

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 25 August 2015

**Public Authority:** Department for Transport

**Address:** Great Minster House  
33 Horseferry Road  
London  
SW1P 4DR

### Decision (including any steps ordered)

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1. The complainant made a freedom of information request to the Department for Transport (DfT) for advice offered to Ministers regarding the Settle to Carlisle Railway in the 1980's. The DfT confirmed it held some information falling within the scope of the request but withheld it under the exemption in section 35(1)(b) (Ministerial communications).
2. The Commissioner has decided that section 35(1)(b) is engaged and the public interest in maintaining the exemption outweighs the public interest in disclosure. The Commissioner requires no steps to be taken.

### Request and response

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3. The complaint relates to a request for information made to the DfT regarding the Settle to Carlisle Railway which had been proposed for closure in the 1980's but was subsequently saved following a campaign which led the government to refuse consent to close the line. The request was received on 13 November 2014 and read as follows:

*"I'm after three documents*

- A. *The legal advice offered to Ministers and the Permanent Secretary by inhouse lawyers – or if external advice was commissioned that advice*
- B. *The formal advice offered by the Secretary of State Paul Channon to the Prime Minister or Cabinet colleagues*

*C. The formal advice offered by the Permanent Secretary when the matter was raised with No 10."*

4. The DfT responded to the request on 11 December 2014 when it explained that the requested information was not held.
5. Mr Pearson subsequently asked the DfT to carry out an internal review of its handling of the request and it presented its findings on 19 March 2015. This review found that, following additional searches for information, it did in fact hold information falling within the scope of part B of the request. However, it said that this information was being withheld under the exemption in section 35(1)(b) (Ministerial Communications) and that the public interest in maintaining the exemption outweighed the public interest in disclosure.

## **Scope of the case**

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6. On 15 April 2015 the complainant contacted the Commissioner to complain about the DfT's refusal of his request. The Commissioner agreed with the complainant that the scope of his investigation would be to consider whether the DfT was entitled to rely on section 35(1)(b) as a basis for refusing to provide the withheld information.

## **Reasons for decision**

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### **Section 35(1)(b) – Ministerial Communications**

7. Section 35(1)(b) provides that information held by a government department is exempt if it relates to ministerial communications. It is what is known as a class based exemption. This means it is not necessary that disclosure would cause any kind of prejudice in order to engage the exemption, only that the information falls within the class of information the exemption is designed to protect.
8. In this case the withheld information is a letter between the then Secretary of State for Transport and the Prime Minister and so clearly falls within the scope of the exemption. The Commissioner is satisfied that section 35(1)(b) is engaged.

## **Public interest test**

9. Whilst the Commissioner has found that the exemption is engaged, section 35 is a qualified exemption and therefore the Commissioner has conducted a public interest test, balancing the public interest in disclosure against the public interest in maintaining the exemption.

## **Public interest arguments in favour of disclosure**

10. The complainant offered a number of arguments in favour of disclosure, including the following:
- Many of the campaigners (involved with the campaign to save the Settle to Carlisle Railway) were getting old and some had died.
  - The information was nearly approaching the age by which it would be considered a historical record and therefore not exempt under section 35.
  - There is a public interest in discovering what advice was really received and that this overrides cabinet confidentiality.
  - Current public debate in a number of areas would benefit from understanding of what it was that led Paul Channon to change his mind (on recommending closure of the line).
  - Government would benefit from the use of this information in case study form as Ministers and Civil Servants would learn more about the process of implementing government policy.

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

11. In favour of maintaining the exemption the DfT explained that the information sets out views of the then Secretary of State for Transport Paul Channon and therefore public arguments relating to collective responsibility are applicable in this case. It referred to the Commissioner's guidance on the section 35(1)(b) exemption which states that "if the information reveals the views of an individual Minister on a government position, arguments about maintaining collective responsibility are likely to carry significant weight". It explained that that was the case with this information and given the importance of the constitutional principle it had attached significant weight to this in its public interest test.

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

12. The Commissioner has first considered the arguments in favour of disclosure and would accept that there is a public interest in transparency and accountability. However, this is only in the most general sense in that disclosure of any government information

promotes greater openness. The matter is really only one of historical curiosity and in the Commissioner's view there is no particularly compelling case for disclosure, for instance by contributing to any current public debate or by exposing any kind of wrongdoing. The Commissioner appreciates that the Settle to Carlisle Railway is of great interest to a number of people but this is different from what is held to be in the public interest. Furthermore, whilst the Commissioner is sympathetic to the complainant's argument that some campaigners are ageing, he must find that this is not a relevant argument. FOIA is applicant blind and in balancing the public interest the Commissioner must consider the public interest as a whole and not by reference to specific individuals.

13. The Commissioner does not accept that disclosure would add to any current public debate in any material sense, as suggested by the complainant. Similarly, the Commissioner has not taken into account the argument that the government would benefit from the use of this information by learning about the process of implementing policy. The Commissioner would expect that there is already a great deal of information available to civil servants to help them implement policy and this particular information would in any event still be available within government if it was felt to be particularly useful on this point.
14. The complainant had also raised the issue that the documents are approaching the age when they would be considered a historical record and may be transferred to the National Archives. However, this is not in itself grounds for disclosure. There has been no decision that the information will be released and it could well be that the files will remain closed. Whilst the information remains subject to the section 35 exemption the Commissioner must make a decision based on the facts of the case.
15. Therefore, the Commissioner has found that the arguments for disclosure carry only very limited weight in the circumstances.
16. As regards the public interest in maintaining the exemption, the Commissioner has given an initial weighting in favour of the information being withheld due to the importance of the constitutional principle of collective responsibility. Cabinet Collective responsibility is the longstanding convention that all ministers are bound by the decisions of the Cabinet and carry joint responsibility for all government policy and decisions. It is a central feature of our constitutional system of government. Ministers may express their own views freely and frankly in private, but once a decision is made they are all bound to uphold and promote that agreed position to Parliament and the public. Where information reveals the opinion of individual ministers, as is the case

here, there will always be a public interest in it being withheld because disclosure only serves to undermine this principle.

17. Given the importance of this constitutional principle, the Commissioner finds that the arguments for maintaining the exemption are relatively strong. However, he must also acknowledge that the individuals concerned are either deceased or no longer involved in politics and this together with the passage of time means that the public interest in protecting this principle is reduced somewhat.
18. In conclusion however, given the lack of any compelling argument for disclosure, the Commissioner has found that in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosure.

## Right of appeal

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19. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

20. If you wish to appeal against a Decision Notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
21. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Signed .....**

**Pamela Clements**

**Group Manager**

**Information Commissioner's Office**

**Wycliffe House**

**Water Lane**

**Wilmslow**

**Cheshire**

**SK9 5AF**