

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 25 October 2010**

**Public Authority:** Department for International Development  
**Address:** 1 Palace Street  
London  
SW1E 5HE

### Summary

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The complainant requested information broadly relating to the Trust laws governing the relationship between the public authority, the World Bank and its agencies. After conducting searches for the information requested, the public authority concluded that it did not hold any information matching the requests. The Commissioner finds that, on the balance of probabilities, the public authority did not hold the information requested by the complainant.

### 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. The complainant's first set of requests on 03 December 2009 was phrased as follows:
  - (i) "What Trust Law governs Trusts established by each of: (i) the International Bank for Reconstruction & Development (IBRD), (ii) the International Finance Corporation (IFC) and (iii) jointly by the World Bank and IFC (WB/IFC) and which are co-financed and administered by DFID as a trustee?"

- (ii) What is the applicability of the: Hague Convention on the Law Applicable to Trusts and on their Recognition which also regulates conflict of trusts?"
3. The second set of requests was made on 17 December 2009 and phrased as follows;
- (i) "What Law of Trust governs Trusts administered by the WB and IFC, or any combination thereof, as the case may be, in which the UK (through DfID) and non-traditional donors (i.e. not member countries) including major foundations and corporations such as ABM/AMRO (RBS) Bank, BP p.l.c., Shell Int., Visa Int. Citigroup, Deutsche Bank etc, are co-contributors?
- (ii) What force and application does the Trustee Act 2002 confer in respect of UK contributions to Trusts administered by the WB and IFC, or any combination thereof?
- (iii) Under the authority, duties and powers conferred on the Trustees of a WB and IFC Trust, or any combination thereof, to carry out the Trust purposes as set forth in the Agreement and applicable law, rules and regulations, upon becoming aware of facts, developments, events, circumstances, conditions, occurrences or effects that could reasonably be expected to result in the occurrence of: (i) a breach of the duties of the Trustee/s set forth in the Agreement or under any applicable Law governing the Trust; (ii) any misconduct, fraud, misappropriation, embezzlement or unjustified enrichment by the Trustee/s; or (iii) any other material compliance event that results in the failure of any of the Trustees to adhere to their respective commitments in any material respect, what action must the Board of Trustees take to commence a review of such facts, developments, events, circumstances, conditions, occurrences or effects to make a determination of whether or not a breach or material compliance event has occurred?"
4. On 05 January 2010 the complainant phrased an additional request as follows;
- "did DFID (i) intend to make an outright gift of UK funds to the WBG coupled with a recommendation as to how the funds should be applied, but ultimately leaving it up to the WBG as to what it chose to do with the property- in which case no trust is created – or (ii) intend to bind the WBG to apply UK funds to specified purposes, thus creating a trust"

5. On 05 January 2010 the public authority responded to the requests of 03 and 17 December 2009 respectively. The public authority explained that it did not hold any information within the scope of the requests.
6. On 05 January 2010 the complainant wrote back to the public authority. She disagreed with the public authority's findings that no information was held and requested a review of the decision. The complainant then also made the additional request quoted above.
7. On 28 January 2010 the public authority wrote back with details of the outcome of the internal review and also responded to the additional request made. The public authority explained that following extensive searches, no information matching any of the requests had been found.

## **The Investigation**

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### **Scope of the case**

8. On 22 January 2010 before the completion of the internal review, the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complaint was however not accepted as a valid case until 16 February 2010, which followed the Commissioner having been notified that the public authority had completed its internal review.
9. The complainant also provided documentary evidence generally in support of her complaint but also more specifically to prove that the public authority would have acted as a Trustee for Trusts established by the World Bank and its agencies.

### **Chronology**

10. On 14 July 2010 the Commissioner wrote to the complainant. He reproduced all her requests above in the letter and invited her to confirm that the scope of the investigation correctly reflected her complaint.
11. On 05 August 2010 the complainant confirmed that she was satisfied with the scope of the investigation.
12. In the meantime, the Commissioner had written to the public authority on 22 July 2010. The Commissioner requested clarifications from the public authority which are outlined below.

13. On 18 August 2010 the public authority responded.
14. On 15 September 2010 the Commissioner wrote back to the public authority for additional clarifications which are also outlined below.
15. On 15 September 2010 the public authority responded.

## Analysis

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### Section 1

16. Section 1 grants a presumptive right of access to applicants under the Act so that unless an exemption(s) is relied upon, a public authority is under a duty to inform an applicant in writing whether it holds the information requested and if it does, to then have it communicated to the applicant. A full text of section 1 is available in the legal annex.
17. In determining whether a public authority holds information requested by an applicant the Commissioner applies the civil standard of proof which is based on the balance of probabilities.
18. In deciding where the balance lies, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority as well as considering, where appropriate, any other reasons offered by the public authority to explain why the information is not held.<sup>1</sup>
19. The public authority explained to the complainant that in addition to conducting extensive searches, enquiries had been made to members of staff in the freedom of information team, international financial institutions divisions and also to staff in the central finance and corporate policy department responsible for setting general policy on Trust funds. However, none of these had yielded any information within the scope of the requests.
20. In response to the Commissioner's queries regarding the status of the public authority in relation to the Trust funds administered by the World Bank, the public authority categorically stated that it did not administer Trust funds as a trustee. Rather, the public authority acting on behalf of the UK government contributed to the Trust funds as a

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<sup>1</sup> These views were expressed in more detail by the Information Tribunal in *Linda Bromley & Others v The Information Commissioner & Environmental Agency* – EA/2006/0072

donor and acted as a shareholder, and not a trustee as the complainant suggests.

21. In view of the above facts, the public authority explained that it could not possibly hold the information requested by the complainant under item (i) of the requests of 03 December 2009.
22. In terms of item (ii) of the requests of 03 December, the Commissioner explained that in his opinion, a reasonable assumption could perhaps be made that an interpretation of the applicability of the relevant Hague Convention would have been provided to assist the public authority's officials in its working relationships with various organisations.
23. In view of the above, the Commissioner recommended that the public authority conducted additional enquiries and searches of information relating to item (ii) above.
24. The public authority explained that given that no Trust funds are co-financed and administered by the public authority as a trustee, the Hague Convention referred to could not be applicable in the circumstances. The public authority nonetheless conducted another search of its Electronic Document Records Management System (EDRMS) which dates back to 2005 but did not find any information matching the request. According to the public authority, a further search of the EDRMS had come up with a total of 133 documents containing the key phrase the 'Hague Convention'. A list of all the documents was provided to the Commissioner. A representative of the public authority who had read through each of the documents confirmed that none of the documents are specifically concerned with the relevant Convention or are in any way related to the requests.
25. The Commissioner is satisfied with the public authority's explanation and having gone through the list, he does not consider that those documents on the list which had been created at the time of the requests relate to item (ii).
26. The public authority also explained that a key word search of its paper titling system dating back to pre-2005 revealed instances of the key phrases used in item (ii) only in relation to the complainant's requests.
27. The Commissioner finds that on the balance of probabilities the public authority did not hold any information in relation to the requests of 03 December.

28. In terms of the requests of 17 December 2009 the public authority explained that in its view, the complainant appeared to be seeking legal opinions rather than information. According to the public authority, it would have had to have sought legal advice in relation to the specific questions posed by the complainant to hold the information requested. The public authority however confirmed that a search on the EDRM yielded no results matching the scope of the requests.
29. Given the relationship between the public authority and the World Bank, the Commissioner asked the public authority to make additional general enquiries and specifically with its lawyers as to whether there was any information matching the scope of these requests.
30. The public authority explained that it did not have an in-house legal team and used external lawyers from other government departments on case by case basis. According to the public authority, the external lawyers would not have access to its files. If advice specifically relating to the requests had been provided, it would be held on the EDRM and searches had not produced the relevant information. A further search of old paper file titles and cross-references to see whether Trust laws or the Trustee Act had ever been referenced in the context of the requests also did not produce any information.
31. The Commissioner finds that on the balance of probabilities the public authority did not hold any information in relation to the requests of 17 December.
32. The public authority further explained that the additional request of 05 January 2010 which was phrased as an enquiry also appeared to be seeking a legal opinion rather than information held. The public authority therefore explained that it would only be likely to hold information relevant to the points made in that request if it had sought legal advice specifically on the issue.
33. In the Commissioner's opinion, it is not clearly obvious that the complainant was seeking a legal opinion. However, it does appear that the complainant was seeking information relating to the government's intentions in contributing to Trust funds administered by the World Bank and its agencies. In light of the relationship between the public authority and the World Bank explained above, and which is also available on the public authority's website<sup>2</sup>, the Commissioner can understand why the public authority viewed the complainant's specific query as one which would have required a legal opinion.

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<sup>2</sup> <http://www.dfid.gov.uk/About-DFID/Who-we-work-with1/The-World-Bank/>

34. To reiterate, the public authority was explicitly clear that it is a donor to the World Bank and does not act as a Trustee. The Commissioner is therefore satisfied that the public authority would not have held information relating to the specific parameters of the request of 05 January. As already pointed out, general information about the relationship between the public authority and the World Bank is publicly available.
35. The Commissioner finds that, on the balance of probabilities, the public authority did not hold any information in relation to the request of 05 January 2010.
36. The Commissioner did also consider the documentary evidence provided by the complainant but did not find any information which authoritatively indicated that the public authority acted as a Trustee for Trust funds administered by the World Bank or its agencies.
37. Even if the Commissioner is wrong on the above point, his role is to assess whether, on the balance of probabilities, the public authority held the information requested by the complainant, and he is satisfied that the public authority did not.
38. In summary, in view of the explanation provided, the extent and thoroughness of the searches conducted, the Commissioner is satisfied that, on the balance of probabilities, the public authority did not hold the information requested by the complaint on 03 December 2009, 17 December 2009, and 05 January 2010.

## **The Decision**

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39. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

## **Steps Required**

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40. The Commissioner requires no steps to be taken.

## Right of Appeal

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41. 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 25<sup>th</sup> day of October 2010**

**Signed .....**

**Alexander Ganotis  
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”.”