

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 24 May 2010**

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

### Summary

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The complainant's information request primarily pertained to differences in content between the text of a speech that had been distributed prior to its reading, and the actual speech given by Gordon Brown on 14 November 2007. The requestor also sought communication between the Cabinet Office (CO) and the organisation Common Purpose as well as details of the government's policy towards it. Finally the requestor sought details as to the measures taken by the CO to ensure that the correct version of the speech was distributed to MPs. The Cabinet Office confirmed to the complainant that the information was not held by the Prime Minister's Office. This position was confirmed after an internal review. The Commissioner accepts that no information is held as to the reasons why the Prime Minister changed his speech from the previously prepared text to the actual speech given. With regards to the remainder of the requests, the CO considered these were not valid requests for information and confirmed that they were not obliged to respond. The Commissioner does not agree that the requests were not valid, however he does accept that the information was not held by the Cabinet Office.

### 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 9 June 2008 the complainant made an information request concerning changes made from the published text of the proposed speech to the actual speech given by the Prime Minister in The Commons on 14 November 2007. The four part request , after clarification by the ICO and agreed by the complainant on 18 December 2008, was as follows:
  - i) *`Why, who by and when was the speech changed? As part of your reply, will you please provide the documents that generated the changes in the text of your speech so as to exclude mention of Common Purpose` (including all relevant recorded information).*
  - ii) *`Why didn't you issue the doctored version, which was read out in The Commons, to those who were sent the original version...As part of your reply, please provide copies of the correspondence between your office and Common Purpose informing them of your intention to include reference to them in your speech, and their replies to you. This will require the provision of the distribution list.`*
  - iii) *`What is this government's policy with respect to Common Purpose?`*
  - iv) *`Please ...indicate what measures you took to ensure that MPs were in possession of the correct version ie. The version excluding Common Purpose`.*
3. The Cabinet Office responded to the request on 9 July 2008, stating that the Prime Minister's Office did not hold the information.
4. On 14 July 2008 the complainant requested an internal review of the Cabinet Office's handling of his request.
5. The Cabinet Office conducted an internal review and communicated its findings to the complainant on 25 September 2008. The Cabinet Office (CO) stated that they had carried out a further search and again confirmed that they held no recorded information that fell within the terms of the request other than the text of the speech. By way of explanation the CO stated that copies of speeches distributed by the Prime Minister's Office to third parties in advance or at the time of his speech including for example to MPs and journalists, are headed "*check*

*against delivery*” because of the possibility that it might change on delivery for a variety of reasons including, for example, time constraints and responding to points raised during the course of a debate.

## The Investigation

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### Scope of the case

6. On 4 October 2008 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant stated that none of the issues that were raised in parts (i) to (iii) had been answered whilst part (iv) was only partially answered.
7. The complainant, in his request, had invited the Cabinet Office to speculate or opine on certain issues associated with Common Purpose. As these requests were not for the purpose of seeking information held by the Cabinet Office, they were discounted from the scope of the investigation.

### Chronology

8. On 18 February 2009 the Commissioner wrote to the CO with his understanding of the request. He advised the CO that a significant part of the investigation would hinge on the way in which a decision is taken to edit a speech after the initial, authorised version has been distributed. The Commissioner asked the CO to confirm:
  - At what stage, and by whom, was a decision made to amend the original transcript of the speech
9. The Commissioner acknowledged the CO’s position of not holding the requested information but pointed out the requestor’s reasonable expectation of the existence of the information. The ICO invited the CO to substantiate its position further.
10. The CO responded on 15 April 2009 and stated that they have never held information as to why the Prime Minister did not adhere 100% to the text of the speech distributed prior its reading when delivering it.
11. The CO stated that they would not be expected to hold information of this kind and that there were no record management policies for this or any statutory requirement to do so.

12. The CO confirmed that no relevant information had been destroyed since the initial request was received.
13. The CO provided the published guidance on the distribution of statements (see Annex1).
14. The CO stated that they did not hold information that showed the government's working approach to Common Purpose. However they did state that as the government had paid Common Purpose money to develop the employees of various departments, it may well be that those departments hold such information.
15. On 8 May 2009 the Commissioner wrote to the CO seeking further clarification. It pointed out that given the types of changes made to the speech it was understandable that the complainant had inferred that the decision to edit the speech was a considered one. The Commissioner pointed out that in cases of '*information not held*', he needed to consider whether an authority's position can be considered reasonable given an objective reading of the request in the case.
16. The CO responded on 2 June 2009 and stated that neither they, nor any other department, have ever held information as to why the Prime Minister deviated from the text of the speech distributed prior to its reading when delivering it.
17. Regrettably due to changes in personnel there was delay before the Commissioner was able to respond to the CO. However on 5 February 2010 the Commissioner wrote to the CO to advise them that whilst they had dealt with Part 1 of the information request they had not provided the answers to Parts 2 to 4.
18. The CO responded on 4 March 2010. They pointed out that the Act provides the requestor with an access right to recorded information but does not extend to requests for views or comments about a particular matter. The CO stated that parts 3 and 4 do not request recorded information and therefore they are not obliged to respond. With regards to part 2, they did not consider this to be a valid request but nevertheless confirmed that they did not hold any information.

## Analysis

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### Substantive Procedural Matters

Is relevant recorded information held?

19. An important initial point to make is that the Commissioner is limited to considering whether or not recorded information exists at the time of the request for information. This is the only information that a public authority is obliged to provide. This is made clear in section 1(4) of the Act. The time of the request was 9 June 2008.
20. In investigating cases involving a disagreement as to whether or not information is in fact held by a public authority, the Commissioner has been guided by the Information Tribunal in the case of *Linda Bromley & Others and Information Commissioner V Environment Agency (EA/2006/0072)*. In that case the Tribunal indicated that the test for establishing whether information was held by a public authority was not one of certainty, but rather the balance of probabilities. The Commissioner will apply that standard of proof to this case.
21. The complainant made a four part request and the Commissioner will consider each part in turn.
22. In the first part, the complainant argued that the speech delivered by Gordon Brown on 14 November 2007 had been altered to such an extent that a significant paragraph had been rewritten, expunging the names of two organisations that were included in the original advance versions of the speech to be delivered. The complainant further believed that the CO held details as to why the speech was changed.
23. The CO conceded that it was understandable as to why the complainant, having looked at the differences between the original script and the final speech as delivered, inferred that the decision to edit the speech was a considered one. The CO however maintained that they did not hold any information as to the reason as to why the Prime Minister deviated from the text of the speech distributed prior to its reading when delivering it.
24. Having looked at the differences in the content of the speech given by the Prime Minister to the original script that was released, it is apparent that there have been changes. Organisations such as the Karimia Institute and Common Purpose are not mentioned in the delivered speech. Other organisations such as Youth Debating Circles and Tag TV have similarly been omitted. The football club Tottenham Hotspur was mentioned in the original script whilst the delivered speech only made reference to "*Tottenham in Haringey*".
25. The original scripts of speeches released before the speech is delivered are marked "*check against delivery*". The CO has stated that the

reason for this is the distinct possibility of a delivered speech changing from that in the original script released prior to its reading.

26. The Commissioner believes that it is entirely possible that changes made to a speech on delivery might not be reflected in the scripts released prior to its delivery. The Prime Minister on delivering a speech might conceivably make changes to the prepared script depending on circumstances, including amongst other things time constraints. The Prime Minister may deviate from a prepared speech for reasons that might not be entirely clear. It is equally likely that there might not be any written records as to why a speech was changed by the Prime Minister on delivery.
27. The Commissioner did pursue the question of meta-data in the CO's computer system that would have allowed the tracking of changes relating to the document. He also sought to confirm whether any written amendments to the original transcript of the speech existed. The CO's response was that they were not expected to hold this information nor was there a record management policy or statutory requirement to do so. Whilst the CO has not explicitly stated that they do not hold meta-data, they have nevertheless been quite categorical in their assertion that they do not hold any information as to why the Prime Minister deviated from the prepared script of the speech. The Commissioner has accepted the explanation provided by the CO.
28. The second part of the request dealt with correspondence between the CO and Common Purpose. The CO confirmed, with regards to policy on the distribution of speeches, that they do not hold any recorded information on the matter as this will vary from speech to speech and records are not kept of the distribution of each speech. They did however refer the Commissioner to the statement of the Speaker of 9 June 2008 regarding the distribution of ministerial statements (Annex 1). The CO argued that whilst the requestor has a right to access, under the Act, recorded information, it does not extend to requests for views and comments about particular issues. Nor does it, they argued, require the CO to create new information for the purposes of responding to a request. Whilst they considered the first part of part 2 of the request not to be valid they did nevertheless confirm that they did not hold any information on the matter of correspondence with Common Purpose.
29. The Commissioner agrees that an invitation to speculate on why an action did not take place is not in itself a request for recorded information. However, in confirming to the Commissioner that no requirement or practice exists to require such an action the

Commissioner is satisfied that there is no information held as to why the action did not occur.

30. The Commissioner also has to consider, on the balance of probabilities, whether it is likely that the CO held no correspondence between themselves and Common Purpose and that they also did not hold a copy of the distribution list for the speech. In light of the fact that the Cabinet Office maintain that there was no communication with Common Purpose on this matter and the decision to include the reference in the distributed version was taken by the authors of the speech it appears more likely than not to the Commissioner that no information is held. This is further supported by the fact that there is no specific requirement to liaise with parties that might be included or referred to in a speech.
31. With regards to Part 3, the CO did not consider that this represented a request for recorded information. The CO stated that they hold no information *"that shows the governments working approach to Common Purpose"*. The CO did however comment that it was evident that the government had paid Common Purpose money to develop employees of various departments and that these departments may hold further information regarding this.
32. The Commissioner is mindful that any written request could technically be regarded as an FOI request. In the case *Richard Day and the Information Commissioner v Department for Work and Pensions (EA/2006/0069)* the complainant asked a number of questions about the Child Support Agency (CSA) which were based on his view that the CSA was poorly run. One example is:

"When are proper compensation payments for computer errors and administration going to be made and can individuals directly sue the American company who installed the CSA system?"

The DWP argued that this was not a valid request since it contained an unaccepted assumption that maladministration had occurred which should be compensated. The Tribunal said at paragraph15:

*".....The Act only extends to requests for recorded information. It does not require public authorities to answer questions generally, only if they already hold the answers in recorded form. The Act does not extend to requests for information about policies or their implementation, or the merits or demerits of any proposal or action – unless of course, the answer to any such request is already held in recorded form...."*

The Tribunal went on to say that:

*".... there might be a straightforward factual recorded answer even to [this] question...suppose for example, that following some report on the CSA, Parliament had approved a scheme enabling individuals "to sue the American company who installed the computer system" and providing for "proper compensation payments to be made". If so, Mr Day's fifth question, far from being tendentious and outside the Act, could be answered simply, by providing recorded information on the implementation date of the scheme..."*

33. Having considered the matter further, the Commissioner is of the opinion that the request was for recorded information. The fact that a policy does not exist simply means that the CO ought to have responded by informing the requestor that the information was not held. The position differs from the *Day* case in that that matter presupposed wrongdoing and that remedial action would inevitably follow. In this matter, the requestor is essentially asking if a policy exists and if so to be provided with it. The alternative would be to invalidate any request for information that is not held under the guise of not being valid simply because the information does not exist.
34. The normal standard of proof to apply in determining whether a public authority does hold any requested information is the civil standard of the balance of probabilities. The Commissioner has conducted external searches to ascertain if there is indeed a government policy with respect to Common Purpose. No such policy has so far been identified. The Commissioner is therefore satisfied, on the balance of probabilities, that there is no recorded information outlining the government's policy with regards to Common Purpose as there is no 'government policy' in place with respect to Common Purpose and as such the CO would have been in a position to inform the applicant that information is not held.
35. The fourth part of the request dealt with the measures taken to ensure that the MPs were in possession of the correct version of the speech. The CO's view was that as the request was not for recorded information it rendered the request invalid. The Commissioner however does not share this view and is of the opinion that the CO should have provided a response to the request. Whilst the CO has confirmed to the Commissioner that it held no information as to the measures taken, it should have in the first instance confirmed this to the requestor.
36. As with the third part of the request, the normal standard of proof to apply in determining whether a public authority does hold any information is the civil standard of the balance of probabilities. The fact that copies of scripts of intended speeches distributed by the Prime



Minister's Office in advance of the speech to third parties like MPs are headed "*check against delivery*" is to place the onus for checking that the delivered speech has not deviated from the prepared script firmly in the hands of the third parties concerned. That being the case it is highly improbable that the CO would contact third parties to ensure that they held the correct version of the prepared script of the speech to be delivered. The Commissioner is satisfied that the CO hold no information with regards to "*measures*" taken to ensure that MPs were in possession of the "*correct version*" of the script.

## The Decision

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37. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act in that it breached section 1(1)(a) by failing to notify the complainant in writing whether it held all the information of the description specified in the request. However, having clarified the matter with the CO, the Commissioner is satisfied that it did not hold any information falling within the scope of those parts of the complainant's request which were valid requests for the purposes of the Act.

## Steps Required

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- 38 The Commissioner requires no steps to be taken.

## Other matters

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39. The Commissioner notes that the internal review of 25 September 2008 was only initiated after the intervention of the ICO. While there is no statutory timescale for the conduct of an internal review, the Commissioner's guidance states that this should be completed within 20 working days, or in exceptional circumstances, within 40 days.
40. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests information, and that the procedure should encourage a prompt determination of the complaint. The Code explains that any written reply from the applicant which expresses dissatisfaction with an authority's response should be handled as a complaint (internal review). As he has made clear in his

*'Good Practice Guidance No 5'*, published in February 2007, 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 in no case should the time taken exceed 40 working days. The Commissioner is concerned that in this case, it appears to have taken the authority over 52 days for an internal review to be completed, despite the publication of his guidance on the matter.

## Right of Appeal

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41. 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,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

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

**Dated the 24<sup>th</sup> day of May 2010**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

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

## Legal Annex

### General Right of Access

**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”.

## **Annex 1**

### **Extract from Modernisation Committee Report: 5 September 2002**

#### **"STATEMENTS**

85. We recommend that the full text of a statement should be made available to Members as soon as the Minister sits down or at the same time as a statement is given to the Press Gallery, whichever is the earlier. This would remove the resentment sometimes felt in the Chamber when Members can see the text of the statement being handed out in the Press Gallery when it is not available in the Chamber. As it is not practical for Members who wish to intervene to leave the Chamber to call at the Vote Office, we invite the House authorities to consider how copies of the text might best be made available within the Chamber."

### **Speaker`s Statement (official report 9 June 2008:Column 21)**

"I wish to make a statement about the distribution of copies of ministerial statements, about which points of order and other representations have been made in recent days.

Since 2003, in the interests of accurate reporting, I have allowed copies of ministerial statements to be distributed discreetly in the Press Gallery when Ministers rise to make statements. Since it is clear that this arrangement is not operating as intended, in fairness to Members I have now decided that statements will be distributed to Members and the Gallery at the same time-when Ministers sit down. That does not interfere with Ministers` discretion to release statements to Opposition Front Benchers on the usual Privy Council terms.

This will be in line with the recommendation of the report of the Modernisation Committee approved by the House in 2002."