

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 26 September 2011

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

#### Decision (including any steps ordered)

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1. The complainant has requested information about restrictions on the rights of Romanian and Bulgarian nationals to work in the UK following the accession of those countries to membership of the EU in 2007. The Cabinet Office refused to disclose this information and cited several exemptions from the FOIA.
2. The Commissioner's decision is that the Cabinet Office applied the exemption provided by section 35(1)(b) (information relating to Ministerial communications) of the FOIA correctly and so it is not required to disclose this information.

#### Request and response

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3. On 4 May 2010, the complainant wrote to the Cabinet Office and requested information in the following terms:

*"...information regarding the imposition of employment restrictions on Romania and Bulgaria when they joined the European Union on 1.1.2007."*

4. The Cabinet Office responded on 2 June 2010. It stated that the information would not be disclosed, with the exemption provided by section 35(1)(b) (information relating to Ministerial communications) of the FOIA cited.
5. Following an internal review the Cabinet Office wrote to the complainant on 14 June 2011. It stated that the refusal of the request was upheld, with the following exemptions now cited:  
  
27(1)(a) (prejudice to relations between the UK and any other State)

27(1)(c) (prejudice to the interests of the UK abroad)

27(1)(d) (prejudice to the promotion or protection by the UK of its interests abroad)

35(1)(a) (information relating to the formulation or development of government policy)

35(1)(b) (information relating to Ministerial communications)

## Scope of the case

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6. The complainant contacted the Commissioner on 15 June 2011 to complain about the way his request for information had been handled. The complainant indicated at this stage that he believed that the Cabinet Office should have considered disclosing the requested information in edited form, with exempt content redacted, rather than withholding the information in its entirety.

## Reasons for decision

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7. The Commissioner has focussed on section 35(1)(b). This section provides an exemption for information that relates to Ministerial communications. Consideration of this exemption is a two-stage process; first, the exemption must be engaged as a result of the information relating to Ministerial communications. Secondly, this exemption is qualified by the public interest, meaning that the information must be disclosed if the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure.
8. Covering first whether the information does fall within the class specified in the exemption, section 35(5) of the FOIA sets out the meaning of 'Ministerial communications' as it is used in section 35(1)(b). This includes proceedings of the Cabinet, or of any Cabinet committee. The Cabinet Office has stated that the information in question comprises minutes from a Cabinet Committee on Asylum and Migration. Given this, the Commissioner considers it clear that this information is of the type specified in section 35(1)(b) as clarified by section 35(5). The exemption provided by section 35(1)(b) does, therefore, apply to this information.
9. Having found that this exemption is engaged, the next step is to consider the balance of the public interest. In forming a conclusion on the public interest, the Commissioner has taken into account general factors, such as the public interest in improving the transparency and openness of the Cabinet Office, and factors that relate more specifically

to the information in question, including the arguments advanced by the Cabinet Office and the complainant.

10. Covering first those factors that favour disclosure of the information, the view of the Commissioner is that the subject matter of this information is highly significant. The issue of immigration is one that is clearly of considerable public interest, as reflected in the perpetually high position that this issue occupies on the political and media agendas. The Commissioner considers there to be a strong public interest in the disclosure of information that would provide greater transparency about Ministerial communications in this area and regards this as a valid factor in favour of disclosure of significant weight.
11. Furthermore, the issue of immigration from eastern European States acceding to membership of the European Union (EU) is of particularly acute public interest. This public interest stems from concern about the impact of immigration to the UK from other States of the EU. The view of the Commissioner is that there is a strong public interest in information recording what steps were taken by the government to deal with this concern in relation to Romania and Bulgaria and this adds further to the weight in favour of disclosure relating to the subject matter of this information.
12. Turning to the factors that favour maintenance of the exemption, where this exemption applies it is necessary to consider whether disclosure would result in harm to the convention of collective Cabinet responsibility. This refers to the convention whereby all members of the Cabinet share responsibility for all government policies, regardless of any misgivings they may have held or expressed privately. The Commissioner recognises that preservation of this convention is in the public interest and the issue to be considered here is whether disclosure would result in the erosion of this convention. The weight that this will carry as a factor in this case depends on the content of this information and what, if anything, this reveals about the views of individual Cabinet Ministers.
13. The Commissioner notes two points from the content of the information. First, this does include content attributable to individual Ministers. Given this, the Commissioner accepts that the argument concerning the maintenance of the convention of collective Cabinet responsibility is relevant in relation to this information, as it provides some insight into how individual views held by Ministers contributed to the formation of the collective Cabinet position. The Commissioner considers this to be a valid factor in favour of maintenance of the exemption of some weight.
14. Secondly, the information records in detail the considerations of this Cabinet committee. As covered above, the Commissioner considers

that the sensitivity and high profile of the policy area covered within this information is a factor in favour of disclosure. However, this factor can also be cited in favour of maintenance of the exemption in that it is particularly important that a safe space within which members of the government can discuss this issue freely is preserved. This is in the public interest on the grounds that this will enable full discussion of all policy options, including those that may be regarded as politically unpalatable. This should be beneficial to the quality of the finalised policy. The Commissioner regards the preservation of a space away from the possibility of disclosure in which policy in this sensitive area can be considered by the government to be a valid factor in favour of disclosure of some weight.

15. The complainant has argued that the Cabinet Office did not consider the option of whether some of the content of the information could have been redacted and the remainder disclosed and believed that it may have been possible via this method to release some of the information requested rather than it being withheld in its entirety. The view of the Commissioner on this point is that the arguments he has accepted as valid apply to all of this information; he does not believe that there is any part of this information which could clearly be disclosed without incurring a negative outcome for the public interest.
16. The Commissioner has recognised valid public interest in the disclosure of this information on the basis of its subject matter. Added to this is the general public interest in improving the transparency and openness of the public authority. However, this subject matter also contributes to the public interest in favour of maintenance of the exemption; it highlights further the weight of the public interest in ensuring that the government is capable of carrying out an effective policy-making process.
17. Also contributing to the public interest in favour of maintenance of the exemption is the content that is attributed to individual Ministers. This means that the public interest in preserving the convention of collective Cabinet responsibility is applicable to this information. Given these factors in favour of maintenance of the exemption, the conclusion of the Commissioner is that the public interest in the maintenance of the exemption outweighs the public interest in disclosure of the information. The Cabinet Office is not, therefore, required to disclose this information.

## Other matters

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18. There was a very lengthy delay to the completion of the internal review in this case. This has been noted by the Commissioner's office and the

Reference: FS50397684



Cabinet Office must ensure that it carries out internal reviews promptly in future.

## Right of appeal

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19. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:
- First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ
- Tel: 0300 1234504  
Fax: 0116 249 4253  
Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)
20. 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.
21. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Signed** .....

**Jon Manners**  
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**Water Lane**  
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