



**Information Commissioner's Office**  
Promoting public access to official information  
and protecting your personal information

## **Freedom of Information Act 2000 (Section 50)**

### **Decision Notice**

**Dated 11 July 2006**

**Public Authority: The Cabinet Office**

**Address: 70 Whitehall  
London  
SW1 2AS**

### **Summary Decision and Action Required**

**The Complaint requested information concerning the operation of the “Wilson Doctrine”. This concerns the possible interception of the telephone calls of Members of Parliament. The Cabinet Office declined to confirm that the requested information was held and to provide a copy of any information on the basis of s.24 of the Act (National Security) and section 23 (Security Bodies).**

**The Commissioner upholds the refusal of the request although he considers that the public authority did not initially explain its grounds for the refusal of the complainant’s request in sufficient detail. Some additional explanation has now been given and the Commissioner therefore requires no further steps to be taken to achieve compliance with the Act.**

#### **1. Freedom of Information Act 2000 (the ‘Act’) – Application for a Decision and the Duty of the Commissioner**

**1.1 The Information Commissioner (the ‘Commissioner’) has received an application for a decision whether, in any specified respect, the Complainant’s request for information made to the public authority has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 (the ‘Act’).**

**1.2 Where a complainant has made an application for a decision, unless:**

- a complainant has failed to exhaust a local complaints procedure, or**
- the application is frivolous or vexatious, or**
- the application has been subject to undue delay, or**
- the application has been withdrawn or abandoned,**

**the Commissioner is under a duty to make a decision.**

- 1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.

## **2. The Complaint**

- 2.1 The Complainant has advised that on 31 January 2005 the following request was submitted to the public authority in accordance with section 1 of the Act.
- 2.2 "I am writing to you concerning the operation of the Wilson Doctrine, as set out by the then Prime Minister, Harold Wilson, in response to a question from a former MP for Lewes, Sir Tufton Beamish, on 17 November 1966.

"Can you please inform me whether, since that date, there has been a change of policy which has occurred but has not yet been reported to the House of Commons, and specifically if he will state how many MPs have been subjected to telephone tapping or other intrusive surveillance since that date. I am asking for the number to be given, along with the year of intercept, not for the names of the MPs in question."

- 2.3 On 4 March 2005 the Cabinet Office issued a refusal notice to the complainant. This gave section 23(5) and 24(2) of the Act as grounds for neither confirming nor denying that the requested information was held.
- 2.4 The complainant requested a review of the refusal of his request. On 14 July 2005, the Cabinet Office confirmed its previous decision. It also stated that "by virtue of section 17(4), the Cabinet office is under no obligation to state why either exemption applies." In reiterating its refusal, the Cabinet Office also stated that it has not previously applied the public interest test to the information exempted by virtue of section 24, but that it had now done so.
- 2.5 The complainant submitted a complaint under s.50 of the Act to the Commissioner on 27 July 2005.

## **3. Relevant Statutory Obligations under the Act**

- 3.1 **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."

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

"A public authority which... 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.”

3.3 **Section 17(3)** provides that, when refusing a request, a public authority

“... must state the reasons for claiming ... that, in all the circumstances of the case, the public interest in maintaining the exclusion if the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information ...”

3.4 **Section 17(4)** provides that –

“A public authority is not obliged to make a statement under sub-section (1)(c) or (3) if, or to the extent that the statement would involve the disclosure of information which would itself be exempt information.”

3.5 **Section 23** provides that –

“(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)

(2) 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.

(3)The bodies referred to in subsections (1) and (2) are:

- (a) the Security Service,
- (b )the Secret Intelligence Service,
- (c) the Government Communications Headquarters...”

(5) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).”

3.6 **Section 24** provides that –

“(1)Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security...

(2)The duty to confirm or deny does not arise if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of safeguarding national security.”

#### **4. Review of the case**

- 4.1 The Commissioner contacted the Cabinet Office on 15 February 2006. In addition to requesting background information about the Wilson Doctrine, the Commissioner sought clarification that the Cabinet Office had refused to confirm or deny the holding of both items of requested information. The Commissioner also asked whether a Ministerial certificate as Provided by sections 23(2) and 24(3) had been obtained.
- 4.2 The Cabinet office responded by explaining that the Wilson Doctrine, as originally announced by the then Prime Minister, stated that he had given an instruction that there was to be no tapping of the telephones of Members of the House of Commons but that, if there was a development of any kind which required a change of policy, he would, at such moment as seemed compatible with the security of the country, make a statement in the House about the matter.
- 4.3 It was confirmed that the Cabinet Office maintained its position that it was required neither to confirm nor deny the holding of both items of information. Although it was also stated that the operation of the Doctrine was “self-evidently covered” by the national security exemption at s.24 of the Act, the letter from the Cabinet Office, in fact, provided a fairly detailed argument as to why the response to the request had been the correct one. It was confirmed that the Doctrine remained in force. The Cabinet Office stated that it hoped to be able to resolve the complaint without the need for a Ministerial certificate and that it had not therefore put the matter to Ministers.
- 4.4 Although, providing additional background information to the Commissioner, the Cabinet Office repeated its earlier assertion that the sensitivity of the issue meant that it was unable to add to the explanation already given to the complainant as to why the requested information was exempt.
- 4.5 For the reasons set out in the next section of this notice, the Commissioner accepted that the information requested was exempt by virtue of sections 23 and 24 of the Act. (Although the latter is a qualified exemption, the Commissioner accepted the view of the public interest taken by the Cabinet Office.) However, he remained of the view that some additional explanation of the reasons for refusal should have been given.
- 4.6 On 11 April 2006, a meeting was held between representatives of the Cabinet office and an Assistant Commissioner to discuss the case and, in particular, the possible provision of a more detailed explanation to the complainant of the grounds for the refusal of his request.

4.7 It was agreed at this meeting that a further explanation would be provided to the complainant. The Cabinet Office wrote to the complainant on 5 May 2006 in terms agreed with the Commissioner. At the same time, it drew the attention of the complainant to a statement recently made in the House of Commons by the Prime Minister to the effect that the Wilson Doctrine remained in force.

4.8 The complainant indicated by telephone on 28 June 2006 that he remained dissatisfied with the information provided and that he did not wish, therefore to withdraw his complaint.

## **5. The Commissioner's Decision**

5.1 The Commissioner agrees that the Cabinet Office was entitled, by virtue of the exemptions at s.23 and 24 of the Act to neither confirm nor deny holding the information requested.

5.2 In essence the Wilson Doctrine is that the telephone calls of Members of Parliament may be tapped if it is considered necessary for reasons of national security but that if this occurs, the Prime Minister will make an announcement to that effect once he judges that it is safe to do so. By implication there are two possibilities: the first is that calls are or have been tapped but the Prime Minister does not judge it safe to make an announcement. The second is that calls are not or have not been tapped. In the first case, to confirm that calls are or have been tapped would undermine the purpose of interception since those involved would be alerted to the risk. In the second, denial that tapping has occurred would assist anyone who would otherwise be of interest to the security services. In any event the Commissioner agrees that the Cabinet Office was justified in giving a non-committal response to the complainant's request.

5.3 Were the interception of telephone calls to have taken place, it seems likely that the information would be held by one of the security bodies listed in section 23(3). This is an absolute exemption, not subject to the public interest test. In accepting that the Cabinet Office, in relying upon this exemption, was entitled neither to confirm nor deny holding information as to occasions on which the telephone calls of Members of Parliament may have been tapped, the Commissioner implies no comment upon the merits of the complainant's request. However, it seems clear to the Commissioner that, as a matter of law, the FOI Act does not give a right of access to such information.

5.4 The Commissioner welcomes the fact that the Cabinet Office has not made use a Ministerial Certificate but, rather, has chosen to explain the reasons for its refusal of the complainant's request in the normal way. The Commissioner was initially critical of the reliance upon section 17(4) of the Act. This provides that an account of why a particular exemption applies need not be given if to do so would be to disclose exempt information. However, he is satisfied that a clear explanation has now been given in conformity with the provision of section 17(3) of the Act.

## **6. Action Required**

6.1 In the light of the above considerations, the Commissioner requires not steps to be taken by the public authority.

**7. Right of Appeal**

7.1 Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "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@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

7.2 Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

**Dated the 11<sup>th</sup> day of July 2006**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

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