

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 27 May 2010**

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

### Summary

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On 02 June 2009 the complainant requested information from the Cabinet Office relating to the "dossier" on Iraq's weapons of mass destruction. The Cabinet Office delayed providing a substantive response for nine months by extending the time needed to consider the public interest test a considerable number of times. As the Commissioner has considered this complaint before the completion of an internal review he has found the following breaches of the Freedom of Information Act. The Cabinet Office are in breach of section 1(1)(a) and section 10(1) for failing to confirm whether information was held within 20 working days. The Cabinet Office are also in breach of section 17(1)(a), 17 (1)(b), 17 (1)(c) and 17(2) for failing to issue a refusal notice specifying an exemption it was relying on to withhold information or an estimate for the completion of the public interest test.

### 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 02 June 2009 the complainant contacted the Cabinet Office to request the following information:

*"I would like to make a new request for information relating to the September 2002 'dossier' on Iraq's weapons of mass destruction. I would like:*

*1) Any comments received from the Defence Intelligence Staff or anyone else on the draft dossier circulated on 16 September 2002. In particular I would like the remainder of the memo published by the Hutton Inquiry at [http://www.the-hutton-inquiry.org.uk/content/cab/cab\\_33\\_0116](http://www.the-hutton-inquiry.org.uk/content/cab/cab_33_0116). pdf. You will know that it has been stated that this relates to the 16 September draft. I understand that this runs to six pages (see [http://www.the-hutton-inquiry.org.uk/conent/mod/mod\\_4\\_0006to0008](http://www.the-hutton-inquiry.org.uk/conent/mod/mod_4_0006to0008). pdf). You will also know that an equivalent memo dated 19 September has apparently been published in full at [http://www.the-hutton-inquiry.org.uk/content/cab/cab\\_3\\_0079to0081](http://www.the-hutton-inquiry.org.uk/content/cab/cab_3_0079to0081). pdf.*

*2) Any comments received from the Defence Intelligence Staff or anyone else on the draft dossier circulated on 19 September 2002."*

3. The Cabinet Office provided a number of brief responses over the following months refusing to disclose the information whilst it considered possible exemptions and the related public interest test.
4. On 02 November 2009 the Cabinet Office wrote to the complainant making reference to a previous refusal dated 19 October 2009. This withheld part of the information the complainant requested in June on the basis that the absolute exemption contained in section 23 was found to be engaged.
5. The Cabinet Office also made reference, in its letter of 02 November 2009, to the fact that it was previously unable to disclose the remainder of the information as the public interest test regarding other qualified exemptions was still being considered. The public authority confirmed this was still the case stating:

*"Unfortunately, it has not been possible to conclude the consideration of the public interest in time to make a substantive response. As we judge that it may take a further 20 working days to complete the process satisfactorily, we will respond as soon as possible and no later than 30 November."*

## The Investigation

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### Scope of the case

6. On 03 November 2009 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 fact the public authority was taking an unreasonable amount of time to conclude its consideration of the public interest test and had subsequently failed to provide him with a substantive response since June 2009.
7. During the course of the Commissioner's investigation the public authority withheld information in reliance upon a number of exemptions available under the Act. The complaint made in this case was about the delays in the public authority providing a substantive response. The Commissioner has not therefore considered the public authority's application of these exemptions and its compliance or non-compliance with section 1(1)(b), the duty to make information available, in this Notice.

### Chronology

8. On 30 November 2009 the complainant received a letter from the Cabinet Office informing him that unfortunately the consideration of the public interest test had not been completed. The public authority extended its time for the process to be concluded for another 20 working days.
9. On 01 December 2009 the Commissioner wrote to the public authority detailing his FOI enforcement strategy and good practice guidance. The Commissioner instructed the public authority to respond to the complainant within 20 working days of receipt of the letter.
10. On 04 January 2009 the Commissioner contacted the Cabinet Office. The public authority confirmed that no substantive response had been provided to the complainant within the 20 working days specified in the Commissioner's letter of 01 December 2009. The Commissioner informed the public authority that as previous attempts to obtain a response had failed, he was in the process of drafting a decision notice.
11. On 09 February 2010 the complainant contacted the Commissioner concerned that the Cabinet office was no longer responding to any of his correspondence chasing the progress of his request. The complainant was advised that the decision notice was the best way forward and that the Commissioner's Good Practice and Enforcement

Team were aware of the case and actively monitoring the Cabinet Office's handling of requests.

12. On 08 March 2010 the Cabinet Office provided a response to the complainant. The response refused to disclose the requested information finding seven separate exemptions engaged.

## Analysis

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### Procedural Requirements

13. Section 1(1)(a) (full wording in Legal Annex) of the Act states:

*"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 the information..."*

14. Section 10(1) (full wording in Legal Annex) of the Act states:

*"...a public authority must comply with section 1(1) promptly and in any event no later than the twentieth working day following the date of receipt."*

15. It is evident from the correspondence provided to the Commissioner that the Cabinet Office failed to comply with section 1(1)(a) within 20 working days.

16. Section 17(1) (full wording in Legal Annex) of the Act states:

*"A public authority which, in relation to any request for information, is to any extent relying... 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."*

17. It is evident that as at 20 working days from receipt of the request the Cabinet Office had not done the following to comply with section 17(1):

stated it was relying upon any part II exemption; specified an exemption or stated why the exemption applied.

18. Section 17(2) (full wording in Legal Annex) of the Act states:

*“Where –*

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim –  
(ii) that the information is exempt information...*

*the notice under section (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.”*

19. The Cabinet Office did not provide a notice within 20 working days giving the complainant an estimate of when the public interest test decision would be reached.
20. The Commissioner would like to make the point that any notice issued under section 17(2) should only be issued after the public authority has decided that one or more specific qualified exemption(s) is engaged. The notice should not be used, as the Cabinet Office appears to have done in this case, to allow the public authority extra time to decide if any or which exemption applies.

## The Decision

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21. The Commissioner’s decision is that the public authority did not deal with the request for information in accordance with the Act.

The public authority failed to confirm that information was held within the statutory time limit and thus breached section 1(1)(a) and section 10(1)

The public authority also failed, within the statutory time limit, to state that it was relying upon an exemption, to specify the exemptions upon which it was relying and to explain why these exemptions applied.

It therefore breached sections 17(1)(a), 17(1)(b) and 17(1)(c) of the Act.

The public authority also failed to provide an estimate of the time for completion of the public interest test and thus breached section 17(2).

## Steps Required

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22. The Commissioner does not require the public authority to take any remedial steps as a response to the complainant's information request has now been provided.

## Other matters

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

The Commissioner was not contacted by the public authority for permission to extend its time in which to complete the public interest test beyond the reasonable 40 working days due to exceptional circumstances.

The continued extension of time to conclude the public interest test raised good practice issues and has been referred to the Commissioner's Enforcement team.

## Right of Appeal

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24. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

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 sent.

**Dated the 27<sup>th</sup> day of May 2010**

**Signed .....**

**Lisa Adshead  
Group Manager**

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

## Legal Annex

### General Right of Access

**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 1(2)** provides that -

"Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14."

**Section 1(3)** provides that -

"Where a public authority -

- (a) reasonably requires further information in order to identify and locate the information requested, and
- (b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information."

**Section 1(4)** provides that -

"The information -

- (a) in respect of which the applicant is to be informed under subsection (1)(a), or
- (b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request."

**Section 1(5)** provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

**Section 1(6)** provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.”

### **Time for Compliance**

**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 10(2)** provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.”

**Section 10(3)** provides that –

“If, and to the extent that –

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

**Section 10(4)** provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

**Section 10(5)** provides that –  
“Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.”

**Section 10(6)** provides that –  
“In this section –  
“the date of receipt” means –

- (a) the day on which the public authority receives the request for information, or
- (b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”

### **Refusal of Request**

**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 17(2)** states –

“Where–

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-
  - (i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or

- (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and
- (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached."

**Section 17(3)** provides that -

"A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

- (a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or
- (b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information."

**Section 17(4)** provides that -

"A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

**Section 17(5)** provides that -

"A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact."

**Section 17(6)** provides that –

“Subsection (5) does not apply where –

- (a) the public authority is relying on a claim that section 14 applies,
- (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
- (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.”

**Section 17(7)** provides that –

“A notice under section (1), (3) or (5) must –

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (b) contain particulars of the right conferred by section 50.”