



**Information Commissioner's Office**  
Promoting public access to official information  
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## **Freedom of Information Act 2000 (Section 50)**

### **Decision Notice**

**Dated 7 July 2006**

**Public Authority:** Cabinet Office ('the Cabinet Office')  
**Address:** Admiralty Arch  
The Mall  
London  
SW1A 2WH

#### **Summary Decision and Action Required**

**The Commissioner's decision in this matter is that the public authority has partly dealt with the complainant's request in accordance with Part I of the Act. The Cabinet Office did not reply to the request within twenty working days and therefore it breached sections 1 and 10 of the Act. However, as a Refusal Notice has now been issued and the Cabinet Office has also complied with the duty under section 1 (1) (a), the Commissioner has not ordered any remedial steps.**

**The Commissioner is satisfied that Cabinet Office appropriately determined that the public interest favoured maintaining the exemptions in sections 35 and 42 in relation to some of the requested information and therefore the duty to provide information in section 1 (1) (b) did not apply. Therefore the Cabinet Office complied with the Act in refusing to supply that information to the complainant.**

- 1. Freedom of Information Act 2000 (the 'Act') – Applications for a Decision and the Duty of the Commissioner**
  - 1.1 The Information Commissioner (the 'Commissioner') has received an application for a decision whether, in any specified respect, the Complainant's request for information made to the public authority has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 (the 'Act').
  - 1.2 Where a complainant has made an application for a decision, unless:

- a complainant has failed to exhaust a local complaints procedure, or
- the application is frivolous or vexatious, or
- the application has been subject to undue delay, or
- the application has been withdrawn or abandoned,

the Commissioner is under a duty to make a decision.

- 1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.

## **2. The Complaint**

- 2.1 The complainant has advised that on 31 March 2005 the following information was requested from the Cabinet Office in accordance with section 1 of the Act.

Information relating to legal advice given by the Attorney General over war in Iraq between late February 2003 and 17 March 2003. In particular:

- i) information relating to meetings between the Attorney General and 10 Downing Street personnel during the first two weeks of March 2003 at which Iraq was discussed;
- ii) information in relation to the retention of a greater balance of legal advice than Christopher Greenwood QC on the legality of war in Iraq; and
- iii) any form of document produced for, or possessed by, the Cabinet Office from Lord Goldsmith on war with Iraq.

- 2.2 The Cabinet Office acknowledged receipt of the request on 1 April 2005. The complainant was informed via email that the request had been forwarded to 10 Downing Street and that a letter had been sent explaining that the time for a response would be extended. On 14 June 2005 the complainant contacted the Commissioner to request assistance in obtaining a reply. The aforementioned letter had not been received nor had a substantive reply to the original request. The Commissioner contacted the Cabinet Office on 7 July requesting an update on the progress of the request. A substantive reply was provided to the complainant on 27 July 2005.

- 2.3 The substantive reply to the complainant stated that some information relevant to part i) of the request was already in the public domain. The complainant was referred to the Report of the Butler Review of Intelligence and Weapons of Mass Destruction. This recorded that the Attorney General had a meeting with Lord Falconer and Baroness Morgan of Huyton on 13 March 2003 when he informed them of his clear view that it was lawful under Resolution 1441 to use force without a further UN Security Council resolution. The complainant was also

referred to the briefing by the Prime Minister's Official Spokesperson on 11 March 2003.

2.4 The Cabinet Office confirmed that other information relevant to part i) of the request was held but that it was exempt under sections 35 (1) (a) and (c) and section 42 (1) of the Act. The reply set out the arguments that the Cabinet Office had taken into account when deciding that the public interest favoured maintaining those exemptions and that therefore the duty to provide information in accordance with section 1 did not apply.

2.5 The Cabinet Office also stated that it did not hold any information in relation to part ii) of the request. It referred the complainant to written answers given in Parliament by the Solicitor General on 29 March 2004, 8 March 2005 and 21 March 2005. On the 8 March 2005 the Solicitor General stated that,

“Professor Greenwood did not contribute to the drafting of the Attorney-General's advice on the legality of the use of force against Iraq. As I set out in my reply to the right hon. and learned Member for North-East Fife (Sir Menzies Campbell) on 29 March 2004, *Official Report*, column 1147W, no non-Governmental experts or lawyers were asked to advise the Attorney-General on whether the conflict in Iraq was lawful. Professor Greenwood was instructed to assist in relation to legal issues arising from the Iraq conflict, including the preparation of the Attorney-General's statement to Parliament on 17 March 2003”.

2.6 In relation to part iii) of the request the Cabinet Office also referred to some information that was already available in the public domain. In particular, reference was made to the Attorney General's advice to the Prime Minister dated 7 March 2003 and the letter from the Legal Secretary to the Law Officers to the MoD Legal Adviser on 14 March which confirmed that the Attorney General was satisfied that the proposed military action by the UK would be in accordance with national and international law. The Cabinet Office provided web addresses at which the aforementioned information could be accessed. The remainder of the information held by the Cabinet Office which was relevant to part iii) of the request was deemed to be exempt under sections 35 (1) (a), (b) and (c) and 42 (1) of the Act. The Cabinet Office determined that the public interest favoured maintaining the exemptions and therefore the duty to provide information in section 1 of the Act did not apply.

2.7 The complainant requested an internal review from the Cabinet Office in an email dated 31 July 2005. In correspondence with the Commissioner the complainant has explained that they particularly asked whether the absence of information relevant to part ii) of the request meant that the Cabinet were unaware of differences and

disputes of legal opinion, for example with the Foreign Office, over legality of war with Iraq and thus achieving a greater balance of opinion was not an issue. Alternatively, were the Cabinet aware of differences and disputes of legal opinion but did not regard retaining a greater balance of views as an issue in accepting the Attorney General's advice? In addition the complainant did not agree with the decision to maintain the exemptions in section 35 or 42 in relation to the information relevant to parts i) and iii) of the request.

- 2.8 The Cabinet Office communicated the outcome of its internal review to the complainant in a letter dated 7 October 2005. In response to the request for clarification about additional legal advice sought, the Cabinet Office stated that the Attorney General provided the definitive legal advice to the Government. It also stated that it was a matter of public record and was widely reported in the media that there were serious legal arguments on both sides of the debate. The Cabinet Office also upheld the decision to maintain the exemptions in sections 35 and 42.
- 2.9 The complainant contacted the Commissioner on 17 October 2005 and requested that he consider the Cabinet Office's handling of the request. In particular the complainant explained that they were not satisfied that the Cabinet Office had appropriately decided that the public interest favoured maintaining the exemptions. In addition the complainant was not satisfied with the response in relation to part ii) of the request.

### **3. Relevant Statutory Obligations under the Act**

#### **3.1 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.”

#### **3.2 Section 10 provides that –**

“ (1) ...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” and

“ (3) If, and to the extent that –

- (a) section 1 (1) (a) would not apply if the condition in section 2 (1) (b) were satisfied, or

- (b) section 1 (1) (b) would not apply if the condition in section 2 (2) (b) were satisfied,

the public authority need not comply with section 1 (1) (a) or (b) until such time as is reasonable in the circumstances; but this does not affect the time by which any notice under section 17(1) must be given”.

### 3.3 **Section 17** provides that –

“(1) 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”.

## 4. **Review of the case**

- 4.1 In the letter to the complainant dated 7 October the Cabinet Office explained that it had only conducted an internal review on the response to the third part of the request. This is because it treated the questions raised by the complainant regarding parts i) and ii) as requests for clarification. It stated that the complainant should revert to the Cabinet Office if they required an internal review of the substantive response to the first two parts of the original request.
- 4.2 In light of the time taken by the Cabinet Office to conduct the internal review the Commissioner does not consider that it would have been reasonable to expect the complainant to revert to it for a further review. The Commissioner has discretion to consider an application for a decision even if the person requesting it has not exhausted the complaints procedure provided by the relevant public authority. In this instance he has decided that it would be appropriate to consider this complaint without requiring the complainant to revert to the Cabinet Office.
- 4.3 The Commissioner has considered whether the Cabinet Office complied with part I of the Act when processing the complainant’s request. When considering this complaint the Commissioner has primarily based his decision upon the investigation he conducted on a number of similar complaints against the Cabinet Office and the Legal Secretariat to the Law Officers (‘LSLO’). Those complaints related to requests for similar information and resulted in an Enforcement Notice being served on the LSLO on 22 May 2006. This required the LSLO to

produce a Disclosure Statement which set out the substance of information which led to or supported the conclusions made public by the Attorney General in his 17 March 2003 Statement. A copy of the Enforcement Notice is attached at Annex A.

- 4.4 Details of the inspections that the Commissioner has carried out and of the information that he has taken into account in reaching his decision, can be found in paragraphs B1, B2, B5 and B6 of the Enforcement Notice.
- 4.5 In addition, in an email dated 7 July 2005, the Commissioner asked the Cabinet Office to supply copies of correspondence sent to the complainant. On 24 August the Cabinet Office supplied a copy of the letter to the complainant dated 27 July 2005. In determining whether the Cabinet Office complied with the procedural requirements of Part I of the Act the Commissioner has relied upon the information supplied by the complainant and the Cabinet Office.

## **5. The Commissioner's Analysis**

- 5.1 The Commissioner is satisfied that he inspected all of the information that is held by the Cabinet Office that is relevant to parts i) and iii) of the complainant's request during the investigation mentioned in section 4.1 above. The Cabinet Office relied upon the same exemptions and public interest arguments in this case as it applied in relation to the requests that were the subject of the aforesaid investigation. Therefore the Commissioner has determined that the considerations set out in sections B9 to B11 of the Enforcement Notice regarding the application of the exemptions in sections 35 and 42 also apply in this case.
- 5.2 In addition the Commissioner has decided that the public interest considerations set out in sections C8 to C27 of the Enforcement Notice also apply to the information relevant to parts i) and iii) of this complaint.
- 5.3 In the initial letter to the Commissioner the complainant explained that they had chased a reply from the Cabinet Office when a response was not provided within twenty working days. The complainant was informed that a letter had been sent to explain that the time for a response would be extended. However no such letter was received by the complainant, nor was a copy provided to the Commissioner by the Cabinet Office. In view of this it appears that the Cabinet Office did not issue a Refusal Notice compliant with section 17 of the Act within the requisite twenty working days.
- 5.4 The Commissioner has also considered the Cabinet Office's reply to part ii) of the request. In the Commissioner's view this part of the request is slightly unclear. However it appears to have been interpreted by the Cabinet Office as a request for information about advice given by non-Government advisers, other than Christopher Greenbank QC,

on the legality of war in Iraq. As mentioned in paragraph 2.5 above, in the reply to the complainant dated 27 July 2005, the Cabinet Office referred to various written answers given in Parliament by the Solicitor General. These answers explained that no non-Government advisers were asked to advise the Attorney General on whether the conflict in Iraq was lawful. In light of this the Commissioner is satisfied that the Cabinet Office does not hold information relevant to the second part of the request.

## **6. The Commissioner's Decision**

- 6.1 In respect of parts i) and iii) of the request, the conclusions that the Commissioner expressed about sections 35 and 42 and the public interest test in the Enforcement Notice also apply to the information held by the Cabinet Office which is relevant to this case. Those conclusions are set out in paragraphs D4 to D16 inclusive. The Commissioner is satisfied that the Cabinet Office does not hold any material relevant to the complainant's request which he has determined should be disclosed. He is satisfied that the Cabinet Office has appropriately maintained the exemptions in sections 35 and 42 and therefore it was not under any obligation to supply the information to the complainant under section 1 of the Act.
- 6.2 However the Commissioner has also concluded that in failing to supply a Refusal Notice in accordance with section 17 of the Act to the complainant within twenty working days the Cabinet Office breached section 10 (1) of the Act.
- 6.3 The Commissioner is satisfied that the Cabinet Office does not hold information relevant to part ii) of the request. This fact was communicated to the complainant in the letter dated 27 July 2005. Therefore the Commissioner's decision is that the Cabinet Office has complied with section 1 (1) (a) of the Act. However in failing to comply with section 1 (1) (a) within twenty working days, the Cabinet Office also contravened section 10 (1) of the Act in this regard.

## **7. Action Required**

- 7.1 The Commissioner has concluded that the Cabinet Office acted in accordance with the Part I of the Act in refusing to supply information relevant to parts i) and iii) of the request. However as the Refusal Notice was not issued until 27 July 2005 the Cabinet Office did contravene section 10 (1). However as a Refusal Notice has now been provided and the Commissioner agrees that the duty under section 1 (1) (b) did not arise in relation to parts i) and iii) of the request he has not ordered any remedial steps.
- 7.2 The Commissioner accepts that the Cabinet Office does not hold information relevant to part ii) of the request. However in failing to confirm that fact within twenty working days the Cabinet Office

contravened section 10 (1). As the Cabinet Office has now complied with section 1 (1) (a) the Commissioner has not ordered any remedial steps.

**8. Right of Appeal**

8.1 Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

8.2 Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

**Dated the 7<sup>th</sup> day of July 2006**

**Signed .....**

**Richard Thomas  
Information Commissioner**

**Information Commissioner  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**



Ref: FS50079971

Annex A – Enforcement Notice served on the Legal Secretariat to the Law Officers dated 22<sup>nd</sup> May 2006.