

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 January 2013

Public Authority: Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant requested information relating to meetings of the Business Advisory Group, comprising senior Ministers and business leaders who meet to discuss and debate matters of economic policy. The Cabinet Office refused to disclose this information and cited the exemption provided by section 35(1)(a) (formulation or development of government policy) of the FOIA.
2. The Commissioner's decision is that the Cabinet Office applied section 35(1)(a) correctly and so it is not required to disclose this information.

Request and response

3. On 1 March 2012, the complainant wrote to the Cabinet Office and requested information in the following terms:

"In relation to the Prime Minister's meeting with his Business Advisory Group on 6 February 2012, please provide me with:

- the agenda of the meeting and minutes, as well as any other official notation

- any further documents provided to attendees

- any further documents detailing what was discussed at the meeting.

- any correspondence between officials, and between officials and others relating to the meeting".

4. After a delay and well outside 20 working days from receipt of the request, the Cabinet Office responded on 10 May 2012. It stated that the request was refused, with the exemption provided by section 35(1)(a) of the FOIA cited.
5. The complainant responded to the Cabinet Office on 20 May 2012 and requested an internal review. The Cabinet Office responded with the outcome of the internal review on 17 July 2012. It stated that the refusal of the request under section 35(1)(a) was upheld.

Scope of the case

6. The complainant contacted the Commissioner on 20 July 2012 to complain about the refusal of his information request. The complainant indicated that he was dissatisfied with the refusal to disclose the requested information.

Reasons for decision

Section 35

7. The Cabinet Office has cited the exemption provided by section 35(1)(a). This section provides an exemption for information that relates to the formulation or development of government policy. Consideration of this exemption is a two-stage process; first, the information must fall within the class described in the exemption by relating to the formulation or development of government policy. Secondly, this exemption is qualified by the public interest. This means that the information must be disclosed if the public interest in the maintenance of the exemption does not outweigh the public interest in favour of disclosure.
8. Turning first to whether the information in question does relate to the formulation or development of government policy, when arguing that this exemption was engaged, the Cabinet Office did not refer to a specific policy making process to which this information relates. It did not, for example, refer to specific legislation that had come about through the work of the Business Advisory Group. Neither did it refer to any specific aspect of economic policy that stemmed from the discussions of this group.
9. In the absence of specifics as to what policy this information relates to, it is questionable whether this information can be accurately characterised as relating to the formulation or development of

government policy. However, the approach of the Commissioner is that the term 'relates to' as it is used in this exemption can safely be interpreted broadly.

10. Taking this approach, the Commissioner is satisfied that the information in question, which consist of meeting minutes, record a process that relates to the formulation and development of the Government's economic policy. Although it does not appear to be the case that the Cabinet Office can point to a specific action taken by the Government that came about as a result of the discussions in this group, the Commissioner accepts that this group informed the background to decisions on economic policy taken by the Government. This information does, therefore, fall within the class specified in section 35(1)(a) and so this exemption is engaged.
11. Having found that this exemption is engaged, the next step is to consider the balance of the public interest. In forming a conclusion here the Commissioner has taken into account the general public interest in favour of the transparency and openness of the Cabinet Office, as well as those factors that apply in relation to the specific information in question, including arguments advanced by the Cabinet Office and by the complainant.
12. Covering first those arguments that favour disclosure of the information, the Commissioner regards the subject matter of this information as highly relevant here. The current Government has been explicit that it regards the economy as its primary focus and its efforts to reduce the deficit as its key policy. Given this background, there is a very significant public interest in information that relates to the formulation and development of the Government's economic policy.
13. The view of the Commissioner is that disclosure of the information in question would improve public knowledge and understanding of the background to the Government's policy making process. He regards this as an argument in favour of disclosure of very significant weight.
14. Also noteworthy here is that this information records discussions between Ministers and senior figures from the business world. At a time when the financial practices of the business world are under considerable scrutiny, with issues such as the level of executive pay attracting widespread attention and comment, the influence of the Advisory Group on the economic policy of the Government is of particularly high public interest. This adds to the weight of the public interest in favour of disclosure.
15. Turning to those factors that favour maintenance of the exemption, the Cabinet Office has referred to the importance of it being possible for

government to receive free and frank advice from businesses. It believes that disclosure of this information would cause businesses to be guarded in their contributions to discussions with government. In support of this argument the Cabinet Office supplied to the ICO an example of a letter sent from the Prime Minister inviting the participants in the group to join. This is evidence which indicates an expectation of privacy with regard to the content of the discussions of the Advisory Group.

16. When considering the balance of the public interest in relation to section 35(1)(a) the Commissioner will generally always consider it relevant to take into account the public interest in preserving a degree of confidentiality in the policy making process. There are two main issues to consider here, the first of which is the possibility of harm to the quality of the policy making process if those involved were not confident that their contributions would remain confidential. The second issue concerns the convention of collective Cabinet responsibility and the possibility of harm to this if the information in question was disclosed.
17. The Commissioner recognises that the argument concerning the preservation of a space within which to carry out the policy making process is, in general, valid on the grounds that this will assist in the open discussion of all policy options, including those that may be considered politically unpalatable. However, the weight that this argument carries in each case will vary, depending on the circumstances.
18. In this case the Commissioner has noted that the policy making process to which this information relates is current; at any given time a government could be expected to be considering its economic policy. Furthermore, this information comprises the record of a meeting that took place only shortly prior to the date of the request, meaning that the likelihood of inhibition could not be said to be reduced as a result of the passage of time.
19. The Commissioner also notes that the majority of the participants in the group are from the private sector, and were given an indication of privacy. Whilst officials are required to contribute to a policy making process fully and candidly, which should mitigate against inhibition resulting through concern about the possibility of future disclosure, this is not the case for the invited private sector participants in this group. Given that the majority of the participants in the group are from the private sector and given that the withheld information relates to a policy making process that was current at the time of the request and was recorded only shortly prior to the date of the request, the Commissioner accepts that harm to the policy making process resulting from the likely

inhibition of the participants in this group is a valid factor of some weight in favour of maintenance of the exemption.

20. However, the Commissioner also notes that whilst the minutes in question do attribute contributions to specific Ministers, the contributions of the private sector participants in the meeting are not attributable. Neither could specific contributions be obviously attributed to individual participants as a result of relating to specific areas of industry. The weight of the aforementioned factor in favour of maintenance of the exemption is somewhat reduced as a result.
21. Having taken into account, when considering the arguments in favour of disclosure, the fact that the withheld information relates to economic policy and that this is a key policy of the current Government, the Commissioner must also take this into account when considering the arguments in favour of maintenance of the exemption. This means that the weight of any arguments in favour of maintenance of the exemption which relate to harm to the policy making process will be greater because the policy in question is the Government's economic policy.
22. Turning to the issue of the convention of collective Cabinet responsibility, as mentioned above the information includes content that is attributable to named Ministers. In relation to this information the Commissioner considers it appropriate to consider whether disclosure of this information could impact upon the convention of collective Cabinet responsibility, whereby all members of the Cabinet share responsibility for all government policies, regardless of any misgivings they may have voiced privately. This argument concerns whether disclosure of the individual views of a Minister could erode this convention, with a resultant negative impact upon the operation of Cabinet government.
23. The Commissioner notes that the withheld information records Ministerial views on an issue of ongoing policy consideration at the time of the request, and also that the issues of economic policy are currently high profile and of some controversy. The Commissioner recognises that a disclosure that reveals Ministers' individual views in these circumstances could well result in an erosion of collective Cabinet responsibility. He finds that this is a valid public interest factor of considerable weight in favour of maintenance of the exemption.
24. The Commissioner has recognised a strong public interest in favour of disclosure of this information on the grounds of the subject matter of this information. However, he has also recognised that disclosure may result in harm to the policy making process. When the policy making in question relates to an area of such importance as the economy, it is clear that the importance of preserving the quality of that process must weigh heavily when considering the balance of the public interest.

25. In particular, the Commissioner recognises that it is likely to be the case that the willingness of private sector representatives to contribute freely to a policy making process at such a senior level does rely to a significant extent on the assurance that the discussions will remain confidential. Having recognised the public interest in government being able to receive free and frank advice from the private sector, and adding to this the weight of the public interest in avoiding an erosion of collective Cabinet responsibility, the Commissioner has concluded that the public interest in the maintenance of the exemption outweighs the public interest in favour of disclosure. The Cabinet Office is not, therefore, required to disclose the information in question.

Right of appeal

26. 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

27. 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.
28. 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
Deputy Commissioner
Information Commissioner's Office
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