

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 13 October 2009

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

Summary

The complainant requested information in relation to the periodic meetings held between the Prime Minister and the Multinational Chairmen's Group. The public authority withheld the information held by virtue of the exemption at section 35(1)(a) of the Act (Formulation and Development of Government Policy), and concluded that the public interest was in favour of maintaining the exemption. After considering the case, the Commissioner finds that the public authority correctly applied 35(1)(a) to the information held. He decided that in all the circumstances of the case, the public interest in maintaining the exemption did not outweigh the public interest in disclosure. The Commissioner therefore finds the public authority in breach of sections 1(1)(b) (Access to Information held by public authorities) and 10(1) (Time for Compliance with Request) for failing to disclose the withheld information at the time of the request.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 24 January 2008, the complainant requested the following information:
 - 'Minutes of any meetings between the Multinational Chairmen's Group and the Prime Minister or any of his officials,

- Correspondence between the Multinational Chairmen's Group and the Prime Minister or any of his officials, and
 - Any other information relating to meetings between the Multinational Chairmen's Group and the Prime Minister or any of his officials.'
3. The complainant specified that the information provided should cover the period from 04 January 2005 to the date of his requests.
 4. On 21 February 2008, the public authority confirmed it held information relating to the request but refused to disclose this information by virtue of the exemption at section 35(1)(a) of the Act. It also concluded that the public interest was in favour of maintaining the exemption.
 5. On 26 February 2008, the complainant requested an internal review.
 6. On 02 June 2008, the public authority provided the complainant with the outcome of the review. In summary, it concluded that some of the previously withheld information could be disclosed to the complainant but upheld the application of section 35(1)(a) to the remainder of the information. Specifically, the date of the meeting, the main issues under consideration, and the names of the attendees as well as the companies they represent were disclosed.

The Investigation

Scope of the case

7. On 03 June 2008 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider whether the information requested was correctly withheld under section 35(1)(a) and if applicable, also consider where the balance of the public interest lies.
8. The complainant also asked the Commissioner to consider whether a redacted version of the withheld information could be disclosed, and also drew the Commissioner's attention to his ruling in case FS50086299 on a similar subject matter.

Chronology

9. On 15 June 2009, the Commissioner wrote to the public authority requesting its submissions on the application of the exemption at section 35(1)(a) as well as a copy of the withheld information.
10. On 17 July 2009, the public authority responded to the Commissioner's queries. A copy of the withheld information was also provided by the public authority on 21 July 2009.

11. On 24 July 2009, the Commissioner requested some clarification in relation to the information held by the public authority within the scope of the requests.
12. Specifically, the Commissioner asked the public authority to clarify the number of meetings which took place between the relevant parties within the period specified in the requests. He also asked the public authority to clarify whether there was any background material (used to inform discussions) produced for such meeting(s).
13. The public authority responded on 04 September 2009.

Analysis

14. A full text of the statutory provisions referred to below can be found in the Legal Annex.

Exemptions

Section 35(1)(a)

15. Information is exempt from disclosure under section 35(1)(a) if it relates to the formulation or development of government policy. Section 35(1)(a) is a qualified exemption and therefore the information has to be disclosed if in all circumstances of the case, the balance of the public interest lies in favour of disclosure.
16. The withheld information consists of the minutes of a meeting in October 2005 between the Prime Minister and the Chairmen of a number of multinational companies. The discussions focussed on a number of issues including China, G8/climate change, and the UK tax regime.
17. The public authority confirmed that the meeting of 11 October 2005 was the only meeting which took place in the relevant period and that the information it had provided to the Commissioner comprised of all the pertinent information it holds regarding that meeting and consequently the requests. The public authority however also explained that; *'...the Prime Minister's office does not retain all information that passes through it. Where a matter is of primary concern to another department, documents will be referred to that department and not necessarily kept on file in the Cabinet office.....it is therefore possible that other papers on this subject may exist but be held by other departments.'*
18. According to the public authority, the meeting allowed participants to freely air their views on subjects of particular concern in order to help inform and develop government policy. The government considers such meetings form part of the process of developing government policy as it is a useful way of gathering information and obtaining the view of key players which may then constitute one element in the development of government policy. The public authority also drew

the Commissioner's attention to the position he took regarding the application of section 35(1)(a) in case FS50086299.

19. Case FS50086299 involved the same complainant in this case. His requests are also essentially the same, the only major difference being that the requests in the present case relate to information produced between 04 January 2005 and 24 January 2008 as opposed to his previous requests which covered the period up to 04 January 2005.
20. Although the Commissioner took the view in case FS50086299 that the information withheld was correctly exempt from disclosure under section 35(1)(a), he generally decides each case on its particular merits. Furthermore, the information withheld in case FS50086299 consisted of the Prime Minister's briefing notes (rather than the actual minutes) and background material relating to two meetings with the multinational companies.
21. The purpose of the meeting as pointed out by the public authority was to allow the participants to freely air their views on a number of subject matters in order to inform and develop the government's policies on those subject matters. Having reviewed the minutes, the Commissioner is persuaded that the views expressed by the participants were indeed aimed at informing and arguably influencing the government's policies regarding the subject matters under consideration.
22. Although both could be used interchangeably, 'Formulation' suggests the early stages of government policy. 'Development' on the other hand implies a review of existing policy which may result in alterations. The Information Tribunal has also noted that 'relates to' could be safely given a broad interpretation so that it would not be necessary to consider whether any of the withheld information deviates from section 35(1)(a) activities. It is sufficient therefore that the context in which it was produced and the subject matter cover section 35(1)(a) activities.¹
23. The Commissioner therefore finds that the exemption was correctly engaged in respect of the withheld information in the minutes of the meeting of 11 October 2005.

Public interest arguments in favour of disclosing the requested information

24. The public authority pointed out that there is a strong public interest in being open about how the government formulates policy concerning business and industry. It explained that as the members of the multinational chairmen's group are heads of companies which affect the lives of millions of people in the UK, it was important that any influences they could have on government policy should be open to public scrutiny.
25. The public authority also explained that it would not be in the public interest for there to be any suggestion of improper influence on government policy, and that disclosure would allow for a more informed public debate and increase public confidence in the conduct of government policy making.

¹ DfES v Information Tribunal & the Evening Standard EA/2006/0006 (paragraphs 53-58)

Public interest arguments in favour of maintaining the exemption

26. According to the public authority, meetings of the multinational chairmen's group occur periodically.
27. It argued there was a strong public interest that participants at such meetings should be able to debate issues in a free and frank manner without fear that their discussions will be disclosed prematurely. It explained that many of the topics under discussion are still live issues and the participants would not have expected the contents of the meeting to be disclosed so soon afterwards.
28. It further argued that given the uniquely well-informed positions held by the participants, it would not be in public interest for the government to be deprived of the benefit of their views.
29. The public authority also explained that one of the benefits of the meetings is that the Chairmen are able to speak frankly concerning the economic and political regimes of foreign countries because they are assured of confidentiality. It therefore argued that were their views to be disclosed, their business relationships with other countries may be harmed which might also make them less candid in the future for fear of damaging their commercial interests.
30. More generally, the public authority argued that disclosure of the minutes in this case could also inhibit chairmen of giving their views freely and frankly in future meetings, consequently lessening the value of their contributions.

Balance of the public interest arguments

31. The Commissioner agrees with the strong public interest arguments presented in favour of disclosure by the public authority. He specifically considers that significant weight should be given to the argument that the views expressed by multinational companies to the government regarding policies which directly or indirectly affect their business should be open to public scrutiny. As elected representatives, it is of overriding importance that the government remains accountable to the electorate and is not unduly influenced by any special interests. Furthermore, there is a strong public interest in giving an opportunity for others to challenge the views expressed by private interests.
32. Similarly, significant weight also needs to be attached to the argument if disclosure could deprive the government of the benefit of the opinions held by the chairmen of the multinational companies regarding various subject matters. As leaders in their various business fields, their well-informed opinions are an important tool in the policy making and development process, and to effectively contribute to the policy deliberation process, they need to be able to freely and frankly express those opinions.
33. Furthermore, it is reasonable to argue that with the introduction of the Act in January 2005, the participants at the meeting should not have assumed their discussions would remain confidential. However, it is also plausible to argue that,

if, as the public authority has concluded, the subject matters under discussion are still 'live', the participants would have been right to assume that information which could potentially prejudice their commercial interests abroad would not be disclosed. The question of whether the subject matters under discussion could be accurately described as 'live' is further considered below. The Commissioner is however persuaded that the potential prejudice to the commercial interests of the participants is a relevant consideration here because it could inhibit them from freely and frankly expressing their views in future meetings and consequently have a negative impact on the quality of the policy making process.

34. In addition, given that business leaders attending such meetings are highly likely to also use it as an opportunity to influence government policy to their own advantage, the Commissioner is not persuaded by the general argument that disclosure would have a chilling effect on the frankness of their views.² However, he accepts that they would be less likely to freely express their views if disclosure could potentially harm their commercial interests. Consequently therefore, this would also have a detrimental impact on the quality of the government's policy making process.
35. The nature of the withheld information is also of importance in assessing where the balance of the public interest lies. As already noted, the minutes summarise the views expressed by the participants regarding a number of different subject matters. There is no evidence as far as the Commissioner can see that any undue influence was being placed on the government in relation to the direction of its policies with regards the issues under consideration. Nevertheless, the Commissioner is of the opinion that there is still a strong public interest in knowing the full picture of matters discussed at the meeting and letting the public decide this for themselves.
36. Furthermore, in the Commissioner's opinion, the minutes reveal observations rather than detailed free and frank discussions on current international/global issues. They reveal nothing about the business intentions of the participants and are the sort of comments they could have made on a public platform.
37. In addition, the Commissioner is not persuaded that all of the issues discussed at the meeting could accurately be described as 'live' at the time of the request. The discussions on climate change at the Gleneagles G8 summit are quite specific to the decisions reached at that summit. In relation to the UK tax regime, he is also of the opinion that the discussions focussed on a specific issue in relation to recent tax decisions. The Commissioner however accepts the discussions on China could be described as 'live' but given the general nature of the comments made by the participants in relation to China, he is not persuaded that disclosure would be likely to have a chilling effect.
38. The timing of the request is also crucial. As already noted, the meeting took place in October 2005, and the request was made in January 2008. In the Commissioner's opinion, the length of time that had passed from the date of the

² The Information Tribunal also made a similar point in *Evans v ICO & MOD EA/2006/0064* (paragraph 33)

meeting to when the request was made is enough to mitigate any possible chilling effect from disclosure.

39. Therefore, although the Commissioner accepts that the arguments presented in favour of maintaining the exemption should be given weight if the disclosure would be likely to have the effects identified by the public authority. He has decided that in light of the timing of the request as well as the contents of the minutes, the effects on the policy process protected by section 35(1)(a) would not be significant. He finds that the public interest is in favour of disclosure.
40. He therefore finds that in all the circumstances of the case, the public interest in disclosing the minutes of the meeting outweigh the public interest in maintaining the exemption.
41. The Commissioner would however like to record that the discussions on climate change fall within the definition of 'environmental information' under the Environmental Information Regulations 2004 (EIR). However, given the outcome under section 35(1)(a), he cannot see how any arguments provided would support a different outcome under the EIR.

Procedural Requirements

42. In light of his decision regarding the last paragraph of the minutes, he also finds the public authority in breach of section 1(1)(b) and 10(1) for failing to disclose this information at the time of the requests.

The Decision

43. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
 - It incorrectly withheld the minutes of the meeting of 11 October 2005 under section 35(1)(a) of the Act.

Steps Required

44. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
 - Provide the complainant with a copy of the minutes of the meeting of 11 October 2005.
45. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

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

Other matters

47. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
48. Part VI of the section 45 Code of Practice (the “section 45 code”) makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his *‘Good Practice Guidance No 5’*, published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner is concerned that in this case, it took over 60 working days for an internal review to be completed, despite the publication of his guidance on the matter.
49. In relation to desirable practice regarding the transferral of requests for information, paragraph 17 of the section 45 code states:
- “If the authority has reason to believe that some or all of the information requested, but which it does not hold, is held by another public authority, the authority should consider what would be the most helpful way of assisting the applicant with his or her request.”
50. Paragraph 18 of the section 45 code clarifies the actions a public authority should consider undertaking in such instances:
- “In most cases this is likely to involve:
- contacting the applicant and informing him or her that the information requested may be held by another public authority;
 - suggesting that the applicant re-applies to the authority which the original authority believes may hold the information; and
 - providing him or her with contact details for that authority.”
51. In its letter to the Commissioner of 4 September 2009, the public authority raised the possibility that information falling within the scope of the request might be held

by other public authorities. The Commissioner notes that the public authority did not advise the complainant of this possibility and he directs the authority to follow the recommendations of the section 45 code in its future handling of requests.

Right of Appeal

52. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 13th day of October 2009

Signed

**Steve Wood
Assistant Commissioner**

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

Legal Annex

General Right of Access

Section 1(1) provides that -

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

Section 1(2) provides that -

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

Section 1(3) provides that –

“Where a public authority –

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”

Section 1(4) provides that –

“The information –

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”

Section 1(5) provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

Section 1(6) provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.”

Time for Compliance

Section 10(1) provides that –

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

Section 10(2) provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.”

Section 10(3) provides that –

“If, and to the extent that –

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

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

Section 10(4) provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

Section 10(5) provides that –

“Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.”

Section 10(6) provides that –

“In this section –

“the date of receipt” means –

- (a) the day on which the public authority receives the request for information, or
- (b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”

Formulation of Government Policy

Section 35(1) provides that –

“Information held by a government department or by the Welsh Assembly Government is exempt information if it relates to-

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

Section 35(2) provides that –

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

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

Section 35(3) provides that –

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

Section 35(4) provides that –

“In making any determination required by section 2(1)(b) or (2)(b) in relation to information which is exempt information by virtue of subsection (1)(a), regard shall be had to the particular public interest in the disclosure of factual information which has been used, or is intended to be used, to provide an informed background to decision-taking.”

Section 35(5) provides that –

“In this section-

"government policy" includes the policy of the Executive Committee of the Northern Ireland Assembly and the policy of the Welsh Assembly Government;

"the Law Officers" means the Attorney General, the Solicitor General, the Advocate General for Scotland, the Lord Advocate, the Solicitor General for Scotland, the Counsel General to the Welsh Assembly Government, and the Attorney General for Northern Ireland;

"Ministerial communications" means any communications-

- (a) between Ministers of the Crown,
- (b) between Northern Ireland Ministers, including Northern Ireland junior Ministers, or
- (c) between members of the Welsh Assembly Government,

and includes, in particular, proceedings of the Cabinet or of any committee of the Cabinet, proceedings of the Executive Committee of the Northern Ireland Assembly, and proceedings of the Cabinet or any committee of the Cabinet of the Welsh Assembly Government;

"Ministerial private office" means any part of a government department which provides personal administrative support to a Minister of the Crown, to a Northern Ireland Minister or a Northern Ireland junior Minister or any part of the administration of the Welsh Assembly Government providing personal administrative support to the members of the Welsh Assembly Government;

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