

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 12 May 2008

**Public Authority:** Cabinet Office  
**Address:** Admiralty Arch  
North Entrance  
The Mall, London  
SW1A 2WH

### Summary

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The complainant requested *'the assessment by the Joint Intelligence Committee of Iraq's declaration of its weapons of mass destruction in December 2002'*. The public authority withheld the information under sections 23(1) and 24(1) of the Freedom of Information Act 2000 ('the Act'). As a result of the Commissioner's investigation the public authority reviewed its original decision and decided to release the information previously withheld under section 24. The Commissioner accepted an assurance from a senior official that the remaining information had been received from or related to bodies listed in section 23(1) and that it was therefore exempt under section 23(1). The Commissioner therefore required no further steps to be taken.

### The Commissioner's Role

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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

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2. On 4 January 2005 the complainant made a request to the Cabinet Office for *'the assessment by the Joint Intelligence Committee of Iraq's declaration of its weapons of mass destruction in December 2002'*.
3. The Cabinet Office replied on 1 February 2005. It confirmed that it held the information but was withholding it as exempt under sections 23(1) and 24(1) of the Act. It referred the complainant to his right to request an internal review.

4. On 1 March 2005 the complainant requested that review.
5. The Cabinet Office eventually replied on 5 September 2005. It upheld the original decision.

## The Investigation

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### Scope of the case

3. On 5 October 2005 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He expressed his view that there was a clear public interest in releasing the information in circumstances in which *'the accuracy of such matters is so widely queried'*; and pointed out that the report was *'almost three years old and it seems unlikely that sources and methods used for gathering data on Iraq's weapons of mass destruction retain currency'*.

### Chronology

4. The Commissioner wrote to the complainant and the Cabinet Office on 21 November 2006. He asked the Cabinet Office to comment on various issues and to provide the withheld information. He sent a reminder on 7 February 2007.
5. The Cabinet Office provided its comments on 19 February 2007.
6. After further contact with the Commissioner, the Cabinet Office wrote on 31 July 2007. It stated that it had reviewed its original decision and, in light of the fact that the name and subject of the Joint Intelligence Committee paper was, unusually, already in the public domain, it was now reassessing whether the public interest favoured releasing some of the information which had been withheld under section 24. It indicated that it would complete this exercise by 22 August. It stated that it was not reassessing the application of section 23, and proposed that a senior official provide written confirmation that that information had been supplied by a section 23 body.
7. The Cabinet Office subsequently indicated on 24 August 2007 that it needed an extension until 14 September 2007. On 14 September it telephoned the Commissioner to advise that it should in fact be able to provide a response on 19 September.
8. On 17 September 2007 the Cabinet Office informed the Commissioner that it was releasing some of the information and still expected to do so on 19 September. On 18 September, however, it stated that it would take longer. On 1 October it explained that there would be another delay because the matter was being considered by Ministers, and in a further telephone call on 24 October it stated that the matter was still being considered and that it was unable to give a timetable for finalising things.
9. The Commissioner wrote again to the Cabinet Office on 13 November 2007, reminding the authority of the delays already encountered.

10. On 23 November 2007 the Cabinet Office provided the Commissioner with evidence that it had on the same day written to the complainant enclosing a copy of the requested information which had previously been withheld under section 24 of the Act. It also sent a letter from the Director of Security and Intelligence in the Cabinet Office with his confirmation that the information which the Cabinet Office was continuing to withhold had indeed been received from bodies listed in section 23(1) or directly related to them.

## Analysis

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11. The complainant requested the Joint Intelligence Committee's assessment of Iraq's declaration in December 2002 regarding its alleged weapons of mass destruction. The Cabinet Office confirmed that it had the information but was withholding it as exempt under sections 23(1) and 24(1) of the Act. As a result of the Commissioner's investigation it has now released that part of the information to which it originally applied section 24. It continues to maintain that section 23(1) is engaged by the rest of the information.

### Exemption – section 23(1)

12. Section 23(1) states:

*'Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).'*

13. The Cabinet Office has confirmed that Joint Intelligence Committee assessments relied on intelligence provided by the intelligence collection agencies: the Secret Intelligence Service, the Security Service and GCHQ. Since these are bodies cited in section 23(3) of the Act the Commissioner is satisfied that section 23(1) would be engaged in this case if the withheld information was indeed supplied by or related to those bodies.
14. The Director of Security and Intelligence in the Cabinet Office told the Commissioner on 23 November 2007 that the information which the Cabinet Office was continuing to withhold had indeed been received from bodies listed in section 23(1) or directly related to them, and amounted to *'the line by line assessments by the Joint Intelligence Committee of intelligence received from the section 23 bodies'*.
15. The Commissioner is prepared, in limited circumstances, to accept the assurance of a senior official that information withheld under section 23(1) has indeed been supplied by or is related to security bodies specified in section 23(3). He will only do so where the official occupies a position in relation to the security bodies which allows them genuinely to validate the provenance of the information, and where the official is independent of the public authority's process for dealing with freedom of information requests. For completeness, it should be noted that the Commissioner retains the power to serve an Information Notice under section 51 where he considers it appropriate and in remains open to the public authority to obtain, in appropriate cases, a conclusive ministerial certificate under section 23(2). The

Commissioner is satisfied that the Director of Security and Intelligence in the Cabinet Office occupied such a position in this case. Accordingly, he has concluded that the remaining information that was withheld by the Cabinet Office engaged the exemption under section 23(1). Since section 23(1) is an absolute exemption, there is no public interest test.

## The Decision

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16. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

## Steps Required

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17. The Commissioner requires no steps to be taken.

## Other matters

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18. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.

19. Section VI of the Code of Practice (provided for by section 45 of the Act) makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information. As he has made clear in his *'Good Practice Guidance No 5'*, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer, but the total time taken should not exceed 40 working days, and as a matter of good practice the public authority should explain to the requester why more time is needed. Furthermore, in such cases the Commissioner expects a public authority to be able to demonstrate that it has commenced the review procedure promptly following receipt of the request for review and has actively worked on the review throughout that period.

20. In this case the complainant's internal review request was made on 1 March 2005, but the Cabinet Office did not provide its decision until 5 September 2005. It therefore took 130 working days to deal with the review. The Cabinet Office has explained in mitigation that the internal review in this case was *'detailed and involved discussions with a number of parties'* and that this was *'the first occasion that a member of the public had...ask[ed] for a named intelligence document'*; it also pointed out that it was one of the first internal reviews carried out by the Cabinet Office under the Act, and that subsequently it had introduced formal internal review procedures including specific targets for clearing cases. However, although the

decision was made before the Commissioner issued his guidance on internal review timescales, he takes the view that this was not a reasonable length of time to deal with the matter. He notes that the Cabinet Office did not provide any updates to the complainant, acknowledge the time which it had taken, or provide him with an apology when it eventually did send its decision. In the circumstances, the Commissioner wishes to register his view that the Cabinet Office fell short of the standards of good practice in failing to complete its internal review within a reasonable timescale.

## Right of Appeal

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21. Either party has the right to appeal against this Decision Notice to the Information 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)

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

**Dated the 12<sup>th</sup> day of May 2008**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

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

## Legal Annex

### 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.’

### Section 1(2) provides that –

‘Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.’

### Section 1(3) provides that –

‘Where a public authority –

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.’

### Section 1(4) provides that –

‘The information –

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.’

### Section 1(5) provides that –

‘A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).’

**Section 1(6)** provides that –

‘In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as ‘the duty to confirm or deny’.’

**Section 23(1)** provides that –

‘Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).’

**Section 23(2)** provides that –

‘A certificate signed by a Minister of the Crown certifying that the information to which it applies was directly or indirectly supplied by, or relates to, any of the bodies specified in subsection (3) shall, subject to section 60, be conclusive evidence of that fact.’

**Section 23(3)** provides that –

‘The bodies referred to in subsections (1) and (2) are-

- (a) the Security Service,
- (b) the Secret Intelligence Service,
- (c) the Government Communications Headquarters,
- (d) the special forces,
- (e) the Tribunal established under section 65 of the Regulation of Investigatory Powers Act 2000,
- (f) the Tribunal established under section 7 of the Interception of Communications Act 1985,
- (g) the Tribunal established under section 5 of the Security Service Act 1989,
- (h) the Tribunal established under section 9 of the Intelligence Services Act 1994,
- (i) the Security Vetting Appeals Panel,
- (j) the Security Commission,
- (k) the National Criminal Intelligence Service, and
- (l) the Service Authority for the National Criminal Intelligence Service.’

**Section 23(4)** provides that –

‘In subsection (3)(c) ‘the Government Communications Headquarters’ includes any unit or part of a unit of the armed forces of the Crown which is for the time being required by the Secretary of State to assist the Government Communications Headquarters in carrying out its functions.’



**Section 23(5)** provides that –

‘The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).’

**Section 24(1)** provides that –

‘Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security.’

**Section 24(2)** provides that –

‘The duty to confirm or deny does not arise if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of safeguarding national security.’

**Section 24(3)** provides that –

‘A certificate signed by a Minister of the Crown certifying that exemption from section 1(1)(b), or from section 1(1)(a) and (b), is, or at any time was, required for the purpose of safeguarding national security shall, subject to section 60, be conclusive evidence of that fact.’

**Section 24(4)** provides that –

‘A certificate under subsection (3) may identify the information to which it applies by means of a general description and may be expressed to have prospective effect.’