



**Information Commissioner's Office**  
Promoting public access to official information  
and protecting your personal information

## **Freedom of Information Act 2000 (Section 50)**

### **Decision Notice**

**Dated 7 July 2006**

**Public Authority: Legal Secretariat to the Law Officers ('LSLO')**

**Address: 9 Buckingham Gate  
London  
SW1E 6JP**

#### **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 Commissioner has concluded that certain information within the scope of the request should have been provided to the complainant. In failing to supply the information which fell within the scope of the request (except that exempt under section 27) which led to or supported the conclusions made public by the Attorney General in the 17 March 2003 Statement the LSLO breached section 1 (1) and 10 of the Act.**

**In an Enforcement Notice dated 22 May 2006 the Commissioner required the LSLO to prepare a Disclosure Statement setting out the substance of all the recorded material falling within the scope of the request (except that which is specifically exempt under section 27 of the Act) which led to or supported the conclusions made public by the Attorney General in the 17 March 2003 Statement. The Disclosure Statement prepared by the LSLO and attached to the Enforcement Notice met the Commissioner's requirements. In view of this the Commissioner is satisfied that the LSLO has now met its obligation to supply information under the Act and therefore he has not specified any further steps in this notice.**

#### **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- the application has been withdrawn or abandoned,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 December 2004 the following information was requested from the public authority by email,

"Lord Goldsmith's full legal advice on the war/conflict with Iraq. Please also disclose or make available any ministerial correspondence, including correspondence of the Attorney General and the Solicitor General, on the subject of the legality of the Iraq conflict".

2.2 The request was acknowledged by the LSLO on 4 January 2005. On 24 January 2005 LSLO contacted the complainant seeking to clarify the scope of the request. The complainant confirmed that the request included correspondence between Ministers and correspondence with third parties outside Government such as letters to MPs.

2.3 A Refusal Notice was issued to the complainant on 25 January in relation to the request for "Lord Goldsmith's full legal advice on the war/conflict in Iraq". This stated that the LSLO did not consider that there was an obligation to disclose the information and cited the following exemptions as being relevant, sections 42 (1) (Legal Professional Privilege), 35 (1) (a), (b) and (c) (Formulation of government policy etc.), 41 (1) (Information provided in confidence) and 27 (1) and (2) (International relations).

2.4 On 1 February LSLO disclosed 11 letters within the scope of the second part of the request for Ministerial correspondence to the complainant. It refused to disclose a letter between the Attorney General and a member of the Cabinet citing section 35 (1) (b). However it stated that further time was required to consider the public interest test and indicated that a reply would be provided in approximately 5 days. LSLO also stated that the remainder of the

information held within the scope of the second part of the request was considered to be exempt under sections 42 (1), 35 (1) (a), 35 (1) (b) and 35 (1) (c). When citing the exemptions LSLO stated that it was relying upon the arguments set out in its letter of 25 January to justify their application.

- 2.5 On 8 February LSLO advised the complainant that having given further consideration to the letter between the Attorney General and the member of the Cabinet, the public interest favoured maintaining the exemption.
- 2.6 The complainant requested an internal review of the decisions to refuse access to the requested information via emails dated 25 January and 8 February.
- 2.7 On 11 February LSLO advised the complainant that following an internal review the decision had been made to uphold the refusal to disclose the majority of the requested information.
- 2.8 On 20 February 2005 the complainant made an application to the Commissioner for a decision under section 50 of the Act about whether the LSLO acted in accordance with its statutory obligations in refusing to disclose the requested information.

### **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(1)** provides that –

“...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”.

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

- 4.1 The Commissioner is aware that the request was made prior to the 1 January 2005 when the right of access to information came into effect. However as the request has been treated as valid under the Act by the

LSLO the Commissioner has decided that it is appropriate to consider the application for a decision under Section 50. In the course of the investigation LSLO has indicated that it is satisfied that the Commissioner's decision in this regard is appropriate. Therefore it will not appeal against any decision on the basis of the validity of the original request.

- 4.2 During the investigation the government released the Attorney General's advice dated 7 March 2003 ("the 7 March advice"), following a partial leak in April 2005. As that information is now in the public domain the Commissioner has not given further consideration to whether that information should have been disclosed, given that there are no remedial steps which he could order the LSLO to take in that regard. Therefore the decision set out in this notice relates only to other information within the scope of the request which is held by the LSLO.
- 4.3 In addition the LSLO has stated that reliance is no longer placed on section 41 as a possible exemption in relation to the information within the scope of the request. Therefore he has not considered whether or not reliance on section 41 was justified.

#### **The Commissioner's Investigation**

- 4.3 Details of the material that the Commissioner has inspected and of the information that he has taken into account in reaching his decision, can be found in paragraphs 1 to 6 of section B of the Enforcement Notice issued to the LSLO on 22 May 2006 and attached in Annex A.

#### **The Commissioner's Analysis**

- 4.4 The Commissioner's analysis of whether or not the exemptions cited by the LSLO, with the exception of section 41, have been appropriately applied is provided within paragraphs B8 -12 and section C of the Enforcement Notice in Annex A.

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

- 5.1 The Commissioner's decision about the exemptions and the public interest test is set out in section D of the Enforcement Notice in Annex A.
- 5.2 In refusing to supply those sections of the requested information which led to or supported the views made public by the Attorney General in the 17 March 2003 Statement to the complainant within twenty working days the LSLO has failed to comply with Part I of the Act and has acted in contravention of its obligations under sections 1 and 10 of the Act.

**6. Action Required**

6.1 The steps that the Commissioner required the LSLO to take are set out in Section E of the Enforcement Notice in Annex A. The Disclosure Statement prepared by the LSLO and attached to the Enforcement Notice met the Commissioner's requirements. Therefore the Commissioner is satisfied that the LSLO has now met its obligations in relation to disclosure under the Act and has not specified any further remedial steps in this Decision Notice.

**7. Right of Appeal**

7.1 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)

7.2 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 7th day of July 2006**

**Signed .....**

**Richard Thomas  
Information Commissioner**

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

Ref. FS50064590

Annex A – Enforcement Notice dated 22<sup>nd</sup> May 2006