

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 2 January 2008

**Public Authority:** Cabinet Office  
**Address:** Admiralty Arch  
North Entrance  
The Mall, London  
SW1A 2WH

#### Summary

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The complainant requested from the public authority a document entitled 'PREM 16/21' referred to at the National Archives. The public authority withheld the information under section 27(1)(a) of the Freedom of Information Act 2000 ('the Act'). The Commissioner decided that there was insufficient prejudice to engage the exemption. He therefore required the public authority to disclose the information which it had improperly withheld.

#### 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. On 6 April 2006 the complainant requested from the Cabinet Office a document entitled '*PREM 16/21*' which was referred to in the catalogue at the National Archives.
3. The Cabinet Office issued a refusal notice on 9 May 2006. It confirmed that it held the information but concluded that it was exempt under section 27(1)(a) of the Act. It referred the complainant to his right to request an internal review of this decision and to approach the Information Commissioner.
4. The complainant requested an internal review on 12 May 2007.
5. The Cabinet Office replied on 26 June 2007. It stated that it was satisfied that the section 27 exemption applied to the information and the public interest test had

been properly conducted. It referred the complainant to his right to complain to the Commissioner.

## The Investigation

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### Scope of the case

6. On 3 November 2006 the complainant contacted the Commissioner to complain about the decision.

### Chronology

7. The Commissioner asked the Cabinet Office on 16 October 2007 to provide him with a copy of the withheld information and to comment on various queries.
8. The Cabinet Office replied on 9 November 2007 with its comments and the information.

## Analysis

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### Exemption – section 27(1)(a)

9. Section 27(1)(a) of the Act provides that:

*'Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice-*

*(a) relations between the United Kingdom and any other State...'*

10. Section 27(1)(a) will only be engaged if disclosure of the requested information would, or would be likely to, cause some prejudice to United Kingdom relations with – in this case – other states. To engage the exemption it is therefore necessary for the Cabinet Office to demonstrate that disclosure of the information would cause some relevant prejudice. The Information Commissioner's interpretation of 'likely to prejudice' is that there should be evidence of a significant risk of prejudice to United Kingdom relations with other states. The degree of risk must be such that there 'may very well' be prejudice to those interests. In this case, the Cabinet Office informed the Commissioner that, while the information in question was, '*on the face of it, relatively innocuous*', another state '*would not wish to see the UK unilaterally disclosing information*' about the subject of the information. It stated that the consequence of disclosure might be to make that other state less likely to cooperate with the United Kingdom and that this would seriously harm the United Kingdom's effectiveness in certain areas. In its refusal notice the Cabinet Office had claimed that disclosure of the information could possibly provoke a strong negative reaction from a particular state, and

stated that *'the trust within which confidential exchanges between the United Kingdom and other Governments takes place might be damaged and in future might not be respected'*.

11. Having considered the withheld information, the Commissioner agrees with the Cabinet Office that it is *'relatively innocuous'*. Furthermore, in light of the substance of the information the Commissioner considers it highly unlikely that its disclosure might provoke a strong negative reaction from the other state, as contended by the Cabinet Office, nor does he consider that there is any significant risk that disclosure would undermine the trust in which the United Kingdom government is held. Although it was not raised by the Cabinet Office, the Commissioner notes that there were other states involved in the events to which the information relates, and he has therefore had regard to any potential prejudice to the United Kingdom's relations with them. Again, he considers it highly unlikely that disclosure of the requested information would provoke a strong negative reaction from those states either. Notable factors to which the Commissioner has had regard in reaching his conclusion include the age of the information, the fact that the events which it concerns are in the public domain, the nature of the body involved on behalf of one of the other states, and the original function of the information at issue. In the circumstances, the Commissioner has decided that it was not objectively reasonable for the Cabinet Office to have reached the conclusion that disclosure of this information would be likely to prejudice United Kingdom relations with another state, and he has accordingly decided that the section 27(1) exemption is not engaged by this information.

## The Decision

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12. The Commissioner's decision is that the Cabinet Office did not deal with the request for information in accordance with the Act, in that it unjustifiably withheld the requested information as exempt under section 27(1)(a) of the Act.

## Steps Required

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13. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- The Cabinet Office should provide the complainant with the requested information which it claimed was exempt under section 27(1)(a) of the Act.

The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

## Failure to comply

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14. 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.

## Other matters

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15. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern. Section VI of the Code of Practice (provided for by section 45 of the Act) makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information. As he has made clear in his *'Good Practice Guidance No 5'*, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In this case the complainant's request was made on 12 May 2007 – which was after the Commissioner's new guidance on internal reviews had been issued – and the Cabinet Office sent its decision to him on 26 June 2007. The Cabinet Office therefore took 31 working days, taking account of the intervening bank holiday. The Commissioner wishes to register his view that the Cabinet Office fell short of the standards of good practice in failing to complete its internal review within a reasonable timescale.

## Right of Appeal

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16. 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@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.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.

Reference: FS50140872



**Dated the 2<sup>nd</sup> day of January 2008**

**Signed .....**

**Jane Durkin  
Deputy Commissioner**

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

## Legal Annex

**Section 27(1)** provides that –

‘Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) relations between the United Kingdom and any other State,
- (b) relations between the United Kingdom and any international organisation or international court,
- (c) the interests of the United Kingdom abroad, or
- (d) the promotion or protection by the United Kingdom of its interests abroad.’

**Section 27(2)** provides that –

‘Information is also exempt information if it is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court.’

**Section 27(3)** provides that –

‘For the purposes of this section, any information obtained from a State, organisation or court is confidential at any time while the terms on which it was obtained require it to be held in confidence or while the circumstances in which it was obtained make it reasonable for the State, organisation or court to expect that it will be so held.’

**Section 27(4)** provides that –

‘The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a)-

- (a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1), or
- (b) would involve the disclosure of any information (whether or not already recorded) which is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court.’

**Section 27(5)** provides that –

‘In this section-

‘international court’ means any international court which is not an international organisation and which is established-

- (a) by a resolution of an international organisation of which the United Kingdom is a member, or
- (b) by an international agreement to which the United Kingdom is a party;

'international organisation' means any international organisation whose members include any two or more States, or any organ of such an organisation;

'State' includes the government of any State and any organ of its government, and references to a State other than the United Kingdom include references to any territory outside the United Kingdom.'