

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 December 2011

Public Authority: Department for Culture, Media and Sport
Address: 2-4 Cockspur Street
London
SK9 5AF

Decision (including any steps ordered)

1. The complainant has requested copies of minutes of meetings relating to discussions about proposed new arrangements for S4C following the government's comprehensive spending review in October 2010.
2. The Information Commissioner's decision is that the Department for Culture, Media and Sport has correctly withheld the information under section 36 of the Act.
3. The Information Commissioner does not require the public authority to take any steps

Request and response

4. On 1 March 2011, the complainant wrote to DCMS and requested information in the following terms:
"I should be grateful if you would send me copies of the Minutes (or Record or equivalent) of each of the meetings held so far involving DCMS, the BBC and S4C to discuss the proposed new arrangements for S4C, following the Comprehensive Spending Review in October 2010. I understand that the first of these meetings took place on 11 January 2011".
5. DCMS responded on 29 March 2011. It stated that it was withholding the information under section 36(2)(b) of the FOIA.

6. Following an internal review DCMS wrote to the complainant on 20 April 2011. It stated that it was withholding the information under section 36(2)(b) and that the public interest in withholding the information outweighed the public interest in disclosing the information. It also said that it could additionally rely on section 35 to exempt the information from disclosure.

Scope of the case

7. On 23 April 2011 the complainant contacted the Information Commissioner to complain about the way his request for information had been handled. In particular he asked the Information Commissioner to consider the content of his request to DCMS for an internal review when considering his complaint. Amongst other comments he also asked the Information Commissioner to consider several specific points.
 - That he did not agree that section 35 applied.
 - That the public interest in the subject has been clearly acknowledged by the Chairs of the BBC and S4C.
 - That there have been many published calls for information to be made public about the future of S4C.
8. During the course of his investigation the Information Commissioner asked DCMS to confirm whether it was relying on both exemptions stated, section 36(2)(b) and section 35. DCMS confirmed that it was relying solely on section 36(2)(b)(i) and (ii) in respect of all of the information.
9. DCMS also provided the Information Commissioner with a copy of the withheld information and confirmed that no other information was held within the scope of the wording of the request. It also provided the Information Commissioner with additional arguments and information for its reliance on section 36(2)(b)(i) and (ii).
10. The scope of Information Commissioner's investigation is therefore to solely consider whether DCMS was correct to withhold the information under section 36(2)(b).

Reasons for decision

11. Section 36(2)(b)(i) and (ii) provides an exemption where, in the reasonable opinion of a qualified person, the disclosure of the information 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,
12. The Information Commissioner must determine whether the opinion of the qualified person was reasonable. If the opinion is reasonable the Information Commissioner will then consider the balance of the public interest arguments in relation to the withheld information.
13. DCMS told the Information Commissioner that the qualified person in this case was the Secretary of State, Jeremy Hunt. It told the Information Commissioner that it sought the opinion of Mr Hunt on 16 March 2011 and that his opinion was given on 29 March 2011.
14. The Information Commissioner has been provided with a copy of the submission given to the qualified person and on which his opinion was based.
15. The basis for the opinion was that the disclosure of the withheld information would be likely to impact on the ability of officials to have full and frank discussions. DCMS also argued that it would not be in the public interest if officials were impeded before being able to make decisions based on those discussions.
16. The Information Commissioner is satisfied that Mr Hunt is the qualified person for DCMS and that an opinion was given at the relevant time. He has therefore gone on to consider whether that opinion was reasonable that disclosure would or would be likely to have the impact stated.

Is the opinion reasonable?

17. The Information Commissioner has been provided with a copy of the submission given to the qualified person, which includes a copy of the withheld information as well as information supporting a recommendation. He has carefully considered the content of that submission and is satisfied that the opinion given was reasonable.
18. The Information Commissioner is therefore satisfied that section 36(2)(i) and (ii) is engaged in relation to the information, which if disclosed

would be likely to inhibit on the free and frank provision of advice or exchange of views.

19. As the Information Commissioner has found the exemption to be engaged he has gone on to consider the public interest arguments.

Public interest arguments in favour of disclosure

20. DCMS told the Information Commissioner that being open and transparent about such discussions may lead to an increase in engagement between the public and the government and that there would be increased confidence that such decisions are well-founded and based on adequate information.
21. The complainant told the Information Commissioner that there is a public interest in the information as S4C is vital to the health of the Welsh language. He told the Information Commissioner that the channel itself came about after much effort, personal sacrifice and a strong commitment for a Welsh language channel, and for this reason S4C viewers are extremely worried and uneasy about the channel's future, particularly as there has been a lack of information about the talks that are being held.
22. The complainant also argued that there has been an explicit acknowledgement of the public interest in the joint discussions over the future of S4C and this has been demonstrated in letters¹ from both the Chair of the BBC and the Chair of S4C in November 2010.
23. The Information Commissioner accepts that there is significant public interest in the future of S4C as the only national Welsh language television channel. In particular he notes that it was a call from the public which led to the first Welsh language channel to be created. Albeit that the channel was launched in 1982, it had taken several years of high-profile campaigning to get to that point. The Information Commissioner further notes that the subject of a Welsh language television channel was even included in both the Labour party and Conservative party general election promises in 1979. Accordingly, the Information Commissioner has attributed significant weight to the public

1

http://www.bbc.co.uk/bbctrust/news/press_releases/2010/november/s4c_letter.shtml

http://www.s4c.co.uk/pdf/e_letter-bbc-trust.pdf

interest in disclosure of the information regarding discussions over the future of the channel.

Public interest arguments in favour of maintaining the exemption

24. DCMS argued that it is in the public interest for DCMS officials and ministers to take part in open and honest discussions with S4C and the BBC, to get the best possible outcome of those discussions for the public. It argued that all options need to be fully explored in order to understand all implications. It said that disclosing the information before the discussions were finalised would be likely to result in pressure to close off some options before they had been fully thought through.
25. DCMS also argued that, if the information were disclosed, it is likely that the BBC and S4C would be more guarded in their feedback in the future and be less willing to provide frank advice to each other. DCMS told the Information Commissioner that it was its view that this would damage its ability to ensure that S4C and the BBC act in partnership as initially promised.
26. The Commissioner accepts the arguments put forward by DCMS in respect of the importance of being able to carry out free and frank discussions. He accepts that although the policy announcement had been made there were many issues about implementation for the new arrangements still to be agreed. He accepts that disclosure would reveal information about issues that were still live at the time of the request.

Balance of public interest arguments

27. The Information Commissioner notes the history of the formation of the first Welsh language channel and the associated public interest and the strength of public feeling that remains attached to the channel and the concerns over its future. There is significant weight in favour of the public interest in disclosing the information. The Information Commissioner also notes that the Chairs of both the BBC and S4C made public statements on the significance of the public interest over the future of the channel and a public commitment to work together in the best interests of the channel. This commitment to work together can be presented as a counter argument to the claims of the DCMS that disclosure would harm the partnership. However, despite this the Information Commissioner still considers that considerable weight should be placed on maintaining the exemption, noting the prejudice that would be likely to be caused by disclosing at the time the request was made.

28. The Information Commissioner finds that the public interest in maintaining the exemption outweighs the public interest in disclosure. The public authority was correct to withhold the information under section 36(2).

Right of appeal

29. Either party has the right to appeal against this decision notice to the first-tier tribunal (information rights). Information about the appeals process may be obtained from:

First-tier tribunal (information rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

30. 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.

31. Any Notice of Appeal should be served on the tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Steve Wood
Head of Policy Delivery
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF