

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 18 October 2010**

**Public Authority:** The Government Hospitality Advisory Committee for the Purchase of Wine  
**Address:** c/o The Head of Government Hospitality  
Lancaster House  
St James's  
London  
SW1A 1BB

### Summary

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The complainant requested information from the Government Hospitality Advisory Committee for the Purchase of Wine (GHACPW) about the wines held in the Government Hospitality cellar, including the names of the wines held, suppliers, prices and comments regarding the wines themselves. The GHACPW provided the complainant with an 'illustrative list' of the types of wine it held but refused to provide the remaining information requested on the basis that it was exempt from disclosure by virtue of section 43(2) of the Act. The Commissioner accepts that disclosure of the prices at which the Foreign and Commonwealth Office (FCO) bought particular wines, and from which suppliers, would be likely to prejudice the commercial interests of both the suppliers and the FCO and that in all the circumstances of the case the public interest favours maintaining the exemption. However, the Commissioner has also concluded that section 43(2) does not provide a basis to withhold the names of the FCO's suppliers and furthermore does not provide a basis to withhold the names of the wines held, unallied to the names of who supplied them, but allied to the comments about each particular wine. The GHACPW must therefore provide the complainant with this information.

### The Commissioner's Role

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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.

## Background

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2. The Government Hospitality Advisory Committee for the Purchase of Wine (GHACPW) is a non-departmental public body sponsored by the Foreign and Commonwealth Office (FCO). The GHACPW is responsible for providing advice on the maintenance of appropriate standards of wines for use at government functions. This entails providing advice, after tasting, on the purchase of wine, the exchange of wine if necessary, and the stocking of the Government Hospitality (GH) Cellar at Lancaster House. GH is a department within the FCO.
3. The GHACPW is chaired by a senior civil servant and its members consist of four individuals who are members, past or present, of the wine trade, and Masters of Wine. It is provided with secretariat services by the Head of GH.
4. The GHACPW is listed in Schedule 1 of the Act as a public authority in its own right, i.e. for the purposes of the Act it is separate body to the FCO. The Commissioner also understands that it is the GHACPW that 'holds' the information requested by the complainant rather than the FCO. For these reasons this Notice has been served on the GHACPW rather than the FCO. However, given that the role of the GHACPW, as its names suggests, is simply to 'advise' the FCO on the use and purchase of wines, rather than to buy them in its own right, the Commissioner understands that it is accurate to consider any prejudice that may occur following disclosure of the requested information to be to the FCO's, rather than to the GHACPW's, commercial interests.
5. Furthermore when investigating this complaint the Commissioner exchanged correspondence directly with the FCO rather than the GHACPW. Therefore the Chronology section and remainder of the Notice refer to the 'FCO's submissions' rather than the 'GHACPW's submissions'. Such submissions however clearly reflect the opinions and position of the GHACPW.

## The Request

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6. The complainant submitted the following requests to the GHACPW on 17 July 2009:

'I would like to request the following information under the Freedom of Information Act. My request touches upon the work of the Government Hospitality Advisory Committee for the purchase of wine...Please note that I am only interested in information which relates to the period July 1 2008 to the present day.

1....Can you please supply all minutes of any meetings of the Government Hospitality Advisory Committee which have taken place during the aforementioned period.

2....Does the committee hold a list of wines it considers suitable for consumption at official functions. If so can the Committee provide such a list. I assume the list will include information about labels, vintages, suppliers and prices.

3....Does the committee hold a list of functions which have taken place during the aforementioned period and for which it has provided any support and or guidance and or wine. Can it please provide a list of functions. Could the list identify the government/public body hosting the event, provide the venue of the event and state the date the event took place. Could the list specify the quantities and types of wine used on each occasion together with the cost.

4....During the aforementioned period has the committee issued any general advice to Government Departments and or other bodies about what wines to use. I assume this will include information about what wines to use in general, what wines to use on particular occasions and what wines to use on specific functions. Could the committee please provide copies of this guidance?'

7. The GHACPW responded to this request on 28 August 2009. In relation to request 1, it provided the complainant with the copies of the minutes of the GHACPW meetings for the period since 1 July 2008. In relation to request 2, it explained that it did not hold a list of the wines in the terms that the complainant had requested. However, what it did hold was a full stock list of the GH cellar. The GHACPW explained that it considered the details of this stock list to be exempt from disclosure on the basis of section 43(2) of the Act because disclosure would be likely to affect both the commercial interests of the FCO and its wine suppliers. However, the GHACPW explained that it had prepared 'an illustrative list of the types of wine that are currently held' and provided this to the complainant. In relation to request 3 the GHACPW

explained that it did not hold a list of the functions that had taken place since 1 July 2008. In relation to request 4, the GHACPW explained that it did not issue guidance to government departments on what wines to use, either in general or specific terms, other than to GH. However, the response explained that advice issued by the GHACPW to GH was either recorded in the minutes or added directly to the comments on individual wines on the stock list. The GHACPW said that such comments were subjective and not appropriate for release, (although it did not cite a specific exemption as a basis to withhold this information).

8. The complainant contacted the GHACPW on 1 September 2009 and asked it to conduct an internal review of the decision to withhold the stock list on the basis of section 43(2). In submitting this request the complainant set out a number of reasons as to why he disputed the GHACPW's reasoning behind the application of this exemption.
9. The GHACPW informed the complainant of the outcome of the internal review on 1 October 2009; the review upheld the decision to withhold the stock list on the basis of section 43(2). In response to a point made by the complainant that the wine industry was probably aware of who GH's suppliers were, the GHACPW explained that 'We also accept that the wine industry is probably aware of who are GH's suppliers. We have never sought to conceal which suppliers we work with or how GH buys its wines'.

## **The Investigation**

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### **Scope of the case**

10. On 20 October 2009 the complainant contacted the Commissioner to complain about the way his requests for information had been handled. The complainant specifically asked the Commissioner to consider the points which he had set out in his request for an internal review.
11. The Commissioner has confirmed with the complainant that the scope of this complaint is therefore the GHACPW's decision to withhold the information falling within the scope of request 2 – i.e. a list of wines including labels, vintages, suppliers and prices - and its decision to withhold the comments about individual wines which would fall within the scope of request 4.

## **Chronology**

12. Unfortunately, due to a backlog of complaints received about the Act, the Commissioner was unable to begin his detailed investigation of this case immediately. Therefore it was not until 2 June 2010 that the Commissioner wrote to the FCO in respect of this complaint. In this letter the Commissioner asked the FCO to provide him with a copy of the information that had been withheld from the complainant and detailed submissions to support its argument that such information was exempt from disclosure on the basis of section 43(2) of the Act.
13. The FCO provided the Commissioner with a copy of the Government Hospitality Wine Cellar Report (i.e. the stock list) on 5 July 2010 and confirmed that the information that had been withheld from the complainant was contained in this report.
14. The FCO subsequently provided the Commissioner with detailed submissions regarding section 43(2) on 12 July 2010.

## **Findings of fact**

15. The stock list includes the name of each wine held in the cellar and also includes the following fields of information:
  - Supplier and delivery date;
  - Grade;
  - Original order;
  - Cost per bottle;
  - Agency price;
  - Market price;
  - Present stock;
  - Usage instructions; and
  - Tasting notes.
16. Not all fields are populated for all wines; for example not all wines have tasting notes.

## Analysis

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### Substantive Procedural Matters

17. The Commissioner wishes to confirm the exact nature of the information that he understands to fall within the scope of requests 2 and 4.
18. The Commissioner considers the name of each of the wines along with the supplier and delivery date, original order, cost per bottle and agency price to fall within the scope of request 2. For ease, the Commissioner has referred to this information as 'purchasing arrangements' throughout the remainder of this Notice.
19. The Commissioner considers the grade, usage instructions and tasting notes to fall within the scope of the request 4. For ease, the Commissioner has referred to this information as the 'comments' throughout the remainder of this Notice.
20. Based upon an objective reading of the wording of the relevant requests, the Commissioner considers the remaining information, i.e. the market price and present stock - to fall outside the scope of both of requests 2 and 4 and therefore he has not considered whether such information is exempt on the basis of arguments submitted by the FCO.

### Exemptions

#### Section 43(2) – commercial interests

21. Section 43(2) states that:

'Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).'
22. The FCO has argued that disclosure of the detailed information contained on the stock list, which would fulfil requests 2 and 4, would be likely to prejudice both its commercial interests and those of its suppliers.
23. The Commissioner has set out below the submissions the FCO has provided to support this position before summarising the complainant's arguments and then set out his findings with regard to the application of the exemption.

### The FCO's position

24. In submissions to the Commissioner, the FCO explained that it believed that both its and its suppliers' commercial interests were likely to be prejudiced by disclosure of the requested information for the following reasons:
25. Firstly, the FCO's ability to achieve price discounting from its suppliers is very likely to be prejudiced if the rates it pays its suppliers for purchases of wines are disclosed. London is the centre of a highly volatile and active wine market. GH requires its suppliers to tender quotes for individual wines. When receiving quotes prior to a tasting and purchase, GH will always select the lowest quote, which may or may not come from the dominant supplier within the UK. Some of GH's suppliers are prepared to offer significant discounts below the normal market price. Releasing stock and pricing details of sales to GH in the London wine market is very likely to be picked up by other wine purchasers, and could result in pressures on the suppliers which would be very likely to lead them to end their discounting arrangements with GH. As a public authority, the FCO has a duty to achieve the best possible value for money and it believed that the value for money arrangements it had in place would be compromised by the disclosure of the purchasing arrangements requested by the complainant.
26. Secondly, the commercial interests of FCO's suppliers and FCO itself would be likely to be prejudiced by disclosure of the comments made about individual wines by members of the GHACPW. The comments recorded on the wine database and printed on the stock list are a mixture of informal advice from members of the GHACPW and comments and views made during reviews and tastings from both the Committee and others. Some of the comments are complimentary, offering guidance on future use and progress of individual wines. Some of the comments are critical of wines which members of the GHACPW may feel are not performing as well as they would expect. None of these comments were ever intended to be widely disseminated, and are, necessarily, only recorded in summary form. The advice is offered for the benefit of the Head of GH who is responsible for the management of the cellar on a day-to-day basis and who can interpret the comments appropriately. Release of some of the comments would damage the reputations of both supplier and individual wines. The FCO did not consider it appropriate for a public authority to influence, positively or negatively, the reputations of individual products and suppliers through informal advice offered by the GHACPW.
27. In submitting these arguments the FCO noted that it had consulted with a number of its suppliers on a number of occasions in order to



explicitly ask whether releasing details of its purchasing arrangements and comments by the GHACPW members would prejudice their commercial interests or affect the price discounting arrangements with GH. The FCO reported that all suppliers asked agreed that release of these details would prejudice their commercial interests to some extent.

28. In submissions to the Commissioner, the FCO confirmed that the level of prejudice which the FCO was seeking to rely on was the lower threshold of likelihood that prejudice would be likely to occur, as opposed to would occur. The FCO confirmed that its reasoning for this determination was based on its discussions not only with suppliers but also with experts available for consultation by GH which included the GHACPW members.

#### The complainant's position

29. In submitting his internal review request the complainant made the following points:
- The reference to other wine purchasers pressuring the government's own suppliers in the event that information is released is pure conjecture and highly unlikely.
  - It was likely that the entire wine industry is aware of which firms supply the FCO and on what basis.
  - The fact that comments about individual wines may be highly subjective is not a reason for refusing to disclose them under the Act.

#### The Commissioner's position

30. In order for a prejudice based exemption, such as section 43(2), to be engaged the Commissioner believes that the following three criteria must be met:
- Firstly, the actual harm which the public authority alleges would or would be likely to occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
  - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and



- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e. disclosure would be likely to result in prejudice or disclosure would result in prejudice. If the likelihood of prejudice occurring is one that is only hypothetical or remote the exemption will not be engaged.

31. As suggested above there are in effect two different classes of information that have been withheld from the complainant: the purchasing arrangements that would fulfil request 2 and the comments that would fulfil request 4. The Commissioner has applied the three limb test set out above to the information that would fulfil request 2 first.

#### *Request 2 – purchasing arrangements*

32. The Commissioner is satisfied that the prejudicial effects identified by the FCO both to its interests and those of its suppliers are clearly ones that relate to the interests which section 43(2) is designed to protect. The first criterion is therefore met. (In respect of the prejudicial effect to the FCO's commercial interests, the Commissioner notes that the Information Tribunal in *Keene v Central Office of Information* (EA/2008/0097) confirmed that it was correct to accept that a public authority's ability to obtain best value for money amounts a commercial interest for the purposes of section 43(2).)
33. In respect of the second criterion, the Commissioner accepts that it is reasonable to argue that in a specialist market such as the London wine trade, disclosure of the purchasing arrangements the FCO entered into with various wine suppliers would be very likely to be picked up by other wine purchasers. Furthermore the Commissioner accepts that it is logical to argue that other purchasers of the same wine in similar quantities, would be likely to pressure the FCO's wine suppliers for similar discounts. There would be no obvious reason why other purchasers would not seek to minimise the amount they had to spend to secure the wines that they wanted. The Commissioner is also prepared to accept that it is plausible, in theory, to argue that the FCO's suppliers would find it difficult to refuse such pressure from other purchasers. Even if such pressures did not result in them offering the same discount as provided to the FCO but still offering a lower price than they would have usually sold that particular wine to that particular buyer for, then there would be impact on the suppliers' commercial interests. Thus the Commissioner accepts that there is a causal relationship between disclosure of the prices and quantities at which particular suppliers sold particular wines to the FCO at and a potential impact on the various suppliers' commercial interests. In light of the

- volumes and values of the wines traded by such suppliers the Commissioner also accepts that it would be correct to describe such prejudice as real and actual.
34. In respect of the second criterion, and the prejudice that may occur to the FCO's commercial interests, it is the Commissioner's understanding that the likelihood of such harm occurring is dependent on harm initially occurring to the commercial interests of its suppliers, or more accurately the suppliers perceiving such harm to their interests as a real threat. That is to say, the reason that the FCO's commercial interests will be harmed is because its suppliers may review their discounting arrangements with the FCO because of the fear (or actuality) that disclosure of the purchasing information will lower the price the suppliers are able to sell wines to other purchasers. Thus the causal relationship between disclosure of the information and prejudice to the FCO's commercial interests is dependent on the existence of a causal relationship between disclosure of the information and prejudice to FCO's suppliers' commercial interests. In the preceding paragraph the Commissioner has explained why he believes that there is causal link to the supplier's commercial interests. The Commissioner is also prepared to accept that there would be a causal link between pressure on the FCO's suppliers and future discounts such suppliers may be prepared to offer the FCO. In the Commissioner's opinion it is logical to assume that if such suppliers face pressures to sell at a discounted rate to other purchasers, it is plausible that to avoid such pressure they end or reduce the discounts that they are prepared to offer to the FCO.
  35. Furthermore, and of equal importance, the Commissioner recognises that the purchasing arrangements between the FCO and suppliers are considered to be confidential in nature. Therefore the Commissioner accepts that it is plausible to argue that if details of the purchasing arrangements were disclosed, contrary to the explicit expectations of the suppliers, then such suppliers may consider reviewing the nature of their discounting relationships with the FCO. Moreover, such a scenario could occur regardless of any actual effects to the suppliers' commercial interests via pressures from other buyers.
  36. Regardless of why the prejudice to the FCO's commercial interests may occur, the Commissioner accepts that given the volume of wine that the FCO purchases, and the value of the discounts that it is offered by its suppliers, such harm could be correctly described as real, actual and of substance.
  37. However, the Commissioner has considered whether a redacted version of the stock list could be disclosed – with some details of the purchasing arrangements removed – in order to partially fulfil request

2 without any prejudice occurring to either the FCO's or its suppliers' commercial interests as a result. As part of such considerations the Commissioner has noted that in its internal review response the FCO explicitly stated that 'We also accept that the wine industry is probably aware of who GH's suppliers are. We have never sought to conceal which suppliers we work with or how GH buyers its wines'.

38. Therefore the Commissioner believes that the names of all of the suppliers on the stock list could be disclosed - unallied to the particular wines that they supplied - without any resulting prejudice to the commercial interests of either the suppliers themselves or the FCO. As indicated in the preceding paragraph, this point is one effectively accepted by the FCO in its internal review outcome.
39. Furthermore the Commissioner has carefully considered whether the list of all of wines held by the FCO could be disclosed without any resulting prejudice to either its or its suppliers' commercial interests. In undertaking such considerations the Commissioner would note that the FCO's submissions to him, which are replicated above, focused very much on its purchasing arrangements with the various suppliers, and to a lesser extent, the comments regarding each individual wine. In these submissions the FCO did not specifically highlight how disclosure simply of the wines it held would be likely to prejudice either its commercial interests or those of its suppliers. However, in its refusal notice the FCO did argue that it was not appropriate that purchases made by the GH for the government wine cellar should be viewed as public endorsements of individual wines or producers, and release of such information could result in a distortion of the volatile wine market.
40. In respect of this argument, the Commissioner is prepared to accept that in theory it is not implausible that the fact that the FCO has invested in stocks of certain wines could be seen by some as an endorsement of certain wines. As noted above, the Commissioner also accepts that the wine market is a specialist one with very knowledgeable buyers and sellers who are likely to take a keen interest in such information. However, in the Commissioner's opinion such purchasers – either investors or those buying to drink – are unlikely to buy wines **simply** because the FCO has previously bought such wines. Both types of buyer are presumably sufficiently sophisticated to make their decision to invest and/or purchase a particular wine having considered a range of data and criteria. Furthermore, even if disclosure of the list of wines held by the FCO could result in some sort of 'distortion' to the wine market, the Commissioner does not accept that such a distortion could be linked to a prejudicial impact on the commercial interests of the suppliers or producers. If anything, as the

FCO's argument implies, disclosure of the list is likely to enhance the reputations of particular suppliers and/or producers.

41. Moreover, the Commissioner is aware that edited versions of the minutes of the GHACPW are disclosed by the FCO and these contain the names of the particular wines tasted by the Committee. Although such meetings only take place quarterly and the number of wines tasted is small compared to the number held in the cellar, by comparing all of the available minutes some insight could be gained into the wines held.
42. Furthermore, in its submissions to the Commissioner, the FCO highlighted the fact that in responses to previous FOI requests for a copy of the stock list, it had indicated that requests framed around what wines were served from the cellar in a particular year would be fully answered.
43. Therefore through such actual and hypothetical disclosures a relatively detailed and informative mosaic could presumably be built up of the various wines held in the cellar.
44. The Commissioner is therefore not prepared to accept that there is a causal link between disclosure of the list of wines held by the FCO and any prejudice to either its own commercial interests or its suppliers' commercial interests.
45. In reaching this conclusion the Commissioner acknowledges that in its submissions to him the FCO has indicated that some of the wines it has purchased have been bought from 'exclusivities', i.e. one merchant supplying the entire UK market with a particular product. Therefore the Commissioner accepts that for wines bought on such a basis, disclosure of the fact that such wines are held in the cellar will in effect confirm who the FCO purchased such wines from. However, if the supplier in question is the sole seller of such a product to the UK wine trade, it is difficult to see how disclosure of such a fact could harm that suppliers' commercial interests as potential purchasers have no alternative direct source of purchasing such wines.
46. With regard to the third criterion, the Commissioner has been guided on the interpretation of the phrase 'would, or would be likely to' by a number of Information Tribunal decisions. With regard to likely to prejudice, the Tribunal in *John Connor Press Associates Limited v The Information Commissioner* (EA/2005/0005) confirmed that 'the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk' (Tribunal at paragraph 15). With regard to the alternative limb of 'would

prejudice', the Tribunal in *Hogan v Oxford City Council & The Information Commissioner* (EA/2005/0026 & 0030) commented that 'clearly this second limb of the test places a stronger evidential burden on the public authority to discharge' (Tribunal at paragraph 36).

47. As noted above the FCO has confirmed that it is relying on the lower threshold of 'would be likely' in respect of both its commercial interests and those of its suppliers.
48. Having considered the circumstances of this case the Commissioner is prepared to accept that the likelihood of prejudice occurring to both the FCO and its suppliers' commercial interests by disclosure of the pricing arrangements is one that is more than hypothetical and thus the exemption is engaged. The Commissioner has reached this conclusion for the following reasons:
49. In respect of the prejudice that would be likely to occur to the FCO's suppliers the Commissioner is somewhat sceptical of the actual 'pressure' under which these suppliers would be placed. In theory such suppliers could presumably refuse to provide other purchasers with the discounts offered to the FCO on the basis of the FCO's particular relationship with the supplier; i.e. such a discount is provided not just in respect of that purchase but on the basis of a long term, ongoing relationship between that supplier and the FCO.
50. However, the Commissioner recognises that in asserting that such prejudice is likely to occur, the FCO has consulted with a number of the suppliers in question. Such consultation is in line with the comments of the Information Tribunal in *Derry Council v Information Commissioner* (EA/2006/0014) in which the Tribunal argued that it is not appropriate for a public authority to simply rely on speculative arguments concerning prejudice to third parties' interests; rather such arguments should be based on the public authority's actual and prior knowledge of the third parties' interests. (The FCO has informed the Commissioner that such discussions took place over the telephone or by email and no records of them have been retained.)
51. In response to this consultation the third parties were very clear that disclosure of the pricing and stock information falling within the scope of request 2 (and comments regarding their wines which fall within the scope of request 4) would, to some extent, prejudice their commercial interests and none felt that this was hypothetical. Whilst the Commissioner recognises the obvious inherent interest that such suppliers have in advancing such arguments, the Commissioner also recognises the fact that these companies are suppliers in a specialist market and therefore he considers it appropriate to place weight on

their views with regard to likelihood of harm to their commercial interests. Furthermore, the Commissioner recognises that the FCO's views on the likelihood of prejudice occurring to the suppliers are also informed by the knowledge and comments of the four Masters of Wine who comprise the GHACPW.

*Request 4 – comments about wines*

52. Again in relation to the first criterion, the prejudice which the FCO envisages would be likely to occur to both it and its suppliers if the comments on the individual wines were disclosed, is clearly one which falls within the scope of the exemption contained at section 43(2) of the Act.
53. However, in respect of a causal link between disclosure of these comments and prejudice to the commercial interests of the suppliers the Commissioner is somewhat sceptical because the majority of them are positive in nature. Therefore rather than harming the reputation of the various suppliers (and the individual wines) disclosure of the comments could arguably improve the commercial reputation of the suppliers and wines in question. Even if such enhancement of reputations did not occur, it is very difficult to see any causal relationship between disclosure of these comments and prejudice to the commercial reputations of the suppliers and/or producers.
54. With regard to the negative, or more circumspect comments, the Commissioner recognises that it is logical to argue that these comments are ones that could potentially harm the reputations of the individual wines producers and thus for these comments the second criterion is met.
55. However in respect of these negative comments, the Commissioner does not believe that the third criterion is met because in his opinion the likelihood of such prejudice occurring to the FCO's suppliers is one that is nothing more than 'hypothetical'. The Commissioner has reached this conclusion for a number of reasons:
56. Firstly, the Commissioner notes in its submissions to him, the FCO highlighted the fact that the comments were never intended to be widely disseminated and need to be 'interpreted' by the head of GH. However, the Commissioner is strongly of the opinion that in disclosing information under the Act, public authorities always have the option of setting information in some sort of context in order to lessen the effects of any potential prejudice. In this case the FCO could easily replicate the caveat as set out above concerning the context in which



these comments were originally provided in order to offset any potential prejudice.

57. Secondly, the Commissioner recognises the fact that the comments recorded about each wine have been made by the members of the GHACPW, the current members of which are all Master of Wines and therefore it is arguable that their comments (both positive and negative) have the potential to have a greater influence on the reputation of individual wines than other commentators. However, he would reiterate the points he has made above in relation to disclosure of the wines held by the FCO; namely that wine purchasers are knowledgeable and sophisticated and are very likely to make their decision to invest and/or purchase a particular wine having considered a range of data and criteria. Given the amount of money that such purchasers are likely to spend, in the Commissioner's opinion it is highly unlikely that they would place significant weight on comments which, by the FCO's own admissions, are ones that are simply made for a limited audience, open to interpretation, and are brief and summary in nature.
58. Thirdly, the Commissioner understands that on the basis of the submissions provided to him, the 'confidential' nature of the relationship between the FCO and its suppliers does not extend to an understanding that if the comments recorded on the stock list are disclosed then suppliers will reconsider their discounting arrangements with the FCO. Rather such confidentiality extends simply to the pricing information itself.
59. In reaching this conclusion the Commissioner is not disputing that the comments may be read with interest by those in the wine industry. However, he does not believe that the FCO has demonstrated that the likelihood of prejudice occurring to suppliers' commercial interests following disclosure of these comments is anything beyond hypothetical. The only exception to this conclusion is in respect of some of the comments about six particular wines because these contain details of the price these wines were bought for and/or the supplier they were purchased from. The Commissioner accepts that such information is exempt from disclosure for the same reasons as the purchasing arrangements discussed above.
60. To summarise, the Commissioner accepts that section 43(2) is engaged in respect of the particular price at which particular suppliers sold particular wines to the FCO and on what date such transactions took place. However, the Commissioner does not believe that section 43(2) is engaged in respect of the names of the suppliers themselves and further this exemption does not provide a basis to withhold the



names of the wines that the FCO holds, unallied to the name of a particular supplier, but alongside any comments recorded on the stock list.

### **Public interest arguments in favour of disclosing the requested information**

61. The FCO acknowledged that the disclosure of information requested by the complainant would serve the public interest in transparency of public funds. Disclosure could also serve the public interest in knowing and understanding how the government sources its wines and what particular wines were bought.
62. The Commissioner also notes that there have been a number of Parliamentary Questions and stories in the media concerning the government wine cellar and therefore disclosure of the requested information could potentially contribute to this debate.

### **Public interest arguments in favour of maintaining the exemption**

63. The FCO argued that it was strongly in the public interest that as a public authority it secures the best possible value for money when buying wines for the GH cellar. It was therefore strongly against the public interest to disclose information which could undermine or lead to the termination of the discounts which the FCO receives from its suppliers.
64. The FCO also noted that it had already placed into the public domain a range of information concerning the cellar, including the lists of example wines held given to the complainant; the minutes of the GHACPW meetings; and responses to Parliamentary Questions and other requests received under the Act in which it had disclosed the annual amount spent on the cellar and its total value.

### **Balance of the public interest arguments**

65. The Commissioner believes that there is a clear and very strong public interest in the disclosure of information that reveals how public funds have been spent. In the circumstances of this case the public clearly have a genuine and legitimate interest in knowing which wines the government has bought and at what price. Furthermore such transparency can also generate confidence in the integrity of the procedures involved. Disclosure of the pricing information could reassure the public that the FCO has been successful in achieving discounts from its wines suppliers and/or provide reassurance that the cellar has been well managed. That is to say, wines that the FCO has

decided to buy when young and relatively inexpensive, have matured and improved in quality (and value). In the Commissioner's opinion these arguments should be given notable weight.

66. The Commissioner is somewhat sceptical as to the degree to which disclosure of the information which he accepts is exempt could genuinely further this debate. Although as noted above, disclosure of this information could inform the public as to the effectiveness of the cellar's management, the debate would appear to be based upon the more fundamental question as to whether the government should in fact be spending public funds in order to maintain such a cellar when many arguably more vital areas of government spending are facing significant cuts in funding. In light of the fact the FCO (or the GHACPW) already publishes the total amount spent each year on acquiring stock for the cellar as well as the overall value of the cellar, the Commissioner does not believe that disclosure of the purchasing information could contribute hugely to answering this question.
67. In the Commissioner's opinion, whether or not the cellar is effectively managed and provides good value for money is linked to, but certainly distinct from, a discussion as to whether the government should be using public money to provide dignitaries, and those who attend official functions with fine wines. In other words in considering the balance of the public interest in respect of this complaint, the Commissioner does not believe that it is necessary or appropriate to question whether such a cellar should be maintained.
68. With regard to the public interest in maintaining the exemption, the Commissioner believes that it is very strongly in the public interest that public authorities receive best value for money when purchasing goods or services. In the circumstances of this case the Commissioner notes that disclosure of the information risks undermining the FCO's discount arrangements not just with one supplier but numerous suppliers. Furthermore the FCO's purchasing of wine for the GH cellar is an ongoing, continuous activity. In the Commissioner's opinion such factors add weight to the public interest in maintaining the exemption.
69. In conclusion, the Commissioner has decided that the public interest in maintaining the exemption outweighs the public interest in disclosure of the pricing information. Whilst he recognises the validity of the arguments surrounding accountability and transparency, in the Commissioner's opinion the weight that should be attributed to protecting the FCO's ability to achieve the best price available when purchasing wine for the GH cellar is stronger.

## Procedural Requirements

### Sections 10 and 17 – Time for compliance

70. The right to access information is provided by section 1(1) of the Act and is in fact split into parts: section 1(1)(a) – the right to know whether information of the nature requested is held; and section 1(1)(b) – if held, the right to have that information provided.
71. Section 10(1) states that a public authority must comply with the requirements of section 1(1) no later than the twentieth working day following the date of receipt of the request.
72. Section 17(1) states that if a public authority is relying on an exemption to refuse to provide the requested information it must provide the applicant with a refusal notice stating this within the time for compliance set out in section 10(1).
73. In this case the complainant submitted his request on 17 July 2009 and the GHACPW did not respond to this request until 28 August 2009, outside of the twenty working days specified in section 10(1). By failing to issue its refusal notice within this time limit, the GHACPW breached section 17(1) of the Act. Furthermore as the response of 28 August also disclosed some information to the complainant, failure to provide this information within twenty working days represents a breach of section 1(1)(b) and 10(1) of the Act.
74. Furthermore by failing to provide the complainant with the information that the Commissioner has concluded is not exempt from disclosure, the GHACPW committed further breaches of sections 1(1)(b) and 10(1) of the Act.

## The Decision

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75. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
  - (i) In respect of request 2 the Commissioner has concluded that the pricing information which forms part of the 'purchasing arrangements' which links the supplier and delivery date to the original order, cost per bottle and agency price is exempt from disclosure on the basis of section 43(2) and in all the circumstances of this case

the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

- (ii) Parts of six of the comments falling within the scope of request 4, identified in the confidential annex to this notice, are also exempt on the same basis.

76. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- (i) In respect of request 2 the Commissioner believes that section 43(2) does not provide a basis to withhold simply a list of suppliers nor a list of the wines unallied to the particular suppliers who provided them.
- (ii) In respect of request 4 the Commissioner believes that section 43(2) does not provide a basis to withhold the comments about each wine (i.e. grade, usage instructions and tasting notes) with the exception being parts of six particular comments which the Commissioner has identified in the confidential annex.
- (iii) By failing to respond to the request within twenty working days the GHACPW breached section 17(1) in respect of its refusal notice and sections 1(1)(b) and 10(1) in respect of the information which it disclosed.
- (iv) In failing to provide the complainant with the information that the Commissioner has concluded is not exempt from disclosure the GHACPW also breached sections 1(1)(b) and 10(1) of the Act.

## Steps Required

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77. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

To provide the complainant with –

- (i) A list of its suppliers recorded on the stock list; and
- (ii) A list of the wines its holds with the associated comments recorded on the stock list (namely the grade, usage instructions and tasting notes) allied to each wine. In providing these comments the GHACPW can withhold parts of the comments for the particular wines which the Commissioner has identified in the confidential annex.

78. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

### **Failure to comply**

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

## Right of Appeal

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80. 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,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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

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

**Dated the 18<sup>th</sup> day of October 2010**

**Signed .....**

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

## **Legal Annex**

### **Freedom of Information Act 2000**

#### **General Right of Access**

**Section 1(1)** provides that -

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

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

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

**Section 1(2)** provides that -

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

#### **Effect of Exemptions**

**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"

#### **Time for Compliance**

**Section 10(1)** provides that –

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



## **Refusal of Request**

**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.”

## **Commercial interests.**

**Section 43(2)** provides that –

“Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).”