

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 21 July 2011

Public Authority: Foreign and Commonwealth Office
Address: Old Admiralty Building
Whitehall
London SW1A 2PA

Summary

The complainant requested copies of correspondence, minutes and memos between Jack Straw and Tony Blair relating to contingency plans for the war in Iraq. The public authority refused to provide this information citing exemptions at section 27 (International relations) and section 35 (Formulation/development of government policy) as its basis for doing so. It argued that the public interest in maintaining these exemptions outweighed the public interest in disclosure. At internal review, it upheld this position. The Commissioner has decided that the public authority was entitled to rely on section 35(1)(b) in relation to all of the withheld information at the time of the request. However, it failed to provide a response within the statutory period in breach of section 1(1)(a) and section 10(1). No steps are required.

The Commissioner's Role

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.

Background

2. On 15 June 2009, the then Prime Minister, Gordon Brown announced that a formal Inquiry would be held to identify lessons that could be learned from the Iraq conflict. More details about the Iraq Inquiry can be found on its official website¹. The Commissioner notes that the Iraq Inquiry is often also called the Chilcot Inquiry after the Chair of the Inquiry, Sir John Chilcot.

3. When giving evidence to the Iraq Inquiry on the afternoon of 21 January 2010, former Foreign Secretary Jack Straw said:

"I submitted formal minutes to him [former Prime Minister, Tony Blair]. This was far too serious to make suggestions to him. So I thought about this a very great deal. I talked to my officials and advisers in the Foreign Office and the agencies about this. I prepared a paper for Mr Blair." (Page 105 Line 8)².

4. Mr Straw's comments were made in response to a question from Sir Lawrence Freedman of the Iraq Inquiry as follows:

"... at a point when you weren't going to get it [a second resolution or sufficient evidence of Iraqi compliance], was there, for example a plan B that you could turn to?" (Page 103 Line 11).

The Request

5. On 22 January 2010 (the day after Mr Straw first gave evidence to the Iraq Inquiry) the complainant sent an email to the public authority entitled "*copy of contingency plan sent from Jack Straw to Tony Blair relating to the invasion of Iraq*". In that email, she requested information of the following description:

¹ <http://www.iraqinquiry.org.uk/about.aspx>

² <http://www.iraqinquiry.org.uk/media/44190/20100121pm-straw-final.pdf>

"Copies of correspondence/minutes/memos between Jack Straw and Tony Blair relating to contingency plans for the war in Iraq.

Jack Straw revealed at the Chilcot inquiry that he had drafted a contingency plan concerning the war in Iraq, and had submitted formal minutes to Tony Blair on the proposal. Please send me copies of this plan and the minutes.

If it is necessary for any reason to redact any part of the document, please only redact the relevant part and send me the rest of the document."

6. The public authority responded to the request on 19 March 2010. It confirmed that it held information within the scope of her request but it refused to disclose it on the basis of the exemptions contained in sections 27(1)(a) and (b) and 27(2) (International relations) and sections 35(1)(a) and (b) of the Act (Formulation/development of government policy and Ministerial communications). These exemptions are set out in full in a Legal Annex to this Notice. It argued that the public interest in maintaining these exemptions outweighed the public interest in disclosure.
7. The public authority also explained that it was not obliged to confirm or deny whether it held any other information within the scope of the request by virtue of the exemptions at section 23(5) or, in the alternative, section 24(2).
8. On 26 March 2010, the complainant requested an internal review of the public authority's reliance on the provisions of section 27 and section 35. On 12 July 2010, the public authority wrote to the complainant with the details of the result of the internal review it had carried out. It upheld its original decision although it provided more detail about its arguments.

The Investigation

Scope of the case

9. On 4 August 2010, the complainant contacted the Commissioner to complain about the way her request for information had been

handled. The complainant specifically asked the Commissioner to consider the following points:

- The public authority had incorrectly relied on the exemptions at section 27 and section 35.
10. The complainant did not complain about the public authority's use of either section 23 or section 24 either in this letter of complaint or in later correspondence. The Commissioner has therefore not considered further the public authority's reliance on these exemptions.

Chronology

11. On 1 September 2010, the Commissioner wrote to both parties to advise receipt of the complaint.
12. In his letter to the public authority, the Commissioner asked it to send him a copy of the information that had been withheld in this case.
13. On 29 September 2010, the public authority responded to the Commissioner's letter. It gave a brief description of the information it held which fell within the scope of the request. Specifically, it explained that the information constituted a "*ministerial communication between the then Prime Minister and the then Foreign Secretary in the formulation of government policy*" and that the information was therefore exempt in its entirety under section 35(1)(a) and (b) of the Act. It also set out arguments as to why the public interest favoured maintaining these exemptions. It also identified certain passages which were, in its view, also exempt under section 27(1)(a) and (b) of the Act and section 27(2) of the Act.
14. The public authority's arguments will be analysed in further detail later in this notice.
15. It also set out logistical difficulties it had in sending the documents to the Commissioner's office in Wilmslow. These related to the Asset Classification of the documents (they were marked "SECRET" as well as "PERSONAL") and the cost of engaging a courier to dispatch documents of such classification for such a distance.
16. Between the end of December 2010 and 5 January 2011, the Commissioner made a series of telephone calls to both parties in

order to establish whether there were options for informal resolution of the complaint. In conversation with the public authority the Commissioner also sought to clarify arrangements for viewing the withheld information in situ.

17. On 16 February 2011, the Commissioner wrote to the complainant to confirm the scope of his investigation as outlined above in "Scope of the case" and to ask her to let him know if there were any other matters which she believed should be investigated. He then made several attempts to contact the complainant by telephone and succeeded in doing so on 21 February 2011. He sought to check with her whether the information she had described in her request was the information which Mr Straw had referred to in his evidence to the Iraq Inquiry of 21 January 2010. He wanted to ensure that all parties were clear as to the scope of that request and to avoid any misunderstanding as the case progressed. The complainant confirmed that her request was confined to that information which Jack Straw had referred to. She did not at that point or later raise any other matters which she believed should be investigated in this case.
18. On 16 February 2011, the Commissioner also wrote to the public authority with a series of detailed questions about the application of section 27 and section 35.
19. On 29 March 2011, the public authority sent its response. It reiterated its earlier comments as to the application of sections 27 and 35. These will be analysed later in this letter. It also invited one of the Commissioner's representatives with security clearance to view the withheld information at its offices.
20. Following an exchange of telephone calls and emails, arrangements were made for one of the Commissioner's representatives to visit the public authority on the morning of 20 April 2011 to view the withheld information.
21. During that visit, the public authority confirmed to the Commissioner that the information in question had been submitted to the Iraq Inquiry in 2009, that is, before the complainant made her request.
22. On 3 May 2011 the complainant returned the Commissioner's call to discuss further options for informal resolution of the case. The complainant said that she still wished to have a formal decision from the Commissioner.

Analysis

Exemptions

Section 35(1)(a) and (b) – Are these exemptions engaged?

23. Section 35(1)(a) states that information held by a government department is exempt if it relates to the formulation or development of government policy. This is a class based exemption and if the information relates to the formulation or development of government policy, the exemption is engaged.
24. Section 35(1)(b) states that information that is held by a government department is exempt information if it relates to Ministerial communications. This is also a class based exemption and if the information relates to a Ministerial communication, this exemption is engaged
25. The full text of section 35 can be found in the legal annex at the end of the notice.
26. The two exemptions are not mutually exclusive. Self-evidently, if the withheld information is a communication from one minister to another about the formulation or development of government policy, it can fall within the scope of both exemptions.
27. The Commissioner has first considered whether the withheld information relates to the formulation and development of government policy.
28. In the Commissioner's view, the term 'relates to' should be interpreted broadly to include any information which is concerned with the formulation or development of the policy in question and does not specifically need to be information on the formulation or development of that policy.
29. In this instance, the Commissioner is satisfied that the withheld information relates to the formulation and development of HM Government's policy towards Iraq in 2003. The withheld information is correspondence from Mr Straw to Mr Blair setting out points which directly relate to both the formulation and the development of that policy in the first quarter of 2003. As is now a matter of historical record, the UK was part of a US-led coalition that invaded Iraq on 20 March 2003.

30. The Commissioner is therefore satisfied that the withheld information falls within the scope of information described in section 35(1)(a). As such it is exempt information under that provision of the Act.
31. Because the information is correspondence from Mr Straw to Mr Blair on a policy matter, the Commissioner is also satisfied that the information falls within the scope of information described in section 35(1)(b) (Ministerial communications). As such it is also exempt information under that separate provision of the Act.
32. Both section 35(1)(a) and section 35(1)(b) are subject to a balance of public interests test. Either exemption can only be maintained where the public interest in doing so outweighs the public interest in disclosure.
33. Although the exemption relating to the formulation or development of government policy appears first in the list of exemptions contained within section 35, the Commissioner will instead deal first with the exemption which relates to Ministerial communications. As noted above, the withheld information clearly constitutes communications from the Foreign Secretary to the Prime Minister and therefore falls squarely within the scope of section 35(1)(b).
34. The Commissioner notes that the complainant and the public authority conflated their arguments as to the balance of public interests in relation to section 35(1)(a) and section 31(1)(b). These will be set out shortly. In his analysis of those arguments, the Commissioner will first focus on the significance of the points raised where they relate to the application of section 35(1)(b).

Section 35(1)(b) - Public interest arguments in favour of disclosing the requested information

35. The complainant submitted the following arguments as to the public interest in disclosure:
 - Jack Straw referred to this information in public therefore there is even more reason to release the information since its existence is already known.
 - The Iraq war was one of the most significant decisions made by the previous Government and it has had huge implications for the British public, as well as citizens of many other countries.

- There is an overwhelming public interest in disclosure in order to enable informed public debate on the issue.
 - Similarly, disclosure would enable greater transparency of Government decisions.
 - It would allow the public to scrutinise the decision making process so any misconduct is exposed and "*they are deceived in how the Government made its decisions* [sic]".
 - A huge amount of public money has been spent on the Iraq war - and the Government must be held accountable for this.
 - The public has the right to know what kind of contingency plans were made for the war in Iraq to know whether the Government acted properly or not. In order for the Government to be truly open and transparent these documents should be released.
 - Many people in the UK have been directly affected by this decision.
 - There is a public interest in enabling the public to more adequately scrutinise the decision making process prior to the invasion.
 - Disclosure may dispel concerns about the plans (or lack of plans) the UK Government had regarding the war.
36. The public authority advanced the following arguments in favour of disclosure:
- There is a general and increasing public interest in transparency in how Government operates.
 - There is a general public interest in greater transparency in demonstrating the methods and types of communications between ministers.
 - There is an increasing public interest in transparency of decision making.
 - Disclosure would make government more accountable and increase trust.
 - There is a public interest in being able to assess the quality of the advice being given to the Prime Minister at the time and any subsequent decision making.
 - The major impact of the Iraq war on UK public spending adds weight to these arguments.

Public interest arguments in favour of maintaining the exemption

37. Although the complainant appeared to acknowledge in the wording of her request that some of the information caught by the scope of the request may be withheld, she did not advance any specific arguments as to the public interest in maintaining this exemption or any other of the exemptions that the public authority sought to rely on.
38. The public authority advanced the following public interest arguments in favour of maintaining both of the exemptions in section 35 that it sought to rely on:
- Government requires a clear space, immune from public view in which it can conduct an exchange of views internally, free from the pressures of public political debate
 - Candour of communications will be affected by an assessment as to whether content will be disclosed in the future. This will have a negative impact on the quality of decision making and on any recording of that decision making. Such an impact is not in the public interest
 - Ministers must be able to conduct rigorous and candid assessments of their policies and programmes and disclosure of the entirety of the withheld information would negatively impact on Ministers' ability to do this
 - It should be conducive and proper for the public authority "*not to put out the confidentiality of what was secret and personal for the previous government*"
 - The Iraq Inquiry is still ongoing and no further disclosure of relevant papers should be made until the Inquiry has finished
39. The public authority acknowledged that finding the appropriate balance was complex but that, in this case, the public interest favoured maintaining the exemptions.

Balancing the public interest arguments

40. The public authority has argued that there is public interest in preserving a safe space for Ministerial communications (it described it as a "clear space") and has argued that disclosure would have a chilling effect on any such future communications.

41. The term “chilling effect” refers to an adverse effect on the frankness and candour of participants in the policy making process. Arguments about “safe space” are related to chilling effect arguments but are distinct. The need for a safe space within which policy can be debated exists regardless of any chilling effect that may result through disclosure.
42. Before analysing these points in detail, the Commissioner would observe that consideration of any arguments as to the public interest either in maintaining the exemption in question or in disclosure can only be based on the circumstances prevailing at the time of the request or, at least, at the time for compliance with the request. The period in question in this case is from 22 January 2010 to 20 February 2010 (which was 20 working days from the date of the request). The public authority exceeded the time for compliance with the request (it did not respond until 19 March 2010) and this is addressed later in this notice.
43. It should be noted that the government in power at the time of the request was under the premiership of Gordon Brown who succeeded Tony Blair as leader of the Labour Party in June 2007. The Labour Party had retained power following the general election of May 2005. Mr Straw was also a member of Mr Brown’s Cabinet serving as Lord High Chancellor and Minister of Justice at the time of the request. The Iraq Inquiry was also hearing evidence at the time of the request.

Chilling effect

44. In considering the public authority’s arguments as to a “chilling effect” arising from disclosure, the Commissioner has taken into account the scepticism with which numerous Tribunal decisions have treated such arguments when they have been advanced by other public authorities. The Tribunal has been unconvinced that ministers would shy away, in cabinet discussion, from taking positions and from expressing their views candidly for fear that their views may, in certain circumstances, become public.
45. The Commissioner notes that the High Court was somewhat more circumspect on this point when considering an appeal against the Tribunal decision *Friends of the Earth v The Information Commissioner and Export Credits Guarantee Department* (EA/2006/0073)³. Whilst supporting the view of numerous

³ <http://www.bailii.org/ew/cases/EWHC/Admin/2008/638.html>

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. Instead he said that such arguments are likely to be relevant in many cases.

46. In the Commissioner's view, ministers must reasonably assume that records of their correspondence and discussions will, at some point, be made public, particularly where the matter being discussed is of historic significance to the life of the nation as was the case here. The Commissioner notes, as an example, reports of the disclosure by The National Archive⁴ of cabinet papers from the 1956 Suez crisis. The question which arises in this case is whether the disclosure of Ministerial correspondence relating to more recent events of significance to the life of the nation would give rise to a chilling effect on the frankness and candour of Ministerial communications in future.
47. The public authority also raised concerns about the adverse and chilling effect disclosure might have on the recording of decision making. The Commissioner recognises that the possibility of relatively prompt disclosure may give some individuals pause to consider the extent to which they record their views on a complex matter of national importance. However, the Commissioner notes that a number of other factors may also adversely affect record-keeping in this regard. For example, where a more informal style of decision-making (often referred to as "sofa government") is preferred, fewer detailed records as to the progress of discussions may be kept. Similarly, electronic communication between ministers may not necessarily lend itself to fastidious record keeping.
48. The Commissioner thinks that, on balance, it is reasonable for the public to expect that elected representatives will continue to give candid advice to the Prime Minister when acting at the highest level and at the heart of government. The Commissioner also thinks that elected representatives working at the heart of government will continue to do so even where they anticipate that such advice may in whole or in part become public knowledge in the near future. He therefore does not agree that the public authority's arguments as to a likely "chilling effect" carry weight in

⁴ <http://business.timesonline.co.uk/tol/business/law/article656789.ece>

the balance of public interests, particularly given the gravity of the matters to which the withheld information in this case relates.

Safe space

49. The Commissioner has also considered the public authority's arguments as to the risk posed by disclosure under the Act to the "safe space" that exists for discussions between ministers. When considering the merits of this argument, the Commissioner has considered, in particular, the timing of the request. In the Commissioner's view, the importance of protecting a safe space for Ministerial communications can diminish once a policy decision has been taken. In this case, the policy decision to participate in the invasion of Iraq was taken at some point prior to 20 March 2003, that is, considerably in advance of the date of the request. The "safe space" required to reach that particular decision was therefore no longer required.

Cabinet collective responsibility

50. However, there is a separate but related factor to consider concerning the preservation of a safe space for candid discussions by Ministers. This is often referred to as Cabinet collective responsibility.
51. Collective Cabinet responsibility was described by the Information Tribunal in the *Scotland Office v The Information Commissioner* (EA/2007/0070)⁵ as:

"the long standing convention that Ministers are collectively accountable for the decisions of the Cabinet and are bound to promote that position to Parliament and the general public, regardless of their individual views. During the course of meetings of the Cabinet or of Cabinet Committees or through correspondence, Ministers may express divergent views, but once a decision is taken, the convention dictates that they must support it fully. When decisions are announced as Government policy, the fact that a particular Minister may have opposed it in Cabinet is not disclosed." (para 82).

5

[http://www.informationtribunal.gov.uk/DBFiles/Decision/i202/Scotland%20Office%20v%20ICO%20\(EA-2007-0070\)%20-%20Decision%2008-08-08%20+%20Annexes%20A&B.pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i202/Scotland%20Office%20v%20ICO%20(EA-2007-0070)%20-%20Decision%2008-08-08%20+%20Annexes%20A&B.pdf)

52. The Commissioner's view is that regardless of the need for a "safe space" to *reach* a collective position, there is also a separate public interest in the Government being able to present a united front. Where it is not able to do so, this has the potential result of wasting valuable government time publicly debating views that have only ever been individual views. These individual views are considered by the Cabinet prior to reaching and maintaining a collective government position on a particular subject.
53. It was the collective position of the Cabinet under both Tony Blair's and Gordon Brown's premiership that the government's decision to participate in the invasion of Iraq in March 2003 had been the correct one. Although the government in power at the time of the request was, strictly speaking, different to the one in power at the time the withheld correspondence was exchanged (as noted above, there had been a general election to the UK parliament in May 2005), at least two senior members of the March 2003 Cabinet remained in Cabinet at the highest level at the time of the request (January 2010). These were Gordon Brown and Jack Straw.
54. The Commissioner would also note that at the time of the request, UK service personnel were still in Iraq. These personnel were, in effect, implementing the government's policy on Iraq that had been initiated in March 2003. Although UK combat operations in Iraq ended on 30 April 2009, UK service personnel did not leave Iraq until 21 May 2011⁶.
55. In light of the above, the Commissioner thinks that the public interest in allowing the government of the day to maintain its collective position (reached after Ministerial communications which included the withheld information) carried considerable weight at the time of the request.
56. The complainant has set out in some detail, factors which, in her view, weigh heavily in favour of disclosure. These are reproduced above. The Commissioner finds them particularly compelling. The government of the time's decision to participate fully in the US-led invasion of Iraq in 2003 has had profound consequences for the UK and it remains the subject of considerable debate and speculation. The government at the time of the request (and individual Cabinet members who had served in both governments)

⁶ <http://www.bbc.co.uk/news/uk-13488078>

had been under considerable pressure to provide more information about the decision-making process. The Commissioner accepts that there is a very strong public interest in understanding how and why the Government of the time reached that decision. The withheld information is Ministerial correspondence at the highest level and at the heart of government which took place at a crucial time in the run-up to the implementation of that decision. Disclosure would clearly serve that compelling public interest.

57. However, the Commissioner notes that, at the time of the request, the correspondence in question had been submitted in evidence to the Iraq Inquiry for its consideration. In the Commissioner's view, the compelling public interest in understanding the decision making process that resulted in the UK's full participation in the invasion of Iraq was, at the time of the request, being served to a considerable degree by the existence and operation of that Inquiry. The Commissioner notes, in particular, the opening remarks of Sir John Chilcot as follows:

"Our terms of reference are very broad, but the essential points, as set out by the Prime Minister [Gordon Brown] and agreed by the House of Commons, are that this is an Inquiry by a committee of Privy Counsellors. It will consider the period from the summer of 2001 to the end of July 2009, embracing the run-up to the conflict in Iraq, the military action and its aftermath. We will therefore be considering the UK's involvement in Iraq, including the way decisions were made and actions taken, to establish, as accurately as possible, what happened and to identify the lessons that can be learned. Those lessons will help ensure that, if we face similar situations in future, the government of the day is best equipped to respond to those situations in the most effective manner in the best interests of the country."

58. The withheld information in this case constitutes a small part of the evidence that the Inquiry is considering. It is clear from the Inquiry's website that it is considering a broad spectrum of evidence from a large number of relevant sources. The Commissioner recognises that there is a strong public interest in understanding the decision making process on such a crucial issue. This public interest could be served in part where communications between key ministers (including the Prime Minister) are disclosed. However, the Commissioner does not

agree that the public interest is well served by the disclosure of a small piece of the evidence in isolation in advance of publication of the Inquiry's report.

59. More information about the withheld information is in a Confidential Annex to this notice, supplied to the public authority only.
60. Unlike many other papers that have been submitted in evidence to that Inquiry, the requested information has not, at the time of writing this notice, been declassified and published in whole or in part. The Commissioner has no knowledge of the Inquiry's plans to seek the declassification and disclosure of the information that has been withheld in this case. He notes, however, the following paragraphs from the Protocol that was agreed between the Government and the Inquiry regarding the disclosure of documents⁷.

"Where the Inquiry decides that any information provided to it by HMG [Her Majesty's Government], or reference to such information, constitutes relevant information which it wishes to include in its final report or at any other point in its proceedings, it shall first follow the procedure set out below for agreeing with HMG the form in which the information is made public or referred to publicly" (Paragraph 8).

61. In the Commissioner's view, the fact that the public interest in disclosure is being considered by the Chilcot Inquiry and the Inquiry might in due course express views about disclosure of the withheld information is relevant to his consideration of this complaint, but not conclusive.
62. By commissioning the Inquiry, the then Prime Minister, Gordon Brown, had accepted that there was a public interest in greater independent scrutiny of the decision making process at the highest level which led to the UK's participation in the invasion of Iraq. This independent scrutiny will result in a report to the Prime Minister of the day which will be made public.
63. The Commissioner believes that there is a public interest in allowing the government in power at the time of the request to maintain the collective view that it sought to uphold at the time of

⁷ <http://www.cabinetoffice.gov.uk/sites/default/files/resources/protocol.pdf>

the request and to await the outcome of the Inquiry and its report before being required to disclose individual pieces of evidence that are being considered by the Inquiry and were before it at the time of the request.

Section 35(1)(b) - Conclusion

64. The Commissioner acknowledges that the matter is finely balanced but, in light of the above, he has concluded that, at the time of the request (and by the time for compliance with the request), the public interest in maintaining the exemption at section 35(1)(b) outweighed the public interest in disclosure. The public authority was therefore entitled to rely on this exemption as its basis for withholding the information in question. The factors which carry particular weight in this regard are:

- The safe space required by government to maintain a collective position agreed following communications between ministers that took place at the highest level and at a crucial time in the run-up to the invasion of Iraq.
- The circumstances which prevailed at the time of the request, namely key figures in the March 2003 Cabinet were still members of the Cabinet at the time of the request.
- The ongoing role of the Iraq Inquiry.

65. Given that he has concluded that the public authority was entitled to rely on section 35(1)(b) as a basis for withholding the information in question, the Commissioner has not gone on to consider in detail the application of other exemptions cited in this case. However, having already established that the exemption at section 35(1)(a) is also engaged, he notes that, in the circumstances of this case, the factors relevant to the balance of the public interest considered above would also be relevant in respect of the exemption for information relating to the formulation and development of government policy. In other words, the conclusion would almost certainly be the same.

Procedural requirements

66. In failing to provide a refusal notice within 20 working days of the date of the request, the public authority contravened the requirements of section 1(1)(a), section 10(1) and section 17(1)

of the Act. These provisions are set out in a Legal Annex to this Notice.

The Decision

67. 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:

- It was entitled to rely on section 35(1)(b) as a basis for withholding the information described in the complainant's request of 22 January 2010.

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

- In failing to respond within 20 working days of the Act, it contravened the requirements of section 1(1)(a) and section 10(1) of the Act.

Steps Required

69. The Commissioner requires no steps to be taken.

Right of Appeal

70. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

71. 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.
72. 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 21st day of July 2011

Signed

Graham Smith

Deputy Commissioner

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

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 2(3) provides that –

"For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption –

- (a) section 21
- (b) section 23
- (c) section 32
- (d) section 34
- (e) section 36 so far as relating to information held by the House of Commons or the House of Lords
- (f) in section 40 –
 - (i) subsection (1), and
 - (ii) subsection (2) so far as relating to cases where the first condition referred to in that subsection is satisfied by virtue of subsection (3)(a)(i) or (b) of that section,
 - (iii) section 41, and
 - (iv) section 44"

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.”

Refusal of Request

Section 17(1) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

International Relations exemption

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."

Section 27(3) provides that –

"For the purposes of this section, any information obtained from a State, organisation or court is confidential at any time while the terms on which it was obtained require it to be held in confidence or while the circumstances in which it was obtained make it reasonable for the State, organisation or court to expect that it will be so held."

Section 27(4) provides that –

"The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a)-

- (a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1), or
- (b) would involve the disclosure of any information (whether or not already recorded) which is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court."

Section 27(5) provides that –

"In this section-

"international court" means any international court which is not an international organisation and which is established-

- (a) by a resolution of an international organisation of which the United Kingdom is a member, or
- (b) by an international agreement to which the United Kingdom is a party;

"international organisation" means any international organisation whose members include any two or more States, or any organ of such an organisation;

"State" includes the government of any State and any organ of its government, and references to a State other than the United Kingdom include references to any territory outside the United Kingdom."

Formulation/Development of Government Policy exemption

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.”

Section 35(2) provides that –

“Once a decision as to government policy has been taken, any statistical information used to provide an informed background to the taking of the decision is not to be regarded-

- (e) for the purposes of subsection (1)(a), as relating to the formulation or development of government policy, or
- (f) for the purposes of subsection (1)(b), as relating to Ministerial communications.”

Section 35(3) provides that –

“The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1).”

Section 35(4) provides that –

“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.”

Section 35(5) provides that –

“In this section-

"government policy" includes the policy of the Executive Committee of the Northern Ireland Assembly and the policy of the National Assembly for Wales;

"the Law Officers" means the Attorney General, the Solicitor General, the Advocate General for Scotland, the Lord Advocate, the Solicitor General for

Scotland and the Attorney General for Northern Ireland;

"Ministerial communications" means any communications-

(g) between Ministers of the Crown,

(h) between Northern Ireland Ministers, including Northern Ireland junior Ministers, or

(i) between Assembly Secretaries, including the Assembly First Secretary, and includes, in particular, proceedings of the Cabinet or of any committee of the Cabinet, proceedings of the Executive Committee of the Northern Ireland Assembly, and proceedings of the executive committee of the National Assembly for Wales;

"Ministerial private office" means any part of a government department which provides personal administrative support to a Minister of the Crown, to a Northern Ireland Minister or a Northern Ireland junior Minister or any part of the administration of the National Assembly for Wales providing personal administrative support to the Assembly First Secretary or an Assembly Secretary;

"Northern Ireland junior Minister" means a member of the Northern Ireland Assembly appointed as a junior Minister under section 19 of the Northern Ireland Act 1998."