

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 18 June 2008**

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

### Summary

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The complainant asked for a list of requests made to the Cabinet Office, showing in each instance, the date of the Cabinet Office's response and whether the request resulted in full, partial or non disclosure of information. The Cabinet Office responded that the information was not held. The Cabinet Office has argued that the process of gathering the information requested into a list constitutes information "creation", an activity which the Act does not require public authorities to undertake. The Commissioner does not accept this view and has found that information falling within the scope of the request was held by the Cabinet Office. In failing to communicate this the Cabinet Office breached section 1(1) of the Act. The Commissioner instructed the Cabinet Office to provide the complainant with the requested information or, should they estimate that to do so would exceed the "appropriate limit" as defined in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, provide the complaint with an indication of what information can be provided within the appropriate limit to assist the complainant in reframing the request so that it might be accommodated within the appropriate limit.

### 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.

### Note about Linked Decision Notice

Whilst this decision notice addresses the Cabinet Office's compliance with a discrete request for information it is linked to another request (referred to as the "original" request) which is the subject of a separate

decision notice issued by the Commissioner (ICO case reference: FS50155552). It is relevant here both because the subject matter of the requests is similar and because the Cabinet Office's response to this other request is directly responsible for the complainant submitting the request examined in this decision notice.

## The Request

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2. On 16 October 2006 the complainant, who was at the same time corresponding with the Cabinet Office with regard to another, related request (henceforth referred to as his "original request", see note above) wrote to the Cabinet Office to request:

"Please provide me with a list of requests made to the Cabinet Office under the FOIA/EIR showing in each case (i) the date of the response; and (ii) whether it resulted in full disclosure, partial disclosure, or no disclosure."

3. The Cabinet Office responded on 14 November 2006 and stated:

"I regret to inform you that we do not hold the information in the format you have requested. We hold records of each individual request, but we do not hold a consolidated list of all requests."

The Cabinet Office also directed the complainant towards statistics on the Ministry of Justice's (the "MOJ") website (at that time the Department for Constitutional Affairs (the "DCA")) which related to central government departments' handling of requests for information.

4. On 27 November 2006 the complainant wrote to the Cabinet Office and restated his request and queried why it appeared that the Cabinet Office did not "...operate a system for keeping track of FOIA requests that would contain the information requested, or at least, something close to it." The complainant asked the Cabinet Office to explain what system they had for keeping track of requests for information and to consider how his request might be addressed in the light of this.
5. On 31 January 2007 the Cabinet Office wrote to the complainant and provided some clarification about its system for keeping track of FOI requests stating that it was designed:

"...to manage the FOI cases we have and to provide the data required by the Department for Constitutional Affairs. The reply of 14 November 2006 highlighted the DCA's statistics so you could see what type of information is collected, which we thought may have been of interest to you."

6. The complainant wrote to the Cabinet Office on 25 February 2007. He stated that he considered that they had not addressed his request. He explained that his request was prompted by the Cabinet Office's confirmation that the information specified in his original request was not held and in lieu of any assistance from the Cabinet Office as to how his request might be revised to identify relevant held information. He asked the Cabinet Office to provide the information identified in the modified request.

7. On 16 March 2007 the Cabinet Office wrote to the complainant and stated that the finding of their internal review was:

"...that the information requested was not held in the format required. We do not maintain our records in such a way to provide you with the information requested, and under the Freedom of Information Act we are not required to create information."

## The Investigation

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### Scope of the case

8. On 26 March 2007 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:

- Whether the Cabinet Office holds the information requested or, at least, "something close to it".
- Whether the Cabinet Office provided sufficient provide advice and assistance.

9. During the course of his investigation the Commissioner has considered the following issues:

- With regard to the Cabinet Office's claim that the information specified in the request was not held in the "format" requested, to establish which section of the Act this ground for refusal refers.
- Whether the Cabinet Office provided the complainant with sufficient advice and assistance as defined under section 16 of the Act.
- Whether information falling within the scope of the request is held by the Cabinet Office.

### Chronology

10. On 4 December 2007 the Commissioner contacted the Cabinet Office and asked them to provide clarification of their handling of the request, specifically:

- The Commissioner asked the Cabinet Office to clarify upon which grounds for answering/refusing the request they were intending to rely and to specify, where applicable, the relevant section(s) of the Act.
- As the subject matter of the request was requests for information handled by the Cabinet Office the complainant had a reasonable expectation that some relevant information would be held. Also, the Commissioner would expect public authorities to have systems in place for recording and tracking requests for information. As no information was provided, the Commissioner asked whether (aside from directing the complainant to the DCA's website) the Cabinet Office considered advising the complainant how he might resubmit his request in a form which identified information which they did hold.

11. On 14 January 2008 the Cabinet Office responded to the Commissioner, stating that with regard to this request and the complainant's "original" request:

"...the Cabinet Office did not hold the information requested and that was the sole reason for our declining to comply with the requests."

The Cabinet Office clarified that, although the "basic building blocks" of the information requested were held, they considered that "significant manipulation" of this constituent information, involving "knowledge and judgement" would be required in order to produce the specified information. The Cabinet Office explained that they considered this process would be equivalent to information 'creation', something which the Act does not require public authorities to undertake.

12. In their response the Cabinet Office also provided the Commissioner with an explanation of their method for recording requests for information:

"The Cabinet Office's initial method of recording Freedom of Information (FOI) requests was to record centrally on a spreadsheet key information including the name of the requester, the request itself, the date of the request, the date it was cleared and usually, though not always, the outcome. In November 2005 the system was changed, the spreadsheet was archived, and from then on each case was recorded individually on a database. The fact that information may have been released was, of course, recorded, but the information itself was not copied onto the spreadsheet or database, nor was it described and listed anywhere."

13. The Cabinet Office stated that they considered "...that the information did not exist without carrying out extensive manipulation of the data we held, which is not required by the FOI Act." The Cabinet Office explained that, in telling the complainant that they did not hold information in the 'format' requested the intention was to convey that,

whilst individual elements of the information were held, they did not exist in the form of a 'list of requests', as requested.

14. The Cabinet Office explained that, with regard to information held within the spreadsheet maintained up to November 2005, it would have been possible to:

“...suppress irrelevant columns and only print off the column recording the requests made (although some information, such as personal data contained in the requests, might have to be redacted under s40). This would not have been a purely mechanical process as some degree of knowledge and judgement would have been required to check that only relevant information would remain.”

At this stage the Cabinet Office did not clarify the form that the exercise of 'knowledge and judgement' would take.

15. The Cabinet Office also explained the actions involved, should they attempt to extract relevant information from the post-November 2005 manner of recording request information, namely via a database:

“In the case of the requests recorded on the database, which totalled some 1900 cases, each case folder would have to be opened individually and the request printed off, with irrelevant information being suppressed. Had each case taken 5 minutes, this would have taken a total of 158 hours to process, which would have exceeded the appropriate limit.”

16. The Cabinet Office also responded to the Commissioner's enquiry about whether they considered they had offered sufficient advice and assistance to the complainant. The Cabinet Office explained that, as they considered they did not hold the requested information and, given the format in which the constituent data was held it was difficult to know what could be offered which would not have fallen far short of what the complainant required. As the request had specified details of every request since January 2005 they thought it unlikely that the complainant would have been interested in information across a narrower time-frame which, even then, in their view might not have been held. In directing the complainant to statistics on the DCA's website the Cabinet Office considered that they had offered all the reasonable assistance which they could.
17. On 13 February 2008 the Commissioner wrote to the Cabinet Office and sought further clarification about their systems for recording requests for information. He also set out his general view with regard to the status of information contained within electronic databases. The Commissioner confirmed that, on the basis of the explanations provided thus far by the Cabinet Office (interpreted using the Commissioner's model of information contained within databases), it

was apparent that at least some of the information identified in the modified request was held by the Cabinet Office.

18. The Commissioner invited the Cabinet Office to comment upon representations he had received from the complainant which confirmed that, had he been given an opportunity, he would have reframed or narrowed his request in a manner which would identify information which could be provided by the Cabinet Office. The Commissioner put it to the Cabinet Office that the complainant's voluntary submission of a modified version of his original request was evidence of this disposition. Given the Commissioner's initial view that information relevant to the request was held, the Cabinet Office was invited, on an informal basis, to now provide this to the complainant.
19. On 14 March 2008 the Cabinet Office wrote to the Commissioner and provided further details of the operation of their post-November 2005 database system for recording requests. They explained that all requests are passed to a central point (the FOI team) which records the request on the database. Requests are allocated a reference number and are passed to the unit holding information relevant to the request for them to process this. The details recorded in the database include: reference number, name of the requester, date received, and a very brief description of the request.
20. The Cabinet Office further confirmed that the "...description of the request only runs to ten words or so, and is useful, for example, in distinguishing between a number of requests made by the same requestor, but is in no way a complete and accurate description of the request."
21. The Cabinet Office also provided details of the functionality of the database, explaining that it can be used to generate figures which are used for their statistical returns:

"These can show, for instance, in how many cases requests were granted or refused in full, or in how many cases certain exemptions were applied, etc. These, however, are composite figures and do not show details of individual cases (although they can show the brief description of each case, as referred to above)."
22. In response to the Commissioner's proposal that they now provide the complainant with information relevant to his request the Cabinet Office explained that they were prepared to offer a partial response to the version of the request. This response would consist of a print-off of the column logging requests from the Cabinet Office's pre-November 2005 spreadsheet record.

## Analysis

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## Section 1

23. The Commissioner has considered whether information falling within the scope of the request is held by the Cabinet Office.
24. There are two related elements to the request: firstly a list of requests made to the Cabinet Office and secondly, the date associated responses were provided and the nature of the response (i.e., whether information was fully disclosed, partially disclosed or not disclosed).
25. In order to establish whether any information relevant to the request is held the Commissioner has had regard to the submissions received from the Cabinet Office. With regard to the first element of the request, the Cabinet Office has explained:
  - Prior to November 2005 the text of requests received by the Cabinet Office was recorded on a spreadsheet.
  - After November 2005 a 'brief description' of each request received was recorded on the database.
26. The complainant's request was submitted on 16 October 2006. At the time the request was received the Cabinet Office (according to the explanations they have provided) held the constituent information (in an electronic spreadsheet) necessary to provide a list of requests submitted from January to November 2005.
27. The Commissioner acknowledges that public authorities will often receive requests made under the Act for lists of information. In many cases this will not be information which the public authority holds in list form but the constituent data parts, instead, will be held in a database or other disparate sources. A common response to such requests is that the information is simply not held, because, as noted above, the public authority is not in possession of a physical list, as requested. A number of public authorities have further claimed that responding to such a request would involve the creation of new information.
28. The Commissioner does not accept this position and instead is of the view that where a database or other electronic source contains recorded information identified in a request, the information is held, and the public authority is under an obligation to provide it (unless it is exempt). Further, the Commissioner considers that the actions required to access the specified information constitute information retrieval or extraction rather than the creation of new information, because, simply, the information is held, albeit embedded within a broader resource of data. As the Act provides a right of access to recorded information, and such information is recorded, the difficulty of the retrieval or extraction process is irrelevant to the question of whether the information is held. However, the complexity of this procedure, in terms of the time it would take to locate and extract the



requested information is clearly relevant to the consideration of costs under the Fees Regulations<sup>1</sup>.

29. According to the position set out above, the compilation of a list of requests from a spreadsheet would be equivalent to a process of information location, retrieval and extraction rather than one of information creation, as argued by the Cabinet Office. The relative complexity of these actions would only become relevant for the purposes of complying with the request should their undertaking be estimated to exceed the appropriate limit as defined in the Fees Regulations. The Commissioner would be unlikely, from his own experience of the functionality of spreadsheets, to accept (as argued by the Cabinet Office) that the extraction of a column of data would require 'some judgement'. The Cabinet Office has, in any event, subsequently confirmed to the Commissioner that this information could be extracted within the appropriate limit.
30. Post November 2005, whilst the Cabinet Office's database did not record the full text of received requests, it did record a description of each request. From a technical perspective it seems likely that each instance of a description of a request could easily be extracted from the Cabinet Office's database to form a list. Whilst the Commissioner notes that the request specified 'a list of requests' the Act provides a right of access to recorded information and, regardless of the perceived accuracy of each description, it is unclear why the Cabinet Office would not view these descriptions as falling within the scope of the request.
31. With regard to the second element of the request, the Cabinet Office has confirmed that their original spreadsheet recorded (in addition to the text of requests) the date each request was 'cleared' and usually, though not always, the outcome. The subsequent database used for these purposes records, for example, in how many cases requests were granted or refused in full and, whilst these figures provide totals they can be linked, via the brief description recorded in each instance, to individual cases.
32. In order to form a complete picture of the types of statistics relating to requests for information which the Cabinet Office is able to produce, the Commissioner has viewed the quarterly statistics published on the MOJ's website (to which the Cabinet Office directed the complainant) under the heading "Freedom of Information Act 2000: Statistics on implementation in central government". As the title suggests, these statistics cover a range of central government public authorities (including the Cabinet Office) and are derived from "...manual returns

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<sup>1</sup> This position has been articulated in a decision notice (ICO case reference: FS50166599) already issued by the Commissioner, viewable on the ICO's website here: [http://www.ico.gov.uk/upload/documents/decisionnotices/2008/fs\\_50166599.pdf](http://www.ico.gov.uk/upload/documents/decisionnotices/2008/fs_50166599.pdf)



submitted by participating bodies, and cover timeliness of response, outcomes of requests, and usage of the Act's appeal processes."<sup>2</sup>

33. The statistical information accessible via the reports is broken down by public authority and includes: total requests received, number handled under EIR, timeliness of response, number of requests granted in full/partially withheld/fully withheld.
34. Given that the source of the statistics relating to the Cabinet Office in the reports is the Cabinet Office it is reasonable to assume that, at least this level of statistical detail is accessible via the Cabinet Office's own records. As the quarterly reports date back to January 2005 it is also reasonable to conclude that the timeframe of the statistical information held by the Cabinet Office reflects that presented in the MOJ reports. As the Cabinet Office has not confirmed to the Commissioner that information contained within their systems for logging and monitoring requests for information (which must have formed the basis for the statistics provided to the MOJ) had been destroyed at the time the request was received it follows that this information was held.
35. However, the second element of the request asked for, with regard to each request received by the Cabinet Office since January 2005, the associated date of response and the outcome (whether there was full disclosure, partial disclosure or no disclosure of the specified information). It has already been noted that, according to the explanation provided by the Cabinet Office, their database is able to produce "...in how many cases certain exemptions were applied etc. These, however, are composite figures and do not show details of individual cases (although they can show the brief description of each case)...." The Commissioner has already stated that he is of the view that the Cabinet Office's descriptive record of each request received falls within the scope of the request. It follows, therefore, that the statistical information identified in the second element of the request which specifies, in each instance, the outcome of a request received by the Cabinet Office is held.
36. The Commissioner acknowledges the possibility that the Cabinet Office's pre-November 2005 spreadsheet does not necessarily allow for the same statistical detail to be provided for each instance of a request. However, the fact that the full text of each request was recorded on this spreadsheet, when considered with the scope of the statistical information provided by the Cabinet Office to the MOJ (which dates back to January 2005) suggests that information falling within the scope of the request is held.

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<sup>2</sup> Taken from the MOJ website here:

<http://www.justice.gov.uk/publications/freedomofinformationquarterly.htm>

37. In view of the above the Commissioner considers that, contrary to the Cabinet Office's view, information falling within the scope of the request is held. Furthermore, whether the provision of this information wholly answers the request or only partially, it should still be provided to the complainant. The Cabinet Office therefore breached section 1(1) of the Act in that it failed to confirm it held information that fell with the scope of the request and should have communicated the information to the complainant.

## Section 16

38. Section 16 of the Act places a duty on public authorities 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. The section goes on to state that this duty is complied with when the provision of advice and assistance in any case conforms with the section 45 Code of Practice (the "Access Code").
39. Paragraphs 8. to 11 of the Access Code deal with "clarifying the request" and relate specifically to circumstances where a public authority needs more detail to enable it to identify and locate the information sought. Paragraph 8. says that public authorities are entitled to ask for more detail if needed to enable them to identify and locate the information sought. In this circumstance public authorities should assist applicants in describing more clearly the information requested. The Code does not require public authorities to assist applicants in describing the information more clearly if they don't need more detail to identify and locate the information sought. In this case the Commissioner finds that the request was clear and did specify the information sought. The Commissioner's finding above is that the information is held and therefore the Cabinet Office should have communicated the information to applicant in compliance with section 1(1)(b) of the Act. The Commissioner therefore finds that there is not a breach of section 16 in addition to the breach of section 1.

## The Decision

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48. The Commissioner's decision is that the Cabinet Office has not dealt with the complainant's request in accordance with the following requirements of Part I of the Act:
- Section 1(1) – in that it wrongly confirmed that it did not hold information falling within the scope of the request and failed to communicate to the complainant such information they held.

## Steps Required

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49. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
  - Either provide the complainant with information falling with the scope of the request or,
  - Where the cost of compliance is estimated to exceed the appropriate limit, advise the complainant of this by providing a notice stating this fact in compliance with section 17(5) of the Act and provide an indication of what information which can be extracted, located and retrieved within the cost limit to assist the complainant in refining his request.
  
50. 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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57. 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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58. 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).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

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 18<sup>th</sup> day of June 2008**

**Signed .....**

**Steve Wood**  
**Assistant Commissioner**

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

## Legal Annex

### Relevant Statutory Obligations and Provisions under the Act

**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 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”.

**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.”