

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 April 2012

Public Authority: Cabinet Office
70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant requested Cabinet meeting minutes dating from 1984 and 1985 relating to the miners' strike. The Cabinet Office refused to disclose this information and cited the exemption from the FOIA provided by section 35(1)(b) (information relating to Ministerial communications). The Commissioner's decision is that the Cabinet Office has applied this exemption correctly and so it is not required to disclose this information.

Request and response

2. On 1 April 2011, the complainant wrote to the Cabinet Office and requested information in the following terms:
"Copies of the minutes of all the Cabinet meetings, held in 1984 and 1985, that relate to the 1984-5 miners' strike."
3. The Cabinet Office responded on 24 May 2011, outside 20 working days from receipt of the request. It stated that the request was refused and cited the exemptions provided by sections 35(1)(a) (information relating to the formulation or development of government policy) and 35(1)(b) (information relating to Ministerial communications).
4. Following an internal review the Cabinet Office wrote to the complainant on 22 September 2011. It stated that the refusal of the request was upheld.

Scope of the case

5. The complainant contacted the Commissioner on 26 October 2011 to complain about the way his request for information had been handled. The complainant emphasised the historical significance of the miners' strike and suggested that this indicated that the public interest favoured disclosure.
6. When corresponding with the Commissioner's office about this case the Cabinet Office indicated that it no longer relied on section 35(1)(a). This notice therefore focuses on section 35(1)(b).
7. During the investigation of this case a representative of the Commissioner's Office attended the Cabinet Office and viewed the information within the scope of the request. This consisted of excerpts of minutes of Cabinet meetings covering the miners' strike. The position of the Cabinet Office was that the remainder of these minutes, covering issues other than the miners' strike, were not within the scope of the request. The Commissioner agrees that this is a reasonable approach to identifying the information within the scope of the request and that those parts of the relevant minutes that cover issues other than the miners' strike are not within the scope of the request.

Reasons for decision

8. Section 35(1)(b) provides that information relating to Ministerial communications is exempt. Consideration of this exemption is a two-stage process. First the exemption must be engaged as a result of the information falling within the class specified in the exemptions; that is, it must relate to Ministerial communications. Secondly, this exemption is qualified by the public interest, which means that the information must be disclosed unless the public interest in the maintenance of the exemption outweighs the public interest in disclosure.
9. Covering first whether this exemption is engaged, 'Ministerial communications' as that term is used in this exemption is defined at section 35(5). Included in this definition are proceedings of the Cabinet. In this case the Commissioner finds that the information in question is clearly within the class specified in section 35(1)(b). This information consists of the minutes of meetings of the Cabinet covering issues relating to the miners' strike and so falls directly within the definition given in section 35(5). The exemption provided by section 35(1)(b) is, therefore, engaged.

Public interest test

10. Turning to the balance of the public interest, the Commissioner has taken into account here the general public interest in the transparency of government decision-making, as well as those factors that relate to the specific information in question here. These include the arguments advanced by the complainant and by the Cabinet Office.
 - Factors in favour of disclosure
11. Setting out first those factors that favour disclosure, the argument of the complainant concerned the historical significance of the miners' strike and suggested that this meant that there was a strong public interest in disclosure of information recording the considerations of the then Government about this. The Commissioner notes that the miners' strike was indeed an event of considerable historical significance. The view of the Commissioner is also that this significance indicates a genuine public interest in the disclosure of this information.
12. The actions of the then Government in response to the miners' strike were significant in terms of how the strike progressed. As such they were subject to great scrutiny at the time and have continued to be a point of considerable interest since. The Government of the day was also placed under great pressure by the strike, and the view of the Commissioner is that there is a public interest in understanding how it reacted to this. The Commissioner therefore agrees with the complainant that the historical significance of the events recorded within the information in question indicates a valid public interest in disclosure of considerable weight, on the basis that this would improve public knowledge and understanding about the way in which the then Government responded to the miners' strike.
13. The Cabinet Office has suggested that the historical significance of the events recorded within the information is not so great in relation to the balance of the public interest here, stating that it does not believe that there is a high level of continuing interest in the events of the miners' strike. It has suggested that this means that adding to the historical record is not a factor that is likely to outweigh the strong public interest in preserving the confidentiality of Cabinet minutes.
14. The Commissioner does not agree that there is any shortage of continuing strong and legitimate public interest in the events of the strike. His view is that the significance of the events to which the information in question relates is such that the public interest in full disclosure of information about these events, and in particular in

disclosure of information that records the actions of the then Government in relation to it, is a key factor in this case. Whilst this factor may be outweighed by the collective weight of the factors in favour of maintenance of the exemption, that the information that has been requested in this case consists of Cabinet minutes does not make this factor in favour of disclosure any the less imperative.

15. The specific content of these minutes is also of significance to this factor. The minutes are detailed and the content is attributable to named Government Ministers. This is significant in that this detail means that disclosure would be of particular value in terms of improving understanding of the events of the strike. Whilst the detail within this information can also be deployed as an argument against disclosure, as is covered below, the view of the Commissioner is that it also emphasises the weight of this factor in favour of disclosure.
16. The complainant referred to the intention to reduce the 30-year period before most government papers are released to 20 years and referred to it having been over 20 years since the recording of the information in question. The complainant believed that, as the Government has signalled that it recognises that the disclosure of information over 20 years old would not, in most cases, be damaging, given the age of the information in this case this should now be disclosed.
17. In response to this the Commissioner would note that, whilst he appreciates the point made by the complainant here and agrees that the passage of time is an important point to take into account in any discussion of harm that may occur through disclosure, the '20 year rule' has not yet been implemented and so is not directly relevant here. As to the proximity of the information in question to 30 years, the view of the Commissioner is that this is also not relevant. At the time of the request Cabinet minutes were not disclosed for a minimum of 30 years, whereas 26 or 27 years had elapsed in this case. Whilst the age of the information could be relevant if it was compared to, for example, more recently recorded information, the Commissioner does not regard the imminence of its disclosure under the 30 year rule to be relevant.
 - Factors in favour of maintaining the exemption
18. Turning to those factors that favour maintenance of the exemption, the arguments from the Cabinet Office concern harm to the functioning of Cabinet government, which the Commissioner agrees would be counter to the public interest. It has advanced two main grounds by which it believes this may occur: through a reduction of the extent to which participants in Cabinet discussions feel they can contribute freely and

frankly, and through an erosion of the convention of collective Cabinet responsibility.

19. The Cabinet Office believes that members of the Cabinet rely on the assurance that the record of their contributions will remain confidential for a minimum of 30 years in order to feel able to contribute to discussions in a fully free and frank manner. As a result of this assurance, participants in Cabinet discussions feel able to discuss all options freely, including those that would be considered controversial or politically unpalatable. The Cabinet Office believes that disclosure could result in participants in Cabinet discussions no longer holding this confidence, with a subsequent reduction in the quality of Cabinet discussions that would be counter to the public interest.
20. The Commissioner agrees that a reduction in the openness and therefore quality of Cabinet discussions would be counter to the public interest. The question here is whether disclosure of the information in question is likely to produce this result. On this point the Commissioner has taken into account two points: first, the subject matter of this information; and secondly, the level of detail within this information.
21. On the issue of the subject matter of this information, the miners' strike was an issue of great sensitivity and volatility. Whilst it is important to remain conscious of this not technically having been a direct confrontation between the miners and the Government, but rather a dispute between the National Union of Mineworkers and the National Coal Board, the potential ramifications of this dispute were far wider and clearly the Government of the day had an interest in the dispute and a role to play.
22. The Commissioner recognises that the position of the Government in relation to the miners' strike was in itself particularly controversial. Given these circumstances he also recognises that it was of vital importance that members of the Cabinet felt that they could discuss this issue with complete freedom and that confidence that the record of their contributions would remain confidential was important to this.
23. As to the impact of disclosure today, clearly it is necessary for the Cabinet to discuss similarly sensitive issues as they arise and it is important that these discussions are appropriately free and frank. At paragraph 15 above the detailed nature of the information in question is covered in relation to the public interest in favour of disclosure, but it is also noted that this could be cited as an argument against disclosure. The detail of this information and particularly that this is attributable to individual Ministers is relevant here in that this adds to the likelihood

that the participants in these discussions could have been inhibited through knowledge that the detailed record of their individual contributions could later be disclosed sooner than they might reasonably anticipate.

24. The Commissioner accepts that the early disclosure of this information - covering Cabinet discussions of a high level of sensitivity, the content of which is detailed and attributable to individuals - could have a detrimental effect on the freedom and frankness of Cabinet discussions today. As noted above he also accepts that this would be counter to the public interest and so the Commissioner finds that the risk of detriment to the quality of Cabinet discussions through the disclosure of this information is a valid factor in favour of maintenance of the exemption of significant weight.
25. The second argument of the Cabinet Office concerns the convention of collective Cabinet responsibility. This refers to the practice whereby every member of the Cabinet shares responsibility for all government policies, despite any privately held and possibly expressed misgivings. The argument of the Cabinet Office here is that disclosure of these Cabinet minutes may reveal expressions of disagreement by individual Ministers with government policy on the miners' strike and that this would cause difficulties in maintaining collective responsibility.
26. The Commissioner recognises that maintenance of the convention of collective Cabinet responsibility is in the public interest. The question here is the extent to which it is accurate to suggest that disclosure of the withheld information would harm this convention. On this point it is again relevant to note that the content of the information is detailed and attributable to individual Ministers. Given the nature of the content of the information the Commissioner accepts that the potential erosion of the convention of collective Cabinet responsibility is relevant in this case and so finds that this is a valid factor in favour of maintenance of the exemption of considerable weight.
27. At paragraph 17 above it is noted that the age of the information is a relevant factor to take into account in any discussion of harm that may result through disclosure. The argument of the Cabinet Office overall is that disclosure would be likely to result in harm to Cabinet government, and so the age of the information is relevant.
28. The complainant has suggested that the age of the information reduces its sensitivity. The Commissioner accepts that the passage of time has this effect in general and that the information in question here would be less sensitive than a record of more recent Cabinet discussions on an

issue of similar sensitivity. He does not, however, believe that the passage of time has reduced the sensitivity of this information to the point where it is no longer a factor of significant weight in favour of maintenance of the exemption. Instead he considers it clear that information relating to the miners' strike retains a high level of sensitivity despite the passage of time.

- Conclusion

29. The Commissioner has recognised strong public interest in favour of disclosure of this information on the basis of the historical significance of and continuing public interest in the miners' strike. However, he has also found that harm to Cabinet government could result through disclosure of this information and clearly there is a very strong public interest in avoiding this outcome. Ultimately the Commissioner concludes that the public interest in avoiding this harm outweighs that in disclosure and the exemption should be maintained. The Cabinet Office is not, therefore, required to disclose this information.
30. The Cabinet Office did, however, breach the FOIA in that it did not reply to the request within 20 working days of receipt. It should ensure that requests are responded to promptly in future.

Right of appeal

31. 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,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

32. 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.
33. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Graham Smith
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