

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

4 April 2007

**Public Authority:** Foreign and Commonwealth Office  
**Address:** King Charles Street  
Whitehall  
London  
SW1A 2AH

### Summary

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The complainant asked for information contained in communications between the Foreign and Commonwealth Office (the "FCO") and the Foreign Press Association (the "FPA") and notes of meetings held between those two organisations. The FCO provided some information but the complainant said that this was not what he had requested. Following an internal review further information was provided and, following discussion between the Commissioner and the FCO, more relevant material was identified which the FCO agreed to send to the complainant. The Commissioner found the FCO to be in breach of section 1(1) of the Act and expressed concern at the delay in dealing with the internal review.

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

### The Request

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2. The complainant contacted the Foreign and Commonwealth Office (the "FCO") on 2 November 2005 to request under the Act:

*"(1) All correspondence and emails from you to the FPA and replies you have received from the FPA regarding the wrong doing of the FPA accounts and myself;*

*(2) All minutes or notes taken during the meetings of FCO Media Unit people with the FPA committee members....*

*(3) All correspondence and emails you have received from the FPA Secretariat and the above mentioned committee members*

The complainant said that he wanted this information for the period covering January 2003 to 30 October 2005.

3. The FCO replied to the complainant on 30 November 2005. The FCO said that some of the information requested was available on the Foreign Press Association (the "FPA") website and therefore already reasonably accessible to him in accordance with section 21 of the Act (Information accessible to the applicant by other means). The FCO did provide some other information to the complainant and told him that his request for personal data (with which this Decision Notice is not concerned) would be dealt with separately. On 6 December 2005 the complainant wrote back to the FCO. He said that the information with which he had been supplied consisted only of FPA reports to members, and he asked again for the information previously requested. The FCO replied on 9 December 2005, reiterating that the only information it held had now been supplied to him and that the other information was covered by section 21. On 28 December 2005 the complainant wrote again. He made it clear that he did not require information of the kind that had been provided to him: what he was interested in was copies of material between the FCO and the FPA.
4. The complainant then contacted the Commissioner and, following correspondence with the complainant, a member of the Commissioner's staff wrote to the FCO on 3 July 2006 to clarify how matters stood. The FCO replied to the Commissioner on 31 July 2006. The FCO confirmed that, due to an oversight, an internal review of the complainant's request had never been completed. It apologised for that failure and said that such a review was now in progress. The FCO said also that two further documents had been identified which had been overlooked during earlier searches: consideration of these would form part of the review.
5. The FCO wrote to the complainant with the outcome of the review on 3 August 2006. The FCO apologised for the failure to complete the review much earlier. It also said that it now realised that it had cited section 21 in error: nor was the information that the FCO erroneously believed to have been available on the FPA website held by the FCO. The FCO confirmed that the two documents referred to in its letter to the Commissioner of 31 July (see previous paragraph) were not covered by exemptions and these documents were subsequently released to the complainant. The FCO advised the complainant to contact the Commissioner if he remained dissatisfied following this review.

## The Investigation

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### Scope of the case

6. On 25 August 2006 the complainant contacted the Commissioner to say that he was dissatisfied with the response from the FCO. He outlined again the information that he wished to see, which was in effect all the information sought in his original request and through subsequent correspondence. The complainant said that he knew that FCO held this information and believed that it was in the public interest for it to be made available.

### Chronology

7. Following the FCO response a member of the Commissioner's staff met officials from the FCO in December 2006. Following that meeting some further information was found by the FCO which appeared to fall within the parameters of the complainant's request. In January 2007 the FCO said that it would be willing to release some of that information to the complainant: this consisted of copies of emails between the FCO and the FPA dating from April 2005 and a copy of the report entitled 'The Foreign Press Association in London – Investigation into Accounting Irregularities 2001 – 2004' (although the complainant had stated in correspondence that he already possessed a copy of that document). The FCO took the view that another document it had discovered, a submission in July 2005 relating to the FCO funding of the FPA, did not fall within the parameters of the complainant's requests as they had focussed specifically either on correspondence between FCO and FPA or notes taken following meetings between FCO and FPA: the requests had made no reference to internal correspondence. There was therefore no other relevant material for consideration.

### Findings of fact

8. The FPA is an association looking after the interests of overseas journalists working in London, to which the FCO gives an annual grant in order to provide support for its activities as the interface between the foreign media and the Government. Following allegations of financial irregularities (resulting in the investigation referred to in the previous paragraph) that grant was, for a time, withheld. The grant was subsequently restored and the relationship between the FCO and the FPA is now regulated by a Memorandum of Understanding ("MOU"), which was agreed in January 2006 and which is monitored through regular meetings.

## Analysis

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### Procedural matters

9. It is clear from what is set out in paragraphs 2 – 5 above that, although the complainant was sent some information by the FCO following his initial request, it was not the information that he had sought. The FCO subsequently accepted that it had erroneously cited section 21 of the Act in relation to that request, as it believed certain information to be in the public domain. Later, at the internal review stage, the FCO discovered that it did hold some information falling within the parameters of the complainant's request and sent him copies of two documents. Following further discussion between this office and the FCO, yet additional information was discovered which the FCO agreed to send to the complainant.
10. Section 1(1) of the Act, the full text of which appears in the Legal Annex, requires a public authority to inform a requester if it holds information of the kind requested and, unless it is the public authority's view that the information is covered by an exemption, to release that information to the requester. It is clear the FCO acted in breach of that provision as it failed to identify, at the time of the request, relevant information which was subsequently released to the complainant.
11. In addition, by failing to release to the complainant information that it both held and was willing to release, within the timescale set down by the Act, the FCO was in breach of the requirements of section 10(1) of the Act (see the legal annex).
12. The Commissioner has considered with the FCO the question of the relative absence of information held by it in relation to this matter. The response from the FCO has been that no more information is now held and that, in relation to much of the information sought, it was never created in the first place. On the basis of evidence submitted to him, the Commissioner has accepted that response. In so doing the Commissioner has taken account of the decision in the Information Tribunal case of Quinn (Quinn v ICO & The Home Office EA/2006/0010) that, on the balance of probabilities, the Home Office still 'held' information even though it could not locate it. However, in that case, the information was contained in a report of which six copies were known to have been made, where there was no evidence that any of those copies had been destroyed in accordance with formal procedures, and where evidence was put forward that the information concerned was of a kind that might be considered appropriate for permanent archiving. That is not the case here.

### Exemption

13. No exemptions have been cited in respect of this request.

## The Decision

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14. The Commissioner's decision is that the FCO did not deal with the request for information in accordance with the Act in that it failed to identify, in accordance with the timescales set down, information which it held, and subsequently released to the complainant, which fell within the parameters of the complainant's request. The FCO is therefore in breach of both section 1(1) and section 10 (1) of the Act.

## Steps Required

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15. To the extent that it has not already done so, the Commissioner requires the FCO to take the following steps to ensure compliance with the Act:
- to release to the complainant any information falling within the complaint that the FCO has agreed to release to him and that has so far not been released to him.
16. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

## Other matters

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17. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matter of concern. There is no statutory requirement for the time within which an internal review should be completed: however, the expectation is that such reviews will be carried out within a reasonable timescale. In this case the FCO agreed to complete such a review on 24 January 2006 but did not in fact do so until 3 August 2006. This delay, for which the FCO has already apologised to the complainant, is clearly unacceptably long and merits the Commissioner's criticism. The FCO is invited to consider the Commissioner's recently published Good Practice Guidance on this topic, which is accessible on his website.

## Failure to comply

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18. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Right of Appeal

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19. Either party has the right to appeal against this Decision Notice to the Information 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)

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

**Dated the 4<sup>th</sup> day of April 2007**

**Signed .....**

**Richard Thomas  
Information Commissioner**

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

## Legal Annex

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.’

Section 10(1) provides that:

‘Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following receipt.’