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Information Commissioner's Office

# Freedom of Information Act 2000 (FOIA)

# Decision notice

**Date:** **12 March 2013**

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

## Decision (including any steps ordered)

1. The complainant has requested information about the preparation given to government witnesses attending the Leveson enquiry. The Cabinet Office stated that it did not hold any information that was covered by the request. The Information Commissioner's decision is that it placed an unduly restrictive interpretation on the request, and that it did not deal with it in accordance with the requirements of section 1 of the FOIA.

2. The Information Commissioner requires the Cabinet Office to take the following steps to ensure compliance with the legislation:

   - issue a fresh response to the request under the FOIA, one which does not rely on its previous argument that it does not hold the information due to its interpretation of "coaching".

3. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply 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.

## Request and response

4. On 31 May 2012, the complainant wrote to the Cabinet Office and requested information in the following terms:

   *"Under the Freedom of Information Act, I require to know the following:*

> *1) Whether ministers, special advisors, civil servants and other government personnel were coached or in any way given preparation for their testimony to the Leveson enquiry.*
>
> *2) Whether any such coaching/preparation was provided to non-government witnesses, and if so, to whom.*
>
> *3) How any such coaching or preparation was funded.*
>
> *4) The cost of any such training or coaching.*
>
> *5) By whom the training/coaching was carried out.*
>
> *6) Any emails/texts sent from the private or official email accounts and mobile phones of ministers, officials and other agents regarding the above."*

5. The Cabinet Office responded on 2 July 2012, stating that it did not hold any information.

> *"I refer to your requests where you asked for information regarding any coaching received for the Leveson inquiry.*
>
> *I am writing to advise you that following a search of our paper and electronic records, I have established that the information you requested is not held by the Cabinet Office."*

6. The complainant wrote to the Cabinet Office on 2 July 2012, querying the response.

> *"Coaching (or 'refamiliarisation' to use the PM's laughable term for it) cannot possibly be organised without SOMEONE in government having full records of who received it, who provided it, and who paid for it."*

7. The Cabinet Office conducted an internal review and wrote to the complainant on 17 August 2012 with the outcome. It revised its position, stating that it did hold some information regarding coaching or preparation, but that it was exempt from disclosure under section 22 of the FOIA (information intended for future publication), with the public interest favouring maintaining the exemption.

8. It stated that the information would be released after part 1 of the Leveson inquiry and provided a written answer from Jeremy Hunt which it said confirmed this[1] (although in fact the commitment it cited was to publish the cost of Treasury Solicitors and Counsel, and so potentially would not have addressed points 2, 5 and 6 of the complainant's request for information).

## Scope of the case

9. The complainant contacted the Commissioner on 17 August 2012 to complain about the way his request for information had been handled.

10. During the course of the investigation the Cabinet Office reverted back to maintaining that no information was held, based upon a very specific interpretation of the wording of the request. This decision notice therefore concerns itself with that position, and the Information Commissioner has not considered the earlier application of section 22.

## Reasons for decision

11. During the early stages of the Commissioner's investigation, the Cabinet Office wrote to the complainant, informing him that it had reverted to its original position that it did not hold the information he had requested.

> *"This was the appropriate reply as no training or coaching in preparation for testimony was given to government witnesses. You then made a request to the Cabinet Office for an internal review of this decision, which I conducted. At this stage, I interpreted your request to include legal assistance provided to witnesses by the Treasury Solicitors within the scope of 'preparation for their testimony' which was why the Cabinet Office responded to say that the information held was exempt under Section 22(1) of the Freedom of Information Act.*

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[1] http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm120621/text/120621w0001.htm written answer 112773

> *I have looked again at your request and now believe that the original interpretation was the appropriate one. It is clear from the terms of your request that you are concerned with 'training' or coaching of 'witnesses'".*

12. It then went through the request point by point, explaining that because no training or coaching of witnesses had taken place, no information was held.

13. The Information Commissioner asked the Cabinet Office to clarify the position set out in its letter to the complainant as he considered it unclear. He commented that it appeared that the Cabinet Office considered "coached" to be a loaded term; one which implied that witnesses may have been directed to respond to questioning in a pre-determined manner, which might not necessarily be compatible with eliciting the truth when giving evidence.

14. The Commissioner commented that the Cabinet Office seemed to see a distinction between "coaching", and "providing legal assistance", and that it considered that the emphasis of the request was on the former, with its negative connotations, and not on the latter. It was this interpretation that led it to adopt a "not held" stance in response to the request, since it denied that any improper preparation of witnesses had occurred.

15. The Commissioner commented that if his understanding of the Cabinet Office's position was correct he considered it to have placed an unduly restrictive interpretation on the wording of the request.

16. In response, the Cabinet Office agreed that the Commissioner had correctly summarised its position, but disputed that the complainant's request was ambiguous or that it could be objectively read in any way other than the way it had interpreted it. It maintained that the complainant had asked for specific information which was not held by the department. In particular, it disagreed that a reasonable interpretation of the word "preparation", when considered in the context of a request concerning "training" and "coaching" of witnesses, could include legal assistance properly given to individuals for the purposes of their giving evidence before the Leveson enquiry.

17. The Cabinet Office argued that there is a significant distinction between the coaching or training of witnesses (which is prohibited under English law) and the provision of legal advice, assistance and representation, which the Cabinet Office is required to provide to employees acting in the course of their official duties. It conceded that the latter may properly include "witness familiarisation" but stated:

*"It is clear from the requester's correspondence, as well as the context, that the request is aimed at "witness coaching" rather than "witness familiarisation".*

18. The Cabinet Office's position therefore rests on it interpreting the request as being formulated around the assumption that a form of coaching or training of witnesses had taken place which is forbidden under UK law.

19. The Commissioner considers that public authorities have a duty to interpret requests objectively. If the language employed in the request causes difficulty in identifying the information that is required, then the public authority may, under section 1(3), revert back to the requestor for clarification.

20. In this case, the Cabinet Office has not done this because it considers the meaning of the request to be clear and unambiguous. The Commissioner does not agree with this viewpoint.

**"Coaching"**

21. The request for information commences with a question as to whether staff were "coached" in advance of giving testimony to the Leveson enquiry. The Cabinet Office has maintained a wholly negative understanding of the word "coached"; however, the Commissioner does not accept that the meaning it has ascribed is the sole meaning of the word.

22. The Shorter Oxford English Dictionary's definition of "to coach" is:

    *"Tutor, train, esp. individually or intensively (for an examination, competition etc); "give hints to; prime with facts".*

23. In the context of the request, the Commissioner considers that the first element of the definition *("Tutor, train…")* lends itself to a more neutral interpretation than the secondary part ("*give hints to; prime with facts*"). The Cabinet Office's understanding of the word seems to accord with the secondary part of the definition and it has argued that this understanding is the sole definition that should be considered when assessing the request.

24. The Commissioner considers it unreasonable for the Cabinet Office to apply only this interpretation of the word when it is popularly understood to have a number of other more neutral meanings. The Cabinet Office had a duty to take account of the alternative meanings when interpreting the request. (The Commissioner's position takes

account of the Information Tribunal's comments in *Mr E Barber v IC* (EA/2005/004) regarding this point.)

25. The effect of the Cabinet Office's restrictive interpretation of the word "coached" was that information which is held was excluded from the scope of the request. The Commissioner considers that this approach represents a disproportionate response to the problem the Cabinet Office believed that it faced. It had the opportunity to contextualise any disclosure it made when responding to the request. It could have dealt with any concerns it had about the definition of "coached" by explaining its understanding of the term, and clarifying that enquiry witnesses had not been improperly prepared.

**"Preparation"**

26. Even if, for the sake of argument, the Commissioner accepted the Cabinet Office's argument that the term "coached" implies acceptance of some form of improper conduct, the scope of the first question is extended by the addition of "…*or in any way given preparation…*".

27. The use of the word "or" effectively breaks the question into two parts, capable of being considered separately from each other.

28. The Shorter Oxford English Dictionary defines "preparation" as:

> "*The action or process, or an act, of preparing; the condition of being prepared; making or getting ready*".

29. The Commissioner does not consider that this definition lends itself to being interpreted negatively. It would seem reasonable and even desirable that witnesses receive proper support prior to attending court on behalf of their employer. Such support could include, for example, learning about the protocols and procedures of the enquiry, how to address various enquiry members, who to respond to when being questioned and familiarisation with the evidence under scrutiny.

30. The Commissioner therefore considers that even if the Cabinet Office were to operate the definition of "coached" that it has proposed, a reasonable interpretation of "…*or in any way given preparation*" could not lead it to the conclusion that it held no information which was relevant to the request.

31. The Cabinet Office has argued against this, stating that throughout the request the complainant has used the words "coaching" and "preparation" together, and that this indicates he considered them interchangeable. It has used this argument to reject the Commissioner's

view that “preparation” can or is intended to refer to a separate or additional category of information from “coaching”.

32. In response, the Commissioner considers that in the first question the complainant was establishing his general sphere of interest, and that subsequent questions are framed more concisely in order to avoid repetition. He considers the placement of the words “coaching” and “preparation” next to each other as a stylistic device, done for the sake of brevity, and does not agree that it is indicative of the complainant’s view that they are interchangeable.

**Intended meaning**

33. The Cabinet Office has not sought clarification from the complainant as to the intended meaning of his request. As stated in paragraph 16, above, it expressly rejected any arguments that the request was aimed at eliciting information about witness familiarisation. It cited the context of the request and the complainant’s other correspondence as supporting this view.

34. A public authority is required to read a request impartially. Where a request clearly specifies the information required, the authority’s background knowledge of the requester or their interests should not affect the information they receive.

35. For his part, the Commissioner has been careful not to assume the intended meaning of the request, and has sought clarification from the complainant on this point.

36. The complainant has explained:

> *“My request was for information on any preparation or coaching provided to ministers or their assistants for their testimony to the Leveson enquiry - specifically for details of what this training consisted of, what it cost, who provided it and how it was funded. David Cameron already mentioned 'refamiliarisation' that was provided, so I know for a fact that preparation was provided.”*

37. The complainant’s clarification suggests that he intended the request to cover preparation in a very broad sense. The phrase “…w*hat this training consisted of…*” suggests no prior knowledge of the content or purpose of the training. Furthermore, his request for an internal review expressly used the word “refamiliarisation”, which the Cabinet Office should have recognised as referring to the general preparatory work being done with witnesses.

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38. For all of the reasons stated above, the Commissioner is satisfied that the Cabinet Office employed an unduly restrictive interpretation of the request for information and that it did not deal with it in accordance with section 1(1) of the FOIA.

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## Right of appeal

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39. 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: 0300 1234504
    Fax: 0116 249 4253
    Email: informationtribunal@hmcts.gsi.gov.uk
    Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

40. 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.

41. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed ………………………………………………**

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