



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: The Cabinet Office

**Address: 70 Whitehall
London
SW1A 2AS**

Summary Decision and Action Required

The Commissioner's decision in this matter is that the Cabinet Office has partly dealt with the complainant's request in accordance with Part I of the Act.

The Cabinet Office complied with section 1 (1) (a) in informing the complainant that it did not hold the requested information. However, it failed to comply with its obligation to provide advice and assistance under section 16 (1) of the Act.

The Commissioner has ordered the Cabinet Office to provide advice and assistance to the complainant to clarify how the request was interpreted and to explain what type of information it holds relating to legal advice on military action in Iraq to assist the complainant in clarifying or refining their request.

- 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- the application has been withdrawn or abandoned,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 9th March 2005 the following information was requested from Cabinet Office in accordance with section 1 of the Act:

“how many legal advisors to the Government, both before and after the invasion of Iraq: a) fully supported the view of Lord Goldsmith, and b) expressed doubts as to its legality, to a greater or lesser extent supporting the views of Elizabeth Wilmshurst”.

- 2.2 On 6 April the Cabinet Office replied to the complainant referring them to Ms Wilmshurst’s resignation letter, available on the internet. In addition it stated that the Prime Minister’s Office (the part of the Cabinet Office to which the request was directed) did not hold any other information in relation to the request.
- 2.3 The complainant contacted the Commissioner’s office on 30 April stating that they were unhappy with the reply from the Cabinet Office and that they had not been provided with details of how to request an internal review. The Commissioner’s office contacted the Cabinet Office and was advised that the complainant was supplied with instructions about the internal review procedure when the reply was issued on 6 April. In a letter dated 26 May the Commissioner’s Office advised the complainant to seek an internal review. A copy of the Cabinet Office instructions for requesting an internal review were enclosed with that letter.
- 2.4 An internal review was requested on 29 May and a reply was sent on 14 June. The outcome of the review informed the complainant that “other than Elizabeth Wilmshurst’s resignation letter which is available at www.fco.gov.uk, no other information regarding your query is held by the Prime Minister’s Office. The Prime Minister’s Office does not collect information of the type you have requested”.
- 2.5 The 14 June letter also acknowledged that in this case the instructions explaining the internal review procedure appeared to have been omitted from the initial response.

3. Review of the case

- 3.1 On 16 June 2005 the complainant wrote to the Commissioner to express their dissatisfaction with the outcome of the internal review. In particular the complainant clarified that the request for information was “addressed to the Prime Minister in his co-coordinating role”. The complainant stated that “whether the Prime Minister’s Office now holds or collects such information is neither here nor there – I was asking for an overall number and summary relating to legal advisers of all Ministries”.
- 3.2 The complainant appears to be dissatisfied with the way in which the Cabinet Office has interpreted the request. They also indicated, in the letter dated 30 April that the failure of the Cabinet Office to answer the question asked “breaks the rule that if a public authority does not hold the requested information it should either provide the name and address of the concerned public authority that holds the requested information or refer the request to the authority”.
- 3.3 The scope of the Commissioner’s review of this complaint is limited to assessing the following issues:
- Whether the Cabinet Office complied with section 1 of the Act, which sets out the general right of access to information.
 - Whether the Cabinet Office complied with section 16 when processing the request, this relates to the duty to provide advice and assistance.
 - When considering compliance with section 16 of the Act, whether the Cabinet Office should have transferred the requests to other Government departments in accordance with the section 45 Code of Practice.

4. The Commissioner’s Investigation

- 4.1 The Commissioner contacted the Cabinet Office on 27 October to request further clarification of how it had interpreted the request. The Commissioner noted that on the basis of the correspondence it appeared that the request had been narrowly interpreted as being for the number of legal advisors expressing particular views.
- 4.2 In a reply dated 24 November the Cabinet Office explained that it had interpreted the request narrowly as suggested above. It also confirmed that it does not collect information about the number of legal advisers to Government that take a particular view on specific legal questions.

5. The Commissioner's Analysis and Findings

5.1 Section 1- Right of Access

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.”

5.2 The Commissioner is satisfied that the Cabinet Office does not keep a record of the number of legal advisers to Government that take specific views on a particular matter. Therefore he is satisfied that the Cabinet Office complied with the requirements of section 1 (1) (a) of the Act when it informed the complainant, in the letter of 6 April 2005, that it did not hold the requested information.

5.3 Following the internal review the complainant explained that they “were asking for an overall number and summary relating to legal advisers or all Ministries, and addressed it to the Prime Minister in his co-ordinating role”.

5.4 Contrary to the complainant's understanding, the Prime Minister's Office does not act as a co-ordinating body where a request is made for information that may be held by a number of government departments. In addition the Act does not require a public authority to create new information in order to reply to a request. Therefore if the information requested is not recorded then it is not held for the purposes of the Act.

5.5 Section 16 – Advice and Assistance

Section 16(1) provides that –

“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”.

5.6 Notwithstanding the conclusions in paragraphs 5.2 and 5.4, the Commissioner considers that the response provided by the Cabinet Office lacked clarity. In his opinion the inclusion of references to Ms

Wilmshurst's resignation letter, which recorded her views about the legality of military intervention in Iraq, was inconsistent with the Cabinet Office's explanation that it had narrowly interpreted the request. The result was that it was unclear precisely how the Cabinet Office had interpreted the request and particularly, what information was deemed to be relevant to it.

- 5.7 In the letter to the Commissioner of 24 November the Cabinet Office explained that the only reason that Ms Wilmshurst's resignation letter was deemed relevant was because the complainant specifically mentioned her views in the original request.
- 5.8 In this case the Commissioner considers that it would be reasonable for a member of the public to expect the Cabinet Office and other departments like the Foreign and Commonwealth Office ('FCO'), to hold information recording legal advice on the legality of military intervention in Iraq. The Butler Report records the fact that the Attorney General provided advice to the Prime Minister and states that, following the passing of United Nations Security Council Resolution 1441, "there was disagreement inside the FCO on whether a further decision of the Security Council would be needed"¹. The Report also states that in Ms Wilmshurst's evidence to the Butler Committee she explained that her view rested on a difference over legal arguments.
- 5.9 In light of this the Commissioner also considers that it would have been reasonable for the complainant to expect that the Cabinet Office would hold material relevant to the request.
- 5.10 On this occasion the Commissioner has concluded that the Cabinet Office failed to provide sufficient advice and assistance to the complainant to clarify how the request had been interpreted. He also considers that it would have been appropriate for the Cabinet Office to have provided further advice about the type of information it holds relating to legal advice on military action in Iraq to assist the complainant in clarifying or refining their request. In failing to provide advice and assistance the Cabinet Office did not comply with section 16 (1) of the Act.
- 5.11 The complainant has also indicated their view that the Cabinet Office failed to comply with the section 45 Code of Practice as it did not refer the request to other departments holding the requested information. The Commissioner is satisfied that the Cabinet Office would not reasonably have expected other departments to record the number of advisors expressing a particular view. Therefore he is satisfied that it did not breach the section 45 Code of Practice in failing to transfer the request.

¹ Paragraph 375, Page 94-Review of Intelligence on Weapons of Mass Destruction ('The Butler Report')

6. Action Required

6.1 In view of the matters referred to above the Commissioner hereby gives notice that in exercise of his powers under section 50 of the Act he requires that within 35 calendar days of the date of this Decision Notice, the Cabinet Office shall provide advice and assistance to the complainant in accordance with section 16 (1) of the Act. In doing so the Cabinet Office shall –

- (a) clarify how the request was interpreted and
- (b) explain what type of information is recorded by the Cabinet Office relating to the legality of military action in Iraq in order to assist the complainant in clarifying or redefining their request.

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

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**