

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 21 December 2010

**Public Authority:** Department for International Development  
**Address:** 1 Palace Street,  
London  
SW1E 5HE

#### Summary

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The complainant asked the Department for International Development (DFID), in a detailed eight part information request, for information regarding on which committees the UK appointed executive directors of the World Bank had sat each year from 2001 to date and what measures the DFID appointed executive director at the Bank had supported with particular reference to 2002.

The Commissioner decided that appropriate searches for relevant information has been conducted by DFID in both its paper and electronic records and that no information falling within the scope of parts (2) – (8) of the request was held. He decided that DFID had complied with section 1(1) of the Act.

DFID did not initially recognise that it held information relating to part (1) of the request which was exempt; as DFID failed to cite section 21(1) within the statutory time frame, it breached section 17(1) 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.

#### Background

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2. The Secretary of State at the Department for International Development (DFID) is the UK's Governor to the World Bank (the

Bank) and sits on the Bank's Board of Governors. Responsibility for day to day operations at the Bank, and for most decisions on policy and country issues, is delegated to an Executive Board. The Secretary of State for International Development appoints the UK executive director who sits on the Executive Board and leads on behalf of the UK Government. The UK appoints two executive directors to the World Bank Group, the second of which is appointed by the Chancellor of the Exchequer. Both of the UK appointed executive directors and their support staff work in the Office of the Executive Director at the World Bank (more commonly known as the UK Delegation to the World Bank). They are officials of those institutions, not of DFID or HM Treasury. They are based in the Bank's headquarters in Washington.

3. Information held by the UK delegation to the World Bank Group is not subject to the Act unless it is also held by a UK public authority. Much of the information on how executive directors have voted is classed as confidential by the Bank. The World Bank Group publish annual reports which are available through their website: <http://go.worldbank.org/VLWFADE500>. The Bank's Annual Reports up to 2009 are available and contain some details of the committees of which the Executive Directors were members; these are in sections entitled 'The Board of Executive Directors' in the reports for 2005 to 2009.
4. On 15 October 2002 the then Secretary of State told Parliament:  
*My Department is responsible for the UK Government's relations with the World Bank Group, including the International Finance Corporation (IFC). We are represented on the Boards of the World Bank Group by the UK Executive Director or members of his staff in the UK Delegation to the World Bank Group and International Monetary Fund in Washington. The UK Executive Director and his team take instructions from my department and receive guidance from, liaise closely with and report fully to, my department and, as appropriate, other interested Whitehall departments and the Bank of England. All papers for consideration by the IFC Board are received by the UK delegation and forwarded to DFID officials in London who consider these on the basis of agreed Government policy. If any issues arising in the papers appear controversial or are of particular interest, officials bring these to my attention or to the attention of other relevant government departments. The majority of papers are uncontroversial and we are content to support the recommendations of IFC management. Where necessary, DFID officials provide briefing and points for the UK Delegation to make in the Board discussion.*
5. The complainant has made several information requests to DFID on Bank related matters. She supported her complaint to the

Commissioner with a comprehensive and voluminous two part Statement and Chronology.

## **The Request**

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6. On 24 December 2009 the complainant wrote to DFID with a long and detailed eight part request which is reproduced in full at annex 1 to this Notice. She asked at part (1) of the request on which Board Committees the appointed British executive directors of the Bank had sat each year from 2001 to date. The request continued with parts (2) – (8) asking, in summary, for information about whether the DFID appointed executive director had supported certain measures proposed to the Bank in 2002.
7. On 26 January 2010 DFID replied saying that DFID did not hold the information requested but that some information relating to the first part of the eight part request was available in the Bank's annual reports which could be accessed from its website; the relevant link was then given. Later the same day, the complainant asked DFID to review its decision and commented that DFID would be likely to hold copies of the Bank's annual reports.
8. On 24 February 2010 DFID told the complainant the outcome of its internal review of her request. DFID said that, in relation to part (1) of her request, it did hold copies of the World Bank Annual reports, in which details of participants in the Board Committees could be found for the relevant years. DFID said that the correct answer to this part of the request should therefore have been that the information was held, but was available by other means and that, under Section 21 of the Act, DFID did not need to provide the information as it was reasonably accessible to her by other means (but DFID did not elaborate further). DFID apologised that its initial response had not been technically correct.

## **The Investigation**

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### **Scope of the case**

9. The Commissioner investigated DFID's statements that, for part (1) of the eight part request, the information it held was exempt under section 21(1) of the Act and that the remainder of the information requested was not held.

## Chronology

10. On 25 February 2010 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:

- as regards part (1) of her request, the complainant objected that the answers to her questions were not contained in the Bank's annual reports.
- as regards parts (2) – (8) of the request, the complainant quoted extensively from the Articles of the Bank and maintained that DFID's response had been evasive and that DFID was deliberately and unlawfully withholding information from her. The complainant drew particular attention to an extract from the Bank's Articles which said that:

***SECTION 4. Board of Directors***

*(a) The Board of Directors shall be responsible for the conduct of the general operations of the Corporation, and for this purpose shall exercise all the powers given to it by this Agreement or delegated to it by the Board of Governors.*

11. On 6 August 2010 the complainant told the Commissioner that Board members represented member States of the Bank and that the UK was represented by the International Development Secretary acting through DFID. She stressed to the Commissioner that she failed to see how DFID could claim that it held no information in respect of her information request.
12. On 14 September 2010 the Commissioner began his investigation.
13. On 16 September 2010 the complainant provided the Commissioner with a copy of the Trust Fund operational policy of the International Finance Corporation, which is part of the World Bank Group, and provided information about senior DFID officials who had been employed by the Bank at relevant times and who, she said, had a vested interest in ensuring that the information requested was not disclosed to her.
14. On 23 September 2010 the complainant drew the Commissioner's attention to two other matters (ICO references RFA0324922 and FS50300621) which she had reported to him for consideration. The Commissioner has now concluded these other matters and decided that he was able to deal with the present matter on its own merits.

15. On 13 October 2010 DFID responded to the Commissioner saying that information was either exempt under section 21 of the Act (Information accessible to applicant by other means) or was not held. DFID explained that its refusal notice of 26 January 2010 had included a link to the World Bank Group's website: <http://go.worldbank.org/VLWFADE500> for some relevant information. DFID explained that this link gave access to copies of the Bank's annual reports up to 2009. Details of the committees of which the executive directors had been members were given in the sections entitled 'The Board of Executive Directors' in the reports for 2005 to 2009. DFID added that this related mainly to parts (2) to (8) of the request but also had some relevance to the information requested in part 1, particularly in relation to the period 2001 to 2004. DFID confirmed that it did not hold information on committee memberships of the UK executive directors to the Bank for the period 2001 to 2004.
16. On 20 October 2010 the Commissioner put further questions to DFID, with regard to the information that DFID said it did not hold, to enable him to investigate the nature and extent of the searches for the relevant information that DFID had conducted.
17. DFID replied on 9 November 2010 providing the Commissioner with further detailed information about the searches it had conducted.
18. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

## Analysis

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### Substantive Procedural Matters

#### Section 1 - Information not held

19. Section 1 of the Act grants a presumptive right of access to applicants so that unless an exemption is relied upon, a public authority is under a duty to inform an applicant in writing whether it holds the information requested and if it does, to then have it communicated to the applicant. The text of section 1(1) of the Act is reproduced in the legal annex to this Notice.
20. In determining whether a public authority holds information requested by an applicant the Commissioner applies the civil standard of proof which is based on the balance of probabilities.
21. In deciding where the balance lies, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by

the public authority as well as considering, where appropriate, any other reasons offered by the public authority to explain why the information is not held.<sup>1</sup>

22. For parts (2) - (8) of the request, in the course of its internal review, DFID reviewed 27 paper files from its repository. DFID provided the Commissioner with assurance regarding the matters set out below and which, on a balance of probabilities, he accepted.
23. DFID's electronic records management system (ERDM) was introduced in 2005 and, as the request mostly related to the period 2001-04, relevant information would have been held in DFID's paper files. DFID searched the relevant indexes for terms covering the main phrases contained in the complainant's request within the 2001 to 2004 filing time period, for example: World Bank Group; Executive Directors and many more, selecting any files which looked as though they might contain relevant information - but could find none.
24. A second set of searches using key terms over the same period had been conducted as a check on the first search but it did not yield anything not previously found. DFID has confirmed and re-confirmed to the Commissioner that it does not hold the information requested at parts (2) – (8) of the request. DFID said that this information would be likely to be held by the UK Delegation to the World Bank Group, which is not subject to the Act, but it was not held by DFID itself. DFID added that the Bank's board of governors very rarely voted as most decisions were made by consensus. DFID added that the Bank was very protective of its information - particularly information which it classed as confidential - as was the case with Executive Directors votes. DFID said that it had carried out very extensive searches for the information requested, covering both electronic and paper files, and had still not found anything within the scope of the request. DFID said it was as sure as it possibly could be that the information was not held.
25. DFID told the Commissioner that no relevant files from the 2001 – 03 period would have been destroyed under statute.
26. In determining this matter the Commissioner has taken evidence from DFID regarding the nature and scope of the searches it has carried out. He has found that the ERDM was not operational until 2005 and the requests related mainly to the period 2001 – 04; he saw that relevant searches had been carried out but to no avail. In these circumstances, the Commissioner does not expect that DFID would have been likely to have held this information since the Bank is an independent

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<sup>1</sup> These views were expressed in more detail by the Information Tribunal in *Linda Bromley & Others v The Information Commissioner & Environmental Agency* – EA/2006/0072

international body and DFID says that it does not keep detailed records of every action that UK representatives take in their roles since the administrative function is covered by the Bank.

27. The searches of DFID paper files that have been conducted have included the recovery from DFID's document repository of 27 paper files which have then been searched by information rights staff. The Commissioner has been satisfied with the criteria used to search including the selection of relevant key words and phrases. However none of the searches conducted had yielded information within the scope of the eight requests apart from that identified in respect of part (1) of the request and which is considered below.

## Exemptions

### Section 21 – Information accessible to applicant by other means

28. Section 21(1) of the Act provides that information is exempt which is reasonably accessible to the applicant by other means. The exemption is absolute so that considerations of the public interest do not arise.
29. At its internal review of 24 February 2010 DFID acknowledged, in respect of part (1) of the request only, that at the time of the request it held paper copies of some of the bank's annual reports for part of the relevant period, which contained information relevant to part (1) of the request. DFID had not recognised this at the time it had issued its refusal notice on 26 January 2010 and cannot now be specific as to which years' reports there were as these have since been disposed of and DFID now relies on web based electronic versions of the reports for reference, rather than paper copies.
30. The Commissioner accepts that information is reasonably accessible if the public authority knows that the applicant has already found it; or is able to precisely direct the applicant to the information. In this case the public authority has to be reasonably specific to ensure it is found without difficulty and not hidden in a mass of other information. Therefore, the Commissioner believes that it is reasonable to expect public authorities to point specifically to the information rather than, for example, merely to say that there is something of relevance on a website.
31. In this matter, the Commissioner has seen that, in its refusal notice of 26 January 2010, DFID provided the complainant with a link to the relevant area of the Bank's website. In subsequent correspondence with the Commissioner's staff, further more specific links were provided to him by DFID. The Commissioner considered that it would have been better practice for DFID to have provided the more detailed set of links to the complainant from the outset but does not find the

omission was so serious an impediment to finding the information that it meant the information was no longer reasonably accessible to the complainant. The Commissioner recognises that there would be no business need for DFID to retain further information, as the nature of Committees attended is left to the UK representatives and other matters such as their attendance record is for the Bank to maintain.

### **Procedural Requirements**

32. The DFID refusal notice of 26 January 2010 told the complainant that the information requested was not held but did recognise that some of the information requested would be available in the annual reports of the Bank. However DFID did not at that stage recognise that it held copies of those reports and should have either disclosed the information in them or relied upon an exemption from the Act to justify withholding it. As DFID failed to cite section 21(1) within the statutory time frame, it breached section 17(1) of the Act.

### **The Decision**

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33. 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:

- DFID maintained correctly that all of the information relating to parts (2) – (8) of the requests was not held and so complied with section 1(1) of the Act.

34. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- DFID did not initially recognise that it held information relating to part (1) of the request which was exempt under section 21(1) of the Act.
- As DFID failed to cite section 21(1) within the statutory time frame, it breached section 17(1) of the Act.

### **Steps Required**

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35. The Commissioner requires no steps to be taken.



## Right of Appeal

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36. 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)

37. 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.
38. 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 21<sup>st</sup> day of December 2010**

**Signed .....**

**Andrew White  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Annex 1: the request

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On 24 December 2009, the complainant wrote to DFID saying:

*I preface this request for information with the following House of Commons statements by Clare Short, International Development Secretary (then) on 15 October 2002. Available at:*

*<http://www.publications.parliament.uk/pa/cm200102/cmhansrd/vo021015/>*

*Mr. Sayeed: To ask the Secretary of State for International Development (1) if, when carrying out her functions as Governor of the International Finance Corporation of the World Bank Group, she has sole responsibility for instructing the UK Executive Director as to how to exercise the UK's vote on the board of the IFC; which other departments are involved in this role; and if she will make a statement; [74579], (2) what guidelines exist concerning the manner in which instructions are given to the UK Executive Director as to how to exercise the UK's votes on the Board of the International Finance Corporation or on the Board of other of the World Bank Group institutions; if she will place such material in the library; and if she will make a statement. [74578]*

*Clare Short: My Department is responsible for the UK Government's relations with the World Bank Group, including the International Finance Corporation (IFC). We are represented on the Boards of the World Bank Group by the UK Executive Director or members of his staff in the UK Delegation to the World Bank Group and International Monetary Fund in Washington. The UK Executive Director and his team take instructions from my department and receive guidance from, liaise closely with and report fully to my department and, as appropriate, other interested Whitehall departments and the Bank of England. All papers for consideration by the IFC Board are received by the UK Delegation and forwarded to DFID officials in London who consider these on the basis of agreed Government policy. If any issues arising in the papers appear controversial or are of particular interest, officials bring these to my attention or to the attention of other relevant government departments. The majority of papers are uncontroversial and we are content to support the recommendations of IFC management. Where necessary, DFID officials provide briefing and points for the UK Delegation to make in the Board discussion. As with the rest of the World Bank Group, nearly all Board decisions are taken on the basis of consensus, to reflect Board discussions, and decisions rarely go to direct votes.*

*In the light of the foregoing to request the following information, to be supported by relevant documentary evidence in DFID's possession:*

1. *On which Board Committees have the British Executive Directors of the WBG sat each year starting from 2001 to date?*

2. *In 2001, did the British Executive Director, acting for DFID, agree and approve the IFC Management decision to eliminate from IFC's organisational and management structure the Technical and Environment Department by creating effective on 1 March 2001 two distinct departments namely: 1) Technical Services Department ("CTS") and 2) Environment & Social Development Department ("CES") and associated sub-divisions (as recognised in the organisational and management chart presented in the 2001 IFC Annual Report)?*

3. *Did the British Executive Director, acting for DFID, agree and approve the IFC management decision announced on 5 October 2001 to amalgamate the newly created CTS and CES departments and associated sub-divisions by the abolition of those departments and divisions from IFC's organisational and management structure to be replaced, effective on 1 January 2002, by the creation of a new department by name the Environment, Social Development and Technical Services Department ("CET") and associated sub-divisions, resulting in the elimination of the CTS and CES departments and associated sub-divisions also effective on 1 January 2002?*

4. *In March 2002, did the British Executive Director, acting for DFID, agree and approve the IFC Management decision to abolish the CET Department and associated sub-divisions with effect on 1 July 2002 and to reinstate the former CES Department with effect on 1 July 2002?*

5. *Did the British Executive Director, acting for DFID, agree and approve the elimination of the Environmental and Social Development Best Practices Group ("CESBP" or "CETBP") funded under IFC's administrative budget by the creation on 1 July 2002 of a newly established CES Sustainable Financial Markets Facility (SFMF) funded by donors, including DFID?*

6. *Did the British Executive Director, acting for DfID, agree and approve redundancies of tenured "CESBP" or "CETBP" (as relevant) Environmental Specialists effective on 1 July 2002 and substitution of those redundant positions by the creation of new donor-funded positions in the new CES SFMF effective on 1 July 2002?*

7. *In the light of the FY03 WB/IFC Private Sector Development (PSD) Strategy and intent to aggressively scale up technical assistance activities at the core of IFC operations, (discussed by the Executive Board on 16th April 2002 - see: <http://rru.worldbank.org/Documents/> did the British Executive Director, acting for DfID, agree and approve the IFC Management decision to lay off tenured Technical Specialist staff who had the requisite skills and*

*expertise to manage and implement planned technical assistance activities, to be jointly funded by IFC and donors, including DfID, by abolishing the "CTS" or "CET" Department (as relevant) from IFC's organizational structure on 1 July 2002?*

*8. Did the British Executive Director, acting for DFID, specifically consider IFC Donor Trust Fund Operational Policy, WBG Staff Rules and provisions under the International Development Act (IDA) 2002 when, or if, agreeing and approving, as applicable, redundancies of British and other Technical and Environmental Specialists whose skills IFC Management replaced by mobilising and using DFID and other donor funds to hire in substitute technical specialist staff?*

## Legal Annex

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### **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."

### **Refusal of Request**

**Section 17(1)** provides that -

"A public authority which ... is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request, or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which –

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies."

**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.”