

Information Commissioner issues Enforcement Notice concerning information on the legality of military intervention in Iraq

http://www.ico.gov.uk/cms/DocumentUploads/Enforcement_Note_22nd_May_2006.pdf

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The Information Commissioner has served a single Enforcement Notice to resolve the issues arising from a number of similar complaints relating to disclosure of advice given by the Attorney General on the legality of military intervention in Iraq in 2003.

After very careful consideration of all the available evidence, the Information Commissioner has served the Legal Secretariat to the Law Officers (LSLO) with an Enforcement Notice. The Notice requires the disclosure of some - but not all - of the information which had been requested under the Freedom of Information Act. The Information Commissioner has ordered that a Disclosure Statement is published containing the substance of information which led to, or supported the views, which were made public by the Attorney General in his statement to Parliament on 17 March 2003. The Notice does not require the publication of information which was preliminary, provisional or tentative or which may reveal legal risks, reservations or possible counter-argument.

Richard Thomas, Information Commissioner, said:

"This is an exceptional, complex and sensitive case which has raised many issues. The Freedom of Information Act creates a presumption of disclosure, but the Act also creates important and separate exemptions relating to advice from the Attorney General, ministerial communications, the development of government policy, legal professional privilege, and prejudice to international relations. I was satisfied that at least one of the exemptions applied to all the requested information. I was then required to balance competing public interest considerations. The Notice sets out my reasoning in full.

"My conclusion is that the balance of the competing public interest tests calls for disclosure of the recorded information which led to, or supported, the concluded views which were made public by the Attorney General in his 17 March Statement. As the government chose to outline an unequivocal legal position, on such a critical issue at such a critical time, the balance of the public interest calls for disclosure of the recorded information which lay behind those views. By this means the public can better understand the background and rationale behind that published Statement and the extent to which reliance upon those final conclusions was in fact justified.

"But I have also concluded that the arguments for maintaining the exemptions are sufficiently powerful that the balance of the competing public interests does not require the disclosure of those parts of the requested information which were of a preliminary, provisional or tentative nature or which may reveal legal risks, reservations or possible counter-argument. Nor is disclosure needed where it would prejudice the UK's relations with other countries."

The Commissioner has recognised that the nature of the documentation in this case makes it impossible or extremely difficult to publish redacted text to meet the requirements of the Freedom of Information Act. The Enforcement Notice therefore requires a Disclosure Statement to be published meeting specified parameters. The Disclosure Statement has to include the substance of those parts of certain documents, as notified to the LSLO, which fall within these parameters.

The Commissioner is satisfied that the Disclosure Statement prepared by the LSLO and attached to the Enforcement Notice meets his requirements.

ENDS