

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 11 February 2010

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

#### Summary

---

The complainant requested copies of the citations for ten individuals who had been awarded the King's Medal for Courage in the Cause of Freedom. The Cabinet Office argued that this information was exempt from disclosure on the basis of section 23(1) of the Act. The Commissioner has concluded that in the circumstances of this case section 23(1) does provide a basis for withholding the information requested by the complainant.

#### The Commissioner's Role

---

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.

#### Background

---

2. The complainant made a number of separate requests to the Cabinet Office in relation to Dutch citizens who received the King's Medal for Courage in the Cause of Freedom ('the King's Medal'). In response to one of these requests the Cabinet Office released a list of all Dutch recipients of the King's Medal along with their occupation. The complainant subsequently requested the citations for each of the Dutch recipients of the King's Medal. The Cabinet Office refused to provide these citations citing section 23(1) of the Act. The complainant then made a refined request for the citations the Cabinet Office held for ten specified individuals. It is this request which is the focus of this case.

## The Request

---

3. On 29 October 2008 the complainant submitted the following request to the Cabinet Office:

'After having consulted the Act and published guidance I am now asking whether the citations might be provided in relation to the individuals named below.

All of these people were Doctors or Civilians in Arnhem / Oosterbeek during the battle of Arnhem in September 1944 and, as far as I am able to ascertain, provided medical and support services to the British Airborne forces that were wounded during the battle.

As such they would have had nothing to do with security or intelligence matters and the recommendation for any award would have been made by 1<sup>st</sup> Airborne Division after the battle.

I therefore believe that the provision of this information would not be covered by the exemption that you state.

ARRIENS, Mme K A ter Horst – Civilian Oosterbeek.  
BUISMAN, Mlle Hermien (now Mme Alberga) – Nurse Oosterbeek.  
DIJKER, Father R – Priest Oosterbeek.  
HENGEL, van LG – Surgeon St Elisabeth Hospital, Arnhem.  
MAANEN, van GHO – Medical Practitioner, Oosterbeek.  
PILAAAR, M C J – Surgeon, Juliana Hospital, Apeldoorn.  
RODBARD, J J A – Director, Juliana Hospital, Apeldoorn  
SIEMENS, J L – Director, St Elisabeth Hospital, Arnhem.  
STUYT, Mlle Marehe M K (now Mme Van Hees) – Civilian Arnhem.  
TRIP, H L Vierssen – Medical Practitioner, Apeldoorn.'

4. The Cabinet Office responded on 13 November 2008 and explained that it was refusing to comply with this request on the basis of section 14(2) because it was a sub-set of a previous request the complainant had submitted: the request of 29 October sought the citations for ten individuals and the complainant had previously asked the Cabinet Office to provide the citations for all Dutch recipients on 20 August 2008. (The Cabinet Office had refused this earlier request on the basis of section 23(1) of the Act.)
5. On 14 November 2008 the complainant requested an internal review about the decision to apply section 14(2). The complainant argued that a public authority could only rely on section 14(2) if it had actually provided information previously requested and as the Cabinet Office had refused to fulfil his earlier request on the basis of section 23(1), it could not rely on section 14(2) to refuse his request of 29 October 2009.<sup>1</sup> The complainant noted that he had narrowed his request in this

---

<sup>1</sup> Section 14(2) allows a public authority to refuse to comply with a request if it 'has previously complied' with an identical or substantially similar request. The Commissioner wishes to note that in his opinion a

way after receiving advice from a member of the staff at the Cabinet Office. Moreover, the complainant also noted that he had chosen the ten individuals in question because they had received the King's Medal after a specific battle and had nothing to do with the security services and thus he did not believe that section 23(1) provided a basis upon which to withhold these ten citations.

6. On 11 December 2008 the Cabinet Office informed the complainant of the outcome of the internal review. The Cabinet Office explained that it maintained its position that it was entitled to refuse to fulfil the request of 29 October 2008 on the basis of section 14(2) of the Act. The Cabinet Office stated that in its view that complying with the Act also meant issuing a correct refusal notice when the information was exempt.
7. On 28 April 2009 (following the intervention of the Commissioner which is detailed below) the Cabinet Office contacted the complainant and informed him that it was no longer relying on section 14(2) to refuse the complainant's request and instead was relying on section 23(1) as a basis to refuse to disclose to the ten citations.

## The Investigation

---

### Scope of the case

8. On 15 December 2008 the complainant contacted the Commissioner to complain about the way his request had been handled. The complainant specifically asked the Commissioner to consider the following points:
  - That section 14(2) was not applied correctly in this case because he had made a pragmatic, narrower request in order to enable the Cabinet Office to provide some information without exposing information that is covered by section 23(1).
  - That section 23(1) was not applied correctly in this case because he believed that the relevant information for the ten citations was not provided by or related to any specified body outlined in section 23(3).
9. Following receipt of this complaint, the Commissioner contacted the Cabinet Office and informed it that his initial view was that section 14(2) had been incorrectly relied upon to refuse the complainant's request of 29 October 2008. As noted in the Request section of this Notice, following the Commissioner's intervention the Cabinet Office contacted the complainant again on 28 April 2009 and confirmed that it was simply relying on section 23(1) to refuse to provide the ten citations.
10. Therefore at the time this Notice is being issued, the scope of this case is limited to determining whether section 23(1) has been correctly relied upon to withhold

---

public authority can comply with a request either by providing the requested information or by issuing a refusal notice in line with the requirements of section 17 of the Act.

the citations for the ten individuals listed in the complainant's request of 29 October 2009.

## Chronology

11. On 3 April 2009 the Commissioner wrote to the Cabinet Office and explained that he did not agree with the application of section 14(2) and invited it to either release the requested information or to issue a new refusal notice.
12. On 29 April 2009 the Commissioner contacted the Cabinet Office and asked to be provided with copy of the information requested by the complainant and a detailed explanation to support its position that this information was exempt from disclosure on the basis of section 23(1).
13. On 10 June 2009 the Deputy Commissioner and representatives of the Cabinet Office met to discuss the nature of the requested information and the Cabinet Office's reasoning for relying on section 23(1).
14. Further to this meeting, on 30 July 2009 the Commissioner was provided with a letter from Director of Security & Intelligence at the Cabinet Office confirming that he had viewed the information that had been withheld on the basis of section 23(1) and confirmed that he was fully satisfied that the exemption had been correctly applied. This letter also contained detailed reasoning to support the Cabinet Office's position that the requested information was exempt from disclosure on the basis of section 23(1).

## Analysis

---

### Exemption

#### Section 23

15. The Cabinet Office has argued that the ten citations falling within the scope the request are exempt on the basis of section 23(1) because they relate to information supplied either directly or indirectly by a body listed in section 23(3).
16. The parts of section 23 relevant to this request state that:

'23(1) 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).

(3) The bodies referred to in subsection (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
- (l) the Service Authority for the National Criminal Intelligence Service'.

17. In the circumstances of this case the level of detail which the Commissioner can include in this Notice about the Cabinet Office's submissions to support the application of this exemption, and the Commissioner's consideration of these submissions, is very limited. This is because inclusion of any detailed analysis is likely to reveal the content of the withheld information itself. Instead the Commissioner has produced a confidential annex which sets out in detail his findings in relation to the application of section 23(1). This annex will be provided to the Cabinet Office but not to the complainant, so as not to disclose information which the Cabinet Office maintains is exempt.
18. Indeed in this Notice the Commissioner considers that he can merely state that in all the circumstances of the case he has concluded that section 23(1) provides a basis upon which to withhold the ten citations requested by the complainant because they relate to information that was directly or indirectly supplied by one of the bodies listed in section 23(3) of the Act.

### **Procedural Requirements**

19. Section 1(1) of the Act states 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.'

20. Section 10(1) of the Act requires that a public authority must comply with the requirements of section 1(1) promptly and no later than the twentieth working day following the date of receipt.
21. Section 17(1) of the Act states that when a public authority refuses a request by relying on an exemption contained within Part II of the Act it must provide the applicant with a refusal notice within the time period for complying with section 1(1) of the Act – i.e. the time period specified by section 10(1).

22. In this case the complainant submitted his request to the Cabinet Office on 29 October 2008 and the Cabinet Office did not issue a refusal notice citing section 23(1) until 28 April 2009. By failing to provide the complainant with a refusal notice within 20 working days citing section 23(1) the Cabinet Office breached section 17(1) of the Act.

## **The Decision**

---

23. The Commissioner's decision is that the public authority dealt with the following element of the request in accordance with the requirements of the Act:
- The requested information is exempt from disclosure on the basis of section 23(1) of the Act.
24. However, the Commissioner has also decided that the following element of the request was not dealt with in accordance with the Act:
- The Cabinet Office breached section 17(1) by failing to issue a refusal notice citing section 23(1) within 20 working days of the receiving the complainant's request of 29 October 2008.

## **Steps Required**

---

25. The Commissioner requires no steps to be taken.

## Right of Appeal

---

26. 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 served.

**Dated the 11th day of February 2010**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

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

## Legal Annex

### Freedom of Information Act 2000

#### 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.”

#### Time for Compliance

**Section 10(1)** provides that –

“Subject to subsections (2) and (3), 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.”

#### Refusal of Request

**Section 17(1)** provides that -

“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.”

#### Vexatious or Repeated Requests

**Section 14(2)** provides that –

“Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with a previous request and the making of the current request.”



**Information supplied by, or relating to, bodies dealing with security matters**

**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(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.”