

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 July 2015

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

Decision (including any steps ordered)

1. The complainant has requested information from the Cabinet Office (CO) about documents declassified for the purposes of publication by the Iraq Inquiry¹. The CO refused to disclose the requested information relying on FOIA section 22 – information intended for future publication. The Commissioner's decision is that CO was entitled to rely on section 22 to refuse the request.
2. The Commissioner does not require the Cabinet Office to take any further steps.

Request and response

3. On 21 January 2015, the complainant wrote to the Cabinet Office and requested information in the following terms:

"I would like all documents held by the Cabinet Office that have been declassified for the purpose of publication by the Iraq Inquiry (excepting those that have already been published by the Inquiry.)"
4. On 16 February 2015 the CO responded.

¹ An Inquiry formally set up by the former Prime Minister Gordon Brown on 30 July 2009 to identify lessons that could be learned from the Iraq conflict. The Inquiry is led by Sir John Chilcot. Details regarding its work can be found at: <http://www.iraquinquiry.org.uk/about.aspx>. Referred to in this notice as 'the Iraq Inquiry' or the 'Inquiry'.

5. It refused to provide the requested information. It cited the following exemption as its basis for doing so: section 22 – information intended for future publication.
6. The complainant requested an internal review on 18 February 2015. The CO sent the outcome of its internal review on 12 May 2015. It upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner on 23 April 2015 to complain about the way his request for information had been handled.
8. The Commissioner considers the scope of the investigation is to determine whether the CO was entitled to rely on section 22 to refuse the request.

Reasons for decision

Section 22(1)

9. Section 22(1) states that information is exempt from disclosure if;
 - (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),
 - (b) the information was already held with a view to such publication at the time when the request for information was made, and
 - (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).
10. The CO explained that the information in scope is intended for publication by the Iraq Inquiry.
11. In order to correctly rely on section 22, there must have been a settled intention to publish the requested information prior to the request being received.

12. In its submission to the Commissioner, the CO has set out its interpretation of the request. It has explained to the Commissioner that the request covers only those documents which the government has agreed to declassify in full under the terms of the 'Protocol between the Iraq Inquiry and Her Majesty's Government regarding Documents and Other Written and Electronic Information' (The Protocol).
13. It is the CO's assertion that the request explicitly defines the information in scope as documents having been agreed for declassification under the terms of the Protocol at the time of the request. Furthermore the Protocol clearly evidences the intention of the Inquiry to publish the information which has been declassified.
14. Having considered the wording of the request, the Commissioner considers that the CO was correct to interpret the request as it has. He also accepts that the Protocol evidences the intention of the Inquiry to publish the information which has been declassified.
15. In further explaining why it has sought to rely on section 22 in this case, the CO has explained that Sir John Chilcot had written to the Prime Minister on 13 July 2012² and had set out the position that the Inquiry had concluded that it "should not publish further material piecemeal and in advance of its report." It is the CO's position therefore that disclosure of declassified information, without context, would, in Sir John Chilcot's words, "risk misinterpretation and potentially prejudice the fair treatment of individuals" and would therefore risk undermining the work of the Inquiry.
16. The CO clarified to the Commissioner that as the request was for documents, it took this to mean whole documents only, drawing a distinction between whole documents and material drawn from declassified documents. The CO further clarified its position that documents falling within the scope of the request are those documents that Government has agreed to declassify without redactions which will be published in full by the Inquiry.
17. Whilst it is ultimately a matter for the Inquiry to decide which documents will be published in their entirety, the CO has explained to the Commissioner that it has no reason to believe that the Inquiry's intentions regarding publication have changed since declassification was requested.

2

<http://www.iraquinquiry.org.uk/media/54266/2012-07-13%20chilcot%20cameron.pdf>

18. In the circumstances, the Commissioner accepts that there was a settled intention to publish the information prior to the request and that accordingly section 22(1) is engaged. He also considers that it was reasonable for the CO to maintain its reliance on future publication, rather than publish the information in response to the request. This conclusion is consistent with other decisions taken by the Commissioner in relation to documents intended for release in due course by the Iraq Inquiry.

Public interest test

19. The exemption at section 22(1) is qualified by a public interest test. Therefore, the Commissioner has considered whether in all the circumstances of the case, the public interest in maintaining the exemption outweighed the public interest in disclosure at the time of the request.
20. In favour of the public interest in disclosing the requested information, the CO acknowledged that there is a general public interest in openness and transparency of Government which may contribute to a greater public understanding of participation in public affairs. It accepts that there is a strong public interest in understanding how decisions were made in relation to the UK's role in Iraq between 2001 and 2009. It accepts also that there is a strong public interest in an independent, full and frank Iraq Inquiry. It is the CO's position that this public interest will be seen to be met when the Inquiry report is published.
21. The CO however argued that the greater public interest lies in allowing the Inquiry, which is independent of Government, to complete its work without hindrance or outside interference. Premature disclosure of documents, without the context provided by the Inquiry's report would not assist the public understanding of the issues involved and would be likely to undermine the conclusions of the Inquiry before it is able to report. Indeed, the CO argues that the stronger public interest lies in ensuring that the information remains confidential at this stage.
22. In the circumstances, the Commissioner accepts that there is a stronger public interest in publishing the relevant withheld information at the same time as the Inquiry report. He accepts that piecemeal disclosures of material relevant to the Inquiry's report could potentially disrupt the work of the Inquiry and possibly also undermine it. Therefore it is both reasonable and in the public interest to avoid making piecemeal disclosures in order for the public to have a full picture of the Inquiry's findings.

23. Therefore, the Commissioner finds that, in all the circumstances of the case, the public interest in maintaining the exemption at section 22(1) outweighs the public interest in disclosing the information withheld on that basis.

Other matters

24. The Commissioner notes that there was a significant delay in responding to the complainant's request for an internal review in respect of his request.
25. Part VI of the section 45 Code of Practice makes it desirable practice for a public authority to have a procedure in place for dealing with complaints about its handling of requests for information and that the procedure should encourage a prompt determination of the complaint.
26. As the Commissioner has made clear in his '*Good Practice Guidance No 5*', he considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner considers 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.
27. In this case, the request for an internal review was made on 18 February 2015 and the response was issued on 12 May 2015 following a letter from the Information Commissioner's Office on 7 May 2015. The Commissioner notes that in this case, the time taken to respond was 57 working days.
28. It appears that CO has offered no mitigation in terms of the delay other than stating that it was an administrative oversight. The Commissioner finds that this delay is unacceptable and asks the CO to ensure that future requests for internal reviews are handled appropriately and in accordance with his guidance.

Right of appeal

29. 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

30. 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.
31. 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