

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 3 November 2011

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

#### Summary

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The complainant requested information concerning refurbishments to the Downing Street residence of the Prime Minister. The public authority initially stated that some information was not held in response to some requests and cited the exemption provided by section 22(1) (information intended for future publication) in relation to the remainder of the requests. During the Commissioner's investigation the public authority ceased to rely on section 22(1) and instead stated that it held no information falling within the scope of any of the requests. The Commissioner finds in relation to the majority of the requests that the public authority was correct in stating that it held no relevant information. However, in relation to two of the requests the conclusion of the Commissioner is that the public authority did hold relevant information and was in breach of section 1(1)(a) in stating that this information was not held. The public authority is now required to disclose this information or else issue a notice compliant with section 17(1), apart from one item of information in relation to which the Commissioner finds that the exemption provided by section 24(1) (national security) is engaged. The Commissioner also finds that the public authority breached certain procedural obligations under the Act.

#### 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 made the following information requests on 23 June 2010:

*(i) Under the Freedom of Information Act, I am making a formal request to be given details about the estimated cost of the refurbishment works that are to be undertaken on the [11 Downing Street] flat.*

*(ii) Please also provide me with dates, or the estimated dates, on which work will (i) commence and (ii) be completed.*

*(iii) What kitchen appliances will be replaced as part of the works. This would include items such as cookers, fridges, kettles and microwaves.*

*(iv) Details of any additional furniture that will be purchased. This could include items such as cupboards, wardrobes and beds.*

*(v) Details of what furniture will be replaced as part of the refurbishment works. This may include sofas, bookcases and shelves, for instance.*

*(vi) Whether any furniture will be reupholstered as part of the refurbishment works and what those items are.*

*(vii) Details of whether any refurbishment works will take place to the bathroom. If works are due to take place to the bathroom, please provide me with details including estimated costs.*

*(viii) Whether money has been allocated for the replacement of carpets and curtains. If so, what are the costs for each?*

*(ix) I also seek details of who is managing the project on behalf of the civil service.*

*(x) Please also tell me the arrangements [that] have been agreed for sharing costs between the taxpayer and the Prime Minister, and what these are.*

*(xi) Similarly, I would like to be given details of how much Mr and Mrs Cameron expect to contribute to the project personally.*

*(xii) If there are any internal design proposals, draft contracts, details about the numbers of tenders sought and internal emails regarding the work, please let me see them. I am happy for names to be redacted where appropriate.*

*(xiii) I'd like to see copies of any legal advice (that is not legally privileged) in respect of the refurbishment works that are due to take place too.*

*(xiv) If options papers have been prepared by the Prime Minister, his wife or his representatives on the refurbishment, please provide copies of these to me.*

*(xv) Similarly, if the Prime Minister, his wife or a representative on their behalf have prepared any notes giving direction in relation to the project, or there are notes of meetings held that give a clear direction, I would like to be provided with these."*

3. The public authority responded to these requests on 21 July 2010 as follows.
- (i) Refused under section 22(1) (information intended for future publication).
  - (ii) A written response was provided to this request.
  - (iii) No information falling within the scope of this request was held.
  - (iv) No information falling within the scope of this request was held.
  - (v) No information falling within the scope of this request was held.
  - (vi) No information falling within the scope of this request was held.
  - (vii) Refused under section 22(1).
  - (viii) No information falling within the scope of this request was held.
  - (ix) A written response was provided to this request.
  - (x) A written response was provided to this request.
  - (xi) No information falling within the scope of this request was held.
  - (xii) No information falling within the scope of this request was held.

- (xiii) No information falling within the scope of this request was held.
  - (xiv) No information falling within the scope of this request was held.
  - (xv) No information falling within the scope of this request was held.
4. The complainant responded to this on 22 July 2010 and requested an internal review. After a delay and following the intervention of the Commissioner's office, the public authority responded with the outcome of the review on 5 October 2010. The conclusion of this review was that the refusal notice was upheld. In particular, the public authority stated that at this stage some information was not held as the work that the complainant referred to had yet to be carried out.

## The Investigation

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### Scope of the case

5. The complainant contacted the Commissioner's office initially in connection with the failure to complete the internal review. As noted above, the Commissioner's office intervened at that stage and ensured that the public authority responded with the outcome of the internal review.
6. The complainant contacted the Commissioner's office again following the outcome of the internal review on 19 October 2010. The complainant specified that he was dissatisfied with the response of the public authority, believing this to be obfuscatory, and noted that information about refurbishments to Downing Street appeared to have been leaked to the media. The complainant believed that this was evidence that the information he had requested was held by the public authority.
7. It was clarified with the complainant at this stage that his complaint related to those requests in response to which the public authority had either denied that relevant information was held, or had cited the exemption provided by section 22(1). Those requests in response to which the public authority had provided a written answer were not included within the scope of his complaint. Requests (ii), (ix) and (x) are not, therefore, covered within this Notice.

## Chronology

8. The Commissioner's office contacted the public authority on 15 November 2010. At this stage the public authority was asked to respond with further explanation for the citing of section 22(1) and, in relation to those requests where it had stated that it held no relevant information, a detailed description of the searches it had carried out for information falling within the scope of the request and / or any reasoning as to why relevant information was not held.
9. The public authority responded to this by letter dated 24 December 2010 and stated that it was no longer relying on section 22(1) in relation to any requests; instead, its stance was that it held no information falling within the scope of any of the requests under consideration. No description of searches carried out was given, and little explanation as to why this information was not held was included.
10. The Commissioner's office contacted the public authority again on 10 January 2011 and explained that it would be necessary for the public authority to provide further explanation before the Commissioner could accept that no relevant information was held. The public authority was asked to respond within 10 working days. The Commissioner received a response from the public authority on 1 March 2011 giving further reasoning as to why the information requested was not held.
11. The Commissioner considered that the explanations given by the public authority at this stage were inadequate. An Information Notice was issued under section 51 of the Act on 7 April 2011, requiring further explanations in relation to some of the requests.
12. The public authority responded on 20 May 2011 with its further explanations. The public authority also at this stage introduced the following exemptions in relation to one item of withheld information: sections 24(1) (national security), 31(1)(a) (prejudice to the prevention or detection of crime), 38(1)(a) (endangerment to health), 38(1)(b) (endangerment to safety) and 40(2) (personal information).

## Analysis

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### Substantive Procedural Matters

#### Section 1

13. The public authority has stated that it does not hold the information requested. The complainant disputes this and believes that the public authority does hold this information. The task for the Commissioner

here is to consider whether the public authority is correct in stating that this information is not held. If the public authority is correct in stating that this information is not held, the conclusion of the Commissioner will be that the public authority has dealt with the request in accordance with section 1(1)(a). This section is set out in full in the attached legal annex, as are all other sections of the Act referred to in this Notice.

14. The approach taken by the Commissioner when considering whether information is held is that the correct standard of proof to apply is the balance of probabilities. This is in line with the approach taken by the Information Tribunal in the case *Linda Bromley & others and the Environment Agency* (EA/2006/0072) in which it stated the following:

*"...we must consider whether the IC's decision that the EA did not hold any information covered by the original request, beyond that already provided, was correct. In the process, we may review any finding of fact on which his decision is based. The standard of proof to be applied in that process is the normal civil standard, namely, the balance of probabilities..."* (para 10);

because:

*"...there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records..."* (para 13).

15. In reaching a conclusion as to whether a public authority is correct in stating that requested information is not held, the Commissioner will ordinarily take into account:

- the scope, quality, thoroughness and results of the searches; and
- other explanations offered as to why the information is not held.

16. In this case the public authority initially asserted that it was not necessary for it to carry out searches for the requested information.

17. The public authority advanced two reasons why it would not hold the information requested. First,

*"At the time of the request...no information was held on the actual costs of the maintenance work to the Number 11 flat because the work was only due to be carried out later in the summer".*

The public authority confirmed that the work was completed in August 2010.

18. The second reason was that:

*"The Cameron family were personally responsible for appliances and furniture...Consequently any information in relation to these questions or how much the Cameron family either expected to spend or did spend personally would not have been held..."*

The public authority confirmed that this included the appliances and furniture specified by the complainant in his requests.

19. The Commissioner considers the explanation concerning the cost borne personally by the Prime Minister and his family to be relevant to requests (iii), (iv), (v), (vi) and (xi). The Commissioner accepts the explanation given by the public authority in relation to these requests and so concludes that the public authority has complied with section 1(1)(a) in relation to these requests.

20. This leaves requests (i), (vii), (viii), (xii), (xiii), (xiv) and (xv) where the public authority stated that no information was held, stated that searches were not necessary and did not provided any explanation relevant to these requests as to why this information was not held. Whilst the public authority stated that it did not hold information as to the actual costs of maintenance work that had not been carried out by the time of the request, in none of his requests did the complainant ask for the actual costs of maintenance work. Instead the complainant requested information that it is conceivable the public authority may have held at the time of the request, such as the estimated cost of refurbishments yet to be carried out.

21. As noted above at paragraph 11, an Information Notice was issued under section 51 of the Act on 7 April 2011. This required the public authority to respond with further explanations in relation to requests (i), (vii), (viii), (xii), (xiii), (xiv) and (xv). The further explanations provided by the public authority in response to the Information Notice and the conclusions of the Commissioner in relation to each of these requests are as follows.

#### *Request (i)*

22. In response to the Information Notice, the public authority stated that a search was in fact carried out for information falling within the scope of this request, prior to the response of 21 July 2010. This contradicts the position taken by the public authority previously and the Commissioner comments further on this in the '*Other matters*' section below. No description of this search was provided.

23. The public authority also provided an explanation as to why it did not hold information falling within the scope of this request, stating that

the details of refurbishment works had not been agreed by the time of the request and so no estimate of the cost of refurbishments had been made by that time. The Commissioner also notes that the Prime Minister had been in office only a short period prior to the date of the request. In his view, this supports the suggestion that plans for the refurbishment were at an early stage at that time.

24. Whilst the public authority provided no details of the search carried out, on the basis of the confirmation given by the public authority that a search was carried out, combined with the explanation provided as to why this information would not be held, the Commissioner accepts that, on the balance of probabilities, the public authority was correct to say that it did not hold information falling within the scope of this request.

*Request (vii)*

25. Following the Information Notice the public authority stated that a search had been carried out for relevant information and that this had located *"a schedule of works...[which] includes references to works to a bathroom"*. However, the public authority argued that this information was held by it only on behalf of the family of the Prime Minister and so section 3(2)(a) meant that this information was not held by it for the purposes of the Act.
26. The Commissioner does not accept this explanation from the public authority. Instead, he considers it more likely that, whilst refurbishments works to Downing Street may have been at the instigation of the family of the Prime Minister and they may have been responsible for the key decisions and the cost of these refurbishments, the public authority would hold information relating to the refurbishment works for its own purposes. In particular, the Commissioner considers it unlikely that planning for refurbishment works at Downing Street would take place without the involvement of the Cabinet Office as the relevant government department.
27. The conclusion of the Commissioner is, therefore, that the public authority does hold information falling within the scope of request (vii) and that the public authority was in breach of section 1(1)(a) in stating that this information was not held. At paragraph 51 below the public authority is required to disclose this information or else issue a notice compliant with section 17(1) to justify withholding it.

*Request (viii)*

28. The public authority has referred again to the search that was carried out prior to the date of the response to the request. It states that this



search did not locate information falling within the scope of this request.

29. Whilst the public authority provided no description of the search it carried out, on the basis that this search did take place and in the absence of any evidence indicating the actual existence of relevant information, he accepts that, on the balance of probabilities, information falling within the scope of this request was not held. The public authority was therefore in compliance with section 1(1)(a) in stating that no information falling within the scope of this request was held.

*Request (xii)*

30. The public authority has stated that the aforementioned search '*confirmed*' that it did not hold information falling within the scope of this request. It also stated that it did not believe that the information specified would have existed at the time of the request.
31. The absence of clear evidence either way means that the Commissioner can reach only a marginal conclusion here. On this marginal basis, the Commissioner accepts that, a search having been carried out for this information, on the balance of probabilities, information falling within the scope of this request was not held at the time of the request. The public authority was therefore in compliance with section 1(1)(a) in stating that no information falling within the scope of this request was held.

*Request (xiii)*

32. The key explanation provided by the public authority here is that no legal advice relating to refurbishment work was commissioned.
33. The Commissioner accepts this as a reasonable explanation from the public authority as to why information falling within the scope of this request was not held and so concludes that the public authority complied with section 1(1)(a) in relation to this request.

*Request (xiv)*

34. In relation to this request the public authority relied on the search that was carried out at the time of the initial request and also stated that '*we believe that no information was held because no such information existed*'.
35. The Commissioner has disregarded the above statement provided by the public authority as to why it believed that it would not hold information falling within the scope of this request as the unsupported

statement that it did not believe that information falling within the scope of the request would have existed at the time of the request cannot, in the view of the Commissioner, be said to carry any weight.

36. This leaves the assertion by the public authority that a search was carried out for this information and that this search did not locate any relevant information as the only basis for the conclusion here. Again, in the absence of any description of this search the Commissioner can reach only a marginal decision, but he also notes in relation to this information that the request is very specific, meaning that it is less likely that information would be held that falls within the scope of this request than would be the case in relation to a more generally worded request. On this basis the Commissioner accepts that the balance of probabilities suggests that no information was held by the public authority that fell within the scope of this request at the time that it was made and so section 1(1)(a) was complied with in relation to this request.

#### *Request (xv)*

37. The public authority stated that the search located information potentially relevant to this request in the form of a paper and sketches titled '*Specifications for No 11*', which included an annotated floor map. However, the public authority has argued both that this information was not within the scope of this request and that this information was held by it only on behalf of the family of the Prime Minister and so was not held by it for the purposes of the Act.
38. The Commissioner disagrees with both of these arguments. Although the Commissioner has been provided with no description of the content of this information, his view is that the title of this document indicates that it is likely to have been within the scope of this request. As to whether this information was held by the public authority for the purposes of the Act, the Commissioner's conclusion here is similar to that above in relation to request (vii), this being that the public authority would hold information on refurbishments to Downing Street for its own purposes, even if it *also* held this information on behalf of or originated from the Cameron family.
39. The conclusion of the Commissioner in relation to this request is that the public authority held relevant information at the time of the request and that it did not comply with section 1(1)(a) in relation to this request. At paragraph 51 below the public authority is required to either disclose some of this information or issue a notice compliant with section 17(1) to justify withholding it. In relation to the annotated floor map, the public authority has cited the exemption provided by section 24(1), the analysis of which follows.

## Exemptions

### Section 24

40. The public authority has cited the exemption provided by section 24(1). This provides an exemption where the withholding of information is required for the purpose of safeguarding national security. Consideration of this exemption is a two-stage process; first, it must be necessary for this information to be withheld for the purpose of safeguarding national security. Secondly, this exemption is qualified by the public interest, meaning that the information must be disclosed if the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure.
41. The approach of the Commissioner to this exemption is that it must be reasonably necessary for the purposes of national security for the information to be withheld. This means that the public authority must demonstrate that there would be a risk of harm to national security through disclosure of the information, but it is not necessary to prove that there is a specific, direct or imminent threat.
42. The argument of the public authority here is that disclosure of the floor plans would be of assistance to terrorists targeting Downing Street for attack. The Commissioner accepts that this argument is relevant to national security and so to this exemption.
43. As to whether it is reasonably necessary to withhold this information in the interests of national security, clearly the Commissioner would accept that it is plausible that Downing Street could be targeted by terrorists. He also accepts that detailed floor plans of the residence of the Prime Minister, which are not currently available in the public domain, could be of assistance to an individual or group planning an attack on Downing Street. For these reasons, the Commissioner accepts that it is reasonably necessary for the purposes of national security for this information to be withheld from disclosure and so finds that the exemption provided by section 24(1) is engaged.

### **The public interest**

44. Having found that this exemption is engaged it is necessary to go on to consider the balance of the public interest. In forming a conclusion on the balance of the public interest here the Commissioner has taken into account the public interest in the transparency and openness of the public authority, as well as the public interest inherent in the exemption in avoiding harm to national security. This is in addition to the specific factors that apply in relation to the information in question.

45. Covering first those factors that favour disclosure of the information, Downing Street is maintained at public expense. Although the Commissioner recognises that the public authority has stressed that the family of the Prime Minister have met the cost of improvements to the Downing Street residence that they instigated personally, in general maintenance of Downing Street is publicly funded. There is, therefore, a legitimate public interest in improving public knowledge about the maintenance of Downing Street, to which the layout of the interior of these buildings would be relevant. This carries some weight in favour of disclosure.
46. When arguing in favour of maintenance of the exemption, the public authority relied on the public interest inherent in the exemption in avoiding harm to national security. Having accepted that it is reasonably necessary for the purpose of safeguarding national security to withhold this information from disclosure, the Commissioner must also accept the strong public interest inherent in the exemption and that this carries very significant weight in favour of maintenance of the exemption.
47. Whilst the Commissioner has recognised a degree of public interest in disclosure of the information in question, the public interest inherent in this exemption is clearly very strong and, where this exemption is engaged, it is likely that the public interest in this will outweigh all but the weightiest factors in favour of disclosure. In this case the view of the Commissioner is that the public interest factors in favour of disclosure are not sufficiently weighty and so his conclusion is that the public interest in the maintenance of the exemption clearly outweighs the public interest in disclosure.
48. As the above analysis relates to the entirety of the information in relation to which the public authority has cited exemptions, it has not been necessary to go on to consider the other exemptions cited.

## **Procedural Requirements**

### **Sections 1 and 10**

49. In failing to confirm within 20 working days of receipt of the request that it held the information that the Commissioner now concludes was held at the time, the public authority failed to comply with the requirements of sections 1(1)(a) and 10(1).

## The Decision

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50. In relation to requests (i), (iii), (iv), (v), (vi), (viii), (xi), (xii), (xiii) and (xiv), the conclusion of the Commissioner is that the public authority was correct in stating that this information was not held. However, in relation to requests (vii) and (xv) the conclusion of the Commissioner is that the public authority breached section 1(1)(a) in that it did hold relevant information at the time of these requests. Also, in relation to floor plans falling within the scope of request (xv), the Commissioner finds that the exemption provided by section 24(1) justifies withholding that information. The Commissioner further finds that the public authority breached the requirements of sections 1(1)(a) and 10(1) in its handling of the requests.

## Steps Required

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51. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- either disclose to the complainant the information that falls within the scope of requests (vii) and (xv), apart from that falling within the scope of request (xv) which the Commissioner finds to be exempt from disclosure under section 24(1), or issue a notice compliant with section 17(1) to justify withholding it.
52. 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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53. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Other matters

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### *Public authority's submissions*

54. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern. As referred to above, reaching the point of issuing a Decision Notice in this

case has taken an extended period of time, primarily due to the delayed and inadequate responses from the public authority. The Commissioner is particularly concerned that the response to the Information Notice appeared to contradict the previous response from the public authority that no searches had been necessary, suggesting that no searches had been carried out. It is essential that in future cases the public authority responds more promptly. The public authority must also ensure that responses are factually accurate and appropriately thorough.

## Right of Appeal

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55. 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,  
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)

56. 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.
57. 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 3<sup>rd</sup> day of November 2011**

**Signed .....**

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

## Legal Annex

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### **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 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 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 22(1) provides that –**

"Information is exempt information if-

- (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),
- (b) the information was already held with a view to such publication at the time when the request for information was made, and



(c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a)."

**Section 24(1) provides that –**

"Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security."