

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 19 February 2008

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

Summary

The complainant wrote the Cabinet Office to request "Any record or document or extract thereof reporting or evidencing discussions between President Bush and the Prime Minister about the bombing of Al-Jazeera television office in Qatar or elsewhere. The request additionally seeks any document which records comment upon or analysis of such discussions." The Cabinet Office informed the complainant that a memo it holds recording discussions between President Bush and the Prime Minister in April 2004 "does not refer to the "bombing of Al-Jazeera television offices in Qatar or elsewhere."

The Commissioner believes that the Cabinet Office should not have restricted its response to consideration of the April 2004 memo alone. The Commissioner therefore not only investigated whether the Cabinet Office was correct in its assertion in relation to the 2004 memo but also investigated whether it held any other information which contains details of the subject matter requested. Having conducted his analysis, the Commissioner is satisfied that the Cabinet Office did not hold any information which fell within the scope of the complainant's 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 12 January 2006 the complainant requested the following information from the Cabinet Office:

“Any record or document or extract thereof reporting or evidencing discussions between President Bush and the Prime Minister about the bombing of Al-Jazeera television office in Qatar or elsewhere. The request additionally seeks any document which records comment upon or analysis of such discussions.”

3. The Cabinet Office responded on 13 February 2006, in which it informed the complainant that (the following are direct quotes):

- The Cabinet Office has received various requests to publish information in relation to alleged discussions between the Prime Minister and President Bush about the bombing of the Al-Jazeera television station in Qatar. The request you enclosed was one such request.
- These requests appeared to be related to allegations in the press that a memo recording discussions between President Bush and the Prime Minister in April 2004, the leaking of which is currently the subject of a prosecution under the Official Secrets Act, includes references to the “bombing of the Al-Jazeera television station in Qatar”.
- Against that background we therefore assumed that requesters seeking publication of information in relation to these issues were seeking disclosure of that memo (which we have withheld under section 27 of the Act) and, in that sense, that memo was therefore “relevant” to their requests.
- We can, however, confirm that, despite various allegations to the contrary, the memo does not refer to the “bombing of Al-Jazeera television offices in Qatar or elsewhere”.
- To the extent that your request for information seeks information about other issues that may or may not be referred to in the memo, we neither confirm nor deny that such information is held by the Cabinet Office. Section 27(4) of the Act provides that the duty to confirm or deny does not arise if compliance with section 1(1)(a) would or would be likely to prejudice international relations (as set out in section 27(1)). If the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether or not the Cabinet Office holds the information, section 1(1)(a) does not apply. In this case we consider both these tests to be met. This should not be taken as confirmation either that such information exists or does not exist.
- It is important that the detail of discussions at the highest levels between the UK and other states is protected. The effective conduct of international relations depends upon maintaining trust and confidence between Governments. This relationship of trust allows for the free and frank exchange of information on the understanding that it will be treated in confidence.
- If the United Kingdom does not respect such confidences – even in relation to the topics of those discussions – its ability to protect and promote UK interests through international relations will be hampered. The states concerned may be more reluctant to share sensitive information with the United Kingdom Government in future and may be less likely to respect the confidentiality of

information supplied by the United Kingdom Government to them, to the detriment of UK interests. This could have the effect of prejudicing the UK's relations with other states and thus its ability to protect its interests and its citizens effectively.

- We have considered the public interest balance in this case and concluded, for the reasons set out above, that it would not be in the public interest to confirm or deny any further details about discussions between President Bush and the Prime Minister.
4. On 7 March 2006, the complainant contacted the Cabinet Office to request an internal review. He complained about the following:
 - The decision to refuse disclosure of the information requested, and of the procedure by which it was reached.
 - The Cabinet Office's exceeding of the 20 working day limit for response.
 - The "incoherence" of the Cabinet Office's response.
 5. On 23 March 2006, the Cabinet Office wrote to the complainant. Within the letter it noted his comments regarding the timeliness of its response to the request of 12 January 2006 and stated that "there was a short administrative delay in processing your request." However, this letter did not constitute a response to the complainant's request for an internal review.
 6. On 19 April 2006, the complainant wrote to the Cabinet Office, requesting a substantive response to his request for an internal review of 7 March 2006.
 7. The Cabinet Office responded to the complainant on 21 April 2006, in which it informed the complainant that his request for an internal review "was being dealt with". No other information on its conduct of the review was provided.

The Investigation

Scope of the case

8. On 18 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 following points:
 - The refusal to supply him with the requested information;
 - Exceeding the time limit for response in dealing with the request for information;
9. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

10. On 24 June 2007, the Commissioner wrote to the complainant to inform him that he intended to focus his investigation of the complaint upon whether the Cabinet Office's response that it does not hold the requested information was correct. The Commissioner explained that this is because the Cabinet Office stated that other matters contained within the requested document to which it referred (and to which section 27 was applied) did not fall within the scope of that request.
11. However, the Commissioner also informed the complainant that he intended to establish whether that Cabinet Office's assertion that it holds no recorded information on discussions between the Prime Minister and the U.S. President about the bombing of Al-Jazeera is the case for **all** information it holds. The Commissioner explained that by not restricting his investigation solely to the memo to which reference was made, he would more properly address the full scope of the specific request for information actually made.

Chronology

12. On 24 April 2007, the Commissioner contacted the Cabinet Office to request the following information (the following are direct quotes):
 1. An unredacted copy of the full memo referred to in the Cabinet Office's letter to the complainant of 13 February 2006.
 2. Confirmation of whether any documents are held by the Cabinet Office which report discussions between the Prime Minister and the U.S. President about the bombing of Al-Jazeera television offices in Qatar or elsewhere. If any such documents are held, please also supply them to me. (This is because the complainant's request can be interpreted to apply more widely than the single memo to which the Cabinet Office makes reference.)
 3. Details of the Cabinet Office's handling of the complainant's request of 7 March 2006 for an internal review.
 4. Any further representations the Cabinet Office wishes to make on the matter.
13. In the letter of 24 April 2004, the Commissioner also informed the Cabinet Office that he did not intend to assess whether any information contained within the requested documents that does not relate to discussions about the bombing of Al-Jazeera was correctly withheld. He explained that this is because information contained within the documents about other matters does not fall within the scope of the complainant's request. However, the Commissioner explained that he required sight of the entire documents to which reference has been made (i.e. the memo referred to by the Cabinet Office and any other relevant documents) in order to assess whether the Cabinet Office correctly informed the complainant as to whether the requested information was held.
14. On 14 June 2007, the Cabinet Office invited the Deputy Commissioner to view the document referred to in paragraph 3 (above) at its offices. The Deputy Commissioner accepted this offer and reviewed its contents on 12 July 2007. He

found that the Cabinet Office was correct in its assertion that the memo it holds recording discussions between President Bush and the Prime Minister in April 2004 does not refer to the bombing of Al-Jazeera television offices in Qatar or elsewhere. The Deputy Commissioner's analysis of the information contained in the full document and his discussions with senior Cabinet Office officials also led him to accept that no other information falling within the scope of the request was held by the Cabinet Office.

Analysis

Procedural matters

Time for compliance with request

15. Section 10 of the Act states 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."
16. The Commissioner notes that the Cabinet Office's responded to the request of 12 January 2006 on 13 February 2006. In doing so, the Cabinet Office exceeded the time limit for response by one working day.

Memo recording discussions between President Bush and the Prime Minister in April 2004

17. Section 1(1) of the Act states 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."

18. The Deputy Commissioner's analysis of the memo recording discussions between President Bush and the Prime Minister in April 2004 led him to conclude that the Cabinet Office correctly applied section 1 in confirming that the requested information was not held in relation to this document.

Other information held by the Cabinet Office

19. The Commissioner has concluded that the Cabinet Office should not have restricted its response to the content of one specified memo. Instead, it should have interpreted the request for information as being for **any** record or document or extract thereof reporting or evidencing discussions between President Bush and the Prime Minister about the bombing of Al-Jazeera television office in Qatar or elsewhere. In not informing the complainant as to whether it holds any such

information in other documents or elsewhere, the Cabinet Office failed to fulfil its full obligations to the complainant under section 1 of the Act.

20. However, in relation to whether the Cabinet Office does in fact hold any other information reporting or evidencing discussions between President Bush and the Prime Minister about the bombing of Al-Jazeera television office in Qatar or elsewhere, the Commissioner is satisfied that this is not the case.

Exemption

21. As the Cabinet Office did not rely upon an exemption in relation to the actual information requested by the complainant, the Commissioner did not consider the application of, and references to, section 27 (international relations).

The Decision

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

- i. Section 1 in relation to confirmation that the requested information is not held in the memo of the meeting between President Bush and the Prime Minister of April 2004.

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

- i. Section 10 in relation to the time for compliance with the request.
- ii. Section 1 in relation to not informing the complainant whether any information falling within the scope of the request, other than that contained within the memo of April 2004, was held.

Steps Required

24. The Commissioner requires no steps to be taken.

Other matters

25. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

26. A public authority is not required by the Act to carry out an internal review. Rather, the only statutory requirement in relation to such a review is set out under section 17(7)(a), which states that a refusal notice must contain details of any

procedures provided for dealing with complaints about the handling of requests. As such, the Commissioner was not able to investigate a grievance raised by the complainant about the conduct of the internal review within the scope of this Notice (which must restrict itself to an investigation of whether the request had been dealt with in accordance with the requirements of Part I of the Act.)

27. However, the (non-statutory) Code of Practice issued by the Secretary of State under section 45 of the Act obliges a public authority to provide an internal review and conduct it in a timely fashion. The Commissioner therefore expects internal reviews to be conducted in accordance with the Code.
28. The Commissioner notes that the Cabinet Office did not provide the complainant with an adequate response in relation to his request for an internal review of 7 March 2007, despite him chasing up the matter on 19 April 2007. In failing to provide this response, the Cabinet Office's conduct did not conform to the provisions of the code of practice issued under section 45 of the Act which relate to a public authority's handling of internal reviews.
29. Finally, the Commissioner wishes to add that he has some sympathy with the complaint regarding the "incoherence" of the Cabinet Office's response. In his view this arose from that part of the response in which the Cabinet Office neither confirmed nor denied that it held information which the complainant had not in fact requested (see the fifth bullet point in paragraph 3 of this Decision Notice.) In the Commissioner's view this amounted to an unnecessary complication which confused the response to what was a very specific request. If, as it appears, the Cabinet Office were not clear about the extent of the request, the appropriate course of action would have been to seek clarification from the requester.

Right of Appeal

30. 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 19th day of February 2008

Signed

**Graham Smith
Deputy Commissioner**

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