



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

Case No. EA/2018/0136

ON APPEAL FROM:

**The Information Commissioner's
Decision Notice No: FS50672948
Dated: 13 June 2018**

Appellant: Gordon Downie

Respondent: Information Commissioner

Second Respondent: Department for Business, Energy and Industrial Strategy

**Date & venue of hearing: 9 January 2019
Fleetbank House, London**

Date of decision: 26 February 2019

Before

Anisa Dhanji

Judge

and

**Rosalind Tatam
David Wilkinson**

Panel Members

Subject matter

Freedom of Information Act 2000, section 35(1)(a) - whether the public interest in maintaining the exemption outweighs the public interest in disclosure.

DECISION

Dated: 26 February 2019

Name of Complainant: Gordon Downie

Public Authority: Department for Business, Energy and Industrial
Strategy

Address of Public Authority: 1 Victoria Street
London
SW1H 0ET

This appeal is dismissed.

Signed

**Anisa Dhanji
Judge**

REASONS FOR DECISION

Introduction

1. This is an appeal by Mr Gordon Downie (the “Appellant”), against a Decision Notice issued by the Information Commissioner (the “Commissioner”), on 13 June 2018.
2. It concerns a request for information made by the Appellant under the Freedom of Information Act 2000 (“FOIA”), to the Department for Business, Energy and Industrial Strategy (DBEIS), for information concerning certain “Star Chamber” sessions.

The Request and its Context

3. On 27 January 2017 the Appellant requested information “*held by the Department concerning any review either (a) currently being conducted or (b) completed within the last 12 months of the activities of the UK’s economic regulators and, in particular, the review mentioned at paragraph 1.7 (third bullet) of the attached*”. The reference to “the attached” was to the Regulatory Futures Review.
4. DBEIS replied on 22 February 2017. It said that it did not hold the information because there was no such current review, nor had there been in the previous 12 months. However, in accordance with its duty to advise and assist under section 16 of FOIA, DBEIS drew the Appellant’s attention to the “Star Chamber” process.
5. On 27 February 2017, the Appellant requested an internal review. He also asked that the review “*consider whether any information held by the Department concerning the Star Chamber sessions mentioned in the decision (e.g. any minutes of relevant sessions) ought to be provided to me*”. This is the request (the “Request”), that is the subject of this appeal.
6. Although the Request did not fall within the scope of the 27 January request, rather than treating it as a distinct request, DBEIS responded to the Request within the context of the internal review of the 27 January request.
7. However, DBEIS refused the Request, relying on the exemption in section 35(1)(a) of FOIA (formulation of government policy).

Complaint to the Commissioner

8. The Appellant complained to the Commissioner about DBEIS’ refusal.
9. The Commissioner investigated the complaint. On 6 February 2018, during the course of the Commissioner’s investigation, DBEIS released some documents containing some of the disputed information, with certain redactions. However, it withheld other information, maintaining its reliance on the section 35(1)(a). It also relied on the exemptions in section 29(1)(a) (economic interests of the UK); section 35(1)(b) (Ministerial communications); and section 40(2) (third party personal data).
10. For the reasons set out in her Decision Notice, the Commissioner agreed that the information withheld (the “disputed information”), was exempt under section

35(1)(a). Having reached this finding, she did not go on to consider the application of the other exemptions relied upon by DBEIS.

Appeal to the Tribunal

11. The Appellant has appealed against the Commissioner's Decision Notice under section 50 of FOIA. DBEIS has been joined as a party to the appeal.
12. The scope of the Tribunal's jurisdiction in dealing with an appeal from a Decision Notice is set out in section 58(1) of FOIA. If the Tribunal considers that the Decision Notice is not in accordance with the law, or to the extent that it involved an exercise of discretion by the Commissioner, she ought to have exercised the discretion differently, the Tribunal must allow the appeal or substitute such other notice as could have been served by the Commissioner. Otherwise, the Tribunal must dismiss the appeal.
13. The parties have lodged an open bundle comprising some 232 pages. It contains, from pages 108 to 232, redacted versions of documents provided to the Appellant (with a fair amount of duplication).
14. In addition, we have been supplied with a closed bundle comprising some 329 pages (although this, too, includes a fair amount of duplication). It includes unredacted versions of documents supplied to the Appellant in redacted form, as well as a witness statement from Tim Jarvis, who is described as an official of DBEIS.
15. We have considered all the material submitted, even if not specifically referred to in this decision.
16. The Appellant has requested that this appeal be determined on the papers without an oral hearing. The Commissioner and DBEIS have agreed. Having regard to the nature of the issues raised, and the nature of the evidence, we are satisfied that the appeal can properly be determined without an oral hearing.

The Statutory Framework and the Issues in this Appeal

17. Under section 1 of FOIA, any person who makes a request for information to a public authority is entitled to be informed if the public authority holds that information, and if it does, to be provided with that information.
18. The duty on a public authority to provide the information requested does not arise if the information sought is exempt under Part II of FOIA. The exemptions under Part II are either qualified exemptions or absolute exemptions.
19. The key issue in this appeal, upon which the parties have concentrated their arguments, is in relation to section 35(1)(a) of FOIA. This is a qualified exemption. Pursuant to section 2(2)(b), information that is subject to a qualified exemption is only 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. This balancing exercise must be undertaken as at the date of the refusal.
20. Section 35(1)(a) of FOIA provides, so far as is relevant, that information will be exempt from disclosure if *"it relates to the formulation or development of government policy"*.
21. Section 35(4) is also relevant. It provides as follows:

In making any determination required by section 2(1)(b) or (2)(b) in relation to information which is exempt information by virtue of subsection (1)(a), regard shall be had to the particular public interest in the disclosure of factual information which has been used, or is intended to be used, to provide an informed background to decision-taking.

22. Section 35 is a class-based exemption and is drafted in broad terms. For the exemption to be engaged, the information only has to *relate* to the formulation or development of government policy. There is no need to show that any harm would result from disclosure (although harm is of course relevant in the public interest balancing exercise).
23. In the present case, the disputed information (which we will describe in general terms, below), clearly *relates* to the formulation or development of government policy. Indeed, the Appellant does not dispute that the exemption is engaged.
24. The real issue in this appeal is whether in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure of the disputed information. The Commissioner agreed with DBEIS that it does. The Appellant challenges this finding.
25. If we find that the disputed information is exempt under section 35(1)(a), then we need go no further. Otherwise, we must go on to consider the other exemptions that DBEIS has relied upon.
26. In addition to the exemptions referred to at paragraph 9 above, in the course of this appeal, DBEIS has also relied on section 35(1)(b) in relation to two letters (documents 15 and 29 in the list appended to the DBEIS's letter to the Commissioner, dated 10 October 2017).

The Disputed Information and its Context

27. It may be helpful if we first describe the disputed information. In line with the Supreme Court's decision in **Bank Mellat v Her Majesty's Treasury [2013] UKSC 38**, we will say what we reasonably can, about that information, without undermining the purpose of this appeal. We have also kept in mind the Court of Appeal's guidance in **Browning v Information Commissioner and the Department for Business, Innovation and Skills [2014] EWCA Civ 1050**, as regards closed material generally.
28. The disputed information relates to three meetings with the regulators for the water, energy and communications sectors. The meetings were attended by the then Secretary of State for the Department of Business, Innovation and Skills (as it then was), the then Chancellor of the Duchy of Lancaster, and senior civil servants including from HM Treasury, and other relevant Ministers.
29. The dates and regulators present at the three meetings were as follows:
 - 9 February 2016, with representatives of the Water Services Regulation Authority ("Ofwat");
 - 10 February 2016, with representatives of the Office of Gas and Electricity Markets ("Ofgem"); and
 - 7 March 2016, with representatives of the Office of Communications ("Ofcom").
30. The disputed information comprises 329 pages (including duplications), of

correspondence, briefing documents, and slides from the three Star Chamber meetings, some of which, as already noted, have been provided to the Appellant in redacted form. The information contained in these documents relate to a review of the relevant regulatory frameworks, including the substance of regulatory obligations, and includes proposals for changes.

31. The Decision Notice explains the nature of the disputed information in general terms. As well, the closed bundle includes a 15 page letter, dated 10 October 2017, from DBEIS to the Commissioner, explaining why, in its view, the information is exempt. A redacted version of that letter is in the open bundle. The passages that describe the disputed information, also in general terms, have (quite rightly), not been redacted. The letter also contains an Annex, listing in 47 numbered points, the individual documents comprising the disputed information. This corresponds to the table of contents of the closed bundle. The number of documents in issue, and a brief description of each, has therefore been disclosed. The closed witness statement from Tim Jarvis largely repeats what has already been said in the 10 October letter.
32. It is important that we clarify the term “Star Chamber” because, it would seem, that a misunderstanding about this may have informed the Appellant’s appeal. In the sense used by DBEIS, the term “Star Chamber” could not be further from its historical namesake, described by the Appellant in his Response (at paragraph 8). The term as used by DBEIS was not in the historical sense of that term, but rather, referred to an exploratory exercise, gathering and testing ideas and information across government and with the relevant regulators, with a view to making policy proposals. The term was not intended to convey that it was some form of inquiry or investigation, as the Appellant suggests. The disputed information does not support the Appellant’s view that the parties were engaged in a process in which findings were being made by DBEIS about the current activities of the regulators, rather than a candid exchange of ideas about policy formulation.
33. As to the context and background to the disputed information, much of the explanation we have set out below comes from DBEIS, but it is supported by the material that has been placed before us.
34. The Star Chamber sessions with the three regulators arose from an exercise initiated in ‘*A Better Deal: Boosting Competition to Bring Down Bills for Families and Firms*’ (Cm 9164), presented to Parliament in November 2015.
35. Paragraph 4.1 of *A Better Deal* outlined the purpose of the exercise as follows:

“The government is committed to creating the right business environment to enable all businesses, including those with new and innovative business models, to grow and thrive and to provide better products and services at lower prices for consumers. As part of this, regulatory frameworks should be geared towards promoting open, dynamic markets. Regulatory frameworks need to be fit for purpose both at the UK and the EU level; unnecessary regulations and enforcement practices that cost businesses time and money need to be stripped back or removed; and where regulation does exist, it should help rather than hinder business.”
36. Under the heading “*Improving economic regulation and space for regulation*”, paragraphs 4.14-4.15 stated in the following terms, that the Star Chamber process would take place:

“4.14 The UK has a world leading system of strong, independent economic regulation and the government is committed to maintaining a regime that supports investment and competition.

4.15 Economic regulators' core functions are to protect the interest of consumers through price controls that make sure that network monopolies set prices fairly and are run efficiently; and ensure that competition is promoted wherever possible for the benefit of consumers. Since regulators were created, their functions have grown, which can take away from this focus on consumers. To address this, the government will hold Star Chamber sessions to challenge whether the functions of the economic regulators could be slimmed down to enable a greater focus on their core functions, how they can reduce unnecessary red tape and how they can be as lean as possible in their operations. This work will report alongside an initial assessment of the energy delivery landscape, by Budget 2016."

37. The purpose of the Star Chamber sessions was to explore, with each of the three regulators, potential policy developments in relation to the following key themes:
- (a) reducing unnecessary regulation in the sector;
 - (b) removing any extraneous functions not best delivered by the relevant regulator; and
 - (c) becoming leaner, including a consideration of how regulators might better share resources.
38. The intention was that there would be a frank exchange of views and ideas between Ministers and regulators about the ways in which the regulators could pursue these themes, about what changes might be required, and whether changes were the responsibility of the regulators, government, or parliament. DBEIS says that the sessions were conducted in precisely this free and frank spirit, that they were an important "challenge" function, and that the disputed information bears this out.
39. DBEIS also says that resulting from the Star Chamber sessions were a number of ideas for potential future changes to the regulatory landscape. Some possible changes were announced in the 2016 Budget. At paragraph 1.257, for instance, the Chancellor announced that:

"The government is committed to robust but focused economic regulation. The UK's system of independent economic regulation is widely regarded as one of the best in the world. Building on this, Budget 2016 announces that the government will streamline regulators. E-Serve will be split off from Ofgem to ensure Ofgem can focus on its core functions of economic regulation and promoting competition. DECC are committed to consolidating their delivery providers and will set out the future of consumer-facing functions, including those currently undertaken by E-Serve, at Autumn Statement 2016. The government will continue to consider whether economic regulators' functions can be further streamlined strengthen competition and innovation, including by legislating to give Ofgem more power to make sure the system of industry codes supports competition and by enhancing the role of the Competition and Markets Authority in the regulated sectors. The government will continue to look at further changes drive efficiency, by working with economic regulators to review the business case for co-locating and sharing back office functions across regulators, reporting by summer 2016".

40. However, DBEIS says that the specific announcements made did not constitute the end of the policy development process. Rather, the policy development work continues in a variety of forms, and the Star Chamber discussions continue to inform the development of regulatory policy. For example, the Star Chamber

sessions contributed to the on-going wider and more general review of the frameworks within which regulators operate and best regulatory practice. Apart from what has been publicly announced, DBEIS says that the material remains “on the table” for the government’s consideration.

The Parties’ Positions

The Appellant

41. The Appellant says that the regulators are meant to operate independently of DBEIS, and that their participation in the Star Chamber sessions puts that independence at risk. He says that given the importance that regulators maintain their independence, disclosure of the information about the three meetings is in the public interest.
42. In particular, he says that given the risks to their independence posed by their participation in the Star Chamber sessions, there is a very strong public interest in knowing why and in what way, the regulators have chosen to participate in these sessions. He says that that public interest in this outweighs any public interest in maintaining the exemption.
43. The Appellant also says that the Commissioner failed to give weight to the inherent risk to regulatory independence posed by the very existence of the “Star Chamber” process, and thus failed properly to evaluate his argument that details of the process be made public. He further says that it may well be in the public interest that no such “Star Chamber” process should take place at all, given the risk that it may pose to regulatory independence.

The Commissioner

44. The Commissioner says that it was “...*reasonable and not unusual or inappropriate for the Department [DBEIS] to consult with the regulators and for the regulators to participate in such discussions.*” In fact, it would be utterly irrational for government to explore the efficiency and fitness-for-purpose of regulators without engaging with those bodies directly.
45. The Commissioner also contends, more generally, that it is government’s constitutional role to establish and maintain bodies which will further its policy agenda. While she acknowledges that the independent discharge of their functions is a key characteristic of the three regulators, she says that it does not follow that the government’s engagement with regulators, in order to improve them or the circumstances in which they operate, is in any way suspect, or out of the ordinary – much less something which is particularly deserving of public scrutiny. In the Commissioner’s view, the issue of independence is not a sufficiently weighty consideration in these circumstances, such as to outweigh the public interests in preserving a safe space and proper consultative process.

DBEIS

46. DBEIS accepts that the three regulators are independent bodies, and that they must be able to exercise their regulatory functions without direction or control on the part of the Secretary of State. It also acknowledges that their independence is provided for and protected by statute. It says, however, that this does not mean that government has no further role to play in the policy areas regulated by Ofwat (water and sewerage), Ofgem (gas and electricity) or Ofcom (telecommunications, radio, postal services).
47. DBEIS says that on the contrary, the legislative framework within which the regulators operate, may be altered by government at any time. The basis upon

which government may act, is informed (albeit not determined by), the policy positions and priorities of the government. Those policies are considered, developed and pursued in the public interest, and as part of a wider government agenda, which may, for example, have formed part of an election manifesto.

48. According to DBEIS, the input of expert regulators in the policy formulation and development process is neither surprising, nor concerning. It is the ordinary and expected application of “joined-up government”. Any Minister wishing to consider potential policy proposals in an area in which there is an expert regulator, will almost inevitably, wish to seek the views and advice of that regulator. The policy proposals may concern the substantive law or commercial market in the area, or the efficiency and effectiveness of the particular regulator itself.
49. DBEIS adds that Ministers have both general policy-setting powers, and various specific statutory functions which complement or overlap with those of the regulators. In respect of the three regulators in issue here, DBEIS says that:
- Ofwat was established by the Water Industry Act 1991, section 1A (as inserted by the Water Act 2003). It has powers and duties conferred on it in that and other provisions of primary legislation. While Ofwat operates as an independent regulator, under section 2A(1) (inserted by the Water Act 2014), the Secretary of State has the power to set a statement of strategic priorities and objectives for Ofwat when carrying out particular functions. Section 2A(2) requires Ofwat to carry out those functions in accordance with the statement. Section 2B creates a similar scheme in relation to Ofwat’s functions in Wales, with the statement being made by the Welsh Ministers.
 - Ofgem was established by Part 1 of the Utilities Act 2000, and has powers and duties conferred on it in that and various primary legislation. While Ofgem operates as an independent regulator, under section 131 of the Energy Act 2003, the Secretary of State has the power to set a strategy and policy statement, reflecting the strategic priorities in energy policy, the particular outcomes to be achieved, and the roles and responsibilities of affected persons, which specifically includes Ofgem. Section 132(1) requires Ofgem to have regard to that statement in exercising its functions. Section 132(2) requires it to carry out its functions in the manner it considers is best to further the delivery of those policy objectives.
 - The powers and duties of Ofcom are primarily set out in Part 1 of the Communications Act 2003. In exercising its functions, Ofcom operates as an independent regulator. However, section 2A gives the Secretary of State the power to set a statement of strategic priorities for Ofcom. Under section 2B, Ofcom must have regard to that statement in the exercise of its functions.
50. DBEIS points out that in addition, the Secretary of State may issue guidance or codes of practice applicable in the relevant policy areas.
51. Finally, DBEIS says that while the legislative framework, as summarised above, recognises the independence of the regulators, it also recognises the role and responsibility of the elected government in setting out broader policy objectives and priorities to which the regulators must have regard when exercising their judgement in individual cases and circumstances.

Findings

52. The first question is whether, in all the circumstances of this case, the public interest in maintaining the exemption under section 35(1)(a), outweighs the public interest in disclosure of the disputed information. Depending on the answer to that question, it may or may not be necessary, to go further to consider the other exemptions relied upon.
53. Under FOIA, there is no presumption in favor of disclosure. The burden lies on DBEIS to establish that that the public interest favours maintaining the exemption.
54. The correct approach to the application of the public interest balancing exercise, is set out in the decision of the Upper Tribunal (“UT”), in **APPGER v ICO and FCO [2013] UKUT 0560; Department of Health v Information Commissioner and Lewis [2015] UKUT 0159 (AAC); and Home Office v IC and Bingham Centre for the Rule of Law [2015] UKUT 0308 (AAC)**. The public interest balance must be undertaken by reference to the specific public interest factors relating to the content of the information. This does not mean that generic factors are not relevant, but they need to be borne out by the particular information in issue.
55. Public interest considerations under section 35(1)(a) must, of course, relate primarily to the policy making process. That is the purpose of the exemption. However, there is no inherent or automatic public interest in withholding information coming within the scope of this exemption: **OGC v Information Commissioner & the Attorney General [2008] EWHC 737 (Admin)**. The relevance and weight of the public interest arguments will depend, to a great extent, on the content of the information in question and the likely effect of its release.
56. Timing is often an important consideration in assessing the public interest balance under section 35(1)(a). Stanley Burton J in the **OCG** case (above), referring to the unreported decision in **Department for Education and Skills v Information Commissioner, 19 July 2007**, endorsed the principle that “...disclosure of discussions of policy options while policy is in the process of formulation, is highly unlikely to be in the public interest...”
57. There have been two recent UT decisions, **Cabinet Office v Information Commissioner & Webber [2018] UKUT 410 (AAC)**, and **Department for Education v Information Commissioner and Whitmey [2018] UKUT 348 (AAC)**, on the section 35(1) exemption. Neither were cited in this appeal. We mention them only because they are recent decisions in relation to section 35 (although not on the specific issues in this appeal), and we have considered them on that basis. We have also considered the Commissioner’s Guidance Note on section 35, although we are not of course bound by it.
58. In the present case, what are the public interest factors that support disclosure? First, we should say that having considered the disputed information, we find that it bears out what DBEIS has said about the purpose of the Star Chamber process being to facilitate a free and frank exchange of ideas.
59. The Appellant’s argument rests primarily on the assertion that the Star Chamber process compromises, or could be perceived to compromise, the sanctity of regulatory independence.
60. Implicit in the Appellant’s submissions, is the premise that the regulators’ independence is absolute or sacrosanct. In our view, this is misconceived. While decisions in individual cases, or on particular issues, are for the regulator alone, this does not mean that government has no role to play in considering overall policy affecting that regulated area. The fact and nature of that role is set out in the statutory frameworks referred to above.

61. Quite simply, government is accountable to the electorate for the delivery of critical services and infrastructure, and the proper functioning of the regulators is, therefore, legitimately an issue of political accountability. The government's involvement in how utilities such as water, gas and electricity, and telecommunications are provided to consumers, is therefore both necessary and desirable, and indeed may change over time as needs change. The parallel the Appellant seeks to draw with the relationship between government and the judiciary, is not at all analogous.
62. Good government depends on good decision making, and it needs to be based on the best advice. We agree with DBEIS that this requires government to seek the input and expertise of regulators in the development of relevant policies. Regulators also have a significant interest in policy development affecting their areas of operation. Since they do not have the power to change the legislative frameworks themselves, dialogue with Ministers and officials is an important way in which regulators' views can be put forward and considered.
63. In short, we do not find that the Star Chamber process puts at risk the regulators' independence as the Appellant contends, beyond what the legislative framework already allows. It follows that that argument for why the public interest favours disclosure of the disputed information, is not one to which we attach any real weight.
64. Nevertheless, we acknowledge that there is a general public interest in understanding how government develops policies. Transparency may assist in greater public understanding and participation in public affairs and promote transparency and accountability in the policy development process. Disclosure may also offer advance notice of possible regulatory changes allowing those affected to plan and prepare accordingly. In addition, apart from the regulators, there will likely be other individuals and organisations operating in the relevant sectors who may have expertise to offer, and disclosure may allow for their in-put as well.
65. However, we bear in mind that this is not a situation where there is no relevant information available to the public. The public were informed of the Star Chamber process because it was the subject of an express public announcement in *A Better Deal*, which explained that Ministers were seeking the views of regulators in the policy development process. In addition, DBEIS has released information through the FOIA process to the Appellant about the meetings and the Star Chamber process. The public interest in disclosure has therefore been met, to some extent.
66. It is also the case that significant policy developments in this area usually require detailed formal consultation with industry providers, consumers and regulators and appropriate lead-in times to allow for preparation. This means that there will likely be a process, in due course, whereby the public interest in understanding and questioning the development of such policies will be further met.
67. On the other side of the equation, we consider that there is a strong public interest in Ministers being able to discuss issues and possible policies with the regulators in a frank and open way. While there is a legitimate public interest in the policy making process and public debate of policy options, it is not in the best interests of policy formulation and development, and thus not in the public interest, that every stage of the policy making process should be exposed to public scrutiny.
68. The protection of that private space, for policy development and formulation, points strongly to withholding the disputed information. This is particularly so, given the very considerable complexities of the three regulatory areas in issue.

69. Timing is also relevant. The general principle endorsed in a number of cases (see also paragraph 56 above), is that subject to considerations that may arise in individual cases, greater weight should be given to the “safe space” considerations where policy is in the course of being formulated, than where policy has already been decided. In the present case, the policy formulation remained and still remains on-going.
70. In addition, we agree with the Commissioner (at paragraph 47 of the Decision Notice), that if the disputed information were to be disclosed prematurely, it may have an adverse impact on the sectors concerned, and the wider economy, by causing concern amongst the public and relevant industries. In turn, this would compromise the opportunity for DBEIS to properly consider the policy proposals before having to explain or defend them. That would not be in the public interest.
71. We have considered whether, in applying the public interest balance, there is any information within the scope of the disputed information that should be disclosed. No party has suggested that that is the case, but we bear in mind that the Appellant is not able to make any submissions about this, since he has not had sight of the disputed information.
72. Having considered the disputed information, while we accept that there may be arguments to be made that certain parts are severable and should be disclosed, whether or not in redacted form, it is not the case that this is obviously so. Given that the Appellant’s arguments turn not on any specific aspect of the disputed information, but on the disputed information in general, we also consider it to be unnecessary and disproportionate to undertake a line by line analysis of the disputed information. To the extent that it may have been necessary to invite the parties’ submissions on such an exercise, we consider that the delay and additional costs that would have been involved, would not have been in keeping with the overriding objective in the Tribunal Procedure (First-tier Tribunal) Procedure Rules 2009.
73. We have also considered whether, in applying the public interest balance, there is any information that can properly be regarded as being factual background to a policy that should be disclosed pursuant to section 35(4). As already noted, at the time of refusal, the policy decisions had not been concluded, so we are dealing here with factual background to potential policy. We do not need to consider whether section 35(4) applies to such information because we consider that DBEIS has materially disclosed such factual information assembled for the purpose of the 3 Star Chamber sessions by releasing the information at pages 108 to 232 of the open bundle.
74. For all these reasons, we find that in the circumstances of this case, the public interest in maintaining the exemption under section 35(1)(a), considerably outweighs the public interest in disclosure of the disputed information.
75. Having reached the finding that the disputed information is exempt under section 35(1)(a), it is not necessary to go on to consider the other exemptions relied upon.

Decision

76. We dismiss the appeal. Our decision is unanimous.

Signed
Anisa Dhanji
Judge

Date: 26 February 2019
Promulgated: 6 March 2019