



Tribunals Service
Information Tribunal

Appeal Number: EA/2008/0049

Freedom of Information Act 2000 (FOIA)

Hearing of 8th. December, 2008

Decision Promulgated 5th January 2009

BEFORE

INFORMATION TRIBUNAL

DEPUTY CHAIRMAN

D.J. Farrer Q.C.

and

LAY MEMBERS

Marion Saunders

and

Jenni Thompson

Between

THE CABINET OFFICE

Appellant

and

INFORMATION COMMISSIONER

Respondent

Representation:

For the Appellant: **Mr. James Goudie Q.C.**
 Miss Karen Steyn

For the Respondent: **Mr. Timothy Pitt-Payne**

Scope of the Request for information. Approach to interpretation. FOIA 2000 s. 1.

Decision

- 1 We dismiss this Appeal by consent, having ruled on a single issue, namely the scope of the Request. The Appellant is required to disclose to Mr. Norman Lamb MP, within fourteen days of the hearing, the information contained in a revised schedule supplied to the Tribunal at the hearing, paginated 99, 100, 101, 103 and 104, subject to certain amendments agreed between the parties to this appeal.

Reasons for the Decision

The Request

- 2 On 23rd. June, 2005, Mr. Norman Lamb MP, wrote to the then Prime Minister, Mr. Tony Blair, requesting “ a list of all those you have met on official business at 10 Downing Street over the last year, giving the date of the meeting”. That list was to include “all those attending official dinners at 10 Downing Street.” The Prime Minister is, of course, not a public authority within FOIA. This request was very sensibly treated from the outset, however, as made to the Cabinet Office, which is.
- 3 Following a reply from the Private Secretary to the Prime Minister to the effect that the costs of a response would be likely to exceed the limit so as to give rise to the exemption under s.12 of FOIA, that request, by letter of 23rd. August, 2005, was refined as follows :

“I would now ask that you provide a list of all those you met on official business at 10 Downing Street during the month of June 2005, giving the date of each meeting. I would also request that the list includes all those attending official dinners at 10 Downing Street during the same month.”

- 4 The Prime Minister’s Private Secretary replied on 23rd September 2005 providing “ *a list of the Prime Minister `s official meetings held in Downing Street in June 2005*” which were considered to be disclosable. The distinction between the terms of the request and those of the response is significant. He stated that some of the information being requested was being withheld under section 35(1)(a) and/or (b) of FOIA, alternatively under section 36(2)(b)(i) and/or 36(2)(b)(ii) and/or 36(2)(c). Meetings were listed, week by week, for June 2005. Meetings were in some cases identified by the name of the person met (e.g., Samuel Schmid, President of Switzerland), in others by reference to an organisation. There are instances where the subject matter of the meeting is used as the mode of identification. Mr. Lamb was further informed that the Prime Minister chaired a number of meetings of Cabinet Committees and held regular internal meetings with his ministerial colleagues, the Cabinet Secretary and officials and advisers.
- 5 On 15th. November, 2005, Mr. Lamb sought a review of the Cabinet Office `s refusal to provide all the information requested. He now referred to his earlier requests for “*a list of the Prime Minister `s official meetings for June, 2005*” The Cabinet Office maintained its position in a letter of 2nd. May, 2006, which once more treated the request as being for a list of meetings rather than the names of those whom the Prime Minister had met.
- 6 Mr. Lamb complained to the Commissioner (the “IC”) on 19th. May, 2006.
- 7 The investigation of his complaint was seriously delayed due, we were told, to the I.C. `s heavy case – load. In October 2007 further information was disclosed by the Cabinet Office following later reassessment. Meetings were identified largely by the name of the individual or organisation involved.

8 In his Decision Notice, the IC rejected the claim that s.35(1)(a) was engaged in relation to the names of officials. He accepted that the exemption provided for in s.35(1)(b) was engaged but found that the balance of public interest favoured disclosure. He found that the conditions necessary to engage the exemption under s.36(2)(b) were not fulfilled because there was no evidence as to the process by which the qualified person had reached the opinion that disclosure would have the adverse effects referred to in s.36(2). Hence no question of balancing the public interests arose. Since this appeal has been determined by a preliminary ruling, it is not necessary to review the IC's arguments on these issues nor the contrary case advanced by the Cabinet Office.

9 We were invited by Mr. Goudie to rule on two preliminary issues, namely :

- (i) The scope of the request and
- (ii) Whether the opinion of the "qualified person", here the Right Honourable Ed Milliband, must be shown to be both reasonable and reasonably arrived at, as this Tribunal decided in *Guardian & Brook v Information Commissioner & BBC* (EA/2006/0011 and EA/2006/0013).

10 In the event, our announcement at the hearing of our decision as to (i) prompted the Cabinet Office to consent to the dismissal of the appeal, given the effect of that ruling on the scope of the information required to be disclosed.

11 We initially indicated that we would express a view as to (ii), having read and heard very careful submissions on the point from both sides. Further consideration persuaded us, however, that this is not the right appeal on which to add to the observations as to the *Guardian and Brook* decision contained in *Evans v Information Commissioner* EA/2006/0064 and *Home Office and Ministry of Justice v Information Commissioner* EA/2008/0062 since any opinion expressed would be immaterial to the outcome of this appeal. We note only that any further consideration of the question might usefully include a

comparison of the wording of s.36(2) with that of s.60(3) (National Security certificates).

12 The scope of the request

That leaves a quite short point to be determined. The Cabinet Office now contends that the scope of a request is determined once and for all by the terms of the request. By virtue of s.1(1)(a) of FOIA, the requester is entitled to be told whether the public authority holds information

“of the description specified in the request”

and, in accordance with s.1(1)(b)

“if that is the case, to have that information communicated to him”

The IC `s jurisdiction under s.50(1) on an application by a complainant is to decide

“whether, in any specified respect, a request for information made by the complainant to a public authority has been dealt with in accordance with the requirements of Part I”.

Such provisions leave no scope for reinterpretation of the request in the light of later events, it is said.

- 13 The IC argues that, until a very late stage in these proceedings, the Cabinet Office chose to treat this request as a request for a list of meetings, not of persons attending. He contends that it would be wrong and unhelpful for the Tribunal to ignore that interpretation of the request in determining its scope for the purposes of this appeal.

14 Our decision

There is no doubt that the Cabinet Office treated this request as a request for a list of meetings, which is the description contained in Mr.Lamb`s request for a review but not in the letters of 23rd. June and 23rd. August, 2005, which constituted the request for the purpose of s.1. The letter of 15th. November, 2005 was an “appeal” against a refusal, that is to say a request for an internal review. It cannot be construed as a fresh request, nor was it treated as such.

15 The letters of 23rd. June and 23rd. August, 2005 are quite clear and unambiguous and constitute, in our opinion, the only basis for determining the scope of the request. That the request was later interpreted, in error, more broadly, was unfortunate and probably wasteful of resources but cannot affect the jurisdiction of the IC or of this Tribunal.

16 There may well be cases where a request is ambiguous, perhaps due to imprecise terminology. If so the public authority should normally seek further information in order to identify and locate the information requested, pursuant to s.1(3)(a). If such clarification is not required in such a case, then the IC may properly construe the request in a broad sense, consistent with one of the possible interpretations, and issue a Decision Notice accordingly.

17 That is far from this case, however. Mr. Lamb, an experienced Member of Parliament, expressed himself in plain terms which he repeated in his second “narrowing” letter. They corresponded to the wording which he had used in an application to the Parliamentary Ombudsman. This was a clear and specific request, which was later misconstrued through the confusion of two closely linked but quite distinct topics.

18 Delays

The Tribunal expressed its concern at the considerable delays in handling the review and the investigation of the complaint. for which the parties to the appeal were variously responsible. Following the hearing, it requested explanations. The IC referred to the considerable workload facing his staff, a familiar problem which is widely appreciated. The Treasury Solicitor, on behalf of the Cabinet Office, reiterated apologies already given to Mr. Lamb. We are grateful for their responses.

19 We do not doubt the desire of the parties to deal promptly with these requests. Nevertheless, it is an unhappily common feature of many such appeals that the value of the information is slight by the time that the Tribunal is seised of the matter.

Signed:

David Farrer Q.C.
Deputy Chairman
5th January, 2009