

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 13 December 2010

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

Summary

The complainant submitted a request to the Cabinet Office seeking all information concerning the selection procedure for the appointment of Ms Margaret Aldred as Secretary to the Iraq Inquiry and Mr Rae Stewart as head of communications for the Iraq Inquiry. The Cabinet Office issued a refusal notice stating that it held some information falling within the scope of the request but considered it exempt from disclosure on the basis of sections 35(1)(a) and 35(1)(b) of the Act. The complainant subsequently requested an internal review of this decision and the internal review, issued nearly a year after being requested, found that the information determined in the refusal notice to be exempt from disclosure did not in fact fall within the scope of the request. The complainant queried this finding and argued that the Cabinet Office may hold further information falling within the scope of this request. Following enquiries with the Cabinet Office the Commissioner has concluded that it does not hold information falling within the scope of this request.

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.

The Request

2. The complainant submitted the following request to the Cabinet Office on 2 August 2009:

'Under the terms of the Freedom of Information Act 2000, I request disclosure of all information relating to the selection procedure adopted for the choice of Margaret Aldred CB as Secretary and yourself [Rae Stewart] as Communications chief of the Iraq Inquiry Secretariat. In particular, I seek documentation relating to the drafting of the roles of Secretary and Communications chief for the Secretariat showing who was responsible for the drafting, the role specifications themselves and whether these posts were externally advertised for public competition.

Given the politically sensitive role of the Cabinet Foreign and Defence Secretariat, of which Margaret Aldred is a senior official, and its closeness to the Prime Minister's Office, I also seek disclosure of documentation - in paper form and electronic [later amended to in paper form **or** electronic] - which addresses any possible conflicts of interest, especially relating to the Inquiry's investigations into Cabinet minute deliberations and access to Cabinet papers. Will the Secretary have an "advisory" role to the Inquiry panel as to whether Cabinet documents or evidence given should be held in camera or made public?'

3. The Cabinet Office responded on 3 September 2009 and stated that 'this Department may hold information relevant to your request.' The response went on to clarify that some of this information was in the public domain and drew the complainant's attention to a response provided by the Prime Minister on 6 July 2009 to a series of Parliamentary Questions:

'I refer my hon. Friend to my letter of 17 June 2009 to the Rt. Hon Sir John Chilcot GCD and to his reply of 21 June 2009. Copies of both have been placed in the Libraries of the House. As Chairman, Sir John, in consultation with the Inquiry Committee members, will take decisions on how the Inquiry conducts its work. The costs of the Inquiry will be met by the Government. The Secretary to the Inquiry will be Ms Margaret Aldred CB CBE, who is a senior Cabinet Office official'.

4. The Cabinet Office's response noted that Parliamentary answers could be viewed on the Hansard website.

5. The response also referred the complainant to the text of a press release dated 6 July 2009 which read as follows:

'The head of the Secretariat for Sir John Chilcot's committee of inquiry into Iraq has been named today.

Margaret Aldred CB CBE, who's currently Director General and Deputy Head of the Foreign and Defence Policy Secretariat in the Cabinet Office, is due to become the Secretary to the Inquiry. She will begin her duties shortly.

Ms Aldred joined the Civil Service as a graduate trainee in 1975. She spent 25 years in the Ministry of Defence, where she worked in a wide range of areas, including the last three years as the Principal Private Secretary to the Defence Secretary. Her last post in the MoD was Director General Management and Organisation. She has also worked in HM Treasury and the Home Office, and took up her current post in the Cabinet Office in November 2004.

Ms Aldred was appointed CBE in the 1991 Gulf Honours list, and CB in the 2009 New Years Honours list'.

6. The Cabinet Office's response went on to explain to the complainant that the additional information which it held which had not been published was exempt from disclosure on the basis of sections 35(1)(a) and 35(1)(b) of the Act and in all the circumstances of the case the public interest favoured maintaining the exemptions.
7. The complainant contacted the Cabinet Office, also on 3 September 2009, in order to ask for an internal review of the decision to withhold the information. In doing so the complainant argued that the substance of his request was the central issue of the independence of the Iraq Inquiry which he understood had officially been made a prerequisite of its modus operandi. The complainant suggested that such independence, in his view, could not be vouchsafed without the question raised by his request being answered. The complainant noted that he was intrigued with the application of the two exemptions cited above because it suggested that the remit and roles of the Secretariat of the Inquiry had been, and/or would continue to be, a matter of ministerial policy formulation and discussions, which in itself raised queries over the overall independence of the Inquiry. The complainant invited the Cabinet Office, as part of its internal review, to comment on whether this was a reasonable inference to draw from the application of sections 35(1)(a) and 35(1)(b).

8. Following the intervention of the Commissioner (details of which are set out below) the Cabinet Office informed the complainant of the outcome of the internal review on 2 September 2010. This review explained that the information that was considered exempt under the exemptions cited in the refusal notice was not in fact in the scope of the complainant's request. The review went on to explain that the information originally considered to be in the scope was a series of emails between officials that discuss the draft replies to a number of Parliamentary Questions relating to the Iraq Inquiry. However, the Cabinet Office explained that it did **not** relate to the selection procedure adopted for the choice of Margaret Aldred as Secretary and Rae Stewart as press secretary to the Inquiry. The Cabinet Office apologised for any confusion caused by this error.
9. The response went on to describe the process by which the Inquiry Secretariat was formed. The Commissioner has quoted these paragraphs below:

'The former Prime Minister made clear from the outset that it was for the Inquiry itself to determine its scope and terms of reference, within the broad parameters he outlined on 15 June and his subsequent exchange of letters with the Inquiry Chair. The role of the Inquiry Secretariat was agreed within the Inquiry, as it determined how it wished to approach its task. That has been set out in a number of public statements, including the launch on 30 July 2009.

The Cabinet Secretary himself decided to nominate Margaret Aldred, and agreed the appointment with Sir John Chilcot, shortly after Sir John himself accepted his role as Inquiry Chair. Both Cabinet Secretary and the Inquiry Chair felt that the Secretary needed to be a senior individual with the right experience and skills for the task. Her previous involvement in Iraq issues was balanced against that criteria, and the view taken was that it would be possible to manage any conflicts of interest. Margaret Aldred was assured of that position by the Cabinet Secretary from the outset. She took up her appointment on 1 September last year.

The press secretary to the Secretariat has always remained a member of the Cabinet Office communications team. The position therefore retains other duties as well as advising the Inquiry. The appointment of Rae Stewart was made in two stages. First, the Inquiry agreed with the Cabinet Office that, given the nature of the Inquiry and that the role would not always be full-time, it

would be prudent for a member of the Cabinet Office communications staff to be attached to the Inquiry, working full-time as and when necessary. Cabinet Office communications staff suggested that Mr Stewart could perform this role; following its own internal deliberations, the Inquiry agreed.

The appointments of both the Secretary to the Inquiry and the press secretary to the Secretariat were made in line with internal Cabinet Office HR processes, agreed by the Cabinet Secretary, and not subject to Ministerial consideration or approval.

The information I have set out above comprises the extent of the information which the Cabinet Office holds that falls within the scope of your request [emphasis added for reasons that will become apparent below].'

The Investigation

Scope of the case

10. The complainant initially contacted the Commissioner on 29 October 2009 and explained that he had submitted the above request and, having received the refusal notice citing sections 35(1)(a) and 35(1)(b), he then submitted a request for an internal review dated 3 September 2009. The complainant informed the Commissioner that he had not received a response to this request for an internal review and therefore asked the Commissioner to take some form of action in respect of the Cabinet Office's delay.
11. The Commissioner subsequently contacted the Cabinet Office on a number of occasions in order to establish why an internal review had not been completed. Despite the Commissioner's efforts the Cabinet Office did not complete an internal review and therefore in June 2010 the Commissioner took the decision to progress this complaint without waiting for the internal review to be completed.¹
12. On 29 June 2010 the Commissioner contacted the complainant and asked him to confirm that the grounds of his complaint were the Cabinet Office's decision to withhold the information he had requested

¹ Section 50(2)(a) of the Act states that the Commissioner is not required to make a decision in respect of a complaint he receives unless a requestor has exhausted a public authority's internal review procedure. However, in some cases the Commissioner will exercise his discretion and accept a complaint as valid even if the internal review has not been completed.

- on the basis of sections 35(1)(a) and 35(1)(b) of the Act. The complainant subsequently contacted the Commissioner and confirmed that his understanding was correct.
13. On 5 September 2010, following the Cabinet Office's belated issuing of its internal review outcome, the complainant contacted the Commissioner again in order to amend the grounds of his complaint. In essence the complainant explained that rather than a complaint about the Cabinet Office's decision to withhold information on the basis of sections 35(1)(a) and 35(1)(b), his complaint now focused on his view that the Cabinet Office interpreted his request too narrowly and had failed to identify/disclose certain information which could fall within the scope of his request. The complainant provided the Commissioner with a detailed submission to support this allegation.
 14. The Commissioner contacted the complainant on 17 September 2010 in order to confirm his understanding of this refined complaint. Firstly, the Commissioner confirmed that he understood the complainant's request to contain the following three aspects:
 1. A request for disclosure of 'all information' relating to the selection procedure for the two individuals and roles in question.
 2. In particular, 'documentation' relating to the drafting of the two roles.
 3. 'Documentation' which addressed the possible conflicts of interest concerning Margaret Aldred.
 15. The Commissioner noted that he understood that the complainant was concerned that the internal review had been conducted on the basis that the request was limited to the selection procedure and thus may not have identified other information falling within the scope of the request.
 16. Secondly, the Commissioner noted that he understood that the complainant was of the opinion that the information originally determined to fall within the scope of the request – i.e. the correspondence about the Parliamentary Questions – may still fall within the scope of the request.
 17. Thirdly, the Commissioner noted that he understood that the complainant believed that the details provided to him in the outcome of the internal review referenced a number of pieces of information which may be held by the Cabinet Office and could fall within the scope of his request.

18. Following the Commissioner's exchange of correspondence with the Cabinet Office dated 21 September and 21 October 2010 the Commissioner contacted the complainant and informed him that he was satisfied that on the balance of probabilities the Cabinet Office did not hold any recorded information falling within the scope of this request. The Commissioner explained his reasons for reaching this conclusion and therefore invited the complainant to withdraw his complaint.
19. The complainant contacted the Commissioner on 29 October 2010 and confirmed that he wished a Decision Notice to be produced in order to ensure that there was a public record of the paucity of the records the Cabinet Office retained over key areas of decision making which raise public interest issues.
20. Therefore this Decision Notice is not being issued because the complainant disputes the Commissioner's conclusion that the Cabinet Office does not hold information falling within the scope of his request. Nevertheless the Commissioner has set out in the Analysis section below the basis upon which he has reached this conclusion.

Chronology

21. The Commissioner wrote to the Cabinet Office on 29 June 2010 and informed it that in light of its failure to conduct an internal review he had decided to accept this complaint as a valid complaint. The Commissioner therefore asked the Cabinet Office to provide him with a copy of the information that had been withheld at the refusal notice stage on the basis of sections 35(1)(a) and 35(1)(b) along with detailed submissions to support the application of these exemptions.
22. Having received no response to his letter the Commissioner contacted the Cabinet Office on 3 August 2010 and explained that if he did not receive a substantive response within a further 10 working days he would serve an Information Notice under section 51 of the Act.
23. The Commissioner called the Cabinet Office on 20 August 2010 and informed it that in light of the fact that a response had not been provided, an Information Notice would be issued. The Cabinet Office informed the Commissioner that in response to the letter of 29 June 2010 it had re-considered this case and was now of the view that the information initially identified as falling within the scope of the request at the internal review stage did not in fact do so. The Cabinet Office explained that an internal review outcome would be issued to the complainant confirming this position. (In light of this development the

Commissioner did not need to issue an Information Notice to the Cabinet Office.)

24. Following the issuing of this internal review and the refinement of the complaint, the Commissioner contacted the Cabinet Office on 21 September 2010 in order to establish whether it held any information falling within the scope of this request. The Commissioner asked the Cabinet Office to respond to a number of detailed points in order that he could consider the complainant's refined complaint.
25. The Cabinet Office provided the Commissioner with a detailed response on 21 October 2010 which addressed all of the areas on which the Commissioner had sought clarification. In this response the Cabinet Office confirmed that its position was that it did not hold any recorded information falling within the scope of this request.

Analysis

Substantive Procedural Matters

Section 1 – general right of access

26. Section 1(1) of the Act provides the right of access to information and is in two parts, both of which are subject to the application of exemptions:
 - '(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.'
27. In cases such as this where there is some dispute as to whether a public authority holds information falling within the scope of the request – i.e. whether it has correctly fulfilled its obligations under section 1(1)(a) of the Act, the Commissioner has been guided in his approach by a number of Information Tribunal decisions which have used the civil standard of the balance of probabilities, i.e. whether on the balance of probabilities the Commissioner is satisfied that no further information is held.² In deciding where this balance lies the Commissioner will take into account the scope, quality, thoroughness and results of the searches carried out by the public authority as well

² See *Linda Bromley v Information Commissioner* (EA/2006/0072)

as considering, where appropriate, any other reasons offered by the public authority to explain why the information is not held.

28. As is clear from the Investigation section above the Commissioner is satisfied, on the balance of probabilities, that the Cabinet Office does not hold information falling within the scope of this request. The Commissioner has set out below why he has reached this conclusion with reference to the various points of complaint identified by the complainant. In addition to this the Commissioner has also addressed the question of whether the Cabinet Office may have held information at the time of the request but which has subsequently been destroyed.

Information identified in refusal notice

29. The complainant was concerned that the Cabinet Office was wrong to conclude that the information it initially accepted as falling within the scope of his request at the refusal notice stage, was in fact outside the scope of his request. The complainant suggested that the Cabinet Office's error may be as a result of it interpreting the request too narrowly.
30. In order to address this point the Commissioner asked the Cabinet Office to provide him with the information which it originally considered to fall within the scope of this request. As noted in the Cabinet Office's internal review this information consists of email exchanges concerning draft replies to a number of Parliamentary Questions.
31. The Cabinet Office provided the Commissioner with this information as part of its response on 21 October 2010 and having examined it very carefully the Commissioner is satisfied that it does not fall within the scope of the request. In reaching this conclusion the Commissioner took into account the fact that the request not only sought 'all information' relating to the selection procedure for the two individuals and roles in question, but also 'documentation' relating to the drafting of two roles and 'documentation' which addresses the possible conflicts of interest concerning Margaret Aldred.

Recorded information which was referenced in the internal review

32. The complainant noted that the internal review response identified an exchange of letters between the Prime Minister and the Inquiry Chair discussing the scope and terms of reference of the Inquiry. The complainant suggested that such letters could fall within the scope of his request; moreover it was not clear whether all of these letters had been placed in the public domain.

33. The Commissioner explained to the Cabinet Office that on the Iraq Inquiry website the following letters from June 2009 – the period when the Inquiry was established - had been published:
- Letter from the Prime Minister to Sir John Chilcot dated 17 June 2009.
 - Letter from Sir John Chilcot to the Prime Minister dated 21 June 2009.
 - Letter from the Prime Minister to Sir John Chilcot dated 22 June 2009.³
34. The Commissioner asked the Cabinet Office to confirm whether the above list represented a complete list of letters exchanged between the Prime Minister and the Inquiry Chair in relation to the establishment of the Inquiry. The Cabinet Office has confirmed to the Commissioner that this is indeed a complete list in relation to the establishment of the Inquiry and it does not hold any further letters. (The Commissioner is of the opinion that the above letters do not fall within the scope of the request as they focus on top-level discussions concerning the structure of the Inquiry rather than the roles, and appointments of, Ms Aldred and Mr Stewart.)

Further recorded information it would be reasonable to assume the Cabinet Office may hold

35. The complainant argued that based upon the description of events contained in the Cabinet Office's internal review it would be reasonable to assume that the Cabinet Office held recorded information falling within the scope of his request. For example, he noted that it would be expected that the Cabinet Office may hold recorded information backing up the Cabinet Secretary's nomination of Margaret Aldred as being a 'senior individual with the right experience and skills for the task'. Similarly, it would be expected that the view that 'it would be possible to manage any conflicts of interest' would be recorded in some form of written record.
36. In relation to this point the Commissioner made it clear to the Cabinet Office in his letter of 21 September 2010 that the 'information' contained in the internal review, which effectively comprised a narrative description of the events leading to the appointment of Ms Aldred and Mr Stewart, did not necessarily fulfil this request. This was because the request was very clear in stating that the complainant wanted to be provided with 'all information' and 'disclosure of documentation – in paper and electronic form'. In other words the

³ <http://www.iraqinquiry.org.uk/background/letters-memos.aspx>

complainant was not simply seeking a summary of any recorded information which may be held by the Cabinet Office but copies of the information itself.

37. The Commissioner suggested to the Cabinet Office that the position with regard to the Cabinet Secretary's discussions with the Inquiry Chair regarding Margaret Aldred **and** the Cabinet Office's discussions, both internally and externally, regarding Rae Stewart would appear to fall into one of two scenarios:

38. Either:

(A) -

39. No recorded information was ever held concerning the discussions in question. That is to say, such discussions took place orally (as opposed to in writing) and no written record of them was ever created. If this was the case presumably the narrative description of these discussions/deliberations which was included in the internal review was based purely on individuals' recollection of them.

40. Or:

(B) -

41. Alternatively, the Cabinet Office did hold recorded information evidencing the nature of these discussions. The most obvious format for such recorded information would presumably be letters/emails exchanged between the Cabinet Secretary and Inquiry Chairman regarding Margaret Aldred, although such recorded information could obviously extend to meeting notes/memos/records of telephone conversations. Similarly, recorded information regarding the appointment of Rae Stewart may well take the format of emails/letters between the Cabinet Office and Inquiry and also extend to the internal emails created during the Cabinet Office's communications staff's discussion which lead to the nomination of Rae Stewart.

42. If this is the case, the Commissioner suggested to the Cabinet Office that such recorded information was presumably used as the basis to provide the narrative description of the discussions which was included in the internal review. However, for the reasons set out above the Commissioner explained that he was of the view that the Cabinet Office would not have fulfilled this request simply by describing the content of these recorded discussions. Rather the request would only be fulfilled by providing copies of the recorded information about the discussions themselves.

43. The Commissioner therefore asked the Cabinet Office to explain which of the two scenarios above was correct or indeed to enlighten him as to the actual basis upon which it had drafted its internal review response. Furthermore the Commissioner explained to the Cabinet Office that if it did hold recorded information regarding these discussions – i.e. scenario (B) – he wanted to be provided with copies of that information. Conversely, if the Cabinet Office's position was that it did not hold any information about these discussions – i.e. scenario (A) – he would need to be provided with a detailed explanation which set out the steps its had taken to locate any information.
44. In response to this particular line of enquiry the Cabinet Office basically confirmed that the actual position was scenario (A). It stated that it did not hold any information falling within the scope of the request and that the discussions regarding these appointments were conducted orally rather than in writing.
45. In addition to confirming this the Cabinet Office also explained to the Commissioner that in dealing with this request it undertook extensive searches of both its electronic and paper records for any information falling within the scope of the request. When searching the electronic records the following keywords were used:
- Iraq Inquiry;
 - Iraq selection;
 - *Names of individuals* – Margaret Aldred; John Chilcot, Head of Secretariat;
 - Iraq PQs drafts; and
 - Cabinet Secretary.
46. Searches were conducted in all parts of the Cabinet Office where it was considered that information, if any, may be located: in the National Security Secretariat; the Knowledge and Information Management Unit; and the Cabinet Secretary's Private Office. The Cabinet Office confirmed that in undertaking these searches it understood that the request was not limited simply to selection procedures for the roles.
47. The Cabinet Office explained that in light of this, during its internal review it contacted the individuals involved in the discussions and drew on their recollections in order to provide the complainant with the narrative description of these discussions which was included in the internal review response dated 2 September 2010.

Was information held by the Cabinet Office at the time of the request but subsequently destroyed?

48. However, in its letter to the Commissioner of 21 October 2010 the Cabinet Office did state that it could not discount the fact that some information was created which might have fallen within the scope of the complainant's request. The Cabinet Office gave the example of one brief email exchange between the Home Office and the Cabinet Secretary's Office regarding the appointment of a Press Secretary for the Iraq Inquiry. The Cabinet Office explained that it only realised that such an email existed when it was responding to the Commissioner's inquiries as it was provided by the Secretary to the Inquiry after she had seen a copy of the Commissioner's letter of 21 September 2010. It was therefore provided to the Cabinet Office after the point at which it had issued its internal review response. (The Commissioner understands that Ms Aldred held this information in her role as Secretary to the Inquiry rather than as an employee of the Cabinet Office). This email exchange was not retrieved in any of the Cabinet Office's searches for information which indicated that it had been automatically deleted after three months after its creation and was no longer held by the Cabinet Office. (The Commissioner understands that email information is held by the Cabinet Office for 3 months only before being automatically deleted unless it is transferred to its electronic document and records management system.) The Cabinet Office acknowledged it was possible that similar items of correspondence existed at the time of the request and were automatically deleted after three months from the date of creation.

Conclusion

49. In respect of the complainant's three areas of complaint the Commissioner believes that the above analysis is self-explanatory in respect of why he is satisfied, on the balance of probabilities, that the Cabinet Office did not hold information. In respect of the Cabinet Office's admission that it may have held information at the time of the request which was subsequently destroyed, given the passage of time, there is no practical way or indeed proportionate way in the circumstances of this case in which the Commissioner can ascertain whether such information was held at the time of the request. Thus this does not affect his conclusion that on the balance of probabilities, at the time of the request, no recorded information was held.

Procedural Requirements

50. Section 10(1) of the Act requires that public authorities comply with the requirements of section 1(1) of the Act within 20 working days following the date of receipt of the request.
51. In the circumstances of this case the Cabinet Office, in order to correctly comply with the requirements of section 1(1)(a) of the Act, should have informed the complainant that it did not hold any information falling within the scope of his request. It failed to do so both at the refusal notice stage and indeed at the internal review stage. Indeed, it has not directly informed the complainant of this position; it is only via the Commissioner's recent correspondence with the complainant that he is aware of the Cabinet Office's actual position that it does not hold information falling within the scope of his request. Such failings constitute procedural breaches of sections 1(1)(a) and 10(1).

The Decision

52. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act because it failed to correctly inform the complainant that it did not hold any recorded information falling within the scope of his request within 20 days of receiving his request. This constitutes a breach of section 1(1)(a) and 10(1).

Steps Required

53. The Commissioner requires no steps to be taken.

Other matters

54. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
55. The Commissioner would like to record his concerns in relation to the Cabinet Office's reliance upon sections 35(1)(a) and 35(1)(b) of the Act. It would appear that when applying the exemptions, the Cabinet Office had failed to establish that the information fell within the scope

of the request and may have sought to refuse this request on a general basis. A failure to obtain or consider the actual information requested could result in an incorrect or inaccurate response and, in this case, has resulted in significant, unnecessary delays. As such the Commissioner considers that this is extremely poor practice.

56. 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 for information, and that the procedure should encourage a prompt determination of the complaint. 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 took almost a year for an internal review to be completed, despite the publication of his guidance on the matter.
57. In accordance with his [FOI Regulatory Action Policy](#)⁴, the Commissioner has set out his intention to monitor the performance of authorities which he has grounds to believe are repeatedly or seriously fail to respond to freedom of information requests or to conduct internal reviews within the appropriate timescales. As confirmed in a [press release](#)⁵ published on the Commissioner's website on 1 October 2010, the Cabinet Office appears in the list of public authorities subject to this monitoring. The Commissioner expects that the Cabinet Office's future handling of internal reviews will conform to his recommended timescales.
58. In the circumstances of this case the Commissioner is particularly concerned about the possibility that the Cabinet Office's delays in conducting its internal review could have meant that information which it may have held which fell within the scope of the complainant's request was destroyed before the internal review was completed. Such a delay in this case therefore potentially had a fundamental and deleterious impact on this complainant's access rights. The

⁴ Published on the ICO website here:

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/freedom_of_information_regulatory_action_policy.pdf

⁵ Published on the ICO website here:

http://www.ico.gov.uk/~media/documents/pressreleases/2010/ICO_STATEMENT_MONITORING_AUTHORITIES.ashx

Commissioner also wishes to highlight his guidance note 'Destruction of requested information'⁶.

⁶ Published on the ICO website here:

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/practical_applications/fep004practicalguidancedestructionv1.pdf

Right of Appeal

59. 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.

Website: 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 13th day of December 2010

Signed

**Steve Wood
Head of Policy Delivery
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."

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."

Formulation of Government Policy

Section 35(1) provides that –

"Information held by a government department or by the National Assembly for Wales is exempt information if it relates to-

- (a) the formulation or development of government policy,
- (b) Ministerial communications,
- (c) the provision of advice by any of the Law Officers or any request or the provision of such advice, or
- (d) the operation of any Ministerial private office.