

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 14 June 2011

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

### Summary

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The complainant requested information from the Cabinet Office regarding judicial salaries. The Cabinet Office confirmed that it did not hold any information relevant to the complainant's request and it directed the complainant to make his request to the Ministry of Justice (MoJ). The Commissioner accepts that on the balance of probabilities the Cabinet Office does not hold the information. However, the Commissioner has determined the Cabinet Office to have breached section 10(1) of the Act by not responding to the complainant's request within the prescribed 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.

### The Request

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2. The complainant requested the following information on 16 June 2010:  
'All UK Govt state paid Judges Earnings per year.'
3. The Cabinet Office responded to the complainant's request on 20 July 2010. It stated that it did not hold the requested information and directed him to request the information from the Ministry of Justice (MoJ) as the public authority most likely to hold it.

4. The complainant requested an internal review of the Cabinet Office's refusal on 21 October 2010. The Cabinet Office provided its internal review decision to the complainant on 29 November 2010. This upheld its original decision that the information is not held by it. The Cabinet Office again directed the complainant to request the information from the MoJ.

## **The Investigation**

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### **Scope of the case**

5. In correspondence to the Commissioner following the internal review outcome, it was clear that the complainant remained dissatisfied. The Commissioner therefore pursued this as a complaint about the internal review decision. He pursued the complaint on the basis that the complainant felt that the requested information was held by the Cabinet Office.

### **Chronology**

6. The Commissioner wrote to the complainant on 12 January 2011 to confirm the scope of his investigation as being; whether or not the Cabinet Office was correct to state to the complainant that the requested information was not held.
7. On the same day the Commissioner wrote to the Cabinet Office. He confirmed the scope of his investigation and made enquiries relating to the requestor's complaint.
8. A response to the Commissioner's questions was provided by the Cabinet Office on 21 January 2011. It is from this response and the complainant's submissions regarding the Cabinet Office's internal review response that the analysis below is based.

### **Findings of fact**

9. The Commissioner notes that the complainant made a separate request for the same information to the MoJ on 11 August 2010. The MoJ confirmed that they do hold the information and provided a link directly to the records of judicial salaries<sup>1</sup>. This was done following intervention

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<http://webarchive.nationalarchives.gov.uk/+/http://www.justice.gov.uk/publications/judicial-salaries-fees-2010.htm>

by the Commissioner, whereby MOJ was asked to respond to the complainant's request under the Act.

10. The MOJ confirmed that section 21 of the Act would be applied as this was information held on its website and therefore publicly available.
11. The complainant requested and received an internal review from the MoJ but this was not taken any further by the complainant with the Commissioner.

## Analysis

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### Substantive Procedural Matters

12. Section 1(1) of the Act 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.'

13. The effect of section 1(1)(a) and (b) is that a public authority is under a duty to confirm to a requestor whether or not it holds the requested information and if it does, to provide it to the requestor unless it can rely on one of the Act's exemptions.
14. In determining whether a public authority holds requested information, the Commissioner makes enquiries that will satisfy the civil standard of proof, that is, the information is or is not held on the balance of probabilities.
15. In deciding where the balance of probabilities lies, the Commissioner will consider the searches carried out by the public authority, in terms of the extent of the searches, the quality of the searches, their thoroughness and results the searches yielded. He will also consider any other information or explanation offered by the public authority which is relevant to his determination.
16. The Cabinet Office has confirmed that no searches were performed for the requested information as a result of the discussions had with its Freedom of Information team in response to this request. It could not identify any parts of the Cabinet Office which would hold or have the

necessity to hold the requested information. Again the Cabinet Office confirmed what it had told the complainant, that is, it does not have:

'...policy responsibility for the issue that you are raising or hold the information you have requested – responsibility for judicial policy is with the Ministry of Justice.'

17. The Commissioner accepts that it is the MoJ which is the correct public authority to direct this request to. He is drawn to this conclusion on the basis of the information contained in the internet website which had been drawn to the complainant's attention by the MOJ in response to his request of 11 August. He accepts that the Cabinet Office has no necessity to hold the information and is satisfied with its other explanations. The Commissioner therefore accepts that, on the balance of probabilities, the requested information is not held by the Cabinet Office.

18. Section 10(1) of the Act 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."

19. The complainant made his request on 16 June 2010 and a response was provided to him on 20 July 2010. Given that this goes beyond the prescribed 20 working days allowed by the Act the Commissioner has determined that the Cabinet Office breached section 10(1) of the Act.

## The Decision

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20. The Commissioner's decision is that the public authority dealt with the following element of the request in accordance with the requirements of the Act:

- It correctly confirmed that it did not hold the requested information following section 1(1)(a) of the Act.

21. However, the Commissioner has also decided that the following element of the request was not dealt with in accordance with the Act:

- In not responding to the complainant's request in the prescribed 20 working days, the Cabinet Office was in breach of section 10(1) of the Act.

## **Steps Required**

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22. The Commissioner requires no steps to be taken.

## Right of Appeal

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23. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

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)

24. 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.
25. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Dated the 14<sup>th</sup> day of June 2011**

**Signed .....**

**Alexander Ganotis  
Group Manager – Complaints Resolution  
Information Commissioner’s Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

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### Freedom of Information Act 2000

#### 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."

#### Information Accessible by other Means

**Section 21(1)** provides that -

"Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information."