

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 12 May 2008

**Public Authority:** Cabinet Office  
**Address:** 70 Whitehall  
London  
SW1A 2AS

### Summary

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The complainant submitted a request for information held by the Cabinet Office about the so-called 'Shrewsbury Two'. The Cabinet Office explained that a file originating in the Cabinet Office relating to papers about the 'Shrewsbury Two' had been transferred to the National Archives and is open and available for inspection. The Cabinet Office also explained that it has retained a small amount of information, but it considered this information exempt from disclosure on the basis of section 23 of the Act. The Commissioner has concluded that the Cabinet Office were correct to withhold this information on the basis of section 23.

### 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 1 March 2007 the complainant submitted a request to the Department for Constitutional Affairs ('DCA') for information about the 'Shrewsbury Two'.<sup>1</sup> The request stated:

'All attempts to obtain critical information contemporary information about the case have failed. In particular, sections of a minute (copy attached) have been deleted, as has a report which was sent to the Prime Minister (see attached note from Sir John Hunt). I would request that, after thirty two years of it being kept as "Top Secret", it is published under the Freedom of Information Act provisions.'
3. On 6 March 2007 the DCA wrote to the complainant acknowledging receipt of his request and noted that in due course it may be appropriate to transfer his request to another government department.
4. On 23 April 2007 the Cabinet Office wrote to the complainant and explained that it had considered his request for information because it was more appropriate to this department than the DCA. The Cabinet Office went on to explain that, as the complainant was aware, a file originating in the Cabinet Office relating to papers about Mr Tomlinson and Mr Warren had been transferred to the National Archives and is open and available for inspection. A small amount of information had been retained by the Cabinet Office under section 3(4) of the Public Records Act.
5. The Cabinet Office explained that following receipt of the complainant's request it had reviewed the retained material again and concluded that it was exempt from disclosure under the Act on the basis of section 23 which concerns information supplied by, or relating to bodies dealing with security matters.
6. The complainant contacted the Cabinet Office on 30 April 2007 asking for an internal review to be carried out.
7. On 17 May 2007 the Cabinet Office contacted the complainant and informed him that the internal review had concluded that section 23 had been correctly applied and therefore the requested information was exempt from disclosure.

## The Investigation

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### Scope of the case

8. On 22 May 2007 the complainant contacted the Commissioner in order complain about the Cabinet Office's decision to withhold the information he requested. The complainant argued that given the time that had elapsed since the information

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<sup>1</sup> The term 'Shrewsbury Two' refers to a case dating back to 1972 when two men, Ricky Tomlinson and Des Warren were imprisoned for 'conspiracy to picket'.

was created there was no rational reason why this information should be withheld.

## Chronology

9. On 20 February 2008 the complainant called the Commissioner's office in order to ascertain the status of his complainant. A case worker at the Commissioner's office informed the complainant that he had recently been allocated the case and that he would be reviewing the case papers shortly.
10. On the 22 February 2008 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 all of the information that had been withheld fell within the scope of section 23. The Commissioner acknowledged the complainant's argument that the information dated from some time ago, but explained that as section 23 was an absolute exemption, such considerations did not affect the application of section 23. The Commissioner asked the complainant whether he was content for his case to be closed at this stage without the issuing of a decision notice or whether the complainant wished a formal decision notice to be issued.
11. On 28 March 2008 the complainant confirmed that he wished the Commissioner to issue a decision notice.

## Findings of fact

12. On the basis of the correspondence submitted by the complainant to the Commissioner, the Commissioner has established that the information retained by the Cabinet Office when the file relating to the Shrewsbury Two was transferred to the National Archives, and thus the information withheld on the basis of section 23 of the Act, consists of:
  - (i) A paragraph from a memorandum from Sir Michael Hanley, Director General of the Security Service to Sir John Hunt at the Cabinet Office dated 10 January 1975.
  - (ii) A copy of the report which was enclosed with the above memorandum.
  - (iii) A paragraph from a memorandum from Sir John Hunt to a Mr Armstrong dated 13 January 1975 referring to this report.
  - (iv) A paragraph from a memorandum to Sir John Hunt relating to this report dated 15 January 1975.

## Analysis

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### Exemption

#### Section 23

13. The Cabinet Office's position is that the four pieces of information labelled (i) to (iv) above are exempt from disclosure on the basis of section 23.

14. 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'.

15. The Commissioner is satisfied that section 23 has been correctly applied to all four pieces of information for the following reasons:

16. The information described at points (i) and (ii) are documents directly supplied to the Cabinet Office by the Security Service, the body named at section 23(3)(a) of the Act, because they consist of a memorandum written by the Director General of the Security Service and a report attached to this memorandum.

17. The information described at points (iii) and (iv) relates to information created by the Security Service, because they discuss the report described at point (ii).

18. As section 23 is a class based, absolute exemption, for documents to be exempt from disclosure they simply have to fall within the ambit of the exemption. On the basis of the facts outlined above, the Commissioner believes that it is very clear

that the four pieces of information fall within the scope of this exemption and therefore he has not needed to undertake any further analyses in order to establish that section 23(1) has been correctly applied.

## **The Decision**

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19. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

## **Steps Required**

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20. The Commissioner requires no steps to be taken.

## **Other matters**

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21. The Commissioner notes that in the particular circumstances of this case he has not considered it necessary to contact the Cabinet Office in order to seek either clarification as to why it considered the exemption to apply or sight of the withheld information. However, the Commissioner wishes to emphasize to all public authorities that in dealing with complaints he has received under section 50 of the Act the Commissioner will usually require sight of the information withheld by public authority as well as an explanation as to why a public authority considers that information to be exempt from disclosure.

## Right of Appeal

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22. 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).  
Website: [www.informationtribunal.gov.uk](http://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 12<sup>th</sup> day of May 2008**

**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 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.'