

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 15 December 2006

Public Authority: Ministry of Defence

Address: Main Building
Whitehall
London
SW1A 2HB

Summary

The complainant requested information concerning submissions made to the Scott Inquiry. The public authority stated that it was not possible to confirm or deny whether information relevant to the request was held without exceeding the relevant cost limit of £600 and therefore that section 12 provides that it is not obliged to do so. The public authority carried out a search limited to the areas of its records which it felt were most likely to contain information relevant to the request. However, the public authority was not able to locate any information falling within the scope of the request. The Commissioner accepts that in this case to confirm or deny whether the public authority holds information of the description outlined in the request would in itself exceed the appropriate limit. Therefore the Commissioner's decision is that the public authority has complied with its obligations under section 1(1) of the Act. No further steps on the part of the public authority are required.

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. On 24 February 2005, the complainant made the following information request:

"Please provide copies of the full information provided by Sir Nicholas to Sir Richard now Lord Scott and his Inquiry or provide me with the facility to see and copy the full information."

3. The public authority responded to this request on 15 March 2005. This response stated that contrary to the suggestion made by the complainant in his information request, Sir Nicholas Bonsor had not previously been a minister at the public authority. The public authority stated that it was therefore unable to answer the request.
4. The complainant responded on 8 March 2006 requesting that the public authority carry out an internal review of its response to his information request. The Commissioner notes that there was a considerable delay prior to the complainant requesting internal review. However, the Commissioner notes that the public authority did not object to this delay and agreed to carry out an internal review. For this reason, the Commissioner does not consider this delay to be an issue.
5. The public authority responded, giving the outcome of their internal review on 1 August 2006. This response acknowledged that the request had not been dealt with in accordance with section 1(1) of the Act. The public authority stated that it had since identified those files held by it with "Scott Inquiry" in their title, but that a search of these files had not located information relevant to the complainant's request.
6. The public authority went on to state that a search of all its records for information relevant to the complainant's request would exceed the appropriate cost limit. The public authority advised the complainant that under section 12 it is not required to carry out a search of its entire record in order to confirm or deny whether it holds the information requested if to do so would exceed the appropriate limit under section 12.

The Investigation

Scope of the case

7. The complainant contacted the Commissioner on 4 August 2006 to complain about the way in which the public authority handled his information request. The complainant stated that he believed that the information that he wished to access is held by central government and referred to correspondence in his possession which referred to the information passed by Lord Bonsor to the Scott Inquiry.
8. The public authority has acknowledged that its initial response to the information request did not comply with the Act in that it was not an adequate refusal notice under section 17. However, this issue was resolved when the public authority responded to the complainant with the findings of its internal review. The Commissioner notes that the complainant did not specifically raise this point in his complaint. As this issue was acknowledged by the public authority and resolved at the internal review stage, the Commissioner has not undertaken a detailed consideration of this issue in reaching his decision in this case.

Chronology

9. The Commissioner contacted the public authority on 25 September 2006 to raise the issue of the complaint. In this letter the Commissioner asked the public authority the following questions in respect of the requested information and its handling of the information request:
 - How was the cost of complying with this request calculated? Please indicate what factors were taken into account in calculating this cost and the estimated cost of complying with the original request.
 - Does the public authority believe that if a full search for the information requested were to be carried out, regardless of cost, that the information requested by the complainant would be located?
 - Does the public authority believe that information falling within the scope of the request was previously held and since been destroyed? If so, was this destruction carried out in line with the public authority's records management policy?
10. The complainant was also contacted by letter of the same date informing him that his complaint had been allocated to a case officer for investigation and the public authority had been contacted.
11. The public authority responded on 27 October 2006. In its response, the public authority acknowledged that it had not initially responded to the information request in accordance with section 1(1) of the Act. The public authority stated that at the time of the request it was inexperienced in dealing with information requests and that procedures for dealing with information requests had since been improved.
12. The public authority stated that it "would not be the natural custodian" of the information requested. However, it was acknowledged that information falling within the scope of the request may have been provided to the public authority and that such information may have been retained.
13. The public authority described the steps that had been taken within the cost limit of £600 to attempt to locate the information requested. The public authority stated that archived files containing "Scott Inquiry" or some similar reference in their titles had been located and the contents of these files had been searched. However, the public authority explained that no information falling within the scope of the complainant's request was located through this search.
14. The public authority went on to explain why it considered that to confirm or deny whether the requested information was held would exceed the cost limit. In particular the public authority clarified that, as the terms of reference for the Scott Inquiry were broad, information concerning the Scott Inquiry would be held by several different branches within the public authority. The public authority further explained that the Scott Inquiry's broad terms of reference meant that there was a possibility that information falling within the scope of

the request could be held in files other than those with “Scott Inquiry” in the heading. Whilst the report outlining the findings of the Scott Inquiry did refer to 3 branches of the public authority (Defence Export Services Organisation, Defence Exports Services Secretariat and Defence Intelligence Staff), the public authority advised that branches with responsibility for other areas covered by the Scott Inquiry would also be likely to hold files containing information relating to the Scott Inquiry. Therefore it would be necessary for the public authority to search the records held by each of these branches.

15. Having located files which may contain information of relevance, the public authority stated further that it would be a considerable task to identify files with contents relating to the Scott Inquiry. Following this, it would be necessary for the contents of each relevant file to be checked for information falling within the scope of the request. The public authority also confirmed that it does not hold records from the period of the Scott Inquiry in electronic form and thus it would have to search through manual records.
16. By way of example the public authority suggested that if there were 100 files that may contain information relevant to the request and it took 15 minutes to search each of these files, this would exceed the cost limit. The public authority stressed that, although they could not confirm the volume of the documentation that it would be necessary to search in order to locate information falling within the scope of the request due to, as stated above, the fact that a number of branches within the public authority would be likely to hold information relating to the Scott Inquiry, it was felt that the figure of 100 files was a conservative estimate and the actual number of files it would be necessary to search would likely be greater.
17. In response to the question of whether the public authority believed it likely that information relevant to the request would be located if a full search were carried out regardless of the cost, the public authority responded that it did not believe that information relevant to the request would be located through such a search. The public authority explained that the House of Commons Defence Committee, of which Lord Bonsor was previously Chairman, is independent of the public authority and that information held by this committee would not normally be shared with the public authority. Given that it was in his capacity as chairman of this committee that Lord Bonsor had communicated with the Scott Inquiry, the public authority would be unlikely to hold such information.
18. In response to the Commissioner's question as to whether the public authority believed that information falling within the scope of the complainant's information request had been held by the public authority previously, but since destroyed the public authority stated that information gathered and viewed by the Scott Inquiry had not been shared with it. The public authority acknowledged, however, that their records of destroyed files would include only the title of the file, a description of the contents of the file would not be included.

Findings of fact

19. The complainant asserts that information relevant to his information request is held by central government and he believes that the public authority is likely to hold such information given the subject of the Scott Inquiry.
20. The public authority carried out a limited search, which did not exceed the cost limit, for relevant information in the locations identified as the most likely to contain information relevant to the request. This search did not locate any information falling within the scope of the request.
21. The public authority asserts that to confirm or deny whether information relating to the request is held would exceed the cost limit of £600. This estimate is based on the cost of searching files, which do not contain "Scott Inquiry" in the title. Had the request been refined to cover only those files with "Scott Inquiry" in the title, the response from the public authority would have been that the information requested is not held.
22. Although the public authority asserts that it is not possible to confirm or deny within the cost limit, it has also stated that it does not believe that it holds information falling within the scope of the request.

Analysis

Procedural matters

23. The public authority has detailed why it believes that it would not be possible for it to comply with the request without exceeding the cost limit. The Commissioner notes particularly that the public authority did make efforts within the £600 limit to comply with the request by searching all files with "Scott Inquiry" in the title. The Commissioner accepts the representations of the public authority that no information falling within the scope the request was located in these files.
24. The citing of the cost limit relates to a wider search of the information held by the public authority. The Commissioner notes that a number of branches within the public authority may hold information relating to the Scott Inquiry, but that the public authority does not believe that information falling within the scope of the information request is held within any branch.
25. The Commissioner also notes the representations of the public authority that documentation used by the House of Commons Defence Committee would not normally be shared with it and therefore that it would not expect to hold information of relevance to the information request.
26. The Commissioner is aware that Departmental Select Committees are independent from the department to which they relate. The Parliament website explains the role of Departmental Select Committees as follows:

“A departmental committee is the parliamentary body responsible for scrutiny of each government department. Most of the 18 committees have 11 members. Their role is to examine 'the expenditure, administration and policy' of the relevant department and its 'associated public bodies' (e.g. regulators and quangos). Committees determine their own subjects for inquiry gather written and oral evidence (and sometimes information from visits in the UK or overseas) and make reports to the House which are printed and placed on the Internet. The Government subsequently replies.”
<http://www.parliament.uk/documents/upload/p02.pdf>

27. The Commissioner is also aware that the Scott Inquiry was a judicial inquiry and was independent from the House of Commons Defence Committee. The conclusions of the Scott Inquiry were reported to Parliament. Further to this, the Commissioner notes that the records of the Scott Inquiry are held by the Cabinet Office, rather than the public authority in this case.

The Decision

28. The Commissioner accepts the representations of the public authority that to confirm or deny whether information falling within the scope of the request is held would exceed the appropriate limit under section 12 of the Act.
29. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

30. The Commissioner requires no steps to be taken.

Right of Appeal

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@dca.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 15 day of December 2006

Signed

**Graham Smith
Deputy Commissioner**

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