

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 15 December 2010**

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

### Summary

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The complainant requested copies of documents held by the Cabinet Office relating to Tony Blair's visit to Iraq in May 2006. In making the request the complainant made it clear that he would prefer to be provided with documents in their original form rather than extracted digests of information. The Cabinet Office initially refused to disclose any information on the basis of sections 27(1)(a), 27(1)(c), 27(1)(d), 27(2) and 35(1)(a). At the internal review stage the Cabinet Office provided the complainant with a digest of the text contained in seven of the documents falling within the scope of the request but maintained that the remaining documents were exempt from disclosure. The Commissioner has concluded that in order to comply with section 11 of the Act the Cabinet Office should have provided the complainant with copies of the seven documents, the text of which it accepts is not exempt. In respect of the remaining documents the Commissioner has concluded that they are all exempt from disclosure on the basis of section 27(1)(a), with the exception of one document which, although exempt on the basis of section 35(1)(a), should nevertheless be disclosed because the public interest in maintaining the exemption does not outweigh the public interest in disclosure.

### 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.

## The Request

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2. The complainant submitted the following request to the Cabinet Office on 24 April 2009:

'Please send me documents relating to the meetings of former Prime Minister Tony Blair, during his visit to Iraq in May 2006. Please include the minutes, preparatory notes, agendas and other substantive supporting documents.

If you decide to withhold any of these records (or portions thereof), please explain the basis for your exemption claims, and (as appropriate) your assessment of the balance of the public interest. Additionally, please release all sections of the records that do not meet an exemption.

I prefer to receive documents in their original form (with redactions if necessary), rather than a digest of extracted portions, in order to judge the context of the information'.

3. The Cabinet Office contacted the complainant on 27 May 2009 and informed him that it held information falling within the scope of his request but it needed more time to consider the public interest test.
4. The Cabinet Office contacted the complainant again on 23 June 2009 and explained that it had concluded that all of the information it held was exempt from disclosure on the basis of one or more of the following exemptions: sections 27(1)(a), 27(1)(c), 27(1)(d), 27(2) and 35(1)(a). For each of these exemptions the Cabinet Office had concluded that the public interest favoured maintaining the exemption.
5. The complainant contacted the Cabinet Office on 18 August 2009 in order to ask for an internal review. In submitting this request for an internal review the complainant asked for a number of points to be considered and submitted detailed arguments to support these points.
6. The Cabinet Office acknowledged receipt of this request for an internal review on 21 August 2009.
7. The complainant emailed the Cabinet Office on 1 October 2009 and asked to be provided with an update on the progress of the internal review.
8. Having received no response a representative of the complainant telephoned the Cabinet Office four times between 3 November 2009

- and 11 December 2009 in order to chase up a response to the request for an internal review. In the final telephone call the Cabinet Office indicated that a response would be sent prior to Christmas.
9. On 29 December 2009, having received no further response from the Cabinet Office, the complainant contacted the Commissioner.
  10. Following the commencement of the Commissioner's investigation - which is detailed below - the Cabinet Office informed the complainant of the outcome of the internal review on 17 August 2010. The Cabinet Office explained that it had decided that some of the requested information could be disclosed and its response included this information. This information was provided in the form of extracts from the particular documents rather in the form of the copies of the documents themselves.

## **The Investigation**

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### **Scope of the case**

11. As noted above the complainant initially contacted the Commissioner on 29 December 2009. The complainant asked the Commissioner to consider the Cabinet Office's failure to provide him with the information he had requested. The complainant referred the Commissioner to his request for an internal review in which he set out his detailed arguments in relation to the Cabinet Office's decision to withhold the information that he had requested. The Commissioner has not detailed these points of complaint here; rather he has referred to them in the relevant sections of the Analysis below. However, they can be summarised as follows:
  - The Cabinet Office's handling of the request failed to recognise the difference between 'documents' and 'information';
  - The Cabinet Office applied the exemptions in a blanket fashion and did not consider disclosing the documents in a redacted form;
  - The specific facts of the request were not properly considered;
  - The public interest test was not properly considered;
  - Section 27(1) was incorrectly applied;
  - Section 27(2) was incorrectly applied;
  - Section 35 is not relevant to this case; and
  - The public interest in releasing the information exceeds that in withholding it.

12. Subsequent to receiving the internal review outcome, the complainant contacted the Commissioner on 6 September 2010 in order to confirm that he was dissatisfied with the amount of information that continued to be withheld and therefore asked the Commissioner to continue to consider his original points of complaint.

## **Chronology**

13. The Commissioner contacted the Cabinet Office on 13 May 2010 and explained that in light of time that had elapsed since the complainant's request for an internal review, he had decided to progress this complaint without waiting for the internal review to be completed. The Commissioner therefore asked the Cabinet Office to provide him with copies of the documents falling within the scope of the request. The Commissioner also asked to be provided with detailed submissions to support the Cabinet Office's reliance on the various exemptions cited in the refusal notice.
14. Having received no response from the Cabinet Office the Commissioner contacted it again on 16 June 2010 and asked for a response to his original letter of 13 May 2010. The Commissioner explained that if a response was not provided within a further ten working days he would issue an Information Notice under section 51 of the Act.
15. In light of the fact that the Cabinet Office did not provide the Commissioner with a response within this timeframe, the Commissioner served an Information Notice on the Cabinet Office on 7 July 2010. This Notice required the Cabinet Office to provide the Commissioner with a response to all of the points set out in his letter of 13 May 2010 within 30 calendar days of the date of the Notice, i.e. by 6 August 2010.
16. The Cabinet Office failed to fulfil any of the steps set out in the Notice by 6 August 2010. The Cabinet Office did manage to send the Commissioner a copy of nine documents which fell within the scope of the request on 18 August 2010. These documents were those that the Cabinet Office had continued to withhold in their entirety from the complainant; i.e. they were not the seven documents, the text of which had been disclosed at the internal review stage. In providing these documents the Cabinet Office provided a schedule which indicated which of the exemptions cited in the refusal notice it considered to apply to each of the documents.
17. However, in light of the Cabinet Office's failure to provide the Commissioner with submissions regarding the application of the exemptions, the Commissioner wrote to the Cabinet Office on 24

August 2010. In this letter the Commissioner explained that unless the Cabinet Office fulfilled the remaining steps of the Information Notice by 5 September 2010 he intended to lodge a certificate of non-compliance with the High Court in relation to this matter.

18. Once again the Cabinet Office failed to meet this deadline. However, the Commissioner was then provided with submissions from the Cabinet Office regarding the application of the exemptions. In this letter the Cabinet Office provided detailed arguments to support its application of the exemptions cited in the refusal notice. In this letter the Cabinet Office also informed the Commissioner that 'sections 24, 26, 29, 38, 40, 41 and 43 are also engaged in respect of some of the information' although its letter did not provide any reasoning as to why these exemptions applied. The Cabinet Office suggested to the Commissioner that if he took the view that the balance of the public interest under sections 27 or 35 favoured disclosure it would welcome the opportunity to provide additional arguments in relation to these further exemptions. Furthermore the Cabinet Office also noted that in its opinion the manuscript comments which were contained on some of the documents were outside the scope of the request; if the Commissioner was a different opinion the Cabinet Office wished the opportunity to consult a qualified person in order to determine whether section 36(2)(b) was engaged.
19. The Commissioner contacted the Cabinet Office again on 28 September 2010 and asked to be provided with copies of the seven documents from which the text disclosed at the internal review stage had been taken.
20. The Cabinet Office provided the Commissioner with these documents on 4 October 2010.

### **Findings of fact**

21. The Cabinet Office holds 16 documents falling within the scope of this request.
22. At the internal review stage the complainant was provided with the majority of the text contained within 7 of these documents but not with copies of the documents themselves.
23. Of the remaining 9 documents the Cabinet Office has applied a variety of exemptions in order to withhold them. The Commissioner has attached a schedule at the end of this Notice in order to clarify the exemptions which have been applied to each of these remaining documents.

## Analysis

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### Substantive Procedural Matters

#### Section 1 – right of access and Section 11 - means by which communication is made

24. Section 1(1) of the Act provides a right of access to information in two parts, both of which are subject to the application of exemptions:
  - '(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.'
25. Section 11 of the Act allows applicants to specify the means by which they would prefer the information they are requesting to be communicated. The section requires that a public authority shall give effect to any such preference as far as is 'reasonably practicable'.
26. In submitting his request the complainant specifically noted that 'I [would] prefer to receive documents in their original form (with redactions if necessary), rather than a digest of extracted portions, in order to judge the context of the information'.
27. As explained above at the internal review stage the Cabinet Office provided the complainant with the majority, but not all, of the text contained within seven of the documents falling within the scope of his request. The information contained within these seven documents which the complainant was not provided with included the names of recipients and senders; signatures; security markings and the headings of any lettered paper.
28. By failing to provide the complainant with such information – which clearly falls within the scope of his request – the Commissioner must conclude that the Cabinet Office breached section 1(1)(b) of the Act. Furthermore in respect of the content of the seven documents which was provided to the complainant at the internal review stage, the Cabinet Office failed to take account the complainant's preference to be provided with copies of the original documents.
29. The Commissioner has not been provided with any explanation from the Cabinet Office as to why it would not have been reasonably

practicable for it to provide the complainant with copies of the seven documents themselves. It would appear that the Cabinet Office chose simply to ignore the complainant's section 11 preference. Moreover having reviewed these documents himself the Commissioner cannot see any reason why it would have been impracticable for the Cabinet Office to provide copies to the complainant. Therefore, by failing to provide the seven documents in question the Commissioner has found that the Cabinet Office failed to take account of the complainant's section 11 preference.

30. Consequently, in order to rectify this breach of section 1(1)(b) and the failure to take into account the section 11 preference, this Notice orders the Cabinet Office to provide the complainant with complete copies of the original seven documents.
31. In its submissions to the Commissioner the Cabinet Office noted that the manuscript comments – basically handwritten annotations - contained on some of the documents were outside the scope of the original request. The Cabinet Office did not provide the Commissioner with any submissions to support this view.
32. In the Commissioner's view, in light of the fact that the complainant specifically requested **copies** of the original documents then on any objective reading of this request, any handwritten comments contained on the documents falling within the scope of the request would clearly fall within the scope of the request because they are an intrinsic part of the documents themselves. Therefore in the Commissioner's opinion the manuscript comments do fall within the scope of the request. (The Commissioner has established that the only documents which contain manuscript comments are those contained in the batch of nine documents that the Cabinet Office continues to withhold rather than in the batch of the seven documents, the text of which has now been disclosed.)

## Exemptions

### Section 27 – international relations

33. In providing its submissions on the application of the four elements of the exemption within section 27(1) that it cited, the Cabinet Office emphasised that the reasons why one of these applies are related to the reasons why each of the other provisions of section 27(1) also applies.
34. The Commissioner notes that with the exception of one document – number 15 in the annex – the Cabinet Office has argued that all of the documents it is continuing to withhold are exempt on the basis of section 27(1)(a) of the Act. In light of the fact that this exemption has been applied to the vast majority of the documents, the Commissioner has begun by considering the application of this exemption. (The Commissioner also recognises that sections 27(1)(c) and 27(1)(d) have also been applied to the same documents. However, as the Cabinet Office's rationale, in part, is that these exemptions are engaged because section 27(1)(a) is engaged, he considers it logical to begin by considering the whether section 27(1)(a) itself is in fact engaged.)
35. Section 27(1)(a) states that information is exempt from disclosure if its disclosure would, or would be likely to prejudice, relations between the United Kingdom and any other State.
36. In order for a prejudice based exemption, such as section 27(1), to be engaged the Commissioner believes that three criteria must be met:
  - Firstly, the actual harm which the public authority alleges would or would be likely to occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
  - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
  - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e. disclosure would be likely to result in prejudice or disclosure would result in prejudice. If the likelihood of prejudice occurring is one that is only hypothetical or remote the exemption will not be engaged.



37. Furthermore, the Commissioner has been guided by the comments of the Information Tribunal which suggested that in the context of section 27(1), prejudice can be real and of substance 'if it makes relations more difficult or calls for a particular damage limitation response to contain or limit damage which would not have otherwise have been necessary'.<sup>1</sup>

*The Cabinet Office's position*

38. The Cabinet Office has provided the Commissioner with detailed submissions to support its application of this exemption. The Commissioner is conscious that these submissions contain detailed references to the withheld information itself. Therefore the level of detail the Commissioner can include in this Notice in relation to his assessment of the exemptions is somewhat limited.
39. Nevertheless, the Commissioner believes that he is able to include the following summary of the Cabinet Office's position:
40. The Cabinet Office believes that section 27(1)(a) is engaged because disclosure of all of the withheld information would prejudice the UK's relations with Iraq, and in respect of certain documents would also prejudice the UK's relations with the US. The Cabinet Office argued that prejudice would occur because of two broad reasons:
41. Firstly, the withheld documents contain information which has been provided to the UK by the US and Iraq in confidence. Whilst such information is protected by section 27(2), in the Cabinet Office's opinion its unilateral disclosure would cause a breakdown of trust between the UK and US because of the considerable importance US officials in particular place on the principle that consultations are confidential in nature. Similarly, disclosure of information received from Iraq would be regarded as a betrayal of diplomatic confidentiality. Therefore if such information was disclosed then in the future both the US and Iraq would be less likely to communicate candidly with the UK.
42. Secondly, the Cabinet Office identified a number of reasons why disclosure of the withheld information would harm the UK's relations with both the US and Iraq because it had the potential to cause offence to either country. The consequences of such an effect would result in a deterioration of diplomatic relations, making communication and cooperation more difficult.

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<sup>1</sup> *Campaign Against the Arms Trade v The Information Commissioner and Ministry of Defence* (EA/2006/0040), paragraph 81.

43. Thirdly, the Cabinet Office argued that disclosure of the withheld information would also harm the UK's relations with other States, other than the US and Iraq, and identified a number of reasons why such prejudice could occur.

*The complainant's position*

44. In support of his view that the exemptions contained within section 27(1) were not engaged the complainant submitted the following arguments:
45. He acknowledged that prejudice would exist if criticisms made internally by the UK government of the Iraqi government were disclosed. However the complainant suggested that prejudice was less likely to occur through release of bilateral meeting minutes which the Iraqi government itself also possessed – the rationale being that no new information would be disclosed which would surprise or vex the Iraqi government – except insofar as the meetings were held on a confidential basis.
46. At the time of the meeting in May 2006 the Iraqi government would have been aware that the Act was in force and that it might lead to release of meeting minutes unless they were explicitly declared to be confidential.
47. The Cabinet Office failed to take into account the major changes in the UK-Iraqi relationship between the time period covered by his request, i.e. May 2006, and the date his request was submitted in April 2009 which meant that prejudice was less likely to occur. The complainant specifically highlighted the following:
48. The UK no longer had military forces in Iraq which made a fundamental difference to how the Iraqi government saw the UK: from occupation power to simply another nation with which it has relations.
49. At the time of Mr Blair's visit the (current) permanent government was not yet in power; the country was still officially governed by transitional government.
50. Mr Blair was no longer UK Prime Minister; given the changes in UK policy since then his actions would not necessarily be associated with the UK's current government.
51. At the time of the visit in May 2006 government institutions in Baghdad had at best minimal control over the country. Since then the Iraqi government had grown considerably stronger and is cultivating a more

nationalist image. That context would have been recognised to have influenced a different form of communication between the governments at that time and not necessarily impact on the perceptions of the respective current governments.

52. Following the withdrawal of British forces from Basra, government ministers were keen to stress that it marked a 'new chapter' in UK-Iraqi relations.
53. Furthermore, it was not the case that there is a positive relationship of trust between the UK and Iraq that would be damaged by disclosure of the information. British-Iraqi relations were described as having suffered a 'catastrophic failure' when the Iraqi government turned to the US rather than British forces for assistance in its military operations in Basra. Therefore in relation to such large issues affecting UK-Iraqi relations, damage to the relationship of trust, as a result of releasing the requested information would be slight at most.

#### *The Commissioner's position*

54. The Commissioner accepts that disclosure of the information would harm the UK's relations with Iraq and the US is clearly an applicable interest within the scope of section 27(1)(a). As is the argument that disclosure of the information could harm the UK's relations with other States. The first criterion set out at paragraph 36 is therefore met.
55. With regard to the second criterion the Commissioner accepts that it is logical to argue that disclosure of information provided to the UK in confidence could harm the UK's relations with the State which provided this information. The Commissioner accepts that it is logical to argue that disclosure of information which may cause offence to another State could harm the UK's relations with the State in question. Furthermore, the Commissioner accepts that disclosure of the withheld information could result in a general prejudice to the UK's relations with other international partners if, as would be the case, the UK was seen as a State which disclosed information on sensitive issues relating to international relations. Therefore, and for all three of the broad arguments advanced by the Cabinet Office, the Commissioner is satisfied that there is a causal relationship between the potential disclosure of the requested information being withheld and the prejudice to the UK's relations with Iraq, the US and other international partners.
56. Furthermore, the Commissioner is satisfied that the resultant prejudice which the Cabinet Office believes would occur is one which can be correctly categorised, in light of the Tribunal's comments referred to

above, as real and of substance. In other words, subject to meeting the likelihood test at the third criterion, disclosure could result in making relations more difficult and/or demand a particular diplomatic response.

57. In relation to the third criterion of the test set out above, the Commissioner has been guided on the interpretation of the phrase 'would, or would be likely to' by a number of Information Tribunal decisions. With regard to likely to prejudice, the Tribunal in *John Connor Press Associates Limited v The Information Commissioner* (EA/2005/0005) confirmed that 'the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk' (Tribunal at paragraph 15). With regard to the alternative limb of 'would prejudice', the Tribunal in *Hogan v Oxford City Council & The Information Commissioner* (EA/2005/0026 & 0030) commented that 'clearly this second limb of the test places a stronger evidential burden on the public authority to discharge' (Tribunal at paragraph 36).
58. As noted above the Cabinet Office has argued that the higher threshold of likelihood is met. Having considered the detailed submissions made by the Cabinet Office the Commissioner is prepared to accept that there is sufficient evidence to demonstrate that this higher threshold is met. Although the Commissioner cannot in this notice provide detailed reasoning to explain why he has reached this conclusion as to do so may comprise the content of the information itself, he believes that he can provide the following summary: The fact that disclosure of the majority of the documents could prejudice the UK's relations with both the US and Iraq, and potentially with other international partners, rather than just with one State, increases the likelihood of prejudice occurring. Furthermore the prejudice which could occur to the UK's relations with the US and Iraq is because of two reasons, rather simply one, and moreover in respect of the second reason, disclosure causing offence, such offence could arise for a number of different reasons. Moreover, in the Commissioner's opinion the actual content of the information itself strongly supports the arguments advanced by the Cabinet Office. Finally the information that has been withheld clearly has a different quality (candid and referring to issues that are not in the public domain) when compared to the information that was disclosed to the complainant at the internal review stage.
59. By reaching this conclusion it follows that the Commissioner does not accept the counter arguments advanced by the complainant. In relation to the timing of the request the Commissioner obviously accepts the factual differences identified by the complainant, e.g. the change from a transitional to permanent government in Iraq and a

change in British Prime Minister. However, the Commissioner believes that because of a number of specific ways in which prejudice would occur and because of the content of certain documents, the passage of time would not significantly lessen the likelihood of prejudice occurring. Furthermore, the Commissioner does not accept the complainant's alternative argument that because relations between the UK and Iraq were so poor, disclosure would be unlikely to have any significant effect. Rather, in the Commissioner's opinion, the fragility of the relationship at the time of the request means that the likelihood of prejudice occurring is increased; disclosure would exasperate the difficulties with the relationship.

60. Moreover, the complainant's counter arguments only focus on the shifting nature of the relationship between the UK and Iraq and as noted above for the majority of the documents the Commissioner is satisfied that the exemption is engaged not simply because of prejudice which would occur to the UK's relations with Iraq but also the UK's relations with the US. Furthermore, the Commissioner acknowledges that disclosure of the withheld information could also result in a general prejudice to the UK's relations with other international partners.

### **Public interest test**

61. Section 27(1) is a qualified exemption and therefore the Commissioner must consider the public interest test at section 2(2) of the Act. This requires a consideration of whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

### **Public interest arguments in favour of disclosing the requested information**

62. The Cabinet Office highlighted the following arguments in favour of disclosure in submissions to the Commissioner:
63. The Cabinet Office acknowledged that there was a generic public interest in understanding the policy making process: the foreign policies formulated by the Prime Minister and senior advisers may have a significant impact on the lives of citizens and there is a public interest in their deliberations being transparent.
64. The Cabinet Office also recognised that openness in government increases public trust in, and engagement with, the government and that this has the beneficial effect on the overall quality of government.

65. In addition to these generic public interest arguments the Cabinet Office considered the public interest in understanding British policies towards Iraq. The Cabinet Office recognised that Britain's role in the international intervention in Iraq was controversial and that there is a continuing public debate about the UK's involvement in Iraq. Access to good quality information about these issues could ensure that the debate is well informed.
66. The complainant emphasised the following public interest arguments in favour of disclosing the information he requested:
67. The public interest in understanding the government's activities in relation to Iraq was considerable given that the Iraq war has been described as the most controversial, and perhaps flawed, foreign policy since the Suez crisis of 1956. As evidence of its controversial nature the complainant highlighted the unpopularity of the war within the UK; the two Cabinet resignations as a direct result of it; the fact that to date it had been subject to three separate public inquiries; and the level of press articles and books concerning the mishandling of the war and occupation which had led to a strengthening of public criticism.
68. The complainant highlighted the fact that much of criticism since the start of the war had been promoted by the creation and exacerbation of sectarian conflict, and the related sectarianised politics, in Iraq. A vital period of this conflict and politics was the formation of the permanent Iraqi government in the weeks following the bombing of the al-Askariya shrine in Samarra. This was the period for which the complainant was seeking information about the UK government role. The public had a need to know what role its government played in Iraq's political situation, and whether that role was constructive in contributing to peace, democracy and the legitimacy of Iraq's institutions of government.

### **Public interest arguments in favour of maintaining the exemption**

69. The Cabinet Office stated that it was not in the public interest to prejudice its relations with other States on account of the damage to the UK's interests and the damage to the UK's ability to protect and promote its interests abroad. This was particularly the case where the state is an important global partner, such as the US, but it applies equally to Iraq which is an important regional partner in the Middle East where British security, British investments, British trade and the safety of British subjects are at stake.

## Balance of the public interest arguments

70. With regard to attributing weight to the public interest arguments in favour of disclosing the information the Commissioner notes that they focus on issues often cited in any consideration of the public interest test, namely accountability and transparency, contributing to the public debate, improving decision making and the public's trust in government. However, as such concepts are inherent to the Act this should not diminish their relevance to this case. Nevertheless the weight that should be applied to them will depend upon the particular facts of the case and in particular the content of the information that the Commissioner has decided is exempt on the basis of section 27(1)(a).
71. The Commissioner is persuaded by the points advanced by the complainant that in light of the circumstances of this case and the associated background surrounding the UK's involvement with the Iraq war, the arguments in favour of disclosure deserve to be given significant and notable weight. Furthermore having reviewed the content of the withheld documents themselves the Commissioner believes that their disclosure could genuinely inform the public about the role and actions of the Prime Minister during his visit in May 2006.
72. With regard to attributing weight to the public interest in favour of maintaining the exemption, the Commissioner accepts that it is very strongly in the public interest that the UK enjoys effective relations with foreign States. In the circumstances of this case the Commissioner accepts that this is particularly true of relationships with key partners, such as the US, or with States such as Iraq which is key to UK interests in the Middle East. Furthermore the Commissioner agrees with the Cabinet Office that the public interest which follows from the UK being able to maintain strong diplomatic relations with both these countries are compelling and multi-faceted: the maintenance of good relations with the US is central to the well-being British citizens, to the protection of British forces and the security of British trade, investments and citizens at home and abroad. Moreover, working closely with the US to promote a stable, democratic Iraq is central to the UK's national security, as is working with Iraq and the US to promote stability and democracy in the region. In respect of Iraq there is a strong public interest in protecting and promoting the UK's security, economic and diplomatic interests by maintaining strong relations with the country as well as in the safety of British citizens in Iraq.
73. In conclusion the Commissioner recognises the strength of the arguments on both sides of the public interest test; however, and by a

relatively narrow margin, the Commissioner has concluded that the public interest favours maintaining the exemption. This is because although disclosure of the withheld information would serve the legitimate public interests identified above it would only inform the public about the issues surrounding the Prime Minister's visit to Iraq in May 2006. In effect the actual benefit of disclosure, in terms of the public interest is therefore limited, in that it is very specific. However, disclosure of the information would have a profound and negative effect on the UK's relations with both the US and Iraq not just in relation to the issues covered by the Prime Minister's visit but on many issues and topics central to the UK's relationship with these two countries.

74. The Commissioner has therefore concluded that the documents in the annex numbered 8 to 14 and number 16 are exempt from disclosure on the basis section 27(1)(a) and the public interest favours maintaining the exemption. In reaching this conclusion the Commissioner acknowledges that some of the points upon which he has placed weight in the above analysis could be seen as factors which are inherent in sections 27(1)(c) and (d) rather than section 27(1)(a) and thus should not be given weight in a public interest balance which focuses solely on section 27(1)(a). However, in the Commissioner's opinion the public interest in maintaining section 27(1)(a) cannot be seen in isolation; the public interest in the UK having good relations with other States is in part a means to an end; the end being the ability of the UK to protect and promote its interests abroad.
75. Furthermore in reaching this conclusion the Commissioner is aware that a number of these documents contain manuscript comments and in his opinion such annotations fall within the scope of the request. As noted above the Cabinet Office suggested that it would seek to rely on section 36(2)(b) if the Commissioner decided that the annotations fell within the scope of the request.
76. The Information Tribunal in *Department for Business, Enterprise and Regulatory Reform v Information Commissioner and Friends of the Earth* (EA/2007/0072) considered a situation where a public authority had sought to rely on exemption for the first time before the Tribunal. The Tribunal concluded that it, and by implication, the Commissioner 'may decide on a case by case basis whether an exemption can be claimed outside the time limits set by [sections] 10 and 17 depending on the circumstances of the particular case'. The Tribunal added that 'it was not the intention of Parliament that public authorities should be able to claim late and/or new exemptions without reasonable justification otherwise there is a risk that the complaint or appeal



process could become cumbersome, uncertain and could lead public authorities to take a cavalier attitude towards their obligations’.

77. In the Commissioner’s opinion, even despite the obvious sensitivity of the manuscript annotations, in the circumstances of this case it is difficult to accept that the Cabinet Office has any reasonable justification for relying on section 36 at this stage: As the Commissioner has argued above a clear and objective reading of the request should have led the Cabinet Office to conclude that the manuscript annotations were in the scope of the request; the Commissioner would have expected a public authority such as the Cabinet Office, which is very experienced in dealing with requests under the Act, to have reached this conclusion. Furthermore, as set out above, the Cabinet Office appears to have simply ignored the complainant’s section 11 preference which arguably contributed to its failure to identify the manuscript comments as falling within the scope of the request. Again the Commissioner would suggest that a decision to ignore an explicit section 11 expression of preference is far from best practice. Moreover the Cabinet Office’s tardiness in handling this request does not, in the Commissioner’s opinion, lend weight to idea that it would be fair to the complainant for the Cabinet Office to now rely on an exemption which it never previously cited. On this basis the Commissioner does not consider it appropriate to allow the Cabinet Office to rely on section 36 to withhold the manuscript annotations.
78. Nevertheless, the Commissioner does accept that the various manuscript annotations, which form an integral part of the documents themselves, are exempt from disclosure on the basis of section 27(1)(a) for the reasons set out above.

#### *Potential disclosure of redacted documents*

79. The Commissioner also recognises that in submitting his request for an internal review the complainant highlighted the fact that even if large parts of a document were exempt under the Act this not mean that entire document would be exempt; the public authority should disclose any information which is not exempt. The complainant highlighted the Commissioner’s guidance entitled ‘What should be published: minutes and agendas’ which suggested that in nearly all cases it would be possible to give the dates and times of meetings and the names of the organisations represented; broad headings of what was discussed; and names of individuals who attended in a personal capacity.<sup>2</sup>

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[http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/detailed\\_specialist\\_guides/minutesandagendas.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/minutesandagendas.pdf)

80. In submissions to the Commissioner the Cabinet Office noted that a relatively small fraction of the withheld documents consisted of records of meetings. Furthermore it confirmed that its position was that disclosure of any of the information contained in the remaining documents would be prejudicial and against the public interest, for the reasons set out above.
81. The Commissioner has considered the nature of the withheld documents carefully in light of the points made by both parties. In the Commissioner's opinion, given the content and context of these documents, disclosure even of potentially anodyne information, such as names and document titles, is still exempt from disclosure for the reasons set out above. Although the Commissioner accepts that the dates of the various documents could potentially be disclosed he believes that even in light of the comments in his guidance quoted by the complainant, a relatively pragmatic approach has to be taken by public authorities when dealing with requests. Consequently, the Commissioner would not normally expect a public authority to disclose a lengthy document with the entire content redacted but simply the date unredacted.
82. In light of his findings in relation to section 27(1)(a) the Commissioner has not gone on to consider whether documents 8 to 14 and number 16 are also exempt from disclosure on the basis of the exemptions cited by the Cabinet Office.

### **Section 35 – formulation and development of government policy**

83. The Cabinet Office has argued that the document numbered 15 in the attached annex is exempt from disclosure solely on the basis of section 35(1)(a).
84. This section states that:
- ‘Information held by a government department or by the National Assembly for Wales is exempt information if it relates to-
- (a) the formulation or development of government policy’
85. Section 35 is a class based exemption, therefore if information falls within the scope of a particular sub-section of 35(1) then this information will be exempt; there is no need for the public authority to demonstrate prejudice to these purposes.

86. The Commissioner takes the view that the 'formulation' of policy comprises the early stages of the policy process – where options are generated and sorted, risks are identified, consultation occurs, and recommendations/submissions are put to a Minister or decision makers (for the purpose of this case, such decision makers are the Authority). 'Development' may go beyond this stage to the processes involved in improving or altering existing policy such as piloting, monitoring, reviewing, analysing or recording the effects of existing policy. At the very least 'formulation or development' suggests something dynamic, i.e. something that is actually happening to policy. Once a decision has been taken on a policy line and it is not under review or analysis, then it is no longer in the formulation or development stage. Although section 35(1)(a) can be applied to information relating to the formulation or development stage of a policy that has been decided and is currently being implemented, it cannot apply to information which purely relates to the implementation stage.
87. The Cabinet Office has explained which particular policy it believes document 15 relates to and moreover confirmed that it believes that the document focuses on the formulation and development of the policy in question rather than its implementation.
88. In his submissions to the Commissioner the complainant argued that the information he requested would relate to the implementation and communication of the government's policy on Iraq rather than any aspect of policy formulation and development.
89. Having examined the document in question the Commissioner is satisfied that it obviously relates to the formulation and development of a clearly identifiable government policy and section 35(1)(a) is therefore engaged in respect of document 15. Given the broad scope of the complainant's request it is not immediately obvious what the topic of the policy in question may be. For the purpose of this notice the Commissioner cannot explain what the policy is without revealing the content of document 15, so will not do so.

### **Public interest test**

90. Section 35(1)(a) is a qualified exemption and therefore the Commissioner must once again consider the public interest test at section 2 of the Act and whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

### **Public interest arguments in favour of disclosing the requested information**

91. The Commissioner believes the public interests in favour of disclosure to largely mirror those set out above in relation to section 27(1)(a).
92. In submissions to him the Cabinet Office noted that disclosure of document 15 could inform the particular public debate around the specific issues which the policy in question raises.

### **Public interest arguments in favour of maintaining the exemption**

93. The Cabinet Office highlighted the following public interest arguments in favour of maintaining the exemption:
94. There is a very strong public interest in maintaining the confidentiality of the policy process and disclosure of records about very recent discussions would erode this. Such confidentiality allows those involved – in this case the Prime Minister and senior officials – to have the freedom to develop policy away from intrusion. If officials involved in policy making had to constantly ‘look over their shoulders’ for the public reaction to their advice, they would spend too much effort focusing on the presentation of that advice compared to its content. How a policy would appear would intrude at too early a stage in the policy process and this would undermine the quality of the advice. This would also undermine accountability since decision takers could claim that poor decisions arose from poor advice. The expectations of the participants was that their considerations of policy options would remain confidential. This applies with special force to the discussions between the Prime Minister’s advisors.

### **Balance of the public interest arguments**

95. In considering the balance of the public interest arguments outlined above, the Commissioner has taken into account the comments of the Tribunal in *DFES v Information Commissioner and Evening Standard* (EA/2006/0006) which considered the application of section 35(1)(a).
96. In particular the Commissioner has considered two key principles outlined in the *DFES* decision. The first was the importance of the timing of the request when considering the public interest in relation to section 35(1)(a):

‘Whilst policy is in the process of formulation it is highly unlikely that the public interest would favour disclosure unless for example it would expose wrongdoing in government. Both

ministers and officials are entitled to hammer out policy without the "...threat of lurid headlines depicting that which has been merely broached as agreed policy.'

97. The second being:

'The central question in every case is the content of the particular information in question. Every decision is specific to the particular facts and circumstances under consideration. Whether there may be significant indirect and wider consequences from the particular disclosure must be considered case by case.' (Para 75(i)).

98. In relation to the timing of the request the Cabinet Office was somewhat ambiguous as to whether, by time of the complainant's request in April 2009, the policy formulation and development had been completed. It simply suggested to the Commissioner that some of the issues set out in the documents, including document 15, which had been withheld on the basis of section 35(1)(a) had 'no immediate currency'. However, having considered the policy to which document 15 focuses on, and taken into account the time fact that nearly three years had passed between the date of the document in question and the date of the request, the Commissioner is satisfied that the formulation and development in respect of this policy was completed by the time the complainant submitted his request.
99. With regard to the arguments advanced by the Cabinet Office, although not specifically describing them as such the Commissioner recognises that they are often described as safe space and chilling effect arguments.
100. Safe space arguments focus on the need for a 'safe space' in which policy can be formulated, 'live' issues debated and decisions reached without being hindered by external comment and/or media involvement. In the Commissioner's opinion such arguments are only relevant, if at the time of the request, the policy formulation and development was ongoing. This is because such arguments are focused on the need for a private space in which to develop **live** policy. As the Commissioner is of the opinion that in respect of this policy the formulation and development was completed by the time this request was submitted such arguments should not be attributed any weight.
101. With regard to the chilling effect arguments, the Commissioner notes that these arguments can encompass a number of related scenarios:

- Disclosing information about a given policy, whilst that policy is still in the process of being formulated and developed, will affect the frankness and candour with which relevant parties will make future contributions to that policy;
- The idea that disclosing information about a given policy, whilst that policy is still in the process of being formulated and developed, will affect the frankness and candour with which relevant parties will contribute to other future, different, policy debates; and
- Finally an even broader scenario where disclosing information relating to the formulation and development of a given policy (even after the process of formulating and developing that policy is complete), will affect the frankness and candour with which relevant parties will contribute to other future, different, policy debates.

102. Clearly in this case as the policy formulation and development was completed at the time of this request it is only the third scenario that is relevant. In considering the weight that should be attributed to this argument the Commissioner has taken into account the scepticism with which numerous Tribunal decisions have treated the chilling effect arguments when they have been advanced by other public authorities. The following quote from the Tribunal in *Foreign and Commonwealth Office v Information Commissioner* (EA/2007/0047) accurately summarises these views:

'we adopt two points of general principle which were expressed in the decision in *HM Treasury v the Information Commissioner EA/2007/0001*. These were first, that it was the passing into the law of the FOIA that generated any chilling effect, no Civil Servant could thereafter expect that all information affecting government decision making would necessarily remain confidential ..... Secondly, the Tribunal could place some reliance in the courage and independence of Civil Servants, especially senior ones, in continuing to give robust and independent advice even in the face of a risk of publicity.' (para 26).

103. However, the Commissioner has also taken into account the comments of Mr Justice Mitting when hearing an appeal in the High Court against the Tribunal decision in *Friends of the Earth v The Information Commissioner and Export Credits Guarantee Department* (EA/2006/0073). Whilst supporting the view of numerous Tribunal decisions that each case needed to be considered on its merits, Mr Justice Mitting disagreed that arguments about the chilling effect should be dismissed out of hand as ulterior considerations but rather are likely to be relevant in many cases:

'Likewise, the reference to the principled statements of Lord Turnbull and Mr Britton as "ulterior considerations" was at least unfortunate. The considerations [chilling effects] are not ulterior; they are at the heart of the debate which these cases raise. There is a legitimate public interest in maintaining the confidentiality of advice within and between government departments on matters that will ultimately result, or are expected ultimately to result, in a ministerial decision. The weight to be given to those considerations will vary from case to case. It is no part of my task today to attempt to identify those cases in which greater weight may be given and those in which less weight may be appropriate. But I can state with confidence that the cases in which it will not be appropriate to give any weight to those considerations will, if they exist at all, be few and far between.'

104. In light of the case law, and bearing in mind the underlying principles set out above, the Commissioner believes that the actual weight attributed to chilling effect arguments have to be considered on the particular circumstances of each case and specifically on the content of the withheld information itself. Furthermore, a public authority would have to provide convincing arguments and evidence which demonstrates how disclosure of the information in question would result in the effects suggested by the public authority.
105. Having considered the content of document 15 the Commissioner recognises that it represents an example of policy making at the highest level of government and clearly contains candid, albeit brief, discussions of the policy in general. In light of this the Commissioner accepts that a reasonable level of weight should be given to the chilling effect argument advanced by the Cabinet Office.
106. Again, as with the consideration of the public interest test under section 27(1)(a) of the Act, the Commissioner recognises that the public interest arguments in favour of disclosure, although generic, are ones that should be attributed notable weight. Furthermore in the circumstances of this case the Commissioner believes that disclosure of the document in question could genuinely contribute directly to the public debate upon the policy issue in question.
107. In conclusion, as the only argument in favour of maintaining the exemption – chilling effect – attracts only a reasonable level of weight and the arguments in favour of disclosure are more compelling and broadly based, the Commissioner considers that the public interest in maintaining the exemption does not outweigh the public interest in

disclosing the information. The Commissioner notes the Cabinet Office's request in its letter to him dated 20 September 2010 to be provided with the opportunity to supply additional submissions to support the application of further exemptions. However, on the basis of the reasoning set out in paragraph 77 the Commissioner does not consider it appropriate in this case to provide the Cabinet Office with this opportunity. (The Commissioner is also of the opinion that the additional exemptions cited by the Cabinet Office would be very unlikely to provide a basis to withhold document 15).

### **Procedural Requirements**

108. Part I of the Act includes a number of procedural requirements with which public authorities must comply.

109. These include section 1(1) which states that:

'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.'

110. Section 10(1) requires a public authority to respond to a request within 20 working days following the date of receipt.

111. As the Commissioner has decided that document 15 is not exempt from disclosure, in failing to provide this information within 20 working days the Cabinet Office breached sections 1(1)(b) and 10(1) of the Act.

112. By failing to provide the complainant with the copies of the original copies of documents numbered 1 to 7 the Cabinet Office failed to provide the complainant with all of the information contained in these documents, namely the names of recipients and senders; signatures; security markings and the headings of any lettered paper. Failure to provide such information also constitutes a breach of sections 1(1)(b) and 10(1) of the Act.



## The Decision

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113. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

- (i) The documents in the annex numbered 8 to 14 and 16 (including any manuscript annotations) are exempt from disclosure on the basis of section 27(1)(a) and in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

114. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- (i) By failing to provide the complainant with the original copies of the documents in the annex numbered 1 to 7 the Cabinet Office failed to take account of the complainant's preferred means of communication and thus did not comply with the requirements of section 11(1) of the Act.
- (ii) As a consequence of not providing the complainant with copies of these documents the Cabinet Office failed to disclose the names of recipients and senders; signatures; security markings and the headings of any lettered paper and this represents a breach of sections 1(1)(b) and 10(1) of the Act.
- (iii) The Cabinet Office was incorrect to conclude that the manuscript annotations contained on documents 8 to 14 and 16 did not fall within the scope of the request.
- (iv) Although document 15 falls within the scope of the exemption contained at section 35(1)(a), the Commissioner has concluded that in all of the circumstances of the case the public interest in maintaining the exemption does not outweigh the public interest in disclosing this document.
- (v) In failing to disclose this document the Cabinet Office breached section 1(1)(b) and 10(1) of the Act.

## Steps Required

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115. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

- (i) to provide the complainant with copies of the documents numbered 1 to 7.
- (ii) to provide the complainant with a copy of document number 15.

116. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

## Failure to comply

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117. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Other matters

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118. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

119. The Commissioner has issued guidance on the time limits on carrying out internal reviews under the Act.<sup>3</sup> This guidance explains that in the Commissioner's opinion 20 working days constitutes a reasonable amount of time to conduct an internal review. In exceptional circumstances it may be reasonable to take longer but in no circumstances should the total time taken exceed 40 working days. In this case, the Cabinet Office received correspondence from the complainant on 18 August 2009 asking it to conduct an internal review of its handling of his requests. The Cabinet Office did not inform the complainant of the outcome of this review until 17 August 2010, nearly an entire year later, and only after the intervention of the Commissioner.

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<sup>3</sup> [Freedom of Information Good Practice Guidance No. 5](#)

120. In the future when the Cabinet Office conducts internal reviews the Commissioner expects it to adhere to the timelines set out in his guidance paper.
121. Similarly, as the Chronology section of this Notice makes clear, there were significant delays in the Cabinet Office responding to the Commissioner's inquiries in relation to this case, including the Cabinet Office's failure to comply with an Information Notice in the time period required. The Commissioner considers the Cabinet Office's tardiness in providing him with the responses he needed in relation to this complaint as particularly unhelpful and would expect that the Cabinet Office to ensure that in all future cases it engages with him in a timelier manner.

## Right of Appeal

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122. 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 sent.

**Dated the 15<sup>th</sup> day of December 2010**

**Signed .....**

**Graham Smith  
Deputy Commissioner  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

### Schedule of information falling within scope of request

Document number for purposes of this Decision Notice	How document is referenced in the Cabinet Office's submissions to the Commissioner dated 20 September 2010	Cabinet Office's position	Commissioner's position
1		Text, title and date of document disclosed at internal review.	Original copy of document needs to be provided to complainant.
2		Text, title and date of document disclosed at internal review.	Original copy of document needs to be provided to complainant.
3		Text, title and date of document disclosed at internal review.	Original copy of document needs to be provided to complainant.
4		Text, title and date of document disclosed at internal review.	Original copy of document needs to be provided to complainant.
5		Text, title and date of document disclosed at internal review.	Original copy of document needs to be provided to complainant.
6		Text, title and date of document disclosed at internal review.	Original copy of document needs to be provided to complainant.
7		Text, title and date of document disclosed at internal review.	Original copy of document needs to be provided to complainant.
8	Pages 1-2	Exempt on basis of sections 27(1)(a), (c) and (d).	Section 27(1)(a) engaged and public interest favours maintaining exemption.
9	Pages 3-4	Exempt on basis of sections 27(1)(a), (c) and (d); 27(2); 35(1)(a).	Section 27(1)(a) engaged and public interest favours maintaining exemption.
10	Page 5	Exempt on basis of sections	Section 27(1)(a) engaged and public interest

		27(1)(a), (c) and (d); 27(2); 35(1)(a).	favours maintaining exemption.
11	Pages 6-8	Exempt on basis of sections 27(1)(a), (c) and (d).	Section 27(1)(a) engaged and public interest favours maintaining exemption.
12	Pages 9-10	Exempt on basis of sections 27(1)(a), (c) and (d); 27(2); 35(1)(a).	Section 27(1)(a) engaged and public interest favours maintaining exemption.
13	Pages 11-12	Exempt on basis of sections 27(1)(a), (c) and (d); 35(1)(a).	Section 27(1)(a) engaged and public interest favours maintaining exemption.
14	Pages 13-15	Exempt on basis of sections 27(1)(a), (c) and (d); 27(2).	Section 27(1)(a) engaged and public interest favours maintaining exemption.
15	Page 16	Exempt on basis of section 35(1)(a).	Section 35(1)(a) is engaged but the public interest favours disclosure of the information.
16	Page 17	Exempt on basis of sections 27(1)(a), (c) and (d); 27(2).	Section 27(1)(a) engaged and public interest favours maintaining exemption.

## Legal Annex

### General Right of Access

**Section 1(1)** provides that -

"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 1(2)** provides that -

"Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14."

### Effect of Exemptions

**Section 2(2)** provides that –

"In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that –

(a) the information is exempt information by virtue of a provision conferring absolute exemption, or

(b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information"

### Time for Compliance

**Section 10(1)** provides that –

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

**Section 10(3)** provides that –

"If, and to the extent that –

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given."

### **Means by which communication can be made**

#### **Section 11(1) provides that –**

"Where, on making his request for information, the applicant expresses a preference for communication by one or more of the following means, namely –

- (a) the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,
- (b) the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and
- (c) the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant.

The public shall so far as is reasonably practicable give effect to that preference."

#### **Section 11(2) provides that –**

"In determining for the purposes of this section whether it is reasonably practicable to communicate information by a particular means, the public authority may have regard to all the circumstances, including the cost of doing so"

#### **Section 11(3) provides that –**

"Where a public authority determines that it is not reasonably practicable to comply with any preference expressed by the applicant in making his request, the authority shall notify the applicant of the reasons for its determination"

#### **Section 11(4) provides that –**



“Subject to subsection (1), a public authority may comply with a request by communicating information by any means which are reasonable in the circumstances.”

## **International Relations**

**Section 27(1)** provides that –

“Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) relations between the United Kingdom and any other State,
- (b) relations between the United Kingdom and any international organisation or international court,
- (c) the interests of the United Kingdom abroad, or
- (d) the promotion or protection by the United Kingdom of its interests abroad.”

**Section 27(2)** provides that –

“Information is also exempt information if it is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court.”

## **Formulation of Government Policy**

**Section 35(1)** provides that –

“Information held by a government department or by the National Assembly for Wales is exempt information if it relates to-

- (a) the formulation or development of government policy,
- (b) Ministerial communications,
- (c) the provision of advice by any of the Law Officers or any request or the provision of such advice, or
- (d) the operation of any Ministerial private office.