

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 14 July 2008

**Public Authority:** Foreign and Commonwealth Office  
**Address:** Old Admiralty Building  
London  
SW1A 2PA

### Summary

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The complainant requested information relating to the business affairs of David Mills, the husband of Tessa Jowell MP. While the Commissioner found that the Foreign and Commonwealth Office (FCO) did not hold the information, he criticised FCO for leading the complainant to believe that it did. The Commissioner concluded that FCO had breached section 10 of the Act in failing to respond to the information request within 20 working days.

### 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. Legislation relevant to this complaint is set out in full in the Legal Annex to this Notice.

### The Request

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2. On 14 March 2006 the complainant emailed FCO saying that he was researching the business affairs of Mr David Mills. He said that he was interested in Mr Mills' business links with Iran and was trying to obtain all FCO documentation which dealt with this subject. The complainant said that, as had been widely publicised, Mr Mills had approached Baroness Symons in 2002 seeking help and advice about the sale of BAE Systems RJ146 passenger jets to Iran. He asked under the Act:
  - (i) "For all internal FCO documents (including emails, transcripts, memos and minutes) which deal with Mr Mills' approach to Baroness Symons. Some of

- these may pre-date the press reports about the issue. Others may be much more recent.
- (ii) For all external correspondence between the department and any other body or individual which deals with Mr Mills' approach to Baroness Symons. Correspondence could include letters, emails and telephone transcripts. Some of this correspondence will pre-date press reports about the approach. Others may be much more recent.
  - (iii) Has Mr Mills ever approached any member of the current FCO ministerial team about the aforementioned export of aircraft? If so, can you please give full details of these approaches including all relevant times, dates, and the details of any discussions. These approaches may pre-date Mr Mills' contact with Baroness Symons. Alternatively, they could be more recent.
  - (iv) Has Mr Mills ever approached the FCO or any member of its current ministerial team about his wider commercial links with Iran? If so, can you please give full details of these approaches including all relevant times, dates and details of any discussions.
  - (v) Has Tessa Jowell MP ever made any kind of approach to the FCO or any member of its ministerial team which relates to her husband's wider links with Iran?
  - (vi) Can you please provide details of the information the MOD holds on these matters but is not willing to provide."
3. On 15 March 2006 FCO acknowledged the information request and said that it would aim to respond within twenty working days. On 9 April and 19 April 2006 the complainant sought a progress report, but did not receive a reply. On 3 May 2006, in response to his further request of that date for an update, FCO provided him with a copy of a letter that it had sent him on 12 April 2006. In that letter FCO had said that it did hold information falling within the terms of the request, and it had sought to extend the deadline for reply until 10 May 2006 to reach a decision on where the balance of public interest lay. The letter also said that FCO considered that the exemptions in section 27(1)(a), relating to information which would, or would be likely to prejudice relations between the UK and Iran, and section 40(2), relating to personal data, were applicable.
  4. On 10 May 2006 FCO responded substantively to the complainant, and provided him with the information sought in points (i) and (ii) of his email of 14 March 2006. FCO said that it was continuing searches for the information requested in points (iii) to (v) of the information request (it did not mention point (vi)).
  5. On 18 May 2006, 7 June 2006 and 4 July 2006 the complainant asked FCO when the outstanding information would be provided to him. On 20 July 2006 FCO emailed the complainant, saying that 'The FCO does hold additional information relevant to your request'. It said that the request continued to raise complex public interest issues, which it needed to consider further before it could come to

- a decision on releasing the information. FCO said that it needed to extend its response time until 28 July 2006. On 28 July 2006, for the same reasons given on 20 July, FCO said that it needed to extend the time for its response to 11 August 2006.
6. On 28 July 2006 the complainant emailed FCO expressing his dissatisfaction with its delay in responding to him and asked FCO for an internal review of its handling of the request. On 11 August 2006 FCO replied to points (iii) to (vi) of the information request, saying, as regards (iii) that it had no record of any such contacts and as regards (iv) and (v) no such approaches had been made. As to the complainant's request for information held by MOD, (point (vi)) FCO suggested that he contact MOD direct.
  7. By return on 11 August 2006, the complainant sought a review of FCO's decision and suggested that it and his request for a review of FCO's handling of his information request could be combined. He said that FCO's failure to provide any further information appeared to contradict what was said in its letter of 20 July 2006, namely 'The FCO does hold additional information relevant to your information request'. He commented that, in later correspondence, FCO had said that his request 'continued to raise complex public interest issues' and found himself at a loss to understand how information that does not exist could raise such issues.
  8. On 25 October, 22 November and 23 November 2006 the complainant asked FCO for a progress report, but received no response. On 28 November 2006 the Commissioner received from the complainant a letter dated 23 November 2006 in which he complained about FCO's ongoing delays, but the Commissioner declined to intervene until the review had been completed.
  9. Following a further approach to FCO on 2 January 2007, on 9 January 2007 FCO told the complainant that it hoped to reply substantively to the review requests by the end of the following week. On 15 January 2007 FCO responded. It said that its interim responses of 20 and 28 July 2006 had incorrectly suggested that the delay in responding to the remaining points in his request was because of FCO's continuing search for or consideration of information relating to the request. FCO said that this had been the result of an internal misunderstanding, which meant that updates provided to the writers of those letters were inaccurate. FCO recognised that this breakdown in communication was unacceptable and a source of considerable embarrassment for FCO. It apologised for the significant procedural failures that had led to inaccurate and misleading language in its interim letters and an unacceptable delay in responding to the remainder of the complainant's information request.

## The Investigation

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### Scope of the case

10. On 17 January 2007 the complainant contacted the Commissioner again to complain about the outcome of the review and the way in which his request for information had been handled. The complainant said that he remained unhappy with the amount and quality of information supplied by FCO, and with the amount of time taken by FCO to process and the request and review. He said that he believed that FCO had been 'dragging its feet' because of the sensitivities of the issues involved. Since FCO had responded to points (i) and (ii) prior to the complaint to the Commissioner, and the complainant has not pursued FCO's response to point (vi), the Commissioner has confined his investigation to the information requested in points (iii) to (v).

### Chronology

11. On 27 September 2007 the Commissioner contacted FCO seeking its observations and representations on the case. The Commissioner also asked FCO what type of enquiries and searches were made within FCO to establish that no information was in fact held in relation to sections (iii), (iv) and (v) of the request.
12. Following reminders on 9 November 2007, 13 December 2007 and 15 January 2008, FCO provided a partial response to the Commissioner on 22 January 2008.
13. FCO said that the request was sensitive and complicated and it had had to consult widely; therefore the request had taken longer than anticipated to resolve and FCO apologised for that. FCO said that, in an attempt to be helpful, it had provided what it could to the complainant in stages. It also said that its file was incomplete and it was thus unclear as to what information it had previously considered to be exempt under section 27 of the Act, but in the end it had not relied on that exemption.
14. As to the searches that had been undertaken, FCO said that a number of departments within FCO, namely the Iran Co-ordination Group, the Parliamentary Under Secretary's Office and the North America Team and European Departments, had been sent a copy of the request and had been asked to search their files for information which fell within its scope. FCO said that, while it had located a number of documents relating to David Mills and his business links with Iran, it had concluded that they did not answer points (iii), (iv) and (v) of the request. FCO said that it was, however, reviewing those documents again to establish whether any of them should be released, and it aimed to complete the review by 5 February 2008.
15. On 7 February 2008 the Commissioner received FCO's further observations dated 5 February 2008, together with a copy of the correspondence that FCO had been reviewing. FCO said that, whilst there was some evidence that discussions took place about the appropriateness of Mr Mills' contact with the Iranians and the

risk to Ms Jowell's reputation, there was no evidence of approaches made by either David Mills or Ms Jowell to any member of the FCO ministerial team about the export of aircraft to Iran, or about Mr Mills' wider commercial links with Iran. FCO therefore concluded that the documents were not relevant to points (iii), (iv) and (v) of the information request.

## Analysis

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### Procedural matters

16. Section 1(1) of the Act creates a general right of access to information held by public authorities, and provides for any person making a request for information to be informed in writing by the public authority whether it holds the information of the description specified in the request, and, if that is the case, to have that information communicated to him. The time limit for complying with section 1(1), set out in section 10(1), is twenty working days.
17. In investigating whether FCO holds the information falling within points (iii) to (v) of the complainant's request, the Commissioner has considered how thoroughly FCO searched for that information. FCO has said that it forwarded the request to all of its departments that were most likely to hold such information asking them to undertake searches (see paragraph 14 above). The Commissioner is satisfied that FCO undertook a sufficiently detailed and comprehensive search of its records and papers, not least because it was able to identify some evidence that discussions had taken place about the appropriateness of Mr Mills' contact with the Iranians and the risk to Ms Jowell's reputation (paragraph 15). However, the Commissioner's staff have examined that correspondence, and the Commissioner is satisfied that it contains none of the information sought by the complainant, namely evidence of approaches made by either David Mills or Ms Jowell to any member of the FCO ministerial team about the export of aircraft to Iran, or about Mr Mills wider commercial links with Iran. On that basis, the Commissioner concludes that FCO does not hold any information which falls within the scope of points (iii) to (v) of the complainant's request.
18. The complainant has complained that FCO delayed unduly in replying to his information request and his review request. He initially sought information on 14 March 2006. Despite a number of reminders from the complainant FCO did not reply substantively until 10 May 2006, when it provided him with information relevant to points (i) and (ii) of his request. Having led the complainant to believe that it held information that was relevant to points (iii), (iv) and (v) of his request, and that it was considering the application of the exemption in section 27(1)(a) of the Act to that information, it was not until 11 August 2006 that it told him that it did not, in fact, hold such information. It is therefore clear that FCO has exceeded the time limit set out in section 10(1) of the Act for informing the complainant whether or not it held the information he had requested, and it has therefore acted in breach of the requirements of section 10(1) of the Act. Both FCO's failure to

correctly identify that it did not hold the outstanding information, and the delay in informing the complainant of that fact, merit criticism.

## The Decision

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19. The Commissioner has decided that FCO fulfilled its obligation under section 1(1)(a) of the Act by correctly informing the complainant that it did not hold any of the information covered by points (iii) to (v) of his request.
20. However, the Commissioner has also decided that the public authority breached section 10(1) of the Act by failing to respond to the complainant's information request within 20 working days.

## Steps Required

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21. The Commissioner requires no steps to be taken.

## Other matters

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22. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.
23. Section VI of the Code of Practice (provided for by section 45 of the Act) makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information. As he has made clear in his *'Good Practice Guidance No 5'* published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take up to 40 working days. Whilst he recognises that the delay occurred before the publication of his guidance on the matter, the Commissioner remains concerned that, in this case, it took over four months for an internal review to be completed.
24. The Commissioner is also concerned about the amount of time taken by FCO to reply to his enquiries. On 27 September 2007 the Commissioner contacted FCO seeking its observations and representations on the case. Following reminders on 9 November 2007, 13 December 2007 and 15 January 2008, FCO provided a partial response to the Commissioner on 22 January 2008. On 7 February 2008 the Commissioner received FCO's further observations dated 5 February 2008. The Commissioner finds these delays to be wholly unacceptable.

25. Finally, the Commissioner would like to record his concerns in relation to FCO's partial reliance on section 27(1)(a) (international relations). It would appear that when applying this exemption, FCO had not actually located (or viewed) the information requested. The Commissioner considers that this is extremely poor practice, particularly as FCO had extended the timescale for the consideration of the public interest test on the basis that section 27(1)(a) applied. The Commissioner notes that the FCO has apologised for this omission and that internal case handling procedures have been reviewed as a result. The Commissioner hopes that FCO's recognition of its failings in this regard will help to prevent similar mistakes in future.

## Right of Appeal

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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](mailto:informationtribunal@tribunals.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 14<sup>th</sup> day of July 2008**

**Signed .....**

**Richard Thomas  
Information Commissioner**

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

## Legal Annex

### **General Right of Access**

**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.”

### **Time for Compliance**

**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.”