



Scottish Information
Commissioner

**Decision 174/2006 Christine Grahame MSP and the
Scottish Executive**

*Communications between the Scottish Executive and the Home
Office concerning the detention of children at Dungavel Immigration
Removal Centre*

**Applicant: Christine Grahame MSP
Authority: Scottish Executive
Case No: 200501357
Decision Date: 21 September 2006**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS



Decision 174/2006 Christine Grahame MSP and the Scottish Executive

Communications between the Scottish Executive and the Home Office with regard to the detention of children at Dungavel Immigration Removal Centre – relations within the United Kingdom – section 28(1) – free and frank exchange of views – section 30(b)(ii) – consideration of the public interest – information held in confidence, having been supplied by the UK Government – section 3(2)(a)(ii) – information not held – section 17 – duty to advise and assist – section 15

Facts

Mark Hirst, acting on behalf of his employer, Christine Grahame MSP, asked the Scottish Executive (the Executive) for all communication (emails/letters/minutes of meetings), from the period August 2003 to June 2004, between the Executive and the Home Office with regard to the detention of children at Dungavel. The Executive refused to supply this information, citing the exemption in section 28(1) of FOISA, which applies where disclosure of information would, or would be likely to, prejudice substantially relations between the any administration in the United Kingdom (here, the Executive) and any other such administration. The Executive also concluded that the public interest in maintaining this exemption outweighed that in release. The Executive upheld this decision following an internal review.

Mr Hirst then applied to the Commissioner for a decision, again on behalf of Ms Grahame. In the course of the investigation, the Executive reconsidered its position in relation to the documents falling under the scope of the request. It claimed that further exemptions applied to a number of these. It also submitted that, because it understood that some had been supplied in confidence by the Home Office, these were not technically “held” by the Executive for the purposes of FOISA. Finally, the Executive no longer sought to withhold some of the documents under consideration.

Outcome

The Commissioner found that the Executive had failed to comply fully with the requirements of Part 1 of FOISA in response to the applicant’s information request. He found that some of the information under consideration was not exempt from release, and so required that this now be supplied.



The Commissioner found that the Executive had correctly applied the exemption in section 28(1) to a number of documents under consideration. Where he found that section 28(1) did not apply to information to which it had been applied by the Executive, he went on to consider whether this information was exempt under the terms of section 30(b)(ii) of FOISA. In a number of instances, the Commissioner found that the exemption in section 30(b)(ii) had been correctly applied.

Having applied the public interest test contained in section 2(1)(b) of FOISA to each item he considered to be exempt, the Commissioner found that the public interest in maintaining the exemptions in sections 28(1) and 30(b)(ii), in each case where these had been found to apply, outweighed the public interest in disclosure of the information. Therefore, he found that the Executive had acted in accordance with Part 1 of FOISA by refusing to supply this information to the applicant.

The Commissioner also considered the public interest in relation to information that he had found not to be exempt, as if, contrary to his view, these items had been found to be exempt. The Commissioner concluded that, had these items been found to be exempt, the public interest in disclosure of this information would have outweighed the public interest in maintaining the exemptions.

The Commissioner also found that certain information that had initially been identified as falling under the scope of the request was actually not held by the Executive for the purposes of FOISA as a result of section 3(2)(a)(ii). He found that the Executive had failed to act in accordance with section 17 of FOISA, by failing to issue a notice confirming that this information was not held.

The Commissioner also concluded that by failing to provide advice on how to request this information from the UK Government, under the terms of the Freedom of Information Act 2000, the Executive had failed to wholly comply with the duty to advise and assist the applicant under the terms of section 15 of FOISA.

Appeal

Should either the applicant or the Scottish Executive wish to appeal against this decision, there is a right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days of receipt of this notice.



Background

1. Before addressing the specific information request to which this decision relates, it is helpful to briefly outline the wider context of this case.
2. On 15 August 2003, Her Majesty's Chief Inspector of Prisons for England and Wales (HMIP) published a report of an inspection carried out in October 2002 of Dungavel Immigration Removal Centre (Dungavel) in Strathaven, South Lanarkshire.
3. The purpose of immigration removal centres is to hold people who have been detained under immigration law as overstayers, illegal entrants or failed asylum seekers prior to their removal from the UK. These centres may also hold detainees whose cases have not yet been concluded, but who are considered to be at risk of absconding, or whose identities are being established. Dungavel is the only such removal centre in Scotland.
4. At the time of the 2002 HMIP inspection, Dungavel was the only removal centre that held children for considerable periods, which could on occasion extend to a number of months. The HMIP report raised serious concerns about the welfare and development of children within this custodial environment. The report expressed the view that the detention of children should be exceptional, and only for a very short period. It also recommended that an independent assessment of the welfare, developmental and educational needs of each child in detention should be carried out as soon as practicable after detention and that the assessment should be repeated at regular intervals to advise on the compatibility of detention with the needs of the child and to inform any decision on the necessity of detention, or continued detention.
5. At the invitation of HMIP, a follow-up visit to Dungavel was undertaken by Her Majesty's Inspectorate of Education (HMIE) in July 2003. HMIE concluded that Dungavel had made considerable progress in improving the quality of educational provision, and this meant that the range and quality of educational activities provided by the centre were acceptable for children who were detained for very short periods. However, even with these improvements, HMIE concluded that Dungavel did not offer satisfactory educational provision for children detained for prolonged periods, certainly those detained for more than 6 weeks. The HMIE report noted further that detained children's personal, social and learning experiences were impoverished by their lack of contact with the outside world and very restricted social interaction.
6. The HMIP report of its inspection of Dungavel, and the HMIE update on educational provision can be viewed online here:



HMIP report:

http://inspectorates.homeoffice.gov.uk/hmiprisons/inspect_reports/irc-inspections.html/ircdungavel031.pdf?view=Binary

HMIE update:

<http://www.hmie.gov.uk/documents/publication/UpdateDungavel.pdf>

7. The publication of these reports came just 10 days after the high profile deportation of the Ay family, who had spent more than a year in detention at Dungavel before being removed from the UK after their final appeal was rejected by the House of Lords.
8. Immigration is a reserved matter; an area in which power to legislate across the whole of the UK rests with the Westminster Parliament. The operation of the immigration system (including immigration removal centres) is the responsibility of the Home Office. Under the terms of the Scotland Act 1998, the Scottish Parliament is not empowered to legislate in this area.
9. The education and welfare of children in Scotland is a devolved matter, and so responsibility for these areas lies with the Executive, which is in turn accountable to the Scottish Parliament. However, the Scottish Ministers' responses to various Parliamentary Questions have indicated that, where children are detained in Dungavel, legal responsibility for their welfare and education rests with the Home Office and not the Executive. As such, the responsibility for responding to and addressing the concerns raised within the HMIP/HMIE reports rested with the Home Office.
10. The detention of children in Dungavel has nonetheless been a matter of significant public debate in Scotland, encompassing a wide range of individuals and organisations, including trades unions, refugee support groups, charities (including Oxfam, Save the Children and Amnesty International), church leaders and politicians at Holyrood, Westminster and the European Parliament. This debate was particularly active in the period from August 2003 that followed the deportation of the Ay family and the publication of the HMIP and HMIE report and recommendations.

The request for information

11. Mr Hirst, acting on behalf of Christine Grahame MSP, emailed the Scottish Executive on 11 February 2005, requesting the following information:

“All communication (emails/letters/minutes of meetings) between [the] Scottish Executive and the Home Office with regard to the detention of children at Dungavel for the period August 2003 to June 2004.”



12. Mr Hirst's email also contained a second information request for communications between the Executive and the Scottish Children's Reporter Administration on related matters. However, this decision is solely concerned with the request set out in paragraph 11.
13. This request could be construed as seeking either
 - a) communications (of any date) relating to the detention of children between August 2003 and June 2004, or
 - b) communications between August 2003 and June 2004, relating to the detention of children at any time.

The applicant has confirmed to my Office that (b) reflects the intended meaning of the request. I understand that the Executive also adopted this interpretation when responding to the request.

14. The Executive issued a refusal notice in response to this request on 9 March 2005. This confirmed that the Executive held some of the requested information, but the exemption in section 28 of FOISA was judged to apply to this. The Executive explained that this exemption applies where release would, or would be likely to, prejudice substantially relations between any administration of the United Kingdom and any other such administration. The Executive also informed the applicant that it had concluded that the public interest in maintaining this exemption outweighed that in disclosure of the information.
15. Mr Hirst wrote to the Scottish Executive, again on behalf of Ms Grahame, in a letter dated (erroneously) 6 March 2005, asking that a review of the response to his request be conducted.
16. The Executive notified the applicant of the outcome of its review in a letter dated 9 April 2005, but actually sent as an attachment to an email on 8 April 2005. This confirmed that the Executive upheld in full its original decision in relation to the request for information.
17. On behalf of Christine Grahame MSP, Mr Hirst then made an application for a decision from me on this matter.
18. This application for decision was allocated to an investigating officer and then validated by establishing that a valid information request had been made to a Scottish public authority (i.e. the Executive) under FOISA and that the application had been made to me only after asking the Executive to review the response to the request.



Investigation

19. The investigating officer wrote to the Executive on 20 April 2005 informing it that an appeal had been received and that an investigation into the matter had begun. The Executive was invited to comment on the case in terms of section 49(3)(a) of FOISA.
20. The Executive was also asked to supply
 - a) copies of all information falling under the scope of the request;
 - b) analysis of the application of the exemption in section 28(1) of FOISA to this information;
 - c) analysis of the Executive's reasoning when judging that the public interest in maintaining this exemption outweighed that in release;
 - d) documents relating to the Executive's handling of the request and subsequent request for review; and
 - e) details of any consultation with the Home Office to establish its view on the release of documents requested, and copies of any associated documentation.
21. The Executive's response to this letter was received on 18 May 2005. This confirmed that 27 items (which in some cases included more than one document or communication) had initially been identified as falling under the scope of the request. Copies of these were supplied and numbered 1 – 27. A schedule provided details of the Executive's consideration of the exemption in section 28(1) and the public interest in relation to each item.
22. The Executive's response stated that, in retrospect, certain other exemptions might also have been applied to this information. However, detailed reasons for the application of further exemptions to the items listed in the schedule were not provided.
23. The Executive also noted that one item (number 23 - an email providing a copy of a press release in advance of its publication) should not have been identified as being held by the Executive for the purposes of FOISA. This was because it was judged to be covered by section 3(2)(a)(ii) of FOISA, in that it was held by the Executive in confidence, having been supplied by the UK Government. Where information falls under this section, it is not considered to be held by a Scottish Public Authority for the purposes of FOISA.



24. On 15 August 2005, the investigating officer wrote again to the Executive, providing an outline of my initial views on this case. This letter expressed concern that the Executive had not provided sufficiently detailed information to justify or allow proper consideration of its decision to withhold the information identified in this case. More detailed submissions were requested in relation to both the application of section 28(1) and the Executive's consideration of the public interest. This letter also noted that if the Executive considered exemptions other than section 28(1) to apply to some or all of the items under consideration, these could only be considered if a more detailed submission on the application of these was supplied. Finally, the investigating officer raised concerns about the Executive's view that a press release now in the public domain should be considered to be held in confidence.
25. A response to this request was received on 14 September 2005, providing a more detailed analysis of the application of the exemptions cited in relation to particular items. The Executive also informed me that, following further consideration, certain other exemptions might also be relevant to this case.
26. In addition, the Executive advised me at this stage that it had now concluded that certain documents previously identified as falling under the scope of the request, actually did not. In some cases this was because the information contained within these did not constitute a communication between the Home Office and the Executive with regard to the detention of children at Dungavel. In other cases, the Executive now submitted that it believed that the information was held in confidence, having been supplied by the UK Government, and so it was not information held by the Executive for the purposes of FOISA under section 3(2)(a)(ii). The previous application of this section to document 23 was withdrawn. At this stage, the Executive also confirmed that it would now be willing to release certain documents that fall under the scope of the request.
27. On 30 March 2006, the investigating officer wrote to the Executive to request clarification on a number of points, including:
 - a) the Executive's reasons for now concluding that certain documents were held in confidence;
 - b) the Executive's reasons for relying upon one of the exemptions cited in relation to certain documents; and
 - c) the extent to which certain documents fell under the scope of the request under consideration.
28. The Executive's response to these further questions was received in May 2006, and further exchanges took place over the course of June and the beginning of July 2006 to clarify outstanding points.
29. At the end of the investigation, the terms upon which the Executive had explained its position in relation to the request under consideration were that:



- a) certain information contains communications between the Home Office and the Executive with regard to the detention of children at Dungavel, but this is not held for the purposes of FOISA because it is held in confidence having been supplied by the UK Government (section 3(2)(a)(ii));
 - b) certain information is exempt from disclosure under section 28(1) of FOISA – which applies where disclosure would, or would be likely to, prejudice substantially relations between any administration in the UK and any other such administration;
 - c) certain information is exempt from disclosure under section 30(b)(i) of FOISA, which applies where disclosure would, or would be likely to, inhibit substantially the free and frank provision of advice;
 - d) certain information is exempt from release under section 30(b)(ii) of FOISA, which applies where disclosure would, or would be likely to, inhibit substantially the free and frank exchange of views for the purposes of deliberation;
 - e) certain information is exempt under section 36(1) of FOISA, which applies to information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings and
 - f) part of one item is exempt under section 38(1)(b), which, read in conjunction with section 38(2)(a)(i), exempts information where it is personal data as defined in the Data Protection Act 1998 (DPA), and the disclosure of the information to a member of the public otherwise than under FOISA would contravene any of the data protection principles set out in the DPA.
30. The applicant was also invited to comment upon the matters raised by this case and, in particular, on the public interest as it relates to the information requested. A submission was subsequently provided by Mr Hirst on behalf of Ms Grahame in May 2006. He emphasised the public interest in what he described as “the effective imprisonment of children” as well as the wider public concern about UK immigration legislation usurping Scots law especially as it relates to the Children (Scotland) Act 1995. He argued that, “The public should know that actions which are effectively taken in their names by Ministers do not lead to instances where vulnerable children are placed in moral and physical danger.”
31. All of the points raised in the submissions from both parties have been taken into account even if they are not specifically referred to in this decision.
32. The table overleaf lists the items identified by the Executive in relation to this case. The numbers reflect those in the Executive’s schedule of documents, and I will refer to information under consideration by reference to these numbers throughout this decision. The “Executive position” detailed alongside each entry reflects the Executive’s views on each item at the conclusion of my investigation.



33. A second version of this table, which confirms my decision as it relates to each item, is appended to this decision notice.

No.	Type	Executive position
1	Emails & attachment	Outwith scope of request
2	Fax	Exempt: section 28(1), section 30(b)(ii)
3	Minute of meeting	Exempt: section 28(1), section 30(b)(ii)
4	Email & attachments	Exempt: section 28(1), section 30(b)(ii)
5	Emails	Exempt: section 28(1), section 30(b)(ii)
6	Emails	Willing to release
7	Email & attachment	Exempt: section 28(1), section 30(b)(ii)
8	Email	Willing to release
9	Email	Exempt: section 28(1), section 30(b)(ii)
10	Email & attachments	Exempt: section 28(1), section 30(b)(ii)
11	Email & attachment	Exempt: section 28(1), section 30(b)(ii)
12	Minute of meeting	Exempt: section 28(1), section 30(b)(ii), section 38(1)(b)
13	Email & attachments	Section 3(2)(a)(ii) - Not held for purposes of FOISA. Also considered exempt: section 28(1), section 30(b)(ii)
14	Emails & attachments	Section 3(2)(a)(ii) - Not held for purposes of FOISA. Also considered exempt: section 28(1), section 30(b)(ii)
15	Emails & attachments	Section 3(2)(a)(ii) - Not held for purposes of FOISA. Also considered exempt: section 28(1), section 30(b)(ii)
16	Emails	Partly outwith scope of request. Relevant parts exempt: section 28(1), section 30(b)(ii)
17	Emails	Partly outwith scope of request. Relevant parts exempt: section 28(1), section 30(b)(ii)
18	Emails & attachment	Exempt: section 28(1), section 30(b)(ii)
19	Email	Exempt: section 28(1), section 30(b)(i)
20	Emails	Exempt: section 28(1), sections 30(b)(i) & (ii), section 36(1)
21	Emails & attachment	Exempt: section 28(1), section 30(b)(ii)
22	Emails	Exempt: section 28(1), sections 30(b)(i) & (ii), section 36(1)
23	Emails & attachment	Partly outwith scope of the request. Willing to release the relevant sections
24	Emails	Partly outwith scope of request. Relevant parts exempt: section 28(1), section 30(b)(ii)
25	Email & attachment	Partly outwith scope of request. Relevant parts are exempt: section 28(1), section 30(b)(ii).
26	Emails & attachment	Attachment is only partly relevant to the request. Email and relevant parts are exempt: section 28(1), section 30(b)(ii).
27	Emails & attachments	Exempt: section 28(1), section 30(b)(ii)



The Commissioner's analysis and findings

34. The first matter I must address in this case is the extent to which the documents identified by the Executive in the course of this investigation are relevant to the request made by the applicant. Although the Executive initially supplied 27 items to my Office, it has subsequently identified that the whole or part of a number of these actually falls outwith the scope of the request.
35. Having considered the contents of the documents, I have concluded that the following items fall entirely outwith the scope of the request: 1, 11, 17, 19, 20 and 22. Items 1 and 17 do not contain any communications between the Home Office and the Executive. Items 11, 19, 20 and 22 do contain communications between the Home Office and the Executive, but these do not appear to me to relate in any direct way to the detention of children at Dungavel.
36. I have also disregarded item 25 in my findings below. This consists of an email between Executive officials, forwarding a press office briefing from the Home Office. The email does not fall within the scope of the request, but the associated briefing does. However, this briefing is duplicated entirely within item 26 and so my consideration of that item makes item 25 redundant.
37. Item 10 contains an email with two attachments, one of which duplicates entirely the minute contained in item 3. I have disregarded the duplicated minute where it appears in item 10 and considered this only under item 3. References below to the "the attachment to item 10" refer only to the second attachment, which is not duplicated elsewhere. Similarly, the covering email in item 4 is duplicated within item 5. I have considered this email only within item 4 and disregarded it within item 5. References to item 5 should be read as referring only to the email timed at 22:23 on 16 October 2003.
38. Items 4, 16, 23, 24 and 26 are only partly relevant to the request. Item 4 consists of an email sending two attachments, one containing a briefing and the other containing a list of contact details for officials. I do not consider the list of contact details to fall within the scope of the request. I do consider the email and the attached briefing (which I will refer to in what follows as the "relevant attachment" in item 4) to be relevant to the request.
39. Item 16 consists of a series of three emails. The final email (timed at 12:31 on 8 December 2003) was not communicated between the Executive and the Home Office and so it falls outwith the scope of the request. The email timed at 12:20, which incorporates an earlier email timed at 12:04, does fall under the scope of the request and is therefore considered in what follows below. I will refer to these emails as the "relevant emails" in item 16.



40. One email in item 23 (9 March 2004, 12:39) was exchanged within the Executive and so is not relevant to this request. The remainder of this item, including the attachment, is relevant. The Executive has indicated that it is now willing to release the relevant parts of item 23, and so it is not necessary for me to consider the application of any exemptions in relation to this item.
41. Item 24 consists of three emails, two of which were exchanged within the Executive and so these fall outside the scope of the request. Only the email dated 10 March 2004 and timed 12:08 falls within the scope of the request and will be considered below.
42. Item 26 consists of a series of emails and an attached press office briefing. Although the emails were sent between the Home Office and the Executive, they are not relevant to the request as they do not relate to the detention of children at Dungavel. The attached briefing does contain certain relevant information (as identified in correspondence between the Executive and the investigating officer), and this content has been considered below. The content that falls outside the scope of the request has not been considered further.

Information held in confidence having been supplied by UK Government

43. Under section 3(2)(a)(ii) of FOISA, information is not considered to be “held” by a Scottish public authority for the purposes of FOISA if it is held in confidence, having been supplied by a Minister of the Crown or by a department of the Government of the United Kingdom.
44. The Executive initially identified all of items 1 – 27 to be held for the purposes of FOISA, and responded to the applicant on that basis. However, in the course of the investigation, it alerted my Office that, having reconsidered certain items, it now considered information contained in items 13, 14 and 15 not to be held for the purposes of FOISA under the terms of section 3(2)(a)(ii).
45. My briefing on the exemption in section 28 of FOISA (available online here: <http://www.itspublicknowledge.info/legislation/briefings/section28.htm#six>) comments on section 3(2)(a)(ii) and what this means in practice. The effect of this section is to remove information that has been supplied in confidence by the UK Government from the scope of FOISA. Where this information is still held by the UK Government, however, it would fall under the scope of the Freedom of Information Act 2000 (FOIA), which applies to UK public authorities.



46. Where a person has requested information from a Scottish public authority and the information is not considered to be held by that authority by virtue of section 3(2)(a)(ii) of FOISA, I would expect that person to be advised by the authority that the information is not held for the purposes of FOISA. Section 15 of FOISA imposes a duty on Scottish public authorities, so far as it is reasonable to expect them to do so, to provide advice and assistance to a person who proposes to make, or has made, a request for information to them. I consider it reasonable to expect public authorities, who wish to argue that information is not held by them in terms of section 3(2)(a)(ii), to advise the person who has requested information that he/she has a right to request this information from the UK Government under FOIA and to provide reasonable advice on how he/she might do this.
47. My briefing on section 28 of FOISA envisages that information supplied by UK Government Departments and intended to be held in confidence would normally be clearly marked as such. There may be cases, however, where information without an “in confidence” or other protective marking appears to an authority to be sensitive. In such cases, the Scottish public authority will wish to confer with the relevant UK Government Department to determine the status of the information.
48. None of the documents that the Executive has submitted to me as having been supplied in confidence are explicitly marked as confidential. Also, I understand that when the Executive first consulted with the Home Office following the receipt of the applicant’s request, the issue of confidentiality was not raised. Following a request from my Office that it do so in the course of the investigation, the Executive sought the Home Office’s views on this matter. The Home Office’s response confirmed that it considered the documents associated with items 13, 14 and 15 to have been supplied in confidence.
49. Therefore, at a late stage in this investigation, the Executive provided me with information supporting its submission that the attachments associated with items 13, 14 and 15 (but not the emails sending these) are not held by the Executive for the purposes of FOISA. I am satisfied that the attachments associated with items 13, 14 and 15 are held by the Executive in confidence, having been supplied by a department of the Government of the United Kingdom. Therefore, I will not consider these attachments further in this decision.



50. However, I do not consider the emails to which these documents were attached to be held in confidence, having been supplied by the UK Government. The Executive's submissions on this point only referred to the attached documents and not the emails themselves, one of which was sent by the Executive and therefore was clearly not supplied by the Home Office. I have therefore concluded that these emails are held by the Executive for the purposes of FOISA, and I will consider these emails in what follows below. In item 15, only the email timed 16:30 is relevant to the request. The email timed at 16:38 will not be considered below as this was not exchanged between the Home Office and the Executive, and so falls outwith the scope of the request.
51. By failing to recognise that the documents attached to items 13, 14 and 15 were held in confidence for the purposes of section 3(2)(a)(ii), the Executive's responses to the applicant's information request failed to comply with section 17 of FOISA. Where information that has been requested is not held by the public authority to which that request is made, the authority should issue a notice under the terms of section 17 confirming that the information is not held. As no such notice was issued in this case, the Executive failed to comply with this requirement.
52. I also note that the Executive has not provided any advice to the applicant about how to make a request for the information held in confidence to the Department of the UK Government that supplied it, under the terms of FOIA. Had a notice under section 17 been issued in these circumstances, I would expect an authority to take the steps set out in paragraph 46 above. By failing to provide any such advice and assistance, I consider the Executive to have failed to comply fully with the duty to provide advice and assistance under section 15 of FOISA.
53. There is no obvious purpose to be served by requiring the Executive to take steps now to rectify this omission in this case. The holding department is clear from this decision and the process of making a request to the Home Office (and separate directorates within it) it is reasonably clear from its own website. However, I would remind authorities that they should identify at the earliest practicable opportunity where information requested of them is not information they hold but will (or is likely to) be found in the hands of another public authority (subject either to FOISA or FOIA) and to advise applicants accordingly.



Consideration of exemptions

54. Having confirmed which items among those initially identified require consideration in the remainder of my decision, I now turn to consider the application of exemptions. The Executive had relied upon the exemptions in section 36(1) and 30(b)(i) of FOISA only in relation to items which I have judged to fall outwith the scope of the request for information under consideration. In the light of this, it is no longer necessary for me to consider the application of these exemptions.
55. The Executive has indicated that, following reconsideration of its initial response to this request, it is willing to release items 6, 8 and the parts of item 23, which fall within the scope of the request. It is therefore not necessary for me to consider the application of any exemptions to (the relevant parts of) these items.
56. The remaining items under consideration, either in their entirety or in part, are items 2–5, 7, 9–10, 12–16, 18, 21, 24, 26 and 27. These include minutes of meetings between the Home Office and the Executive, and a meeting between these along with other parties. These also include exchanges between the Home Office and the Executive relating to the development of the Home Office's response to the HMIP and HMIE recommendations. Communications under consideration also relate to more general information sharing between the two administrations on Dungavel and related issues.
57. The Executive maintains that for each of the items under consideration, the contents that fall under the scope of the request are exempt under both section 28(1) and 30(b)(ii) of FOISA. It also maintains that the public interest in maintaining these exemptions outweighs the public interest in disclosure in each case. Item 12 is also considered by the Executive to contain certain information which is personal data for the purposes of DPA, release of which would breach the first data protection principle. As such, the Executive maintains that this information is also exempt under section 38(1)(b) of FOISA, read in conjunction with section 38(2)(a)(i).

Section 28 – relations within the United Kingdom

58. Section 28(1) states that information is exempt information if its disclosure under FOISA would, or would be likely to, prejudice substantially relations between any administration in the United Kingdom and any other such administration. Section 28(2) states that “administration in the United Kingdom” means the Government of the United Kingdom, the Scottish Administration, the Executive Committee of the Northern Ireland Assembly or the National Assembly for Wales.



59. In this case, section 28 has been applied on the basis that disclosure would prejudice substantially relations between the Scottish Administration (i.e. the Executive) and the Government of the United Kingdom (the UK Government).
60. The Executive's submissions on the application of section 28(1) state that the operation of Dungavel is the responsibility of the UK Government and so the documents identified in this case relate to a reserved policy. However, the Executive has also pointed out that it is vital that an uninhibited line of communications exists between the Executive and the UK Government on this subject, to ensure that Scottish Ministers are kept informed of the views and actions of the UK Government that may impact on devolved areas. It has noted further that the Ministers of the UK Government need to be aware of the background to issues that are often the subject of political and media enquiries to the Executive.
61. The Executive has stated that the documents under consideration are provided to the Executive on the basis that they remain "internal". As a result, it has judged that their release would undoubtedly prejudice relations with the UK Government. It has stated that release of these documents would cause real harm to the line of communication between the two administrations, and that any limitations on these communications would have repercussions for the effectiveness of Scottish government.
62. The Executive has confirmed that it consulted the Home Office to seek its views on the request for information under consideration. I understand that the Home Office indicated that the information should not be disclosed.

Conclusions on section 28(1)

63. Co-operative and constructive relationships between central government and the various devolved administrations are regarded as important given the constitutional arrangements established through devolution. Section 28(1) of FOISA assists in maintaining these relationships by exempting information from disclosure where this would, or would be likely to, prejudice substantially relations between UK administrations. That is not to say that information which any of the administrations would simply prefer not to be released, or which, if released, might cause a degree of irritation or embarrassment, should be withheld. Rather it is where the consequence of releasing the information would so significantly harm the relationship that cooperation and exchange would be (or would be likely to be) adversely affected to an appreciable extent or indeed cease altogether.



64. The location of Dungavel means that its operation has raised complex political and legal questions at both a Scottish and UK level. In these circumstances, the Home Office, as the department of the UK Government responsible for its operation, participates in a dialogue with the Executive. It is a matter of public record that this dialogue does take place, and did take place following the publication in 2003 of the HMIP and HMIE reports on Dungavel. This type of dialogue between administrations is one aspect of the overall relations between them.
65. I accept that revealing certain records of these communications would, or would be likely to, prejudice substantially relations between the two administrations, by diminishing the administrations' willingness to exchange information and views in the way that these documents reveal. I agree that disclosure of such information would, or would be likely to, prejudice substantially future engagement on matters of mutual interest and concern and would be likely to lead to that engagement being less forthright and full.
66. The Executive has stated that the importance of the continuation of an open line of dialogue on this subject means that all documents that it still considers exempt in this case fall under this exemption in their entirety. However, I am not persuaded that disclosure of all of the information under consideration in this case would, or would be likely to, prejudice substantially relations between the administrations.
67. Having considered the contents of these documents, I accept that the exemption in section 28(1) applies to items 7 and 9, the attachments to items 10, 18 and 21, the relevant parts of the attachment to item 26 and to item 27 in its entirety. I also accept that the exemption in section 28(1) applies to item 3, except for paragraphs 8 and 9, the first sentence of paragraph 10, and paragraph 17.
68. However, I do not accept that this exemption applies to item 2, those parts of item 3 detailed in paragraph 67 above, items 4 and 5, the email in item 10, item 12, or the relevant emails in items 13, 14 15, 16, 18, 21, and 24.
69. In reaching the conclusions set out in paragraphs 67 and 68 above, I have firstly drawn a distinction between information that I consider to directly reveal the substance of the dialogue between the Executive and the Home Office with regard to Dungavel, and information that relates to the process of that dialogue. As the existence of this dialogue is a matter of public record, I have generally concluded that documents which reveal the process of dialogue in action (but which do not necessarily reveal the substance of the exchanges) are not exempt under section 28(1).



70. Where documents directly reveal the substance of the dialogue (i.e. the actual content of information, requests, advice, or views on the topic of Dungavel exchanged between the administrations), I have often concluded that the Executive has correctly applied the exemption. However this is not always so.
71. In the case of item 2, I am of the view that the fact of, and the content of, the exchange between the Scottish Executive and the Home Office would not now or in the future be likely to prejudice substantially relations given that the fact of the exchange and its content were referred to by the First Minister in Parliament. The parts of item 3 that I have judged not to fall under the scope of this exemption contain information which is broadly factual. The attachment contained in item 4 sets out information collated and proffered by the Scottish Executive and does not contain any information received from the Home Office, or comment on any information provided or position taken by the Home Office. Item 12 discusses in largely general terms proposals in response to the HMIE report.
72. Section 28(1) is a qualified exemption, and so the public interest test contained in section 2(1)(b) of FOISA must be considered before reaching a final conclusion on whether the information falling under its scope should be disclosed. I will also address the public interest considerations raised in relation to the information detailed in paragraph 68 as if, contrary to my view, this information was also exempt under section 28(1). However, before considering the public interest as it relates to this case, I will first consider the application of the exemption in section 30(b)(ii).

Section 30(b)(ii) – free and frank exchange of views

73. Section 30(b)(ii) applies to information the disclosure of which under FOISA would, or would be likely to, inhibit substantially the free and frank exchange of views for the purposes of deliberation. In the course of my investigation, the Executive confirmed that it judged this exemption to apply to each item that it also considered exempt under section 28(1).
74. The exemption in 30(b)(ii) is closely related to that in 30(b)(i), which states that information is exempt information if its disclosure under FOISA would, or would be likely to, inhibit substantially the free and frank provision of advice. Together, the two exemptions in section 30(b) therefore allow for information to be withheld if its disclosure would inhibit substantially the imparting or commissioning of advice, or the offering or requesting of opinions or considerations.



75. The exemptions in section 30(b) acknowledge that the prospect of disclosure of information which reveals internal thinking processes may be detrimental to the ultimate quality of decision making within a public authority, and that this may lead to less candid and robust discussions, insufficient records being created, hard choices being avoided and ultimately the quality of government being undermined.
76. "Inhibit" is not defined in FOISA. However, I take the view that in this context it means to restrain, decrease or suppress the freedom with which opinions or options are expressed. "Deliberation" tends to refer to the evaluation of the competing arguments or considerations that may have an influence on a public authority's course of action.
77. I should be clear, however, that the test for the application of the exemption in section 30(b)(ii) is not simply that of whether information to which it is being applied does or does not contain or form part of a free and/or frank exchange of views for the purposes of deliberation. When information does contain or form part of such an exchange, then this may well lend weight to the case for the application of this exemption. Where it does not contain or form part of such an exchange, it may be less likely for the most part that this exemption will apply. However, in determining whether the exemption applies, the key test is that of whether the disclosure of any information (whether or not it contains a free and frank exchange of views) would, or would be likely, to have a substantially inhibitive effect on future exchanges.
78. The applicant has commented upon the Executive's use of this particular exemption and suggests that Ministers use this exemption to avoid answering pertinent questions, leading to less openness, transparency and accountability.
79. In my view, the standard to be met in applying the test in section 30(b)(ii) is high. When considering the application of this exemption, each request should be considered on a case by case basis, taking into account the effects anticipated from the release of the particular information involved. For example, this would involve considering:
- a) the nature of the information, and whether it does actually contain an exchange of views
 - b) the subject matter of an exchange of views
 - c) the content of an exchange of views
 - d) the manner in which an exchange of view is expressed, and
 - e) whether the timing of release would have any bearing (releasing advice or views whilst a decision was being considered, and for which further views were still being sought, might be more substantially inhibiting than once a decision has been taken).



80. In this case, the Executive's submissions in relation to the application of section 30(b)(ii) overlap considerably with those in relation to section 28(1). The case made on the application of section 28(1) has emphasised the importance of open channels of communications with the UK Government on matters of mutual concern, and the harm that might be done to these through disclosure in this case. However, section 30(b)(ii) relates to a sub-set of overall communications, applying where disclosure would, or would be likely to, inhibit substantially the free and frank exchange of views for the purpose of deliberation.
81. I have considered the application of section 30(b)(ii) to the items that fall under the scope of the applicant's request, and to which the Executive has applied section 30(b)(ii), except where I have already concluded that these are exempt under section 28(1). The items in relation to which I have considered the application of section 30(b)(ii) are item 2, those parts of item 3 detailed in paragraph 67 above, items 4 and 5, the email in item 10, item 12, and the relevant emails in items 13, 14 15, 16, 18, 21, and 24. In each case I have looked carefully at the content of the information in the context of the criteria set out above and have considered the arguments put forward by both parties.
82. I am satisfied that the exemption in section 30(b)(ii) has been correctly applied to some parts of the relevant attachment to item 4, These are the second and third paragraphs of section 5 and the whole of section 7. I am also satisfied that this exemption applies to item 5. Within item 12, I am satisfied that the following parts are exempt under section 30(b)(ii):
- a) Within the main minute of the meeting, the third paragraph (the first full paragraph on the second page), the seventh paragraph (immediately preceding the heading "The HO Action Plan" and the final paragraph (starting "I said"), including the three associated bullet points.
 - b) Within the documents following the main minute, all content on the page headed "Additional Issues and Recommendations.
83. However, I am not persuaded that this exemption has been correctly applied in relation to item 2, the parts of item 3 specified in paragraph 67 above, the relevant attachment to item 4 (other than the parts of sections 5 and 7 specified above), item 12 (other than those parts specified above), or the relevant emails in items 4, 10,13, 14, 15, 16, 18, 21 and 24.
84. As in relation to my conclusions on the application of section 28(1), the conclusions set out in paragraphs 82 and 83 above are prompted in part by a distinction between information revealing the process and items revealing the substance of dialogue between the Home Office and the Executive (and others) on the subject of the detention of children at Dungavel.



85. However, disclosing the substance of the exchanges would not necessarily inhibit substantially the free and frank exchange of views for the purposes of deliberation. In the case of item 2, I am of the view that the fact of, and the content of the exchange between the Scottish Executive and the Home Office should be disclosed given that the fact of the exchange and its content were referred to by the First Minister in Parliament. The non-exempt parts of item 3 contain information which is broadly factual. The relevant attachment to item 4 summarises some political and civic society representations and activity on the issue of the detention of children in Dungavel and where relevant the Executive's response. For the most part this is matter of fact except for the exempt parts of sections 5 and 7 where the commentary is free and frank and to my mind would, or would be likely to, be inhibited substantially in the future if released. Item 12 (excluding the parts specified above) discusses in largely general terms proposals in response to the HMIE report.

Consideration of the public interest

86. Sections 28(1) and 30(b)(ii) are both qualified exemptions. This means that where they are judged to apply, a public authority must go on to consider the public interest test contained in section 2(1)(b) of FOISA. This requires consideration of whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs that in disclosing the information. If the two are evenly balanced, the presumption should always be in favour of disclosure.
87. Both the applicant and the Executive made submissions on the public interest as it relates to the information under consideration in the course of my investigation. As these were made in general terms that did not distinguish between the public interest as it relates to each exemption separately, I will summarise these submissions first before going on to set out my conclusions on the balance of public interest which apply equally to both exemptions.
88. In so doing I am applying this test to those items which I view as having had an exemption properly applied, and also to those items which I have held are not subject to an exemption as if, contrary to this view, the exemptions claimed did apply.

The Executive's submissions on the public interest

89. The Executive has acknowledged the benefits of disclosure of the information it holds, observing that the more transparent its work is, the greater the level of trust will be in its decisions. It has acknowledged further that this is particularly the case with an issue such as Dungavel, which continues to arouse the concerns of relevant bodies and the wider public.



90. However, the Executive has also noted that there is a real danger to its position should the information under consideration in this case be disclosed. It notes that it would not be in the public interest to cause damage to the Executive's role in representing these interests to the UK Government. The Executive has pointed out that it also needs to be able to approach the Home Office in relation to its own interests regarding Dungavel.
91. The Executive has acknowledged that in some instances release of further information may contribute to public debate, but has concluded that the content of the documents concerned would not add any substantial value to this. The Executive therefore concluded in relation to each item under consideration that the public interest in maintaining the exemptions in sections 28(1) and 30(b)(ii) outweighed the public interest in disclosure of the information.

The applicant's submissions on the public interest

92. Mr Hirst, on behalf of the applicant, also made a submission in relation to this case. In doing so, he did not have the benefit of having access to the information under consideration.
93. However, he submitted that the matter to which these items relate was clearly in the public interest and noted that these communications relate to the "effective imprisonment" of children and raised wider public concerns about UK immigration legislation "usurping" Scots law, particularly as it relates to the Children (Scotland) Act 1995.
94. He also noted that a number of children detained in Dungavel had been deported following referral to the Scottish Children's Reporter Administration (a devolved public body), and before the Reporter had time to complete their investigations. He suggested that these children were all deported on grounds that highlighted that they were at risk from people within the family group; and that no effort was made to ensure the welfare of these children after they were deported.
95. He submitted that this practice and the involvement of the Scottish Executive and officials are therefore very much in the public interest and that the public should know that actions that are effectively taken in their name by ministers do not lead to instances where vulnerable children are placed in moral and physical danger. He stated that, from a Scottish perspective, the public have strong moral grounds to know whether or not Scots legislation is being undermined for what the applicant considers appears to be politically driven policy making at UK level.



Findings on the public interest

96. The issues around the detention of children at Dungavel raise questions that are of clear public interest both at a UK and Scottish level. A wide range of groups, both political and non-political, have raised concerns about the wellbeing of the children concerned and the moral legitimacy of detaining children in this context.
97. Furthermore, the 2003 HMIP and HMIE reports made clear that there are real concerns about the welfare and wellbeing of children who are held in this environment for extended periods. I also note that the publicly available 2005 report on HMIP's inspection of Dungavel in 2004 expressed continued concerns about the welfare and education of children in the centre, and observed that no progress had been made on key recommendations from the 2003 report.
98. While detention of children is a matter of legitimate and serious public concern in any part of the UK, the location of Dungavel in Scotland raises further complex political, legal and constitutional questions about the responsibilities of the Scottish Parliament and Executive for the wellbeing of individuals who are detained in Scotland under powers that are reserved to the UK Government.
99. The circumstances of this case raise compelling and competing arguments about how the public interest is best served. On one side, the Executive has made a strong case to the effect that the public interest requires that it is able to participate in open and candid dialogue with the UK Government on Dungavel as a matter of mutual interest and concern. Through these channels, the Executive is able to ensure that its own interests and those of the Scottish public are represented and taken into consideration by the Home Office as it formulates its policy in this area. This type of communication contributes to the continued successful operation of the devolution settlement and, for it to continue to do so, candid discussions on sensitive matters will require a degree of privacy.
100. I have already concluded that disclosure of much of the information under consideration in this case would, or would be likely to, prejudice substantially the relations between the Executive and the UK Government, or inhibit substantially the free and frank exchange of views for the purpose of deliberation. I also accept that disclosure could, in the circumstances of this particular case, be contrary to the public interest, by threatening the effectiveness of government at both the Scottish and UK level.
101. On the other side, the particular circumstances surrounding Dungavel mean there is also a strong competing public interest in favour of disclosing this information despite the harm this might cause.



102. I am aware that, on 11 September 2003, the Scottish Parliament passed a motion calling upon the UK Government to take immediate action to implement the recommendations of the HMIP and HMIE reports and calling upon the Executive to convey the Parliament's concerns to the UK Government. The public interest would be served where disclosure of information would reveal the steps taken by the Executive to represent the will of the Scottish Parliament to the Home Office.
103. The public interest would also favour release should the disclosure of information contribute to public debate or understanding on this matter of significant public concern, or enable greater understanding of the devolution settlement, particularly as it relates to the interaction between devolved and reserved powers in this area.
104. It is not however sufficient, if it were possible, to conclude that in all respects one side of the public interest argument prevails without regard to the specific content of the information. I have already concluded that the Executive was not correct to withhold certain of the information for which it claimed exemption. If, contrary to this view, the exemptions did apply then I would conclude that it was in the public interest for this information to be released, and that this would outweigh the public interest in maintaining the exemptions.
105. In coming to this conclusion I believe, in all the circumstances of the case, the balance of the public interest is tipped in favour of gaining an insight into which authorities were involved in discussing the detention of children at Dungavel and what if any responsibilities they exercised. The public debate over Dungavel in part expressed a frustration at what, if any, role the Scottish Executive had with regard to the detention of children and what exchanges it had with the Home Office on this matter. The information which I believe should be released will assist in illuminating the respective roles and the fact of and some of the nature of the exchanges which took place. I have indicated that this can be done without prejudicing substantially relations within the United Kingdom (as exempted by section 28(1)) or without inhibiting substantially the free and frank exchange of views (as exempted by section 30(b)(ii)). However, if, contrary to this view, this is not the case then I consider that the public interest in disclosure would outweigh the public interest in the maintenance of the exemptions.



106. Where I have determined that the exemptions should apply then I have considered the content of the information withheld carefully. In each case I have come to the view that the public interest lies in maintaining the exemption. This is because the harm which would be done would not be justified with respect to the actual information which would be put into the public domain. There is a general interest in the disclosure of information but having regard to the specific content of what is covered by the exemptions I have concluded that, the contribution that disclosure of these items would make to public understanding and debate on the subject of Dungavel is limited, and as such, the public interest in favour of release would not outweigh that in maintaining the exemption in this case.

Section 38(1)(b) – personal data

107. The Executive had submitted to me that certain parts of item 12 are exempt under section 38(1)(b) of FOISA, which, read in conjunction with section 38(2)(a)(i), exempts from disclosure to a member of the public information which is personal data as defined in the Data Protection Act 1998, where disclosure would breach any of the data protection principles. Having already found that the relevant information is exempt from disclosure under another exemption (section 30(b)(ii)), and that the public interest in maintaining the exemption outweighs that in disclosure of the information, I take the view that consideration of the exemption in section 38 in this decision is unnecessary.

Decision

I have found that the Scottish Executive (the Executive) failed to comply fully with the requirements of Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in its response to the information request made by Mr Hirst on behalf of Ms Grahame.

I have found that the Executive failed to advise the applicant under the terms of section 17 of FOISA that the attachments in items 13, 14, and 15 were not held by the Executive for the purposes of section 3(2)(a)(ii) of FOISA. By failing to advise the applicant of how to request this information under the terms of the Freedom of Information Act 2000 from the UK Government department that had supplied it, I also find that the Executive failed to fully comply with the duty to advise and assist requestors under section 15 of FOISA. I do not require any steps to be taken in relation to these technical breaches.

I have found that the Executive correctly applied the exemption in section 28(1) to a number of items requested by the applicant. I also found that the exemption in section 30(b)(ii) applies to a number of further items (which I found not to be exempt under section 28(1)).



For all items that I judged to be exempt, I also found that the public interest in maintaining the relevant exemption outweighed the public interest in disclosure of the information. Therefore, I conclude that the Executive acted in accordance with Part 1 of FOISA by withholding this exempt information.

However, I have found that the Executive failed to comply with the requirements of section 1(1) of FOISA by withholding certain information. I have found in a number of instances that neither the exemption in section 28(1) nor that in section 30(b)(ii) of FOISA applied to the information under consideration. In order to comply with the requirements of section 1(1) of FOISA, I now require this non-exempt information to be disclosed to the applicant.

My conclusions and any steps required in relation to each item under consideration in this decision are summarised in the table appended to this document. This table forms part of this decision notice.

In order to comply with Part 1 of FOISA, I require the Executive to take the steps specified above and in the appended table within 2 months of the receipt of this notice.

Kevin Dunion
Scottish Information Commissioner
21 September 2006



Appendix – Summary of decision in relation to each item under consideration

Note – where the exemption in section 28(1) was found to apply to an item listed below, my decision does not go on to consider the application of section 30(b)(ii). In each case where section 30(b)(ii) was judged to apply, it can therefore be inferred that section 28(1) was found not to apply to the relevant information.

No.	Executive position	Commissioner's decision and steps required
1	Outwith scope of request	<ul style="list-style-type: none">• Outwith scope of request.
2	Exempt: sections 28(1), 30(b)(ii)	<ul style="list-style-type: none">• Not exempt – disclose.
3	Exempt: sections 28(1), 30(b)(ii)	<ul style="list-style-type: none">• Paragraphs 8, 9, the first sentence of paragraph 10 and paragraph 17 are not exempt – disclose these parts.• Remaining content is exempt under section 28(1). Public interest favours the maintenance of the exemption - withhold exempt parts.
4	Exempt: sections 28(1), 30(b)(ii)	<ul style="list-style-type: none">• Attachment containing contact details falls outwith scope of request.• Relevant attachment (briefing) - Second and third paragraphs of sections 5 and the whole of section 7 are exempt under section 30(b)(ii). Public interest favours maintenance of the exemption – withhold exempt parts.• Remaining parts of the relevant attachment are not exempt – disclose remaining parts.• Email is not exempt – disclose.
5	Exempt: sections 28(1), 30(b)(ii)	<ul style="list-style-type: none">• email timed at 8:53 duplicates that in item 4. Disregard in item 5.• Email timed at 22:23 is exempt under section 30(b)(ii). Public interest favours the maintenance of the exemption – withhold.
6	Executive now willing to release	<ul style="list-style-type: none">• Disclose.
7	Exempt: sections 28(1), 30(b)(ii)	<ul style="list-style-type: none">• Exempt under section 28(1). Public interest favours the maintenance of the exemption – withhold.
8	Executive now willing to release	<ul style="list-style-type: none">• Disclose
9	Exempt: sections 28(1), 30(b)(ii)	<ul style="list-style-type: none">• Exempt under section 28(1). Public interest favours the maintenance of the exemption – withhold.
10	Exempt: sections 28(1), 30(b)(ii)	<ul style="list-style-type: none">• First attachment is exempt under section



		<p>28(1). Public interest favours the maintenance of the exemption – withhold first attachment.</p> <ul style="list-style-type: none"> • Second attachment duplicates item 3 – disregarded in item 10. • Email is not exempt – disclose email.
11	Exempt: sections 28(1), 30(b)(ii)	<ul style="list-style-type: none"> • Outwith scope of request.
12	Exempt: sections 28(1), 30(b)(ii), 38(1)(b)	<ul style="list-style-type: none"> • Third, seventh and final paragraph (including bullets) in main minute, and content of page headed “additional issues and recommendations” is exempt under section 30(b)(ii). (See full description in paragraph 82.) Public interest favours the maintenance of the exemption – withhold exempt parts. • Remaining content is not exempt – disclose remaining parts. • (Section 38(1)(b) not considered as relevant content already judged to be exempt.)
13	Section 3(2)(a)(ii) - Not held for purposes of FOISA. Also considered exempt: sections 28(1), 30(b)(ii)	<ul style="list-style-type: none"> • Attached documents are not held by the Executive for the purposes of FOISA. • Covering email is held for purposes of FOISA and is not exempt – disclose email.
14	Section 3(2)(a)(ii) - Not held for purposes of FOISA. Also considered exempt: sections 28(1), 30(b)(ii)	<ul style="list-style-type: none"> • Attached documents are not held by the Executive for the purposes of FOISA. • Covering email is held for purposes of FOISA and is not exempt – disclose email.
15	Section 3(2)(a)(ii) - Not held for purposes of FOISA. Also considered exempt: sections 28(1), 30(b)(ii)	<ul style="list-style-type: none"> • Attached documents are not held by the Executive for the purposes of FOISA. • Email timed 16:38 falls outwith scope of request. • Email timed 16:30 is held for the purposes of FOISA and is relevant to the request and is not exempt – disclose email timed 16:30.
16	Part of document falls outwith scope of request. Relevant sections exempt: sections 28(1), 30(b)(ii)	<ul style="list-style-type: none"> • Email of 8 December 2003, 12:31 falls outwith scope of request. • Relevant emails (8 December 2003, 12:20 incorporating the earlier email timed 12:04) not exempt – disclose relevant emails.



17	Part of document falls outwith scope of request. Relevant sections exempt: sections 28(1), 30(b)(ii)	<ul style="list-style-type: none"> • Outwith scope of request.
18	Exempt: sections 28(1), 30(b)(ii)	<ul style="list-style-type: none"> • Attachment is exempt under section 28(1). Public interest favours the maintenance of the exemption – withhold attachment. • Email is not exempt – disclose email.
19	Exempt: sections 28(1), 30(b)(i)	<ul style="list-style-type: none"> • Outwith scope of request.
20	Exempt: section 28(1), 30(b)(i) & (ii), 36(1)	<ul style="list-style-type: none"> • Outwith scope of request.
21	Exempt: sections 28(1), 30(b)(ii)	<ul style="list-style-type: none"> • Attachment is exempt under sections 28(1). Public interest favours the maintenance of the exemption – withhold attachment. • -Email is not exempt – disclose email.
22	Exempt: section 28(1), 30(b)(i) & (ii), 36(1)	<ul style="list-style-type: none"> • Outwith scope of request
23	Part of item falls outwith scope of the request. Willing to release the relevant sections	<ul style="list-style-type: none"> • Email timed 12:39 falls outwith scope of request. • Disclose email timed 12:19 and attachment.
24	Part of item falls outwith scope of request. Relevant sections exempt: sections 28(1), 30(b)(ii)	<ul style="list-style-type: none"> • Emails timed 13:47 and 12:14 are outwith scope of request. • Email timed 12:08 falls within scope of the request and is not exempt - disclose email timed 12:08.
25	Part of item falls outwith scope of the request. Remaining parts exempt: sections 28(1), 30(b)(ii)	<ul style="list-style-type: none"> • Email falls outwith scope of request. • Attached document is duplicated entirely in item 26. Version in item 25 disregarded.
26	Exempt: sections 28(1), 30(b)(ii) Certain parts of attachment are not relevant to the request.	<ul style="list-style-type: none"> • Emails are outwith the scope of the request. • Relevant parts of attachment are exempt under section 28(1). Public interest favours the maintenance of the exemption – withhold.
27	Exempt: sections 28(1), 30(b)(ii)	<ul style="list-style-type: none"> • Entirely exempt under section 28(1). Public interest favours the maintenance of the exemption - withhold