

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 2 July 2008

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

Summary

The complainant submitted a request for information held by the Cabinet Office about the so-called 'Shrewsbury Two'. The Cabinet Office explained that a file originating in the Cabinet Office relating to papers about the 'Shrewsbury Two' had been transferred to the National Archives and is open and available for inspection. The Cabinet Office also explained that it has retained a small amount of information, but it considered this information exempt from disclosure on the basis of section 23 of the Act. The Commissioner has concluded that the Cabinet Office were correct to withhold this information on the basis of section 23. However, the Commissioner has also concluded that in handling this request the Cabinet Office failed to provide a refusal notice compliant with section 17 of the Act.

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 18 July 2007 the complainant submitted the following request to the Cabinet Office:

'I have been looking in the National Archives for papers relating to the case of the Shrewsbury Pickets in the early 1970s. I have come across a file PREM16/947/1 "The Shrewsbury Two" (Des Warren and Eric "Ricky" Tomlinson): question of Home Secretary's prerogative of Mercy in

conspiracy cases; representation from TUC and the Parliamentary Labour Party. This file elates [sic] to the case and appears to be either closed or retained by your office. I would therefore like to put a request in under the Freedom of information Act for access to this document'.

3. The Cabinet Office contacted the complainant on 1 August 2007 and explained that the file PREM 16/947/1 had been transferred to the National Archives where it could be consulted although a number of papers had been retained by the Cabinet Office. The Cabinet Office explained that the papers it had retained were exempt from disclosure on the basis of section 23 of the Act.
4. On 3 August 2007 the complainant requested that the Cabinet Office conduct an internal review of its decision to withhold the requested information on the basis of section 23 of the Act.
5. The Cabinet Office informed the complainant on 24 August 2007 that it had conducted an internal review and concluded that its initial decision that the requested information was exempt on the basis of section 23 of the Act had been correct.

The Investigation

Scope of the case

6. The complainant contacted the Commissioner on 12 September 2007 and asked him to consider whether the Cabinet Office was correct to rely on section 23 of the Act as a basis to withhold the information he had requested.

Chronology

7. On 17 May 2008 the Commissioner wrote to the complainant and explained that he had recently issued a decision notice (reference FS50163794) in which the applicant had requested the same information he was seeking access to, namely, copies of the information contained in file number PREM 16/947/1 which had not been transferred to the National Archives. The Commissioner explained to the complainant that in this earlier case the Cabinet Office had also relied on section 23 of the Act to withhold the requested information and the decision notice recently issued by the Commissioner had upheld the Cabinet Office's application of section 23. The Commissioner provided the complainant with a copy of the decision notice which he had issued.¹
8. The Commissioner explained to the complainant that any decision notice he issued in relation to his complaint would simply follow the decision that the Commissioner had reached in case FS50163794. He therefore asked the complainant whether he was content for his case to be closed at this stage

¹ Decision notice FS50163794 can be viewed at http://www.ico.gov.uk/upload/documents/decisionnotices/2008/fs_50163794.pdf

without the issuing of a decision notice or whether he wished a formal decision notice to be issued.

9. On 17 June 2008 the complainant confirmed that he wished the Commissioner to issue a decision notice.

Findings of fact

10. The Commissioner has established that the information retained by the Cabinet Office when the file relating to the Shrewsbury Two was transferred to the National Archives, and thus the information withheld on the basis of section 23 of the Act, consists of:
- (i) A paragraph from a memorandum from Sir Michael Hanley, Director General of the Security Service to Sir John Hunt at the Cabinet Office dated 10 January 1975.
 - (ii) A copy of the report which was enclosed with the above memorandum.
 - (iii) A paragraph from a memorandum from Sir John Hunt to a Mr Armstrong dated 13 January 1975 referring to this report.
 - (iv) A paragraph from a memorandum to Sir John Hunt relating to this report dated 15 January 1975.

Analysis

Exemption

Section 23

11. The Cabinet Office's position is that the four pieces of information labelled (i) to (iv) above are exempt from disclosure on the basis of section 23(1).

12. The parts of section 23 relevant to this request state that:

'23(1) Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).

(3) The bodies referred to in subsection (1) and (2) are –

- (a) the Security Service
- (b) the Secret Intelligence Service
- (c) the Government Communications Headquarters
- (d) the special forces
- (e) the Tribunal established under section 65 of the Regulation of Investigatory Powers Act 2000
- (f) the Tribunal established under section 7 of the Interception of Communications Act 1985

- (g) the Tribunal established under section 5 of the Security Service Act 1989
 - (h) the Tribunal established under section 9 of the Intelligence services Act 1994
 - (i) the Security Vetting Appeals Panel
 - (j) the Security Commission
 - (k) the National Criminal Intelligence Service
 - (l) the Service Authority for the National Criminal Intelligence Service'.
13. The Commissioner is satisfied that section 23 has been correctly applied to all four pieces of information for the following reasons:
14. The information described at points (i) and (ii) are documents directly supplied to the Cabinet Office by the Security Service, the body named at section 23(3)(a) of the Act, because they consist of a memorandum written by the Director General of the Security Service and a report attached to this memorandum.
15. The information described at points (iii) and (iv) relates to information created by the Security Service, because they discuss the report described at point (ii).
16. As section 23 is a class based, absolute exemption, for documents to be exempt from disclosure they simply have to fall within the ambit of the exemption. On the basis of the facts outlined above, the Commissioner believes that it is very clear that the four pieces of information fall within the scope of this exemption and therefore he has not needed to undertake any further analyses in order to establish that section 23(1) has been correctly applied.

Procedural matters

Section 17

17. Section 17(1) states 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 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
 - (c) states (if that would not otherwise be apparent) why the exemption applies.'
18. In the Commissioner's opinion when public authorities specify a particular exemption, that specification should include both the specific section number and sub-section of the exemption claimed.

19. In its refusal notice the Cabinet Office simply informed the complainant that it was relying on section 23 of the Act to refuse to disclose the requested information. In order to comply with the requirements of section 17(1)(b) it should have in fact specified the relevant sub-sections of the exemption it was seeking to rely on, i.e. section 23(1). By failing to state this specific sub-section in its refusal notice the Commissioner believes that the Cabinet Office breached section 17(1)(b).

The Decision

20. The Commissioner's decision is that the public authority dealt with the following element of the request in accordance with the requirements of the Act:
- The Cabinet Office was correct to refuse to disclose the requested information on the basis of section 23(1) of the Act.
21. However, the Commissioner has also decided that the following element of the request was not dealt with in accordance with the Act:
- The Cabinet Office breached section 17(1)(b) of the Act by failing to state the specific sub-section it was relying on to withhold the requested information.

Steps Required

22. The Commissioner requires no steps to be taken.

Other matters

23. The Commissioner notes that in the particular circumstances of this case, as in the earlier related decision notice FS50163794, he has not considered it necessary to contact the Cabinet Office in order to seek either clarification as to why it considered the exemption to apply or sight of the withheld information. However, the Commissioner wishes to emphasize to all public authorities that in dealing with complaints he has received under section 50 of the Act the Commissioner will usually require sight of the information withheld by public authority as well as an explanation as to why a public authority considers that information to be exempt from disclosure.

Right of Appeal

24. 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.
Website: www.informationtribunal.gov.uk

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.

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 2nd day of July 2008

Signed

**Steve Wood
Assistant Commissioner**

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

Legal Annex

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.'

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 23(1) provides that –

'Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3)'

Section 23(2) provides that –

'A certificate signed by a Minister of the Crown certifying that the information to which it applies was directly or indirectly supplied by, or relates to, any of the bodies specified in subsection (3) shall, subject to section 60, be conclusive evidence of that fact'

Section 23(3) provides that –

'The bodies referred to in subsections (1) and (2) are—

- (a) the Security Service,
- (b) the Secret Intelligence Service,
- (c) the Government Communications Headquarters,

- (d) the special forces,
- (e) the Tribunal established under section 65 of the Regulation of [2000 c. 23.] Investigatory Powers Act 2000,
- (f) the Tribunal established under section 7 of the [1985 c. 56.] Interception of Communications Act 1985,
- (g) the Tribunal established under section 5 of the [1989 c. 5.] Security Service Act 1989,
- (h) the Tribunal established under section 9 of the [1994 c. 13.] Intelligence Services Act 1994,
- (i) the Security Vetting Appeals Panel,
- (j) the Security Commission,
- (k) the National Criminal Intelligence Service, and
- (l) the Service Authority for the National Criminal Intelligence Service.'