



**First-tier Tribunal
(General Regulatory Chamber)
Information Rights
Decision notice fs50841228**

Appeal Reference: EA/2020/0240

**Heard on CVP platform
On 29/30 April 2021**

Before

JUDGE CHRIS HUGHES

TRIBUNAL MEMBERS

KATE GRIMLEY EVANS & MIKE JONES

Between

CABINET OFFICE

Appellant

and

INFORMATION COMMISSIONER

First Respondent

JENNA CORDEROY

Second Respondent

Appearances:-

Appellant: Mr A Eardley

First Respondent: Mr P Lockley

Second Respondent: Ms J Kerr Morrison

Cases

Kennedy v Charity Commission [2014] 2 WLR 808

DECISION

The decision of the Information Commissioner is correct in law. The appeal succeeds with respect to a small part of the withheld information.

REASONS

1. On 20 August 2018 Ms Corderoy wrote to the Cabinet Office seeking information:-

"I would like to request the following information:

For the past two months, I would like to request copies of the FOI Round Robin List, which is circulated, to my knowledge, by the Cabinet Office.

I would like to receive this information in an electronic format."

2. On 13 September 2018 the Cabinet Office replied identifying two exemptions and indicating that the balance of public interest lay in non-disclosure:-

"Information you have requested is exempt under section 35(1)(a) and (b) of the Freedom of Information Act, which protects the formulation of policy and communications between Ministers. Disclosure would weaken Ministers' ability to discuss controversial and sensitive topics free from premature public scrutiny. In addition, other exemptions would likely also apply on a case by case basis of requests detailed on these lists."

3. S35 deals with the formulation of government policy and provides:-

(1) Information held by a government department ... is exempt information if it relates to—

(a) the formulation or development of government policy,

(b) Ministerial communications,

4. Ms Corderoy sought an internal review on 12 November and within the Cabinet Office an instruction was sent for a draft of the review to be available for consideration and sending by Ms E W Atkins (the Cabinet Office official responsible) by 11 December. The review was not carried out and becoming concerned about the delay, Ms Corderoy complained to the Information Commissioner on 5 May 2019. On 10 July Ms Atkins wrote to Ms Corderoy confirming the outcome of the internal review. The Cabinet Office now relied on s36(2)(b) to the same effect as before. S36 provides (so far as is relevant), that

36 Prejudice to effective conduct of public affairs.

(1) This section applies to –

(a) information which is held by a government department ... and is not exempt information by virtue of section 35,

(2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act –

...

(b) would, or would be likely to, inhibit –

(i) the free and frank provision of advice, or

(ii) the free and frank exchange of views for the purposes of deliberation, or

(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

5. The Information Commissioner wrote to the Cabinet Office in the light of Ms Corderoy's concerns about delay and after Ms Corderoy again complained to the Information Commissioner on the basis of the outcome of the internal review, the IC by a letter of 21 October 2019 commenced her investigation. She noted the reliance on s36 and while asking for a copy of the withheld material, also asked for the qualified persons opinion and pointed out that if any further exemptions were to be relied upon they should be notified and explained to Ms Corderoy. She asked for the Cabinet Office to set out its view on the balance the balance of public interest and set out Ms Corderoy's views on public interest:-

"The FOI Round Robin List which I refer to is a collation of FOI requests submitted by individuals such as journalists and NGOs. To my knowledge, the List indicates what the FOI requests are about, and which government department has received them. I also believe that the FOI Round Robin List indicates which exemptions the departments should reply upon. Taking into consideration the timing of the request as well as the nature of the FOI Round Robin List, I do not understand how a release of the information would prejudice or inhibit Ministers and Officials - prejudice or inhibit them from what, exactly?"

"I believe that the information sought is in the public interest. I have concerns over how this FOI Round Robin List operates, and how and why requesters end up on this List. Other FOI users, I believe, would share my concerns. Furthermore, the disclosure of the information sought would enable the public to see how the Cabinet Office treats FOI requests and scrutinise their processes."

"More specifically, my concerns over the operation of the List mainly relate to the applicant blindness principle, and what categories of requesters are likely to end up on this List. I am also concerned that the Cabinet Office is dictating to other government

departments on how they should respond to requests, and the public deserves to know and understand how and why they are doing this."

6. The submission to the Minister is dated 20 January 2020 and provides background information about the request, a description of the Round Robin list and a discussion of the public interest question:-

"4. On 20 August 2018 the Cabinet Office received the following request from Jenna Corderoy:

"For the past two months, I would like to request copies of the FOI Round Robin List, which is circulated, to my knowledge, by the Cabinet Office."

5. The FOI Round Robin is a list issued daily to Whitehall departments, which comprises a list of FOI requests from across departments that either (a) have 'repeat request characteristics' (identical requests have been sent to multiple departments) or (b) are asking about sensitive subjects that are included on the FOI 'trigger' list (such as the Royal Household or Ministerial diaries) and that have been reported to the Cabinet Office Clearing House. Once a request is added to the list, other government departments who receive the same request also notify the Clearing House. The list comprises a reference number, the date it was received by Clearing House, the name of the applicant, the text of the request, a record of the departments who have currently received it, the deadline of the request, and any advice from the Clearing house on how departments should respond. Once responses are drafted, they are sent to the Clearing House to be reviewed and cleared

...

11. The Round Robin list registers to government departments FOI requests that may have been received by other departments and also offers practical advice on how to respond to requests on often sensitive or technical issues (though departments, as individual public authorities under the Act, are ultimately responsible for how they respond). The intention of the Round Robin is to ensure that government departments are aware of those issues that have a broad applicability across government, to ensure consistency of approach across departments, and ultimately to assist in providing the best possible advice to requesters, while also ensuring that the FOI act is being upheld correctly.

12. As the Round Robin is a document that is updated and issued on a daily basis, the information and advice it contains is constantly changing to take account of evolving policy positions and advice. This information and advice, however, when viewed on its own is often extremely concise and void of context, as the list itself is only an aid memoire to departments, devoid of the fuller advice and discussions that occurs daily between departments and the Clearing House in other correspondence and advice (much of which is often verbal).

13. The disclosure of this information, devoid of the subtleties and contextuality of these other discussions, would likely lead to a misinterpretation of much of the advice, which in turn would be likely to inhibit the free and frank provision of that advice, and the free and frank exchange of views for the purposes of deliberation, and therefore it is

recommended that this information is not shared publicly. We are also unconvinced as to the public interest in doing so, as it would add very little to the general public understanding of how central government operates or responds to FOI requests. "

7. The qualified person's opinion was supplied to the Information Commissioner in a letter dated 21 January 2020 and which indicated that in any event s40 redactions of the names of requesters as well as civil servants would be needed, the Cabinet Office summarised its view:-

"We do, however, wish to reiterate the ephemeral nature of the Round Robin list, which changes and is reissued on a daily basis. It is meant as an immediate, practical tool for central government departments, offering them advice on often sensitive or technical FOI issues as that advice arises (and changes) over the timeframe of individual cases. As the submission explains, the purpose is both one of awareness and ensuring consistency of approach (as far as individual departmental circumstances allow), both with the ultimate aim in providing the best and most accurate advice possible to requestors and ensuring that the FOI Act is being upheld correctly.

This free and frank provision of advice, and the fuller discussions and communications between departments that accompanies it, is offered with an immediacy that acknowledges that such advice may well change (sometimes significantly) as opinions are formed, further specialised advice is sought and senior sign-off of approach is obtained. Again, as the submission points out, viewing the Round Robin list on its own, devoid of the context of the supporting discussions and exchanges, is very likely to lead to a misinterpretation of much of the advice offered. The likely upshot of such public misinterpretation would be a severe inhibition in the free and frank exchange of views for the purposes of deliberation, as officials would only add advice to the list when they were absolutely sure of their final position and where this was supported by contextual information. However, this would make the Round Robin incredibly unwieldy as a document and, more importantly, unresponsive to the day-to-day needs of evolving situational advice between departments.

Moreover, the Cabinet Office - and the qualified person agrees - remain unconvinced of the public interest to be gained from release of these documents, especially when taking account of the redactions (see below) that would need to be made.

...However, should the ICO seek to challenge the qualified person's view, then the Cabinet Office would reserve the right to invoke section 40(2) to cover the personal information contained within the Round Robin lists. Under such circumstances, as this would remove a significant percentage of the list's information - and the key information necessary to contextualise the remaining information - we could not see that there would be any public interest at all in releasing the remaining, substantially truncated, stub of the list.

It went on "I hope that I have answered the main issues raised in your letter. Please let me know if I can provide more information in relation to any of these points. "

8. It may be noted that the Cabinet Office entirely failed to address the issues raised by Ms Corderoy as being the public interest grounds for disclosure. It appears that before her complaint to the Information Commissioner the Cabinet Office relied on a previous qualified person's opinion relating to a similar request for information and only sought a QPO justifying the refusal of this request some six months after it had relied upon s36 to justify refusal.
9. The Cabinet Office supplied a sample of the Round Robin list, the Information Commissioner insisted on receiving all the requested information and on 31 January the Cabinet Office wrote to the Information Commissioner in the following terms:-

"attached are copies of the Round Robin list within scope (circulated between 20 June and 20 August 2018)"

10. The Information Commissioner issued her decision notice on 13 July 2020. As a preliminary issue she addressed one of the arguments advanced by the Cabinet Office:-

14. For the avoidance of doubt, the Commissioner does not share the public authority's view that the text of the information requests also constitute personal data within the meaning of the Data Protection Act 2018. Neither does the Commissioner share the view that applying section 40(2) would remove a significant percentage of the list's information and the key information necessary to contextualise the remaining information.

11. She accepted that the QPO was reasonable in that inhibition was likely to occur and went on to consider the severity, extent and frequency of that prejudice or inhibition in forming her own assessment of whether the public interest test required disclosure. In weighing the public interest she concluded:-

56. There will always be a general public interest in transparency. More specifically, there is a strong public interest in disclosing a list which includes the names of applicants as well as the text of their FOI request and advice from the Cabinet Office to departments on handling these requests. Disclosure would, amongst other things, assist the public in assessing whether requests have been included on the list in line with the public authority's criteria, whether Clearing House is dictating to departments how to respond to FOI requests or offering advice in an expected manner and, whether the advice offered and the general handling of requests on the list is influenced by the identity of an applicant when it is not necessary to do so, such as in relation to the application of section 14 FOIA.

57. The Commissioner does not consider that there is a strong public interest in withholding the round robin list within the scope of the complainant's request. The Commissioner does not consider that publishing the list would severely impact on the quality of advice provided by Clearing House to departments. Whilst officials could

become more guarded with their advice as a consequence, she is not persuaded that this would interfere in any significant way with their ability to provide sound advice which is primarily what departments require in order to provide an FOI and/or EIR compliant response to applicants.

58. As mentioned, the public authority has not explained how the public might misinterpret the advice to departments. However, the Commissioner does not consider that public misinterpretation of the request is a decisive factor in tilting the balance of the public interest in favour of maintaining the application of section 36(2)(b) in this case. The fact that the public authority is retaining the FOI and EIR round robin list is more likely to be a cause for concern for some members of the public in the first place (which is not to suggest that there are no legitimate business reasons for retaining the list). The complainant has suggested that this is primarily the reason for her request. In the Commissioner's view, the public is less likely to misinterpret the advice from Clearing House and the rest of the withheld information. In any event, the public authority could contextualise any part of the withheld information it considers is likely to be misinterpreted by the public before releasing it.

12. She considered the question of the names of requesters and while acknowledging that revealing them would be of assistance in considering whether the handling of requests was applicant blind concluded:-

78. In the Commissioner's view, disclosure of the names of the applicants would not significantly inform the public about how the public authority is handling certain types of FOI requests beyond the text of the requests themselves and the advice provided by Clearing House to departments. It is clearly not the least restrictive means of informing the debate.

79. Consequently, the Commissioner has concluded that disclosure of the names would not be lawful and therefore article 6(1)(f) of the GDPR is not met.

13. She made adverse findings about the conduct of the information request by the Cabinet Office:-

81. The Commissioner considers that the public authority issued an invalid refusal notice to the complainant in support of the application of section 36(2)(b) on 10 July 2019 nearly a year after she originally submitted her request and nearly 8 months following her request for an internal review. Although a valid refusal notice in support of the application of section 36(2)(b) was never actually issued to the complainant, the Commissioner considers that if one was provided, it could not have been issued prior to 21 January 2020 when the Qualified Person gave her opinion further to the application of section 36(2)(b).

83. Although there is no statutory time limit for completing internal reviews in the FOIA, the Commissioner considers that, as a matter of good practice, internal reviews should generally take no longer than 20 working days and in exceptional circumstances 40 working days.

84. There is simply no justifiable reason in the Commissioner's view for the public authority to have taken nearly 8 months to carry out the internal review.

14. The Cabinet Office appealed against the decision on 10 August 2020, it argued that the balance of public interest had not been properly struck and in setting out the background to the request in its Ground of Appeal stated:-

2. The Clearing House issues on a daily basis a "Round Robin" list recording FOI requests that are either identical requests that have been sent to multiple departments or are asking about sensitive subjects that have been reported to the Clearing House. The information listed includes the name of the applicant, the content of the request, the receiving department(s) and advice from the Clearing House on how a department may wish to respond to the request.

15. The Cabinet Office minimised the significance of the Clearing House List which it asserted did not detract from the rights of requesters and argued that as the Commissioner had not found any inappropriate conduct there was only a slight public interest in disclosure. The information should be withheld since it was still quite recent, it was produced in haste and in large quantities so that it was not fully considered, it might reveal what the requested information was or other sensitive background information and might compromise a subsequent NCND response. It set out the practical difficulties involved:-

9.(5) The Commissioner's answer to this - that the CO can "contextualise" the information upon release (DN [58]) - is, with respect, unreal. The Lists typically comprise in excess of 60 cases. Considering whether clarification or context is required for each piece of advice before releasing a List under FOIA would be extremely onerous. It is much more likely therefore that officials will refrain from recording their advice in the first place until they have reached a final view and/or that they will feel obliged to explain themselves at much greater length. This would substantially damage the value of the List. It derives its utility from being a concise, up-to-the-minute and responsive document, candidly recording current thinking as it develops.

16. On 3 September 2020 the Cabinet Office supplied Ms Corderoy copies of the Round Robins with the names of requesters and the Clearing House advice redacted.

17. In her response to the appeal Ms Corderoy argued that civil servants were accustomed to providing advice in circumstances where it might be revealed to the public and argued that the interest in disclosure was all the greater when the issue was live, since the Clearing House fed into the decision-making of the government departments of which the requests were made it was important that the requester and public should be able to feed in their concerns about this.

18. On 8 March 2021 the Cabinet Office changed its position radically. It released much of the disputed information, the guidance given in 145 out of 159 cases

listed in the Round Robins on the basis that it had become less sensitive with the passage of time, it relied on s23(1) with respect to seven of the 14 remaining cases and for the remainder of the cases indicated that the s36 argument was particularly strong.

19. On 18 March 2021 the Minister for the Cabinet Office wrote to the Society of Editors briefly giving details of the functions of Clearing House and the criteria for government departments to make a referral of an FOI request to Clearing House. The letter explained:-

“The Cabinet Office plays a vital role in ensuring compliance with the Freedom of Information Act across Government, providing assistance on complex FOI requests while also making sure sensitive information, including that related to national security, is handled appropriately.

A Clearing House function was established in 2004 and has operated in different forms since the Freedom of Information Act came into force in January 2005. In 2015 Freedom of Information (FOI) Policy moved from the Ministry of Justice to the Cabinet Office.

These coordination functions remain in place and are carried out by a small number of staff members, who have a range of wider responsibilities. They extend to ministerial and non-ministerial departments; non-departmental public bodies are not normally covered, although it may be that requests to those bodies are referred to the Cabinet Office through sponsor departments.”

20. In opening the appeal for the Cabinet Office, Mr Eardley confirmed that the Cabinet Office was not pursuing the appeal with respect to the 145 cases. Given the disclosure of the 145 cases there was only a marginal benefit in disclosing the remaining 14 which had specific sensitivities. He explained that this did not mean that the Cabinet Office would not challenge the disclosure of similar material in the future nor would it routinely disclose the guidance from the Cabinet Office.
21. Mr Lockley emphasised that the time the public interest balance should be struck was the time of the final refusal to disclose. At that time none of the disclosures made in March 2021 had been made and the publicly available information was minimal. Ms Morrison supported this. Attention was drawn to the impact of failing to handle the request properly for two and half years and then relying on the very late disclosure of material to justify withholding the 14 items.
22. Ms Atkins a Deputy Director in the Cabinet Office responsible for FOI and Transparency Data whose responsibilities include Clearing House, by a witness statement dated 1 April gave a history of the request, of recent disclosures of the requested material and of the Clearing House. She confirmed that the Clearing House both provided central advice on sensitive matters, including national security, the Royal Household, and significant live policy development as well

as ensuring a consistent response when requesters made the same request to multiple departments. The handling of these requests was applicant-blind and individual departments remained responsible for dealing with the requests they received. In oral evidence she maintained her stance that the occupation of the requester did not influence the handling of the request. Clearing House advice was a brief review process that departments did not have to follow; "if they don't follow they explain".

23. In further oral evidence Ms Atkins confirmed that the submission to the Minister was in error and that the Round Robin List does not contain information about requests in relation to sensitive subjects, (as listed in paragraph 5 of the QPO submission as (b)). but only requests within (a) -identical requests to multiple departments.
24. She explained that in responding to the Information Commissioner the Cabinet Office had supplied all Round Robins within the date range. Subsequently they had realised that the Round Robin dated 20 August had not been sent until 21 August and accordingly the Cabinet Office had not included it in the bundle. The Cabinet Office had not notified the Information Commissioner of this and it had only come to light when Counsel for the Information Commissioner raised it.
25. In closed evidence she addressed the sensitivities of the material which in her view justified retention under s36. This included where the advice suggested a department should give a specific response. The giving of such advice could be inhibited in future if officials believed that such advice would be disclosed. The hearing explored the issues underlying other parts of the withheld material and the fact that there was little in the public domain relating to this issue. Ms Atkins confirmed that there was some information in the public domain (although none on gov.uk websites), and that the matter was not a secret. She could see no public interest in the disclosure. In considering the individual requests where this arose she explained that her view was that disclosure of this material would cause those providing the advice to be inhibited from giving it so freely. With respect to advice falling within s23, Ms Atkins confirmed that she had seen e-mails which confirmed that the advice had come from a department within GCHQ. She confirmed that a number of individuals whose names and email addresses were within the withheld material were not of a senior grade and accordingly their names and the personal part of their email addresses should be withheld under s40.
26. Ms Corderoy, as the requester, explained the background to her requests, which arose out of the inadvertent sending of a Clearing House Round Robin list to one of her colleagues in 2017, which had been promptly deleted but had made her aware of the existence of the Clearing House. She had over time made many FOI requests to government and had not been aware that Clearing House existed. There was little information about it and no information in the public

domain since it had been transferred to the Cabinet Office in 2015. She had systematically researched the Clearing House and was concerned about the impact of Clearing House and its Round Robins on the proper operation of FOIA in government. She felt that there was a troubling culture of non-transparency and non-compliance with FOIA and wished for all the information to be disclosed so that there could be a properly informed debate about the appropriateness of such an operation and its place in the Cabinet Office. She wished to see the entire material within the scope of her request so that she could analyse an unbiased sample of the material.

27. During the hearing the Cabinet Office continued to rely on the QPO provided in February 2020 and emphasised the relatively small amount of information now withheld. It argued that the small public interest in disclosure when balanced against the inhibition that disclosure would cause meant that further material should not be disclosed.
28. In a skeleton argument dated 27 April seeking the disclosure of all the material Ms Morrison (for Ms Corderoy) emphasised the value of conducting an analysis of the activities of Clearing House, to examine the quality of its advice, to increase transparency about government handling of FOIA requests, including seeing whether requests were blocked and how requests from journalists, campaigners and researchers were treated. She noted that the Cabinet Office had only raised the s23 argument on 5 March 2021, two and half years after the request and cast doubt on whether the exemption could be justified.
29. Mr Lockley (for the Information Commissioner) accepted the s23 arguments of the Cabinet Office. He noted that at the time of the internal review virtually nothing was in the public domain. He accepted that for one of the requests disclosure of the advice would cause inhibition and that the balance lay in non-disclosure. For the other six the disclosure of the contents of the advice would have a negligible impact and there was some public interest in transparency in connection with what would be revealed.

Consideration

30. It is unfortunate that the Minister was inadvertently misled in a material issue when she gave her opinion to enable the Cabinet Office to withhold the requested information. The Tribunal was also misled by the Cabinet Office's Grounds of Appeal which also stated that the Round Robin List covered requests falling within (b) - sensitive requests (paragraph 14 above), this error only became apparent in the hearing.
31. The individual's rights under FOIA are constitutionally significant. As the Secretary of State introducing the Bill stated:-

“Unnecessary secrecy in Government and our public services has long been held to undermine good governance and public administration...the Bill will not only provide legal rights for the public and place legal duties on Ministers and public authorities, but will help to transform the culture of Government from one of secrecy to one of openness. It will transform the default setting from “this one should be kept quiet unless” to “this should be published unless”.

32. The role of the Cabinet Office within government has over recent decades become increasingly central to the working of the UK Government. On its website it explains its role:-

We support the Prime Minister and ensure the effective running of government. We are also the corporate headquarters for government, in partnership with HM Treasury, and we take the lead in certain critical policy areas.

33. It states that its responsibilities are:-

- *supporting collective government, helping to ensure the effective development, coordination and implementation of policy*
- *supporting the National Security Council and the Joint Intelligence Organisation, coordinating the government’s response to crises and managing the UK’s cyber security*
- *promoting efficiency and reform across government through innovation, better procurement and project management, and by transforming the delivery of services*
- *promoting the release of government data, and making the way government works more transparent*
- *creating an exceptional Civil Service, improving its capability and effectiveness*
- *political and constitutional reform*

34. Co-ordination of government activity is a key part of the work of the Cabinet Office as is *making the way government works more transparent*. It is clear that over the years there has been a lacuna in public information about how these two important roles are brought together to ensure that government transparency is effective across the whole of government. There has been no publicly available information, such information as was on gov.uk was archived eight years ago, the Wikipedia entry to which the tribunal’s attention was drawn was also out of date. The recent public disclosure of information about Clearing House made on 18 March 2021 (paragraph 19 above) is welcome however it does not impact on the public interest issue that this tribunal has to resolve. It may be noted that the Minister in his letter emphasised the Cabinet Office’s *vital role in ensuring compliance with the Freedom of Information Act across Government*.

35. Ms Corderoy, in making her request, sought a sample of Round Robins because that, as far as she was aware, was what the Clearing House did. When, belatedly, her request was put before a Minister so that the Minister could decide whether or not to issue a QPO, the submission was factually inaccurate. It conflated two

of the activities of the Clearing House, the Round Robin bulletin listing requests which it appeared might be sent to multiple departments and the role of Clearing House in responding to “sensitive” requests. That factual inaccuracy was not identified to Ms Corderoy or the Information Commissioner until the first day of the hearing when the witness for the Cabinet Office clarified the position in cross-examination. The Respondents were placed at some disadvantage in understanding the criteria upon which the disclosed material had been placed on the Round Robin lists since, on first examination, some might seem to be sensitive rather than likely to be targeted at several departments. The profound lack of transparency about the operation of the Cabinet Office, might appear, from the material before this tribunal, to extend to Ministers.

36. While the Cabinet Office has emphasised that individual departments as public authorities remain responsible for responding to FOIA requests it is noteworthy that, while they do not follow the advice of Clearing House, Ms Atkins confirmed “they have to explain”. This provides an example of the level of scrutiny of other government departments by Cabinet Office.

37. The Supreme court in *Kennedy* emphasised the significance of FOIA:-

The Freedom of Information Act 2000 was a landmark enactment of great constitutional significance for the United Kingdom. It introduced a new regime governing the disclosure of information held by public authorities. It created a prima facie right to the disclosure of all such information, save in so far as that right was qualified by the terms of the Act or the information in question was exempt. The qualifications and exemptions embody a careful balance between the public interest considerations militating for and against disclosure.

38. On its website the Cabinet Office lists the contents of its publication scheme in seven categories, the fourth of which is *How we make decisions*. The Minister in writing to the Society of Editors has spoken of the Clearing House’s vital role in co-ordinating FOI work across government, ensuring the constitutional rights of citizens are respected. Clearing House has a substantial role in this constitutionally significant work of the Cabinet Office and information about its existence and an outline of its work, has now, as a result of the Cabinet Office’s response to the questions raised in this information request, been placed in the public domain.

39. While the material before the tribunal in both open and closed bundles amounted to approximately 5000 pages, much of this was repetitious, with open and closed versions of Round Robins, and the same material included in a number of iterations of the Round Robin. Ms Corduroy has suggested (based on the initial position of the Cabinet Office) that the Round Robin contains both multiple requests and sensitive requests. Ms Atkins in her evidence confirmed that the function of the Round Robin is to address the issue of multiple requests and sensitive requests are dealt with separately. The disputed material in this

case has, over time, been reduced and now is confined to the initial Clearing House advice on 14 requests. The issue for the tribunal is whether this material should have been disclosed to Ms Corderoy when the other material should have been disclosed, ie at the time of the internal review in July 2019 (given the unconscionable delays in handling the request, she would have been entitled to receive the material in September 2018), long before the publication of general information about Clearing House. Given all the circumstances then prevailing – a lack of accurate publicly available information about the constitutionally significant role in co-ordinating FOI responses there is real weight in the public interest in disclosure. For seven of these requests Ms Atkins confirmed that the advice had come from a s23 body. While Ms Morrison valiantly argued that the National Cyber Security Centre should not be seen as part of GCHQ, it was difficult to discern a robust legal basis for that submission and the tribunal was satisfied that the appeal should succeed with respect to these seven items.

40. The Cabinet Office has continued to rely on the QPO provided in February 2020 for the other cases and has emphasised the relatively small amount of information now withheld and it argued there was small public interest in its disclosure and sufficient harm to justify non-disclosure under s36. Since that QPO does rely in part on a factual inaccuracy the conclusion must be subject to some scrutiny.
41. In arguing for disclosure of all the material Ms Corderoy emphasised the value of conducting an analysis of the activities of Clearing House, to examine the quality of its advice, to increase transparency about government handling of FOIA requests, whether they were blocked and how requests from journalists, campaigners and researchers were treated. While there may well be some public interest in these issues the impact of the disclosure of the seven additional samples would be comparatively modest and a consideration of the actual contents of the withheld material is essential.
42. The tribunal is satisfied that in one other case there would be a sufficient risk of inhibition to justify withholding the contents of advice. In respect of the other six cases the tribunal is satisfied that disclosure of the material, along with the other 145 cases which it is acknowledged should have been disclosed at the internal review or earlier, would at that time have had some value in increasing public understanding of the working of the Round Robin without materially causing inhibition or otherwise prejudicing the discharge of this function.
43. There is a closed section of this decision.
44. The tribunal draws to the attention of the parties the provisions of the GRC rules:-

Orders for costs

10. – (1) *Subject to paragraph (1A) the Tribunal may make an order in respect of costs only –*

(a) under section 29(4) of the 2007 Act (wasted costs) and costs incurred in applying for such costs;

(b) if the Tribunal considers that a party has acted unreasonably in bringing, defending or conducting the proceedings;

Signed Hughes

Judge of the First-tier Tribunal

Date: 19 May 2021

Promulgated 25 May 2021