

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 14 July 2016

**Public Authority:** Foreign and Commonwealth Office ('FCO')

**Address:** King Charles Street  
London  
SW1A 2AH

#### Decision (including any steps ordered)

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1. The complainant has requested information on part of a draft dossier on Iraq's weapons of mass destruction.
2. The Commissioner's decision is that, on the balance of probabilities, the FCO does not hold the requested information.
3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

#### Request and response

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4. On 22 June 2015, the complainant wrote to the FCO with a copy of his request for information dated 20 May 2015 and requested information in the following terms:

"The request relates to the second "intelligence" part of the draft dossier on Iraq's weapons of mass destruction [programmes] produced by John Williams, ie subsequent to the "9 September" draft dossier disclosed in February 2008. Paragraph 10 of the attached FCO minute refers to the 'second "intelligence" part'.

Please provide me with a copy of this document. In the alternative, if the document was as stated published by Lord Hutton, please provide me with the location and/or reference on the (archived) Hutton Inquiry website.

Please note, I have not been able to identify the document on the

archived Hutton Inquiry website. No document there is identified as such. If it is there, I will need the information requested in order to identify it."

The paragraph 10 minute states:

*"In practice, Hutton published all formal drafts of the dossier including the second "intelligence" part of the Williams' draft."*

5. The FCO responded on 20 July 2015. It stated that information relevant to the request was not held – other than the document already released to you under the Freedom of Information Act in 2008.
6. Following an internal review the FCO wrote to the complainant on 18 August 2015. It upheld its original position.

### Scope of the case

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7. The complainant contacted the Commissioner on 20 August 2015 to complain about the way his request for information had been handled. The complainant stated his opinion that the FCO does hold the requested information. At the time of his complaint the complainant did not provide any further reasoning for his opinion. However, following the Commissioner's correspondence of 24 February 2016 the complainant provided his reasons for believing that the requested information is held by the FCO.
8. The complainant's request in this case is based on information he received as a result of a previous FOIA request from 2007. The FCO refused his request however following a complaint to the Commissioner and an Information Tribunal appeal the FCO disclosed the draft dossier re-drafted by Mr Williams in 2008.
9. The Commissioner considers that the scope of his investigation is to determine whether, on the balance of probabilities, the requested information is held by the FCO.

### Reasons for decision

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10. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether that information is held and, if the information is held, to have that information communicated to him.

11. In cases where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – in accordance with a number of First-tier Tribunal decisions – applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely or unlikely that the public authority holds information relevant to the complainant's request.
12. The Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the public authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.

#### The complainant's view

13. The complainant highlighted to the Commissioner that his request focuses on a document which he believes was produced by Mr John Williams (Senior Press Officer in the FCO in 2002) rewriting an existing text, covering the intelligence-based section of the September 2002 Iraq dossier. The complainant makes clear that this document would be subsequent to the "9 September dossier" already disclosed.
14. The complainant believes that Mr Williams redrafted the intelligence part of the dossier and therefore that the FCO must hold this draft. The complainant relies on various statements or comments from individuals contained in information previously disclosed and available in the Hutton Inquiry archives. For the sake of completeness the Commissioner will detail this evidence below.
15. As quoted in the complainant's request, the Hutton Inquiry website states: "*Hutton published all formal drafts of the dossier including the second 'intelligence' part of the Williams' draft*". Understandably, it is reasonable for the complainant to conclude that the 'second "intelligence" part exists and could have been published by Lord Hutton.
16. The complainant references a minute from Sir John Scarlett (Head of the Joint Intelligence Committee) in June 2003 and his description that the aim of involving communications officials like Mr Williams was "to ensure that the public assessment [the dossier] deployed the intelligence effectively."

17. Again from the Hutton Inquiry website, the complainant cites Mr Williams' note to Alastair Campbell (6 September 2002):

"I have spoken to Jack [Straw, Foreign Secretary] and Michael Jay [FCO Permanent Secretary] about the media-friendly editorial job that will need to be done when John Scarlett and his team have produced the dossier."

18. The disclosed Williams' re-draft contains a comment from Mr Williams typed in the intelligence section:

"I don't propose to rewrite this until I take delivery of the new version."

The references in paragraphs 16 to 18 above, in addition to other references, led the complainant to believe that Mr Williams was involved in rewriting an existing text covering the intelligence-based sections of the 2002 Iraq dossier.

19. The complainant referred the Commissioner to a disclosed email, dated 10 September 2002, from Daniel Pruce to Mark Matthews (both Press Officers at this time). The email provides Mr Pruce's thoughts on Mr Williams' draft of 9 September 2002 including the comment:

"we also need to think, once we have John's further draft tomorrow, how we prepare the ground for the launch of the text to get expectations in the right place."

The complainant therefore concludes that a further draft was produced by Mr Williams, in addition to the draft disclosed in 2008.

20. The complainant has a particular interest in the matters surrounding the Iraq war and in considering information disclosed and in the public domain, he provided the Commissioner with a comparison of extracts taken from three versions of the dossier. This comparison indicated paragraphs of text found in Mr Williams' re-draft of the dossier from 9 September 2002 appearing in the draft of the dossier circulated by Sir John Scarlett dated 10/11 September 2002.

21. The complainant further relies on Mr Williams' statement to the Iraq Inquiry in which, at paragraph 17, he states:

"It was a routine job of taking the strongest points and putting them in an executive summary,"

The complainant considers that Mr Williams is here acknowledging his re-drafting and therefore his creation of the September 10/11 2002

dossier's executive summary. The Commissioner notes that many of the bullet points listed in paragraphs 5 and 6 of the executive summary appear to be listed on pages 5, 6, and 7 in the John William's re-draft of 9 September 2002.

#### The FCO's view

22. The FCO referred the Commissioner to three drafts of the dossier contained in the Hutton Inquiry website. A version dated 20 June 2002 entitled; "British Government Briefing Papers on Iraq"; a version entitled; "Iraqi WMD Chemical, Biological and Nuclear Programmes- The Current Threat" appearing on the website as "Draft dossier September 02" and a further version dated 5 September 2002 entitled; "Iraqi WMD Programmes appearing as "Draft dossier Iraqi WMD Programme".
23. The FCO also referred the Commissioner to a Minute from Sir John Scarlett to the Prime Minister, dated 4 June 2003, which sets out the background to the preparation of the final Government Assessment entitled; "September 2002 Iraq Dossier". In paragraph 6 of that Minute Sir John writes;  
  
"The drafting of the revised document was co-ordinated by Julian Miller working with representatives of Departments, including DIS, SIS, GCHQ and FCO. There were two meetings of two to three hours each, numerous exchanges of drafts and constant consultations between the experts concerned. With the agreement of the Agencies, representatives from the No 10(Danny Puce) and FCO Press Offices (John Williams, Paul Hamill and James Paver) were involved. The aim was to ensure that the public assessment deployed the intelligence effectively, taking account of the reliability of the information and the demands of source protection."
24. The FCO considers that the above extract indicates that the role of John Williams was as an ancillary, presentational one, revising an already existing text which had been under preparation since March 2002 and which already included an intelligence component.
25. The complainant has based his request on information contained in the FCO document of 17 May 2007 considering its response to a decision notice requiring release of the Williams re-draft, which had been previously disclosed under the FOIA. The document states:

*"In practice, Hutton published all formal drafts of the dossier including the second "intelligence" part of the Williams' draft."*

The FCO has informed the Commissioner that this assertion was incorrect. Firstly, the FCO states that Lord Hutton did not publish the version drafted by Mr Williams which was disclosed under the FOIA in 2008. The FCO explained that the Williams re-draft was submitted to the Hutton Inquiry in 2003 but was not eventually published on the Inquiry website. The FCO explained;

"This may either have been through an oversight or alternatively a recognition that it in fact had no formal status."

26. Secondly, the FCO explained that Mr Williams, as a Senior Press Officer in the FCO in 2002 was not;

"in a position to write as an expert in intelligence issues."

The FCO supports this opinion with reference to Mr Williams' statement to the Chilcot Inquiry (6 December 2010) in which he explains that he was not in a position to judge the quality of specific intelligence and that it would have been;

"...improper for a spokesman to question the accuracy of the intelligence"

The FCO thus concludes that;

"John Williams therefore did not, and in fact could not, have originated any of what became the September 2002 Government Assessment, least of all its intelligence section."

27. In addressing the point covered in paragraph 17 above, the FCO commented that Mr Pruce had not been interviewed to determine his views on his email. However, the FCO view is that Mr Pruce and Mr Matthews were not involved with the production of the Government Assessment. It went on to explain that;

"Mr Pruce may well have believed that John Williams was intending to prepare a 'further draft'. But Mr Williams' initial re-draft was not used and he was not asked or required to produce any further draft."

28. The FCO went on to state that Mr Williams accompanied the Foreign Secretary, Mr Straw, to New York from 10-16 September 2002 and was not in the country at the relevant time.

29. The Commissioner notes Sir John Scarlett's correspondence with Mr Alastair Campbell on 10 September 2002 entitled "The Iraq Dossier" (Hutton Inquiry website reference CAB/23/0002). Paragraph 2 reads;

"This has been significantly recast, with considerable help from John Williams and others in the Foreign Office.....But we have now reached the stage where it would be helpful to have your advice on presentation. I know that John Williams is also looking at the text, and may offer further views from New York."

30. In response to the Commissioner's questions in respect of Sir John's comments reproduced in paragraph 29 and the comparison created by the complainant detailed in paragraph 18 the FCO explained that Mr Williams was asked at a "very late stage" to show how existing material could be turned into a public document. The FCO explained:

"It is not therefore surprising..... that there will be material that is common to the version re-drafted by Mr Williams and the one that was eventually published."

31. In the light of the FCO's response detailed in paragraph 30, the Commissioner asked the FCO to explain its earlier assertion that Mr Williams' re-draft was "simply not used in the final stages leading to publication". The FCO reiterated that Mr William's "initial re-draft" (i.e. the previously disclosed re-draft of 9 September 2002) was not used or taken any further. It again relied on Mr William's New York visit during 10-16 September 2002 as one reason why;

"he did not and could not prepare a 'second intelligence' part of the draft dossier."

32. In common with all his investigations concerning public authorities claiming not to hold requested information, the Commissioner asked the FCO to respond to a series of questions detailing the searches undertaken to locate the information. The FCO did not provide specific responses to the questions, however, it provided a rationale supporting its determination.

33. The request was considered by the FCO Unit which is providing assistance to the Chilcot Inquiry in terms of extensive document searches. The Unit has complete records of all the documents sent to the Inquiry, numbering approximately 30,000. The FCO explained:

"The alleged 'intelligence draft' by John Williams has never been found either by FCO – or Cabinet Office. If it existed it would have been identified and sent to the Inquiry in common with every other relevant document that we have identified, nothing has been held back."

The FCO went on to explain that its initial response to the Commissioner was;

"the result of a significant and time-consuming research exercise that attempted to clarify the confusion surrounding this request."

34. The FCO explained that to provide the Commissioner with any additional detail, it would need to speak with the individuals involved at the time of the drafting of the documents. This would include Mr Williams, Mr Pruce, Sir John Scarlett and at least three other former FCO colleagues who are retired or working overseas and a "detailed and complex investigation of the events of 2002."

#### The Commissioner's view

35. The Commissioner has considered the points made by both parties. He acknowledges the complainant's significant interest and detailed knowledge of matters concerning the Iraq war and in particular the Government's Iraq dossier.
36. The Commissioner is satisfied that all parties understand that the complainant recognises that Mr Williams had no role in *originating* any part of the dossier. The complainant made clear to the Commissioner that his request was for a document he believed to have been produced by Mr Williams by rewriting existing text covering the intelligence- based section of the September 2002 dossier.
37. The Commissioner accepts that one view of the extracts from records at the time highlighted by the complainant, as set out in paragraphs 14 – 20, is that they appear to demonstrate that Mr Williams was involved with drafting versions of the Iraq dossier subsequent to the re-drafted version of 9 September 2002 already in the complainant's possession. This creates an understandable impression that a further version of the 'intelligence part' of the dossier could exist, beyond the information already disclosed.
38. The Commissioner notes that the FCO acknowledges that Mr William's re-draft of 9 September 2002 was used in the subsequent drafts.
39. The Commissioner does not accept that Mr William's absence during the period 10-16 September 2002, whilst accompanying Mr Straw to New York, would have necessarily prevented Mr Williams from being involved with further re-drafting. Sir John Scarlett's comment reproduced in paragraph 27 states that Mr Williams "...may offer further views from New York". There appears to be no evidence whether Mr Williams did or did not offer any further views.
40. The Commissioner considers that from the evidence provided by the complainant and the FCO a reasonable conclusion is that there was a



clear intention for Mr Williams to re-write intelligence material, albeit not to originate it. However, the Commissioner cannot conclude that the intention became a reality.

41. The FCO is unequivocal in stressing that the only information it holds within the scope of the request comprises the Williams' re-draft already disclosed.
42. The Commissioner notes the FCO's comments in regard to its reliance, in this case, on the searches undertaken for the Chilcot Inquiry. He accepts that the extensive searches carried out for the Inquiry are likely to have located the requested information, if held. The Commissioner also accepts that the interviewing of individuals as described in paragraph 33 goes beyond the required searches for the purposes of the FOIA.
43. In the circumstances of the case and on the balance of probabilities, the Commissioner concludes that the requested information is not held by the FCO.

## Right of appeal

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44. 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: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

45. 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.
46. 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** .....

**Gerrard Tracey**  
**Principal Adviser**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**