

Freedom of Information Act 2000

Decision notice

Date: 4 January 2016

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

Decision (including any steps ordered)

1. The complainant requested information relating to the Hutton Inquiry.¹ The Cabinet Office initially refused the request under section 21(1) of the Freedom of Information Act 2000 (the Act) because it considered the information was already reasonably accessible to the complainant. The Cabinet Office provided a link to the information it considered to be of relevance, but did not confirm that it held any of the requested information.
2. The Cabinet Office later informed the Commissioner that it did not hold any of the requested information, and stated it only provided the link to be of assistance to the complainant.
3. The Commissioner does not accept that the Cabinet Office has fulfilled its obligations in accordance with section 1(3). He is of the view that the Cabinet Office reasonably requires further information in order to identify and locate the information requested and should inform the complainant of that requirement. The Commissioner therefore requires

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<http://webarchive.nationalarchives.gov.uk/20090128221546/http://www.the-hutton-inquiry.org.uk/index.htm>

the Cabinet Office to take the following steps to ensure compliance with the legislation.

- Respond to the complainant as per section 1(3) of the Act.
 - Provide reasonable advice and assistance to the complainant to assist him in rephrasing his request.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 12 February 2015, the complainant wrote to the Cabinet Office and requested information in the following terms:

"I would like to make a request for information under the FOI Act. The request relates to drafts of the September 2002 Iraq WMD dossier (or sections thereof) released to and published by the Hutton Inquiry. I shall use the references handwritten on Hutton Inquiry documents.

1) What was the document circulated with John Scarlett's handwritten note of 6 September 2002? CAB/23/003-004 Please supply a copy of the relevant document or cite the Hutton Inquiry reference.

2) Who was the author of the draft dossier "Section 6" published by Hutton with reference CAB/23/005-0014? Please state the name and/or designation, depending on FOI applicable exemptions.

3) Who was the author or authors of the draft dossier "Section 6" published by Hutton with reference DOS/2/0030-0043? (ie Section 6 of the 10 September draft) Please state the names and/or designations, depending on FOI applicable exemptions.

4) In particular, who drafted paragraphs 3 and 4 of the draft dossier "Section 6" published by Hutton with reference DOS/2/0030-0043? (ie who wrote this version of the "Why are we concerned?" section?) Please state the names and/or designations, depending on FOI applicable exemptions.

5) Please see the attached FCO document dated 17 May 2007, which was release to me under FOI. The second sentence of paragraph states that the Hutton Inquiry published the second "Intelligence" part of the

John Williams draft. Please indicate which document published by Hutton was the second "Intelligence" part of the John Williams draft. Please supply a copy of the relevant document or cite the Hutton Inquiry reference."

6. The Cabinet Office responded on 15 May 2015. It did not confirm or deny that it held any information within the scope of the complainant's request, but instead stated that the information was exempt under section 21(1) of the Act because the information for the Hutton Inquiry was available from The National Archives.
7. The complainant appealed to the Commissioner against the Cabinet Office's refusal notice on 19 May 2015. Due to the length of time it had taken for the refusal notice to be issued, the Commissioner chose to accept the complainant's appeal before the Cabinet Office issued its internal review.
8. The Cabinet Office stated to the Commissioner that when it was contacted by the Commissioner it was already in the process of drafting its internal review response. The Cabinet Office confirmed that this response had already reached the conclusion that the information was not held, and that section 21(1) had been applied incorrectly.

Scope of the case

9. The complainant contacted the Commissioner on 23 April 2015 to complain that the Cabinet Office had not issued its response within the statutory timeframe. Upon receiving the Cabinet Office's refusal notice the complainant confirmed he wished to appeal against the section 21(1) refusal. Given the Cabinet Office's later amended position, the matter for the Commissioner to initially consider became whether it was reasonable for the Cabinet Office to assert that it does not hold the requested information.
10. Having assessed the Cabinet Office's reasoning as to why no information was held the Commissioner determined the scope of the case to be:
 - the time taken to respond to the request;
 - whether the request is phrased in such a way that the Cabinet Office can identify and locate the information requested; and
 - if not, then whether the Cabinet Office has met its obligations under the Act to inform the complainant whether it needs further information before it can properly handle the request.

Reasons for decision

Section 10(1) – time for compliance with a request

11. Section 10(1) of the Act states that a public authority must confirm or deny whether it holds relevant information to a request within 20 working days.
12. The complainant submitted his request on 12 February 2015. As the Cabinet Office did not either confirm or deny whether it held information relevant to the complainant's request (or seek further information from the complainant in order to identify and locate the information) by the twentieth working day – 12 March 2015 – it has breached section 10(1) of the Act.
13. In respect of the 15 May 2015 response, the Commissioner asks that the Cabinet Office only applies section 21(1) where it is satisfied that it holds the requested information. He also asks the Cabinet Office to ensure that all future responses which reference section 21(1) confirm that the requested information is held; otherwise the exemption should not be applied. Further details can be found in the Commissioner's guidance:

*"[Within section 21(1)] there is no exclusion from the duty to confirm or deny that the information is held. As an applicant still accesses requested information where section 21 is relevant, there is no value in neither confirming nor denying that the information is held. It is therefore reasonable for a public authority to inform the applicant that it holds the information in order to give them the opportunity to access it by another route."*²

Section 1(3) – clarification of information requested

14. Whilst most section 1 cases concern a dispute about whether the documents specified in the request are held in a public authority's records, this case is different. The complainant believes that the Cabinet Office retains the information that he has requested and should be able to identify it. However, it is evident from the Cabinet Office's submissions that its position is that it cannot locate any of the request

² <https://ico.org.uk/media/for-organisations/documents/1203/information-reasonably-accessible-to-the-applicant-by-other-means-sec21.pdf> (see paragraph 8 on page 3)

information due to the way the complainant has phrased his request. The Commissioner therefore cannot accept that – in respect of the request as it currently stands – no information is held.

15. The Commissioner did consider whether this should be a decision based around section 8(1)(c) of the Act: on whether the request describes the information requested. In his view the complainant has described the information requested, and that the reference numbers do refer to documents that are publically available. Instead, the relevant issue to consider is whether the phrasing of the request is sufficient for the Cabinet Office to locate any relevant information that might be held; and if not, whether it reasonably requires further information in order to do that.

Complainant's view

16. The complainant's position largely stems from his view that the Cabinet Office – as the originator of the majority of the documents – will still retain copies and an audit trail to help it identify the specific information he is interested in obtaining. He argued that the reference numbers would be known by the Cabinet Office as it provided this information to the Hutton Inquiry.
17. When the Commissioner informed the complainant of his view that he did not consider that the Cabinet Office could identify the information he described in his request, the complainant stated that the Cabinet Office could have simply asked him and he would have used different terms.
18. The complainant went to the effort to express his arguments for each of the five items within his request:
 - 1) Document would be retained as matter of routine record keeping.
 - 2) Document was drafted by Joint Intelligence Committee (JIC), whose parent department is the Cabinet Office. The Cabinet Office would retain an audit trail for this document and be able to identify the draft version he is referring to.
 - 3) See 2), also stated that it would be a matter of routine record keeping.
 - 4) As it asks for specific paragraphs of 3), the same arguments apply.
 - 5) Document was carried out under the auspices of the JIC so would be retained by the Cabinet Office.

Cabinet Office's view

19. The Cabinet Office position is that the complainant is asking for documents in relation to the Hutton Inquiry, which is not the responsibility of the Cabinet Office but instead of the Ministry of Justice (MOJ). The Cabinet Office does not hold the Hutton Inquiry papers nor have a catalogue of the reference numbers that the complainant refers to.
20. Whilst the Cabinet Office would be capable of conducting research using the archived Hutton Inquiry website, it is not required to carry out this work under the provisions of the Act in order to try and identify information that might be held in its records.
21. The Cabinet Office stated to the Commissioner that the information may [Commissioner's emphasis] be held by the Cabinet Office, and that it did hold information relating to the Iraq dossier which was considered under the Inquiry,³ but the way the requests were phrased mean that it is not possible to identify the information. For in items 1 – 4 of the request it argued that the reference numbers prohibited it from knowing what information the complainant wanted; and for item 5 the complainant asked for information published by the Hutton Inquiry, which is held by the MOJ.

Commissioner's view

22. Section 1(3) of the Act states that:

(3) Where a public authority –

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.

23. The Commissioner has issued guidance on interpreting and clarifying requests. This has a section on how a public authority should meet its obligations under section 1(3) if it requires further information from a

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<http://webarchive.nationalarchives.gov.uk/20090128221546/http://www.the-hutton-inquiry.org.uk/content/evidence-lists/evidence-dos.htm>

requester before it can determine whether any relevant information is held in its records.⁴ This makes it clear that when a public authority cannot be sure of the scope of a request due to its wording, then it must contact the complainant and inform him of this. The onus is then on the complainant to provide further clarification before the public authority is required to comply with the request.

24. The Cabinet Office position made it clear that it might hold some of information within the scope of the complainant's request, but that it was not able to determine what information was being asked for as the wording of the request included references to the Hutton Inquiry, whose records are held by the MOJ.
25. As the request currently stands, and taking into account the Cabinet Office's representations, the Commissioner is not prepared to accept that it has sufficiently made the case that it is unlikely to hold the relevant information. The Commissioner accepts that the records of the Hutton Inquiry are held by the MOJ but it does not automatically follow that the Cabinet Office does not hold information regarding the Iraq dossier – and related material – which also formed part of the Hutton Inquiry's records. For example, that the request is phrased by reference to the Hutton Inquiry's records does not in itself mean that the information to which those Inquiry references refer is not held by the Cabinet Office.
26. The Commissioner's view is that the Cabinet Office is correct in stating that it does not have to carry out research of the Hutton Inquiry website. Nor does the Cabinet Office have to contact the MOJ in order to determine whether it holds relevant information in its own records. He accepts the Cabinet Office's argument that the phrasing of the complainant's request means that it is unable to comply with the request.
27. However, given the nature of information the complainant seeks and the potential it being held by the Cabinet Office, the Commissioner has considerable sympathy with the complainant's view that the Cabinet Office could have asked him to use different terms, and also has sympathy for his reasons behind that opinion. The Commissioner is therefore of the view that it would be reasonable for the Cabinet Office to seek further information from the complainant (i.e. clarification or a

⁴ <https://ico.org.uk/media/for-organisations/documents/1162/interpreting-and-clarifying-a-request-foia-eir-guidance.pdf#page=9> (see paragraph 22)

different description of the information he seeks) so that it can determine whether any of the information is held.

28. The Cabinet Office therefore needs to contact the complainant and ask for clarification, as per section 1(3) of the Act. The Commissioner requires the Cabinet Office to take this step in order to meet its obligations under the Act.

Advice and assistance

29. Section 16(1) of the Act states that:

"It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it."

30. In furtherance of this provision, when responding to the complainant the Cabinet Office should explain why the description in his request is insufficient for it to determine whether the information is held. It should also provide reasonable advice in order to assist him in providing that clarification, such as by explaining how and where any records relating to the Iraq dossier (and related material) are held by the Cabinet Office.

Right of appeal

31. 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 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

32. 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.
33. 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

Alexander Ganotis
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF