

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 25 August 2015

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

Decision (including any steps ordered)

1. The complainant has requested information relating to a report into the murder of WPC Yvonne Fletcher. The Cabinet Office refused to provide it under section 23(1) (security bodies), section 27 (international relations), section 31 (investigations information) and section 40(2) (unfair disclosure of personal data). It upheld this at internal review although failed to communicate this to the complainant in a timely manner.
2. The Commissioner's decision is that the Cabinet Office is entitled to rely on section 23 as a basis for withholding all the requested information.
3. No steps are required.

Request and response

4. On 10 June 2014, the complainant requested information of the following description:

"We write to make a freedom of information request for the following Cabinet Office documents.

- 1) The preliminary report into the events outside the Libyan People's Bureau on 17 April 1984, produced by the Deputy Cabinet Secretary, Sir Antony Duff, on 29 April 1984.

- 2) The final report in the same events, produced by the Secretary of the Cabinet, Sir Robert Armstrong.

These two reports were produced following a Cabinet led inquiry into the events leading up to the death of WPC Yvonne Fletcher outside the Libyan People's Bureau on 17 April 1984. We have obtained documents from The National Archives which show that this inquiry took place and that Sir Anthony Duff completed a preliminary report. They also show that Sir Robert Armstrong was in the process of preparing a more detailed report although we do not know for sure if this was eventually completed.

The reports themselves are not held by The National Archives. It is therefore assumed that they have not been transferred to The National Archives and are still with the Cabinet Office. We kindly request disclosure of these reports.

To assist you in this disclosure request, we attach a copy of a Minute by Sir Robert Armstrong dated 4 May 1984. This minute directly relates to both reports and should provide sufficient information to help you locate both".

5. On 29 August 2014, the Cabinet Office responded. It confirmed that it held a report by Sir Antony Duff and refused to provide it. The Cabinet Office cited the following exemptions as its basis for doing so:

section 23(1); section 27(1)(a),(b) & (d); section 31(1)(a); and section 40(2).
6. It denied holding a separate report by Sir Robert Armstrong and explained that the Minute the complainant had supplied referred to finalising Sir Antony Duff's report.
7. The complainant requested an internal review on 16 October 2014. They received an acknowledgement the following day but, despite chasing a response on 4 December 2014 and 3 February 2015, the complainant did not receive the outcome of the internal review. The Commissioner took the case forward on the basis that there had been a protracted delay on the Cabinet Office's part in conducting an internal review.
8. During the course of the Commissioner's investigation, the Cabinet Office supplied the Commissioner with a copy of the internal review it had conducted. This was dated 23 January 2015. The Cabinet Office could offer no explanation as to why the complainant had not received this. Further comment is made about the internal review in the Other Matters section of this Notice.

9. In this letter of internal review, it upheld the use of all the exemptions it had cited at refusal.

Scope of the case

10. The complainant contacted the Commissioner on 16 March 2015 to complain about the way his request for information had been handled. It had previously contacted the Commissioner on 17 February 2015 but had not supplied all relevant correspondence held regarding the request.
11. During the course of the Commissioner's investigation, the Cabinet Office wrote to assert that all the information was exempt under section 23. Parts of the report were also exempt under section 27, section 31 and section 40 as indicated above.
12. The Commissioner has therefore considered first whether all the information is exempt under section 23.

Reasons for decision

Section 23

13. Section 23 (1) states:

'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).'

14. To successfully engage the exemption at section 23(1), a public authority must be able to demonstrate that the relevant information was *directly or indirectly supplied by, or relates to* any of the bodies listed at section 23(3). The Cabinet Office applied this exemption to other parts of the withheld information.
15. In correspondence with the Cabinet Office, the complainant alluded to section 64(2), which provides that section 23 is qualified by the public interest where the information in relation to which it was cited is a historical record, the threshold for which is currently being reduced from 30 years to 20, *and* it has been passed by the originating body to the National Archives.
16. Whilst the information here is a historical record due to its age, it has been retained by the Cabinet Office and not been passed to the National Archives. This means that section 64(2) does not have effect, so section

23(1) remains an absolute exemption in relation to the information in question.

17. The Cabinet Office provided the Commissioner with a letter from a very senior official in the Cabinet Office (SO) with the experience and authority to validate the provenance of the information. The SO assured the Commissioner that the information in question was either received from one of the bodies listed in section 23(3) or is directly related to them.
18. The Commissioner has considered all the submissions of both parties in the light of the subject matter and what is already in the public domain. He accepts that in the circumstances of this case, the assurance provided by the SO with regards to the application of section 23(1) to all the information in the report is sufficient for him to be satisfied that section 23(1) is engaged.
19. The Commissioner therefore finds that the requested information is exempt from disclosure on the basis of section 23(1) because it was supplied by, or relates to, one of the bodies listed in section 23(3).
20. Section 23(1) is an absolute exemption which means that there is no requirement to carry out a public interest test to determine whether or not the information withheld on that basis should have been disclosed in any event in the public interest. While there may be compelling reasons why the public must know more about the murder of WPC Yvonne Fletcher, these cannot be taken into account when considering the application of section 23, because the exemption is absolute.

Other matters

21. Whilst there is no explicit timescale laid down by the Act for completion of internal reviews, the Commissioner considers that they should be completed as promptly as possible. The Commissioner believes 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 longer but in no case should the time taken exceed 40 working days.
22. The Commissioner is concerned that in this case, it took 69 working days for an internal review to be completed. The Commissioner does not accept that exceptional circumstances existed to justify such a delay, and he therefore wishes to register his view that the Cabinet Office fell short of the standards of good practice by failing to complete its internal review within a reasonable timescale. He would like to take this opportunity to, once again, remind the Cabinet Office of the expected

standards in this regard and recommends that it aims to complete its future reviews within the Commissioner's standard timescale of 20 working days.

23. He would also draw the Cabinet Office's attention to the fact that the complainant chased the outcome of the internal review twice. The second of these chasing letters should have alerted the Cabinet Office to the fact the internal review, which it says was sent on 23 January 2015, had not been received. It should have sought to clarify this with the complainant.

Right of appeal

24. 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,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504
Fax: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

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

Signed

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