

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 21 March 2011

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

Summary

The complainant made a request for information relating to the drafting of a September 2002 dossier entitled 'Iraq's weapons of mass destruction'. The Cabinet Office provided a response to the complainant beyond the 20 working day limit (prescribed under the Act) in which it explained it needed further time to consider the public interest test, having cited several qualified exemptions. The time needed to consider the public interest test was then extended several times before a response was provided. In its handling of this request the Commissioner finds the Cabinet Office in breach of sections 10(1), 17(1) and 17(3).

The Commissioner's Role

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

2. The complainant made the following request on 14 September 2010:

'I would like to make a request for information under the FOI Act. The request concerns the drafting of the September 2002 dossier on "Iraq's weapons of mass destruction". I would like:

1) Any information, including drafts, relating to the process of drafting the wmd section of the dossier in February/March 2002, including any documents/emails/drafts relating to the paper "WMD programmes of

concern".

- 2) Any information showing the role of the CIC (Coalition Information Centre or otherwise) in drafting the dossier or any part thereof.
 - 3) In particular, the draft of the dossier headed "JIC Two Document Version 24 July 2002" (before that document was redrafted by John Williams of the FCO).
 - 4) Any other unpublished draft of the dossier or section thereof.
 - 5) In particular, any draft document representing or containing a summary (eg an executive summary) of the intelligence-based claims on Iraq's current wmd capabilities/programmes as set out in any draft of the dossier.'
3. On 13 October 2010 the complainant contacted the Commissioner to confirm that he had not received a response to his request within 20 working days.
 4. The Cabinet Office responded to the complainant's request on 21 October 2010. It stated that it would be citing several exemptions to the requested information, some absolute exemptions (sections 23 and 24) and some qualified exemptions (sections 24, 27 and 38). The Cabinet Office stated that it needed more time to consider the public interest test in relation to the qualified exemptions it had cited. It explained that a further 20 working days would be required and that the complainant should receive a response by 9 November 2010.
 5. On 9 November 2010 the Cabinet Office contacted the complainant again. It explained that it had not reached its decision on the public interest test and would require a further 20 working days to provide its response. This meant that the new response date would be 7 December 2010.
 6. On 18 November 2010 the Commissioner contacted the Cabinet Office to request that it respond to the complainant's request within the following 10 working days, that is by 2 December 2010. Further contact from the Cabinet Office to the complainant extended the time in which it would respond with its public interest test considerations to 7 January 2011.
 7. On 17 January 2011 the Commissioner contacted the Cabinet Office to advise it that since a response regarding the public interest test had not been provided to the complainant, he would issue a formal decision requiring the Cabinet Office to provide its public interest considerations.

8. However, in an email to the Commissioner dated 17 January 2011 the Cabinet Office explained that a response would be provided by 4 February 2011. This extended its response time by a further 14 working days.
9. On 7 February 2011, the Commissioner contacted the complainant and asked him to confirm whether or not the Cabinet Office had provided him with the results of its public interest test. The complainant informed the Commissioner that this had not been done. On the same date the Commissioner informed the Cabinet Office that he would be issuing a Notice requiring it to provide its public interest test considerations to the complainant.
10. The Cabinet Office made further contact with the complainant, advising him that it would again need even more time to consider the public interest test and that its response would be provided by 4 March 2011.
11. This deadline was not met, however the public interest test considerations were provided to the complainant on 8 March 2011.

The Investigation

Scope of the case

12. On 13 October 2010 the complainant contacted the Commissioner to complain about the way that his request for information had been handled, specifically that no substantive response had been provided to him.

Analysis

Substantive Procedural Matters

Section 10 – Time for compliance with request and Section 17 – Refusal of request

13. Section 10(1) of the Act 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 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."

14. The Commissioner accepts that the Cabinet Office did confirm that it held information relating to the request - though it has to be inferred from the wording of its initial response which advised the complainant that it would need further time to consider the exemptions which applied to his request. The Commissioner has therefore determined that the Cabinet Office complied with section 1(1)(a) of the Act.

15. However, the complainant made his request on 14 September 2010 and the Cabinet Office responded in accordance with section 1(1)(a) on 21 October 2010. This response time is beyond the 20 working day limit prescribed by the Act, being 27 working days. The Cabinet Office therefore breached section 10(1) of the Act.

16. Section 17(1) of the Act 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."

17. The Cabinet Office's initial response, citing the exemptions it considered to apply to the requested information, was provided outside of the 20 working day limit. This constitutes a breach of section 17(1) of the Act.

18. 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.”

19. Therefore where a public authority wishes to rely on any of the Act's qualified exemptions to withhold requested information, it must provide a notice to the requestor containing its determination of the balance of the public interest test – where it considers the balance to favour the maintenance of an exemption - in '*...such time as is reasonable in the circumstances*'. This section therefore provides an extension of the prescribed time limit to respond in full, to public authorities when considering the public interest test.
20. The Commissioner has produced a Guidance Note¹ with regards to what is 'reasonable in all the circumstances'. He considers this to be an additional 20 working days to the initial 20 working days (i.e. 40 working days in total). If the public authority does not respond within this extended period it will be found by the Commissioner to be in breach of section 17(3) of the Act. Given that the Cabinet Office first explained that it would need further time to consider the arguments for the public interest on 13 October 2010 and only provided the determination of the public interest test on 8 March 2011 the Cabinet Office is clearly in breach of section 17(3) of the Act.

The Decision

21. The Commissioner's decision is that the public authority did not deal with the following elements of the request in accordance with the Act:
- In not complying with section 1(1)(a) of the Act within 20 working days it breached section 10(1).
 - In not issuing a refusal notice within 20 working days of the request it breached section 17(1).
 - In only providing its decision on the public interest to the complainant on 8 March 2011, it breached section 17(3).

¹http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/foi_good_practice_guidance_4.pdf

Steps Required

22. The Commissioner requires no steps to be taken.

Other matters

23. On 22 February 2007, the Commissioner issued guidance on the time limits for considering the public interest test (PIT). This recommended that public authorities should aim to respond fully to all requests in 20 working days. Although it suggested that it may be reasonable to take longer where the public interest considerations are exceptionally complex, the guidance stated that in no case should the total time exceed 40 working days. The Commissioner is concerned that in this case, the authority failed to communicate the outcome of the public interest to the complainant more than 120 working days after the request was submitted. This example of severe delay has been logged by the Commissioner's Enforcement team.

Right of Appeal

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.

Website: www.informationtribunal.gov.uk

25. 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.
26. 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 21st day of March 2011

Signed

**Alexander Ganotis
Group Manager – Complaints Resolution
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Freedom of Information Act 2000

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."

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."

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."