

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date 23 April 2007

**Public Authority:** Privy Council Office  
**Address:** 2 Carlton Gardens  
London  
SW1Y 5AA

### Summary

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The complainant requested information on a number of matters in relation to the University Visitor. PCO refused to supply this information on the grounds that it did not hold the information for the purposes of FOI. The Commissioner has decided that PCO was correct to refuse to disclose this information on the basis that it does not hold the information under section 3(2) of the Act and that it responded to the complainant within the timescales set out in section 10 of the Act.

### 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 26 March 2006 the complainant made the following request to the Privy Council Office (PCO) in a letter addressed to Baroness Amos:
  1. Did you take any decision in respect of my Petition of 27.5.04? If so, please state the date of your decision and provide a true copy of your decision.
  2. Did you appoint anyone to advise you in respect of my Petition? If so, please state the date of your appointment of an advisor, the advisor's name and status, and please provide a true copy of your appointment.

3. Did you receive any advice in respect of my Petition? If so, please state the date of that advice and the name and status of the person who advised you, and please provide a true copy of that advice.
  4. Did you instruct the Clerk of the Privy Council to inform me of your decision? If so, please state the date on which you instructed him and please provide a true copy of your instruction.
  5. Did you read my Petition and the attached documents and subsequent letter of 21.6.04? If so, please state the date on which you read them.
  6. Were you advised on the law in the context of my Petition by the Lord Chancellor? If so, please state the date of his advice and provide a true copy of that advice.
  7. Were you advised on the law relating to my petition by anyone else? If so, please state the name and status of the person and the date of the advice, and please provide a true copy of the advice.
3. The PCO replied to the complainant on 30 March 2006, refusing to supply the requested information on the grounds that the request was made about Baroness Amos in her capacity as a University Visitor rather than her role as a Privy Councillor. The PCO stated that a University Visitor is not a public authority under the Act and provided an extensive justification to support its view. It also stated that although papers relating to Baroness Amos in her capacity as a University Visitor may be physically located within the building occupied by the PCO, they are the private property of Baroness Amos.
4. In its letter of 30 March 2006, the PCO made the following specific points about the status of the University Visitor:
- i. Although the jurisdiction of the University of London is exercised by someone who happens to be a Government minister that is not a relevant consideration. The Lord President of the Council does not act as Visitor in her Ministerial role as Leader of the House of Lords or as President of the Privy Council, since neither body has any functions relating to Visitors.
  - ii. A Visitor is the creation of the common law, which imputes a Visitor to any eleemosynary corporation (which is by nature a private foundation). The Lord President's responsibilities as a Visitor are entirely separate from her Ministerial role. What matters is the nature of the role of a Visitor, and it is quite clear that the nature of that role is not a public one....since they are not in any sense exercising a public jurisdiction.
  - iii. The Visitor cannot be brought within the meaning of the FOI Act by virtue of its extension to the governing bodies of universities. Visitors are emphatically not members of the governing body of the universities that fall within their jurisdiction, since those governing bodies are themselves subject to that jurisdiction. For a Visitor to be a member of the governing

body would breach the rules of natural justice, since no one can be judge in his own cause. The Visitor is not part of the university at all.

5. On 5 April 2006, the complainant wrote to PCO, asking a number of substantially similar questions to the request of 26 March 2006.
6. The PCO replied to the complainant on 18 April 2006, again refusing the request, relying on section 3(2)(a) of the Act, stating that to the extent that the requested information is in the possession of the PCO it is held on behalf of Baroness Amos in her capacity as University Visitor.
7. The complainant replied to the PCO on 23 April 2006, disputing the PCO's decision and reasoning, asking for a copy of the PCO's internal complaints procedure and asserting that the PCO was not complying with its obligations under section 16(1) of the Act (Duty to provide advice and assistance).
8. The complainant wrote to the PCO again on 28 May 2006 asking for information about decisions made by the University Visitor and stated that the PCO's publication scheme states that "the PCO will publish material on the Judicial Committee and the University Visitor, which is not required under the statutory scheme as it relates to bodies which, though serviced by the PCO are not themselves part of it".
9. The PCO replied on 31 May 2006, repeating its justification and refusing to supply any information to the complainant in relation to its publication scheme policy "in the light of the vexatious nature of his request." In response, further letters were sent to PCO by the complainant on 2 June 2006 and 3 June 2006.
10. In its response dated 6 June 2006, PCO provided details of its complaints procedure but stated that it would not accept an appeal from the complainant as it declared him to be a vexatious correspondent.
11. On 17 June 2006, the complainant wrote to PCO asking for clarification about the role of the University Visitor, details of information published by PCO about the Visitor and the former PCO complaints procedure.

## The Investigation

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### Scope of the case

12. On 10 July 2006 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
  - i. Breach of duty under section 1(1)(a) to confirm or deny.
  - ii. Breach of section 10: time for compliance with request.
  - iii. Breach of section 19(1)(b): duty to publish information in accordance with the publication scheme; also breach of section 19(2)(b) and (c).

13. The complainant also made an allegation about a breach of section 77 of the Act (Offence of altering etc. records with intent to prevent disclosure) in respect of the PCO's refusal to provide the requested information the complainant. He also raised other issues that are not addressed in this Notice because they do not fall within any of the requirements of Part 1 of the Act.

## **Chronology**

14. Prior to commencing investigation into the complaint, the Commissioner was in the process of investigating another case, FS50084354, an element of which also centred on access to information about the University Visitor from PCO. The Commissioner was satisfied that the submissions received from PCO in response to his requests for further clarification were sufficient to enable him to reach a decision on whether the complainant in this case was entitled to the information requested. Furthermore, aside from the correspondence received from the complainant, as set out in preceding paragraphs, the Commissioner did not consider it necessary to ask for any further representations from the PCO as part of his investigation.

## **Findings of fact**

15. The Commissioner found that University Visitors are entities which are legally separate to any other body and no public authority has a statutory function or otherwise in relation to the Visitor.
16. The Commissioner understands that, until 2004, each one of the long-established universities in England and Wales was overseen by a 'Visitor' whose role it was to determine disputes arising between the academic institution and its members. This role was private to the university to whom the Visitor undertook the role. Students at these universities had no right to go to court if they were dissatisfied with their teaching or feel they had been unfairly treated by the university authorities. The only appeal that could be made by a student outside the internal procedures of the university was to the University Visitor.
17. The Commissioner also understands that the historic role of a Visitor is to protect the interests of the founder of the corporation, and it is open to any member of the foundation to petition the Visitor – who is independent of the body itself – in respect of the interpretation and application of the body's internal law. In the case of *R v Hull University* (1993), the House of Lords concluded that the Visitor's jurisdiction was of such a private nature that it could not even be reviewed by the courts on a point of law, as the law applied by the Visitor was not the common law of England but the entirely private domestic law of the University.
18. On 1 January 2005 the role undertaken by the Visitor was assigned to the Office of the Independent Adjudicator for Higher Education, under the terms of the Higher Education Act 2004.

## Analysis

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19. The relevant provisions of all sections of the Act to which references are made in the following paragraphs can be found in the legal annex.

### **Section 1(1)(a) – Duty to confirm or deny** **Section 3(2) – Public Authorities**

20. Information held by the PCO about University Visitors falls outside the scope of the Act by virtue of section 3(2)(a). This is because the functions of PCO do not extend to University Visitors and Baroness Amos' status as a privy councillor, or indeed as the ministerial head of the PCO, is entirely unrelated to her separate position as a University Visitor. This role is private to the university to whom she undertakes that role. Simply because information about Visitors is in the possession of the PCO by virtue of it undertaking work on behalf of Baroness Amos in her capacity as a University Visitor does not make this information that the PCO holds in its own right.
21. The Commissioner notes the PCO's view, provided to him on 17 August 2006 in relation to another case (FS50084354), that:
- i. The fact that Baroness Amos is assisted in her Visitorial role by members of the Privy Council Office is not sufficient to bring it within the purview of the Act, as the information held on Visitor cases is held on behalf of the Visitor and is therefore outside the scope of the Act.
  - ii. The University of London's statutes provide that "5. The Visitor shall be the Sovereign acting through the Lord President of the Council." Although this technically means that The Queen is always advised before acting on any matter, the pragmatic view is taken that the Visitor is actually the Lord President of the Council, who is, of course, always a Government Minister. However, that is not sufficient to bring her within the definition of a Government Department. This is because the Privy Council itself is not a government department and it is difficult to see how its President alone could be.
22. The Commissioner accepts that the Privy Council and the Privy Council Office are separate institutions and further accepts that the Privy Council itself is not a public authority under the terms of the Act.
23. The Commissioner therefore finds that all the information in the possession of the PCO relating to University Visitors is held on behalf of Baroness Amos in her capacity as a University Visitor. To the extent that the PCO provides support to Baroness Amos in her capacity as a University Visitor, the Commissioner understands that it does not do so as part of its statutory functions of providing support to her as the President of the Privy Council.
24. As a result of the application of section 3(2), there is no obligation on the part of the PCO to provide any information requested by the complainant on 26 March 2006. As the PCO confirmed to the complainant that it does not hold the above

information for the purposes of the Act, it fulfilled its obligations under section 1(1) of the Act. The Commissioner therefore finds no evidence of a breach of the Act in respect of the duty to confirm or deny.

### **Section 10 - Time for compliance with request**

25. Given the dates of the requests and responses (as outlined in this Notice), the Commissioner finds no breach of section 10.

### **Section 19 - Publication scheme**

26. In his letter to the PCO of 28 May 2006, the complainant advised that its publication scheme states that “the PCO will publish material on the Judicial Committee and the University Visitor, which is not required under the statutory scheme as it relates to bodies which, though serviced by the PCO are not themselves part of it”.
27. In its reply of 31 May 2006, PCO refused to supply any information to the complainant in relation to its publication scheme “in the light of the vexatious nature of his request.”
28. As a publication scheme constitutes the types of information a public authority proactively makes available, as opposed to the right of an individual to request information under section 1, it cannot apply section 14(1) of the Act (Vexatious requests) to refuse to supply such information to a requestor. Instead, the exemption under section 21 (Information accessible to the applicant by other means) may be applied in response to request for such information made under section 1(1) of the Act.
29. A public authority's failure to publish information in accordance with its publication scheme would constitute a breach of section 19(1)(b) of the Act (Publication schemes). However, the Commissioner does not consider a public authority's commitment to publish information which it holds on behalf of another body to form an enforceable part of the scheme. The PCO is therefore under no legal obligation to disclose the aforementioned information under the Act.

### **The Decision**

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30. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- i. Section 1(1)(a) in relation to the information requested on 26 March 2006.
  - ii. Section 3(2) in so far as the information requested is held by the public authority on behalf of another person and is therefore not held by the public authority for the purposes of section 1(1) of the Act.
  - iii. Section 10 in relation to the time for compliance.

31. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- i. Section 1(1)(a) in relation to the PCO's justification for refusing to supply the information requested in its publication scheme.

### Steps Required

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32. The Commissioner requires no steps to be taken.

### Other matters

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33. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matter:

**Section 77 – Offence of altering etc. records with intent to prevent disclosure**

34. In his complaint to the Commissioner of 10 July 2006, the complainant alleged that PCO was guilty of an offence under section 77, of concealing records with the intention of preventing disclosure, by falsifying the relevant facts and the law.
35. Given that the Commissioner has found that the PCO legitimately relied upon section 3(2) in order to refuse to disclose the requested information and fully explained the reasons for this to the complainant, the Commissioner finds no evidence that the PCO breached section 77. Additionally, although the PCO refused to supply the information referred to within its publication scheme on incorrect grounds, it did not commit any of the offences set out in section 77 in doing so.

## Right of Appeal

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36. 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 23<sup>rd</sup> day of April 2007**

**Signed .....**

**Richard Thomas  
Information Commissioner**

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

## Legal Annex

### 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.

### Section 3(2) of the Act provides that -

For the purposes of this Act, information is held by a public authority if –

- (a) it is held by the authority, otherwise than on behalf of another person, or
- (b) it is held by another person on behalf of the authority.

### Section 10 of the Act provides that –

- (1) 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.
- (2) Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.
- (3) If, and to the extent that –
  - (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
  - (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.

### Section 17(7) of the Act provides that -

A notice under subsection (1), (3) or (5) must –

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provided such a procedure, and
- (b) contain particulars of the right conferred by section 50.

**Section 19(1) of the Act provides that -**

It shall be the duty of every public authority –

- (a) to adopt and maintain a scheme which relates to the publication of information by the authority and is approved by the Commissioner (in this Act referred to as a “publication scheme”),
- (b) to publish information in accordance with its publication scheme, and
- (c) from time to time to review its publication scheme.

**Section 77(1) and (2) of the Act provides that -**

(1) Where –

- (a) a request for information has been made to a public authority, and
- (b) under section 1 of this Act or section 7 of the Data Protection Act 1998, the applicant would have been entitled (subject to payment of any fee) to communication of any information in accordance with that section,

any person to whom this subsection applies is guilty of an offence if he alters, defaces, blocks, erases, destroys or conceals any record held by the public authority, with the intention of preventing the disclosure by that authority of all, or any part, of the information to the communication of which the applicant would have been entitled.

(2) Subsection (1) applies to the public authority and to any person who is employed by, is an officer of, or is subject to the direction of, the public authority.