

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 November 2013

Public Authority: Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant has requested a list of documents that government departments have so far declassified in connection with the Iraq Inquiry. The Cabinet Office stated that the information was exempt under section 22(1). The Information Commissioner considers that the Cabinet Office was entitled to rely upon section 22(1) to withhold the information. However, he found breaches of section 10(1) and section 17(1) in respect of the time taken to issue a refusal notice. He does not require any remedial steps to be taken.

Request and response

2. On 18 February 2013, the complainant wrote to the Cabinet Office and made the following request for information.

"I would like to make a request for information under the Freedom of Information Act. The request relates to the Iraq Inquiry and specifically the statement on the Inquiry website that

"Before the Inquiry publishes its final report [...] Extracts from thousands of document will be proposed for declassification (this process is already under way)".

I would like a list of the documents that government departments have so far "declassified" in response to such proposals, to the extent that the Cabinet Office is recording such information. If the Cabinet Office does not maintain any record of documents declassified by other departments, please a) let me know and b) restrict my request

to documents declassified by the Cabinet Office (including Number 10)."

3. The Cabinet Office responded on 24 April 2013 confirming that it held information of the type described in the request. It refused to provide the requested information, citing the following FOIA exemption:
 - section 22(1) - Information intended for future publication
4. The Cabinet Office provided an internal review on 15 May 2013 in which it maintained its original position.

Scope of the case

5. The complainant initially contacted the Commissioner on 15 April 2013 to complain about the way his request for information had been handled. At this stage the complaint concerned the Cabinet Office's failure to respond to the request.
6. After the Commissioner's intervention a refusal notice was issued and an internal review completed, but the complainant was dissatisfied with the Cabinet Office's decision to withhold the requested information under section 22(1) and with the length of time it had taken to respond.
7. The Commissioner has considered whether the Cabinet Office was entitled to rely upon section 22(1) to withhold the requested information and the delay in its response.

Background

8. The Iraq Inquiry is described on its website as:

"...an Inquiry by a committee of Privy Counsellors. It will consider the period from the summer of 2001 to the end of July 2009, embracing the run-up to the conflict in Iraq, the military action and its aftermath. We will therefore be considering the UK's involvement in Iraq, including the way decisions were made and actions taken, to establish, as accurately as possible, what happened and to identify the lessons that can be learned. Those lessons will help ensure that, if we face similar situations in future, the government of the day is best

equipped to respond to those situations in the most effective manner in the best interests of the country¹."

9. Before the Inquiry publishes its final report the following must happen:
- the report text containing the Inquiry's conclusions (more than 1,000,000 words) needs to be completed and checked;
 - extracts from thousands of documents will be proposed for declassification (this process is already under way); and
 - the 'Maxwellisation' process (whereby any individual that the Inquiry intends to criticise is offered the chance to make representations) must be carried out.

Reasons for decision

Section 22(1)

10. Section 22(1) provides that information is exempt from disclosure if it was held at the time of the request with the intention that it would be published at some future date. It is not a requirement of this exemption that the precise date of intended publication be determined; neither is it a requirement that the public authority itself must be intending to publish the requested information as it may be held with a view to publication by a third party. However, there must have been at the time of the request a clear and settled intention to publish and it must be, in any event, reasonable in all the circumstances to withhold the information from disclosure until the time of publication.
11. Section 22(1) is a qualified exemption, and so where a public authority is satisfied that it applies, it must nevertheless consider whether the public interest in applying the exemption is greater than the public interest in disclosing the information.

¹ <http://www.iraqinquiry.org.uk/>

Is the information held with a view to publication?

12. The Cabinet Office explained that the information was exempt under section 22(1) because at the time the request was made there was a clear and settled intention to publish it as part of the Iraq Inquiry report.
13. However, it is the complainant's contention that the Cabinet Office is not in a position to claim that the information is held with a view to publication. He is aware that some documents may need to be redacted in line with the Protocol agreed between the government and the Inquiry regarding documents and other written and electronic information². The Protocol states that information considered by the Inquiry will not be released into the public domain where it would or would be likely to cause the harm or adverse effect described in paragraphs 8-13 of the Protocol.
14. The complainant states:

*"I requested a list (ie the identities) of documents declassified at the request of the Iraq Inquiry. I did not request the documents themselves. It **may** be that some, most or all of these documents will eventually be published by the Inquiry at the time it publishes its report and therefore the identities of those published documents revealed, although it is very likely that many documents will not be published but quoted from in such a way that it is not clear what the documents themselves are.*

*...hopefully it will be clear that quoting from a document does not provide the identity of that document. **It is the latter that I have requested.** It is therefore clear that an intention on the part of the Inquiry, which no doubt exists, to disclose some information from some or all of the declassified documents does not amount to an intention to publish all of the information that I requested. Neither does the Cabinet Office know which parts of the information that I requested will be published."*

15. Looking firstly at the complainant's claim that the published report will not satisfy the request, the Commissioner notes that the precise

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/61337/protocol.pdf

wording of the request was for “a list” of declassified documents, and not for “the identity” of those documents. A request for their identities would require a response that addressed the individual characteristics by which the documents could be recognized. A request for a list is far less specific and permits an altogether broader approach, giving the Cabinet Office (or the third party publisher) the flexibility to describe the documents in the manner it considers appropriate.

16. Responding on this point, the Cabinet Office has stated that all the documents which the government has agreed to declassify will either be published alongside the Iraq Inquiry report or will be quoted from or otherwise referred to within the Inquiry’s report, and footnoted or end noted as appropriate. It is the intention that document titles will be published.
17. Where, for reasons of compliance with the aforementioned Protocol, information (including document titles) must be redacted, a reference to the document will still be published which will include at the very least the date the document was written, the originating department, the gist of the document (explaining its nature or purpose) and the recipient department. Therefore, for the purposes of the complainant’s request (for “a list”) the document’s title (if it is published) would constitute the relevant information to be extracted (to create a list); otherwise any other means that the Iraq Inquiry chooses to refer to the document would be the relevant information to be extracted for the purpose of the list.
18. The Commissioner is satisfied that the Cabinet Office has demonstrated that, in the circumstances of the particular wording of the request, it will be possible to extract from the published Iraq Inquiry a list of declassified documents. He is therefore satisfied that the requested information is held with a view to publication.

Was it held with a view to publication when the request was made?

19. The Commissioner notes that the complainant actually referenced the Inquiry’s statement of intention to publish information about declassified documents (posted on its website) in his request. It appears to have been the prompt for his request, and he has made reference to wanting to have the list of declassified documents prior to the publication of the Inquiry report. The Commissioner is therefore satisfied that there was a clear and settled intention to publish the requested information at the time the request was made, although for the reasons set out in paragraph 9, above, a date for publication has not yet been specified.

Is it reasonable that the information should be withheld?

20. The Commissioner has considered whether in all the circumstances of the case it is reasonable for the Cabinet Office to continue to withhold the requested information. The Cabinet Office has explained that it does not currently hold the information in list form and that it would be required to extract the requested information from a large number of documents in order to compile a list. This would involve time and expense and disruption to its existing work.
21. It also referred the Commissioner to Sir John Chilcot's recent letter to the Prime Minister³ in which he commented that the Inquiry had reached a crucial stage of its work (the Maxwellisation process) and that it was important that the process remained confidential. In his response⁴, the Prime Minister acknowledged the importance of confidentiality in this regard.
22. The Cabinet Office considers that to disclose a list of declassified documents would compromise this confidentiality as it would lead to speculation about the conclusions of the report, the identities of those who may be criticised and the nature of any such criticism. With the Inquiry report so close to publication such speculation would clearly be unhelpful and could be grossly unfair. The Inquiry itself has stated that in order to avoid misinterpretation and to ensure fair treatment of individuals, it would not publish information piecemeal, in advance of its final report. The Cabinet Office considers this undertaking applies, by extension, to any material released by the Cabinet Office to the Inquiry.
23. The Commissioner has considered these arguments. In view of Sir John Chilcot's comments, which indicate that the Inquiry is in its closing stages (and therefore that publication will follow), he has concluded that in all the circumstances it is reasonable for the Cabinet Office to continue to withhold the information.

³ http://www.iraqinquiry.org.uk/media/54877/2013-07-15_Chilcot_Cameron.pdf

⁴ http://www.iraqinquiry.org.uk/media/54890/2013-07-17_Cameron_Chilcot_Letter.tif

Public Interest

24. The Cabinet Office may only rely on the exemption at section 22(1) to withhold the information if, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
25. The public interest arguments in favour of maintaining the exemption are largely the same issues as those considered in respect of section 22(1)(c) (whether it is reasonable to continue to withhold the information). Those issues are the value in preventing unwarranted disruption to the work of the Cabinet Office when publication appears to be close at hand, and in protecting the confidentiality and integrity of the Iraq Inquiry and providing it with circumstances conducive to reaching accurate and constructive conclusions.
26. On the latter point there is clearly an overwhelming public interest in understanding the UK's role in the Iraq conflict of 2003 and its aftermath. The Iraq Inquiry is intended to address this public interest and in order for it to do so it must be able to determine and complete the processes necessary, up to and including publication of the report. Disclosure of the material at issue would or would be likely to significantly hinder or prejudice that process. It is clearly in the public interest that this is not permitted to happen.
27. In favour of disclosure, the Commissioner has considered the public interest in ensuring that the Inquiry process is seen to be transparent and accountable. However he considers that to a large extent this public interest will be served by the publication of the final report. He does not consider there to be any persuasive or specific public interest argument to justify publication in advance of the planned publication.
28. The Commissioner is therefore satisfied that the public interest in maintaining the exemption outweighs any public interest in disclosing the information.

Section 10(1) and section 17(1)

29. The Commissioner notes that the Cabinet Office took 45 working days to respond to the complainant's request. The Cabinet Office has not explained why it took this long, although it has apologised for the delay.
30. Section 10(1) of the FOIA requires that a public authority complies with section 1(1) promptly and in any event not later than 20 working days following the date that a request was received. If a public authority is seeking to rely on an exemption to refuse to comply with a request then, in line with section 17(1), it must provide the requestor with a

refusal notice, within 20 working days, stating which exemption(s) is being relied upon.

31. By the Commissioner's calculation, it took 45 working days for the Cabinet Office to tell the complainant that it was seeking to rely on section 22(1).
32. In failing to comply with section 1(1) and 17(1) within 20 working days of the request, the Cabinet Office contravened the requirements of section 10(1) and section 17(1) of the FOIA.

Right of appeal

33. 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,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

34. 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.
35. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

**Graham Smith
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Information Commissioner's Office
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