



**IN THE FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
[INFORMATION RIGHTS]**

**EA/2011/0010**

**ON APPEAL FROM:**

**Information Commissioner's Decision Notice: FS50298338  
Dated: 21 December 2010**

**Appellant: ELAINE COLVILLE**

**Respondent: THE INFORMATION COMMISSIONER**

**Second Respondent: THE DEPARTMENT FOR INTERNATIONAL  
DEVELOPMENT**

**On the papers**

**Date of hearing: 1 July 2011**

**Date of Decision: 29 July 2011**

**Before**

**Annabel Pilling (Judge)  
Marion Saunders  
and  
Steve Shaw**

**Subject matter:**

FOIA – Whether information held s.1

**Cases:**

*Bromley v Information Commissioner and the Environment Agency*  
(EA/2006/0072)

**Representation:**

For the Appellant:	Elaine Colville
For the Respondent:	Richard Bailey
For the Second Respondent:	Alexander Ruck Keene, Sarah Townsend

**Decision**

For the reasons given below, the Tribunal dismisses the appeal but substitutes the following for the decision notice dated 21 December 2010

**SUBSTITUTED DECISION NOTICE**

Dated 29 July 2011

Public Authority: Department for International Development  
Address: 1 Palace Street  
London  
SW1E 5HE

Complainant: Ms Elaine Colville

**The Substituted Decision**

For the reasons set out in the Tribunal's determination, the substituted decision is that DFID did not deal with the complainant's request in accordance with the requirements of Part 1 of the Freedom of Information Act 2000, in that DFID was not entitled to rely on section 21(1) of the Freedom of Information Act 2000 in respect of the information requested in part (i) of the request of 24 December 2009 relating to the years 2001 to 2004.

That information was not held by DFID.

The remainder of the information requested in part (i) of the request, relating to the years 2005 to 2009, was reasonably accessible to the applicant and therefore exempt under section 21(1) of the Freedom of Information Act 2000.

The information requested in parts (ii) to (viii) of the request was not held by DFID.

No further action is required.

Dated 29 July 2011  
Annabel Pilling  
Judge

## **Reasons for Decision**

### **Introduction**

1. This is an Appeal by Ms Elaine Colville against a Decision Notice issued by the Information Commissioner (the 'Commissioner') dated 21 December 2010.
2. The Decision Notice relates to a request made by Ms Colville under the Freedom of Information Act 2000 (the 'FOIA') to the Department for International Development ('DFID') for information relating, broadly, to decisions taken by the British Executive Director of the World Bank Group (the "WBG").
3. DFID advised that it did not hold the information requested.
4. Ms Colville did not accept that the information she sought was not held by DFID and complained to the Commissioner. The Commissioner concluded that, in respect of the majority of the information, on the balance of probabilities, DFID did not hold the information requested and therefore it had complied with section 1(1)(a) of the FOIA in denying that it held the information. In respect of a small part of the information, he concluded that this was available to the Appellant by other means and was therefore exempt from disclosure under the provisions of section 21 of FOIA.

### **Background**

5. DFID is a central government department that promotes international development and the reduction of poverty. Its statutory basis is set out in the International Development Act 2002. DFID is headed by the Secretary of State for International Development. The UK Government, through DFID, donates funds to the WBG, an international organisation which comprises the International Bank for Reconstruction and Development ('IBRD', more commonly known as

the 'World Bank'), the International Finance Corporation ('IFC') and the Multilateral Investment Guarantee Agency ('MIGA').

6. Ms Colville is seeking information broadly relating to decisions taken by the British Executive Director to the WBG, acting for DFID.

The request for information

7. Ms Colville made a request under the FOIA on 24 December 2009 to DFID, prefaced with statements made by Clare Short, then International Development Secretary on 15 October 2002...

*"In the light of the foregoing to request the following information, to be supported by relevant documentary evidence in DFID's possession*

- (i) On which Board Committees have the British Executive Directors of the WBG sat each year starting from 2001 to date?*
- (ii) In 2001, did the British Executive Director, acting for DFID, agree and approve the IFC Management Decision to eliminate from IFC's organisational and management structure the Technical and Environment Department by creating effective on 1 March 2001 two distinct departments namely: 1) Technical Services Department ("CTS") and 2) Environment and Social Development Department ("CES") and associated sub-divisions (as recognised in the organisational and management chart presented in the 2001 IFC Annual Report)?*
- (iii) Did the British Executive Director, acting for DFID, agree and approve the IFC Management Decision announced on 5 October 2001 to amalgamate the newly created CTS and CES departments and associated sub-divisions by the abolition of those departments and divisions from IFC's organisational and management structure to be*

*replaced, effective 1 January 2002, by the creation of a new department by name the Environment, Social Development and Technical Services Department (“CET”) and associated sub-divisions, resulting in the elimination of the CTS and CES departments and associated sub-divisions also effective on 1 January 2002?*

- (iv) In March 2002, did the British Executive Director, acting for DFID, agree and approve the IFC Management Decision to abolish the CET department and associated sub-divisions with effect on 1 July 2002 and to reinstate the former CES department with effect on 1 July 2002?*
- (v) Did the British Executive Director, acting for DFID, agree and approve the elimination of the Environmental and Social Development Best Practices Group (“CESBP” or “CETBP”) funded under IFC’s administrative budget by the creation on 1 July 2002 of a newly established CES Sustainable Financial Markets Facility (“SFMF” )funded by donors, including DFID?*
- (vi) Did the British Executive Director, acting for DFID, agree and approve redundancies of tenured “CESBP” or “CETBP” (as relevant) Environmental Specialists effective on 1 July 2002 and substitution of those redundant positions by the creation of new donor-funded positions in the new CES SFMF effective on 1 July 2002?*
- (vii) In the light of the FY03 WB/IFC Private Sector Development (PSD) Strategy and intent to aggressively scale up the technical assistance activities at the core of IFC operations (discussed by the Executive Board on 16 April 2002 see link provided), did the British Executive Director, acting for DFID, agree and approve the IFC Management Decision to lay off tenured Technical Specialist staff who had the requisite skills and expertise to manage and implement planned technical assistance activities, to be jointly funded by IFC and donors,*

*including DFID, by abolishing the “CTS” or “CET” Department (as relevant) from IFC’s organisational structure on 1 July 2002?*

*(viii) Did the British Executive Director, acting for DFID, specifically consider IFC Donor Trust Fund Operational Policy, WBG Staff Rules and provisions under the International Development Act (IDA) 2002 when, or if, agreeing and approving, as applicable, redundancies of British and other Technical and Environmental Specialists whose skills IFC Management replaced by mobilising and using DFID and other donor funds to hire in substitute specialist staff?*

8. By letters dated 26 January 2010, DFID responded and explained that it did not hold the information requested. It added that some of the information relating to part (i) of the request was available in the World Bank Annual Reports and provided the relevant website link.
9. Ms Colville asked for an internal review of this decision on 26 January 2010. She set out the reasons why she rejected the answer that the information was not held.
10. Eilidh Simpson, Head of Openness Unit of DFID, responded on 24 February 2010 having carried out an internal review. She found that DFID does hold copies of the World Bank Annual Reports, in which details of participants in the Board Committees can be found. Therefore the correct response should have been that the information was held but was not being disclosed as it was available by other means, relying on section 21 of FOIA. She upheld the original decision that the requested information in parts (ii) to (viii) of the request was not held.

### The complaint to the Information Commissioner

11. The Appellant complained to the Commissioner on 25 February 2010
12. The Commissioner commenced an investigation, requiring DFID to provide information about the searches that it had undertaken in relation to this request. He also received further correspondence from Ms Colville. DFID provided a detailed explanation of the steps it had taken following receipt of the request for information and why it considered that it did not hold the information requested.
13. A Decision Notice was issued on 21 December 2010. In summary, the Commissioner concluded that, in respect of part (i) of the request, DFID was entitled to rely on section 21 FOIA (and he found there was a procedural breach of section 17 of FOIA as this exemption not been relied on in the initial refusal). In respect of parts (ii) – (viii) of the request, the Commissioner concluded that, on the balance of probabilities, DFID did not hold the requested information and was not in breach of s1(1)(a) of FOIA.

### The Appeal to the Tribunal

14. By Notice of Appeal dated 20 January 2011, Ms Colville appeals against the Commissioner's decision.
15. The Tribunal joined DFID as Second Respondent.
16. Ms Colville is not represented in these proceedings and has submitted detailed submissions supported by other material which she considers the Tribunal should take into account when deciding this Appeal.
17. The Grounds of Appeal have been identified as follows:

**Ground 1** - The IC erred in concluding, on the balance of probabilities, that DFID did not hold the requested information in (ii) – (viii).

**Ground 2** – The IC erred in concluding that all the information requested in (i) is exempt under section 21.

18. The Appeal was determined at a hearing on the papers on 1 July 2011.

19. The Tribunal was provided in advance with an agreed Bundle of material and written submissions from the parties. Although we do not refer to every document, we have had regard to all the material before us.

### The Powers of the Tribunal

20. The Tribunal's powers in relation to appeals are set out in section 58 of FOIA, as follows:

*(1) If on an appeal under section 57 the Tribunal considers-*

*(a) that the notice against which the appeal is brought is not in accordance with the law, or*

*(b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,*

*the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner; and in any other case the Tribunal shall dismiss the appeal.*

*On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.*

21. The starting point for the Tribunal is the Decision Notice of the Commissioner but the Tribunal also receives evidence, which is not



limited to the material that was before the Commissioner. The Tribunal, having considered the evidence (and it is not bound by strict rules of evidence), may make different findings of fact from the Commissioner and consider the Decision Notice is not in accordance with the law because of those different facts. Nevertheless, if the facts are not in dispute, the Tribunal must consider whether the applicable statutory framework has been applied correctly. If the facts are decided differently by the Tribunal, or the Tribunal comes to a different conclusion based on the same facts, it will find that the Decision Notice was not in accordance with the law.

### *The Legal Framework*

22. Under section 1(1) of FOIA, any person making a request for information to a public authority is entitled, subject to other provisions of the Act, (a) to be informed in writing by the public authority whether it holds the information requested, and (b) if so, to have that information communicated to him.
23. The section 1(1)(b) duty of the public authority to provide the information requested will not apply where the information is exempt by virtue of any provision of Part II of FOIA. The exemptions provided for under Part II fall into two classes: absolute exemptions and qualified exemptions. Where the information is subject to a qualified exemption, it will only be exempt from disclosure if, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information (section 2(2)(b)). Section 21 of FOIA is an absolute exemption. Information that falls within this section is therefore exempt from disclosure and not subject to the balancing of public interest considerations under section 2(2)(b).

## Submissions and Analysis

### Ground 1 - The IC erred in concluding, on the balance of probabilities, that DFID did not hold the requested information in (ii) – (viii).

24. The information requested in parts (ii) to (viii) of the request of 24 December 2009 relates to whether the British Executive Director of the WBG agreed and approved various management decisions during the period 2001 to 2002. The Commissioner concluded that, on the balance of probabilities, DFID did not hold the requested information and it is against that decision that Ms Colville appeals.
25. There is no dispute that the duty under section 1(1) of FOIA, to disclose information upon request, extends only to recorded information. It does not place an obligation on a public authority to answer questions generally or to create information that is not held in recorded form at the time of the request.
26. There can never be certainty that a document might not be undiscovered within the records held by a public authority. It is accepted by the parties that the standard of proof to be applied is the civil standard, that is the balance of probabilities. A differently constituted Panel of this Tribunal in *Bromley v IC and Environment Agency*<sup>1</sup> (“*Bromley*”) rejected arguments that certainty was the test to be applied in determining whether information was held for the purposes of FOIA and described the balance of probabilities as the “normal standard of proof.” We are content that this is the correct standard of proof to be applied by this Tribunal.
27. In *Bromley* the Tribunal said that in reviewing the conclusion reached by the Commissioner as to whether the public authority, on the balance of probabilities, held the requested information, it was required

*“...to consider a number of factors, including the quality of the public authority’s initial analysis of the request, the scope of the*

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<sup>1</sup> (EA/2006/0072)

*search that it decided to make on the basis of that analysis and the rigour and efficiency with which the search was then conducted. Other matters may affect our assessment at each stage, including, for example, the discovery of materials elsewhere whose existence or content point to the existence of further information within the public authority which had not been brought to light. Our task is to decide, on the basis of our review of all these factors, whether the public authority is likely to be holding relevant information beyond that which has already been disclosed.”*

28. In response to questions from the Commissioner during his investigation, DFID set out the details of the searches that were carried out for information falling within the scope of the request.
29. We have been provided with a witness statement from Eilidh Simpson, Head of Openness Unit in DFID's Business Solutions Division, who has worked in various departments of DFID for a total of thirty years. Ms Simpson is responsible for the team of ten staff that responds to requests for information from the general public, including formal requests which are handled under FOIA. A FOI manager and assistant have core responsibility for the FOIA requests. Ms Simpson carried out the internal review in relation to Ms Colville's requests and also corresponded with the Commissioner during his investigation of Ms Colville's subsequent complaint.
30. Although DFID now stores core documents using an Electronic Document Records Management System ('EDRMS'), this was introduced in 2005 and pre-2006 paper records are held in an off-site repository and in a basement in DFID's East Kilbride office. File titles are held in an electronic index that is searchable using words or phrases. Files may be recalled from the repository or basement upon request.
31. Ms Simpson explains that FOIA requests in DFID are routed to and answered by her team. The team will carry out whatever searches are

appropriate in relation to a particular request; this usually consists of a combination of asking the appropriate country office or policy team if they hold information and a general search of EDRMS for other relevant information. The country or policy team will usually look for the information in the appropriate EDRMS folder. If the country or policy team cannot locate the relevant information or the FOI team feel that additional information may exist, the FOI team will carry out a further general search of the EDRMS. If the terms of the FOI request suggest that information is likely to be held in paper files, the FOI team will ask the Records Management Unit to carry out a key word search of the paper file index. Any files that seem likely to hold the information are ordered from the basement or file repository and manually searched by the FOI team.

32. In relation to Ms Colville's request of 24 December 2009, Ms Simpson sets out the details of the searches carried out:

- On 29 December 2009 the FOI team referred the request to staff in the International Financial Institutions Department (IFID) of DFID, as it was believed that they would be most likely to hold such information or know where it would be located. Following some internal consultation, the IFID team, responded on 21 January 2010 noting that the information requested in parts (ii) to (viii) was not held by DFID. In relation to part (i), they subsequently clarified that the World Bank's Annual Reports would contain information about the Board Committees on which the British Executive Directors sat.

33. Following Ms Colville's request for an internal review, Ms Simpson carried out the following enquiries:

- Referred to IFID (who hold the policy for the World Bank); they clarified that they did hold copies of the Annual Reports but did not hold further information on parts (ii) to (viii), which

they subsequently clarified would only be likely to be held by the World Bank itself and not DFID.

- Commissioned a keyword search by DFID's Information Management Unit of DFID's paper files which was carried out on 19 February 2010. The keyword search used the following terms: "World Bank" and "International Finance Corporation" both alone and combined with words and phrases in variations such as "technical", "environment", "committee", "Executive Directors", "Management Decisions", "Administrative Budget" as well as the acronyms quoted by Ms Colville "CES", "CTS", "CESBP", "CETBP" and "PSD". There were no exact matches to most of the combinations (although there were a few matches to "environment" and one to "committee").
- The Records Management Team suggested a series of files which might contain relevant information and she ordered and read through the 27 most likely files from the file repository. These were mostly general files dating between 2001 and 2003 and included file titles such as International Finance Corporation Policy, International Finance Corporation Monthly Operations Report, International Finance Corporation General, International Finance Corporation Finance, World Bank Group Environment, World Bank Group UK Delegation to the World Bank and International Monetary Fund (UKDEL). She found no information that was relevant to any of Ms Colville's requests.

34. During the Commissioner's investigation of Ms Colville's complaint, the FOI manager:

- clarified that only the WB Annual Reports dating from 2005 to 2009 contained details about Committee Membership, that

information was not contained in the reports from 2001 to 2004.

- consulted the Information Management Unit to determine whether there were any WB or IFC files relating to or likely to contain information about Committees or Committee Membership between 2001 and 2004. No further files were identified as being likely to contain relevant information; this was consistent with the findings of the earlier searches which had covered the period 2001 to 2003.
- to be doubly sure that DFID held no relevant information, commissioned the Information Management Unit to undertake fresh keyword searches of the paper file index in relation to parts (ii) to (viii) of the request but without further result.
- additionally carried out a search of EDRMS using search terms such as “Executive Director”, “vote”, “International Finance Corporation” again without result. While this was to be expected, as EDRMS post-dates 2005, it did serve as a cross-check to show that DFID did not hold any information additional to that contained in the WB Annual Reports.

35. Ms Colville’s submissions in respect of Ground 1 can be summarised as follows:

- i) the likelihood that the UK delegation pass on all information to DFID ministers and officials;
- ii) DFID’s failure to carry out a reasonable search for the information requested.

36. Ms Colville submits that the Commissioner’s conclusion is contrary to the answer given on 15 October 2002 by the Rt. Hon. Clare Short MP,

*Mr. Sayeed: To ask the Secretary of State for International Development (1) if, when carrying out her functions as Governor of the International Finance Corporation of the World Bank Group, she has sole responsibility for instructing the UK Executive Director as to how to exercise the UK's vote on the board of the IFC; which other departments are involved in this role; and if she will make a statement; (2) what guidelines exist concerning the manner in which instructions are given to the UK Executive Director as to how to exercise the UK's votes on the Board of the International Finance Corporation or on the Board of other of the World Bank Group institutions; if she will place such material in the library; and if she will make a statement.*

*Clare Short: My Department is responsible for the UK Government's relations with the World Bank Group, including the International Finance Corporation (IFC). We are represented on the Boards of the World Bank Group by the UK Executive Director or members of his staff in the UK Delegation to the World Bank Group and International Monetary Fund in Washington. The UK Executive Director and his team take instructions from my department and receive guidance from, liaise closely with and report fully to my department and, as appropriate, other interested Whitehall departments and the Bank of England.*

*All papers for consideration by the IFC Board are received by the UK Delegation and forwarded to DFID officials in London who consider these on the basis of agreed Government policy. If any issues arising in the papers appear controversial or are of particular interest, officials bring these to my attention or to the attention of other relevant government departments. The majority of papers are uncontroversial and we are content to*

*support the recommendations of IFC management. Where necessary, DFID officials provide briefing and points for the UK Delegation to make in the Board discussions. As with the rest of the World Bank Group, nearly all Board decisions are taken on the basis of consensus, to reflect Board discussions, and decisions rarely go to direct votes.”*

37. Ms Colville submits that in light of this answer and the Guidance from the Cabinet Office on answering parliamentary questions, as to accuracy etc, the effect of the Commissioner’s decision, that DFID holds no further information falling within the scope of the request, is that the Secretary of State made false or misleading statements to Parliament. She submits that any papers concerning UK contributions to the activities of the WB would have had to have been passed by the UK Delegation to DFID ministers and officials. She argues that she does not find it plausible that *“official documents and communications between DFID and the UK Delegation, which forms the basis of and affect Government decisions in respect of the UK’s international and financial relations with the world’s leading public international financial institution are not retained as a matter of policy.”*

38. In her long and thoroughly referenced Grounds of Appeal and Replies to the Commissioner and DFID’s Responses to the Grounds of Appeal, Ms Colville relies upon extracts from various source material to support her submission that the UK delegation can be expected to have passed on *“all information for DFID ministers and their officials to consider for instructions as to how the UK Delegation are to act or vote to represent the official UK position in WBG board meetings.”* She argues that *“short of gross negligence or acts of an ultra vires nature, it must further be assumed that [the Executive Director] or another in the UK Delegation “forwarded to DFID officials in London”, “all papers for consideration by the IFC Board” relating to: 1) the 2002 IFC Reorganisation and provisioning of US\$13 million from the 2002 administrative budget for redundancies of technical experts and other*



*staff; and 2) contributions from IFC's net income and administrative budgets to "special programmes"...* Ms Colville's position is that DFID has "enabled" the WBG to breach international law "causing unjustified loss and injury to WBG employees" and that "DFID continues to act with legal malice to cover up both its own and the WBG's wrong-doing through the wilful suppression of information".

39. The Commissioner pressed this issue in respect of what information DFID is passed by the UK delegation during his investigation of Ms Colville's complaint. For example, on 19 November 2010 in an e-mail from Dr Wernham, the Commissioner reminded DFID of the answer given by the Secretary of State (quoted in paragraph 36 above) and asked:

*"In light of that statement, the "not held" position seems a bit surprising and I wondered if you could please reassure me on the point once again."*

40. DFID responded the same day, to indicate further checks would be made. The substantive response was sent by e-mail on 3 December 2010 -

*"..I'm just writing to confirm that our policy team have again confirmed that we do not hold the information requested at part 2-8 of Ms Colville's request...."*

*As previously mentioned, Board decisions very rarely go to the vote as most are made by consensus. The World Bank is very protective of their information – particularly information which they have classified as confidential – as is the case with Executive Directors votes. That said, however, we have carried out very extensive searches for the information covering both our electronic and paper files and still not found anything relevant to the request. I know it's always really difficult to prove conclusively that we don't hold relevant information, but in this case we are as sure as we possibly can be that we don't hold it."*

41. DFID submits that whilst the Secretary of State is the UK's Governor to the WB and sits on the Bank Board of Governors, responsibility for day to day operations and for most decisions on policy is delegated to an Executive Board. Both of the Executive Directors and their support staff work in Washington and are officials of the Office of the Executive Director at the WB, known as the UK Delegation to the WB, not officials of DFID.
42. Ms Colville argues that whatever the outcome of any matter decided by the Board, all information relating to those decisions, however reached, is required to be appropriately communicated to DFID by the UK Delegation office and that to hold otherwise would be to suggest that the Secretary of State deliberately misled Parliament, and *"that the UK Delegation conceal information and take ultra vires decisions on behalf of the UK Government about which Parliament and DFID knows nothing"*. We remind ourselves that we are considering the request for information of 24 December 2009 and the way that was dealt with, and not any wider question of what information about the IFC or WBG is, or should be, communicated to DFID. The request in this case was not for the outcome of any matter decided by the Board, but for answers to specific questions about whether the British Executive Director agreed and approved certain IFC Management decisions. These decisions relate to the administrative functions and structure of the WB, i.e. how the WBG implements international human resources structure, rather than a broader policy decision and therefore it might not be necessary to communicate in respect of this with DFID. It does not follow that the "voting" information would be communicated to DFID. Equally it does not follow that the Secretary of State's answer on 15 October 2002 was misleading, deliberately or otherwise, and it is no part of our jurisdiction to comment on those allegations.
43. DFID delegates responsibilities to the Executive Director and the UK Delegation to the WB to act within the parameters of policy set by the Secretary of State. This means that there is no mandate to vote a

certain way on each and every issue that may be raised, or to always seek specific instructions in every instance, but that there is a delegated authority to vote within set parameters. Recorded information, such as minutes of discussions and how the consensus decision is reached, we accept would be held by the WBG and not DFID. Nothing we have seen suggests that such information is, or should be, communicated to DFID. This is not at odds with the answer given by the Secretary of State on 15 October 2002. We consider that Ms Colville is mistaken in her interpretation of that answer and wrongly believes that much more information flows from the UK Delegation to DFID than is the case.

44. In respect of the quality of the search, Ms Colville submits that DFID failed to carry out a reasonable search for the information requested and that the searches *“appear to have been completely random and conducted using the wrong descriptors”*. She submits that it *“is hardly credible”* that no information covering the main phrases in her requests within the 2001 to 2004 filing time period was found. She submits that the keyword search should have been much wider and should have included the following words and/or phrases:

- IFC, IFC Management, IFC Management Decision, IFC Organisational and Management Structure; Technical and Environment Department; Technical Services Department (“CTS”); Environment and Social Development Department (“CES”); Organisational and Management Chart; 2001 IFC Annual Report; Environment, Social Development and Technical Services Department (“CET”); IFC’s Administrative Budget; Sustainable Financial Markets Facility (SFMF); Donors (including DFID) [IFC] Redundancies [2002]; FY03 WB/IFC Private Sector Development (PSD) Strategy; Technical Assistance Activities (“discussed by the Executive Board on 16<sup>th</sup> April 2002”  
[http://rru.worldbank.org/Documents/PapersLinks/WBG\\_PAD\\_Im](http://rru.worldbank.org/Documents/PapersLinks/WBG_PAD_Im)

[plementaion Progress Reports June-2003.pdf](#)), IFC Donor Trust Fund Operational Policy, WBG Staff Rules.

- Searched by using the names of the Executive Directors and/or relevant names or acronyms for the UK Delegation.

45. Some of these were search terms used by DFID in any event. We do not understand the inclusion of the link to the WB website in the list of suggested search terms.

46. DFID submits that:

- i) It analysed the Appellant's requests with appropriate care and accuracy;
- ii) The scope of the searches it then conducted was appropriate;
- iii) The rigour and the efficiency of those searches was appropriate;
- iv) Those searches yielded no information responsive to the Appellant's requests;
- v) The Appellant has not adduced materials whose existence or content point to the existence of further information within DFID which were not brought to light by the searches conducted in response to the Appellant's requests; and
- vi) Therefore the Tribunal can and should be satisfied on the balance of probabilities that DFID does not hold (and/or is not likely to be holding) information responsive to the Appellant's requests.

47. The Commissioner submits that this is evidence of the reasonable enquiries carried out by DFID as to whether it held the information and upon which he was satisfied that a reasonable search had been carried

out. On that basis, he submits that he was correct to conclude that, on the balance of probabilities, the information requested was not held.

48. Even if we were to conclude that DFID should hold the information that Ms Colville requested, it does not follow that DFID does, in fact, hold that information. Our task is to consider whether the Commissioner was correct to conclude on the balance of probabilities that the information requested was not held.

49. We are satisfied on the evidence we have seen – both from correspondence in the bundle of material provided to us and from Ms Simpson’s statement – that DFID carried out a reasonable search for information that might fall within the scope of parts (ii) to (viii) of Ms Colville’s request of 24 December 2009. In our opinion it properly analysed the requests and thereafter undertook an appropriate search, and that the scope of the search that it made was rigorous and efficient. We accept the explanation for why the information is not held by DFID and consider that Ms Colville is acting under a mistaken assumption in respect of the extent of information held by DFID concerning the WBG.

50. It is clear from the evidence that the Commissioner’s investigation went much further than merely accepting a bald assertion from DFID that it did not hold the information requested and he required further details from DFID in respect of what information is passed on from the UK Delegation.

51. It is possible that DFID could obtain the answer to parts (ii) to (viii) of the request of 24 December 2009 from the Executive Director or the WBG but we accept that it would not be communicated as a matter of course and therefore we accept that the information is not held.

52. Ms Colville’s arguments were thoroughly researched and presented to us. It appears to us that she is acting under a misapprehension as to the width of the jurisdiction of this Tribunal and may be better placed by

pursuing a different course of action in respect of her perception of the actions of the WBG and DFID.

Ground 2 – The IC erred in concluding that all the information requested in (i) is exempt under section 21.

53. Section 21 of FOIA provides as follows:

*(1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.*

54. In respect of the information requested in part (i) of the request (i.e., on which Board Committees the British Executive Directors of the WBG sat each year starting from 2001 to 2009), DFID refused the request on the basis that the information was available by other means and therefore exempt under section 21(1) of FOIA. The Commissioner upheld that decision.

55. The Annual Reports for 2005 to 2009 contain the “Executive Directors, Alternate and Committee Membership” information. These are available on the website and we are satisfied that these are reasonably accessible to Ms Colville; the exemption provided for in section 21(1) of FOIA is therefore engaged in respect of this part of the request.

56. However, it is accepted by the Commissioner and DFID that, in fact, the information within part (i) of the request, so far as it related to the period 2001 to 2004 was not “reasonably accessible to the applicant” as it was not until the publication of the 2005 World Bank Annual Report that information of the nature requested was included in the Annual Report made available to the public. The Annual Reports for 2001 to 2004 do not contain the information on which Board Committees the British Executive Directors sat each year within that period. DFID submits that it did not (and does not) hold the information elsewhere. It relies on the evidence contained in the statement of Ms Simpson who carried out the searches outlined in paragraphs 32-34 above.

57. The Commissioner is satisfied that DFID also carried out a reasonable search for this information and that, on the balance of probabilities, this information is not held by DFID. The Commissioner submits that he should have concluded that the information in part (i) of the request relating to the years 2001 to 2004 was not held by DFID and he invites the Tribunal to issue a substituted Decision Notice.

58. Ms Colville maintains that this information should be held by DFID and we have therefore considered her arguments on this point in line with our analysis above and come to the same conclusion that DFID carried out a reasonable search for information that might fall within the scope of this part of Ms Colville's request of 24 December 2009. In our opinion it properly analysed the requests and undertook an appropriate search.

59. We therefore issue a substituted Decision Notice to reflect this.

#### Conclusion and remedy

60. For the reasons set out in detail above, we have concluded that the Commissioner applied the correct standard of proof and that he was both entitled and correct to reach the decision that, on the balance of probabilities, DFID did not hold the information falling within parts (ii) to (viii) of the request. Accordingly, we dismiss Ground 1 of this appeal.

61. We allow, in part, Ground 2 of the appeal as we find that DFID was not entitled to rely on the exemption in section 21(1) of FOIA in respect of the information requested in part (i) of the request for the years 2001 to 2004. We find that on the balance of probabilities, DFID did not hold the information falling within this part of the request.

62. Our decision is unanimous

Signed

Annabel Pilling  
Tribunal Judge

29 July 2011