

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 10 May 2016

**Public Authority:** The Attorney General's Office  
**Address:** 20 Victoria Street  
London  
SW1H 0NF

#### Decision (including any steps ordered)

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1. The complainant submitted a request to the Attorney General's Office (AGO) for all guidance and correspondence received and sent by the Attorney General which related to the creation of the ministerial veto which was issued to prohibit the release, under FOIA, of The Prince of Wales' correspondence with government departments. The AGO refused to disclose the information on basis of sections 35(1)(a) (formulation and development of government policy); 35(1)(b) (Ministerial communications); and 42(1) (legal professional privilege). The AGO also relied on section 35(3) to refuse to confirm or deny whether it held advice provided by the Law Officers or requests for such advice.
2. The Commissioner has concluded that the withheld information is exempt from disclosure on the basis of the exemptions cited by the AGO. He has also concluded that the AGO is entitled to rely on section 35(3) in manner that it did.

#### Background

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3. In 2005 Rob Evans, a journalist with *The Guardian*, submitted a number of FOI requests to various government departments seeking copies of correspondence they had exchanged with HRH The Prince of Wales. The departments refused to disclose this information. Mr Evans complained to the Commissioner about this decision, but in 2009 the Commissioner issued decision notices upholding the departments' position.
4. Mr Evans appealed these notices. The appeal was heard by the Upper Tribunal which issued its decision on 18 September 2012 in which it

found that Mr Evans was entitled to disclosure of what it termed 'advocacy correspondence', ie correspondence relating to the promotion of the Prince's views on various issues.

5. The departments did not seek permission to appeal this decision. However, on 16 October 2012 the Attorney General issued a certificate under section 53(2) of FOIA, the consequence of which was that the Upper Tribunal's decision requiring disclosure ceased to have effect.
6. Mr Evans sought a judicial review of the Attorney General's certificate. This review was ultimately decided by the Supreme Court in the case *R* (on the application of Evans) and *another (Respondents) v Attorney General (Appellant)*.<sup>1</sup> The Supreme Court dismissed the earlier appeal brought by the Attorney General against the decision of the Court of Appeal which had ruled that the certificate issued by him on 16 October 2012 was unlawful. The effect of the Supreme Court's decision meant that the correspondence was disclosed in line with the Upper Tribunal's decision of September 2012.

## Request and response

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7. The complainant submitted the following request to the AGO on 9 June 2015:

*'Please may you provide me with all guidance and correspondence received and sent by Dominic Grieve in 2012, which relates to the creation of the Freedom of Information Act Section 53, 'Ministerial Certificate' and its accompanying 'Statement of Reasons' that was issued in 2012 by the then Attorney General [i.e. Dominic Grieve]. For avoidance of any doubt, this is the ministerial veto which was issued to prohibit the release of Prince Charles' letters to ministers.'*

8. The AGO responded on 7 July 2015 and confirmed that it held information falling within the scope of the request but it considered the exemptions contained at sections 35(1) and 42 of FOIA to apply and it needed additional time to consider the balance of the public interest test.
9. The AGO informed him of the outcome of its deliberations on 3 August 2015. It explained that some of the information was exempt from

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<sup>1</sup> [https://www.supremecourt.uk/decided-cases/docs/UKSC\\_2014\\_0137\\_Judgment.pdf](https://www.supremecourt.uk/decided-cases/docs/UKSC_2014_0137_Judgment.pdf)

disclosure on the basis of section 21 of FOIA and provided him with a link to the relevant information. Furthermore, the AGO explained that the remaining information was exempt from disclosure on the basis of sections 35(1)(a), 35(1)(b) and 42(1) of FOIA and that the public interest favoured maintaining each of these exemptions. The AGO also explained that it was relying on section 35(3) to refuse to confirm or deny whether any of the requested information contained advice, or requests for such advice, provided by the Law Officers.

10. The complainant contacted the AGO on 17 August 2015 and asked for an internal review to be conducted. He argued that the public interest favoured disclosure of the withheld information.
11. The AGO informed him of the outcome of the internal review on 16 September 2015. The review upheld the application of the various exemptions.

### **Scope of the case**

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12. The complainant contacted the Commissioner on 29 September 2015 about the AGO's handling of his request. He disputed its decision to withhold the information it confirmed that it held and he also disputed its decision to rely on section 35(3) to refuse to confirm or deny whether it held information falling within the scope of the request containing advice, or requests for such advice, provided by the Law Officers.

### **Reasons for decision**

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#### **Section 35(1)(a) – formulation and development of government policy**

13. The AGO sought to withhold some of the information on the basis of section 35(1)(a) of FOIA. This states 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'*

14. Section 35 is a class based exemption, therefore if information falls within the description of a particular sub-section of 35(1) then this information will be exempt; there is no need for the public authority to demonstrate prejudice to these purposes.

15. The Commissioner takes the view that the 'formulation' of policy comprises the early stages of the policy process – where options are generated and sorted, risks are identified, consultation occurs, and recommendations/submissions are put to a Minister or decision makers. 'Development' may go beyond this stage to the processes involved in improving or altering existing policy such as piloting, monitoring, reviewing, analysing or recording the effects of existing policy.
16. Whether information relates to the formulation or development of government policy is a judgement that needs to be made on a case by case basis, focussing on the precise context and timing of the information in question.
17. The Commissioner considers that the following factors will be key indicators of the formulation or development of government policy:
  - the final decision will be made either by the Cabinet or the relevant minister;
  - the government intends to achieve a particular outcome or change in the real world; and
  - the consequences of the decision will be wide-ranging.
18. The AGO explained that the withheld information concerned the decision as to whether or not to exercise the Ministerial veto to the Prince of Wales' correspondence and the policy considerations surrounding that decision. The AGO acknowledged that the exemption contained at section 35(1)(a) was limited to information relating to the formulation and development of government policy and as opposed to information concerning the implementation of policy. However, it was of the view that information concerned the formulation and development of the government's policy in respect of the veto as opposed to the implementation of existing policy concerning the veto.
19. To support this position the AGO noted that the power of veto under section 53 of FOIA was not exercised until 2009 and it had been rarely used since. The only published policy on the exercise of the veto is a 'Statement of HMG Policy on the use of the executive override under the Freedom of Information Act 2000 as it relates to information falling within the scope of section 35(1)(a)' which dates from 2009.<sup>2</sup> The AGO

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/276160/statement-hmg-policy-veto.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/276160/statement-hmg-policy-veto.pdf)

explained that although this statement only concerns the operation of the veto in respect of information that relates to the operation of collective responsibility, it is indicative of the decision making process that would have been followed when deciding to exercise the veto in respect of the Prince of Wales' correspondence. In particular, AGO emphasised that the statement explains that the veto should only be used in exceptional circumstances and only following a collective decision of the Cabinet and thus the decision to apply the veto in this case was taken at a high level.

20. The AGO also explained that this case also gave rise to the particular need for policy development for a number of reasons, including the fact that it involved the decision whether to exercise the veto in the context of a high profile and politically sensitive case which raised novel points of constitutional significance and had potentially wide-ranging consequences.
21. Having considered the AGO's submissions, and the withheld information itself, the Commissioner is satisfied that the decision to exercise the veto in respect of the Prince of Wales' correspondence constituted the formulation and development of government policy. Although there was a published policy on the exercise of the veto this only applied to certain types of information, ie that engaging collective responsibility, and not to the nature of the correspondence in question. Furthermore, the Commissioner recognises that the decision to exercise the veto will always depend on the circumstances of each particular request and that it will only be exercised in exceptional cases. The Commissioner also accepts that the decision to exercise the veto to this correspondence clearly involved the consideration of a number of sensitive novel issues, with both a political and constitutional dimension, and had potentially wide ranging consequences. Consequently, the Commissioner is satisfied that the decision to exercise the veto in this case was not simply the implementation of existing policy in respect of the veto but can be correctly seen as the formulation and development of government policy with regard to whether the veto should be used in this case. Section 35(1)(a) is therefore engaged.

### **Public interest test**

22. Section 35 is a qualified exemption and therefore the Commissioner must consider whether, in all the circumstances of the case, the public interest in maintaining the exemption contained at section 35(1)(a) outweighs the public interest in disclosing the information.

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

23. The AGO emphasised that the issues discussed in the withheld information concerned highly sensitive political and constitutional matters. It argued that there was a real risk that disclosure of internal discussions on such sensitive issues would inhibit future debate and thorough decision making and thereby undermine the principles of good government. The AGO argued that although this is no longer a live matter in the sense that the decision to exercise the veto to the Prince of Wales' correspondence had been taken, as the use of the veto remains exceptional, policy discussions about the use of the veto remain current and so previous policy discussions about the use of the veto would help inform current and future discussions.
24. The AGO also argued that the information withheld on the basis of this exemption also engaged the principle of collective responsibility. (Collective responsibility being the longstanding convention that all Ministers are bound by the decisions of the Cabinet and carry joint responsibility for all government policy and decisions.)

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

25. In his submissions to the Commissioner the complainant argued that the AGO's public interest considerations failed to take into account the decision of the Supreme Court in which it concluded that the veto certificate issued by the Attorney General was unlawful. The complainant emphasised that the Supreme Court found that the certificate caused constitutional problems with a member of the executive being able to override the judiciary without having reasonable grounds to do so. The complainant noted that the unwritten constitution, common laws and separation of powers in the UK are what underpin the democracy of the country. Consequentially he argued that there was a vast public interest in the reasoning of any decisions, such as the decision to exercise the veto to the Prince of Wales' correspondence, which could cause constitutional problems. This, the complainant suggested, outweighed the public interest in withholding the information.
26. Furthermore, the complainant noted that the Supreme Court also suggested that such arguments may have been possible to foresee. In his opinion this called into question the decision to issue the veto and the decision making process involved.<sup>3</sup> Moreover, he suggested that the

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<sup>3</sup> The complainant pointed to this finding at paragraph 88 of the judgment: 'I would add that the 2000 Act was passed after the *Powergen* and *Danaei* cases had been decided, and they both precluded executive decisions which conflicted with earlier decision of tribunals which were not even part of the judiciary. So it is not as if the grounds for this conclusion could have been unforeseen by Parliament.'

foresight of such conclusions would have helped the government save at least £250,000 in legal fees.<sup>4</sup>

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

27. In considering the balance of the public interest arguments outlined above, the Commissioner has taken into account the comments made in a key Information Tribunal decision involving the application of the section 35(1)(a). In that case the Tribunal confirmed that there were two key principles that had to be taken into account when considering the balance of the public interest test: firstly the timing of the request and secondly the content of the requested information itself.<sup>5</sup>
28. With regard to attributing weight to the chilling effect arguments, the Commissioner recognises that civil servants are expected to be impartial and robust when giving advice, and not easily deterred from expressing their views by the possibility of future disclosure. Nonetheless, chilling effect arguments cannot be dismissed out of hand and are likely to carry some weight in most section 35 cases. If the policy in question is still live, the Commissioner accepts that arguments about a chilling effect on those ongoing policy discussions are likely to carry significant weight. Arguments about the effect on closely related live policies may also carry weight. However, once the policy in question is finalised, the arguments become more and more speculative as time passes. It will be difficult to make convincing arguments about a generalised chilling effect on all future discussions.
29. The Commissioner is satisfied that the withheld information in this case is clearly sensitive. Moreover it contains a detailed and frank assessment of the issues considered by the government in deciding whether to issue the veto following the publication of the Upper Tribunal decision in respect of the Prince of Wales' correspondence. In the Commissioner's opinion even though the policy making process in respect of the decision to issue the veto of the Prince of Wales' correspondence is complete, because of the content of the withheld information it is reasonable to envisage that disclosure of this information would result in some element of a chilling effect on submissions to Ministers in respect of the potential use of the veto in future cases. In the Commissioner's opinion, given the sensitivity of the matters discussed in the information, and the

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<sup>4</sup> <http://www.theguardian.com/uk-news/2014/mar/28/prince-charles-letters-quarter-of-a-million-pounds>

<sup>5</sup> *DFES v Information Commissioner and Evening Standard* (EA/2006/0006)

public, media and Parliamentary interest in this issue, the potential impact of this chilling effect should not be underestimated. Rather, in the circumstances of this case the Commissioner finds the chilling effect arguments to be particularly compelling and deserving of significant weight.

30. The Commissioner also notes that the AGO has argued that the information withheld on the basis of section 35(1)(a) attracts the principle of collective responsibility. In the Commissioner's opinion collective responsibility arguments will only be relevant when disclosure of the information in question would reveal the views of an individual Minister in a government decision. Having considered the information that has been withheld on the basis of section 35(1)(a) in the Commissioner's view not all of the withheld documents contain the views of individual Ministers. Therefore, in the Commissioner's opinion not all of the information withheld under this exemption attracts the principle of collective responsibility. However, where this principle is relevant, the Commissioner believes that this adds considerable weight to the public interest in withholding the information in question. This is because of the fundamental importance of the general constitutional principle of collective responsibility. Furthermore, although the issue is no longer live, the Commissioner does not believe that this reduces the public interest in maintaining collective responsibility given the fundamental importance of protecting collective responsibility.
31. With regard to attributing weight to the public interest arguments in favour of disclosure, the Commissioner agrees that there is clear public interest in the public being able to understand how the veto power contained at section 53 of FOIA works in practice. In the particular circumstances of this case the Commissioner agrees with the complainant that in light of the Supreme Court's decision there is particularly strong public interest in the disclosure of information which would reveal the policy and decision making process by which the government decided to issue the veto. As the complainant highlights, the case raised issues fundamental to the operation of the UK's constitution and the Commissioner agrees that disclosure of information about the issues considered by the government in light of such an outcome should not be underestimated. Furthermore, in the Commissioner's opinion given the detailed nature of the withheld information its disclosure would provide a clear insight into the process by which the government decided to issue the veto. Thus it would directly – and to a significant extent – serve the public interests identified by the complainant.
32. Nevertheless, the Commissioner is persuaded that the public interest favours maintaining the exemption. In reaching this conclusion he wishes to emphasise that he recognises the strength of the public



interest in favour of disclosure; this cannot, and should not, be dismissed lightly. However, given the real and significant risk of a chilling effect on future policy discussions, and where relevant the need to protect collective responsibility, the Commissioner believes that the public interest tips in favour of maintaining the exemption.

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

33. The AGO also argued that some of the withheld information was exempt from disclosure on the basis of section 35(1)(b). This provides an exemption for information which relates to Ministerial communications.
34. The Commissioner has only considered the AGO's reliance on this exemption in relation to the information to which section 35(1)(a) has not been applied. Having examined this information, the Commissioner is satisfied that it clearly falls within the scope of the exemption contained at section 35(1)(b).

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

35. The AGO argued that disclosure of the information withheld under this exemption would prejudice the convention of collective Cabinet responsibility. It emphasised that in a sensitive case like this it was of central importance that Ministers should be able to express their views freely and frankly before a collective decision is made. The AGO was of the view that disclosure would undermine the ability of Ministers to exchange views freely and frankly in the future.

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

36. The complainant's arguments in favour of disclosure are set out above at paragraphs 25 and 26.

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

37. As discussed above, the Commissioner agrees that there is a strong public interest in the disclosure of information which would shed light on the process by which the government decided to issue the veto. The Commissioner accepts that disclosure of the information withheld on the basis of section 35(1)(b) would serve this interest by providing an insight into the views of various Ministers in relation to this matter. However, in the Commissioner's view the public interest in disclosing the information withheld on the basis of section 35(1)(b) is significantly outweighed by the public interest in protecting the convention of collective responsibility. As discussed above the Commissioner accepts that there is a significant public interest in protecting this principle. Moreover he agrees with the AGO that the interest in maintaining it attracts additional weight given the sensitive nature of the issues

discussed and indeed because many of the Ministers in question are still active in politics.

## **Section 42 – legal professional privilege**

38. Section 42(1) provides that information is exempt from disclosure if the information is protected by legal professional privilege and this claim to privilege could be maintained in legal proceedings.
39. There are two categories of legal professional privilege: advice privilege and litigation privilege.
40. Litigation privilege applies to confidential communications made for the purpose of providing or obtaining legal advice about proposed or contemplated litigation. There must be a real prospect or likelihood of litigation, rather than just a fear or possibility. For information to be covered by litigation privilege, it must have been created for the dominant (main) purpose of giving or obtaining legal advice, or for lawyers to use in preparing a case for litigation. It can cover communications between lawyers and third parties so long as they are made for the purposes of the litigation. Litigation privilege can apply to a wide variety of information, including advice, correspondence, notes, evidence or reports.
41. Advice privilege applies where no litigation is in progress or contemplated. It covers confidential communications between the client and lawyer, made for the dominant (main) purpose of seeking or giving legal advice. The legal adviser must have given advice in a legal context; for instance, it could be about legal rights, liabilities, obligations or remedies. Advice from a lawyer about financial matters or on an operational or strategic issue is unlikely to be privileged, unless it also covers legal concerns, such as advice on legal remedies to a problem.
42. The AGO argued that the information attracted both litigation and advice privilege. It acknowledged that the litigation in question had concluded, but explained that there were aspects of the advice that was pertinent to future cases.
43. The Commissioner has examined the legal advice in question and is satisfied that separate parts of it could attract litigation and advice privilege. The exemption contained at section 42(1) is therefore engaged.

## **Public interest test**

44. Section 42 is a qualified exemption and therefore the Commissioner must consider whether, in all the circumstances of the case, the public

interest in maintaining the exemption contained at section 42(1) outweighs the public interest in disclosing the information.

### **Public interest in maintaining the exemption**

45. The AGO emphasised that the exemption contained at section 42 acknowledged the importance of confidentiality between professional legal advisers and clients to ensure openness between them and to safeguard access to fully informed, realistic and frank legal advice. It also argued that there was a strong public interest in ensuring that government decisions are made once all of the legal implications have been fully highlighted to the decision maker. Legal advice is likely to comment on the negative and positive implications of a situation so that the decision maker has a balanced perspective. Consequently, the AGO argued that there is a strong public interest in withholding legal advice in order to ensure that the government receives full, accurate and considered legal advice. In the circumstances of this case the AGO emphasised that risks associated with disclosure were particularly high given the sensitivity and significance of the issue and the advice provided. Moreover, it emphasised that although the litigation in respect of the veto was complete the issues addressed by the guidance remained live in the sense that they would be relevant to future cases.

### **Public interest in disclosing the information**

46. The AGO acknowledged that disclosure of the legal advice would contribute to an open and transparent relationship between the government and the public. It also acknowledged that it was in the public interest to know whether legal advice obtained by government has been followed and for the decision making process to be transparent and understandable.
47. The complainant's arguments in favour of disclosure are set out above at paragraphs 25 and 26.

### **Balance of the public interest test**

48. Although the Commissioner accepts that there is a strong element of public interest inbuilt into legal professional privilege, he does not accept, as previously argued by some public authorities that the factors in favour of disclosure need to be exceptional for the public interest to favour disclosure. The Information Tribunal in *Pugh v Information Commissioner* (EA/2007/0055) were clear:

*'The fact there is already an inbuilt weight in the LPP exemption will make it more difficult to show the balance lies in favour of disclosure but that does not mean that the factors in favour of*

*disclosure need to be exceptional, just as or more weighty than those in favour of maintaining the exemption'. (Para 41).*

49. Consequently, although there will always be an initial weighting in terms of maintaining this exemption, the Commissioner recognises that there are circumstances where the public interest will favour disclosing the information. In order to determine whether this is indeed the case, the Commissioner has considered the likelihood and severity of the harm that would be suffered if the advice were disclosed by reference to the following criteria:
- how recent the advice is; and
  - whether it is still live.
50. In order to determine the weight that should be attributed to the factors in favour of disclosure the Commissioner will consider the following criteria:
- the number of people affected by the decision to which the advice relates;
  - the amount of money involved; and
  - the transparency of the public authority's actions.
51. With regard to the age of the advice the Commissioner accepts the argument advanced on a number of occasions by the Tribunal that as time passes the principle of legal professional privilege diminishes. This is based on the concept that if advice is recently obtained it is likely to be used in a variety of decision making processes and that these processes are likely to be harmed by disclosure. However, the older the advice the more likely it is to have served its purpose and the less likely it is to be used as part of any future decision making process.
52. In many cases the age of the advice is closely linked to whether the advice is still live. Advice is said to be live if it is still being implemented or relied upon and therefore may continue to give rise to legal challenges by those unhappy with the course of action adopted on that basis.
53. In the circumstances of this case the Commissioner accepts that the although the information is not live in the sense that the litigation in respect of the veto issued in September 2012 has ended, he accepts that the advice will be relevant to future decisions and discussions concerning the operation of the veto. Furthermore the Commissioner recognises that the advice in question is relatively recent. In light of this the Commissioner believes that there is a significant and weighty public interest in upholding the exemption.

54. With regard to the public interest in disclosure of the legal advice, as discussed above the Commissioner agrees that there is clear public interest in the public being able to understand how the decision making process by which the government decided to issue the veto. In his opinion disclosure of the legal advice would provide a detailed and informative insight into the various legal issues considered. Its disclosure would therefore directly serve such an interest. However, taking into account the fact that aspects of the advice are still live, the sensitive of the issues in question and the impact on the government's ability to seek frank legal advice in the future, the Commissioner has concluded that the public interest favours maintaining the exemption contained at section 42(1).

### **Section 35(3) – Law Officers' advice**

55. The AGO explained that to the extent that the request could potentially include advice provided to the Law Officers, or requests for such advice, it was relying on section 35(3), by virtue of section 35(1)(c), to refuse to confirm or deny whether such information was held.
56. Section 35(1)(c) of FOIA provides an exemption for information which relates to the provision of advice by any of the Law Officers or any request for the provision of such advice.
57. Section 35(3) of FOIA provides:

*'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).'*

58. The Commissioner is satisfied that as drafted the request could potentially include advice provided by the Law Officers or requests for such advice. Section 35(3) is therefore engaged.

### **Public interest test**

59. Section 35 is a qualified exemption and so the Commissioner must consider whether, in all the circumstances of the case, the public interest in neither confirming nor denying is greater than that in confirming or denying whether the AGO holds information which would fall within the exemption provided by section 35(1)(c).

### **Public interest in maintaining the exemption**

60. The AGO argued that it was vital that the government is free from external pressure in deciding whether it should seek advice from the Law Officers. It is a long standing convention, observed by successive governments, that neither the advice of Law Officers, nor the facts

about whether advice has been sought or provided, is disclosed outside of government. The AGO also argued that the Law Officers' convention also promotes democratic accountability by ensuring that the focus of public scrutiny and debate is on a decision (which may include a legal position) taken collectively by the government, rather than on the internal process by which that decision is reached. Consequently, the AGO argued that the Law Officers' convention not only reflected the public interest in ensuring that the government is able to seek the most authoritative legal advice in confidence, it also reflects the importance of protecting collective Cabinet responsibility.

### **Public interest in confirming whether or not Law Officers' advice is held**

61. The complainant noted that government did not always follow this convention and cited the example of the Prime Minister's statement to the House of Commons on 7 September 2015 concerning drone strikes in Syria. However, the complainant did acknowledge that this statement post-dated his request.

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

62. The Commissioner accepts that there will always be a strong public interest in neither confirming nor denying whether the government has obtained advice from the Law Officers in relation to an issue. The Commissioner recognises the weight the section 35(1)(c) exemption attracts from the way it has been drafted by Parliament – providing a specific exemption for a particular type of legal advice. That weight is reinforced by the convention of non-disclosure adopted by successive governments.
63. Furthermore, the Commissioner recognises that it would be impossible for the Law Officers to advise on every aspect of government policy that has legal implications, given the range of legal advice that government requires. If the government routinely disclosed occasions on which the Law Officers had or had not given advice that could give rise to questions as to why they had advised in some cases and not in others. This could put pressure on the government to seek their advice in cases where their involvement would not be justified. The risk of creating an impression that it is not confident of its legal position regarding a particular issue could also deter the government from seeking the Law Officers' advice in cases where their involvement would be justified. Consequently, the Commissioner accepts that confirming or denying whether such information is held creates a potential risk which could undermine effective government.
64. Nevertheless, the exemption is not absolute, and the strong public interest in protecting Law Officers' advice may be overridden if there are

particularly strong factors in favour of disclosure. In the circumstances of this case the Commissioner recognises that the decision to issue the veto involved issues which raised fundamental questions about the interaction between the executive and the judiciary. Consequently, in his opinion there is arguably a significant public interest in confirming whether or not the advice of Law Officers was sought by the government as part of its decision making process.

65. However, the Commissioner is not persuaded that this public interest is sufficient to outweigh the public interest in maintaining the Law Officers' convention. The public interest therefore favours maintaining the exemption contained at section 35(3).

## Right of appeal

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66. 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)

67. 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.
68. 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 .....

**Jonathan Slee**  
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