

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date 3 April 2007

**Public Authority:** The Department for Transport ('DfT')  
**Address:** Great Minister House  
76 Marsham Street  
London  
SW1 4DR

### Summary

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The complainant requested information relating to the business interests of David Mills, the husband of Tessa Jowell MP. The public authority responded to this request stating that it did not hold the requested information, but the complainant disputed this. Following investigations, the Commissioner is satisfied that the public authority does not hold any information covered by the scope of the request. However, the Commissioner has concluded that the public authority failed to respond to the request within 20 working days and therefore breached section 10 of the Act.

### The Commissioner's Role

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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

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2. On 6 March 2006 the complainant submitted a request to the DfT for information it held relating to the business interests of David Mills, the husband of Tessa Jowell MP. The complainant specifically asked for:

*'All internal documentation and correspondence held by the DfT, which relates to a widely publicised approach made by Mr Mills to Baroness Symons, the former Foreign Office Minister about the possible sale and export of BAe passenger aircraft to Iran. That approach took place in 2002. These documents should include all emails, telephone transcripts, minutes, memos and letters etc. These documents could of course predate*

*press reports about the approach by Mr Mills or they could be much more recent.*

*Could you please provide details of any official contact between the DfT and Mr Mills over the course of the last five years? This should be supported by all related correspondence and internal documentation including emails.*

*Has Mr Mills sought the advice of any members of the department's ministerial team in connection with his business affairs during the course of the last five years? Could you please provide full details and all relevant correspondence and internal documentation including emails.*

*All the DfT documentation of any kind whatsoever which deals with the commercial operations of the Italian airline group Gandalf SRL (aka Gandalf Airlines). This documentation should stretch back as far as possible.*

*All DfT documents (including emails) which relates to the take over of Gandalf by Air Italia. This documentation should stretch back as far as possible.*

*Could you please detail any documents in the DfT's possession, which relate to any of the above, but which it is not willing to provide.'*

3. On 7 March 2006 the DfT confirmed to the complainant that it had received his request and that it would respond in accordance with the timescale stipulated by the Act.
4. The 6 April 2006 a representative of the DfT informed the complainant that 'I am afraid we have not been able to respond to your FOI request within 20 working days. We hope to be able to respond in the near future'.
5. The complainant responded to the DfT on the 6 April and expressed his dissatisfaction with the delay in fulfilling his request and asked for an internal review into the handling of his request.
6. The DfT contacted the complainant on 16 May 2006 and informed him that it had conducted a search of its records and confirmed that it did not hold any of the information covered by the scope of his request. The DfT also informed the complainant that it had conducted an internal review into it's handling of his request and acknowledged that there had been 'a degree of laxity on the Department's part in failing to provide you with a response within the 20 working day deadline and we apologise for this. However, some FOI requests that involve coordinating across a number of areas of the Department can often be time consuming and delays in handling can sometimes occur'. The DfT's letter of 16 May 2006 also informed the complainant that he had the right to complain about the way his request had been handled and if he was not satisfied with the outcome of that review, he had the right to complain to the Commissioner.

7. The complainant contacted the DfT on 23 May 2006 and explained that he was confused about the contents of the DfT response of 16 May because it suggested that an internal review had already been conducted and confirmed the outcome, but the letter concluded by stating that he should apply for an internal review if he was unhappy with the way his request had been handled. The complainant therefore asked the DfT to clarify this situation.
8. Having received no further response from the DfT, the complainant contacted the DfT again on 7 June 2006 and asked for a response to his email of 23 May 2006.
9. Having received no reply to his email of 7 June 2006, the complainant contacted the Commissioner on 16 June 2006.
10. The Commissioner reviewed the earlier correspondence on this case and decided that the DfT had not correctly conducted an internal review into its handling of the complainant's request; it had reviewed the failure to respond within 20 working days, but not the initial conclusion that it did not hold any of the requested information. Therefore, the Commissioner contacted the DfT on 21 September 2006 and instructed the DfT to conduct an internal review into its handling of this request. The DfT acknowledged receiving the Commissioner's letter on 13 October 2006 and confirmed that an internal review was underway and the DfT hoped to complete this review before the end of October.
11. On the 20 December 2006 the DfT informed the complainant that it had now conducted an internal review into its handling of this request and concluded that the DfT did not hold any of the information covered by his request.

## The Investigation

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### Scope of the case

12. On 28 December 2006 the complainant contacted the Commissioner again and informed him that he was dissatisfied with the outcome of the internal review. The complainant also informed the Commissioner that he was unhappy with the time it took the DfT to complete its internal review.
13. On the 10 January 2007 the Commissioner contacted the complainant and asked him to clarify the basis of his complaint. The Commissioner informed the complainant that he understood the complainant had no confidence in the DfT's assertion that it held no information covered by his request because of the way the DfT had handled his request. The Commissioner asked the complainant to provide any further submissions as to why he believed the DfT held some of the requested information, e.g. information the complainant may know of which suggests that it was likely that the DfT would hold information covered by the request.
14. The complainant informed the Commissioner that whilst he did not have any specific proof of contact between the DfT and Mr Mills, he decided to submit the

request because of the press revelation that Mr Mills approached Baroness Symons about the possible sale and export of BAe aircraft to Iran. The complainant explained that given the nature of the approach by Mr Mills, the DfT may have been informed of it, may have documented, or may have even received an approach from Mr Mills directly. The complainant also explained that the reference to the Italian airline industry was included because Mr Mills is known to have extensive links with the Berlusconi family in Italy who have expressed an interest in the airline business.

15. The complainant also informed the Commissioner that he had submitted similar requests about Mr Mills to a number of other central Government departments including the Foreign Office, the Department for Culture, Media and Sport, the Department for Constitutional Affairs and the Ministry of Defence. The complainant suggested that he had 'experienced problems with all of these departments and believe they may have colluded to try and disrupt the requests'.

## Chronology

16. The Commissioner contacted the DfT on 11 January 2007. In order to assist the Commissioner's investigations into this case, the Commissioner asked the DfT to respond to the following questions:
  1. *Was any of the above information ever held by the DfT? If so, can the DfT provide the ICO with information about the deletion of the information?*
  2. *What is the DfT's records management policy with regard to documents which fall within the complainant's request?*
  3. *Does the DfT hold any similar information to that requested and did the DfT consider offering any advice and assistance to the applicant?*
  4. *Please outline the steps taken to locate the information covered this request.*
  5. *Obviously, I appreciate that the key role of the DfT is the delivery of a safe and secure transport system within the UK. Clearly, the complainant's request focuses on transport issues external to the UK. I would therefore be grateful if you could provide me with a brief outline of how, if at all, the DfT becomes involved in issues affecting the transport systems of foreign countries.*
  6. *Would the DfT ever become involved in the sale and export of aircraft manufactured by a British company?*
  7. *More specifically, did the DfT become involved at all in the potential sale of BAe passenger aircraft to Iran which the complainant refers to in his request?*

8. *If the DfT was not involved directly with this potential sale, was the DfT ever informed about the deal by another government department? If so, is this documented?*
  9. *Similarly, would the DfT have any need to be concerned with the affairs of the European airline industry leading it to have any information about the Gandalf story referred to by the complainant?*
17. The Commissioner received a response from the DfT on 14 March 2007 in which it answered the nine questions listed above. The DfT's responses to each of the questions are quoted below:
1. *DfT found no record of any existing or previously-held documents relating to the complainant's request. During this search we found no evidence to suggest that any information on this matter was held by the Department.*
  2. *International, Aviation and Safety Division (IASD), the division that handled this request, have in place records management practices which are in accordance with the Department's record management policy (including in the handling of this request) . These, in turn, conform to wider governmental records management policy.*
  3. *DfT has found no information similar or relevant to that requested.*
  4. *In determining if DfT held relevant materials IASD undertook a thorough search of both paper files and electronic archives. This was carried out by experienced staff with a good working knowledge of where this information, could be located, if held, and who would reasonably have been expected to be exposed to any such material. A search of DfT records looking for specific references to "Mills", "Gand" and BAe failed to reveal any information that related to the request. Case records dating back to 2001 were included in the search.*
  5. *DfT is not involved in issues affecting the internal transport systems of foreign countries, though the UK is involved in international discussions on a wide variety of issues and transport modes.*
  6. *DfT is not involved with the sale and export of aircraft.*
  7. *DfT was not involved in the specific export case referred to by Mr Hastings.*
  8. *DfT has found no documentation from any other government department on this matter.*
  9. *DfT is not aware of any such concerns and has found no information relating to any concerns.*

18. In its letter of the 14 March 2007 the DfT also informed the Commissioner it considered that the cost of any further work trying to establish whether relevant information is held by the DfT would exceed the relevant cost limit of £600 and section 12 of the Act provides that the DfT were not obliged to do so.

## Analysis

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### Section 1

19. Section 1 of the Act creates a general right of access to information held by public authorities. Section 1(1) 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.'*
20. In investigating whether the DfT holds any information which falls within the scope of the complainant's request, the Commissioner has considered two issues. Firstly, the Commissioner has considered how thoroughly the DfT searched for the information it may hold which is covered by the request. Secondly, the Commissioner has considered whether there is any evidence to suggest that the DfT would have a reason to hold information covered by the scope of the request.
21. The Commissioner is satisfied that the DfT undertook a sufficiently detailed and comprehensive search of its records in order to establish if it held any information which fell within the scope of the request. The Commissioner notes that the DfT's search included reviewing both its electronic and paper records in order to establish if it held any relevant information. This search was conducted by experienced staff from the relevant division of the DfT which was likely to hold this information (the International, Aviation and Safety Division) and these staff had a good working knowledge of where this information, if held, would have been located. Furthermore the Commissioner notes that the complainant's request asked for information dating back 5 years and that the DfT searched for records dating back to 2001. The Commissioner also notes that whilst at the internal review stage the original searches were not re-run because the person conducting the internal reviewed established that they were adequate to locate the requested information, additional further searches were conducted. Despite these additional searches, no information falling within the scope of the request was located.
22. Secondly, although the Commissioner is satisfied that the searches conducted by the DfT were adequate to locate any relevant information held by the DfT, he has

gone on to consider whether it is likely that the DfT would have held this information.

23. With regard to this issue, the Commissioner believes that the key issue is the fact that the topic of the information the complainant was seeking is information that the DfT does not hold during the normal course of its business. The subject of the complainant's request can be split into two broad topics: firstly, information about the sale of BAe aircraft to Iran and secondly, information about the takeover of a domestic Italian airline. The Commissioner has established that the DfT's central role is to oversee the delivery of a reliable, safe and secure transport system for the UK. The DfT's remit does not cover issues affecting the internal transport systems of foreign countries nor does it cover the sale and export of aircraft. Therefore, the Commissioner is satisfied that the DfT would have no need to hold information on the topics sought by this request.
24. Furthermore, the Commissioner has considered whether the DfT would have a need to hold correspondence to or from the individuals covered by the scope of the request. It is clear from the complainant's request that Baroness Symons was at one point a minister in the Foreign Office. The Commissioner has also established that Baroness Symons has held a ministerial post within the Ministry of Defence and was also a Deputy Leader of the House of Lords; however she never held a political position within the DfT. Therefore, the Commissioner considers that the DfT would have no need to hold the correspondence Baroness Symons had with another individual, Mr Mills, who also had no direct links with the DfT.
25. On the basis of the above, the Commissioner is satisfied that the DfT does not hold any information which falls within the scope of the complainant's request.

## Section 10

26. Section 10(1) of the Act states 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."*

27. The Commissioner has established that the complainant submitted his request on 6 March 2006 and the DfT did not provide a response to this request until 16 May 2006, outside of the twenty working days stipulated by the Act. Therefore, in dealing with this request the DfT breached section 10 of the Act.

## Section 12

28. The Commissioner notes that the DfT did not apply section 12 as a basis upon which to refuse to answer the complainant's request; this section of the Act was only cited during correspondence with the Commissioner. However, as the Commissioner is satisfied that on the basis of his discussions with the DfT that it does not hold any information covered by the scope of the request, he has not considered the application of section 12 any further in this decision notice.

## The Decision

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29. The Commissioner's decision is that the public authority breached section 10 of the Act by failing to respond within 20 working days.
30. However, the Commissioner has decided that the DfT fulfilled its obligation under section 1 of the Act by correctly informing the complainant that it did not hold any information covered by his request.

## Steps Required

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31. The Commissioner requires no steps to be taken.

## Other matters

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32. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
33. The Commissioner considers that the DfT's response of 16 May 2006 was unclear as it included the DfT's initial response to the request as well as a review of the delay in responding to this request. When the complainant sought clarification from the DfT as to what the DfT's internal review process was, he did not receive a reply and it was not until the Commissioner contacted the DfT that it undertook an internal review. Furthermore, the Commissioner wishes to note that the DfT took nearly four months to complete the internal review; this is substantially longer than the Department for Constitutional Affairs' guidelines which suggest that even complex reviews involving a reconsideration of the public interest test should be dealt with within 6 weeks.
34. The Commissioner has also considered the complainant's suggestion that the DfT colluded with other Government departments in order to disrupt his requests. Whilst the focus of this investigation has been solely on whether the DfT holds the information covered by scope of this request, as part of his investigation the Commissioner has found no evidence of collusion designed to disrupt the various department's responses to the complainant's requests. The Commissioner also notes that the Access to Information Clearing House (located within the Department for Constitutional Affairs) provides an established and formal route for information requests received by Whitehall departments to be co-ordinated so that a consistent approach can be taken on similar requests received by different departments.



## Right of Appeal

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35. 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@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

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 3<sup>rd</sup> day of April 2007**

**Signed .....**

**Jane Durkin  
Assistant Commissioner**

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