

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 29 March 2010**

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

### Summary

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The complainant requested correspondence between the public authority and the Metropolitan Police Service regarding arrangements for interviewing Tony Blair during the so-called "Cash-for-Honours" investigation. The public authority asserted that this information was not held for the purposes of the Act. It upheld this position after internal review. After investigation, the Commissioner has found that the requested information is not held for the purposes of the Act by virtue of section 3(2)(a).

### 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. In March 2006, the Metropolitan Police Service ("MPS") commenced an investigation into alleged breaches of The Honours (Prevention of Abuses) Act 1925 (the "1925 Act") following a complaint it had received from a member of the

Scottish National Party. This was widely referred to as the "Cash for Honours" investigation.

3. According to the report published by the Crown Prosecution Service ("CPS") on 20 July 2007<sup>1</sup>:

*"There were some subsidiary issues relating to the Political Parties, Elections and Referendums Act, 2000 ('the 2000 Act'); and during the course of the investigation itself it became necessary to consider whether certain events might be interpreted as acts tending and intended to pervert the course of justice."*

4. In the same report, the CPS announced that:

*"... there would be no criminal proceedings arising out of the so called 'Cash for Honours' investigation. For the avoidance of doubt, we wish to emphasise that today's decision indicates unequivocally that there is insufficient evidence to support proceedings against any individual, for any offence under either the 1925 Act or the 2000 Act, or for any offence of perverting, or attempting or conspiring to pervert, the course of justice".*

5. The then Prime Minister, Rt. Hon. Tony Blair, was interviewed as a witness on three occasions by the MPS during the investigation. This was the first time that a serving Prime Minister had been interviewed as part of a criminal investigation. The MPS made a report to the Metropolitan Police Authority about the investigation on 22 November 2007<sup>2</sup>.

## The Request

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6. On 11 January 2008, the complainant made the following request to the public authority:

*"Please could I be supplied with all correspondence between Scotland Yard, the Cabinet Office and Downing Street*

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<sup>1</sup> [http://www.cps.gov.uk/news/press\\_releases/146\\_07\\_document/](http://www.cps.gov.uk/news/press_releases/146_07_document/)

<sup>2</sup> <http://www.mpa.gov.uk/committees/mpa/2007/071122/12/>

*concerning arrangements for interviewing then-Prime Minister Tony Blair over the cash-for-honours affair.*

*An electronic response to this email or the below address would be fine."*

7. The public authority responded on 8 February 2008. It explained that it had searched its paper and electronic files and established that *"the information you requested is not held, for the purposes of section 3(2) of the Act, by this Department"*. It offered the complainant the opportunity to have this decision reviewed.
8. There then followed an exchange of correspondence between the complainant and the public authority where the complainant sought to understand the public authority's assertion that it did not hold the information. To this end, he submitted a further request to the public authority under the Act on 18 February 2008 asking whether the information requested on 11 January 2008 had been deleted. He also submitted a virtually identical request to the other party to the correspondence in question, namely the MPS.
9. On 1 May 2008, the complainant requested an internal review of the public authority's response to his request of 11 January 2008.
10. On 12 June 2008, the public authority wrote to the complainant with the outcome of its internal review in which it upheld its earlier position that the information was not held for the purposes of the Act. It explained that:

*"... the only information located in the Cabinet Office and the Prime Minister's Office is correspondence between the Metropolitan Police Service (MPS) and the then Prime Minister himself. This is correspondence between the MPS concerning interviewing Mr Blair as a witness in a police investigation and is information that the Cabinet Office holds on Mr Blair's behalf. The Cabinet Office regards this information as being sent to Mr Blair in a personal capacity"*.
11. It also commented that if the information were held for the purposes of the Act, it would be exempt under section 41 (Confidential Information), section 40 (Unfair disclosure of personal data) and section 31(1)(a) (Prejudice to Law

Enforcement). However, it provided limited detail as to the basis of its arguments in this regard.

## **The Investigation**

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### **Scope of the case**

12. On 6 August 2008 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
  - he disputed the public authority's assertion that it did not hold the requested information for the purposes of the Act;
  - where information was held for the purposes of the Act, the public authority could not rely on any of the exemptions that it sought to rely on as a basis for withholding the information; and
  - the public authority's initial letter of refusal was unhelpful and puzzling.

### **Chronology**

13. The Commissioner wrote to the public authority on 21 October 2008 to advise that he had received a complaint from the complainant. The Commissioner had not, at this stage, identified the 11 January 2008 request as being the subject of the complaint. Instead, he stated to the public authority that the 18 February 2008 request was the subject of the complaint.
14. In August 2009, the Commissioner corresponded with the complainant in order to establish the precise scope of his complaint and to obtain copies of relevant correspondence.
15. On 13 January 2010, the Commissioner wrote to the public authority. He asked 12 questions which sought further information about its argument that it did not hold the requested information for the purposes of the Act. He also asked for a copy of the original letter of refusal it had sent to the complainant (the complainant had failed to retain a copy of this). The Commissioner asked the public authority to respond by 10 February 2010.

16. This letter also reminded the public authority of the Commissioner's information gathering powers under section 51 of the Act.
17. When no response was received, the Commissioner telephoned the public authority on 10 February 2010 to ask whether one would be forthcoming. The Commissioner was advised to send a further email as a reminder to the public authority. The public authority explained that it was currently dealing with a number of information access requests about complex matters all of which were subject to tight deadlines.
18. Following this telephone conversation and on the same day, the Commissioner sent an email to the public authority noting that no response to his letter of 13 January 2010 had been received. He urged the public authority to respond as soon as possible and by no later than 24 February 2010. He explained that where no response was received, he might proceed to make a decision based solely on the information which has already been supplied to him. He explained that he might alternatively use his powers under section 51 to issue an Information Notice. He reminded the public authority that failure to comply with an Information Notice may result in the Commissioner making written certification of this fact to the High Court and may be dealt with as a contempt of court.
19. There followed further telephone calls between the Commissioner and the public authority in order to progress matters without resort to an Information Notice. At the same time, the Commissioner drafted an Information Notice and advised the public authority that he had done so.
20. The public authority eventually responded on 10 March 2010. The details of its response are analysed later in this Notice.
21. The public authority also sent the Commissioner a schedule of the correspondence that it had considered to be within the scope of the request. In addition, it forwarded a copy of its letter of refusal to the complainant. As noted above, the complainant had failed to keep a copy of this letter and had therefore been unable to provide it with his complaint to the Commissioner even though its content had formed part of his complaint to the Commissioner.

22. During this period, the Commissioner conducted a parallel investigation into the way the MPS handled a request made to it by the complainant on the same subject. This request to the MPS was for information which is virtually identical to the information described in the complainant's request in this case. The complainant explained that he had felt frustrated by the way the public authority in this case handled his request. He therefore put in an information access request to the other "side" of the correspondence, i.e, to the MPS.
23. The MPS case was informally resolved when the MPS disclosed certain information from the correspondence to the complainant, namely the dates of the correspondence and the number and rank of the officers who were present at the interviews. The complainant withdrew his complaint about the MPS but asked the Commissioner to continue with his investigation into the way the public authority in this case had handled his request.
24. During the Commissioner's investigation of the MPS case, he was granted access to the information described in the request made to that public authority. The Commissioner is satisfied that the information to which access was granted in the MPS case is the same information that is described in the complainant's request in this case. He concluded that it was therefore not necessary to require the public authority in this case to also grant him access to the same information. Had there not been a parallel case, he would have required the public authority to provide him with access to the requested information.

## Analysis

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### Substantive Procedural Matters

25. Section 3(2) of the Act provides that :

*"For the purposes of this Act, information is held by a public authority if –*

- *it is held by the authority, otherwise than on behalf of another person, or*
- *it is held by another person on behalf of the authority".*

26. In the Commissioner's view, where information is held by a public authority, to any extent for its own purposes, then it holds that information otherwise than on behalf of another person, and therefore it holds the information for the purposes of the Act.
27. The only circumstance in which information would not be held by a public authority by virtue of section 3(2)(a) would be where information is only held on behalf of another person, and is not held at all for that public authority's own purposes.
28. Where a public authority holds information *only* on behalf of another person, and thus does not hold it for the purposes of the Act, then its duty under section 1 of the Act will be to advise the applicant that it does not hold the information.
29. In the Commissioner's view, the application of section 3(2) can be confusing to those who are unfamiliar with the detail of the legislation. It can be difficult to understand how information which is physically retained on the premises of a public authority is not *held* by that public authority for the purposes of the Act. Where the information is perceived as controversial or sensitive, as is the case here, it may seem that the public authority is being deliberately unhelpful when it argues that it does not hold requested information for the purposes of the Act.
30. The Information Tribunal has considered appeals on the application of section 3(2). In *Digby-Cameron vs the Information Commissioner (EA/2008/0010)*<sup>3</sup>, the Appellant had requested a transcript of an inquest into the death of his son. The requested information in that case was created by HM Coroner for Hertfordshire whose offices were located on the premises of Hertfordshire County Council. The Coroner is not designated as a public authority for the purposes of the Act but the County Council is. Officials of the County Council regularly acted for the Coroner in an administrative capacity, however, HM Coroners are subject to a wholly separate access regime. Unfortunately, the public authority had not made this clear to the Appellant. The Commissioner found that the information was not held for the purposes of the Act and this view was upheld by the Information Tribunal. Both the

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<sup>3</sup> [http://www.informationtribunal.gov.uk/DBFiles/Decision/i261/A.J.%20Digby-Cameron%20v%20ICO%20\(EA-2008-0010\)%20Decision%2016-10-08.pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i261/A.J.%20Digby-Cameron%20v%20ICO%20(EA-2008-0010)%20Decision%2016-10-08.pdf)



Commissioner and the Tribunal criticised the public authority for not making itself clear when explaining section 3(2) to the Appellant.

31. In an earlier case, *McBride vs the Information Commissioner and the Ministry of Justice (EA/2007/0105)*<sup>4</sup>, the Tribunal found that whether a public authority holds information on behalf of another is:

*"...not an issue that turns on who owns the information, nor on whether the [public authority] has exclusive rights to it, nor indeed on whether there is any statutory or other legal basis for the [public authority] to hold the information. Rather, the question of whether a public authority holds information on behalf of another is simply a question of fact, to be determined on the evidence..."* (para.27).

*Is the requested information held for the purposes of the Act?*

32. As noted above, the Commissioner put a series of questions to the public authority in order to test the public authority's assertion that the information in question was Mr Blair's private correspondence rather than correspondence which related to his prime ministerial functions. The Commissioner also sought an explanation as to why such private correspondence had not been removed by Mr Blair when he left office and whether there was any intention to transfer such correspondence to the National Archives or the Parliamentary Archives.
33. The public authority explained that it was customary for a Prime Minister to keep possession of personal papers on leaving office but, on this occasion, Mr Blair had handed this correspondence to the public authority for safe keeping. It explained that the reason for this was that the "Cash for Honours" investigation had only recently been concluded and that the possibility of further action could not be ruled out. However, it asserted that it had always been very clear that the correspondence remained Mr Blair's private correspondence.

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[http://www.informationtribunal.gov.uk/Documents/decisions/EMcBride\\_vs\\_ICO\\_DeterminationWebsite0105.pdf](http://www.informationtribunal.gov.uk/Documents/decisions/EMcBride_vs_ICO_DeterminationWebsite0105.pdf)



34. The Commissioner notes that Tony Blair stepped down as Prime Minister on 27 June 2007. At that stage, the CPS had not announced whether any person was to face charges as a result of the "Cash for Honours" investigation. It eventually did so on 20 July 2007. The Commissioner accepts that, in context, this might explain why the correspondence was not removed when Mr Blair left office even though it was, in fact, private correspondence. However, he does not believe it makes any difference one way or the other to the public authority's assertion that the requested information was private rather than official correspondence.
35. The public authority further asserted that there was no intention to transfer the correspondence to either the National Archives or the Parliamentary Archives because it was Mr Blair's private correspondence. It explained that it would be returned to Mr Blair either at the end of the current Administration or at the conclusion of the Commissioner's investigation, whichever came first.
36. Noting the public authority's apparent intention to return the documents to Mr Blair as soon as it can, the Commissioner would draw the public authority's attention to paragraph 12.3 (a) of the section 46 Code of Practice which provides:
- "Records should not be kept after they have ceased to be of use to the authority unless:*
- a) They are known to be the subject of litigation or a request for information. If so, destruction should be delayed until the litigation is complete or, in the case of a request for information, all relevant complaint and appeal provisions have been exhausted".*
37. The Commissioner's guidance on the destruction of requested information recommends that public authorities retain all requested information for at least six months from the date of their last communication about the request, to allow for appeals<sup>5</sup>. The Commissioner would urge the public authority to follow the spirit of section 46 Code of Practice and to consider retaining a copy of the requested information in accordance with the above recommendations even though it

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[http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/practical\\_application/fep004practicalguidancedestructionv1.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/practical_application/fep004practicalguidancedestructionv1.pdf)

believes that the requested information falls outside the scope of the Act.

38. In response to another of the Commissioner's questions, the public authority explained that it did not have a formal procedure in place for dealing with requests from an investigating authority for an interview with a serving Prime Minister as part of an ongoing investigation. It explained that the requested correspondence had been delivered by hand to Mr Blair by the interviewing officers of the MPS. It also explained that a member of the Prime Minister's office maintained a folder for his private correspondence but that this was for convenience and ease of reference.
39. During his investigation of the parallel case referred to above, the Commissioner had been told by the MPS that it had been the investigating officers that had delivered the correspondence by hand to Mr Blair himself. The Commissioner believes this corroborates the public authority's assertions that the information is not held for prime ministerial or Cabinet Office purposes.
40. The public authority also made submissions which pertain more closely to the substance of the interviews themselves based on its more detailed knowledge of this subject. These were provided in response to specific questions from the Commissioner on this point. The Commissioner has endeavoured to set out as much detail on the face of this Notice as possible regarding his investigation. However, he believes it is inappropriate for him to set out in a public document, any information which relates to a police investigation where that information has not already been put into the public authority by the police themselves.

### *Conclusion*

41. Having considered the requested information itself and the public authority's submissions about it, the Commissioner is satisfied that the information described in the complainant's request of 11 January 2008 is not held by the public authority for the purposes of the Act by virtue of section 3(2)(a).
42. Before reaching this conclusion, the Commissioner examined whether the public authority had any purpose in its own right (including any administrative purpose) for holding the

requested information. He has been unable to identify any official purpose that it would have for holding the information. The Commissioner is satisfied that the requested information is the private correspondence of the former Prime Minister and that it is currently retained by the public authority on Mr Blair's behalf as a matter of courtesy in unusual circumstances.

43. Arguably, and with hindsight, the public authority should have returned the correspondence to Mr Blair when he left office. However, the fact that it did not so does not, in the Commissioner's view, indicate that it has retained the correspondence for its own purposes.
44. Where information is not held for the purposes of the Act, the question of whether or not it is exempt information under the Act falls away. The Commissioner has therefore not gone on to consider the complainant's complaint that the public authority has incorrectly applied exemptions under the Act.

### **Subsidiary Procedural Matters**

#### *The letter of refusal*

45. As noted above, where requested information is not held for the purposes of the Act, the public authority's obligation under section 1 is to advise the requester that this is the case. The public authority did so in its letter of 8 February 2008.
46. The complainant has argued that the letter of refusal was unhelpful and puzzling. It is his contention that this was deliberately so.
47. In its letter to the complainant of 12 June 2008, the public authority acknowledged that the letter of 8 February 2008 "*should have made it clearer that the only information held was information held on behalf of the then Prime Minister*". In the Commissioner's view, the public authority's letter of 8 February 2008 complies with its basic obligation to state that section 3(2) applies. However, he agrees with the public authority that it could have been clearer on this point and welcomes their acknowledgement in that regard. In his view, this lack of clarity is not evidence of deliberate obfuscation on the public authority's part. As noted above, and as

exemplified by the Digby-Cameron case, section 3(2) can be a difficult concept to explain to requesters, particularly where the requested information is of a sensitive nature.

## **The Decision**

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48. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

## **Steps Required**

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49. The Commissioner requires no steps to be taken.

## **Other matters**

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50. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.
51. During the course of his investigation, the Commissioner has encountered considerable delay on account of the public authority's failure to meet the timescales for response set out in his letters. Furthermore, the Commissioner has met with resistance in his attempts to understand the public authority's reasons for handling the request as it did.
52. In investigating complaints received under section 50(1) of the Act, the Commissioner is, in the majority of cases, reliant upon substantive submissions from public authorities. When public authorities do not respond to the ICO's enquiries within a reasonable timescale, the outcome is that an investigation is unnecessarily prolonged whilst the Commissioner attempts to secure a response. Clearly, one of the knock-on effects of this is that a complainant is made to wait an unreasonable period of time for the issues they have raised to be addressed. This is of particular concern in cases where the purpose of an investigation is to establish whether an authority has legitimately withheld information specified in a request.

53. The Commissioner expects that, in future, the public authority will provide responses within the reasonable timescales set in the Commissioner's correspondence.

## Right of Appeal

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54. 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)

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 29<sup>th</sup> day of March 2010**

**Signed .....**

**Graham Smith  
Deputy Commissioner and Director of Freedom of  
Information**

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