



Ministry of JUSTICE

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Freedom of Information Requests

Dear Dr Watt

Thank you for your three Freedom of Information Act (FOIA) requests submitted on 18 and 27 May about the Hutton Inquiry and the death of Dr David Kelly, in which you asked for the information outlined at Annex A from the Ministry of Justice (MoJ). Your requests have been handled under the Freedom of Information Act 2000 (FOIA).

The overall costs of complying with your requests, including, in relation to some of your questions, the cost of determining whether we hold relevant information, would exceed the limit set by FOIA. FOIA provides that where an applicant submits a series of requests for similar information within a period of sixty working days, they may be aggregated for the purposes of the cost limit. Given the theme common to your requests, I have aggregated them for the purposes of the cost limit. As a result of the cost of your aggregated requests exceeding this cost limit I will not be taking them further as they currently stand.

Section 12 of FOIA allows us to decline to answer requests when we estimate that it would cost us more than £600 (equivalent to 3½ working days' worth of work, calculated at £25 per hour) to confirm whether the department holds the information requested; and where we can confirm that information is held, to identify, locate, extract, and then provide the information that has been asked for.

In this instance the most costly parts of your request to answer are those contained in "Request 3" where you ask for information not contained in specified documents and which would require a large scale search to be made of large volumes of the Hutton Inquiry papers (for example details of any meeting on any date between specified people). I should also make clear that to comply with all parts of "Request 3" would itself exceed the cost limit.

I am, however, aware that you have previously been informed that information very similar to that requested in "Request 1" is not held by MoJ. I am not clear about the extent to which you consider your renewed request to be for the same information as that which you previously asked for or a wider range of material. However, given earlier searches for information about these issues undertaken in response to your previous requests I can confirm that the department is unlikely to hold information relevant to "Request 1". However, it would exceed the cost limit to conduct any further search as a result of the overall cost of processing your aggregated requests.

In addition, only question 2 within your "Request 2" falls for consideration under FOIA. It is the only question requesting the disclosure of recorded information. The other questions are factual and do not ask for the disclosure of recorded information, and therefore fall to be answered outside the scope of FOIA. In relation to these, I hope the following information is helpful.

The Hutton Inquiry papers contain considerable volumes of correspondence from and to Martin Smith and Clifford Chance LLP. We have no information to suggest that Clifford Chance continue to hold additional papers relating to the Hutton Inquiry and which should have been selected for preservation at The National Archives (TNA). Therefore currently we have no plans to ask Clifford Chance LLP whether they retain further papers relating to the Hutton Inquiry. As would be expected in such circumstances, although the cost of complying with your aggregated requests exceeds the cost limit, I can confirm that we do not hold any list of papers retained by Clifford Chance LLP.

You can find out more about section 12 of FOIA by reading the extract from the Act and some guidance points we consider when applying this provision, attached in Annex B at the end of this letter.

Although we cannot answer your request at the moment, we might be able to answer a refined request within the cost limit. You may wish to consider, for example, reducing the number of questions you pose, focussing on those which would require a less extensive search of the Hutton Inquiry papers to be undertaken. In addition, or alternatively, you may wish to narrow the scope of some of your broader questions, for example to particular periods of time. However, please be aware that we cannot guarantee at this stage that a refined request will fall within the FOIA cost limit.

I am sorry that on this occasion I have not been able to answer your request. You have the right to appeal our decision if you think it is incorrect. Details can be found in the 'How to Appeal' section attached in Annex C at the end of this letter.

Disclosure Log

You can also view information that the Ministry of Justice has disclosed in response to previous Freedom of Information requests. Responses are anonymised and published on our on-line disclosure log which can be found on the MoJ website: <http://www.justice.gov.uk/information-access-rights/foi-requests/latest-moj-disclosure-log>

The published information is categorised by subject area and in alphabetical order.

Yours sincerely

OLIVER LENDRUM

Annex A – FOIA Requests

Request 1 (18 May)

1. From what sources and by what means did the Department of Constitutional Affairs during the specified time period learn of the disappearance of Dr. David Kelly? For each and any such communication I ask for the time it was received by the Department of Constitutional Affairs.

2. I ask for copies of all memos, emails, minutes and notes of telephone conversations, telephone logs and similar material that apply to the matter referred to in Question 1.

3. From what sources and by what means did the Department of Constitutional Affairs during the specified time period learn of the discovery of a body at Harrowdown Hill? For each and any such communication I ask for the time it was received by the Department of Constitutional Affairs.

4. I ask for copies of all memos, emails, minutes and notes of telephone conversations, telephone logs and similar material that apply to the matter referred to in Question 3.

5. At what times did the Department of Constitutional Affairs communicate with Mr. Blair's plane (en route from Washington to Tokyo)? Who initiated each call? At what time did each call start and end?

6. I ask for copies of notes of the telephone calls referred to in Question 5.

7. I ask for copies of the relevant parts of the telephone logs relating to question 5.

8. At what times did the Department of Constitutional Affairs communicate with Mr. Blair's Director of Communications, Alastair Campbell? Who initiated each call? At what time did each call start and end?

9. I ask for copies of notes of the telephone calls, telephone logs and similar material referred to in Question 8.

Request 2 (27 May)

My Request relates to documents which may relate to the Hutton Inquiry which may possibly still be held by Clifford Chance LLP, solicitors to the Hutton Inquiry.

1. Does Clifford Chance LLP retain any Hutton Inquiry documents?

2. If so, I ask for a catalogue of all such documents.

3. Has the Ministry of Justice (or its predecessor department, the Department of Constitutional Affairs) asked for all Hutton Inquiry documents to be returned by Clifford Chance LLP and ensured that all such documents are placed in the National Archives?

4. Does the Ministry of Justice have any plans to ensure all Hutton Inquiry documents previously held by Clifford Chance LLP are placed in the National Archives?

I ask these questions since previous FOI Requests to the National Archives regarding the Hutton Inquiry and related matters made me think that some documentation might be missing from the National Archives.

One possible explanation is that Hutton Inquiry documents were retained by Clifford Chance LLP.

It seems to me that documents from a public inquiry properly belong in the National Archives. In making this Request I do not suggest impropriety.

Request 3 (27 May)

1. Lord Hutton met on or about 26th July 2003 with Janice Kelly. Who asked for that meeting to take place? Who attended that meeting?

2. I ask for any notes of that meeting together with any correspondence regarding the arrangement of the meeting.

3. Lord Hutton stated that Janice Kelly gave him some information. I ask for a copy of that information.

4. Professor Keith Hawton made a submission to the Hutton Inquiry which was never publicly disclosed. I ask for a copy of that submission.

5. According to papers released by the Attorney General's Office Dr. Kelly's mental health was assessed by Professor Gisli Gudjonsson. On what date did that assessment take place and at what location?

6. I ask for a copy of the assessment by Professor Gudjonsson.

7. On what dates and at what times did Lord Hutton meet with Chief Constable Peter Neyroud of Thames Valley Police?

8. I ask for copies of any notes, minutes or such documents of the meeting(s) between Lord Hutton and Mr. Neyroud.

9. On what dates and at what times did Lord Hutton meet with Assistant Chief Constable Michael Page?

10. I ask for copies of any notes, minutes or similar documents of the meeting(s) between Lord Hutton and Assistant Chief Constable Page.

I am unsure if the Ministry of Justice or the National Archives currently hold the information and documents requested. Therefore I am making a Freedom of Information Request in identical terms to each organisation so that each may respond appropriately according to the documents it hold.

Annex B – Additional information about Section 12

We have provided below additional information about Section 12 of FOIA. We have included some extracts from the legislation, as well as some of the guidance we use when applying it. We hope you find this information useful.

The legislation

Section 1: Right of Access to information held by public authorities

- (1) 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 12: Cost of compliance exceeds appropriate limit

(1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.

(2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.

(3) In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.

(4) The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority—

- (a) by one person, or
- (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.

(5) The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are to be estimated.

Guidance

The 'appropriate limit', for the purposes of section 12 of the Freedom of Information Act has been set at:

- £600 for central government and Parliament.
- The hourly rate is set at £25 per person per hour.

The following activities may be taken into account when public authorities are estimating whether the appropriate limit has been exceeded.

- determining whether it holds the information requested
- locating the information or documents containing the information
- retrieving such information or documents
- extracting the information from the document containing it.

Annex C - How to Appeal

Internal Review

If you are not satisfied with this response, you have the right to an internal review. The handling of your request will be looked at by someone who was not responsible for the original case, and they will make a decision as to whether we answered your request correctly.

If you would like to request a review, please write or send an email to the Data Access and Compliance Unit within two months of the date of this letter, at the following address:

Data Access and Compliance Unit (10.34),
Information & Communications Directorate,
Ministry of Justice,
102 Petty France,
London
SW1H 9AJ

E-mail: data.access@justice.gsi.gov.uk

Information Commissioner's Office

If you remain dissatisfied after an internal review decision, you have the right to apply to the Information Commissioner's Office. The Commissioner is an independent regulator who has the power to direct us to respond to your request differently, if he considers that we have handled it incorrectly.

You can contact the Information Commissioner's Office at the following address:

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

Internet address: https://www.ico.gov.uk/Global/contact_us.aspx