

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 27 September 2007

Public Authority: Cabinet Office
Address: 70 Whitehall
London
SW1A 2AS

Summary

The complainant made a request to the Cabinet Office for details of the person or persons who drafted the executive summary of the Iraq dossier. The public authority refused the request under Section 21 of the Act as it said that the issue of who drafted dossier, including its executive summary, had been considered as part of the Hutton Inquiry and that this information was available on the inquiry's website. The public authority added that it held no further information. The Commissioner has considered the complaint and has found that the public authority applied section 21 correctly and that it holds no further information falling within the scope of the complainant's request. However, the Commissioner has found that the public authority breached section 17 of the Act by failing to issue the complainant with a refusal notice within 20 working days of receiving the request.

The Commissioner's Role

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

2. On 19 December 2005 the complainant wrote to the public authority to request information regarding the drafting of the executive summary of the Iraq Dossier. The request read as follows:

I would like to know which official or officials re-drafted the dossier's executive summary between the 10/11 September draft and that of the 16 September.

As you will know, it has been said publicly that the executive summary was drafted under the leadership of Julian Miller and the overall supervision of John Scarlett. So, to make my request as clear as possible, I would like to know who actually did the re-drafting at this stage. I appreciate that the Cabinet Office may be unwilling to disclose the identities of certain officials, particularly those (e.g. JIC assessments staff) whose identities are not in the public domain. So I accept that it may only be possible to indicate the designation of officials or their position within the structure. On the other hand, there would be no reason not to disclose the identity of (e.g.) an official based at the FCO press office.

If the answer to my inquiry is that officials from more than one part of government produced iterations of the executive summary during this time, I would like this to be set out as clearly as possible, with (e.g.) information as to the sequence of iterations.

3. The public authority responded to the request on 9 March 2006. It explained that the drafting of the Iraq dossier, including the executive summary, is referred to in Cabinet office evidence to the Hutton Inquiry. It said that the information held by the Cabinet Office that is published on this site is therefore exempt under section 21 of the Act relating to information accessible by other means.
4. It provided the complainant with the internet address <http://www.the-hutton-inquiry.org.uk/content/evidence.htm> where it said the information could be found. It also explained to the complainant that beyond this it held no further information.
5. On 9 March 2006 the complainant wrote to the public authority to express his concerns with the public authority's response. On 10 March 2006 the public authority wrote to the complainant clarifying its earlier response. It said that it "does not hold a record of the identity of officials who helped to draft all or part of this document". However it went on to say that "the identity of those who drafted the document was considered by the Hutton Inquiry. John Scarlett's evidence to the inquiry included testimony relevant to this point".
6. On 24 March 2006 the complainant requested that the public authority carry out an internal review of its handling of his request. The complainant voiced his concerns about the public authority's application of the section 21 exemption. He also asked that the public authority review what he saw as its substantive decision that it does not hold a record of the officials who drafted the executive summary between 11 and 16 September.
7. The public authority provided the complainant with the outcome of its internal review on 29 June 2006. The public authority said that following a review of information held it did not hold a record of the officials who drafted the dossier's executive summary between 11 and 16 September.

The Investigation

Scope of the case

8. On 11 July 2006 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the public authority's decision to refuse the request under section 21 of the Act. The complainant has also asked the Commissioner to consider the public authority's decision to refuse the request on the basis that it did not hold any record of the official or officials who helped to draft the executive summary of the Iraq dossier between the 10/11 September draft and the 16 September draft.

Chronology

9. On 24 May 2007 the Commissioner wrote to the public authority with details of the complaint. The Commissioner asked that the public authority clarify its application of the section 21 exemption. The Commissioner noted that there appeared to be a degree of ambiguity regarding the public authority's use of this exemption. The Commissioner also asked the public authority to explain why it did not hold any information falling within the scope of the complainant's request.
10. The Commissioner also asked the public authority whether it was aware, at the time the request was made, if the information was held by any other central government department.
11. The public authority responded to the Commissioner on 4 July 2007. It confirmed that it was still applying section 21 to the complainant's request. It said that Sir John Scarlett gave evidence to the Hutton Inquiry into the circumstances surrounding the death of Dr David Kelly and this touched upon the drafting of the executive summary. It explained that in his evidence Sir John Scarlett names himself, the senior official reporting to him, Julian Miller, and Mr Miller's drafting team in the JIC assessments staff as those responsible for drafting the dossier and its executive summary. The public authority said that it considered this to be information relevant to the request and that this is why it applied section 21. It also said that it was aware that the evidence given to the Hutton Inquiry does not fully address the specifics of the request, such as name of all the officials, and that this is why in responding to the complainant it added that it held no further information.
12. The public authority went on to explain why it held no further information falling within the scope of the request. It said that the authorship of the dossier (including its executive summary) is ascribed to the Joint Intelligence Committee (JIC). It said that the actual production of the dossier was an iterative process and involved the assimilation of information from departments across Whitehall. It emphasised that the JIC "owned" the process at every stage. It went on to say that the dossier was drafted by a team of assessments staff desk officers managed by a Deputy Chief of Assessments and reporting to the Chief of

Assessments staff, Mr Julian Miller. Mr Miller reported to the Chairman of the JIC, Sir John Scarlett.

13. The public authority made it clear that the name of the person who actually typed the words for each section of the dossier is not recorded. It said that the drafting papers are not saved in any format which indicates who is the author of any particular element. It explained that the exact identity of the person who drafted the executive summary is not relevant for its own record keeping purposes.
14. In response to the Commissioner's query as to whether the public authority was aware of further information being held by another government department, it said that it holds no information that anybody outside the small team overseen by John Scarlett drafted the executive summary. It said that the only correct answer it could give to the complainant's request was to direct him to the information available on the Hutton Inquiry website and to state that no further information is held. It said that it believed any other answer would be speculative on its part.
15. The Commissioner updated the complainant with the extra clarification provided by the public authority and invited his comments. In responding the complainant continued to question the public authority's application of the section 21 exemption. The complainant made the point that in his request he had highlighted the fact that he was already aware of the information available on the Hutton website and that he was actually requesting information beyond this. The complainant also made the point that if the public authority held no information falling within the scope of his request then they were wrong to rely on the section 21 exemption.
16. The complainant also suggested that if the public authority had received comments from persons involved in the drafting process which were subsequently fed into the draft of the executive summary then such comments should be considered to fall within the scope of his request.

Findings of fact

18. The evidence given by Sir John Scarlett is available on the Hutton Inquiry website under the "Hearing Transcripts" section. In his evidence Sir John discusses, *inter alia*, the drafting of the Iraq dossier including its executive summary.
19. In his evidence given on 26 August 2003 and 23 September 2003 Sir John explains how the drafting of the dossier, including the executive summary, was carried out by a small unit of Assessments Staff desk officers, mainly of two people, managed by a Deputy Chief of Assessments and reporting to the Chief of the Assessments Staff, Mr Julian Miller. Sir John explained that Mr Miller reported to him, as Chairman of the Joint Intelligence Committee, who had overall responsibility for the drafting of the dossier.

Analysis

20. A full text of the relevant statutes referred to in this section is contained within the legal annex.

Procedural matters

21. The complainant made his request to the public authority by e-mail on 19 December 2005. The public authority did not respond to the request until 9 March 2006 and thereby clearly exceeded the 20 working days required by the Act for responding to a request.
22. The Commissioner has considered whether the public authority holds any information falling within the scope of the complainant's request other than the information already available on the Hutton Inquiry website.
23. The complainant has argued that due to the significance of the Iraq dossier it is inconceivable that the public authority would not hold details of who drafted the executive summary of the dossier. In response the public authority has said that the name of the person who physically produced each section of the dossier is not recorded and that the drafting papers are not recorded in any format which would indicate who the author of a particular element is.
24. The Commissioner has considered the arguments put forward by both parties and whilst appreciating the significance of the Iraq dossier does not find the public authority's position, that the drafting papers are not saved in any format which indicates who is the author of any particular element, to be unreasonable. In reaching this view the Commissioner notes the public authority's argument that this would be irrelevant for its record keeping purposes. Therefore, without any evidence to the contrary, the Commissioner is satisfied that the public authority holds no further information beyond what is already available on the Hutton Inquiry website.
25. The complainant has also argued that if comments were fed into the drafting process then this should fall within the scope of his request. The Commissioner has considered this point but is of the opinion that the complainant's request does not extend to cover information of this nature. The complainant's request was quite specific in that it asked for details of the official or officials who carried out the actual drafting of the executive summary. However, the process of drafting a document and the process of collating comments are two distinct activities and so the Commissioner cannot accept that the public authority should have considered this to fall within the scope of the complainant's request. It would be unreasonable to expect the public authority to have interpreted the request in this way.

Exemption

26. The complainant has argued that the public authority should not have applied the section 21 exemption given that he had made it clear that he was requesting information beyond that which was available on the Hutton Inquiry website. The

complainant has also argued that the public authority should not have applied section 21 of the Act since it has said that it holds no information falling within the scope of his request.

27. Firstly the Commissioner has considered the scope of the complainant's request and the extent of the information available on the Hutton Inquiry website. In his request the complainant makes it clear that he is already aware that the executive summary "was drafted under the leadership of Julian Miller and the overall supervision of John Scarlett". However the complainant does not make it clear that he is aware of the information being available on the Hutton Inquiry website. Whilst the information available on the website does refer to the executive summary being drafted under the leadership of Julian Miller under the supervision of John Scarlett, it also goes somewhat further than this insofar as it refers to the drafting of the dossier being carried out within the Assessments Staff by a small group consisting of mainly two people. Therefore it was not unreasonable for the public authority to cite section 21 of the Act as this is clearly information relevant to the complainant's request.
28. The complainant has argued that the public authority should not have cited section 21 since they had informed him that they did not hold any information falling within the scope of the request. The Commissioner thought that there was some ambiguity in the public authority's responses to the complainant and it seemed unclear whether the public authority was saying that it held no information falling within the scope of the request, or if it was saying that it held the information available on the Hutton inquiry website but that this was exempt under section 21. Having looked into the case it is clear that the latter is the correct interpretation.
29. In its refusal notice the public authority referred the complainant to the information available on the Hutton Inquiry website explaining that this information was exempt from disclosure under section 21 as it was information accessible to the applicant by other means. However, it went on to say that "it does not hold any *further* (Commissioner's emphasis) information about which official or officials re-drafted the executive summary between the 10/11 September draft and 16 September draft". It is clear that the public authority was making the point that it did hold the information available on the Hutton Inquiry website; that it considered this information to be relevant to the request and that it held no further information falling within the scope of the request.
30. The information available on the website of the Hutton Inquiry was readily available for the complainant to access on the internet and therefore can be said to be reasonably accessible. The Commissioner is satisfied that section 21 was applied correctly.
31. Section 21 is an absolute exemption and therefore the Commissioner has not undertaken an assessment of the public interest test.

The Decision

32. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

- The public authority applied section 21 of the Act correctly.

However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- The public authority breached section 17(1) of the Act by failing to provide the complainant with a refusal notice within 20 working days of receiving the request.

Steps Required

33. The Commissioner requires no steps to be taken.

Right of Appeal

34. 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

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 27th day of September 2007

Signed

**Jane Durkin
Assistant Commissioner**

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

Legal Annex

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 the date of receipt.”

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.”

Section 21 provides that –

- (1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.”
- (2) For the purposes of subsection (1)-
 - (a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and
 - (b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.”
 - (c) For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.”