

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 30 April 2009

Public Authority: Cabinet Office
Address: Propriety and Ethics Team
Room 118
70 Whitehall
London
SW1A 2AS

Summary

The complainant submitted a request to the Cabinet Office which sought details of the information provided to the UK by the Saudi Government, prior to the July 7 2005 terrorist attacks, about expected terrorist attacks in the UK. The Cabinet Office confirmed that it held information falling within the scope of the request but it considered it to be exempt from disclosure by virtue of section 23(1) of the Act. The Commissioner is satisfied that the Cabinet Office was correct to withhold this information on the basis of section 23(1). However, the Commissioner has also concluded that the Cabinet Office breached section 10(1) by failing to confirm within 20 working days that it held this information and furthermore also breached section 17(1) by failing to issue a refusal notice citing section 23 within the same time period.

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. On 7 November 2007 the complainant submitted the following request to the Cabinet Office:

'What precisely was the information provided on each occasion, prior to the 7 July 2005 bombings in London, by the Saudi Government concerning

expected terrorist attacks in the UK; and what were the dates of each occasion when such information was provided?'

3. The Cabinet Office responded on 18 January 2008 and explained that although it held information falling within the scope of this request it considered it to be exempt on the basis of the section 23(1) of the Act.
4. The complainant requested an internal review of this decision on 7 May 2008 citing a number of reasons why disclosure of the information requested was in the public interest.
5. The Cabinet Office informed the complainant of the outcome of the internal review on 18 June 2008. In this response the Cabinet Office noted that as section 23 is an absolute exemption there is no requirement to consider the public interest in disclosing the information against the public interest in maintaining the exemption. The Cabinet Office was therefore satisfied that the requested information fell within the scope of the exemption contained at section 23(1) of the Act and was therefore exempt from disclosure.

The Investigation

Scope of the case

6. The complainant contacted the Commissioner on 22 February 2008 in order to complain about the Cabinet Office's decision to refuse to disclose the information he requested. The Commissioner informed the complainant on 26 March 2008 that he needed to ask the Cabinet Office to conduct an internal review before he could consider his complaint.
7. Having completed the internal review process the complainant contacted the Commissioner again on 22 June 2008 and asked him to consider the Cabinet Office's decision to refuse to disclose the information that he had originally requested. The complainant argued that the information should be disclosed on the basis of two reasons:
8. Firstly, he argued that the requested information related to a historical issue of national security and therefore disclosure of the information would not harm any ongoing national security matters.
9. Secondly, the complainant argued that the information should be disclosed because it is in the public interest for the general public to be assured that lessons have been learnt and that all necessary action has been taken to prevent any recurrence of the terrorist attacks in the future.

Chronology

10. On 11 February 2009 the Commissioner wrote to the complainant and explained that on the basis of the correspondence he had submitted with his complaint, it

appeared to the Commissioner that the information falling within the scope of his request was exempt from disclosure on the basis of section 23(1) of the Act. The Commissioner also explained that as section 23(1) was a class based, absolute exemption he could not take into account the two grounds of appeal that the complainant had submitted, namely that disclosure would not have a prejudicial effect and disclosure was in the public interest. The Commissioner explained to that complainant that the only exception to this conclusion would appear to be if the requested information did not in fact fall within the scope of section 23, i.e. if the requested information was not supplied to the Cabinet Office either directly or indirectly, by one of the bodies listed in section 23(3) or did not relate to any of these bodies. The Commissioner invited the complainant to make further submissions if this was indeed his position.

11. The complainant wrote to the Commissioner on 23 March 2009 and asked for a decision notice to be prepared. The complainant did not provide the Commissioner with any further submissions to support his view that the information had been incorrectly withheld.
12. The Commissioner subsequently contacted the Cabinet Office on 26 March 2009 and asked it to confirm that it remained of the view that the information falling within the scope of this request was exempt from disclosure by virtue of section 23(1) of the Act.
13. The Cabinet Office responded to the Commissioner on 15 April 2009. In this response the Cabinet Office confirmed that it remained of the view that all of the information falling within the scope of the request was exempt from disclosure by virtue of section 23(1) of the Act. The Cabinet Office explained that as with previous cases involving the application of section 23, it was providing the Commissioner with a letter from the Cabinet Office's Director, Security and Intelligence which confirmed that information falling within the scope of this request was either received from one of the bodies listed in section 23(3) or is directly related to them.

Analysis

Procedural matters

14. 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.'

15. 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.
16. 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).
17. In this case the complainant submitted his request to the Cabinet Office on 7 November 2007 and the Cabinet Office did not issue a refusal notice until 18 January 2008. By failing to provide the complainant with a refusal notice within 20 working days the Cabinet Office breached section 17(1) of the Act.
18. Furthermore by failing to provide the complainant with the confirmation required by section 1(1)(a) of the Act that it held the requested information the Cabinet Office also breached section 10(1) of the Act.

Exemption

Section 23

19. 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’.

20. The Cabinet Office has argued that the information falling within the scope of this request is exempt from disclosure on the basis of section 23(1) because it was

either received from one of the bodies listed in section 23(3) or is directly related to them.

21. In the particular circumstances of this case, given the nature and subject-matter of the information requested, the Commissioner is prepared to accept the assurance given in the letter mentioned in paragraph 13 that the information falling within the scope of this request is exempt from disclosure by virtue of section 23(1) for the reasons given by the Cabinet Office.
22. As the Commissioner has explained in paragraph 10 as section 23(1) is an class based, absolute exemption the two grounds of appeal raised by the complainant do not affect the Commissioner's conclusion that all of the withheld information is exempt from disclosure on the basis of section 23(1).

The Decision

23. The Commissioner's decision is that the Cabinet Office was correct to withhold the requested information on the basis of section 23(1) of the Act.
24. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
 - By failing to issue a refusal notice within 20 workings days following receipt of this request the Cabinet Office breached section 17(1) of the Act.
 - Furthermore by failing to comply with the requirements of section 1(1)(a) within 20 working days the Cabinet Office also breached section 10(1) of the Act.

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 Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@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 served.

Dated the 30th day of April 2009

Signed

**Graham Smith
Deputy Commissioner**

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

Legal Annex

Section 1(1) provides that -

'Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.'

Section 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."

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."

Section 23(1) provides that –

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

Section 23(2) provides that –

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

Section 23(3) provides that –

'The bodies referred to in subsections (1) and (2) are—

- (a) the Security Service,
- (b) the Secret Intelligence Service,
- (c) the Government Communications Headquarters,
- (d) the special forces,
- (e) the Tribunal established under section 65 of the Regulation of [2000 c. 23.] Investigatory Powers Act 2000,
- (f) the Tribunal established under section 7 of the [1985 c. 56.] Interception of Communications Act 1985,
- (g) the Tribunal established under section 5 of the [1989 c. 5.] Security Service Act 1989,
- (h) the Tribunal established under section 9 of the [1994 c. 13.] 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.'