

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 14th October 2008

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

Summary

The complainant wrote to the Cabinet Office (“the public authority”) to request information regarding a Cabinet Committee that was formed in order to consider data sharing within the public sector. The public authority provided the complainant with some information but refused to disclose the minutes of meetings of the committee under section 35(1)(a) and 35(1)(b) of the Act. The Commissioner considered the complaint and found that section 35 applies and that the public interest favours maintaining the exemption. The public authority also refused to disclose the names of junior civil servants who attended the Committee by relying on section 40(2) of the Act and the Commissioner found that the public authority also correctly withheld this information. However, the Commissioner found that in its handling of the complainant’s request the public authority breached sections 1(1)(a), 1(1)(b), 10(1), 17(1) and 17(1)(c). The Commissioner requires no steps to be taken.

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 17 April 2007 the complainant wrote to the public authority to request the following information regarding the Cabinet Committee “MISC31”:
 - (i) Minutes of all meetings held since Cabinet Committee MISC31 was formed,
 - (ii) The agenda(s) of all forthcoming meetings of MISC31,

- (iii) The calendars for future meetings of MISC31,
 - (iv) The name, address, telephone number and email address of the Secretary to Cabinet committee MISC31,
 - (v) The names, ranks and job titles of all members of Cabinet Committee MISC31, and
 - (vi) The Strategy Document(s) produced (final and drafts) by or for consideration by Cabinet Committee MISC31.
3. The public authority responded to the request on 16 May 2007. It informed the complainant that the membership and terms of reference of the committee was published on the internet and that this included job titles. It provided the complainant with the following internet address:

<http://www.cabinetoffice.gov.uk/secretariats/committees/misc31.asp>
4. The public authority also referred the complainant to the Information Sharing Vision Statement published in September 2006 which it said he may find useful. It provided the complainant with the following internet address.

<http://www.dca.gov.uk/foi/sharing/information-sharing.pdf>
5. The public authority went on to say that, as regards the other elements of the request, it could confirm that it held relevant information. However, it said that it was withholding the information under section 35(1)(a) and (b) of the Act. It explained that section 35(1)(a) deals with the formulation or development of government policy whereas section 35(1)(b) deals with Ministerial communications which it said included proceedings of any committee of the Cabinet.
6. The public authority said that in deciding whether or not to release the requested information it had had to consider the public interest in maintaining the exemption against the public interest in disclosing the information. After identifying and explaining the factors it had taken into consideration, it concluded that the public interest in maintaining the exemption outweighed the public interest in disclosing the information.
7. The complainant wrote back to the public authority on 16 May 2007 to request an internal review of its handling of his request. The complainant set out the following reasons why he believed the public authority was wrong to refuse his request.
 - The exemptions in the Act are discretionary and therefore did not have to be applied by the public authority.
 - The public interest referred to by the public authority is not defined in the Act. The complainant suggested that a "common sense approach" should be taken

by the public authority and suggested that the public interest is one that furthers or benefits the interests of the community.

- The complainant referred to guidance issued by the Commissioner on interpreting the public interest. Taking this into account, the complainant argued that the public interest in the scrutiny of the decision making process of the Cabinet Committee led to the opposite conclusion to that reached by the public authority in its refusal notice.
 - Referring again to the Commissioner's guidance, the complainant argued that the public authority had taken irrelevant factors into consideration when carrying out the public interest test and its refusal notice was therefore flawed.
 - There is a presumption in the Act in favour of disclosure.
 - The complainant stressed that the exemption in section 35 of the Act was a qualified and not an absolute exemption. The complainant referred to a speech recorded in Hansard, by the Secretary of State for Constitutional Affairs, where he had said that "the Government believe that factual information used to provide an informed background to decision-taking will normally be disclosed". The complainant argued that the information he was seeking was factual and should therefore be disclosed.
 - The complainant said that statistical information was not exempt under section 35 and therefore should be disclosed to him.
8. The public authority presented the findings of its internal review on 21 June 2007. The public authority informed the complainant that it had concluded that the exemptions in section 35(1)(a) and (b) of the Act had been applied correctly and the public interest in maintaining the exemptions outweighed the public interest in disclosure. It added that details of the membership of the secretariat to the Committee were additionally exempt under section 40(2) of the Act. Finally, it said that the original response should have stated that information regarding the agenda and calendar of the Committee was not held.

The Investigation

Scope of the case

9. On 11 September 2007 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant asked the Commissioner to consider the public authority's response to his request and specifically asked the Commissioner to consider the public authority's decision to refuse to disclose the minutes of the MISC31 Committee under sections 35(1)(a) and 35(1)(b). The Commissioner has considered the public authority's response to all elements of his request of 17 April 2007.

Chronology

10. The Commissioner wrote to the public authority on 14 May 2008 with details of the complaint. The Commissioner asked the public authority to provide him with copies of the information it withheld from the complainant as well as a further explanation of why the withheld information related to the formulation or development of government policy and Ministerial communications.
11. The Commissioner asked the public authority, in respect of its application of section 40, to explain which data protection principle would be breached through the disclosure of the names of the secretariat to the Committee. The Commissioner also noted that details of the MISC31 committee were no longer available on the Cabinet Office website. The Commissioner said that he assumed that this was because the committee was no longer operating although he invited the public authority to let him know if his understanding was not correct. With this in mind the Commissioner asked the public authority to provide him with details of the Committee's membership and terms of reference. The Commissioner also asked the public authority to provide him with any relevant background information on the Committee such as the reason for its formation and its timeframe.
12. The public authority responded to the Commissioner's enquiries on 19 June 2008. It confirmed that the MISC31 Committee no longer existed and explained that "MISC" Cabinet Committees are generally set up to deal with issues that are likely to be time limited. It said that the issues dealt with by the MISC31 Committee would now be dealt with by another, broader ranging committee. The Commissioner was provided with details of the membership and terms of reference.
13. The public authority provided the Commissioner with further information on the background to Cabinet Committee system and specifically the MISC31 Committee, which it explained was set up to look at the risks and benefits to public service delivery from better information sharing between Departments. It said that the Committee's work resulted in the publication of the Information Sharing Vision Statement in September 2006. In explaining why it did not hold information in respect of parts (ii) and (iii) of the request, it said that the Committees are generally held on an ad hoc basis and do not have advance agendas for meetings as they are only issued once a meeting was organised. Therefore, it said that parts (ii) and (iii) could not be answered because at the time that the complainant made his request no future meetings of MISC31 had been scheduled.
14. The public authority went on to say that at the time that the complainant made his request MISC31 had met three times and therefore it holds three sets of minutes which fall within the scope of the request. In answer to the Commissioner's questions on why section 35(1)(a) and (b) applied the public authority said that the minutes of a Cabinet Committee meeting are made are a record of ministerial discussions – generally covering the agreed outcomes and points made in discussion. In explaining why section 35(1)(a) applied to the information it said that the Committee considers and takes binding decision about policy.

15. The public authority maintained that the public interest in maintaining the section 35 exemption outweighed the public interest in disclosure and referred the Commissioner to the reasons it gave in its refusal notice. It also referred the Commissioner to the evidence given by the Chairman of the Joint Intelligence Committee, Alex Allan, in a case heard at the Information tribunal.¹ In his evidence Mr Allan, formerly the Permanent Secretary at the Ministry of Justice, commented on the convention of collective responsibility and the public interest in maintaining this convention. In attempting to further justify its application of the public interest test, it highlighted a recent High Court decision in which the Judge, Mr Justice Mitting, had said that weight needs to be given to considerations about the confidentiality of advice to ministers and in their decision making process.²
16. The public authority said that it had reconsidered the complainant's request for the names of the secretariat managing MISC31 at the time of his request and that it was now prepared to disclose the name of the Senior Civil Servant who was part of the secretariat. It confirmed that this was Tom Wechsler who it said had now left the Cabinet Office.
17. The public authority went on to explain that, in general, committees for which the Economic and Domestic Affairs Secretariat provide the Secretariat for will consist of a combination of the Director General or Director, a member of the Senior Civil Service, and either an employee at Grade 7/Band A or a member of the Civil Service Fast Stream. It confirmed that the Director General and Director of the Secretariat are Paul Britton and Robin Fellgett.
18. The public authority said that it was content for the Commissioner to cite the names given above in his decision notice. However it said it was maintaining its position that the disclosure of names of staff below the Senior Civil Service would breach section 40(2) of the Act and provided the Commissioner with its reasons why it believed that this was the case.
19. The public authority invited the Commissioner to view the withheld information *in situ* at its premises. The Commissioner subsequently visited the public authority on 6 August 2008 to inspect the withheld information to determine whether the information should be disclosed under the Act.

Findings of fact

20. The terms of reference of the MISC 31 committee were:

"To develop the Government's strategy on data-sharing across the public sector."
21. At the time the complainant made his request the MISC31 Committee still existed and three meetings had taken place.

¹ Department for Culture, Media and Sport v The information Commissioner [EA/2007/0090]

² Export Credit Guarantee Department v Friends of the Earth [2008] EWHC 638 (Admin)

22. In discussing the principle of collective responsibility paragraph 2.1 of the Ministerial Code states that:

“Collective responsibility requires that Ministers should be able to express their views frankly in the expectation that they can argue freely in private while maintaining a united front when decisions have been reached. This in turn requires that the privacy of opinions expressed in cabinet and Ministerial Committees, including in correspondence, should be maintained.”

23. Paragraph 2.2 of the Ministerial Code describes the business of Cabinet and Ministerial Committees as consisting in the main of:

- a) *questions which significantly engage the collective responsibility of the Government because they raise major issues of policy or because they are of critical importance to the public;*
- b) *questions on which there is an unresolved argument between departments.*

Analysis

24. A full text of the relevant statutes referred to in this section is contained within the legal annex.

Procedural matters

25. The complainant had specifically asked the Commissioner to consider the public authority's decision to withhold the information in part i) of his request. He did not explicitly ask the Commissioner to investigate whether the public authority was correct when it said that it did not hold the information in parts (ii) and (iii) of the request. However, for the avoidance of any doubt, the Commissioner is satisfied that this information was not held by the public authority at the time the complainant made his request. Having said this, the public authority only informed the complainant that it did not hold the information in parts (ii) and (iii) of the request at the internal review stage. In doing so the public authority failed to confirm or deny whether it held the requested information within 20 working days, as required by section 10(1) of the Act.
26. In respect of part iv) of the request, the public authority initially informed the complainant that it was withholding the names of the civil servants who provided the secretariat for the Committee under section 40(2) of the Act. However the public authority did not fully explain why the exemption applied and it failed to say which data protection principle it believed would be breached through disclosure and how. The public authority only did this once the Commissioner commenced his investigation. In failing to do this the public authority breached section 17(1)(c) of the Act. Consequently the public authority also breached section 17(1) of the Act because it failed to issue an adequate refusal notice within 20 working days of receiving the request.

27. During the course of the Commissioner's investigation the public authority decided to disclose the names of the senior civil servants who provided the secretariat for the MISC31 Committee. However, by not disclosing this information to the complainant within 20 working days the public authority breached section 10(1) of the Act. By failing to disclose this information to the complainant by the internal review stage the public authority breached section 1(1)(b) of the Act.
28. The public authority disclosed to the complainant a list of the membership of the Committee and the terms of reference of the Committee on 16 May 2007 and therefore within 20 working days of receiving the request. The Commissioner is satisfied that the public authority dealt with this part of the request in accordance with the Act.
29. In respect of part vi) of the request The Commissioner is also satisfied, having reviewed the withheld minutes of the MISC 31 Committee and the associated documentation, that no information falling within the scope of part vi) of the request was held by the public authority at the time the complainant made his request. By failing to inform the complainant that it did not hold this information within 20 working days the public authority breached section 10(1) of the Act. By failing to confirm or deny that it did not hold this information by the internal review stage the public authority breached section 1(1)(a) of the Act.

Exemption

Section 35(1)(a) – Formulation or development of government policy

Section 35(1)(b) – Ministerial Communications

30. The public authority has refused part (i) of the complainant's request for the minutes of the MISC31 committee under section 35(1)(a) and 35(1)(b) of the Act which provide that information is exempt from disclosure if it relates to the formulation or development of government policy or Ministerial communications.
31. The withheld information constitutes three sets of minutes of the MISC31 Cabinet Committee. Meetings of Cabinet and Cabinet Committees represent the highest level of policy making within government where Ministers from across government departments attend and contribute. Having viewed the withheld information, the Commissioner is satisfied that it relates to both Ministerial communications and the formulation or development of government policy and that the exemptions in section 35(1)(a) and 35(1)(b) are engaged. These two subsections are not mutually exclusive as has been recognised by the Information Tribunal.³ In reaching his view on whether these exemptions are engaged, the Commissioner has given particular consideration to the following factors:
 - Cabinet Committees provide a framework for government to consider major policy decisions.

³ Scotland Office v Information Commissioner [EA/2007/0070]

- The minutes record the suggestions and various proposals to improve data sharing within government. They include discussions about the challenges and opportunities of improved data sharing within the public sector. When the request was made the no firm policy decision had been made as a result of the three meetings and no policies had been implemented.
 - The minutes exclusively detail ministerial discussions and were recorded for the purpose of providing ministers (above all) with an accurate account of the meetings.
 - Section 35(5) of the Act provides that ministerial communications “includes, in particular, proceedings of the Cabinet or of any committee of the Cabinet”.
32. The complainant has argued that any statistical information contained within the minutes should be released as this is not covered by the section 35 exemption. However, having reviewed the withheld information the Commissioner is satisfied that no information of this nature is held.

Public Interest Test

33. Section 35 is a qualified exemption and is therefore subject to a public interest test under section 2(2)(b) of the Act. This provides that the exemption will only apply if in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Therefore, the Commissioner has undertaken the public interest test in respect of the requested information.
34. The complainant has advanced various arguments why the minutes of the meetings should be released. In particular, the complainant has argued that the public authority took irrelevant factors, such as a desire to protect Ministers from embarrassment, into account when it carried out the public interest test. Having reviewed the withheld information and the public interest arguments put forward by the public authority, the Commissioner does not believe this to be the case. The complainant has also argued that the exemptions within the Act are discretionary and so the public authority was not obliged to refuse the request. Whilst this may be the case, it remains that the public authority decided that the requested information fell within the exemption in section 35 of the Act and the Commissioner agrees that the exemption is engaged. The fact that the public authority still could have released the information is not relevant when considering the public interest in maintaining the exemption.
35. The complainant has argued that there is an assumption in the Act in favour of disclosure and that furthermore the public interest favours disclosure because it would lead to greater scrutiny of the decision making of the MISC31 Committee. The Commissioner agrees and accepts that there is a public interest in the minutes of the meetings being disclosed. The Commissioner would also add that disclosure would in his opinion lead to greater accountability for policy making and decisions reached by government. The Commissioner is aware of the growing public concern at recent high profile incidents involving data loss by

government departments and other public authorities. The Commissioner believes that there is a public interest in any information that would demonstrate how government intends to improve data sharing and the management of data as a whole, within the public sector, as this would inform public debate on the issue.

36. Whilst the Commissioner accepts that there is a public interest in the minutes being disclosed, he believes that there are compelling arguments for maintaining the section 35 exemption in this case. The Commissioner has given a particular weight to the public interest in protecting the convention of collective responsibility. This convention is fundamental to ministerial decision making and indeed the Commissioner notes that the Ministerial Code puts the duty to uphold this convention as the first in the principles of ministerial conduct. The Commissioner understands that it is important for government to maintain collective responsibility as it allows ministers to discuss and develop policy in a free and frank manner whilst presenting a “united front” once a policy decision has been reached. Were the requested information disclosed, the Commissioner is satisfied that there would be a real possibility that this convention would be undermined and this would not be in the public interest as it would lead to valuable government time being spent commenting on, and defending, individual views expressed in a Cabinet Committee rather than the position of the government.
37. Whilst ministerial comments are not accredited when they feature in the minutes, the Commissioner is of the view the convention of collective responsibility would still be undermined as disclosure would reveal the exchange of views between Ministers and any differences in opinion that may arise and which are of course an inevitable part of the policy development process.
38. The Commissioner believes that, given that the issue being considered in the committee was still “live” when the complainant made his request, there is a strong public interest in protecting the principle of collective responsibility in this case and that there would need to be an equally strong public interest in the information being released in order to justify undermining this principle. Having reviewed the information, the Commissioner does not believe that the public interest in the disclosure of the information is sufficiently strong in this case. Having inspected the withheld minutes the Commissioner found that they cover the first three meetings of the MISC31 Committee and as such they detail initial and elementary discussions on data sharing and the framework for the committee’s work. In light of this the Commissioner believes that the public interest in their disclosure is reduced.
39. The Commissioner recognises that respect for the convention of collective responsibility is only one element of the public interest test and in reaching his decision the Commissioner has also considered the timing of the complainant’s request. The Information Tribunal has itself considered, in *DFES v Information Commissioner and Evening Standard*, what effect the timing of a request will have on the weighing up of the public interest in cases where a public authority has relied on the section 35 exemption. In its decision the Tribunal concluded that in deciding whether or not the public interest favours maintaining the exemption in

section 35(1)(a) “the timing of a request is of paramount importance”⁴. In this case the Commissioner notes that when the complainant made his request the government’s policy, on data sharing within the public sector, was still in the formulation stage and no policy decision had been taken at that point. In light of this fact the Commissioner feels that there is a strong public interest in the exemption being maintained. This is because it is the Commissioner’s view that policy making is improved by public authorities having a space in which to share ideas and engage in a free and frank exchange of views before arriving at a decision, without the threat of the details of such exchanges being revealed. The Information Tribunal has commented on this point in the case cited above when it said that:

*“Ministers and officials are entitled to time and space, in some instances to considerable time and space, to hammer out policy by exploring safe and radical options alike, without the threat of lurid headlines depicting that which has been merely broached as agreed policy.”*⁵

40. Similarly, timing will also be of paramount importance when considering the public interest in maintaining the exemption for Ministerial communications under section 35(1)(b). The Information Tribunal made the following comments in *Scotland Office v The Information Commissioner*:

*“Where the Ministerial communication is in relation to an issue that was “live” when the request was made, the public interest in preserving a “safe space” for Ministers to have a full and open debate, and the public interest in the Government being able to come together successfully to determine what may, in reality, have been a contentious policy issue, may weigh the balance in favour of maintaining the exemption.”*⁶

41. The Information Tribunal concluded that whilst policy is in the process of formulation it is highly unlikely that the public interest would favour disclosure unless for example it would disclose wrong doing in government which, having viewed the information in this case, the Commissioner is satisfied that it would not.
42. The Commissioner recognises that there is a public interest in the information in part (i) of the complainant’s request being disclosed. However, the Commissioner finds the arguments in favour of withholding this information more persuasive and has therefore concluded that, in all the circumstances of the case, the public interest in maintaining the exemptions in section 35(1)(a) and section 35(1)(b) of the Act outweighs the public interest in disclosing the requested information.

Section 40(2) – Personal Information

43. The public authority has also withheld the names of the junior civil servants who were members of the secretariat responsible for the MISC31 Committee. The

⁴ Department for Education and Skills v Information Commissioner and The Evening Standard [EA/2006/0006]

⁵ *ibid.*

⁶ Scotland Office v Information Commissioner [EA/2007/0070]

public authority has confirmed that these civil servants would be either members of the Civil Service Fast Stream or civil servants at the Grade 7 level and that it is withholding their names under section 40(2) of the Act. Information will be exempt under section 40(2) if it constitutes the personal data of someone other than the person making the request and its disclosure would contravene any of the data protection principles set out in schedule 1 of the Data Protection Act 1998.

Is the information personal data?

44. In order for this exemption to be engaged it is first necessary to establish if the information constitutes personal data. Personal data is defined in the Data Protection Act 1998 as data which relate to a living individual who can be identified from those data or from those data and any other information in the possession of, or likely to come in to the possession of, the data controller. In this case the data controller is the public authority.
45. The Commissioner is satisfied that the names of the junior civil servants in the secretariat responsible for the MISC31 Committee, given that they clearly relate to living individuals, are personal data. The Commissioner also accepts that the job titles constitute personal data because they also relate to living individuals and if they were combined with the information that is available about the MISC31 committee it would enable the individuals to be identified.
46. The Commissioner accepts that the information requested constitutes the personal data of living individuals other than the applicant. However for the section 40(2) exemption to apply the public authority would need to show that disclosure would contravene one or more of the data protection principles as set out in the Data Protection Act 1998.

The first data protection principle

47. The public authority has said that it believes that disclosure would contravene the first data protection principle. The first data protection principle provides that:

“Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless-

- (a) at least one of the conditions in Schedule 2 is met, and*
- (b) in the case of sensitive personal data, at least one of the conditions in schedule 3 is also met.”*

48. The Commissioner agrees that it is the first data protection principle that is most relevant in this case.
49. The public authority has argued that processing the personal information of the individuals in question, through disclosure of their identities to the complainant, would be unfair. The public authority has argued that disclosure would be unfair because:

- Civil servants below the Senior Civil Service who attend Cabinet Committees have a reasonable expectation that their identities will be protected.
 - Issues discussed at Cabinet Committee level are controversial and the release of the names of junior members of staff could expose them to inappropriate lobbying or pressure from outside that would detract from their role.
50. The Commissioner is of the opinion that disclosing personal data is generally less likely to be considered unfair in cases where the personal data relates to an individual's public or professional life rather than their private life. The threshold for releasing professional information will generally be lower than that in releasing information relating to an individual's private or home life.
51. Civil servants at the Grade 7 level typically have managerial responsibility and whilst they are not members of the "Senior Civil Service" are still relatively senior employees. Equally, members of the Civil Service Fast Stream expect to be given challenging and intensive job appointments which are designed to prepare them for future careers in the Senior Civil Service. With this in mind, the Commissioner feels that these members of staff would have a reasonable expectation that their names would be disclosed in the course of carrying out their work and would be able to cope with any undue pressure that may arise through the disclosure of their names and job titles. At this stage the Commissioner has found nothing to suggest that disclosure of these names would be unfair or unlawful and so he will now go on to consider whether disclosure would meet one of the conditions in schedule 2 of the Data Protection Act 1998.

Schedule 2 – Condition 6

52. The public authority has suggested that, in respect of schedule 2, condition 6 is the condition most relevant to the complainant's request and the Commissioner is minded to agree. Condition 6 legitimises the fair and lawful processing of non-sensitive personal data in cases where:

"The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or third parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject."

53. In deciding whether condition 6 would be met in this case the Commissioner has considered the decision of the Information Tribunal in *House of Commons v Information Commissioner & Leapman, Brooke, Thomas*.⁷ In that case the Tribunal established the following three part test that must be satisfied before the sixth condition will be met:
- there must be legitimate interests in disclosing the information,

⁷ House of Commons v Information Commissioner & Leapman, Brooke, Thomas (EA/2007/0060)

- the disclosure must be necessary for a legitimate interest of the public and,
 - even where disclosure is necessary it nevertheless must not cause unwarranted interference or prejudice to the rights, freedoms and legitimate interests of the data subject.
54. Given that the basic principle of the Act is that there is a public interest in official information being made available, the Commissioner accepts that there is a legitimate interest in the information being disclosed as it would help to provide greater transparency and accountability in the work of the Committee. However, the Commissioner is of the view that the public interest in transparency and accountability has already been met by the public authority's decision to release the names of the Senior Civil Servants who attended the MISC31 Committee and therefore has concluded that a further disclosure of the names of the junior civil servants is not necessary for the legitimate interests of the public as this would add virtually nothing to the public's understanding of the MISC31 Committee or the issue of data sharing within the public sector. In light of this the Commissioner has not gone on to consider the final element of the test.
55. Processing the names and job titles of the junior civil servants (through disclosure to the complainant) would fail to meet a condition within schedule 2 of the Data Protection Act 1998 and so would breach the first data protection principle. Consequently this information is exempt from disclosure under section 40(2) of the Act.

The Decision

56. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the Act.
- The public authority dealt with the request in accordance with the Act by correctly withholding the minutes of the meetings of the MISC31 Cabinet committee under section 35(1)(a) and 35(1)(b) of the Act.
 - The public authority dealt with the request in accordance with the Act by correctly withholding the names and job titles of the junior civil servants on the committee under section 40(2) of the Act.
57. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- The public authority breached section 10(1) of the Act by failing to confirm or deny within 20 working days if it held the information in parts (ii) and (iii) of the request.
 - The public authority breached section 17(1)(c) of the Act by failing to properly explain why section 40 applied to the information in part (iv) of the request.
 - By failing to properly explain why section 40 applied to the information in part (iv) of the request the public authority also breached section 17(1) of the Act because it failed to issue an adequate refusal notice within 20 working days of receiving the request.
 - By failing to disclose the names of the senior civil servants who provided the secretariat to the Committee within 20 working days the public authority breached section 10(1) of the Act.
 - By failing to disclose the names the senior civil servants who provided the secretariat to the Committee by the internal review stage the public authority breached section 1(1)(b) of the Act.
 - By failing to inform the complainant that it did not hold the information within part vi) of the request within 20 working days the public authority breached section 10(1) of the Act.
 - By failing to inform the complainant that it did not hold the information within part vi) of the request by the internal review stage the public authority breached section 1(1)(a) of the Act.

Steps Required

58. The Commissioner requires no steps to be taken.

Right of Appeal

59. 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

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 14th day of October 2008

Signed

**Graham Smith
Deputy Commissioner**

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

Legal Annex

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 2(2) provides that –

“In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that –

(a) the information is exempt information by virtue of a provision conferring absolute exemption, or

(b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information”

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 17(1) provides that –

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies.”

Section 35(1) provides that –

“Information held by a government department or by the National Assembly for Wales 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 National Assembly for Wales;

"the Law Officers" means the Attorney General, the Solicitor General, the Advocate General for Scotland, the Lord Advocate, the Solicitor General for Scotland 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 Assembly Secretaries, including the Assembly First Secretary, 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 executive committee of the National Assembly for Wales;

"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 National Assembly for Wales providing personal administrative support to the Assembly First Secretary or an Assembly Secretary;

"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."

Section 40(2) provides that –

“Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.”

Section 40(3) provides that –

“The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.”