held on 5 May 2005. The FCO replied on 27 April indicating that the estimated response date was 11 May but that it would endeavour to reply before the deadline if possible.
- 2.4 In an email to the Commissioner dated 28 April the complainant stated that they were “not happy with the delay in providing this information – it appears to be being delayed until after the election by design” and asked him to investigate.
- 2.5 On 10 May the FCO sent an email to the complainant extending the deadline for a substantive response by an additional 10 days to 20 May.
- 2.6 A substantive reply was provided to the complainant on 20 May. This stated that no information was held in relation to part a) of the request and a minute relevant to part b) was disclosed to the complainant. The FCO refused to supply the information requested in section c) citing section 40 (2). It also refused to supply information related to section d) of the request, relying upon sections 35 (1) (a) and (c) and 42 (1).

### **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 17 (1) provides that –**

“ A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to

the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1 (1), give the applicant a notice which –

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies”.

3.4 **Section 17 (3)** provides that –

“A public authority which, in relation to any request for information, it to any extent relying on a claim that subsection (1) (b) or (2) (b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming-

(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information”.

**4. Review of the case**

4.1 This Decision Notice solely addresses the complaint regarding the time taken by the FCO to respond to the request. The Commissioner is satisfied that on that specific issue the complainant exhausted the complaints procedure that was offered in the email sent by FCO on 26 April 2005. The email advised the complainant that if they were unhappy with the service they had received in relation to the request and wished to make a complaint, they should write to the author of the email. As mentioned in paragraphs 2.2 and 2.3 above the complainant replied to that email on the same day stating that they were unhappy with the delay because they wanted the information prior to the General Election to help them come to a decision about how to vote. The FCO responded stating that they would endeavour to respond as soon as possible but that they could not give any guarantee that this would be before the General Election.

4.2 The Commissioner was advised that a substantive reply was provided to the complainant on 20 May. In a letter to the complainant dated 26 May 2005 the Commissioner explained that if they were not satisfied with the FCO’s substantive reply regarding the application of exemptions then they would need to exhaust the internal review

procedure in relation to those issues before he would be prepared to consider any complaint.

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

- 5.1 In a letter to the FCO dated 26 May the Commissioner raised a number of queries about the time taken to respond to the complainant's request. In particular the FCO was asked to explain why it had not advised the complainant that information relevant to part a) of the request was not held within the twenty working day deadline. The Commissioner also highlighted that as the material relevant to section c) of the request was considered to be exempt under section 40 there was no public interest test to conduct.
- 5.2 The FCO provided an explanation of the way it had responded to the complainant's request in a letter to the Commissioner dated 20 July 2005.

## **6. The Commissioner's Findings and Analysis**

- 6.1 The FCO has advised the Commissioner that when dealing with the complainant's request the decision was taken that it would be unhelpful and impractical, given the extensive consultation required across a range of government departments, to take a piecemeal approach when replying. The Commissioner notes that this may have been reasonable approach in these particular circumstances had the FCO sought the complainant's agreement. However, this approach was not clearly communicated to the complainant and the Refusal Notice of 26 April 2005 simply stated that the delay in responding to the first three sections of the request was due to the level of consultation required and that the information would be sent out as soon as was possible.
- 6.2 The FCO also explained that when dealing with the request they considered that the information relevant to part b) might have been exempt under section 40 (2). However, having consulted with other departments, the view was taken that the exemption did not apply and that the information should be disclosed. As already mentioned the FCO refused to disclose the information relevant to section c) of the request on the grounds that section 40 (2) applied.
- 6.3 Section 40 (2) confers an absolute exemption where disclosing information would breach one of the Data Protection Principles. In this instance the FCO was of the view that disclosure would breach the First Data Protection Principle. As this exemption is absolute it is not necessary to conduct the public interest test.
- 6.4 As mentioned above the FCO has explained that considerable consultation was required with other government departments in order to reply to sections a) to c) of the request. However the Act specifically requires that information held by public authorities is provided within

twenty working days of receiving a request. There are a number of provisions which enable public authorities to extend the time for compliance, namely where it is necessary to clarify requests, a fee is payable or it is necessary to consider the public interest test. However none of these factors apply in relation to parts a) to c) of the complainant's request.

- 6.5 In view of the above the Commissioner has concluded that the FCO breached section 1 (1) (a) and section 10 (1) in failing to confirm or deny whether information relevant to parts a) to c) of the request was held within twenty working days.
- 6.6 The FCO also contravened section 1 (1) (b) and section 10 (1) in failing to supply information relevant to part b) of the request within twenty working days.
- 6.7 In addition the Refusal Notice dated 26 April did not comply with the requirements of section 17 (1) (a) or (b) as it did not specify that information relevant to part c) of the request was considered exempt under section 40 (2) of the Act or explain that this was because disclosure would breach the First Data Protection Principle.
- 6.8 In relation to part d) of the request the Commissioner's decision is that the total extension of the deadline by 17 working days was not unreasonable in the specific circumstances of this case. The Commissioner recognises that the complainant was informed at each stage that the deadline was being extended and was provided with a new estimated date by which a response would be issued. Though it is regrettable that the first extension deadline was not met it was positive that the complainant was kept informed of the progress of the request.
- 6.9 In reaching this decision the Commissioner has taken into account the fact that a considerable number of requests for information relating to events leading up to military action in Iraq were under active consideration by a number of government departments at the time that this request was received. The Commissioner accepts that in order to ensure that decisions taken in relation to those requests were both fully informed and consistent, an extensive amount of consultation was required between departments.
- 6.10 In particular, the Commissioner acknowledges that at the end of April and the beginning of May, there was a significant amount of media coverage of the circumstances surrounding Ms Wilmshurst's resignation. In order to make a thorough and well informed assessment of where the public interest lay in relation to disclosure of the requested information it was necessary to closely review the ever changing circumstances at the time, particularly as additional information was entering the public domain.

- 6.11 In addition the Commissioner accepts that during a Parliamentary election achieving a fully informed decision taken at a senior level is likely to take considerably longer than would be expected in normal circumstances.
- 6.12 In light of the above factors, the Commissioner is satisfied that the substantive response to the complainant provided by the FCO on 20 May complied with the requirements of section 10 and 17 (3) of the Act.

## **7. Action Required**

- 7.1 In light of the fact that the FCO provided a substantive reply to the complainant on 20 May 2005, the Commissioner hereby gives notice that he does not require any remedial steps to be taken.

## **8. Right of Appeal**

- 8.1 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)

- 8.2 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 7<sup>th</sup> day of July 2006**

**Signed .....**

**Richard Thomas  
Information Commissioner**

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