

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 7 July 2011

Public Authority: Scotland Office
Address: Dover House
London
SW1A 2AU

Summary

The complainant requested information concerning communications between the Secretary of State for Scotland or his private office and a member of the Scottish Parliament. The public authority refused the request, citing the exemptions provided by sections 35(1)(b) (information relating to Ministerial communications) and 35(1)(d) (information relating to the operation of any Ministerial private office) of the Act. This refusal was overturned at internal review and the requested information was disclosed. This Decision Notice records that the public authority breached sections 17(1)(c) and 17(3)(b) in issuing an inadequate refusal notice that included no explanation as to why the exemptions were believed to be engaged, nor as to why the balance of the public interest was believed to favour the maintenance of those exemptions.

The Commissioner's Role

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

2. The complainant made the following information request on 13 September 2010:

"Please send me the following information:

The content of any correspondence, emails, minutes of meetings and notes of any communication, in the period 1 June 2010 to 25 July 2010, between the Secretary of State for Scotland, or the private office of the Secretary of State, or special advisors to the Secretary of State for Scotland, or the Scotland Office press office, and Jeremy Purvis MSP or his office."

3. The response to this request was dated 13 October 2010. The request was refused, with the public authority citing the exemptions provided by sections 35(1)(b) (information relating to Ministerial communications) and 35(1)(d) (information relating to the operation of any Ministerial private office). This response included no explanation as to why these exemptions were believed to be engaged, or as to why the balance of the public interest was believed to favour the maintenance of these exemptions.
4. The complainant responded to this on 28 October 2010 and requested an internal review. After a delay, the public authority responded with the outcome of the internal review on 28 February 2011. The outcome of this was that the decision to refuse the request was overturned. At this stage one document was disclosed to the complainant.
5. Following this disclosure, the complainant contacted the public authority again and noted that the content of the disclosed document referred to an attachment; the complainant queried why this attachment had not been disclosed. The public authority responded to this on 21 March 2011 and disclosed that additional document.

The Investigation

Scope of the case

6. At the outset of this case, the complainant was contacted to ascertain what he wished the Commissioner to consider given that it appeared that the information he had requested had been disclosed. The complainant was advised that, as the requested information had been disclosed, no investigation of the application of the exemptions would be carried out, but a Decision Notice could be issued recording the procedural breaches in the handling of the request if he wished. The complainant confirmed that he did want a Decision Notice recording procedural breaches to be issued.

The Decision

7. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act in that it breached section 17(1)(c) in failing to provide any explanation at refusal notice stage as to why the exemptions provided by sections 35(1)(b) and 35(1)(d) were believed to be engaged. It also breached section 17(3)(b) in that it failed to provide any explanation as to why the public interest in the maintenance of these exemptions was believed to outweigh the public interest in disclosure.

Other matters

8. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.
9. The Commissioner's published guidance on internal reviews states that a review should be conducted within 20 working days, unless there are exceptional circumstances, in which case the review period may be extended to 40 working days. In this case the Commissioner notes that there appeared to be no exceptional circumstances, but that the public authority failed to provide the outcome to the review within 20 working days. Neither did the public authority respond with the outcome of the review within 40 working days. The public authority should ensure that internal reviews are carried out promptly in future.

Right of Appeal

10. 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.

Website: www.informationtribunal.gov.uk

11. 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.
12. 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 7th day of July 2011

Signed

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

Legal Annex

Section 17(1) provides that -

"A public authority which, in relation to any request for information, 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."

Section 17(3) provides that -

"A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

- (a) that, in all the circumstances of the case , the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or
- (b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information."