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FILE TITLE:

POLICY

SERIES

FREEDOM OF INFORMATION

PART:

10

PART BEGINS:

25th February 2005

PART ENDS:

5 MAY 05

CAB ONE:

LABOUR ADMINISTRATION

PREM 49/4102

SECRET

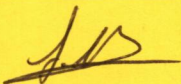
Series : FREEDOM OF INFORMATION

Title : POLICY

Part : 10

Date	From	To	Subject	Class	Secret
25/02/2005	FA/APS	Ch.Staff	FOI request martin Rosenbaum	C	
25/02/2005	PD(DT)	PM	FOI - Diaries	R	
28/02/2005	fco	Cab Off	FOI request relating to the Iraq Dossier	U	
28/02/2005	ss/dti	SS/DCA	Government's response to the CASC report on implementation of Fr	U	
02/03/2005	DCA	SS/DCA	Freedom of Information Next tranche of working assumptions	U	
04/03/2005	PD(DT)	PM	FOI and Cabinet Committees	R	
07/03/2005	SS/DCA	Leader/Opposition	foi Act: Convention on access to papers of previous adminstrations	U	
11/03/2005	PD(DT)	PM	FOI & Minister's Financial Interests	R	
11/03/2005	SS/MOD	pus/DCA	Freedom of Information Act - Working Assumptions	U	
14/03/2005	pus/DCA	DCA	Freedom of Information - Papers prepared for MISC28	U	
14/03/2005	SS/DCA	SS/MOD	Freedom of Information Nirex	U	
15/03/2005	MS/DTI	SS/DCA	Foi - Nirex Sites	U	
15/03/2005	SS/MOD	SS/DCA	Freedom of Information - NIREX	U	
15/03/2005	FCS	pus/DCA	Freedom of Information - Update on Working Assumptions	U	
16/03/2005	SO	SS/DCA	FOI Request - NIREX Site	U	
21/03/2005	PD(DT)	Cab Off	Liam clarke FOI internal appeal	S	47
24/03/2005	PD(AB)	ms/cabinet office	FOI Request: PM Christmas Card List	R	
29/03/2005	ms/ODPM	LC	Freedom of Information - Next Tranche of Working Assumptions	U	
31/03/2005	SS/DoH	SS/DCA	Freedom of Information: Papers prepared for MISC28	R	
31/03/2005	FCS	PUS/FCO	Freedom of Information: Papers prepared for MISC 28	U	
31/03/2005	ss/dfes	SS/DCA	Freedom of Information papers prepared for MISC 28	U	
01/04/2005	DFID	pus/DCA	Information release by DFID	U	
04/04/2005	SS/DfT	pus/DCA	Freedom of Information - Papers prepared for MISC28	R	
04/04/2005	SO	PS/HMQ	Freedom of Information Requests: Papers relating to the transfer of t	U	
05/04/2005	leader/HOL	LC	Freedom of Information: Papers prepared for MISC 28	U	
06/04/2005	PUS/SO	pus/DCA	Freedom of Information: Papers prepared for MISC 28	R	
06/04/2005	AG	pus/DCA	Freedom of Information: Papers prepared for MISC 28: Simultaneou	U	
06/04/2005	CST	pus/DCA	Freedom of Information: Papers prepared for MISC 28	U	
07/04/2005	MS/DPMO	pus/DCA	Freedom of Information: Papers prepared for MISC 28	U	
12/04/2005	FCS	SS/MOD	Falklands FOI Requests	R	
14/04/2005	SS/DCA	pus/DCA	Freedom of Information: Next Tranche of Working Assumptions	U	
14/04/2005	MS/DCMS	pus/DCA	Freedom of Information: Papers prepared for MISC 28	U	
14/04/2005	PD(EM)	MS/CO	Freedom of Information request from BBC Panorama on Migration a	U	
18/04/2005	DCA	HMT	FOIA: Requests for Disclosure of the Attorney General's advice on th	U	
19/04/2005	PM		From Liam Fox, Conservative party: Dealings with Paul Grayson	C	
21/04/2005	SS/MOD	SS/DCA	Nirex - Freedom of Information Request	U	
29/04/2005	MOD	SS/DCA	Nirex - Freedom of information request	U	
04/05/2005	fco	MOD	Falklands FOI requests	R	

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DEPARTMENT/SERIES PREM 49 PIECE/ITEM 4102/2 (one piece/item number)	Date and sign
Extract details: Letter dated 4 May 2005	
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Instructions for completion of Dummy Card

Use black or blue pen to complete form.

Use the card for one piece or for each extract removed from a different place within a piece.

Enter the department and series,
eg. HO 405, J 82.

Enter the piece and item references, .
eg. 28, 1079, 84/1, 107/3

Enter extract details if it is an extract rather than a whole piece.
This should be an indication of what the extract is,
eg. Folio 28, Indictment 840079, E107, Letter dated 22/11/1995.
Do not enter details of why the extract is sensitive.

If closed under the FOI Act, enter the FOI exemption numbers applying to the closure, eg. 27(1), 40(2).

Sign and date next to the reason why the record is not available to the public ie. Closed under FOI exemption; Retained under section 3(4) of the Public Records Act 1958; Temporarily retained; Missing at transfer
or Number not used.



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DT
NR
AP

SECRETARY OF STATE

1. ~~CC~~ GAN Nirex is signed up
PB for this approach. MSU 2/9K

29 April 2005

2. back home
AT 4/5

Dear Charles,

NIREX – FREEDOM OF INFORMATION REQUEST

Following my letter of 21 April and a meeting attended by our respective officials today, I now propose that there should be a managed release of the Nirex information at an early date. Those requesting the information from MOD should be informed that a decision has been taken in principle to release the information in a manner to be agreed following consultation with stakeholders. It would be very helpful if you and other Ministerial colleagues could confirm your agreement to this approach to disclosure of the Nirex information as soon as possible.

At the meeting today attended by officials from all interested Departments and Nirex's Managing Director and Press Officer it was agreed that there was no defensible legal basis for resisting disclosure of the Nirex information.

Managed release of the Nirex information at an early date would allow it to be taken into account in the public consultation phase of CoWRM's consideration of the options for management of higher activity radioactive waste. This phase ends on 27 June; release of the information before CoWRM's national stakeholder meetings on 7-8 June would be preferable. This approach would be a conclusive (and constructive) response to the requests received for the Nirex information.

The Rt Hon The Lord Falconer of Thoroton QC
Secretary of State for Constitutional Affairs and Lord Chancellor

If you and other colleagues agree, the next step will be for MOD to write to the requesters informing them of the decision in principle to release the Nirex information in a manner to be agreed following consultation with relevant stakeholders. The letter would indicate that early release was expected. The mechanics of the release of the information can then be handled by Nirex in consultation with Government.

Given this proposed approach to dealing with the Nirex information, I no longer intend to pursue the request for the Attorney General's advice set out in the MOD's Instructions to him of 12 April.

I am copying this letter to Margaret Beckett, Alastair Darling, Mike O'Brien, Daniel Thornton (No. 10), Robin Fellgett (Cabinet Office) and Jonathan Jones (LSLO).

Yours sincerely
Geoff

GEOFFREY HOON



SECRETARY OF STATE

file
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DCW DT
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DCWfi

MSU 2/9C

21 April 2005

Dear Secretary of State,

NIREX – FREEDOM OF INFORMATION REQUEST

Thank you for your letter of 18 April.

The release of the Nirex information provisionally agreed on 20 January has been delayed because of wishes of colleagues to postpone disclosure until there is comprehensive Ministerial agreement. The Attorney General's advice was sought for two reasons. First, the question of legal justification for delaying a response to requests under the Environmental Information Regulations beyond the applicable 40 day deadline, and second, the issue of refusing the request under the Regulations or the Freedom of Information Act.

As the MOD has received requests for the Nirex information, and given the position of colleagues, I am anxious to secure authoritative advice on how to meet our freedom of information obligations. It is for MOD to decide whether the Attorney should be instructed. This was a situation in which it was appropriate to seek his advice. I understand that your officials were aware of the proposal to consult the Attorney on the evening of 11 April, and that the letter was sent late on 12 April.

The Rt Hon The Lord Falconer of Thoroton QC
Secretary of State for Constitutional Affairs and Lord Chancellor

The points raised by Nirex are discussed in the papers for the Attorney. If it is thought that the instructions inadequately deal with the Nirex arguments, then it is right that of course they should be supplemented.

I fully agree that it is important to continue to make progress on the case and to work towards a satisfactory and defensible outcome. I support the efforts being made to achieve this.

I am copying this letter to Margaret Beckett, Alastair Darling, Mike O'Brien, Daniel Thornton (No. 10) and Robin Fellgett (Cabinet Office).

Yours sincerely

JCS Bah

[PRIVATE SECRETARY]

GEOFFREY HOON

(Approved by the Defence Secretary
and signed in his absence)

Copy to:
PS/PUS
DGLS
DGLS-DGL

CONSERVATIVE



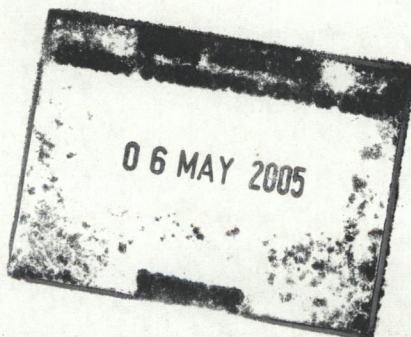
REG
cc: DT
Press

No reply.

> DCU

then back to DCU

The Rt Hon Tony Blair
10 Downing Street
London
SW1A 2AA
(By fax: 7839-9044)



19 April 2005

Dear Prime Minister,

I am writing in response to the latest instance of you refusing to disclose records of your dealings with the businessman and substantial Labour Party donor Paul, now Lord, Drayson.

It is important to keep in mind the background to those dealings. One of Lord Drayson's donations, of £50,000, was made at a time when your Government was considering which company should be awarded a £32 million contract for the supply of a smallpox vaccine. The resulting contract was awarded to Lord Drayson, resulting in a reported £20 million profit for his company, Powderject.

Last year, he gave another £500,000 donation to the Labour Party – the same year that you rewarded him with a life peerage.

This week, the Parliamentary and Health Service Ombudsman, Ann Abraham, ruled that minutes of a breakfast attended by Lord Drayson in December 2001 – shortly before the Government took the decision to give the vaccine contract to Powderject – should be published. She says that 'very little harm' would be caused by the publication of these minutes, and that in any case this is 'outweighed by the public interest in making that information available' (quoted in *The Guardian*, 19 April 2005).

In 1997, you said that you were 'committed to a Freedom of Information Act, leading to more open government' (1997 manifesto, p.33). Your dogged refusal to come clean on what took place at the breakfast with Lord Drayson makes a complete mockery of that promise.

At this election, both trust and accountability are major issues.



The voters have a right to know what you and Lord Drayson discussed. You should therefore immediately comply with the Parliamentary Ombudsman's ruling, and release all the relevant papers relating to the decision to give this contract to Lord Drayson. If you fail to do so, voters will conclude that you have something to hide.

I look forward to receiving an early reply to this letter. In the meantime, I am sending a copy to the Information Commissioner, urging him to apply his legal powers to order you to disclose the contents of the minutes. I am also making available a copy to the media.

Yours sincerely,



Liam Fox

Conservative Party Co-Chairman

(Approved by Dr Fox and signed in his absence by his Chief of Staff)



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cc Juliet Whelan
Daniel Thornton, No. 10 294
Dennis Morris, CO
Alec Taylor, CO
THE LEGAL SECRETARIAT TO THE LAW OFFICERS
Roxana Colins Rice, DCA
ATTORNEY GENERAL'S CHAMBERS

SM 18/4

9 BUCKINGHAM GATE
LONDON SW1E 6JP

18 April 2005

Dear Philip

**FOIA: REQUESTS FOR DISCLOSURE OF THE ATTORNEY GENERAL'S ADVICE
ON THE LEGALITY OF THE IRAQ CONFLICT**

1. As indicated during our conversation on Friday afternoon, I anticipate that we will be wishing to seek further advice/assistance from you in relation to the handling of complaints which have been made to the Information Commissioner concerning the Government's refusal to disclose the Attorney General's legal advice on Iraq in response to requests made under the Freedom of Information Act (FOIA). I am not at this stage asking you to undertake further specific work, but I thought it would be useful to bring you up to date with developments and put you on notice that we are likely to be calling on you again in relation to this matter in the near future.
2. The story so far. Since the beginning of January, approximately 60 requests have been submitted to various Government Departments under FOIA seeking disclosure of the Attorney's advice on Iraq and/or related documents (e.g. the instructions he received, advice given by FCO legal advisers, minutes of meetings between Ministers and officials in which the subject of the legality of the use of force was discussed, documents relating to the Attorney's discussions in Washington in February 2003 etc). All requests for disclosure of the Attorney's legal advice have been declined using as a basis the draft response which you prepared at the end of last year. Requests for related documents have raised very similar issues as regards the application of FOIA exemptions.
3. Only a small minority of applicants have asked for internal reviews to be carried out of the decisions to withhold the information. We have been informed by the Information Commissioner's office that to-date they have received seven complaints relating to this matter. I enclose a ring binder which includes the correspondence relating to these complaints.

4. There have been informal contacts between the Commissioner's office and the Cabinet Office as regards the handling of these complaints. The Commissioner has made it clear that this will be their first major case and they are very much feeling their way on process. On 6th April, Richard Thomas came to inspect the "core documents" at the Cabinet Office. He saw the five pieces of advice which the Ombudsman had seen. We anticipate that he may wish to look at the documents again with his legal adviser and also is likely to want to see the other information covered by these requests.
5. The Commissioner also had an informal meeting with relevant Departments at which handling issues were discussed. While he was reluctant to give any commitments at this stage as to how he intended to proceed, he appeared to accept that it would be desirable to treat the case in stages. He also indicated that it would be desirable to seek further views from the Government on any issues which may be unclear from the documents themselves. The enclosed file also contains a letter from Susanna McGibbon sent to the Commissioner as follow-up to this meeting.
6. Issues on which further advice may be required. There are certain issues on which the Commissioner is likely to require further input from the Departments concerned to enable him to come to a decision on the complaints. The Attorney General is also keen that we should have an opportunity to make representations on certain issues. In particular, the refusal letter asserts that LPP in the advice has not been waived, but this point is not developed. The waiver issue is likely to be a central issue in determining whether the advice should be disclosed. The Guardian newspaper has commissioned advice on this from Keir Starmer QC. A copy of his opinion is enclosed with the correspondence relating to the Rob Evans complaint. We may wish you to prepare a document for the Commissioner in response to this opinion.
7. We may also wish to make further representations on the public interest. In addition, it is doubtful that the Information Commissioner will be in a position to form a view on whether we have properly invoked the exemptions in relation to which we gave no further information pursuant to section 17(4) of FOIA without seeking an explanation from us of the justification for reliance on these exemptions.
8. Following our conversation I discovered that your clerk had returned the instructions you were sent relating to the preparation of the draft reply. I now return these papers to you. Please let me know if there is any other information you would like at this stage. I will be in touch again when it becomes clearer what specific advice is required.
9. I am copying this letter to Susanna McGibbon.

Yours
Cathy

CATHY ADAMS

FOI.

Department for Culture, Media and Sport
Andrew McIntosh
Minister for the Media and Heritage

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✓ **MATRIX**
(2) file.

cc. **DT.**
Nickel.
SPM

CMS 9210/DC

Baroness Ashton of Upholland
Parliamentary Under Secretary of State
Department for Constitutional Affairs
Selbourne House
54 Victoria Street
LONDON
SW1E 6QW



14 April 2005

New Cathy

FREEDOM OF INFORMATION: PAPERS PREPARED FOR MISC 28

to Thank you for copying to me your letter of 14 March to Lord Falconer which I am sorry not to have replied before.

Simultaneous publication of information of general interest to the public

We have begun to publish the material released under FOI and more cases are being prepared for publication.

Our intention is to publish all responses to requests in electronic format on our website. We will be considering further how we might helpfully publish additional contextual information. An FOI specific search engine has been developed to help the public to find the information they want. Where material is available only in hard copy and volume precludes conversion to an electronic format, the website will direct enquirers to our information centre. Our long-term goal is to automate the publishing process via our FOI case management system.

Background material to Bills

As you know, the Gambling Act has just received Royal Assent. The material which has been published on the DCMS website is set out at Annex A to this letter.

Pro-active release plans and NDPBs

The Chief Executives of our NDPBs were recently encouraged, in an FOI session at a DCMS seminar, to release information pro-actively and we have asked FOI champions to send details of their pro-active release plans to you by the end of April.



Enhancing publication schemes and publishing historical records

I note and support your proposals that your Department should work with the Commissioner on the revised and more demanding criteria for accrediting publication schemes. However I do have concerns about the resource implications of more demanding criteria and would ask that this point should be borne very much in mind when your officials work with the Commissioner. We would also welcome the chance to comment on any revised criteria (with a particular eye to resource implications) before they become set in stone. Our overriding priority in this context is, of course, to devote resources to dealing efficiently with FOI requests.

As regards historical records, again I note and support your proposals with the same reservations as to resources.

Alan Johnson mentioned that his officials are grateful for all the help and support that DCA officials have provided over the past months and I would like to re-iterate that from our perspective too.

- > I am copying this letter to the Prime Minister, Cabinet Ministers, members of MISC 28 and Sir Andrew Turnbull.

Yours

Andrew

ANDREW McINTOSH

file

From: Emily Miles
Date: 14 April 2005

DAVID MILIBAND

cc: Ivan Rogers
~~Jonathan Powell~~
Daniel Thornton
Justin Russell
~~David Hill~~
Kate Gross
Nikhil Rathi
Lalini Phoolchand

**FREEDOM OF INFORMATION REQUEST FROM BBC PANORAMA ON
MIGRATION AND EU ACCESSION**

Issue: FOI request from BBC Panorama requesting documents relating to

- the preparation of the PM's speech on migration to CBI on 27 April 2004, and
- the basis on which the Prime Minister stated, in the speech, that the Government would reduce quotas for non EU low-skilled migrants, to take account the impact of EU free movement of workers from 1 May 2004.

Timing: Urgent. The 20 working day deadline for a response expires on Thursday 14 April. The BBC Panorama documentary is planned for the end of April.

Advice:

No. 10 does hold information relating to both aspects of the request. The documents we hold are detailed at Annex A.

2. Documents relating to the PM's migration speech are speech drafts, or private advice to the PM on tone and content. We expect these documents to be exempt under section 36 of the FOI Act (prejudice to the effective conduct of public affairs).

3. Documents relating to the low-skilled migration quotas are those preparing the PM for his immigration stocktake on 21 April 2004 where the policy proposals were discussed. The decision to reduce the quotas was actually first announced at a PM press conference, and through a Home Office press notice,

DM

on 22 April 2004. We expect these documents to be exempt under section 35 of the FOI Act (formulation of government policy).

4. The Home Office and HMT have had a number of other requests from BBC Panorama on the same issue. These are detailed at Annex B.

5. The Home Office has been asked for information on the operation of the Worker Registration Scheme, the impact of accession national migration on the Government's work permits programme, information on the low skilled migration schemes including country of origin of applicants, and the return of accession nationals to their home country. In most cases they have written to Panorama to ask them to clarify their requests. They do not expect to respond substantively before the broadcast of the Panorama documentary at the end of April.

6. HMT was asked on 9 February for information on the predicted and actual impact of accession migrants on the UK economy. They are considering issuing certain sections of an FCO paper on economic impacts. Their deadline has passed but they are reluctant to issue the information before the election, given the sensitivities in this period over immigration issues.

7. Given these other requests, it would be helpful to co-ordinate responses with Home Office and HMT. We also need to consider in more depth the public interest test and whether the exemptions apply to the documents held in No. 10. We therefore cannot respond substantively to Panorama within the statutory period of 20 days. I plan to write to the Producer of BBC Panorama (draft attached at Annex C) to explain that we are considering the request but because we have to apply a public interest test, we do not expect to reply substantively before 13 May.

8. I will revert to you before we reply substantively.

To note

Signed by Emily Miles

14/4

EMILY MILES

ANNEX A

Documents relating to the preparation of the PM's immigration speech to the CBI on 27 April 2004 are:

1. Draft of the speech 25 April 2004
2. Draft of the speech, 22 April 2004
3. A narrative for the Migration Speech, 22 April 2004
4. Press briefing script for the Migration Speech, 22 April 2004
5. Note on immigration speech draft, not clear who author is or date
6. Private advice from John Denham to the PM on tone and content of the speech, 22 April 2004
7. Private advice from Jonathan Powell to the PM on tone and content of the speech, 22 April 2004

Documents relating to basis on which the Prime Minister stated "To take account of the new shape of the EU, we will significantly reduce the quotas of non EU low-skilled migrants coming in to fill labour shortages in the agriculture, hospitality and food-processing industries – to take account the impact of EU free movement of workers from May 1" are:

1. Steering Brief for the Immigration Stocktake on 21 April 2004, from Kate Gross, 20 April 2004
2. Handling Brief for the Immigration Stocktake on 21 April 2004, from Kate Gross, 19 April 2004
3. Letter to PS/Home Secretary providing a record of the Immigration Stocktake on 21 April 2004, from Kate Gross, 23 April 2004.
4. Parts of the Strategy Unit and Home Office Paper on the Economic Impacts of Migration, by Mark Kleinman, April 2004, and a summary of the evidence on the economic impacts of migration dated 22 April 2004.

Summary of BBC Panorama requests for information under FOI and to Press Office

Date	Request (numbering refers to Press Office Q&A)	Made to	Response
9 February	<ul style="list-style-type: none"> List the records relating to the predicted numbers of A8 migrants who would come in to the UK. List the records relating to the actual numbers of A8 migrants who have come in to the UK. List the records relating to the impact of A8 migrants on social cohesion in the UK. List the records relating to the change in rules effecting A8 migrants' rights to social security benefits and housing, which occurred before May 1 2004. List the records that consider A8 migration to the UK as part of the Government's review of Immigration and Asylum policy. 	Freedom of Information	Request refused under Section 12 (exceeds £600 cost limit)

7 March	<ol style="list-style-type: none"> 1) Did the UK Govt - reserve the "right to remove" A8 nationals from UK? If so under what circumstances and has this ever been done? 2) The Accession Monitoring Report indicates that some WRS applications are refused or withdrawn. What happens to those applicants who are refused/withdraw - is there any data as to what they do, where they go? 3) Is the £50 fee refunded if the application is refused/withdrawn? 4) What happens to people who are refused/withdrawn? Is there any data as to what they do or where they go? 5) The report indicates <i>no evidence of employment, insufficient evidence of A8 citizenship</i> - what specifically would constitute evidence of employment (contract / pay packet etc) ? 6) What powers does the Home Office have to monitor whether A8 nationals are actually able to support themselves? 7) What happens to individuals who are refused benefits? 8) What do you mean when you say you will 'phase out quota schemes'? Will these sectors be staffed by EU workers alone? 9) Is there a breakdown of the numbers of jobs in these sectors currently being carried out by non A8 workers on work permits? 	Press Office	Lines provided and responses issued to Panorama
9 March	(a) We request all documents examining the impact of A8 migration to the UK on the government's work permits programme. In particular we request documents that assess the phasing out of the government's low-skilled work permit schemes in light of A8 migration to the UK."	Freedom of Information	Writing for clarification of request
11 March	(b) "We request data and documents relating to the immigration statistics for 2004 with particular reference to the data for the numbers and type of work permits being applied for and granted to those from outside EEA and A8 countries broken down by nationality of	Freedom of Information	Writing for clarification of request

	applicant/recipient"		
11 March	<p>(c) Data and documents relating to the reductions in the number of permits to be granted under all the work permit / work card schemes and programmes, with particular reference to the Sectors Based Scheme and the Seasonal Agricultural Workers Scheme, broken down by scheme.</p> <p>Information which reflects how many people are currently holding work permits under the schemes, how many held permits in 2002 and 2003 and the reductions in the quotas/numbers of available permits and the proportion by which the quotas have been reduced."</p>	Freedom of Information	Writing for clarification of request
11 March	<p>(d) Evidence / data / documents relating to the return of migrant workers to their A8 homelands following short periods of work and/or unsuccessful attempts to find work since May 2004. Including:</p> <ul style="list-style-type: none"> Embassy reports referred to in the Home Office Press Release of 22 February 2005 titled 'Worker Registration Scheme and Work Permit Figures published'. We also request the <u>full</u> feedback and data from a sample of 100 employers 	Freedom of Information	Writing to indicate this will be treated as one request with other FOI requests
14 March	<p>10) HO PN of 22 Feb 05 on WRS and Work Permit Figures refers to 'reports from embassies in the UK and abroad which show that many job seekers from the new member states are returning home after brief periods or unsuccessful attempts to find work'.</p> <p>Can you please provide these Embassy reports - and any data regarding the numbers of people returning to A8 countries after brief work periods or unsuccessful attempts to find work?</p>	Press office	Treating under FOI (duplicates FOI request (d))
14 March	<p>11) Further to Des Browne's WMS on 10/11/04, which refers to "feedback from a sample of over 100 employers showed that almost 60% of</p>	Press Office	Treating under FOI (duplicates FOI

	workers in the agricultural sector who had registered since 01 May had left their jobs to return home". How many workers does that 60% represent ? Can you provide the full figures/data for that sample.		request (d))
14 March	12) What are the penalties for an employer who employs an unregistered A8 national? 13) What is the penalty for an A8 worker who is not registered? 14) How many work permit schemes are there? What are their names?	Press Office	Lines provided to Press Office. No response to Panorama as at 21.3.05
14 March	15) PN 19/05/04 and titled " New restrictions imposed on low-skill migrant workers" states that "The Government is to introduce new country-specific quotas within the overall quota from the start of 2005". Could you please provide those country specific quotas?	Press Office	Treating under FOI (duplicates FOI request (c))
	16) In the same PN it is stated that the number of workers permitted to come to the UK under schemes is being cut to 'reflect the fact that many of those coming to the UK under these schemes in recent years have been from countries which have just joined the EU'. What proportion of workers on these schemes were from the A8 countries?	Press Office	Treating under FOI (duplicates FOI requests (a, b and c)
	17) Please can you provide data /evidence of the country of origin of the workers on these schemes in 2002 & 2003.	Press Office	Treating under FOI (duplicates FOI request (b))
14 March	18) Who can make enquiries about whether someone is registered on WRS (employer, employee etc)? 19) How would these people make the enquiries?	Press Office	Press office to respond (WRS team to clear lines)

22 March	<p>20) The impact of EU enlargement on migration flows report on your website – what month in 2003 was it published?</p> <p>21) Re what the Minister said on R4 Today: “A very recent labour force survey that shows that migrants earn on average seventeen per cent more than, than indigenous workers...” Where do these figures come from and what supports them?</p>	Press Office	Press Office to respond (lines provided)
23 March	<p>Figures for the number of permit holders on each of the individual work permit schemes / programmes operated by the UK government, including the sector based scheme, the Seasonal Agricultural Worker scheme and the highly skilled migrant workers programme. We request this information to be broken down to show the ethnic background and / or national origin of the holders. We request the information for 2002, 2003 and 2004.</p>	Freedom of Information	Writing to indicate this will be treated as one request with other FOI requests

Freedom of Information requests received by Other Government departments:

Date	Request	Made to	Response
9 February	<ul style="list-style-type: none"> List the documents relating to the predicted impact of A8 migrants on the UK economy. List the documents relating to the actual impact of A8 migrants on the UK economy. All documents on the predicted impact of A8 migrants on the UK economy. All documents on the actual impact of A8 migrants on the UK economy. 	HM Treasury	Proposed response: Consolidated document; Certain sections of FCO paper on economic impacts
10 March	<ul style="list-style-type: none"> All documents relating to the preparation of the speech made by the Prime Minister Tony Blair to the CBI on 	Cabinet Office (and No.10)	Under consideration

	<p>migration on 27 April 2004. We have already seen a copy of the published speech so our request would be for other information or documents that formed the basis of the speech.</p> <ul style="list-style-type: none">• In particular we seek information on which basis the Prime Minister stated: "To take account of the new shape of the EU we will significantly reduce the quotas of non EU low-skilled migrants coming in to fill labour shortages in the agriculture, hospitality and food-processing industries - to take into account the impact of EU free movement of workers from May 1."		
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10 DOWNING STREET
LONDON SW1A 2AA
020 7930 4433

From the Policy Adviser

13 April 2005

Dear Mr Quinn

Freedom of Information Request
Cabinet Office Reference: COFOI/05/514

Thank you for your e-mail of 10 March 2005 requesting information on

- All documents relating to the preparation of the speech made by the Prime Minister to the CBI on migration on 27 April 2004.
- In particular, information on which basis the Prime Minister stated: "To take account of the new shape of the EU we will significantly reduce the quotas of non-EU low-skilled migrants coming in to fill labour shortages in the agriculture, hospitality and food-processing industries – to take into account the impact of EU free movement of workers from May 1."

The Prime Minister's Office does hold information on these matters.

The Freedom of Information Act (FOI) obliges us to respond to requests promptly, and in any case no later than 20 working days after receiving your request. However, when a qualified exemption applies to the information, and the public interest test is engaged, we are able to extend the time for response by a reasonable period. We do, of course, aim to make all decisions within 20 working days, including in cases where we need to consider where the public interest lies in respect of a request for exempt information. Your request, however, raises complex public interest considerations, which must be analysed before we can come to a decision on releasing the information.

The specific exemptions, which we are considering in relation to your request, are those detailed in sections 35 and 36 of the Act, namely the formulation of government policy, and prejudice to the effective conduct of public affairs. Further information on these exemptions is available on the Department for Constitutional Affairs FOI website,
<http://www.foi.gov.uk/guidance/exguide/index.htm>.

In your case we need to extend our response time limit by a further 20 working days to give us time to assess whether the public interest in withholding the information outweighs the public interest in disclosing it.

Therefore, we plan to let you have a response by 13 May 2005. If there is a need for any further delay we will keep you informed.

If you have any queries about this letter, please contact me.

Yours sincerely

EMILY MILES

Tristan Quinn, Producer, BBC Panorama

**dca**

Department for
Constitutional Affairs
Justice, rights and democracy

Baroness Ashton of Upholland
Parliamentary Under Secretary of State
Department for Constitutional Affairs
Selborne House
54 Victoria Street
London
SW1E 6QW

File
Top: DJ
cc: NR
**The Rt Hon Lord Falconer
of Thoroton**

Secretary of State and
Lord Chancellor
Selborne House
54 Victoria Street
London SW1E 6QW

T 020 7210 8380
F 020 7210 8597
E lordchancellor@dca.gsi.gov.uk
www.dca.gov.uk

14th April 2005

Dear Cathy,

FREEDOM OF INFORMATION: NEXT TRANCHE OF WORKING ASSUMPTIONS

Your letter to me of 2 March sought MISC28 agreement to three further sets of working assumptions for categories of Freedom of Information requests. Subject to taking account of the letters referred to below, you may take it that you have the agreement of MISC28.

Responses were received from Geoff Hoon (MOD – 11 March), Jack Straw (FCO, 15 March), David Miliband (CO – 15 March), Patricia Hewitt (DTI – 16 March), Nick Raynsford (ODPM – 29 March) and Charles Clarke's private secretary (HO – 11 April).

Geoff was content subject to some minor points. In the working assumption on Ministerial communications, it should be made clear that this refers to correspondence between Ministers of the same administration. Officials should also be reminded that both sides of the public interest argument should be articulated in responding to requests. On the assumption relating to Efficiency Programme information officials should be reminded of the need to consult Ministers in good time when section 36 is to be cited.

Jack was content. On the assumption for Ministerial Communications he strongly supported making explicit the need to consult former Ministers, whether of a previous administration or not, on potential disclosure.

Patricia was also content, although she felt the text on the position of correspondence with third parties on policy issues might be strengthened to more robustly support the working assumption. On public appointments, the detail of the data protection aspects was somewhat incomplete, but Patricia agreed with the overall conclusion of the working assumption.



INVESTOR IN PEOPLE

SKP 15/4/05

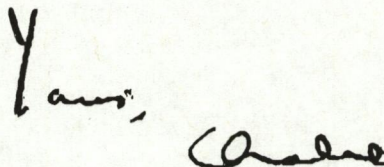
02072108597

Nick had some concerns about the working assumptions and these were set out in detail in his letter. He emphasised the need to ensure the working assumptions portrayed a true reflection of the legal position with respect to the Freedom of Information Act and in particular did not suggest an interpretation that would expose us to frequent challenges by the Information Commissioner. I understand that following discussion at official level agreement has been reached on the points in Nick's letter.

Charles' private secretary wrote that where the standard in a working assumption is for disclosure that there may be benefit in including these in Publication Schemes. On correspondence between Ministers where it relates to a constituency matter the status of the Minister was less critical and such instances might be dealt with as one of the referral points. On public and senior appointments there would be merit in making specific comment on the subject of references. He asked that your officials discuss these points further with Home Office officials.

Subject to taking account of the points raised in colleagues' letters you may take it that you have MISC28 clearance.

I am copying this letter to the Prime Minister, members of MISC28 Committee and Sir Andrew Turnbull.



LORD FALCONER OF THOROTON

RESTRICTED



GC
AP
DT

FCS/05/092

DEFENCE SECRETARY

Falklands FOI Requests

1. Thank you for your letter of 1 April about requests under the Freedom of Information Act for information about the sinking of the Belgrano and carriage of nuclear weapons during the Falklands Conflict.
2. I have taken further advice on this issue, and I remain of the view that the balance of public interest lies in not releasing the information at this time. For the reasons set out in my letter of 21 March and covered in our conversation of 13 March, I remain of the view that the release of this information now would, or would be likely to, prejudice relations during the coming months between the UK and countries in South America, particularly Chile and Argentina (FOIA Section 27 1 a); and have a serious consequent effect on promotion and protection by the UK of its interests in the Falkland Islands (FOIA Section 27 1 d). After the publication of Professor Freedman's Official History of the Falklands Conflict in June – for which we have a careful handling strategy to minimise the likely prejudice to UK interests - we will be in a position to judge afresh the effect of these FOI releases on international relations.
3. Moreover, I also have concerns about the consultation of a previous administration during this politically sensitive period. In our conversation on 13 March, we agreed on the need to be in touch with Ministers of the Administration in office at the time before making any disclosures relating to this period. In my view, this information should not be released (at any time) without the explicit agreement of Baroness Thatcher and Mr Howard. I can see little prospect of them giving such consent this side of the General Election.

RESTRICTED

RESTRICTED



4. I am copying this minute to the Prime Minister and Charles Falconer.

A handwritten signature in black ink, reading "Jack Straw".

JACK STRAW

Foreign and Commonwealth Office

12 April 2005

RESTRICTED

MATRIX

1. MTR
2. File

DT
GC: Nihil



Office of the
Deputy Prime Minister

Creating sustainable communities

Rt Hon Lord Falconer of Thoroton QC
Chair, MISC 28
Department for Constitutional Affairs
Selborne House
LONDON
SW1E 6QW

The Rt Hon Nick Raynsford MP
Minister for Local and Regional Government

Office of the Deputy Prime Minister
26 Whitehall, London SW1A 2WH

Tel: 020 7944 3013 Fax: 020 7944 4539
E-Mail: nick.raynsford@odpm.gsi.gov.uk

www.odpm.gov.uk

OUR REF : R/005449/05

07 APR 2005

Jean Charlie

FREEDOM OF INFORMATION: PAPERS PREPARED FOR MISC 28

I have seen Baroness Ashton's letter of 14 March to MISC28 members. She asked for a progress update on three important areas:

- (i) simultaneous publication of disclosures under Freedom of Information of general interest to the public;
- (ii) making publicly available background factual material to bills in the current legislative programme;
- (iii) details of Departments' major Agencies' and NDPBs' plans for proactive release of information.

As regards the first of these, the Office of the Deputy Prime Minister is committed to the simultaneous release of information of wider public interest under Freedom of Information and processes are now in place to manage the release of disclosures made in response to FoI requests. Our FoI Advice Team have also reviewed all completed responses to ensure that all those that meet the criteria and are capable of being published are released.

The corporate website has been significantly adapted to publish this information with due prominence and in the format recommended by the Department for Constitutional Affairs.

To date, two responses have been identified as being in the wider public interest and posted to the website, and some further responses will be posted before Friday 8 April in response to current requests. The comparatively small number of disclosures put up on the website to

date is accounted for by the fact that many of the disclosures made by ODPM in response to requests have been of particular interest to those making the requests and not of wider public interest. An examination of the closed requests to date suggests that the disclosures that have been published to date do seem to be the most interesting responses.

On the matter of the release of factual background material to bills in the current legislative programme, I can say that ODPM has no current bills. I can confirm that key background material for ODPM bills is routinely placed in the public domain, using the ODPM corporate website where appropriate, for example, for consultations and responses to consultation exercises.

Finally, regarding ODPM's major executive agency's plans for proactive releases, Planning Inspectorate will be developing a disclosure log on their website, and a process to support it, but to date have not carried out simultaneous publication of responses to requests received. A number of these requests have been referred to ODPM's legal team for advice, and others have been the subject of appeals. In addition, PINS management have been considering how simultaneous publishing of Inspectors' reports and First Secretary of State determinations is to be managed, either in ODPM or the Inspectorate.

I am copying this to the Prime Minister, MISC28 members, other members of Cabinet, and Sir Andrew Turnbull.

Yours ever

Nick

NICK RAYNSFORD



DT
ALEG
NR.

SCOTLAND OFFICE

Parliamentary Under Secretary of State

Dover House
Whitehall
London SW1A 2AU

Telephone: 020 7270 6806/6741
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www.scottishsecretary.gov.uk

AN OIFIS ALBANNACH

Fo-rùnaire Stàite na Pàrlamaid

Taigh Dhòbhair
Whitehall
Lunnainn SW1A 2AU

The Rt Hon The Lord Falconer of Thoroton
Lord Chancellor
Department for Constitutional Affairs
Selbourne House
LONDON
SW1E 6QW

6 April 2005

Dear Charlie,

FREEDOM OF INFORMATION: PAPERS PREPARED FOR MISC28

I have seen a copy of Cathy Ashton's letter of 14 March.

In response to the issues raised in relation to the Communications papers I can confirm the following:

Simultaneous publication of FOI material

The Scotland Office currently has in place a temporary arrangement for managing the simultaneous release of information that is deemed to be in the wider public interest. This is achieved by placing appropriate material in the publications area of our website. At the same time we are finalising arrangements for a dedicated FOI area to facilitate all future disclosures and proactive releases. We expect this to be in place early next week.

Background material to bills

The Scotland Office does not have any bills in the current legislative process.

Proactive initiatives and NDPBs

As requested, we will alert our sole NDPB, the Boundary Commission, to the importance of full consideration and proactive publication of FOI material.

Enhanced publication schemes

The Scotland Office will build on earlier discussions with DCA about the proposed enhanced publication schemes and will work towards meeting any new criteria agreed with the Information Commissioner.

Historical records

Traditionally the Scotland Office, and prior to devolution the Scottish Office, has made arrangements with the National Archives of Scotland in relation to storage and management of historical records. Our expectation, therefore, is that we would have limited involvement in any proposed review of records held by the National Archives at Kew.

I am copying this letter to the Prime Minister, members of MISC 28, other members of the Cabinet and Sir Andrew Turnbull.

Best wishes

Anne

ANNE McGUIRE



File
Top: DT
cc Nik Rot
✓ IR

HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ

Baroness Ashton of Upholland,
Parliamentary Under Secretary of State
Department for Constitutional Affairs
Selbourne House
54 Victoria Street
London SW1E 6QW

6 April 2005

**FREEDOM OF INFORMATION: PAPERS PREPARED FOR
MISC 28**

I am responding to your letter of 14 March requesting information about the way departments are handling various freedom of information issues.

Simultaneous publication of information of general interest to the public.

2. The Treasury website has a page dedicated to FOIA disclosures which is easily accessible from the home page. There is already a substantial amount of such information available on the website and it is Treasury policy and practice to publish any information of general interest on the website at the same time as it is released to the requester.

SKP 6/4/05



3. The Inland Revenue and Customs and Excise are merging to form a new department early in 2005/06. This merger is affecting not only the FOI teams, but those engaged in Internet work , who are designing the new website. As soon as the new department is legally formed and the joint FOI teams and updated website are in place a large programme of work is planned.

4. All business areas that have already supplied information for FOI requests will be asked to consider whether these releases should be published on the website. The Press Office will help take this forward and a disclosure website will be prepared. In addition the two departments Publication Schemes will be merged and information owners will be encouraged to put increasing amounts of information on the website.

Background material to Bills

5. Treasury Ministers were responsible for 4 bills in the current Parliamentary session: Child Benefit, Commissioners for Revenue and Customs Bill, Finance Bill, and the Consolidated Fund Bill. In the first three cases publication of the bill was accompanied by a large amount of information about the background to the legislation with the Child Benefit and CRC bills also being preceded by reports and RIAs. The Finance Bill publication on 24 March was supported by detailed explanatory notes about each clause. The



Consolidated Fund bill is a largely formal measure which underpins the authority to spend money through the Supply procedure. While we do not publish background information specific to this bill there is an enormous amount of information on the Treasury website covering the detail of the Estimates.

Proactive Initiatives and NDPBs

6. The Office of Government Commerce (OGC) is considering a proactive release programme including the possibility of publishing Gate 4 and Gate 5 reports one year after submission and their Commodities Price Benchmarking.

7. The Public Works Loan Board is considering the regular publication of details of outstanding loans to local authorities.

8. The Valuation Office Agency, an Executive Agency of the Inland Revenue, plan a series of proactive releases in 2005/06:

Non-domestic Rating:

Details of proposals against 2005 rating list (1 April);
Summary Valuations and Valuation Schemes (1 April);
2005 Rating Cost Guide (1 July).

Finance and Planning:



Finance Manual (1 June);
Project Management Guidance;
Risk Management Handbook.

Customer Services:

Customer Service Manual (1 May);
Customer Satisfaction Survey statistics (1 July);
Complaints statistics (1 June);
Telephone response time statistics (10 May);
Post response times(10 May).

9. Additionally, the Valuation Office are planning to release a lot of information pertaining to the Council Tax Revaluation in September 2006 which will include property attributes and sale price data. However, these proposals are subject to public consultation and further Ministerial decisions and the outcome will not be known for some months.

Enhancing Publication schemes and publishing historic records

10. I can support the principle of enhancing publication schemes and reviewing for publication historical records at the National Archives but am concerned about the resource implications of these exercises. The first priority must be to deal with information requests effectively and in a timely



manner and only when departments are meeting FOIA deadlines consistently should resources be devoted to further proactive disclosures.

11. I am copying this letter to the Prime Minister, Cabinet Ministers, MISC28, and Sir Andrew Turnbull.

A handwritten signature in black ink, appearing to read "Paul Boateng". The signature is written in a cursive, flowing style.

PAUL BOATENG

The Rt Hon the Lord Goldsmith QC



020-7271 2460

MATRIX

✓ MTA
2. File

9 BUCKINGHAM GATE
LONDON SW1E 6JP

DT
✓ CC: M

Baroness Ashton of Upholland
Parliamentary Under Secretary of State
Department for Constitutional Affairs
Selborne House
54 - 60 Victoria Street
LONDON
SW1E 6QW

6 April 2005

Dear Cathy

**FREEDOM OF INFORMATION: PAPERS PREPARED FOR MISC 28:
SIMULTANEOUS PUBLICATION OF INFORMATION/BACKGROUND
FACTUAL MATERIAL TO BILLS**

Thank you for your letter of 14 March.

Simultaneous publication

I can confirm that we are committed to simultaneous publication of information of general interest to the public. As you will appreciate, most of the FoI requests my own office has received so far have been sensitive, and for most we have claimed exemptions under the Act. Our only example thus far has been the release of a note on 25 January setting out our position on my advice on the legality of military action against Iraq.

In the Law Officers' Departments more generally, Bona Vacantia (BV), part of the Treasury Solicitor's Department (TSol) responded to a request for information on 750 intestate estates that were dealt with between 2003 and 2005 where no kin has been found and simultaneously published the details on the link <http://www.bonavacantia.gov.uk/>. BV also had a request for information on the status of 40 named estates, and this was published on the website in March 2005. Both files can be found under the news section.



The Rt Hon the Lord Goldsmith QC

Material was added to the Procurement Section of the TSol Publication scheme as a result of an individual request for information under FOI. The information was placed simultaneously on the Treasury Solicitor's website in February 2005 (http://www.treasury-solicitor.gov.uk/our_publications.htm).

(Electronic Document Records Management (eRIK) procurement material
Business Case
Evaluation Model
Statement of Requirements Volumes 1 to 6)

Proactive release

I am encouraging the Law Officers' Departments to release material proactively. It is in the nature of our work, particularly in the prosecution context, that we will have fewer opportunities for such releases.

We are revising our website with the aim of launching it in May, and will use this as a chance to make some proactive releases.

Bills

We have none.

I am copying this to the recipients of yours: the Prime Minister, MISC28 colleagues, members of Cabinet and Sir Andrew Turnbull.

Yours sincerely
[Signature]

F01 - Policy.

The Rt Hon The Baroness Amos



The Leader of the House of Lords

The Rt Hon Lord Falconer of Thoroton QC
Lord Chancellor
Department for Constitutional Affairs
Selborne House
54 Victoria Street
London
SW1E 6QW

ST
u: NR

5th April 2005

Dear Charlie,

FREEDOM OF INFORMATION: PAPERS PREPARED FOR MISC28

I have seen Cathy Ashton's letter of 14th March.

Not all the information requested is applicable to my Department. We have no Bills in the current legislative programme and no executive agencies or NDPBs.

As to publication of information of general interest to the public, my Department does not provide services to the general public. Our customers are very specialised: chartered bodies, the health regulators, the higher education world, those appealing to or petitioning the Judicial Committee and their representatives and the rest of Whitehall as regards the legislative programme and the work of both houses. We are reviewing our website with all this in mind to see what more we should add. I endorse Cathy's proposals on enhancing publication schemes and on historical records.

I understand from my officials that the paper is too complacent about the performance of the Clearing House mechanisms. We have found that it does not provide advice quickly enough. The only cases where we have missed the statutory deadline are those where it has been involved. The Clearing House seems to be receiving more requests for advice than it is able to answer so maybe a backlog is building up. I am not sure how this will be addressed.

I am copying this letter to the Prime Minister, members of MIWSC28, other members of the cabinet and Sir Andrew Turnbull.

Yours ever,

VALERIE AMOS

Valerie Amos



Scotland Office

Department for Constitutional Affairs

Dover House
Whitehall
LONDON
SW1A 2AU

Tel: 020 7270 6758
Fax: 020 7270 6812

David Ryan Esq
Director of Records Management
Buckingham Palace
London
SW1A 1AA

*(file (attached
destroyed))*

4 March 2005

Dear Mr Ryan,

FREEDOM OF INFORMATION REQUESTS: PAPERS RELATING TO THE TRANSFER OF THE STONE OF DESTINY IN 1996

We are grateful for your colleague Elizabeth Lomas's comments on the set of papers enclosed with David Crawley's letter of 10 February. As you will recall, this was an initial selection of papers for a response to a Freedom of Information request relating to the transfer of the Stone of Destiny from Westminster Abbey to Edinburgh Castle in 1996.

We have reduced and redacted the set of papers in compliance with all of Elizabeth's requested excisions. This reduced and redacted set (attached) is the set that we have shown to other interested parties: namely, the then Prime Minister (Mr Major), the then Secretary of State for Scotland (Lord Forsyth), the then Permanent Secretary of the Scottish Office (Sir Russell Hillhouse), the Dean of Westminster and the Principal Clerk of the Church of Scotland. All of these parties have now responded; none has expressed any objection to the proposed release of these papers.

If you are content, and subject to any comments from the Cabinet Office and No 10, we propose to release the attached papers with a covering letter based on the attached draft. If we receive any other requests for information on this subject (and we are still expecting one from the media, as David Crawley mentioned in his letter), we will respond by supplying the same set of papers. We also intend to make the papers available on the Scotland Office website.

I would be very grateful for any further comments by **7 March**, so that we may give the enquirer a timely response.

I am copying this letter and the attachments to Dennis Morris in the Cabinet Office and Daniel Thornton at No 10.

*Y sincerely,
Ken Robbie*

Kenneth Robbie
Head of Parliamentary Branch

DRAFT

Bernard J Barrell Esq
248 Hornchurch Road
Hornchurch
Essex
RM11 1QB

March 2004

FREEDOM OF INFORMATION ACT: THE STONE OF DESTINY

Further to my letter of 10 February, I am now writing to say that we have completed our search for the information requested by you in the letter received in the Scotland Office on 18 January.

As I said in my earlier letter, certain exemptions apply to the information that you have requested. These are:

1. Exemption 35(1)(a) and (b). Certain of the papers relate to the formulation or development of the then Government's policy and to communications between Ministers;
2. Exemption 36(2)(b) and (c). It is possible that some of the information involved would be likely to inhibit the free and frank provision of advice or would otherwise be likely to prejudice the effective conduct of public affairs; and
3. Exemption 37(1)(a). Certain of the information relates to communications with the Royal Household.

I now enclose a set of 13 papers in response to your request. Three of these papers were publicly available in 1996; the remainder are internal Government communications from 1995 and 1996.

I should re-state that if you are unhappy with the level of service you have received in relation to your request you may ask for an internal review from Gerald McHugh, Head of Briefing Services, Scotland Office, Melville Crescent, Edinburgh, EH3 7HW. If you are not content with the outcome of the internal review you have the right to reply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

I should add that the enclosed documentation will shortly be made publicly available on the Scotland Office website: www.scotlandoffice.gov.uk.

DAVID CRAWLEY



RESTRICTED

Department for
Transport

DT
ECMA
TR
N/L

From the Secretary of State

Baroness Ashton of Upholland
Parliamentary Under Secretary of State
Department of Constitutional Affairs
Selborne House
54 Victoria Street
LONDON
SW1E 6QW

Great Minster House
76 Marsham Street
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Tel: 020 7944 3011
Fax: 020 7944 4399
E-Mail: alistair.darling@dft.gsi.gov.uk

Web site: www.dft.gov.uk

OUR REF: AD/006314/05

- 4 APR 2005

FREEDOM OF INFORMATION; PAPERS PREPARED FOR MISC28

I am replying to your letter of 14 March to Charlie Falconer. I am content with the papers circulated for information.

Communicating FOI and the proactive strategy

I am happy to agree to all the requirements in your letter about better publication of FOI related information. We have established a robust process of ensuring simultaneous publication of FOI response of wider public interest. We will continue to support key announcements with a programme of proactive releases. We are looking closely at the full implications on our publication process and systems as part of the review of the FOI publication scheme, which we acknowledge is needed.

We had already published comprehensive information on our Bills, but we are adding links to this from our FOI home page on our website. We are liaising closely with our executive Agencies and NDPBs to ensure that they are conforming to the full requirements of publication of information of general interest disclosed under FOI.

I am copying this letter to the Prime Minister, members of MISC28, other members of Cabinet and Sir Andrew Turnbull.

ALISTAIR DARLING



From the Secretary of State

Baroness Ashton of Upholland
Parliamentary Under Secretary of State
Department for Constitutional Affairs
Selborne House
54 Victoria Street
London SW1E 6QW

DFID Department for
International
Development

1 Palace Street, London SW1E 5HE

Telephone: 020 7023 0134
E-mail: h-benn@dfid.gov.uk

1 April 2005

Dear Baroness Ashton,

I refer to your letter of 14 March to Lord Falconer, copied to MISC 28 and Cabinet members.

You asked MISC 28 members to respond by 31 March on three specific points and I thought it would be helpful to also set out DFID's position on each.

Simultaneous publication of information of general interest to the public

DFID has been using its disclosure log to simultaneously release information being disclosed where we judge it to be of wider public interest (<http://www.dfid.gov.uk/aboutdfid/foi/foidisclosures.asp>).

We have found the approach quite manageable. Given our relatively low volume of requests, there are only a few items on the log at present. These account for about one in five of the requests where information was disclosed.

Background materials to bills


DFID has no bills in the current legislative programme.

Proactive initiatives and NDPBs

DFID only has two very small NDPBs – The Overseas Service Pension Scheme Advisory Board and the Commonwealth Scholarship Commission. Neither have substantial proactive disclosure strategies but our FOI officials will be contacting them shortly to review experiences of the first three months of FOI and to explore the potential for proactive initiatives.

If your officials would like further information on any of the above, they can contact Frank Rankin of our Open Government Unit (e-mail: f-rankin@dfid.gov.uk).

I am copying this letter to the Prime Minister, members of MISC28, other members of Cabinet and Sir Andrew Turnbull.

p.p. 

HILARY BENN

(Agreed by the Secretary of State and signed in his absence)

MATRIX

DT

cc. Nickhil R

AA
GH



Sanctuary Buildings Great Smith Street Westminster London SW1P 3BT
tel: 0870 0012345 dfes.ministers@dfes.gsi.gov.uk
Rt Hon Ruth Kelly MP

The Rt Hon Lord Falconer of Thoroton QC
Department for Constitutional Affairs
Selborne House
54 Victoria Street
London
SW1 6QW

31 March 2005

Dear Charlie

Freedom of Information: Papers Prepared For Misc28

In her letter of 14 March, addressed to you and copied to MISC28 and other Cabinet colleagues, Baroness Ashton asked about progress in implementing the simultaneous publication of information of wider general interest, when responding to Freedom of Information requests.

My Department is committed to proactive publication wherever possible, both in principle and as an aid to reducing the number of individual responses we will need to make. We have a good track record in publishing information about key policies, school performance tables and issues of concern to the public. However, we are aware that proactive publication of more information will contribute significantly to the success of the legislation and we are formulating a communications strategy to identify areas of both media and public interest.

We have created a focus group drawn from policy teams across the Department and are undertaking a detailed review of the contents of our Publications Scheme. We are looking in particular at those areas of Departmental business likely to attract FOI requests; a list of these was sent to DCA in November.

I noted the analysis of the first six weeks of FOI implementation within central government. The experience in my Department is similar in many respects, although the highest concentration of requests to us has been from the general public, albeit that this group would also include the fact researchers, information brokers and freelance journalists identified in the DCA paper.



I am content that the processes outlined in the third paper for resolving disputes about the DCA Clearing House advice, access to papers of previous administrations and use of the Ministerial veto, are reasonable and provide a good working hypothesis, which could be amended, in the light of experience, if necessary.

Copies of this letter are being sent to the Prime Minister, members of MISC28, other members of the Cabinet and Sir Andrew Turnbull.

Yours ever

Ruth

RUTH KELLY

187622

31 March 2005



Foreign &
Commonwealth
Office

London SW1A 2AH

Baroness Ashton of Upholland
Parliamentary Under Secretary of State
Department for Constitutional Affairs
Selborne House
54 Victoria Street
London SW1E 6QW

From the Foreign Secretary

Dear Cathy

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1. HR
2. file

Freedom of Information: Papers Prepared for MISC 28

... In your letter of 14 March to Charlie Falconer you asked MISC 28 colleagues for a return on specific areas on the Communications and publishing side of FOI. I enclose a note of FCO progress with publishing material – including both FOI and proactive releases as well as background factual material to current issues. Our NDPBs have also been asked, as you requested, to send you details of their release plans. I welcome your proposals for enhancing the quality of publication schemes and endorse the prudent approach of considering further initiatives for historical records alongside consideration of available resources.

... The enclosed note on the FCO's contribution to FOI publishing updates the list I sent to Charlie with my minute/letter of 12 November 2004. Since then we have published a mass of material on the European Union Bill, including a White Paper on the Constitution Treaty, and a steady stream of FOI released information which is regularly published on the FCO website. A dedicated FOI website to include both released and proactive disclosures will be going live mid-April.



The current highlight of our release programme is this week's high profile release at the National Archives of PUSD records (1870-1939). An accompanying collection of essays by FCO Historians is being simultaneously published on the FCO website to give context to this historic release of intelligence-related records.

I am copying this letter to the Prime Minister, members of MISC 28, other members of the Cabinet and Sir Andrew Turnbull.

*Yours ever,
Jack*

JACK STRAW

COMMUNICATING FOI AND THE PROACTIVE STRATEGY

Summary and Recommendations

1. This paper reviews the progress to date on communicating our agreed approach to FOI communications, and sets out a programme for 2005. MISC28 is asked to agree that programme.

Current and future perception of FOI in action

2. A series of speeches and media interviews and articles by DCA Ministers, and by the Information Commissioner in the run up to 1 January led to extensive coverage of the implementation of the Act. This was generally positive in informing the public about the importance of the legislation in extending people's rights.
3. Since the Act came into operation the announcement of the Government's decision not to release the Attorney-General's advice on the legality of the war in Iraq has met with adverse criticism, but much more publicity was generated over the release by HM Treasury of the economic analyses of the withdrawal from the Exchange Rate Mechanism in 1992. Despite some negative reporting about the processing of that particular request, the release itself has been represented as showing that the Act is effective in allowing access to factual information of genuine significance, and has vindicated the policy of simultaneous releases.
4. Over the next few months adverse publicity might be generated by:
 - decisions by the Information Commissioner and the Information Tribunal in respect of information refused by Departments; and
 - non-compliance with the 20 day time-limit for processing requests, particularly in the case of high profile requests.
5. The Commissioner's first rulings against central Government are likely to be made in March. The number of complex and high profile requests made by the media is likely to mean that there will be a significant number of conspicuous cases appealed, from March onwards. When the first quarter's FOI monitoring statistics are published, probably in late May, it is possible that they may provide some evidence of poor and inefficient processing, as evidence to date suggests that there have been failures by many Departments to process requests within the 20 day time-scale, and that the extension of the time-limit for the public interest test has been widely and extensively used. This evidence may be reported as showing that there has been deliberate procrastination by Government Departments to avoid releasing embarrassing information.
6. The programme of Ministerial speeches, interviews and articles will continue over the next 6 months. The announcement of the refusal of the Attorney's Iraq war legal advice was complemented by a speech by the Secretary of State in which he argued that FOI should not be judged in the light of individual disclosure decisions or the extent to which the internal discussions of Government are exposed. Rather, the real test is whether there are changes in attitude to openness across the whole of the public sector over the next few years, and whether or not increasing amounts of information are released.

Openness initiatives

Simultaneous releases and handling current requests

7. The most conspicuous demonstration of the effectiveness of the new right of access to Government information is the information itself that is released in response to requests. Cabinet decided in December that Departments should publish on their websites information of general public interest at the same time as it is communicated to the applicant, and should consider publishing additional information to that requested in order to contextualise the requested information. Many Departments are now publishing such information, but there is still an unevenness of performance, and there has been relatively little publication of additional contextual information.
8. My Department is now compiling on a weekly basis a list of all forthcoming high profile releases reported to the Clearing House, which are likely to generate media interest. This list has the potential to enable Departments to publicise releases by different Departments on related subjects, and to operate a joined up approach to releasing information.
9. **MISC28 is asked to ensure that the simultaneous publication initiative is implemented by their Departments and that there are sufficient processes in place to sustain it.**

Programme of proactive initiatives

10. This paper emphasises the importance of maximising the benefits of current releases while minimising the adverse publicity from inefficient processing. The weight of processing current requests will diminish as Departments become more experienced and policies in difficult areas are established. However the adverse publicity from appeals to the Commissioner and the Tribunal will need to be offset by sustaining the programme of positive initiatives. Four specific initiatives are discussed here.

Enhancing the quality of publication schemes

11. High quality publication schemes containing significant information released to the public are central to demonstrating the Government's commitment to proactive disclosure. The Commissioner is due to produce revised and more demanding criteria for accrediting publication schemes in the first half of 2006. Departments will be required to submit their schemes for re-accreditation from July 2006 and implement them by November 2006.
12. I propose that my Department will work with the Commissioner on the revised criteria and will seek to make them available to Departments in the second half of 2005, so that they can begin to adopt the revised approach over a longer period of time and at a pace to suit their own resources.
13. Many Departments have already adopted a proactive approach to publishing information requested under the Act. For instance my own Department has received a request for information about the hospitality accepted by senior officials and is now publishing the Departmental hospitality register on its website. My officials will monitor Departmental disclosure logs, and identify categories of information that can be added to the revised criteria for publication schemes.

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14. This proposal will enable central Government to inform the Commissioner's requirements for publication schemes, and derive the benefits from implementing them proactively. If MISC28 is content with this proposal DCA officials will work with the Commissioner in the second half of 2005 to identify categories of information for revised and enhanced publication schemes. **MISC28 is asked to agree that Departments will develop their own plans to bring themselves into compliance with the revised standard in phases by July 2006.**

Systematic release of background materials to bills

15. At the October meeting it was agreed that DCA would circulate as a model for other departments an example of the background information to a bill that could be released. Such an example has been circulated by DCA to Departments based on the Gender Recognition Bill. That Bill was deliberately developed with the most open consultation policy possible.
16. Since the October meeting the bills in the Government's legislative programme have been announced. **I am now asking Departments to look at each bill in the programme with a view to releasing proactively the factual background materials to the bill and branding such material as FOI releases.**
17. **MISC28 is asked to send to me by 31 March a note of the background factual information to all bills in the programme which will be released.** This will enable us to adopt a more systematic approach, whereby our default position is that we will release background factual information to bills unless the information is exempt under the FOI Act.

Initiatives relating to historical records

18. On 4 January the National Archives (TNA) released to the public 50,000 files less than 30 years old. This initiative had been supported by Departments which had committed resources to examining the files in question to identify whether or not they were exempt under the Act. I propose that we might return to historical records later in 2005-06 with a view to assessing the availability of resources to pursue further initiatives in this area.

Announcements of proactive initiatives

19. Some departments have produced good examples of such initiatives, and these were exploited in the FOI communications in the run up to 1 January. There is a need for fresh initiatives to be identified. It is likely that NDPBs, particularly those concerned with the delivery of services to the public, hold information of value which can be released proactively.
20. The Environmental Information Regulations require that public authorities shall 'progressively make [environmental] information available to the public by electronic means which are easily accessible'. This requirement has had relatively little attention, but provides a clear direction for authorities to examine whole classes of information whose release would be of concrete benefit to the public.
21. Needless to say it is important that when any such releases are made they are branded explicitly FOI or Access to Information releases.

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22. MISC28 is asked to examine the work of their executive agencies and NDPBs with a view to identifying areas where information relating to their functions can be routinely and proactively released, and branded FOI releases.

Cost of proposals in 2005-06

23. It is established policy that there are no additional resources for FOI implementation. The cost of work on publication schemes involves spreading across 2005-06 and 2006-07 work which Departments would be required to bear in 2006-07, and which would be offset in part at least against the reduced cost of processing requests for the information covered by the scheme.

**Department for Constitutional Affairs
March 2005**

Nature of Requests

5. A significant number of requests are focused on particularly sensitive issues and the Attorney General's advice on the legality of war in Iraq, WMD and Guantanamo, predictably, accounted for a significant number of early requests.
6. However, evidence to date suggests that, in the main, Departments are receiving requests for information on high profile policy areas for which they are responsible. Examples include Top-Up Fees, Identity Cards, Railtrack, the Common Agricultural Policy and the European Constitution.
7. A third category of requests are aimed at Ministers and, in particular, their diary information, including occasions on which they held meetings with third party stakeholders. Others focus on Ministers' financial interests.
8. Events of historical significance complete the set, with requests for material relating to the Thatcher administration, and the Falklands War in particular, to the fore.
9. Early evidence points to an increase in sophistication on the part of applicants: where before their requests were phrased too widely, and clarification needed to be sought, they are now becoming increasingly precise and focused. Requests for lists of files held by Departments have also increased, with the suspicion that requests for the information they contain will follow shortly after.

Applicant Profile

10. While the Act is requestor-blind, it is possible to begin to discern a number of applicant groups through their self-identification in making requests.
11. Of all cases referred to the Clearing House, journalists comprise by some margin the biggest requestor group, accounting for approximately 43% of all requests. In some cases, the information requested corresponds with what one might expect to be of interest to particular journalists - for instance, business related information being sought by business journalists. Others seem to suggest a more general interest in testing the boundaries of FOI.
12. The second biggest group reflected in Clearing House cases are members of the public, accounting for some 37% of the total. It is, however, entirely possible that a proportion of these applicants are in fact researchers, information brokers or freelance journalists.
13. MPs account for approximately 11% of requests referred to the Clearing House.
14. There has been a small increase in the number of subject access requests under the Data Protection Act (DPA). This is attributable to the expansion of the DPA's coverage to include unstructured data, from 1st January 2005, and to individuals' desire to test this increase in scope.

Performance: Central Co-ordination Issues

15. The Clearing House receives an average of 34 referrals per day. The total number of referred cases received by the Clearing House to date was 1309 of which approximately 330 have been referred to HORU, in line with the agreed remits of the Clearing House and HORU.

IMPLEMENTATION TO DATE

Freedom of Information Act Implementation

Summary

This paper provides MISC28 with a review of the first six weeks of FOI implementation within central government. It includes an analysis of requests received and the operation of the Access to Information Central Clearing House. There is a separate annex on implementation in the wider public sector.

MISC28 is asked to take note of this review.

Summary

1. The following headlines points are addressed in further detail below:
 - Request volumes to date are very significant (7200+);
 - Requests tend to focus on departmental responsibilities (eg Railtrack, ID Cards), current high profile issues (eg AG's advice), Ministers' interests (eg diary information) and events of historical significance (eg Falklands);
 - In terms of cases seen by the Clearing House, journalists comprise the biggest user group of FOI, followed by members of the public and MPs;
 - Central co-ordination is challenging but working effectively; and
 - Information from Departments reveals a mixed picture in terms of their performance in the handling of requests to date.
2. The Access to Information Central Clearing House based within DCA provides specialist advice to Whitehall departments in responding to particularly complex or cross-departmental requests. The Clearing House works in tandem with the Histories, Openness and Records Unit (HORU) based within Cabinet Office. The material contained in this paper is principally drawn from the central experience of the Clearing House and through its regular dialogue with Departments.

Request Volumes

3. Following agreement at DA Committee, only those FOI requests received by Freedom of Information Practitioners within departments are monitored and recorded for statistical purposes. A breakdown of requests received in the month of January, together with performance data, appears at Annex A.
4. The figures reveal that volumes are very significant. Typically, Departments reported a relatively slow start in the first few days of full implementation, with a marked rise by the end of the first week. Although Departments are reporting a slight tail-off in request volumes since the first weeks and months of implementation, there is little evidence of a pronounced reduction in request rates. As expected, a high proportion of these cases are complex and demanding of senior official and Ministerial time.

16. In the main, experience to date suggests that Departments are referring cases to the Clearing House in accordance with agreed triggers. However, the experience of the Clearing House in receiving referrals and relevant information from Departments within appropriate timescales is very mixed. Indeed, some referrals have been made to the Clearing House just prior to the expiry of the 20 day time limit and, in one or two instances, after the expiry of the time limit.
17. Broadly speaking, the internal processes in place to enable the Clearing House to respond to these referrals have worked effectively during the first month of full implementation. Workloads are challenging but significant progress is being made to respond to all referrals on time, where referrals themselves are made on time. To maintain performance, pre-existing contingency plans have been triggered to a certain degree, principally to support liaison with departments, to collate and assess information.
18. Both DCA and HORU are experiencing some delays in having relevant information transferred to them in good time to provide robust advice; both are communicating this concern to other Departments. It is important that Departments understand that their work does not stop at the point at which a referral is made to the Clearing House. The decision on the appropriate application of the Act must be based on close and timely collaboration between the Departments, the Clearing House and HORU.
19. Ministers will wish to note that appropriate structures and processes are in place to respond effectively to requests which raise issues of national security. The DCA and Cabinet Office work closely with the National Security Liaison Group on FOI to ensure all interested Agencies and Departments bring their expertise and collective memory to bear in the development of appropriate responses to requests.

Performance: Whitehall Issues

20. On the basis of evidence to date, the performance of individual Departments to date reveals a mixed picture. As the table at Annex A shows, there is a considerable variation in the number and treatment of requests received by Departments.
21. The scope of many requests received is extremely broad and in a significant number of cases, FOI practitioners are providing advice and assistance in order to narrow the scope or to better understand the information actually being sought by applicants. Where this is occurring, it is encouraging to note that the feedback from end users is positive.
22. At MISC28(O), several Departments stressed that implementation of FOI had proved resource intensive, with a particular burden on legal advisors and policy officials. The Foreign Office, Cabinet Office, Treasury, Department of Health, Home Office and the Northern Ireland Office all reported that they had activated their own contingency plans to a greater or lesser degree.
23. Following the first cycle of requests and responses, all Departments are now engaged in processing the first internal reviews of their decisions.

20 Day Statutory Limit

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24. While the Act provides that a request must be responded to within a 20 working day time limit, a number of exceptions to this rule apply. Of particular relevance here are those instances where a request has been expressed in terms that does not enable a public authority to identify the information sought, and where the assessment of the public interest in favour of disclosure or retention is finely balanced.
25. Of the requests seen through the Clearing House, and on anecdotal evidence from Departments, many of the requests are extremely broad and/or vague in scope and have necessitated correspondence with applicants to establish exactly what information they are seeking. However, and as noted above, this is seen by applicants as a positive development.
26. In relation to assessments of the public interest necessitating time extensions, extensions must be reasonable in all the circumstances of each case. **In many cases where a public interest assessment needs to be made, the twenty day time limit should nevertheless be possible to meet.** Where it is not, Departments are obliged to inform the applicant of the delay and the to cite the exemptions being considered within 20 days.
27. There is some concern that time extensions to consider the public interest test are being sought in a significantly higher proportion of cases than might have been anticipated. It is important that such extensions are sought only where the nature of the request actually demands it.
28. There is also anecdotal evidence of certain authorisation procedures, for instance those requiring notification or sign off by Ministers or senior officials in every case, are creating delays in the answering of requests.
29. Data on Departmental performance to date appears at Annex A.

Freedom of Information Act*: requests for information received by selected central government bodies
ANNEX A: Timeliness of responses to requests received during January 2005

Department	Total requests received	Timeliness of response			Percentage of requests meeting 20-day deadline	Percentage of requests "in time" (i.e. meeting deadline or with permitted extension)
		20-day deadline met	Permitted extension to 20-day deadline ¹	20-day deadline missed		
TOTAL	4462	2917	692	853	65%	81%
Ministerial Departments						
Cabinet Office (including 10 Downing Street)	523	394	68	61	75%	88%
Department for Constitutional Affairs	155	131	11	13	85%	92%
Department for Education and Skills	113	71	12	30	63%	73%
Department for Environment, Food and Rural Affairs	143	78	39	26	55%	82%
Department for International Development	42	29	0	13	69%	69%
Department for Transport**	235	197	7	31	84%	87%
Department for Work and Pensions	174	145	25	4	83%	98%
Department of Culture, Media and Sport	109	71	30	8	65%	93%
Department of Health	177	112	3	62	63%	65%
Department of Trade and Industry	145	88	14	43	61%	70%
Foreign and Commonwealth Office	252	112	72	68	44%	73%
HM Treasury	145	72	50	23	50%	84%
Home Office	273	111	20	142	41%	48%
Legal Secretariat to the Law Officers	59	39	5	15	66%	75%
Ministry of Defence**	735	535	30	170	73%	77%
Northern Ireland Office	40	25	4	11	63%	73%
Office of the Deputy Prime Minister	170	116	8	46	68%	73%
Scotland Office	6	5	1	0	83%	100%
Wales Office	7	6	1	0	86%	100%
Other bodies included in monitoring						
Crown Prosecution Service	68	64	2	2	94%	97%
Export Credits Guarantee Department	11	10	1	0	91%	100%
HM Customs and Excise	64	24	0	40	38%	38%
Inland Revenue	109	104	2	3	95%	97%
National Archives	617	289	286	42	47%	93%
Office for National Statistics	49	49	0	0	100%	100%
Serious Fraud Office	6	6	0	0	100%	100%
Treasury Solicitor's Department	35	34	1	0	97%	100%

* - Figures in this table also include information requests processed under the Environmental Information Regulations where appropriate

** - Figures for the Department of Transport and the Ministry of Defence include requests received by the Executive Agencies for which these departments are responsible

¹ - "Permitted extensions" include:

Requests where the 20-day deadline for response under the FoI Act is extended to allow for consideration of the balance of the public interest.

Requests where the 20-day deadline for response under the EIRs is extended because of the complexity or volume of the request

Requests where a fee notice has been issued to the requester and payment is being awaited

ANNEX B

This annex provides MISC28 with an overview of the FOI implementation within the wider public sector.

Summary

1. The following headlines points are addressed in further detail below:
 - Request volumes are significant for larger bodies, but broadly in line with expectations;
 - Requests cover both issues of national significance and of local importance
 - Members of the general public comprise the biggest user group of FOI, followed by journalists, pressure groups and private sector businesses;
 - Mechanisms for co-ordinating responses to requests exist only for the Police Service and the NHS.
 - In many regions there are established networks of FOI practitioners who are able to contact one another and seek advice. These networks are providing valuable sources of information.
2. There is no formal monitoring of FOI in the wider public sector. The material in this paper is drawn from impressions passed to DCA by officials in:
 - ODPM, DfES, DH, and NIO
 - National Health Service (NHS)
 - Association of Chief Police Officers (ACPO)
 - London Fire and Emergency Planning Authority (LFEPA)
 - Convenor for the Midlands FOI network which comprises 20 authorities from large county councils to primary care trusts
 - London Borough of IslingtonExcept for information supplied by NIO and ACPO it has no statistical basis.

Request Volumes

3. Volumes of requests are reported to have been in line with expectations. The 44 Police Forces in England and Wales had received approximately 2,500 requests at the end of January 2005; 500 were referred to ACPO's central referral service. The Police Service of Northern Ireland has received 165 requests, the Northern Ireland Prison Service 16. The impact of FOI on schools is reported to have been minimal.

Nature of Requests

4. Requests for information appears to fall into the following headings:
 - sensitive and high profile issues of national importance, such as fox hunting and the sex offenders register;
 - issues of local importance, such as planning applications, school closures and chief officers' expenses;
 - information of value to the private sector such as lists of contracts awarded by the authority.

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There has been some increase in the number of subject access requests under the Data Protection Act.

5. Authorities report cultivating a good relationship with applicants has assisted in narrowing the definition of requests in a way that is beneficial to both the authority and the applicant.

Applicant Profile

6. A large proportion of requests appear to be from members of the public. The second largest group of applicants is the media, followed by the private sector applying for information for marketing purposes.

Performance: Issues

7. The Police Service has established an effective referral mechanism operated by the Home Office and the Association of Chief Police Officers. The NHS co-ordinates responses to requests through its hierarchical organisational structure, with requests being escalated up to the next appropriate level. For example, recent requests to be co-ordinated nationally include requests about serious untoward incidents, prescribing and financial forecasts. There are inherent difficulties in Whitehall Departments co-ordinating responses to requests in the local government and educational sectors.
8. The evidence gathered to date suggests that organisations are coping with the volume of requests, but complex requests have had a substantial impact. Health authorities appear to be coping with volumes well. Some of the larger local authorities report that they have found it necessary to recruit new staff, but no analysis has been undertaken as to whether this is as a result of additional business generated by FOI. There have been no complaints to DCA about the fees regime.
9. Most of the authorities are finding the workload challenging but only a few appear to have missed the 20 day statutory time limit.
10. A short survey of websites indicates that few authorities are publicising their releases or proactively releasing new information. Most authorities recognise the value of doing so, but many report a lack of resources in this area.
11. The key issues identified by FOI officials are:
 - failures by staff to recognise FOI requests, indicating inadequate training of authorities' staff;
 - lack of understanding of the interface with the Environmental Information Regulations, Data Protection Act, and copyright legislation, indicating the need for FOI officials to be properly trained in the complexities of the legislation;
 - difficulties in locating information because of poor records management practices.

Mechanisms for central Government to liaise with the wider public sector

12. DCA has been working with the Departments that are responsible for the different parts of the public sector to create appropriate mechanisms
 - to communicate Government policy on the implementation of the Act;
 - to ensure compliance with it;
 - to provide Ministers with information about the operation of the Act in the sectors; and

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- to provide a mechanism for DCA to consult the sectors on matters such as fees, coverage and codes of practice.

ODPM, DfES and DH have appointed officials to oversee implementation in local government, the educational sector, and the NHS. DCA officials are working with these officials to create mechanisms representing both central Government and appropriate bodies within these sectors.

PROCESSES

Summary

1. This paper outlines the processes in place for the following:
 - Dispute resolution;
 - The role of the Attorney-General in papers of a previous administration, and;
 - Ministerial veto.
2. MISC28 is asked to note the processes outlined.

Dispute Resolution

3. In September 2004 MISC28 agreed the dispute resolution process. The process has subsequently been developed by officials to ensure that decisions are taken at the most appropriate level and that escalation only occurs where absolutely necessary. The process can be escalated at any point to obtain the quickest and most appropriate decision on a case.
4. Where a Department disagrees with Clearing House advice, the Department and the Clearing House will consult on the level of escalation required to ensure the dispute is escalated to the most appropriate level as swiftly as possible. Further advice, where necessary, will be sought and a joint submission will be put to the most appropriate level of decision making, be that the Permanent Secretaries or directly to the Junior Minister. If Departmental Ministers cannot reach agreement a submission will be prepared for the referring Department and the DCA Secretaries of State.
5. Only if at this level a decision cannot be reached or it has been agreed to by-pass this level will MISC28 itself be engaged and a paper prepared for MISC28. Where a decision can be reached by other means, such as through correspondence, it will not be necessary for MISC28 to convene.

Access to papers of previous administrations

6. In June 2004 you agreed the role of the Attorney General in the process of requests relating to papers of previous administrations.
7. When a Department receives a request for information
 - covered by the convention on access to papers of a previous administration;
 - particular to a former Minister of a previous administration (such as his or her diary or expenses); or
 - relating to high profile events during his or her period of office;the Department will notify the former Minister concerned at the earliest opportunity. If the Department then judges that the information is exempt it will inform the former Minister of its decision. If however the Department is minded to release the information it will first consult the former Minister and invite him or her to identify any public considerations pertinent to the

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decision. It is however for the Department and not the former Minister to make the decision.

8. Where the request relates to information that requires a Minister to make a decision as to whether or not it is exempt MISC28 has agreed that the Attorney General, rather than the Departmental Minister, should make these decisions. This most commonly occurs where the information appears to officials to fall within section 36, and the Act requires the judgement of a Minister. The Attorney General's involvement is to protect the convention on access to papers of a previous administration.
9. All requests for information contained in the papers of previous administrations are referred to the Clearing House. Where the Attorney's involvement is likely to be necessary the Legal Secretariat to the Law Officers (LSLO) is sent copies of all advice and significant correspondence. Arrangements for providing advice to the Attorney General in sufficient time to enable proper consideration of the request have been put in place, and agreed with the Attorney General.
10. The Secretary of State has corresponded and spoken with the Leader of the Opposition about the procedure, although the correspondence on the issue is not yet completed. The Secretary of State has also written to the Leader of the Liberal Democrats to explain this procedure.
11. The majority of decision in relation to papers of previous administrations will be taken by Permanent Secretaries. The Attorney's role will be confined to the application to those cases where a Ministerial decision is required. In the course of a general election campaign the only such decisions requiring the Attorney-General's involvement are likely to be determinations of whether or not information falls within section 36. Since Ministers have agreed to use section 36 in rigorous defence of the convention on Ministerial responsibility and free and frank deliberation within Government it is unlikely that the Attorney would be drawn into a controversy where the Government was accused of failing to use exemptions to protect information damaging to a previous administration's reputation.

Ministerial Veto

12. You agreed that there should be a collective decision whenever use of the Ministerial Veto in section 53 of the Act is contemplated. You have also agreed this should only be used in exceptional circumstances.
13. All cases which may involve the use of Ministerial veto will be submitted to the Clearing House for consideration. These cases will be referred to Legal Advisors (and, if appropriate, Counsel) for advice. In the light of that advice a submission will be prepared which will be put to relevant Ministers and the Attorney General. If the use of Ministerial Veto is approved a submission will be put to Cabinet to consider.
14. The Clearing House will co-ordinate the provision of advice to Ministers in these circumstances and will work with the Cabinet Office to manage the process of collective agreement.

**Department for Constitutional Affairs
February 2005**

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London
SW1A 2NS

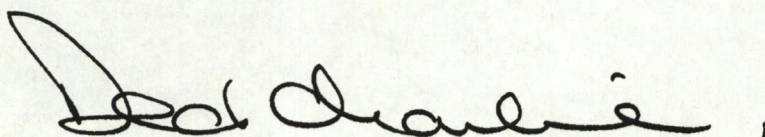
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IMC 37369

The Rt Hon Lord Falconer of Thoroton QC
Secretary of State and Lord Chancellor
Department for Constitutional Affairs
Selborne House
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31 MAR 2005



FREEDOM OF INFORMATION: PAPERS PREPARED FOR MISC28

I have had sight of Cathy Ashton's letter to you of 14 March circulating the MISC28 papers.

Cathy asked for information on our progress in dealing with various initiatives outlined in the communications paper.

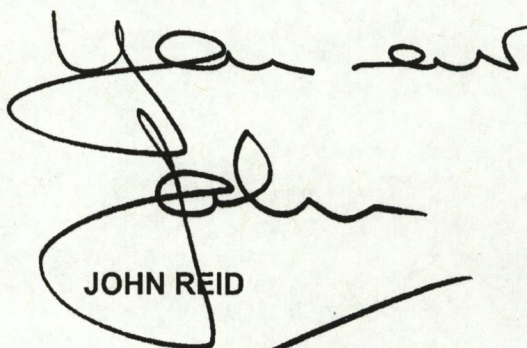
The Department is now routinely publishing released material that is of general interest. We already publish some background factual material to bills. Although we do not have any bills in the current legislative programme, officials are considering what procedures we need to have in place to publish more information in the next parliamentary session.

Our Executive Agencies and NDPBs have been alerted to the need for proactive release of information and have been asked to send you information on their plans by 20 April.

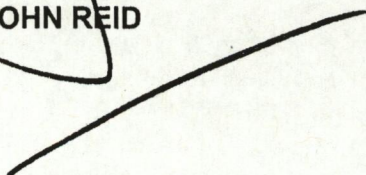
I note and welcome the proposals to improve publication scheme standards. The DH publication scheme has been praised by the Information Commissioner and we will be pleased to work to revised standards from 2006 onwards.

We are also prepared to consider early targeted release of some historical records later in the year but caution the need to consider pressure on resources which will already be stretched in dealing with FOI requests, proactive release and improvements to publication schemes.

I am copying this letter to the Prime Minister, members of MISC28, other members of Cabinet and Sir Andrew Turnbull.



JOHN REID





Office of the
Deputy Prime Minister

Creating sustainable communities

DT

✓
McE
Amc

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Our Ref: R/004461/05
29 MAR 2005

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Jean Charlie

Freedom of Information - Next Tranche of Working Assumptions

I have seen Baroness Ashton's letter of 2 March 2005, covering a further tranche of five working assumptions, for which you are requesting clearance from MISC28 colleagues.

I have concerns about some aspects of these working assumptions, which I summarise below. Some of these concerns are merely of a textual nature or of emphasis, but some are more fundamental in that the advice given in the working assumptions appears to conflict with advice given in Department for Constitutional Affairs' own central exemptions guidance on its website.

Working Assumption on Ministerial Communications

In the Working Assumption on Ministerial Communications, I am rather concerned at the stark nature of the instruction in paragraphs 3, 4 and 5 to "withhold" all information relating to such communications. There should be a clearer recommendation to carry out the public interest balancing test referring to the principles set out in paragraphs 11 to 17 in advance of a general exhortation to withhold all such information. Not all communications of third parties with Ministers will be sensitive as is acknowledged in paragraph 16 - and there may be strong public interest reasons for release of such communications. As regards paragraph 17, the Assumptions acknowledges that correspondence from Ministers to third parties may be made freely available by those parties on their web sites.

The references to the exemptions that should be cited in paragraphs 3 to 5 should be more specific than just "section 35" - it should refer to the sub-sections as well, eg s.35(1)(b).

I would echo Geoff Hoon's sentiment that the wording of paragraph 3 needs tightening to reflect the fact that the Ministerial Communications exemption only covers communications between Ministers of the Crown, or Ministers in the same devolved administration. It does not cover communications between Government Ministers and those of another

administration. These might be covered however by another exemption, possibly section 28.

In paragraph 21 of this Assumption, there needs to be added a sentence after the third sentence (replacing the fourth sentence) to the effect: "However, there may be circumstances - listed below - where the Working Assumption applies in which you may release information. In this case the information request should be referred to a dedicated FoI practitioner (or a more senior member of staff) for consideration."

Working Assumption on Public/Senior Appointments

In this Assumption, the third sub-paragraph of paragraph 2 is not well explained. To make it clear what is intended here, this needs re-phrasing as "Personal data about a candidate who makes a subject access request under section 7(1) of the Data Protection Act 1998 (subject to the exemptions to the right of subject access in that Act).

In paragraph 5, there needs to be a new sentence making clear that the s.40 exemption is, on the whole, an absolute one. For instance: "Where releasing personal data about another individual (candidate or board member) would breach any of the data protection principles in the Data Protection Act, section 40 of the FoI Act is an absolute exemption". Also, the reference to section 36 in paragraph 8 (which is rather more likely to be a consideration than section 35 - "formulation of Government policy") should be more specific, for example s.36(2)(b).

Working Assumption on Efficiency Reviews

In paragraph 3 of this Assumption, consideration should be given to citing section 43 in addition to section 36, since the prejudice to a Department's ability to deliver efficiency improvements is likely also to harm its commercial interests. The Public Interest Test section also needs a further paragraph to provide more substance on the various ways in which premature release of Departmental Action and Improvement Plans, Milestones, Targets and Risk Registers would impede the achievement of those plans and objectives, in order to justify the public interest in withholding such information.

In the third bullet point of the Referral Points section, it might be added that the harm to commercial interests includes notably harm to the commercial interests of the Department.

Working Assumption on the Prime Minister's Delivery Unit (p28)

In the Note prior to paragraph 4, the advice given conflicts with that given in the DCA's own exemptions guidance on section 33. Notably, the exemptions guidance states (Section 33, Audit Functions, paragraph 1.1) "This exemption applies only to departments who have relevant functions in relation to other public authorities. It will not apply where a department has functions in relation to private sector bodies, nor will it cover internal functions. It should also be noted that the exemption can only be claimed by the department carrying out the audit. It is not available to departments in so far as they are the object of those functions." This interpretation is consistent with the wording of section 33 of the Act.

I think it needs to be made very clear why this Assumption now appears to contradict that position.

Working Assumption on Gateway Review Information (p34)

A similar apparent conflict appears in paragraph 11 of this Assumption. It needs to be noted in this paragraph, that where the public organisation conducts its own gateway reviews, section 33 is not available as an exemption, and recourse would need to be had to either section 36 (prejudice to the effective conduct of public affairs) or section 43 (prejudice to commercial interests). The guidance on section 33 is clear that this exemption does not apply to internal (audit) functions.

Conclusion

I hope that it will be possible for your officials to liaise with mine to adopt these points and ensure that these Working Assumptions portray a true reflection of the legal position with respect to the Freedom of Information Act and particularly do not suggest an interpretation that expose us to frequent challenges by the Information Commissioner. As well as being robust, they need to have the necessary qualities of legal accuracy and flexibility to be of value in their role.

I am copying this to the Prime Minister, MISC28 colleagues and Sir Andrew Turnbull.

Yours truly
Nick

NICK RAYNSFORD

RESTRICTED

file

From: Adrian Brown
Date: 24 March 2005

DAVID MILIBAND

cc: Daniel Thornton

FOI REQUEST: PM CHRISTMAS CARD LIST

Issue: How to respond to an FOI request for the names of recipients of Christmas cards from the Prime Minister.

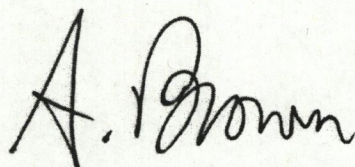
Timing: by 29 March.

Recommendation:

I recommend that we withhold this information under Section 36 of the Act (prejudice the effective conduct of public affairs), and reply as attached.

Section 36(2)(c) of the Act recognises that release of information that "would be likely to prejudice the effective conduct of public affairs" may need to be withheld. Releasing the names of those people who receive Christmas cards from the Prime Minister may offend some people who did not receive cards when others did. This could damage important relationships and would therefore not be in the public interest. To the extent that this applies to foreign leaders Section 27(1)(a) of the Act (international relations) also applies.

A Ministerial certificate is required to apply an exemption under Section 36.



ADRIAN BROWN

RESTRICTED

Dear Mr Adams

**REVIEW OF REQUEST UNDER THE FREEDOM OF
INFORMATION ACT 2000**

I refer to your email of 7th March in which you request a review of the decision not to release the names of recipients of Christmas cards from the Prime Minister. I have carefully reviewed the handling of your request for this information.

In Daniel Thornton's letter dated 3rd March it was argued that the identity of the recipients of the Christmas cards is exempt under section 40(2) of the Act (personal information). Your email of 7th March argued that the names themselves (as opposed to addresses) cannot be considered personal information and cannot therefore be exempted under section 40(2) of the Act. I have specifically considered this point as part of my review and have concluded that section 40(2) applies to some but not all of the information you have requested.

The review process also considered whether any other sections of the Act may apply. My conclusion is that section 36(2)(c) of the Act (prejudice the effective conduct of public affairs) applies in that releasing the names of those people who receive Christmas cards from the Prime Minister may offend some people who did not receive cards when others did. This could damage important relationships and would therefore not be in the public interest. To the extent that this applies to foreign leaders Section 27(1)(a) of the Act (international relations) also applies.

If you wish to pursue your request, you may make an application to the Information Commissioner for a decision under section 50 of the Freedom of Information Act 2000. The Information Commissioner can be contacted at:

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

SECRET

1. Pu
2. Rde

From: Daniel Thornton

Date: 21 March 2005

S 47/05

KEITH ROBSON

cc: Mike Watkins
Antony Phillipson

(without
attendance)

LIAM CLARKE FOI INTERNAL APPEAL

1. I attach papers relating to an FOI request by Liam Clarke. You will see from the papers that Liam Clarke has requested an internal appeal by Colin Balmer. I know that the NSLG has discussed this case.
2. It is clear that some of the papers related to this request fall within the terms of section 23.
3. My view is that other papers fall within section 24, but I am not aware of all of the background to this case. It would be helpful if you could advise Colin and me of your view of the factors in favour of releasing information on this subject, and in favour of withholding. One issue in this case is that I understand that there is a prosecution underway that has a bearing on this case – the prosecution may put some information relevant to this case into the public domain.
4. The request for internal review was received by the Cabinet Office on 7 February, and was sent to me for action on 3 March. The Act requires that the internal appeal be conducted within a “reasonable” time – it would be helpful if you could provide your advice by close 29 March. I apologise that it has taken until now to seek your input on this case.



DANIEL THORNTON

SECRET

SECRET

From: Daniel Thornton
Date: 13 January 2005

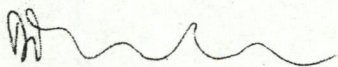
S 7 /05

DAVID OMAND

LIAM CLARKE FOI REQUEST

I attach an FOI request by Liam Clarke relating to information held by No10. I also attach copies of the papers held by No10 that relate to this request.

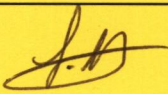
Given the sensitivity of the material, I would be grateful if you could draft a response by 24 January which I will clear in No10.



DANIEL THORNTON

SECRET



DEPARTMENT/SERIESPREM 49..... PIECE/ITEM4102..... (one piece/item number)	Date and sign
Extract details: Letter dated 21 March 2005	
CLOSED UNDER FOI EXEMPTION	
RETAINED UNDER SECTION 3(4) OF THE PUBLIC RECORDS ACT 1958	 19.09.2024
TEMPORARILY RETAINED	
MISSING AT TRANSFER	
NUMBER NOT USED	
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DOCUMENT PUT IN PLACE (TNA USE ONLY)	

Instructions for completion of Dummy Card

Use black or blue pen to complete form.

Use the card for one piece or for each extract removed from a different place within a piece.

Enter the department and series,
eg. HO 405, J 82.

Enter the piece and item references, .
eg. 28, 1079, 84/1, 107/3

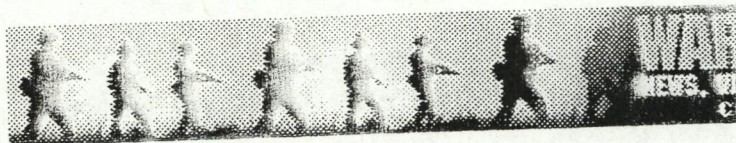
Enter extract details if it is an extract rather than a whole piece.
This should be an indication of what the extract is,
eg. Folio 28, Indictment 840079, E107, Letter dated 22/11/1995.
Do not enter details of why the extract is sensitive.

If closed under the FOI Act, enter the FOI exemption numbers applying to the closure, eg. 27(1), 40(2).

Sign and date next to the reason why the record is not available to the public ie. Closed under FOI exemption; Retained under section 3(4) of the Public Records Act 1958; Temporarily retained; Missing at transfer
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Belfast Telegraph > News

Publication Date: 19 May 2003

Spy code 'flouted to bug calls'

By Chris Thornton

email: cthornton@belfasttelegraph.co.uk

POLICE breached Government spying guidelines by transcribing and keeping the records of Martin McGuinness's phone calls that were published last month.

A leaked NIO letter to RUC Special Branch and Military Intelligence shows that intelligence agencies were supposed to stop collecting intelligence on "legitimate political activities" in 1999.

And the police may have also cut across existing protocols - and secret intelligence gathering regulations - by collecting and keeping records of phone calls involving a Cabinet minister and a senior Government official.

The McGuinness transcripts were published earlier this month in advance of a paperback edition of the biography, Martin McGuinness: From Guns to Government by Liam Clarke and Kathryn Johnston.

The authors were arrested at their home, questioned about the publication, and later released. A Special Branch constable - understood to be a transcription specialist - was charged with a breach of the Official Secrets Act.

The transcripts involved conversations between Mr McGuinness and Secretary of State Mo Mowlam, Downing Street chief of staff Jonathan Powell, and Sinn Fein president Gerry Adams.

A letter published alongside the transcripts in the book reveals how the Government changed its approach to bugging with the devolution of power to the Assembly and Executive.

The letter was written in December by NIO official Stephen Hawker to then RUC Special Branch chief, Freddie Hall, and a Military Intelligence officer named Colonel T J Gregson.

Essentially the letter approves the bugging of Mr McGuinness and other Sinn Fein members because of their IRA associations, but says their political conversations should not be taken down as evidence.

The letter says that the rule applies to Assembly members and Executive ministers "in particular".

The other phone calls took place before the 1999 guidelines were issued, but breached existing protocol.

Written records of telephone calls involving ministers and senior officials are kept by the Government. Under existing protocols the police should



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Patten Report
The Queen Mother
Queen's Jubilee Visit

not have transcribed or kept the record of the Government phone calls.

The Belfast Telegraph understands the Police Service is being asked to explain whether the breaches were by rogue elements or were institutional.

The NIC refused to comment on the letter. The Police Service was considering any response today.

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10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

3 February 2005

Dear Mr Clarke

Thank you for your e-mail dated 4 January requesting information in relation to yourself, in particular with reference to the book entitled "Martin McGuinness: from Guns to Government".

The Cabinet Office can neither confirm nor deny that it holds the information you requested as the duty in s.1 (1) (a) of the Freedom of Information Act 2000 does not apply, by virtue of s.23 and/or s.24 of that Act. The full texts of s.23 and s.24 are attached.

Yours sincerely

DANIEL THORNTON

Mr Liam Clarke

FREEDOM OF INFORMATION ACT 2000

Section 23 - Information supplied by, or relating to, bodies dealing with security matters

- (1) Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).
- (2) A certificate signed by a Minister of the Crown certifying that the information to which it applies was directly or indirectly supplied by, or relates to, any of the bodies specified in subsection (3) shall, subject to section 60, be conclusive evidence of that fact.
- (3) The bodies referred to in subsections (1) and (2) are-
 - (a) the Security Service,
 - (b) the Secret Intelligence Service,
 - (c) the Government Communications Headquarters,
 - (d) the special forces,
 - (e) the Tribunal established under section 65 of the Regulation of Investigatory Powers Act 2000,
 - (f) the Tribunal established under section 7 of the Interception of Communications Act 1985,
 - (g) the Tribunal established under section 5 of the Security Service Act 1989,
 - (h) the Tribunal established under section 9 of the Intelligence Services Act 1994,
 - (i) the Security Vetting Appeals Panel,
 - (j) the Security Commission,
 - (k) the National Criminal Intelligence Service, and
 - (l) the Service Authority for the National Criminal Intelligence Service.
- (4) In subsection (3)(c) "the Government Communications Headquarters" includes any unit or part of a unit of the armed forces of the Crown which is for the time being required by the Secretary of State to assist the Government Communications Headquarters in carrying out its functions.

- (5) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).

Section 24 - National Security

- (1) Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security.
- (2) The duty to confirm or deny does not arise if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of safeguarding national security.
- (3) A certificate signed by a Minister of the Crown certifying that exemption from section 1(1)(b), or from section 1(1)(a) and (b), is, or at any time was, required for the purpose of safeguarding national security.
- (4) A certificate under subsection 3) may identify the information to which it applies by means of a general description and may be expressed to have prospective effect.

5 Woodcroft Avenue, Ballymena, Co Antrim, BT42 1GDF
Phone 028 25631700, fax 028 25631701

7 February 2005

Mr Colin Balmer
Managing Director
Cabinet Office
70 Whitehall
London SW1A 2AS

Dear Mr Balmer,

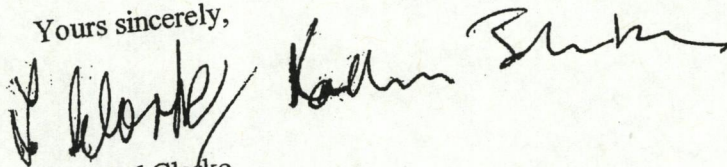
This letter is to ask you to carry out an internal review of a decision not to grant us information under the Freedom of Information Act which was conveyed to me by Daniel Thornton copy enclosed).

In particular, we would like you to consider:

- Whether all information held by the Cabinet Office was, without exception, covered by the exemption(s) quoted.
- Whether documents could have been released in redacted form
- Whether the Cabinet Office has fully discharged its responsibilities to advise us of other bodies that may hold relevant information.
- Whether it was reasonable for the cabinet office to delay this long in replying to a request that was sent to them by e-mail on January 4th, especially since they refused the request on general principle.

Thank you for your attention. I would appreciate an acknowledgement by e-mail (liam.clarke@sunday-times.co.uk).

Yours sincerely,



Liam M Clarke

Kathryn Johnston

ENC



10 DOWNING STREET
LONDON SW1A 2AA

3 February 2005

From the Private Secretary

Dear Mr Clarke

Thank you for your e-mail dated 4 January requesting information in relation to yourself, in particular with reference to the book entitled "Martin McGuinness: from Guns to Government".

The Cabinet Office can neither confirm nor deny that it holds the information you requested as the duty in s.1 (1) (a) of the Freedom of Information Act 2000 does not apply, by virtue of s.23 and/or s.24 of that Act. The full texts of s.23 and s.24 are attached.

Yours sincerely

DANIEL THORNTON

Mr Liam Clarke



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SCOTLAND OFFICE
DOVER HOUSE
WHITEHALL
LONDON SW1A 2AU

www.scottishsecretary.gov.uk

The Rt Hon Lord Falconer of Thoroton
Secretary of State and Lord Chancellor
Selbourne House
54 Victoria Street
LONDON
SW1E 6QW

DT u:an

16 March 2005

D. A. L.

FoI REQUEST : NIREX SITE LIST

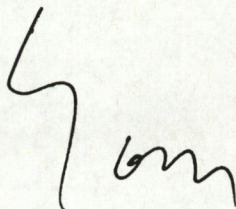
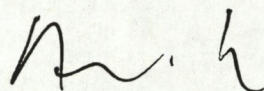
Your letter of 14 March to Geoff Hoon and those who attended the Ministerial discussion in late-January, sought confirmation of our current views on responding to the request for release of the list of sites/locations identified in a Nirex study during the late-1980s. It remains my view that early release of the shortlist is the most appropriate way forward.

It is already clear from the different forms of the request now with Departments and others that delay is adding to the confusion and a refusal to provide this information risks itself becoming an embarrassment for Ministers. Despite Nirex's concerns I do not believe release of 1980s material, from a study now of historical interest, is an issue where we would want to be heading for a possible dispute with the Information Commissioner. Most importantly we need to do everything we can to safeguard the CoRWM process looking at future handling of the disposal of nuclear waste and early release is the best option in that respect.

I know that Scottish Executive Ministers, who have devolved responsibility, continue to be strong supporters of early release. They fully recognise that the topic is especially sensitive in Scotland and are particularly concerned to protect the CoRWM process. Supporting material already prepared by Departments for use at release has been agreed with the Scottish Executive.

While I support the aim of a low-key release, Scottish Executive Ministers are likely to want to go further in informing Members of the Scottish Parliament of the detail of a release of information and in these circumstances I will arrange to contact ahead of release the Scottish Members at Westminster with a direct constituency interest. It is important therefore that Departments directly involved in the release continue to keep Scotland Office in touch with the timing of any move to release the information.

I am copying this letter to the Prime Minister, Geoff Hoon, Margaret Beckett, Mike O'Brien and Sir Andrew Turnbull.

A handwritten signature in dark ink, appearing to read 'Goon', likely representing Geoff Hoon.A handwritten signature in dark ink, appearing to read 'A. Darling', likely representing Alistair Darling.

ALISTAIR DARLING



SECRETARY OF STATE

MINISTRY OF DEFENCE
FLOOR 5 ZONE D MAIN BUILDING
WHITEHALL LONDON SW1A 2HB

Telephone: 020 7218 9000 (Switchboard)

Top: DT
Ns
AP

MST 2/9J

15 March 2005

Dear Charles,

FREEDOM OF INFORMATION – NIREX

Thank you for your letter of 14 March concerning the release of the NIREX list and report.

I am in favour of the release of above documents and have carefully considered the two options for their release. The Ministry of Defence support the views put forward by CoRWM's chairman that the risks to the CoRWM process would be minimised by the earliest possible release of the list coupled with a clear statement that the list has no relevance to current government policy. I am unconvinced by the argument that delaying the release will reduce the harm to communities. The longer the document is withheld the greater the interest in the topic by journalists and others and hence the greater the significance attributed to the information. Therefore I consider that the public interest is best served by an early low-key release of both the NIREX list and report.

The Rt Hon The Lord Falconer of Thoroton QC
Secretary of State for Constitutional Affairs and Lord Chancellor



SKP 16/3/05

Recycled Paper

I am copying this reply to the Prime Minister, Margaret Beckett, Alistair Darling, Mike O'Brien and Sir Andrew Turnbull.

Yours sincerely

Geoff

GEOFFREY HOON

15 March 2005



Foreign &
Commonwealth
Office

London SW1A 2AH

Baroness Ashton of Upholland
Parliamentary Under Secretary of State
Department for Constitutional Affairs
Selborne House
54 Victoria Street
London SW1E 6QW

From the Foreign Secretary

DT

Dear Cathy,

Freedom of Information: Update on Working Assumptions

Thank you for copying me your letter of 2 March to Charlie Falconer seeking MISC 28 clearance to proceed with a further batch of Working Assumptions.

The existing Working Assumptions have proved a useful resource for FOI practitioners and I am in broad agreement with the content of this latest batch. My officials will be following up with yours on a few small points of detail.

My only specific comment relates to the Assumption for Ministerial Communications, where I strongly support making explicit the need to consult former Ministers, whether of a previous Administration or not, on potential disclosure.

I am copying this letter to the Prime Minister, members of MISC 28 and to Sir Andrew Turnbull.

Yours ever

Jack

JACK STRAW

Mike O'Brien MP

MINISTER FOR ENERGY and e-COMMERCE

DT
GN
RS

15 March 2005

The Rt. Hon Lord Falconer of Thoroton
Lord Chancellor
Department of Constitutional Affairs
Selborne House
54 Victoria Street
London
SW1E 6QW

Dear Lord Falconer,

Thank you for your letter of 14th March seeking clarification that Ministers with an interest in Freedom of Information requests for the Nirex site list and report are content that the information should be released as soon as possible and that a low-key handling strategy for its release should be adopted.

I am writing to confirm that I agree with your assessment that the early release of the Nirex site list and report and the adoption of a low-key handling strategy is the best option available to us at present. I have not been persuaded of arguments put forward by Nirex that the early release of the historic site list would jeopardise Nirex's commercial interests and, therefore, remain of the opinion that the release of the information as soon as possible would be in the best interests of the CoRWM process.

I am copying this letter to the Prime Minister, Margaret Beckett, Alistair Darling and Sir Andrew Turnbull.

Yours Sincerely

Mike O'Brien

Department of Trade and Industry

V 842
1 Victoria Street
London SW1H 0ET
Direct Line +44 (0)20 7215 5144
Fax +44 (0)20 7215 5551
Minicom +44 (0)20 7215 6740
Enquiries +44 (0)20 7215 5000
www.dti.gov.uk
mpst.o'brien@dti.gsi.gov.uk



02072108597

**dca**

Department for
Constitutional Affairs
Justice, rights and democracy

Secretary of State for Defence
Ministry of Defence
Whitehall
London SW1A 2HB

**The Rt Hon Lord Falconer
of Thoroton**

Secretary of State and
Lord Chancellor
Selborne House
54 Victoria Street
London SW1E 6QW

T 020 7210 8380

F 020 7210 8597

E lordchancellor@dca.gsi.gov.uk

www.dca.gov.uk

*file**1. cc Paul Brown**2. Back to me**14* March 2005*Daggett**DT**cc GN
RB*

Freedom of Information - Nirex

I am writing to seek confirmation that those ministers with an interest in Freedom of Information requests for the Nirex site list and report are content that the information should be released as soon as possible and that a low-key handling strategy should be adopted. Because of the deadlines imposed by the legislation I would be grateful for urgent comments.

When we met in January to discuss this case, it was agreed that the list of possible sites for burial of nuclear waste, which was compiled by Nirex in the late 1980's, should be released in a low-key manner in response to the requests for information received from the public and journalists. The agreement was thought to be in the best interests of the CORWM process and the government's openness agenda.

Following that meeting Nirex asserted that their commercial interests would be damaged if the list of sites was released on the proposed timetable. Nirex sought to delay release until June, by which time they anticipated being able to contextualise the release by giving further details of the why the sites were selected. In light of that change officials conducted further discussions with Nirex and reviewed the options open to government. A paper setting out the results of that review is enclosed with this letter.

The paper sets out two options as to when the information could be released: 1) to release now, and 2) to delay release until more detailed material can be put into the public domain. The paper clarifies that to delay release any further has significant legal and presentational risks attached to it and that such delay would not be in the interests of the Independent CORWM review, which is at the heart of our strategy for finding a long term solution to the issue of nuclear waste disposal. The paper also explains that Nirex's claim that early release would harm their commercial interests is not compelling and therefore a weak ground on which to delay.

02072108597

I believe that the Nirex's reservations as to handling do not therefore materially affect the agreement reached in January. It is also apparent that there is growing interest in the list and that journalists have more information on the possible sites than previously thought. This raises the risk of the press either inaccurately naming sites or accusing the government of secrecy. I understand that the chair of CORWM would like to clarify the position in a public meeting later this month.

In light of these developments, I recommend that we should proceed with a low key release as soon as possible. Such a release would emphasise that the list is old and the sites selected were ultimately rejected. It would also seek to differentiate the Nirex process with the open process which CORWM are undertaking in order to find a long term solution. I understand that this recommendation is strongly supported by the Scottish Executive.

I am copying this letter to the Prime Minister, Margaret Beckett, Alistair Darling, Mike O'Brien and Sir Andrew Turnbull.

Yours,
Charlie

LORD FALCONER OF THOROTON

02072108597

Note on options for releasing the Nirex site list and report

The requests

Various government departments have received FOI requests for the list of sites which Nirex considered for nuclear waste disposal in the late 1980s. Requests have also been received for the covering report.

Some requests reasonably accurately list the sites suspected. The text of the most recent request from an ITN / Channel 4 journalist, which follows indicates journalists are better informed about the possible sites than previously thought:

At five meetings at the LSE held between Sept & Nov 1988 a list of 12 sites for the development of a deep underground disposal facility for both low level and intermediate level radioactive waste, accompanied by a map showing each location was considered. Those present at the meeting and in possession of these sites included representatives of Nirex.

From information available it is understood the 12 sites were as follows: 1. Dounreay, 2. Braehour, 10km to NE of Altnabreac Station, Caithness, 3. uninhabited island underlain by hardrock, 4. as 3, 5. seaward dropping sediment, 6. BUSC site: Thetford, E Central England, 7. BUSC site: adjacent to Bradwell, Sizewell or Harwell, 8. BUSC inland or coastal, 9. Sellafield, 10. Sellafield B, 11. Off West of Scotland, 12. Off East of England. Site 11 was split into 2 sites, shallow and deep, before the 5th meeting.

In a letter to Corrina Thomson, N Scotland Newspapers dated 30th April 2003, Nirex stated that: "Nirex informed .. the MOD .. what sites are (ie their identities) in February 2002."

My request is, please provide or confirm: the location by description and name of the 13 sites listed above; the ordnance survey map reference of each site; a copy of the map listed above; a copy of the communication by which Nirex informed the MOD as above. I look forward to hearing from you by email.

Questions have also been tabled in the Scottish Parliament.

Information held

MOD holds the list as does UKAEA. Outside of government Nirex and the LSE also hold the information and it is possible that other public bodies hold copies of the relevant information.

History of discussion

Ministers agreed in January (on the basis of the submission attached) that the site list should be released subject to a robust low-key handling plan being put in place. Subsequent to the resulting handling meeting Nirex stated that they would assert confidentiality and that their commercial interests would be prejudiced should the list be released before June. Number 10 asked for more work to be done on alternative options. In light of this change two options are now open to government:

- 1) Release the information now with minimal contextualisation establishing the historical nature of this information in relation to the CoRWM process - a handling plan is in existence.
- 2) To refuse the requests and delay release until further work can be done on handling. The length of delay being dependant on the amount of contextualisation it is felt is required. Nirex would like to delay release until June, by which time they anticipate being able to give details of how the sites were arrived at and other sites considered during the 1980's.

Legal options

Any legal case seeking to exempt the information is dependant on the public interest in withholding or releasing the information - the primary concern to date has been protecting the CoRWM process. The effect of early release on CoRWM, which is considered in options section below, suggests that the

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public interest is stronger for release than non-disclosure. Although a case could be made for exempting the information, consideration should be given to whether government should seek to defend this case in front of the Information Commissioner, where no particular principle is at stake, or whether we are better to robustly defend other information of more fundamental importance.

Option 1. Early release.

Government can release the information without setting and particular precedent. The only challenge to release would be from Nirex by way of an injunction. We think they are unlikely to take such action, and that if they did, it would delay release but not ultimately succeed for the reasons given below.

Option 2. Delaying release by refusing requests

Legal options for delaying release have to be considered for both the list, which comes under the Freedom of Information Act, and the report which Phillips Sales thinks is more likely to come under the Environmental Information Regulations (EIR).

FOI - To delay release of the list government would either have to extend the time for replying to a decision or refuse the request in the knowledge that the Information Commissioner is likely to require its disclosure. We can only delay a response under s.10(3) of the Act where it is "reasonable in the circumstances" in light of the public interest. A delay is open to challenge via the Information Commissioner. We think that given the history of decision-making in this case that once we make a decision about the public interest in relation to release, substantial further delay is not reasonable.

The alternative is to refuse the information outright. We expect a refusal to be challenged by internal review (which should be "thorough" but "prompt") and then by appeal to the Information Commissioner. Once a high-level decision about the public interest has been taken after exhaustive consideration, we do not think that an internal review could reasonably take much time. We must give the requester an estimate of how long the review will take.

Both the extension of time for a response or refusing the request require qualified exemptions to be cited. Those exemptions are outlined below:

s.35 - Relating to the formulation or development of government policy - this exemption was considered by ministers. In relation to government's publicly stated policies (which is all DCA and MoD have access to), it would be difficult to rely on because 1) the list relates to a policy which was agreed and operationalised in the 1980s; 2) the site list and report is factual material which formed the background to a policy decision, as such, by virtue of s.35(4), there is said to be a particular public interest in disclosure. If, however, the Nirex list does in fact continue to relate to the development of government policy, as has been obliquely suggested by No. 10 and DEFRA ministers, MoD could attempt to rely on this exemption. (It does not matter for s. 35 that the information relates to policy that is not being developed by MoD; it must relate only to government policy.)

s. 36 - If it was the *reasonable opinion of a minister* that release would, or would be likely inhibit the free and frank provision of advice, or would be likely to prejudice the effective conduct of public affairs, then the information could be exempted subject to the public interest test. Any such argument would need to be based on bodies such as Nirex being unable to complete such work in the future if information was then disclosed. That is a difficult argument to make given the CORWM process of site selection is explicitly open. Section 35 and section 36 may only be relied on in the alternative.

Nirex have since claimed that the information should be exempted *for the time being* under the EIRs because release would prejudice (1) their commercial interests (protected by section 43) and (2) their expectation of confidence (section 41). It was this change in position which led to reconsideration of the issue following the ministerial meeting. It is our view that this argument is not compelling. There is now some doubt as to whether this information is truly confidential, as it appears to have been shared

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with several people at the LSE seminars. Nirex's expectation of confidence is based in part on an old letter (pre-FOIA) from a junior official in the DTI. The letter does not reflect the government's current position under FOI. Nirex's current position contradicts their initial position in relation to this disclosure, where they asserted confidence only because Government required it of them. In addition we do not think any claim for breach of confidence would be actionable as is required for an exemption to be claimed under the FOIA, not least because Nirex will shortly come under the ownership of DTI / DEFRA. We do not think Nirex have given any evidence that their commercial interests would be harmed by release. As is mentioned above, it is now CORWM rather than Nirex which will be responsible for the process of site selection. For these reasons we do not think we can rely on the exemptions in s. 41 or s. 43 and think an injunction from Nirex unlikely to succeed.

EIR: We have been advised that it is more likely than not that requests for the Report, as opposed to the List, should be treated under EIR. We do not think this materially changes the options.

We can extend time under the Environmental Information Regulations only to a maximum of 40 days and only where it is "impracticable" to comply with the request or to refuse to do so because of the "complexity and volume" of the material. MoD will seek such an extension. Once we make a decision on the public interest, we do not think we could justify further delay. A complaint leads to internal review, which may take a maximum of 40 days but which should be "prompt". We must give the requester an estimate of how long the review will take.

If (and only if) the public interest favours withholding this information, we could refuse the request on the basis of reg. 12(4)(e) (internal communications). Until recently, we had thought we could also rely on reg. 12(5)(e) (commercial confidence) where the threshold for confidentiality is lower than under FOIA. This exception does not require an actionable breach of confidence. However, it does require that the information is truly confidential, about which there is now some doubt.

Note: Nirex has extended time to the maximum for a response, then refused this request under EIR (it has no option of using FOIA). We believe they have received a request for internal review and that the maximum deadline for reply is 4th May. Under the Statutory Code, they should tell the requester how long the review will take. We do not know if they have done so.

Advantages and disadvantages of options 1 and 2

Option 1.

These options are explored below, advantages and disadvantages being grouped against the following heads - the legal risks; effect on the CORWM process; and, other political / handling considerations;

Option 1. Release now

Advantages

Legal risks

- No challenge possible from the Information Commissioner

Effect on CORWM

- Minimises risk on CORWM - CORWM chair wants release as soon as possible
- Government seen to be supporting the CORWM process - i.e. in looking to solve the issue
- Increases public awareness and participation in CORWM process

Other political / handling considerations

- Shows openness
- Gives control over timing and format of presentation

Disadvantages

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Legal risks

- Possible injunction from Nirex, but unlikely to be successful. We have received no evidence of financial loss to Nirex so even if successful, expect damages would be nominal

Other political / handling considerations

- Property blight possible - risk exists under all options and can be mitigated, blight arguably increases with time. Publication of inaccurate list by journalists also has potential for blight.
- Pre election risk - media interest may lead to ad hoc pledges being made about the disposal of waste, ruling out certain methods or locations, in a way that would be inconsistent with the more measured CORWM process. Although CORWM favour immediate release.

Option 2. Delay release by extending time limits or refusing requests

Option 2 would require government to refuse the request on the grounds that the list is exempt under the Freedom of Information Act or the EIR, or to attempt to delay making such a decision. We think the case for extending time under both FOIA and EIR is extremely weak once we have made a decision about the public interest. The maximum delay is limited under the EIR. Although a case for refusing the information could be made we believe that there is a high risk of losing before the Information commissioner.

Delay comes in varying shades. The longer government delays release the higher the adverse effect on CORWM and the risk of legal challenge.

Advantages*Legal risks*

- No damage to Nirex's expectations of confidence / commercial interests

Other political / handling considerations

- Pre election risk - risk of ad hoc pledges on disposal diminishes possible pressure on CORWM process, although CORWM favour immediate release.
- Allows time to consider the benefits of further packaging / risk of over presentation

Disadvantages*Legal risks*

- No substantial mechanism for withholding information under the Act - success of delay strategy cannot be guaranteed
- Legal risk from Information Commissioner, delay on public interest grounds open to challenge - challenge puts government on back foot
- Risk that other holders (e.g. UKAEA and LSE) could release the information. Further requests might be made to other public bodies.

Effect on CORWM

- Delay allows for Nirex to make story at the expense of CORWM
- Packaging itself prejudices CORWM process
- A longer delay to allow for a full review (as suggested by Nirex) undermines / prejudices CORWM process
- Government seen as hiding something, secrecy gives credence to the information

Other political / handling considerations

- Much information already in the public domain and passed to journalists, therefore how much more contextualisation is required?
- Media interest unlikely to diminish, story becomes one of delay
- Government seen as secretive thereby undermining openness agenda
- Property blight remains possible and increases with possible publication of inaccurate list by journalists.

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- Effort in retaining Information is considerable burden on officials

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Annex of the views of those with a policy interest in the CoRWM process

DTI position

Summary -

DTI's main interest is in protecting the CoRWM process from undue damage. Release would separate the historic list from the current process, provided the historic nature of this information was made clear. Having the list forced out of government later would be more likely to damage CoRWM (i.e. during the consultation). Releasing now would increase public interest in the CoRWM process.

View on Nirex information -

Having considered the information provided by Nirex DTI remain of the view that early release, whilst not ideal, would be the least risky option for CoRWM. To release during the CoRWM consultation would inevitably focus any negative reaction onto that "live" public consultation process, regardless of what process we might have employed in the meantime, and that is what we all seem to want to avoid.

Ministerial view -

Mike O'Brien was very clear about the need to operate within the strict limits of the legislation when we discussed this matter prior to the January Ministerial meeting. If we are to recommend any change from the agreement reached at that meeting I believe we would need a very strong case to convince him, however, so far we have not seen enough on the legal side to convince ourselves that further delay will be acceptable.

Scottish Executive

In favour of early release for the same reasons as set out by DTI above.

The Defra position

The Secretary of State has no current preposition to either of the options that DCA will be putting to Ministers, but will consider her position in light of the collective evaluation that is undertaken and the recommendations made in the forthcoming joint submission.

As you will know, at the meeting at No 10 on 20 January 2005, and in an earlier meeting with the Lord Chancellor, [the DEFRA] Secretary of State expressed concern about the potential for local community concern and property blight. She also expressed a view that it would be preferable in this context to withhold and then be forced to release by the Information Commissioner, if this happens, rather than vice versa, but agreed to release on the basis of the important principle of collective decision and responsibility. Since then she has not expressed a view on release, apart from on handling issues addressed below, and has not yet seen the new information, so as I say above has no current disposition to either of the options likely to be recommended.

On handling, her strongly held view was, and remains, that any release must be dealt with as a standard freedom of information release handled by MoD who hold the information. Defra does not hold the information.

For Defra to intervene, for example by writing to MPs and local authorities, would belie the assertion that this is historic information of no relevance to the currently ongoing CoRWM programme.

However, as matters of general principle:

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- the views of CoRWM need to be fully understood and taken into account;
- we should not detract from CoRWM eg by diverting attention from the CoRWM programme towards another issue or body;
- if there is to be any fuller review it should not involve bodies outside Government e.g. the media or NGOs;

No.10 position

Believed to be in favour of delayed release

CoRWM position

CoRWM's position is set out in the e-mail from Gordon MacKerron, the CoRWM Chair, to Chris Murray, of Nirex dated 2 March 2005

Dear Chris Murray (Nirex)

I thought it would be worth setting out my view, which I know is shared by most members of CoRWM, about the impact on CoRWM of the possible release of information about the previous list of Nirex sites.

CoRWM has of course no part to play in any discussions about this release. However, the possible release of the information - especially its handling and timing - represents a risk to CoRWM's programme of work. Our view is straightforward. Risks to CoRWM's process would be minimised by the earliest possible release of the list, coupled with a clear statement that the list has no relevance to current Government policy, including CoRWM's role within that policy.

The possible 'policy review process' that you set out would substantially add to these risks. I should add that the issue of the risk to CoRWM's programme from the release of the Nirex site information is very likely to be discussed at the next CoRWM plenary meeting on 21/22 March

Best wishes

Gordon MacKerron (CoRWM Chair)

This reflects a position stated when Gordon met the Minister for the Environment, and Agriculture, Elliot Morley, earlier that day.

Gordon does not wish to see this matter dealt with in an overblown or grandiose way which had the potential to detract from the CoRWM process and belie the assertion that this historic list has little or no relevance to the current CoRWM process.

The reason he is considering discussion of the issue at CoRWM's next public plenary meeting is to get the committee's view formally on the record. All CoRWM's meetings are held in public.

Non-policy departments**Scotland Office****Summary -**

Scotland Office does not have the direct interest of Scottish Executive with its environmental protection responsibilities and shared interest in CoRWM.

View on Nirex information -

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At official level Scotland Office would therefore come down in favour of release without the elaboration of the "policy review process" envisaged by Nirex. We do not see how such an extended approach could be run without attracting widespread criticism that Government were simply putting off time to avoid the demands of openness in the new post-FoI Act world. It certainly seems to us that should such a delayed approach to release get into difficulties, there would of course be immediate political embarrassment, but CoWRM and confidence in its commitment to open processes would be the real losers. Input on behalf of CoWRM is therefore important to a balanced consideration.

Ministerial View -

However Alistair Darling was among those urging openness on the 1989 shortlist when Ministers met back in January. Aside from general issues of handling FoI requests; part of his rationale was certainly that a fully open approach to nuclear waste issues, past and present, is going to be essential to any sensible consideration in future years of options around further development of nuclear power.

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14 March 2005

Dear Charles,

Freedom of Information: Papers prepared for MISC28

Since it was not possible to hold the meeting of MISC28 on Monday 7 March I am writing to circulate the papers that were prepared for the Committee and to draw attention to the salient features of them. Two of the papers are for information, but the Communications paper contains a number of specific requests. I would ask MISC28 colleagues to write to me with a note of their progress in implementing simultaneous publication of information of general interest to the public and a note of the background factual material to bills in the current legislative programme that they will be releasing. I would also ask that MISC28 colleagues arrange for their major executive agencies and NDPBs to send me details of their proactive release plans and endorse the approach proposed on enhancing publication schemes and historical records. I would be grateful for responses by 31 March.

The Committee was due to have examined three papers:

- Review of implementation
- Communicating FOI and the proactive strategy
- Processes

I shall discuss each in turn.

Review of implementation

This paper is designed to give colleagues a view of implementation of FOI across central Government in the first six weeks of implementation. It discusses such matters as the volume, nature and sources of FOI requests. It also discusses the operation of the Clearing House and factors influencing the performance of Departments. I would particularly want to draw colleagues' attention to the need to ensure that cases are referred to the Clearing House in sufficient time, and with the information in question,



to enable the Clearing House to give appropriate advice and to allow Departments to meet their 20 day targets.

Performance in meeting the 20 day target varies substantially across Government. Performance statistics for requests received during the month of January have been supplied by individual Departments and are set out in Annex A to the paper. I am sure that colleagues will want to see the performance of their own Departments and assess it in the light of other Departments' performances. Where colleagues have cause for concern about the performance of their Departments DCA officials will be pleased to try and provide advice to their counterparts.

This paper is supplemented by a useful annex on the implementation of FOI in the wider public sector.

Communicating FOI and the proactive strategy

This paper reviews our progress in communicating our agreed approach to FOI and it asks Departments to agree actions in support of the strategy. For convenience I summarise those actions briefly below.

Simultaneous publication of information of general interest to the public

Cabinet has agreed the benefits of all Departments implementing this policy, but there is evidence that some Departments have not been as active as others in pursuing it. **I would ask all members of MISC28 to write to me by 31 March and let me have a note of their progress in implementing the policy.**

Background materials to bills

I would ask all members of MISC28 to send me by 31 March a note of the background factual material to bills in the current legislative programme that they will be releasing.

Proactive initiatives and NDPBs

We have not tapped executive agencies and NDPBs for proactive releases of information as extensively as we might have done. It would be helpful if MISC28 would arrange for the message to be disseminated that all central Government authorities should be identifying information of genuine value that can be released proactively to the public and they should be branding it explicitly as FOI material. **I invite MISC28 to arrange for their major executive agencies and NDPBs to send me details of their proactive releases plans by the end of the month.**

The paper also discusses the proactive strategy in two other areas, and I would be grateful for MISC28's endorsement of the approach proposed in the paper:

- *Enhancing publication schemes:* It is proposed that DCA officials will work with the Information Commissioner to shape the revised criteria that the Commissioner will publish in 2006 for publication schemes and that Departments will then establish their own timetables for implementing those criteria ahead of the Commissioner's timetable.
- *Historical records:* Later in 2005-06 we might return to the question of whether or not there would be resources at that point for a targeted review of certain categories of historical records at the National Archives with a view to releasing any which are not exempt under the Act.

Processes

At previous meetings of MISC28 we have discussed:

- the need to have a process to resolve disagreements that may arise between Departments about whether or not to release information the Departments in dispute have a shared interest in;
- the need to preserve the convention on access to papers of a previous administration when a Ministerial decision is required about whether or not to release information falling within the convention; and
- the deployment of the Ministerial veto under the Act.

This paper is only to take note, but I thought colleagues would wish to see the processes that have been established to underpin our decisions in these areas.

I am copying this letter to the Prime Minister, members of MISC28, other members of Cabinet and Sir Andrew Turnbull.

Yours sincerely,


CATHERINE ASHTON

IMPLEMENTATION TO DATE

Freedom of Information Act Implementation

Summary

This paper provides MISC28 with a review of the first six weeks of FOI implementation within central government. It includes an analysis of requests received and the operation of the Access to Information Central Clearing House. There is a separate annex on implementation in the wider public sector.

MISC28 is asked to take note of this review.

Summary

1. The following headlines points are addressed in further detail below:
 - Request volumes to date are very significant (7200+);
 - Requests tend to focus on departmental responsibilities (eg Railtrack, ID Cards), current high profile issues (eg AG's advice), Ministers' interests (eg diary information) and events of historical significance (eg Falklands);
 - In terms of cases seen by the Clearing House, journalists comprise the biggest user group of FOI, followed by members of the public and MPs;
 - Central co-ordination is challenging but working effectively; and
 - Information from Departments reveals a mixed picture in terms of their performance in the handling of requests to date.
2. The Access to Information Central Clearing House based within DCA provides specialist advice to Whitehall departments in responding to particularly complex or cross-departmental requests. The Clearing House works in tandem with the Histories, Openness and Records Unit (HORU) based within Cabinet Office. The material contained in this paper is principally drawn from the central experience of the Clearing House and through its regular dialogue with Departments.

Request Volumes

3. Following agreement at DA Committee, only those FOI requests received by Freedom of Information Practitioners within departments are monitored and recorded for statistical purposes. A breakdown of requests received in the month of January, together with performance data, appears at Annex A.
4. The figures reveal that volumes are very significant. Typically, Departments reported a relatively slow start in the first few days of full implementation, with a marked rise by the end of the first week. Although Departments are reporting a slight tail-off in request volumes since the first weeks and months of implementation, there is little evidence of a pronounced reduction in request rates. As expected, a high proportion of these cases are complex and demanding of senior official and Ministerial time.

Nature of Requests

5. A significant number of requests are focused on particularly sensitive issues and the Attorney General's advice on the legality of war in Iraq, WMD and Guantanamo, predictably, accounted for a significant number of early requests.
6. However, evidence to date suggests that, in the main, Departments are receiving requests for information on high profile policy areas for which they are responsible. Examples include Top-Up Fees, Identity Cards, Railtrack, the Common Agricultural Policy and the European Constitution.
7. A third category of requests are aimed at Ministers and, in particular, their diary information, including occasions on which they held meetings with third party stakeholders. Others focus on Ministers' financial interests.
8. Events of historical significance complete the set, with requests for material relating to the Thatcher administration, and the Falklands War in particular, to the fore.
9. Early evidence points to an increase in sophistication on the part of applicants: where before their requests were phrased too widely, and clarification needed to be sought, they are now becoming increasingly precise and focused. Requests for lists of files held by Departments have also increased, with the suspicion that requests for the information they contain will follow shortly after.

Applicant Profile

10. While the Act is requestor-blind, it is possible to begin to discern a number of applicant groups through their self-identification in making requests.
11. Of all cases referred to the Clearing House, journalists comprise by some margin the biggest requestor group, accounting for approximately 43% of all requests. In some cases, the information requested corresponds with what one might expect to be of interest to particular journalists - for instance, business related information being sought by business journalists. Others seem to suggest a more general interest in testing the boundaries of FOI.
12. The second biggest group reflected in Clearing House cases are members of the public, accounting for some 37% of the total. It is, however, entirely possible that a proportion of these applicants are in fact researchers, information brokers or freelance journalists.
13. MPs account for approximately 11% of requests referred to the Clearing House.
14. There has been a small increase in the number of subject access requests under the Data Protection Act (DPA). This is attributable to the expansion of the DPA's coverage to include unstructured data, from 1st January 2005, and to individuals' desire to test this increase in scope.

Performance: Central Co-ordination Issues

15. The Clearing House receives an average of 34 referrals per day. The total number of referred cases received by the Clearing House to date was 1309 of which approximately 330 have been referred to HORU, in line with the agreed remits of the Clearing House and HORU.

16. In the main, experience to date suggests that Departments are referring cases to the Clearing House in accordance with agreed triggers. However, the experience of the Clearing House in receiving referrals and relevant information from Departments within appropriate timescales is very mixed. Indeed, some referrals have been made to the Clearing House just prior to the expiry of the 20 day time limit and, in one or two instances, after the expiry of the time limit.
17. Broadly speaking, the internal processes in place to enable the Clearing House to respond to these referrals have worked effectively during the first month of full implementation. Workloads are challenging but significant progress is being made to respond to all referrals on time, where referrals themselves are made on time. To maintain performance, pre-existing contingency plans have been triggered to a certain degree, principally to support liaison with departments, to collate and assess information.
18. Both DCA and HORU are experiencing some delays in having relevant information transferred to them in good time to provide robust advice; both are communicating this concern to other Departments. It is important that Departments understand that their work does not stop at the point at which a referral is made to the Clearing House. The decision on the appropriate application of the Act must be based on close and timely collaboration between the Departments, the Clearing House and HORU.
19. Ministers will wish to note that appropriate structures and processes are in place to respond effectively to requests which raise issues of national security. The DCA and Cabinet Office work closely with the National Security Liaison Group on FOI to ensure all interested Agencies and Departments bring their expertise and collective memory to bear in the development of appropriate responses to requests.

Performance: Whitehall Issues

20. On the basis of evidence to date, the performance of individual Departments to date reveals a mixed picture. As the table at Annex A shows, there is a considerable variation in the number and treatment of requests received by Departments.
21. The scope of many requests received is extremely broad and in a significant number of cases, FOI practitioners are providing advice and assistance in order to narrow the scope or to better understand the information actually being sought by applicants. Where this is occurring, it is encouraging to note that the feedback from end users is positive.
22. At MISC28(O), several Departments stressed that implementation of FOI had proved resource intensive, with a particular burden on legal advisors and policy officials. The Foreign Office, Cabinet Office, Treasury, Department of Health, Home Office and the Northern Ireland Office all reported that they had activated their own contingency plans to a greater or lesser degree.
23. Following the first cycle of requests and responses, all Departments are now engaged in processing the first internal reviews of their decisions.

20 Day Statutory Limit

RESTRICTED - DRAFT

24. While the Act provides that a request must be responded to within a 20 working day time limit, a number of exceptions to this rule apply. Of particular relevance here are those instances where a request has been expressed in terms that does not enable a public authority to identify the information sought, and where the assessment of the public interest in favour of disclosure or retention is finely balanced.
25. Of the requests seen through the Clearing House, and on anecdotal evidence from Departments, many of the requests are extremely broad and/or vague in scope and have necessitated correspondence with applicants to establish exactly what information they are seeking. However, and as noted above, this is seen by applicants as a positive development.
26. In relation to assessments of the public interest necessitating time extensions, extensions must be reasonable in all the circumstances of each case. **In many cases where a public interest assessment needs to be made, the twenty day time limit should nevertheless be possible to meet.** Where it is not, Departments are obliged to inform the applicant of the delay and the to cite the exemptions being considered within 20 days.
27. There is some concern that time extensions to consider the public interest test are being sought in a significantly higher proportion of cases than might have been anticipated. It is important that such extensions are sought only where the nature of the request actually demands it.
28. There is also anecdotal evidence of certain authorisation procedures, for instance those requiring notification or sign off by Ministers or senior officials in every case, are creating delays in the answering of requests.
29. Data on Departmental performance to date appears at Annex A.

Freedom of Information Act¹: requests for information received by selected central government bodies
ANNEX A: Timeliness of responses to requests received during January 2005

Department	Total requests received	Timeliness of response			Percentage of requests meeting 20-day deadline	Percentage of requests "in time" (i.e. meeting deadline or with permitted extension)
		20-day deadline met	Permitted extension to 20-day deadline ¹	20-day deadline missed		
TOTAL	4462	2917	692	853	65%	81%
Ministerial Departments						
Cabinet Office (including 10 Downing Street)	523	394	68	61	75%	88%
Department for Constitutional Affairs	155	131	11	13	85%	92%
Department for Education and Skills	113	71	12	30	63%	73%
Department for Environment, Food and Rural Affairs	143	78	39	26	55%	82%
Department for International Development	42	29	0	13	69%	69%
Department for Transport ^{**}	235	197	7	31	84%	87%
Department for Work and Pensions	174	145	25	4	83%	98%
Department of Culture, Media and Sport	109	71	30	8	65%	93%
Department of Health	177	112	3	62	63%	65%
Department of Trade and Industry	145	88	14	43	61%	70%
Foreign and Commonwealth Office	252	112	72	68	44%	73%
HM Treasury	145	72	50	23	50%	84%
Home Office	273	111	20	142	41%	48%
Legal Secretariat to the Law Officers	59	39	5	15	66%	75%
Ministry of Defence ^{**}	735	535	30	170	73%	77%
Northern Ireland Office	40	25	4	11	63%	73%
Office of the Deputy Prime Minister	170	116	8	46	68%	73%
Scotland Office	6	5	1	0	83%	100%
Wales Office	7	6	1	0	86%	100%
Other bodies included in monitoring						
Crown Prosecution Service	68	64	2	2	94%	97%
Export Credits Guarantee Department	11	10	1	0	91%	100%
HM Customs and Excise	64	24	0	40	38%	38%
Inland Revenue	109	104	2	3	95%	97%
National Archives	617	289	286	42	47%	93%
Office for National Statistics	49	49	0	0	100%	100%
Serious Fraud Office	6	6	0	0	100%	100%
Treasury Solicitor's Department	35	34	1	0	97%	100%

* - Figures in this table also include information requests processed under the Environmental Information Regulations where appropriate

** - Figures for the Department of Transport and the Ministry of Defence include requests received by the Executive Agencies for which these departments are responsible

¹ - "Permitted extensions" include:

Requests where the 20-day deadline for response under the FoI Act is extended to allow for consideration of the balance of the public interest.

Requests where the 20-day deadline for response under the EIRs is extended because of the complexity or volume of the request

Requests where a fee notice has been issued to the requester and payment is being awaited

ANNEX B

This annex provides MISC28 with an overview of the FOI implementation within the wider public sector.

Summary

1. The following headlines points are addressed in further detail below:
 - Request volumes are significant for larger bodies, but broadly in line with expectations;
 - Requests cover both issues of national significance and of local importance
 - Members of the general public comprise the biggest user group of FOI, followed by journalists, pressure groups and private sector businesses;
 - Mechanisms for co-ordinating responses to requests exist only for the Police Service and the NHS.
 - In many regions there are established networks of FOI practitioners who are able to contact one another and seek advice. These networks are providing valuable sources of information.
2. There is no formal monitoring of FOI in the wider public sector. The material in this paper is drawn from impressions passed to DCA by officials in:
 - ODPM, DfES, DH, and NIO
 - National Health Service (NHS)
 - Association of Chief Police Officers (ACPO)
 - London Fire and Emergency Planning Authority (LFEPA)
 - Convenor for the Midlands FOI network which comprises 20 authorities from large county councils to primary care trusts
 - London Borough of IslingtonExcept for information supplied by NIO and ACPO it has no statistical basis.

Request Volumes

3. Volumes of requests are reported to have been in line with expectations. The 44 Police Forces in England and Wales had received approximately 2,500 requests at the end of January 2005; 500 were referred to ACPO's central referral service. The Police Service of Northern Ireland has received 165 requests, the Northern Ireland Prison Service 16. The impact of FOI on schools is reported to have been minimal.

Nature of Requests

4. Requests for information appears to fall into the following headings:
 - sensitive and high profile issues of national importance, such as fox hunting and the sex offenders register;
 - issues of local importance, such as planning applications, school closures and chief officers' expenses;
 - information of value to the private sector such as lists of contracts awarded by the authority.

There has been some increase in the number of subject access requests under the Data Protection Act.

5. Authorities report cultivating a good relationship with applicants has assisted in narrowing the definition of requests in a way that is beneficial to both the authority and the applicant.

Applicant Profile

6. A large proportion of requests appear to be from members of the public. The second largest group of applicants is the media, followed by the private sector applying for information for marketing purposes.

Performance: Issues

7. The Police Service has established an effective referral mechanism operated by the Home Office and the Association of Chief Police Officers. The NHS co-ordinates responses to requests through its hierarchical organisational structure, with requests being escalated up to the next appropriate level. For example, recent requests to be co-ordinated nationally include requests about serious untoward incidents, prescribing and financial forecasts. There are inherent difficulties in Whitehall Departments co-ordinating responses to requests in the local government and educational sectors.
8. The evidence gathered to date suggests that organisations are coping with the volume of requests, but complex requests have had a substantial impact. Health authorities appear to be coping with volumes well. Some of the larger local authorities report that they have found it necessary to recruit new staff, but no analysis has been undertaken as to whether this is as a result of additional business generated by FOI. There have been no complaints to DCA about the fees regime.
9. Most of the authorities are finding the workload challenging but only a few appear to have missed the 20 day statutory time limit.
10. A short survey of websites indicates that few authorities are publicising their releases or proactively releasing new information. Most authorities recognise the value of doing so, but many report a lack of resources in this area.
11. The key issues identified by FOI officials are:
 - failures by staff to recognise FOI requests, indicating inadequate training of authorities' staff;
 - lack of understanding of the interface with the Environmental Information Regulations, Data Protection Act, and copyright legislation, indicating the need for FOI officials to be properly trained in the complexities of the legislation;
 - difficulties in locating information because of poor records management practices.

Mechanisms for central Government to liaise with the wider public sector

12. DCA has been working with the Departments that are responsible for the different parts of the public sector to create appropriate mechanisms
 - to communicate Government policy on the implementation of the Act;
 - to ensure compliance with it;
 - to provide Ministers with information about the operation of the Act in the sectors; and

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- to provide a mechanism for DCA to consult the sectors on matters such as fees, coverage and codes of practice.

ODPM, DfES and DH have appointed officials to oversee implementation in local government, the educational sector, and the NHS. DCA officials are working with these officials to create mechanisms representing both central Government and appropriate bodies within these sectors.

COMMUNICATING FOI AND THE PROACTIVE STRATEGY

Summary and Recommendations

1. This paper reviews the progress to date on communicating our agreed approach to FOI communications, and sets out a programme for 2005. MISC28 is asked to agree that programme.

Current and future perception of FOI in action

2. A series of speeches and media interviews and articles by DCA Ministers, and by the Information Commissioner in the run up to 1 January led to extensive coverage of the implementation of the Act. This was generally positive in informing the public about the importance of the legislation in extending people's rights.
3. Since the Act came into operation the announcement of the Government's decision not to release the Attorney-General's advice on the legality of the war in Iraq has met with adverse criticism, but much more publicity was generated over the release by HM Treasury of the economic analyses of the withdrawal from the Exchange Rate Mechanism in 1992. Despite some negative reporting about the processing of that particular request, the release itself has been represented as showing that the Act is effective in allowing access to factual information of genuine significance, and has vindicated the policy of simultaneous releases.
4. Over the next few months adverse publicity might be generated by:
 - decisions by the Information Commissioner and the Information Tribunal in respect of information refused by Departments; and
 - non-compliance with the 20 day time-limit for processing requests, particularly in the case of high profile requests.
5. The Commissioner's first rulings against central Government are likely to be made in March. The number of complex and high profile requests made by the media is likely to mean that there will be a significant number of conspicuous cases appealed, from March onwards. When the first quarter's FOI monitoring statistics are published, probably in late May, it is possible that they may provide some evidence of poor and inefficient processing, as evidence to date suggests that there have been failures by many Departments to process requests within the 20 day time-scale, and that the extension of the time-limit for the public interest test has been widely and extensively used. This evidence may be reported as showing that there has been deliberate procrastination by Government Departments to avoid releasing embarrassing information.
6. The programme of Ministerial speeches, interviews and articles will continue over the next 6 months. The announcement of the refusal of the Attorney's Iraq war legal advice was complemented by a speech by the Secretary of State in which he argued that FOI should not be judged in the light of individual disclosure decisions or the extent to which the internal discussions of Government are exposed. Rather, the real test is whether there are changes in attitude to openness across the whole of the public sector over the next few years, and whether or not increasing amounts of information are released.

● Openness initiatives

Simultaneous releases and handling current requests

7. The most conspicuous demonstration of the effectiveness of the new right of access to Government information is the information itself that is released in response to requests. Cabinet decided in December that Departments should publish on their websites information of general public interest at the same time as it is communicated to the applicant, and should consider publishing additional information to that requested in order to contextualise the requested information. Many Departments are now publishing such information, but there is still an unevenness of performance, and there has been relatively little publication of additional contextual information.
8. My Department is now compiling on a weekly basis a list of all forthcoming high profile releases reported to the Clearing House, which are likely to generate media interest. This list has the potential to enable Departments to publicise releases by different Departments on related subjects, and to operate a joined up approach to releasing information.
9. **MISC28 is asked to ensure that the simultaneous publication initiative is implemented by their Departments and that there are sufficient processes in place to sustain it.**

Programme of proactive initiatives

10. This paper emphasises the importance of maximising the benefits of current releases while minimising the adverse publicity from inefficient processing. The weight of processing current requests will diminish as Departments become more experienced and policies in difficult areas are established. However the adverse publicity from appeals to the Commissioner and the Tribunal will need to be offset by sustaining the programme of positive initiatives. Four specific initiatives are discussed here.

Enhancing the quality of publication schemes

11. High quality publication schemes containing significant information released to the public are central to demonstrating the Government's commitment to proactive disclosure. The Commissioner is due to produce revised and more demanding criteria for accrediting publication schemes in the first half of 2006. Departments will be required to submit their schemes for re-accreditation from July 2006 and implement them by November 2006.
12. I propose that my Department will work with the Commissioner on the revised criteria and will seek to make them available to Departments in the second half of 2005, so that they can begin to adopt the revised approach over a longer period of time and at a pace to suit their own resources.
13. Many Departments have already adopted a proactive approach to publishing information requested under the Act. For instance my own Department has received a request for information about the hospitality accepted by senior officials and is now publishing the Departmental hospitality register on its website. My officials will monitor Departmental disclosure logs, and identify categories of information that can be added to the revised criteria for publication schemes.

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14. This proposal will enable central Government to inform the Commissioner requirements for publication schemes, and derive the benefits from implementing them proactively. If MISC28 is content with this proposal DCA officials will work with the Commissioner in the second half of 2005 to identify categories of information for revised and enhanced publication schemes. **MISC28 is asked to agree that Departments will develop their own plans to bring themselves into compliance with the revised standard in phases by July 2006.**

Systematic release of background materials to bills

15. At the October meeting it was agreed that DCA would circulate as a model for other departments an example of the background information to a bill that could be released. Such an example has been circulated by DCA to Departments based on the Gender Recognition Bill. That Bill was deliberately developed with the most open consultation policy possible.
16. Since the October meeting the bills in the Government's legislative programme have been announced. **I am now asking Departments to look at each bill in the programme with a view to releasing proactively the factual background materials to the bill and branding such material as FOI releases.**
17. **MISC28 is asked to send to me by 31 March a note of the background factual information to all bills in the programme which will be released.** This will enable us to adopt a more systematic approach, whereby our default position is that we will release background factual information to bills unless the information is exempt under the FOI Act.

Initiatives relating to historical records

18. On 4 January the National Archives (TNA) released to the public 50,000 files less than 30 years old. This initiative had been supported by Departments which had committed resources to examining the files in question to identify whether or not they were exempt under the Act. I propose that we might return to historical records later in 2005-06 with a view to assessing the availability of resources to pursue further initiatives in this area.

Announcements of proactive initiatives

19. Some departments have produced good examples of such initiatives, and these were exploited in the FOI communications in the run up to 1 January. There is a need for fresh initiatives to be identified. It is likely that NDPBs, particularly those concerned with the delivery of services to the public, hold information of value which can be released proactively.
20. The Environmental Information Regulations require that public authorities shall 'progressively make [environmental] information available to the public by electronic means which are easily accessible'. This requirement has had relatively little attention, but provides a clear direction for authorities to examine whole classes of information whose release would be of concrete benefit to the public.
21. Needless to say it is important that when any such releases are made they are branded explicitly FOI or Access to Information releases.

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22. MISC28 is asked to examine the work of their executive agencies and NDPBs with a view to identifying areas where information relating to their functions can be routinely and proactively released, and branded FOI releases.

Cost of proposals in 2005-06

23. It is established policy that there are no additional resources for FOI implementation. The cost of work on publication schemes involves spreading across 2005-06 and 2006-07 work which Departments would be required to bear in 2006-07, and which would be offset in part at least against the reduced cost of processing requests for the information covered by the scheme.

Department for Constitutional Affairs
March 2005

PROCESSES

Summary

1. This paper outlines the processes in place for the following:
 - Dispute resolution;
 - The role of the Attorney-General in papers of a previous administration, and;
 - Ministerial veto.
2. MISC28 is asked to note the processes outlined.

Dispute Resolution

3. In September 2004 MISC28 agreed the dispute resolution process. The process has subsequently been developed by officials to ensure that decisions are taken at the most appropriate level and that escalation only occurs where absolutely necessary. The process can be escalated at any point to obtain the quickest and most appropriate decision on a case.
4. Where a Department disagrees with Clearing House advice, the Department and the Clearing House will consult on the level of escalation required to ensure the dispute is escalated to the most appropriate level as swiftly as possible. Further advice, where necessary, will be sought and a joint submission will be put to the most appropriate level of decision making, be that the Permanent Secretaries or directly to the Junior Minister. If Departmental Ministers cannot reach agreement a submission will be prepared for the referring Department and the DCA Secretaries of State.
5. Only if at this level a decision cannot be reached or it has been agreed to by-pass this level will MISC28 itself be engaged and a paper prepared for MISC28. Where a decision can be reached by other means, such as through correspondence, it will not be necessary for MISC28 to convene.

Access to papers of previous administrations

6. In June 2004 you agreed the role of the Attorney General in the process of requests relating to papers of previous administrations.
7. When a Department receives a request for information
 - covered by the convention on access to papers of a previous administration;
 - particular to a former Minister of a previous administration (such as his or her diary or expenses); or
 - relating to high profile events during his or her period of office;the Department will notify the former Minister concerned at the earliest opportunity. If the Department then judges that the information is exempt it will inform the former Minister of its decision. If however the Department is minded to release the information it will first consult the former Minister and invite him or her to identify any public considerations pertinent to the

decision. It is however for the Department and not the former Minister to make the decision.

8. Where the request relates to information that requires a Minister to make a decision as to whether or not it is exempt MISC28 has agreed that the Attorney General, rather than the Departmental Minister, should make these decisions. This most commonly occurs where the information appears to officials to fall within section 36, and the Act requires the judgement of a Minister. The Attorney General's involvement is to protect the convention on access to papers of a previous administration.
9. All requests for information contained in the papers of previous administrations are referred to the Clearing House. Where the Attorney's involvement is likely to be necessary the Legal Secretariat to the Law Officers (LSLO) is sent copies of all advice and significant correspondence. Arrangements for providing advice to the Attorney General in sufficient time to enable proper consideration of the request have been put in place, and agreed with the Attorney General.
10. The Secretary of State has corresponded and spoken with the Leader of the Opposition about the procedure, although the correspondence on the issue is not yet completed. The Secretary of State has also written to the Leader of the Liberal Democrats to explain this procedure.
11. The majority of decision in relation to papers of previous administrations will be taken by Permanent Secretaries. The Attorney's role will be confined to the application to those cases where a Ministerial decision is required. In the course of a general election campaign the only such decisions requiring the Attorney-General's involvement are likely to be determinations of whether or not information falls within section 36. Since Ministers have agreed to use section 36 in rigorous defence of the convention on Ministerial responsibility and free and frank deliberation within Government it is unlikely that the Attorney would be drawn into a controversy where the Government was accused of failing to use exemptions to protect information damaging to a previous administration's reputation.

Ministerial Veto

12. You agreed that there should be a collective decision whenever use of the Ministerial Veto in section 53 of the Act is contemplated. You have also agreed this should only be used in exceptional circumstances.
13. All cases which may involve the use of Ministerial veto will be submitted to the Clearing House for consideration. These cases will be referred to Legal Advisors (and, if appropriate, Counsel) for advice. In the light of that advice a submission will be prepared which will be put to relevant Ministers and the Attorney General. If the use of Ministerial Veto is approved a submission will be put to Cabinet to consider.
14. The Clearing House will co-ordinate the provision of advice to Ministers in these circumstances and will work with the Cabinet Office to manage the process of collective agreement.

Department for Constitutional Affairs
February 2005



SECRETARY OF STATE

MINISTRY OF DEFENCE
FLOOR 5 ZONE D MAIN BUILDING
WHITEHALL LONDON SW1A 2HB

Telephone: 020 7218 9000 (Switchboard)

French id N/T

14/3 MST 2/9K
11 March 2005

DT ✓ IR. (F)

Dear Cathy,

FREEDOM OF INFORMATION ACT – WORKING ASSUMPTIONS

Thank you for your letter of 2 March, in which you asked for clearance of three further FOI Working Assumptions. Subject to a few small points, I can confirm that I am happy for these to proceed to publication.

It has been recognised in other DCA guidance that “Ministerial communications” means Ministers in the same administration. Paragraph 3 of the working assumption could be read to imply that correspondence between Ministers in different administrations is also within the scope of s.35. It might therefore be helpful to tighten up the opening words. Paragraphs 8 and 9 of the same working assumption rightly highlight the very strong arguments for withholding correspondence between Ministers. Nonetheless, staff should be reminded that Section 35 is a qualified exemption and that, although the public interest in refusal is intrinsically very powerful, both sides of the argument will need to be articulated in responding to requests.

The assumption relating to the Efficiency Programme, advises the refusal that information should be refused if release would undermine the ability to reach the objectives of the efficiency programme. As the recommendation is to use

Baroness Ashton of Upholland
House of Lords



Recycled Paper

Section 36, it would be helpful for the working assumption to flag up the need for Ministers to be consulted in good time.

There are also a few detailed drafting points which my officials will pass on to yours.

I am copying this letter to other members of MISC 28, to the Prime Minister, Cabinet colleagues and the Cabinet Secretary.

Yours sincerely,
Geoff
GEOFFREY HOON

RESTRICTED

From: Daniel Thornton
Date: 11 March 2005

PRIME MINISTER

cc: Jonathan Powell
Ivan Rogers
Paul Brown
Hilary Coffman
David Hill
Kate Gross

FOI & MINISTERS' FINANCIAL INTERESTS

1. There are several outstanding FOI requests for information relating to Ministers' and, separately, their spouses' declarations of financial interests.
2. We want to respond to the requests in a coordinated manner, in order to prevent those Ministers who want to make significant disclosures from doing so (DCMS want to put out a great deal of information about the details of declarations by David Mills, some of which is in the public domain, and some of which is not).
3. We have taken advice from Counsel on where we can draw a line in the sand. The advice is that we should reveal:
 - the date of declarations and the Minister making the declaration;
 - any information which is available in the public domain.

There is a strong argument against disclosing the content of declarations, and of discussions with Permanent Secretaries to put in place arrangements to deal with the risk of a conflict of interest, as Ministers are likely to be less forthcoming if such discussions are made public, and because personal information is made available in these discussions.

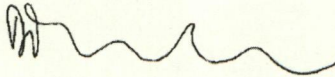
- ④ 4. I attach an example of a potential release that has been agreed with the ODPM in relation to a request for declarations of spouses financial interests. We would like to agree tables along these lines with other departments, and to release these in a coordinated manner within the next week. Departments are putting pressure on to respond immediately to the FOI requests that they have received, which are already well past the deadlines. **Do you agree that responses along the lines of the ODPM release can be issued, subject to the agreement of the relevant Minister?**
- ✓

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- 2 -

5. I will obviously come back to you before anything is released in relation to your personal information.

A handwritten signature in dark ink, appearing to read 'Daniel Thornton', with a stylized, wavy line extending from the end.

DANIEL THORNTON

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OFFICE OF THE DEPUTY PRIME MINISTER

DATE	MINISTER	REASON FOR DECLARATION	DISCLOSE/WITHHOLD
22 June 2002	Lord Rooker	Notification of financial interests and employment details	Lord Rooker's wife is Director of operations at Lewisham College. Other interests are confidential. Section 41
10 July 2002	Tony McNulty	Notification of spouse's employment.	Chief Executive, Tower Hamlets
1 October 2002	Nick Raynsford	Notification of financial interests of spouse	Property in Greenwich which is disclosed in the Register of Members' Interests. Other financial interests are confidential. Section 41
17 December 2002	Barbara Roche	Notification of spouse's employment	Confidential. Section 41
17 July 2003	Yvette Cooper	Notification of financial interests of spouse	Confidential. Section 41
September 2003	Phil Hope	Notification of financial interests of spouse.	Confidential. Section 41



dca

Department for
Constitutional Affairs
Justice, rights and democracy

The Rt Hon Michael Howard QC MP
House of Commons
London SW1A 0AA

The Rt Hon Lord Falconer
of Thoroton

Secretary of State and
Lord Chancellor
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DT ✓ IR
JP
KEG
21/9/3
7th Mar

2005

Dear Michael,

**FREEDOM OF INFORMATION ACT:
CONVENTION ON ACCESS TO PAPERS OF PREVIOUS ADMINISTRATIONS**

Thank you for your letter of 15 February. I am confident that the procedure we discussed is not only consistent with the requirements of the FOI Act, but is in the interests of maintaining the convention on access to papers of a previous administration.

I am keen that former Ministers are notified about requests that relate to their papers or to high profile events that they presided over at the earliest possible opportunity, not least so that, if at all possible, the former Minister learns about the request from the Department, and not from the media. It is equally important that former Ministers are informed about the decisions that Departments make about whether or not information requested should be released. As we agreed the decision on how a request for information should be met is one that only the public authority can make. If the public authority judges that it should not release the information requested, it would not be appropriate to consult others. However where the Department is minded to release the information, or is uncertain of the balance of the public interest, it is clearly essential that former Ministers are consulted, and consulted as soon as possible.

In short, I share your view that former Ministers should have as much time as possible to examine the papers and identify the public interest considerations. The Act allows public authorities, once they have identified a relevant exemption to the requester, to extend the 20 working days response period to assess the public interest, until such time as is reasonable in the circumstances. However the sooner the former Minister is consulted the better. The Government is determined that decisions are made promptly but only after full and proper deliberation.

Yours,

LORD FALCONER OF THOROTON



INVESTOR IN PEOPLE

RESTRICTED

*e-mailed to Chogers 4/13/05
KS*

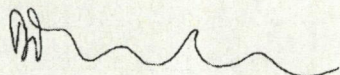
From: Daniel Thornton
Date: 4 March 2005

PRIME MINISTER

cc: Ivan Rogers
David Hill
Jonathan Powell
Sally Morgan
Hilary Coffman

FOI AND CABINET COMMITTEES

1. I attach a note by Andrew Turnbull which proposes a system of proactive release of information about Cabinet Committee meetings "in the light of the recent decision on the release of information from ministerial diaries."
2. Separately, you have a draft letter to the DPM which informs him that you accept the proposal to start proactive release of diaries. The proposal on Cabinet Committees is a sub-set of the diaries information – if you do agree with the diaries proposal, the proposal on Cabinet Committees makes sense (and would be less controversial than some other parts of the diaries releases).
3. However, you should be aware that assembling the information on Ministerial diaries would take at least a couple of weeks, and perhaps longer. The first release of information would be close to a possible election date. As well as potentially putting a certain amount of sensitive information into the public domain, it would raise the profile of the issue of Ministerial diaries, and would be likely to provoke an increase in media attention and FOI requests relating to Ministerial diaries.
4. **Are you content for the proactive release of Ministerial diaries to begin in the next few weeks?**
5. **If so, are you content with Andrew Turnbull's proposal for the proactive release of information about Cabinet Committees?**



DANIEL THORNTON

RESTRICTED



Secretary of the Cabinet and Head of the Home Civil Service

PRIME MINISTER

cc Lord Falconer
David Miliband
Colin Balmer
Paul Britton
Margaret Aldred
Bruce Mann
Robin Fellgett
Katrina Williams
Ivan Rogers (No 10)
Eleanor Kinchen
Tom Walker

FREEDOM OF INFORMATION AND CABINET COMMITTEES

In light of the recent decision on the release of information from ministerial diaries, I would like to set out a clear, consistent line in terms of Cabinet Committee information. This minute sets out a proposal for what we should, and should not, publish about Cabinet and its Committees. As with ministerial diaries, the proposal is to periodically publish a retrospective list of select information. Only those subjects where the policy has been announced would be mentioned. Are you content with this approach, please?

2. At present the only information published about Cabinet Committees is their terms of reference, chair and composition. Even this does not include ad hoc committees including your own stocktakes, although in practice you and others have referred to them at for example your monthly press conference. A bit more is said about Cabinet itself. It is well known it meets every Thursday and from time-to-time your official spokesman briefs the lobby on some of the discussions in Cabinet.

3. I do not think this degree of secrecy will be sustainable under FOI. I would prefer to move to a more defensible position, and take the credit for doing so rather than being forced to concede step-by-step.

4. Our proposals draw a firm line. They amount to acknowledging a bit more about the process that led to Government policy announcements. This is likely to be of considerable interest to constitutional experts and others. We can take

credit for doing so. But hopefully it will be of comparatively little interest to the press as we will continue to say nothing about ongoing policy discussions in Government or reveal anything about the nature of debate within Government leading up to an announcement.

5. Our suggestion is also to publish information periodically and retrospectively. By doing so we will be in a stronger position to resist other freedom of information requests, because we can refer to the exemption in the Act for information due to be published within a reasonable time. There has recently been an agreement on the release of information on ministerial diaries; our proposals are consistent with this decision. There have already been several requests about particular Cabinet Committees and the dates and frequency of their meetings; it is therefore essential to agree a framework for answering these requests.

--- 6. Attached is a mock-up of the sort of information we might release. This is incomplete because we have only looked at a three month period for Cabinet and Committee meetings and a two week period for business dealt with in correspondence to test out our ideas. But I hope it gives you a flavour of what the impact would be.

7. In more detail I would favour:

- a. publishing information every 3 months - the same frequency as the releases of information on ministerial diaries;
- b. releasing information covering the preceding 12 months. Each 3-monthly release will go back over the last year of meetings, including most of those covered by the previous release; this will build up a fuller picture because, over time, more policies will be announced and can therefore be included. An exception will need to be made for the initial releases where information should not date back further than January 2005. This is consistent with the line taken on ministerial diaries where it was not considered appropriate to include information from before the implementation of FOI;
- c. acknowledging the months and number of times Cabinet Committees and similar decision-making fora (including your important stocktakes) met. Nothing will of course be said about informal discussion. Details of who attended or chaired meetings should not be released because it undermines the focus on the collective responsibility of Cabinet Committees;
- d. listing those topics which had been discussed or settled in correspondence where the policy was subsequently (or already had been) announced, while saying nothing about ongoing policy developments and nothing other than the topic about the nature of discussion that led to an announcement. We would not identify

which topics were discussed and which were circulated in correspondence.

- e. not releasing any information relating to unannounced policies or to the formulation of policies. Access will not be provided to Cabinet Committee agendas or minutes. The release should also not give an indication of which policies were discussed more than others;
- f. not linking the releases of information on ministerial diaries with that on Cabinet Committee information. Despite the consistent line, they should be treated as separate issues; one deals with the activities of Ministers, the other provides access to the process for formulating Government policy announcements.

8. Allowing for the time it will take to clear these proposals and to produce consolidated information for January 2005, it is unlikely to be possible to publish information before April 2005. You may therefore prefer to announce and take credit for the approach and promise a first statement in early July. This would enable us to set up systems for capturing the information better, but runs the risk of merely promising 'jam tomorrow'.

9. Are you content, please?



ANDREW TURNBULL

04 March 2005

This table illustrates a proposed option for the limited release of information on Cabinet and its Committees. All information in the table relates to the formulation or monitoring of policy which has already been announced. The information used is from the period between September and November 2004, rather than from January 2005 onwards (which would be used in practice) During this earlier period, there were 55 Cabinet Committee meetings (inc. Ad Hocs, JMCs etc.) and 9 Cabinet meetings. Owing to the volume of clearance letters received, these were only a small sample of these have been recorded. While these letters have been included in the table below, it should be noted that the real volume of correspondence over this period was likely to be around 130 clearance letters and therefore it could be expected that the final column would usually be much fuller with few if any blank entries;

Committee:	Month:	Number of Meetings:	Subjects Considered Included:
Cabinet	September	2	Management of Parliamentary business; European Commission and Parliament; English Regional Assemblies; Parliamentary pay and allowances; Security in the Palace of Westminster; Iraq; Iran; 2012 Olympic bid
Cabinet	October	3	Management of Parliamentary business; the Legislative Programme; Hunting Bill; Gambling Bill; Police White Paper; Council Tax; Sudan; Relations with Russia;
Cabinet	November	4	Management of Parliamentary business; implementation of the Efficiency Review; DTI 5 year programme; Defra 5 year programme; DCA 5 year programme; United Nations; US Presidential election; the Palestinian Authority; Gibraltar; Cote d'Ivoire

DA	October	1	<p>Amendments to the Children's Bill</p> <p>Concessions on the Civil Contingencies Bill</p> <p>Issues related to the Government response to the Better Regulation Taskforce report <i>Better Routes to Redress</i></p> <p>Consultation on the implementation of the European Directive on road freight and passenger transport industries</p> <p>Proposals for implementing the duty on public bodies to promote equality of opportunity between women and men</p>
DA	November	2	<p>Over Thirty Month Rule for cattle</p> <p>Provisions for scrutiny mechanisms in the HMRC Bill</p> <p>Amendments to the Serious and Organised Crime and Police Bill</p> <p>Police Reform White Paper</p> <p>Licensing Act 2003: Fees</p> <p>Health White Paper</p>
DA(ABS)	September	1	Monitoring of progress on the Public Service Agreement target to improve skill levels
DA(D)	September	1	Monitoring of the Drugs Strategy
DOP	November	1	[Correspondence to be added]
DOP(OA)	October	1	

ENV	September	1	Emissions trading Energy Efficiency Commitment post 2005
ENV(G)	November	1	Issues related to the formulation of policy on carbon offsetting for the Defra Five Year Strategy
EP			Memorandum to House of Lords European Union Committee
EUS	October	1	Details of the EU Constitution Bill
GL(P)	November	1	Issues related to the Comprehensive Performance Assessment 2005-06 for an Audit Commission consultation
ICC	October	1	
JMC(E)	September	1	
JMC(E)	October	1	
JMC(E)	November	1	
LP	October	2	The decision to carry over the Gambling Bill and the School Transport Bill into the fourth session. Fourth Session Programme and Queen's Speech

LP	November	4	<p>Child Benefits Bill; New Revenue Department Bill; National Lottery Bill; Public Service Ombudsman (Wales) Bill; Consumer Credit Bill; Criminal Defence Service Bill; Inquiries Bill Transport (Wales) Bill; Clean Neighbourhoods Bill; Immunities and Privileges Bill; Identity Cards Bill; Serious Organised Crime and Police Bill; Education; Rail Bill; Road Safety Bill</p> <p>Consultation on the draft Civil Service Bill</p> <p>Amendments to Bills in Parliament</p>
PRA	October	2	<p>Target of \$1 billion savings from regulatory burdens on business</p> <p>Monitoring the implementation of the Unfair Commercial Practices Directive and the EC Services Directive</p>
PSR	October	1	<p>Issues related to the formulation of the consultation on Criminal Justice Service inspection</p>
PSX	October	2	<p>Monitoring of departmental spending plans</p> <p>Monitoring the implementation of the Efficiency Review</p> <p>Monitoring the implementation of the Lyons Review</p> <p>Council Tax 2005-06</p>

			Monitoring the implementation of the Future of Rail White Paper Monitoring of Public Service Agreement Targets
PSX	November	6	Monitoring of departmental spending plans Monitoring the implementation of the Efficiency Review Monitoring the implementation of the Lyons Review Council Tax 2005-06 Monitoring of Public Service Agreement Targets
PSX(E)	October	1	Monitoring of departmental mission critical IT programmes
PSX(I)	October	1	Consultation on schools inspection and the framework for inspection of education for post-16 year olds
Ministerial Group on Iraq Rehabilitation	November	1	Troop deployment in Iraq
MISC5	November	1	
MISC9(D)	October	1	Issues related to the formulation of the Every Child Matters report Issues related to the Government response to the Tomlinson Report

MISC9(D)	November	1	Child Witnesses and the formulation of policy on information sharing for the Change for Children report Monitoring of the Bichard Implementation Project
MISC13	October	1	
MISC20	November	1	
MISC24	November	1	Issues related to the formulation of policy for the Delivering Democracy report and the Government response to the Voting for Change report
MISC25	September	1	Issues related to the Olympic Bid folder
MISC25	October	1	Issues related to the Olympic Bid folder
MISC26	November	1	
MISC27	September	1	Issues related to the formulation of policy for the Health White Paper
MISC28	September	1	The policy on fees for FOI requests and internal Government processes to manage FOI requests
MISC28	October	1	The policy on fees for FOI requests and internal Government processes to manage FOI requests

Stocktake on Iraq	October	2	
Stocktake on Iraq	November	1	
Asylum and Immigration Stocktake	October	1	Issues relating to the 5 Asylum year strategy
Asylum and Immigration Stocktake	November	1	Issues relating to the 5 year Asylum strategy
Drugs and Crime Stocktake	October	1	



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Department for
Constitutional Affairs
Justice, rights and democracy

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The Rt. Hon. Lord Falconer of Thoroton
Chair, MISC28
Selborne House
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2 March 2005

Dear Charles,

Freedom of Information: Next tranche of working assumptions

I attach, for consideration by MISC 28 colleagues, a new tranche of working assumptions for categories of Freedom of Information requests. Three sets are circulated for clearance and two sets – which have been circulated before – are for information prior to publication. I would be grateful for comments on the three new working assumptions by Monday 14 March 2005 to enable timely publication.

As you know, we have been preparing, in association with other Departments, working assumptions on key categories of information to form part of the guidance for the Act. Working assumptions help to operationalise the public interest arguments for releasing or withholding information and a broad range of these have already been agreed. They also include referral points indicating where the working assumption may not apply and further consideration is necessary.

I now attach working assumptions for the following categories of information:

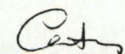
- Ministerial communications, including correspondence between Ministers, correspondence with third parties on policy issues, and notes of meetings with third parties;
- Public and senior appointments;
- Efficiency programme information;
- Information relating to Prime Minister's Delivery Unit; and
- Gateway review information.

The latter two working assumptions have been circulated before and will shortly be published. However, they have been slightly revised in the light of legal advice which allows a broader interpretation of the scope of the exemption relating to audit functions and so I re-circulate these for information only.

I do not need to stress the need to provide Departments with agreed guidance as soon as we are able to do so. We will circulate the working assumptions to Departments and publish these on our website, alongside the existing guidance, shortly after receiving MISC28 comments and clearance. I would therefore appreciate early responses where possible.

I am copying this letter to the Prime Minister, MISC28 colleagues and Sir Andrew Turnbull.

Yours truly,



CATHERINE ASHTON

Working assumptions - Ministerial Communications

Categories of information

1. This guidance note sets out working assumptions for:

- Correspondence between Ministers;
- Correspondence with third parties on policy issues; and
- Minutes of meeting with third parties.

2. Where correspondence with third parties does not relate to policy issues, there may be a range of other exemptions that should be considered. Correspondence with third parties is an extremely diverse category of information. For example, correspondence may relate to issues that are commercially sensitive and so may fall within the scope of s43 (information the release of which would prejudice commercial interests). If you think that one of the other exemptions may apply, please refer to the guidance on that exemption.

Working assumptions

Correspondence between Ministers

3. Where the correspondent is another Minister of the Crown, Northern Ireland Minister, or Devolved Assembly Secretary – **withhold** citing s35.

Correspondence with third parties on policy issues

4. Where the correspondence is a part of the policy-making process –
withhold citing s35

Minutes of meetings with third parties

5. Where the minutes cover discussions relating to the formulation or development of Government policy – **withhold** citing s35

Procedural steps

6. Wherever possible, when considering the release of ministerial communications, the other party should be consulted about the request for information before any decision on release is made. The other party's views or preference are not binding on whether the information should be released, but, for the reasons set out below, they are an important part of the consideration as to whether to apply the working assumption.
7. The Minister's Private Office should also be consulted, as there may be sensitivities around the communications or Ministerial views which need to be taken into account.

Reasons for these assumptions

Correspondence between Ministers

8. The principle of collective responsibility is a critical factor where the correspondence is between Ministers of the Crown, Northern Ireland Ministers, or Devolved Assembly Secretaries - s36 makes clear that collective responsibility is integral to the effective conduct of public affairs and it is also relevant to the assessment of the public interest under s35.
9. Collective responsibility is one of the cornerstones of the UK constitution and system of government. Release of correspondence between Ministers, by revealing the views of individual Ministers, would begin to replace collective responsibility with individual responsibility. It is therefore essential that any inter-Ministerial correspondence of significance is protected.

Correspondence with third parties on policy issues

10. A wide range of third parties are involved in the policy-making process. These range from Non-Departmental Public Bodies (NDPBs) such as the Electoral Commission, Food Standards Agency or Financial Services Authority through to stakeholder organisations from the voluntary and community sector, business and trade bodies, and other lobbying organisations.

11. The public interest in seeing and understanding the work of Government, including how stakeholders are involved in a particular area of work or policy, is strong.
12. That public interest is especially strong in the case of NDPBs and other bodies who have a formal or semi-formal advisory role to Ministers in policy-making. In some cases, Ministers are required to consult with certain bodies by legislation. It is important for the public interest that this process is followed and that its results are accessible. In contrast, lobbying and representative bodies which seek to influence policy usually have no particularly privileged position.
13. Though there is a public interest in disclosure, there may be a number of other factors that need to be considered before the information is released, and the views of the third party will be important in considering the balance of the public interest.
14. People and organisations who write to Government Departments and receive a Ministerial response may not expect the fact that they have been in contact with a Government Department to be revealed, much less the reply that they receive from a Minister. This may be especially true in the case of organisations who have limited contact with Government, or are making representations on sensitive issues.

15. The prospect of such disclosure may inhibit the frankness and candour with which they put their views across or diminish their engagement with Government. This may also apply in the context of formal or semi-formal consultation, as mentioned, or correspondence between Members of Parliament and Ministers on policy issues. The strong public interest in maintaining a thorough, rigorous and inclusive policy-making process may thereby be engaged.

16. Nevertheless, we must bear in mind that there will be times when third parties will be happy for any of their correspondence with Government to be revealed. Indeed, many organisations that are involved in the policy-making process regularly publish their correspondence with Government. In that case, the public interest argument for withholding information set out above will not apply. Checking the position of the third party is therefore crucial.

17. It must also be remembered that once a Government Department has sent out correspondence, then it no longer has complete control over what happens to it. There will usually be nothing to stop the third party from releasing the information themselves.

Minutes of meetings with third parties

18. The same considerations apply. There is a public interest in disclosure in order to further understanding of how policy is developed and the role played by third parties.

19. However, the discussion of policy issues in meetings is likely to be fuller and may be conducted with greater candour than in formal correspondence. As a consequence, the expectation of confidence will be higher and there is a greater risk that the prospect of disclosure will diminish the rigour with which third parties engage with the policy-making process.

20. It is crucial, as with correspondence, to seek the views of the third party wherever possible.

Referral Points

21. Working assumptions do not fit all situations. The referral points set out below describe specific situations where the working assumption should not be used. The fact that the assumption does not apply **does not mean you should automatically release the information**. The information request should be **referred** to a more senior member of staff, or a dedicated FOI practitioner, for them to consider:

Correspondence between Ministers

- Where the correspondence does not discuss or reveal any substantive matter of policy;
- Where the information is more than 10 years old. The public interest in withholding the information is likely to change over time and, in the case of information that is older, a more careful argument is likely to be needed before deciding whether to release or withhold the information. All such cases should be referred.

Correspondence with third parties on policy issues

Minutes of meetings with third parties

- Where part or all of the correspondence, or the information that it contains, is already in the public domain, either through official channels, due to the actions of the other party, or through leaks or un-attributable briefing;
- Where the other party intends to make the information public in the near future – in that case, close consideration should be given to releasing the information now;
- Where the correspondence is part of a formal or semi-formal advisory relationship between Government and the other party;
- Where you believe that the letter should be released – for example, because it reveals no substantive issue of policy - but the third party has

objected or indicated that they are concerned about releasing the information;

- Where it has not been possible to consult the other correspondent;
- Where the information relates to policy that has been closed for longer than 3 years;

Both categories

- The correspondence contains background factual or statistical information;
- The request states that the applicant is asking for internal review of an earlier decision to refuse to release information;
- The advice relates to a matter covered by the Environmental Information Regulations (The EIRs cover all information relating to: air, water, land or soil; flora or fauna, and natural sites; the built environment; and effects on health and safety as a result of changes in the environment);

Working Assumption – Public and senior appointments

Category of information

1. Any information relating to public appointments or senior civil service appointments, including information about candidates or possible candidates, and details of the methodology of the appointment or recruitment exercise, including job specifications, selection criteria and assessment of candidates.

Working assumption

2. **Release:** Information, other than personal data, relating to the selection exercise, including job specifications, advertising and selection criteria, types of questions asked and anonymised statistical information on the results of the exercise, such as how many people applied and how many were interviewed,.

Names of panel members, once the exercise has been completed, unless this would clearly prejudice the willingness of board members to take part in future exercises.

Personal data concerning the requester (subject to the provisions of the Data Protection Act 1998).

Withhold: Personal data and any information which might identify candidates or potential candidates, including notes made of interviews and assessments of candidates, recommendations made to Ministers and details of processes which might lead to identification of candidates or potential candidates (e.g. date/location of interviews – although these details are likely to be disclosable once the exercise has been completed).

Any information identifying those who took part in the recruitment, such as panel members, should be withheld while the appointment exercise is still running.

Any information relating to a contract with a recruitment agency whose disclosure would prejudice the commercial interests of the agency or the department. Also, any information which, if disclosed, would, or would be likely to, prejudice any other person's commercial interests (e.g. information which would prejudice candidates' existing employment).

3. Relevant exemptions may be:

- s40 (personal information),
- s35 (formulation of government policy) - in particular s.35(1)(a),

- s36 (prejudice to effective conduct of public affairs) – in particular s.36(2)(b) and (c),
- s 41 (information provided in confidence) if the information was obtained from any other person and if disclosure of it would constitute an actionable breach of confidence,
- s43 (commercial interests).

Reasons for the assumptions

4. Details of vacancies, whether of senior civil service posts or public appointments will normally be in the public arena. Even if they are not routinely made public, it is unlikely that harm would arise from disclosure of such information. It is also likely to be the case that the methods employed to identify and recruit people to such posts will be either in the public arena, or will not attract any exemption from disclosure. Only where disclosure of the recruitment procedure might prejudice the procedure itself, and hence the future supply of suitable candidates might an exemption apply to this type of information.
5. Section 40 of the FOIA provides exemption from disclosure for certain personal data – i.e. information concerning a living identifiable person. Disclosure of such personal information must be considered in terms of the Data Protection Act 1998 (DPA). Broadly speaking, requesters will be entitled to information about themselves (subject to any exemptions in the DPA) but requesters will only be entitled to information about

other individuals where that would be considered reasonable in terms of the DPA. Disclosure of an individual's personal data must comply with data protection principles, in particular the first principle (fair processing) which requires that one of the conditions set out in Schedule 2 to that Act is met. The conditions are:

1. The data subject has given consent to the processing.
2. The processing is necessary—
 - (a) for the performance of a contract to which the data subject is a party, or
 - (b) for the taking of steps at the request of the data subject with a view to entering into a contract.
3. The processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract
4. The processing is necessary in order to protect the vital interests of the data subject.
5. The processing is necessary—
 - (a) for the administration of justice,

(b) for the exercise of any functions conferred on any person by or under any enactment,

(c) for the exercise of any function of the Crown, a Minister of the Crown or a government department, or

(d) for the exercise of any other functions of a public nature exercised in public interest by any person.

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

(2) The Secretary of State may by order specify particular circumstances in which this condition is, or is not, to be taken to be satisfied.

6. Candidates It is unlikely that the disclosure of personal data held on any candidates would be legitimised by one of the above categories (although a candidate might conceivably consent to disclosure of such information, if it suits his or her interests to do so.). Information

which would identify, or could lead to the identification of any candidate, including assessments made of them and possibly dates and locations of interviews, should therefore be withheld, both during and after the exercise. Some of this information might be disclosable once the exercise has concluded, such as dates and times of interviews.

7. Board members Information identifying or concerning any member of a sift panel or recruitment or assessment board should usually be withheld while the exercise is continuing. Once the appointment process is over, it is more likely to be reasonable to disclose the identities of people who constituted an interview panel, especially for filling a very senior and public post, in order to demonstrate that the selection had been made by people possessed of the necessary knowledge and qualities to make that choice. Such disclosure might be legitimised under Schedule 2 section 5(d) or 6(1). Whether disclosing information is appropriate in these circumstances will depend on the context. There clearly is a public interest in disclosing who is making such important decisions, and if there is no difficulty in getting people to serve on a panel, it would be difficult to argue that the public interest requires their identity to be withheld. On the other hand if we have good evidence that it is extremely difficult getting people to serve on a particular panel, and that the risk of publicly identifying panel members would make it harder to find

appropriate members to serve in future, that could swing the public interest balance away from disclosure and towards withholding.

8. Formulation of policy/free and frank advice. S 35 may be relevant where the information held concerns the formulation of government policy. It is more likely, however, that s36 may be engaged, for example where advice has been given to Ministers (but only if it can be shown that the free and frank provision of advice to Ministers, or the free and frank exchange of views, would, or would be likely to, be inhibited. In each case, where it is proposed to withhold information, a public interest balancing test must be carried out. There is a public interest in being reassured that appointment exercises are carried out fairly and efficiently. However, Ministers must also be able to consider recommendations put to them and consider alternatives. Disclosure of such advice might deter those offering such advice from being fully frank and open.
9. It should be noted that there is already independent scrutiny of certain public appointments by the Independent Assessor, and there is a requirement to comply with the OCPA Code. This might reduce the public interest in disclosure of the information.
10. Confidentiality Where information has been given and confidentiality has been requested, or there is an implied duty of confidentiality, this information might be withheld under s41, but only where the

information is genuinely confidential. Simply marking a document as being in confidence does not automatically give it the necessary quality of confidence. Only where disclosure of the information would constitute an actionable breach of confidence in the courts will there be a reasonable prospect of s41 applying. Where a panel member has insisted on his identity being kept confidential, including after the conclusion of the exercise, we might well accept the duty of confidentiality, especially if there were few alternative members. In those circumstances, his identity should be kept confidential.

11. Commercial interests Requests for information concerning contractual relationships with outside firms, such as recruitment agencies, should be considered in the light of whether any commercial harm would arise from disclosure of any elements of the contract. It may well be possible to disclose much of the contract while withholding any commercially sensitive information under s43. Any information relating to a contract with a recruitment agency whose disclosure would prejudice the commercial interests of the agency or the public authority should be withheld. Also, any information which, if disclosed, would, or would be likely to, prejudice any other person's commercial interests (e.g. information which would prejudice candidates' existing employment) should be withheld. Any assertion of commercial confidentiality should be assessed on a case by case basis.

12. Timing The timing of disclosure will be relevant. Identifying assessment board members before an interview could expose them to lobbying or undue political or other influence. Disclosure of their identities after the selection had been made would be less likely to expose them to such pressures. Although there should be a presumption that names may be disclosed, especially in the case of more senior appointments, such disclosure might prejudice the ability to mount successfully future recruitment exercises, as people might not wish to be involved in the recruiting process if their names are likely to be released. The likelihood of this occurring will need to be considered on the facts of each case. It would clearly not be in the public interest if the best people for a recruitment exercise (particularly a high-level one) were not involved.

Referral points

13. Working assumptions do not fit all situations. The referral points set out below describe specific situations where the working assumption (either to release information or withhold information) should not be used. The fact that the assumption does not apply **does not mean you should automatically release the information**. In these circumstances, the information request should be **referred** to a more senior member of staff, or a dedicated FOI practitioner, for them to consider:

- You do not think the assumption applies to the information;
- The request states that the applicant is asking for an internal review of an earlier decision to refuse to release information – working assumptions are only designed to be used on the first occasion that information is requested. Appeals against decisions to withhold information may need more careful consideration and should therefore be referred;
- The information relates to a matter covered by the Environmental Information Regulations (The EIRs cover all information relating to: air, water, land or soil, flora or fauna, natural sites, the built environment, and effects on health and safety as a result of changes in the environment.) EIRs are a different regime, the exceptions work differently and more factors need to be considered. All EIR cases need to be referred;
- Part or all of the information is already in the public domain, either through official channels, or through leaks or unattributable briefing. In these cases, the assumption could have the effect of confirming that a leak has taken place. In all such cases, extra care is needed to ensure that refusals to release information are more carefully framed to avoid this, and all cases of this type should be referred.

Working assumption – Shared information relating to the Efficiency Programme (or Gershon Review)

Category of Information

1. Information held relating to the Efficiency Programme. In particular information held in the following shared documents:
 - Efficiency Delivery Plans;
 - Departmental Action Plans;
 - Internal management documents
 - Reports to PM and Chancellor.

Working Assumption

2. Information, which should generally be **disclosed**, is listed below.
 - Efficiency Technical Notes*
 - Efficiency Review Final Report: Releasing Resources to the Front Line*
 - Assessment criteria
 - High level risk register
 - Organisational Chart*
 - Stakeholder Map
 - Communication Plan
 - Retrospective activity and event timetable
 - PQ answers*
 - FAQs*

- Board and advisory group membership
- Retrospective agendas
- SLAs for Change Agents
- Programme definition documents including Project Initiation Documents (PIDs), mandates etc.
- Presentations given (e.g. to staff)
- Question & Answer documents (e.g. for staff)

Some of this information is already in the public domain (marked by an asterix (*) as appropriate). Therefore it may be appropriate to **withhold** citing s21 (information accessible by other means), though you should direct the applicant to where the information is available

3. **Withhold** - Information which if released would undermine the ability to reach the objectives of the Efficiency Programme - citing s36 (prejudice to effective conduct of public affairs). This information is normally contained in the following shared documents:

- Efficiency Delivery Plans;
- Departmental Assessments;
- Departmental Action Plans, and Improvement Plans;
- Milestone Chart;
- Programme report and presentations to the PM and Chancellor

4. **Withhold** - Information relating to redundancies / relocation of specific staff that would allow individuals to be identified, citing s40 (personal information).

Reason for the working assumption

5. The Efficiency Programme is a significant public sector change agenda, which will produce efficiency savings of £21.5 billion a year by 2008 to be released back into front line services. The programme is intended to create a culture of continuous improvement. When the programme is over, efficiency will be embedded as a key objective both for individuals and organisations.
6. There is significant interest in the Efficiency Programme from both the general public and the media, and as such a significant amount of information is pro-actively released. However it is recognised that excessive disclosure could undermine the objectives of the Efficiency Programme; for this reason some of the detailed information should be withheld.

The Public Interest Test – when considering s22, s36 and s43

7. There is a general public interest in disclosure, and to make evident the reasons for decisions made by public authorities, which have been examined. Disclosure may also lead to better informed public debate, with an increased public participation in decision making.

8. There is a significant public interest in improved efficiency in the public sector, such as the Efficiency Programme seeks to achieve, through:
- releasing extra resources for priority public services;
 - delivering high and continuously improving standards within the public sector;
 - making better use of existing front line resources (e.g. by reducing bureaucracy) which will allow public service professionals to spend more time delivering the services people want.
9. There is a strong public interest in enhancing scrutiny of the delivery of public services and the efficient use of public money by public authorities to this end. As such there is a clear public interest in public authorities being robustly examined to ensure that they are discharging their functions by using their resources in an efficient and effective way. The Efficiency Programme seeks to maximise this efficient use of resources by public authorities.
10. In examining the effectiveness of public authorities, the process is enhanced when any information produced relating to the Efficiency Programme is full and frank. There is a need to rigorously assess the merits and demerits of the effectiveness with which public authorities are discharging their functions. The prospect of disclosure of specific

information may undermine or restrain both the submissions to, and the reports and analysis of, the Efficiency Programme.

11. Moreover, the successful implementation of decisions made as part of the Efficient Programme requires sensitive and appropriate handling of internal staff issues, especially in relation to relocation and changes in the allocation of resources. It is likely a failure to handle staffing issues such as potential redundancies or relocations would undermine staff morale, prejudicing the conduct of public affairs, and in some cases the commercial interests of the public authority.

In summary, the prospect of excessive disclosure has the potential to prejudice both the process by which the Efficiency Programme operates and the achievement of its objectives. Therefore the general working assumption is that information that would undermine the ability to achieve the objectives of the Efficiency Programme should be withheld citing s36 (prejudice to effective conduct of public affairs).

Referral Points

12. Working assumptions do not fit all situations. The referral points set out below describe specific situations where the working assumption (either to release information or withhold information) should not be used. The fact that the assumption does not apply **does not mean you should automatically release the information.** In the following

circumstances, the information request should be **referred** to a more senior member of staff, or a dedicated FOI practitioner, for them to consider:

- The request relates to information in the following categories where it will sometimes be the case (subject to detailed consideration of the public interest test) that release will not undermine the ability to achieve the objectives of the Efficiency Programme and the application of appropriate exemptions:
 - Report data;
 - Correspondence;
 - Departmental engagement plans;
 - Retrospective meeting papers;
 - Retrospective meeting minutes;
 - Programme budgets
- The request relates to information that is intended for future publication. The Government has committed to publicly report progress towards meeting efficiency targets. Therefore it may be appropriate to withhold certain information citing s22 (Information intended for future publication); however, an assessment will need to be made of whether it is reasonable in all the circumstances to withhold the information until the date of publication; and the public interest test is satisfied.

- The request relates to information the release of which would affect commercial interests. If this is the case, you should refer to the guidance on s43 (commercial interests).
- The request states that the applicant is asking for internal review of an earlier decision to refuse to release information – working assumptions are only designed to be used on the first occasion that information is requested. Appeals against decisions to withhold information may need more careful consideration and should therefore be referred;
- The information relates to a matter covered by the Environmental Information Regulations (EIRs). The EIRs have been closely aligned with the FOI Act to ensure that there are as few operational differences as possible. However, there are some differences between the two regimes, particularly in that some of the exceptions in the EIRs are worded differently from the FOI Act exemptions, and all of the EIR exceptions are subject to the public interest test. If there is any doubt as to whether or not information is covered by the EIRs, the case should be referred. Further guidance on the EIRs can be found at <http://www.foi.gov.uk/guidance/exguide/sec39/chap02.htm> and <http://www.defra.gov.uk/corporate/consult/envinfo/index.htm>

Working assumption – Prime Minister's Delivery Unit (PMDU)

Category of Information

1. PMDU papers, in particular delivery reports; priority reviews; monthly notes to the PM and stocktake briefings.

Working Assumption

2. For information relating to the examination of the economy, efficiency or effectiveness of other Government Departments or Agencies etc. by PMDU - **withhold** citing s33 (2) (Audit functions).
3. **Note:** the nature of PMDU papers means that they will often also be concerned with the provision of policy advice, recommendations, suggested options, and opinions. In these cases you should refer to the separate working assumptions on Policy Advice. Other working assumptions or exemptions may also be relevant.

(1) Working Assumption – information relating to the examination of the economy, efficiency or effectiveness of the activities of other Government Departments or Agencies by PMDU

Withhold: citing s33 (2) (Audit functions)

Note: This assumption applies regardless of whether the information is held by PMDU or the Government Department or Agency that was the subject of review by PMDU. The s.33 exemption is applicable to this class of information, subject to the public interest test, regardless of where the information is held.

Reason for the working assumption

4. The PMDU works in partnership with the Treasury, No. 10, other parts of the Cabinet Office and stakeholder departments, to assess delivery and provide performance management analysis. It has a shared responsibility at the centre of Government, with the Treasury, for joint Public Service Agreement (PSA) targets. The overriding function of the PMDU is to ensure the delivery of top public service priorities. To this end the PMDU operates an audit function of Government departments and other public authorities. The PMDU examines the efficiency and effectiveness with which public authorities achieve their policy objectives and therefore information relating to its functions may be considered in the context of section 33(1)(b) (Audit functions).

5. The FOI Act is not intended to undermine or prejudice the way in which public authorities are audited. The importance of protecting the integrity of the auditing process is made clear within the Act. Information which might prejudice the examination of the economy, efficiency or effectiveness of a public authority is explicitly identified as potentially exempt information, under section 33(2) (Audit functions) subject to the public interest test.

The Public Interest Test

6. There is a general public interest in disclosure, and to make evident the reasons for decisions made by public authorities, which have been examined. Disclosure may also lead to better informed public debate, with an increased public participation in decision making.
7. There is a public interest in enhancing scrutiny and transparency of accountability of the delivery of public services and the use of public money by public authorities to this end. As such there is a clear public interest in public authorities being robustly examined to ensure that they are discharging their functions by using their resources in an efficient and effective way. The PMDU is one of the mechanisms through which this examination takes place
8. There is a strong public interest in the robust and uninhibited examination of the economy, efficiency and effectiveness with which public authorities use their resources in discharging their functions. The

process itself facilitates the accountability and effectiveness of public bodies, both in terms of their decision making and the spending by them of public money. Therefore there is a public interest in protecting the effectiveness of the process.

9. There is also a wider public interest in the transparency of the audit and examination process (as opposed to the specific information considered here), and that this function is robustly performed. However, significant disclosure of the detail of the audit processes could work against the public interest in the unrestrained and unprejudiced audit and examination of public authorities.
10. In examining the effectiveness of public authorities, the process is enhanced when any papers produced by, or submissions made to, the PMDU are full and frank. There is a need to rigorously assess the merits and demerits of the effectiveness with which public authorities are discharging their functions. The prospect of disclosure of specific information may undermine or restrain both the submissions to, and the reports and analysis of, the PMDU. This would adversely affect the ability of the PMDU to carry out its functions effectively.
11. In summary, the prospect of disclosure has the potential to prejudice the process by which the PMDU exercises its functions. Therefore the general working assumption is that information in this category should be withheld citing s 33 (2) (Audit functions) of the Act.

Referral Points

12. Working assumptions do not fit all situations. The referral points set out below describe specific situations where the working assumption (either to release information or withhold information) should not be used. The fact that the assumption does not apply **does not mean you should automatically release the information**. In these circumstances, the information request should be **referred** to a more senior member of staff, or a dedicated FOI practitioner, for them to consider:

- The request states that the applicant is asking for internal review of an earlier decision to refuse to release information – working assumptions are only designed to be used on the first occasion that information is requested. Appeals against decisions to withhold information may need more careful consideration and should therefore be referred;
- The information relates to a matter covered by the Environmental Information Regulations (EIRs). The EIRs have been closely aligned with the FOI Act to ensure that there are as few operational differences as possible. However, there are some differences between the two regimes, particularly in that some of the exceptions in the EIRs are worded differently from the FOI Act exemptions, and all of the EIR exceptions are subject to the public interest test. If there is any doubt as to whether or not information is covered by the EIRs, the case should be referred. Further guidance on the EIRs can be found at

<http://www.foi.gov.uk/guidance/exguide/sec39/chap02.htm>

and

<http://www.defra.gov.uk/corporate/consult/envinfo/index.htm>

- This working assumption should only be considered to be valid in respect of requests for information less than 2 years old, since the public interest in withholding the information is likely to have changed and mean that a more careful argument is needed when refusing to release information. All such cases should be referred.

Working Assumptions – Gateway Review Information

Category of Information

1. Information from Gateway Reviews 0-3
2. Major acquisition programmes and procurement projects in civil central government are subject to OGC Gateway Reviews. These are carried out at key decision points by a team of experienced people, independent of the programme / project team.
3. Gateway Reviews are broken into a series of stages from 0 to 5 (note: Gateway Reviews 4 and 5 are not covered by this working assumption):
 - Gateway Review 0 – Strategic assessment
 - Gateway Review 1 – Business justification
 - Gateway Review 2 – Procurement strategy
 - Gateway Review 3 – Investment decision
 - [Gateway Review 4 – Readiness for service]
 - [Gateway Review 5 – Benefits realisation]
4. *Note:* where a request for information relating to Gateway Review (whether or not the Department is holding the papers) is received the Clearing House should be alerted.
5. Information as to whether or not a Gateway Review had been carried out -
release

6. Basic Review information - version number, date of issue, department and review dates –**release**;
7. Names of Review Team Leader and Members – **withhold** (*if specifically requested see the referral points*)
8. Background including aim of the project, reasons/ objective for the project, etc. – **release**;
9. Purpose and conduct of the Review – **release**;
10. List of documents reviewed – **release**;
11. Conclusion & Summary of findings; Findings & Recommendations; Red Amber Green (RAG) Status; List of interviewees; Summary of recommendations - **Withhold** citing s33 – Information the release of which would, or would be likely to, prejudice the exercise by any public authority of its auditing functions.

The Gateway Review Process

12. The OGC Gateway Process examines a programme or project at critical stages in its lifecycle to provide assurance that it can progress successfully to the next stage; the process is based on techniques that lead to more effective delivery of benefits together with more predictable

costs and outcomes. It is designed to be applied to delivery programmes and procurement projects, including those that procure services, property/construction, IT-enabled business change and procurements using framework contracts. It falls within the ambit of s33 which includes examinations into the efficiency, economy and effectiveness with which public authorities use their resources to discharge their public functions.

13. The OGC Gateway Process provides assurance and support for Senior Responsible Owners (SROs) in discharging their responsibilities to achieve their business aims by ensuring that:

- the best available skills and experience are deployed on the programme or project ;
- all the stakeholders covered by the programme/project fully understand the programme/project status and the issues involved ;
- there is assurance that the programme/project can progress successfully to the next stage of development or implementation ;
- more realistic time and cost targets are achieved for programmes and projects ;
- knowledge and skills among government staff are improved through participation in review teams ; and
- advice and guidance to programme and project teams are provided by fellow practitioners.

Public interest considerations

14. There is a clear public interest in public authorities being robustly audited and examined by an external public authority to ensure that a public authority is discharging its functions in an efficient and effective way. The OGC process provides this function to Government departments and other public authorities through the OGC Gateway Review process.

15. There is an overriding public interest in the continued robust assessment of major procurement projects in order to ensure that the maximum benefits are realised by the project.

16. There is a wider public interest in the transparency of the assessment of major projects, and knowing that this function is robustly performed. However, significant disclosure of the detail of the processes could work against the strong public interest in the unrestrained and unprejudiced audit and examination of the major projects of public authorities.

17. In examining the effectiveness of public authorities it is important that any papers produced in relation to Gateway reviews are full and frank. Interviewees need to feel free to share their insights and reviewers need to be able rigorously to assess the merits and demerits of major projects. The prospect of disclosure may undermine or restrain both the submissions to, and the reports and analysis of, Gateway Reviewers. This would be to the detriment of the Gateway process, and, in the terms of s33, to the

detriment of examinations into the efficiency, economy and effectiveness with which public authorities use their resources..

18. In summary, the prospect of disclosure has the potential to prejudice the quality of Gateway reviews. These perform an important role in ensuring that public authorities are using their resources in an efficient and effective way and there is therefore a strong and vital public interest in maintaining their efficacy. The general working assumption is that the Conclusion & Summary of findings, the Findings & Recommendations, the RAG Status, the list of interviewees, and the summary of recommendations should be withheld citing s 33 of the Act.

Referral Points

19. Working assumptions do not fit all situations. The referral points set out below describe specific situations where the working assumption (either to release information or withhold information) should not be used. The fact that the assumption does not apply **does not mean you should automatically release the information.** In these circumstances, the information request should be **referred** to a more senior member of staff, or a dedicated FOI practitioner, for them to consider:

- The request is for Gateway Reviews 4 or 5, where the nature of the information is sufficiently different to that for Gateway Reviews 0 to 3;
- The names of the Review Team Leader and Member are specifically requested (in which case you should refer the case);

- The request states that the applicant is asking for internal review of an earlier decision to refuse to release information – working assumptions are only designed to be used on the first occasion that information is requested. Appeals against decisions to withhold information may need more careful consideration and should therefore be referred;
- The information relates to a matter covered by the Environmental Information Regulations (The EIRs cover all information relating to: air, water, land or soil; flora or fauna, and natural sites; the built environment; and effects on health and safety as a result of changes in the environment). EIRs are a different regime, the exceptions work differently, and more factors need to be considered - **all EIR cases need to be referred;**
- The information relates to Defence Procurement, National Security, the Security Services, or International Relations; or
- Part or all of the information is intended for future publication, in which case, section 22 may apply.
- This working assumption should only be considered to be valid in respect of requests for information less than 2 years old, since the public interest in withholding the information is likely to have changed, meaning that a more careful argument is needed when refusing to release information. All such cases should be referred.

MATRIX

DT
cc: KEG

dti

28 February 2005

The Rt Hon Patricia Hewitt MP
SECRETARY OF STATE
FOR TRADE AND INDUSTRY

The Rt Hon Lord Falconer of Thoroton
Secretary of State and Lord Chancellor
Department for Constitutional Affairs
Selborne House
54-60 Victoria Street
LONDON
SW1E 6QW

Dear Charlie,

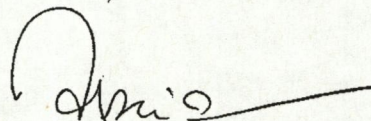
**GOVERNMENT'S RESPONSE TO THE CASC REPORT ON
IMPLEMENTATION OF FREEDOM OF INFORMATION**

I am responding to Baroness Ashton's letter to you of 31 January enclosing the draft Government response to the CASC report on implementing the Freedom of Information Act.

I am content with the draft response. While there may be some mileage in a few points of criticism that the Committee have raised, I am conscious of the enormity of the FOI initiative and the good work that your Department put into place to prepare Government and the public sector for FOI.

I am copying this letter to the Prime Minister, MISC28 and to Sir Andrew Turnbull.

Best wishes,



PATRICIA HEWITT

Department of Trade and Industry
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London
SW1H 0ET

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Foreign &
Commonwealth
Office

NS
DH
DCU

28 February 2005

William Ehrman Esq CMG
Chairman JIC
Cabinet Office

London SW1A 2AH

Mr. Ehrman,

The Foreign Secretary was grateful for your minute of 24 February about the Freedom of Information Act request relating to the Iraq Dossier.

He is content to be cited as a "qualified person" as requested.

I am copying this letter to Sir Nigel Sheinwald and David Hill (No.10)

Yours ever,

Irfan Siddiq
(Private Secretary)

RESTRICTED

From: Daniel Thornton
Date: 25 February 2005

PRIME MINISTER

cc: Jonathan Powell
Ivan Rogers
David Hill
Sally Morgan
Tom Kelly
Godric Smith
Simon Morys
Hilary Coffman

FOI - DIARIES

As requested, DPM has produced a deal on the proactive release of Ministerial diaries.

1. At your bilateral with the DPM on 23 February the DPM outlined to you the state of play on proactive release of Ministerial diaries. You asked for a note.
2. I attach Charlie Falconer's proposal, with a covering note from DPM to you, which slightly modifies the timing of the release (in March there would be a release of the diaries for January, and there would not be a further release until July, when February, March and April would be released.)
3. It is clear that the Information Commissioner will take the view that some diary information should be released – and this will include releasing information that will at the very least complicate the management of your diary (we know this because the Parliamentary Ombudsman who was responsible for appeals under the Code has taken a clear view that the fact of meetings, as opposed to the record, cannot usually be withheld – and the Commissioner will take the Ombudsman's position as his starting point). Diaries are going to be a difficult area regardless of the decision about proactive release.
4. The question is whether proactive release makes the issue more or less difficult. There is a case that proactive release will not help because:
 - Proactive release is generally a good way of dealing with FOI – it allows management of the story on our own terms, and often kills media interest by providing masses of detail - but only where a clear line in the sand can be drawn. It is very difficult to do this with

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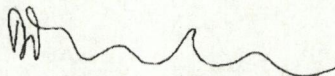
- 2 -

diaries, particularly because our FOI regime is so new (while we know how the Ombudsman viewed the issue, we do not know how much further the Commissioner will go). While there is a case for doing something proactive early on to signal a new culture of openness, there is also a good case for waiting until we have some case law in this area. It is notable that other countries with comparable FOI regimes – Australia, Canada, New Zealand – have not adopted proactive release of diaries.

- As you will see in the attached example of Charlie Falconer's diary, the proposed proactive release policy as currently formulated will not involve releasing the most sensitive information. An analysis of diary requests received by the Cabinet Office indicates that only 10% of the requests would be dealt with by the proactive release policy. For the rest of the requests, we would either resist disclosure, or disclosure would need to be considered on a case-by-case basis (depending upon the circumstances of the meeting – i.e. whether the other party considers the fact of the meeting to be confidential). So the proactive release would help in only a few cases. For other cases, we would be faced with the same difficult decisions as we are at present. And proactive release could raise the profile of the issue, so that there are more requests on diaries, not fewer.

5. **However there is a difficult handling issue.** The DPM has reluctantly come round to the view that proactive release is necessary. You asked him to come up with a deal, and he has done so. Much of the Cabinet would be content if you said that we should not do anything proactive now, but some – Patricia Hewitt, Tessa Jowell, Peter Hain, Charlie himself – would not. There would be a good chance of a leak (there has already been one leak to the FT on this subject). So I **recommend that you send the attached response to the DPM.** You should be aware that it is likely that the central coordination of the diaries release, as proposed in this letter, will take some time.

*OK but that's a
palaver.*



DANIEL THORNTON

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- 3 -

DRAFT PM RESPONSE TO THE DPM LETTER OF 23 FEBRUARY

I am grateful to you for producing this sensible compromise.

There two areas which I think we need to be clear about:

- As I understand it, the current proposal covers all Ministers. I am not aware that junior Ministers have received a significant number of FOI requests for diary information. My view is that we should restrict proactive release to full members of Cabinet. We can review this as necessary, depending upon the volume of requests for junior Ministers' diary.
- It will be important that we approach the proactive release consistently. Ministers should submit proposed releases in draft to the Cabinet Office so that we can ensure that the principles which you have established are interpreted consistently.

Subject to these points, I am content for you to notify Cabinet colleagues of this. I do not see a need for a further Cabinet discussion of this issue at this stage.

RESTRICTED



Deputy Prime Minister

26 Whitehall
London
SW1A 2WH

Tel: 020 7944 8623
Fax: 020 7944 8621

PRIME MINISTER

At Cabinet on 10 February you asked me to find a common position on the Freedom of Information Act and Ministerial diaries.

I met with Charlie Falconer and our colleagues who still have concerns yesterday afternoon. Hilary Armstrong, Margaret Beckett and John Spellar (in place of Paul Murphy) attended the meeting. All other Cabinet colleagues had indicated they were content with the proposal in Charlie's letter of 7 February (attached).

We agreed that we needed to adopt a position we could defend. A limited pro-active release of material will give us that position and will help us defend requests for further releases. Everyone felt that some information from diaries had to be released under the Act, as they do in many other countries across the world as I discussed with my Australian opposite number yesterday. The alternative to a common, proactive approach is that we would be picked off one-by-one through the inevitable challenges we will face. The information that Charlie proposes to release pro-actively is pretty anodyne.

In summary, we agreed the main thrust of Charlie's proposal with a few modifications. The agreement is that:

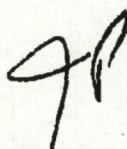
- We should adopt the categories set out in Charlie's letter, subject to one or two clarifications, and we should implement them consistently;
- We should be proactive and release information quarterly;
- We should make the first release in March, with a further release in the first week of July covering February, March and April;
- The first release should cover only the month of January 2005 and should not as Charlie previously proposed cover the months of November and December before the Act came into force; and
- We should apply the proposal to all Ministers including junior Ministers.

With regard to timing of the first release, Margaret suggested that we publish only the framework in March (without information from individual diaries) indicating that we would publish information for January, February and March in early July. Charlie did not think this would be acceptable to the Information Commissioner and colleagues

did not push this option. We concluded that this would not be a sustainable position. It would increase the risk of our preferred approach unravelling quickly.

Colleagues also raised a couple of points of detail. John was reassured by Charlie's clarification that meetings with political parties in Northern Ireland would not fall under the "stakeholder or representative group" heading and would not be released on a proactive basis. Charlie agreed that there might be other meetings with other representative groups which should not be disclosed automatically, for example where the group themselves had requested that the meeting be private. He also agreed that the publication of information would be set in a context which made it clear that it was not a record of all the meetings of a particular Minister.

Overall, I think we have reached a sensible compromise which enables us to operate as required under the Act whilst protecting the Ministerial space we need to have free and frank policy discussions. A consistent approach will mean that we can vigorously defend the line we have agreed. If you agree, I suggest Cabinet quickly endorses this revised proposal on Thursday this week.

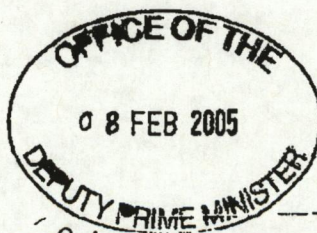


JOHN PRESCOTT
24 February 2005



dca

Department for
Constitutional Affairs
Justice, rights and democracy



The Rt Hon Lord Falconer
of Thoroton
Secretary of State and
Lord Chancellor
Selborne House
54 Victoria Street
London SW1E 6QW

RESTRICTED - POLICY

PRIME MINISTER

Richard
Smith

~~Secretary of State~~/Department for Information

Previous MST case:

PS/DPM PS/PERM SEC PS/All Mins PS/SPADS

Peter Unwin Andrew Pearson

Martin Harding Derek Flews David Frow

David A Smith Sandra Sherman Donatella Phillips

7th February 2005

Dear Prime Minister,

Freedom of Information - Ministerial Diaries

At Cabinet and MISC28, colleagues broadly supported the principles set out in my paper to Cabinet of 26 January 2005 setting out proposals for handling FOI requests relating to ministerial diary information. Following our discussions, I attach a further version, in line with the agreed principles, but setting out in more detail how the line will be drawn and the process we will follow.

I hope this takes account of the various points made by colleagues. I am putting the proposal to Cabinet on Thursday for agreement.

Firstly, I want to reiterate the reasons why we need to agree on a defensible approach. We may expect any early refusal of ministerial diary information to be swiftly submitted for internal review, and subsequently referred to the Information Commissioner, with a decision expected by him sometime in April. Given the media interest, and the overseas precedents for the release of diary information, it is clear that our diaries will come under significant pressure.

If we are seen as inappropriately withholding information, where the public interest is clearly in favour of disclosure, it will undermine the credibility of the Government's approach not just to diaries, but to other categories of information where exemptions might be applied. The wider implications are clear: the Commissioner would be likely to place much less faith in the Government's analysis of where the public interest lies. In other words, we will significantly undermine our ability to protect the legitimate interests that we wish to defend. A pragmatic and sustainable approach in this area will mitigate the risk of undermining our wider approach and also allow us robustly to defend where the line is drawn on diary information.

Secondly, I want to set out the principles on which we agreed that our approach should be based. I emphasise that these principles are a starting point. There will of course be occasions where these broad principles do not apply, and exemptions in the Act are

engaged and the public interest test must be applied. The process we put in place will ensure these concerns can be highlighted at an early stage and then appropriate consideration can be given to exemptions and the public interest test.

(a) for proactive disclosure three months in arrears

The following categories of diary information would be proactively published. For example, in March diary information from November 2004 to January 2005 will be published, in June from February 2005 to April 2005 and so on.

- i. all engagements already in the public domain including speeches, Parliamentary commitments, visits, etc.
- ii. meetings of Cabinet;
- iii. meetings of Cabinet Committees;
- iv. regular meetings in the course of business with representative bodies, trade organisations etc. (For example: Law Society, NFU, CBI etc.). This would also include office holders in representative capacity. Individual meetings in this category might need to be withheld if there is a particular public interest in doing so, e.g. where commercial interests or sensitive negotiations are involved;
- v. meetings with representatives of overseas governments and international organisations and courtesy calls. Individual meetings in this category might need to be withheld if there is a particular public interest in doing so, e.g. where issues of national security or international relations are involved.

(b) for consideration on case-by-case basis when request is made

- vi. meetings with individuals or individual companies. A number of exemptions may be applicable depending on the context, for example, s36 (Prejudice to effective conduct of public affairs) or s43 (Commercial Interests).

(c) resist disclosure

- vii. internal or inter-departmental meetings with ministers and/or officials;
- viii. all future engagements (except where they have been formally advertised or announced e.g. speaking engagements etc.).

(d) Information 'not held' for the purposes of FOIA

(d) information 'not held' for the purposes of FOIA

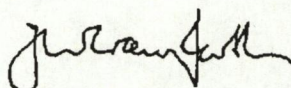
- ix. Political, constituency and personal meetings. Where a meeting might be considered political, the test will be whether a Minister attended the meeting in a Ministerial or Party capacity.

Colleagues agreed we should use these principles to govern a proactive approach to the disclosure of diary information. A proactive approach has two key advantages – firstly it gives us a vehicle by which to deal with a number of requests, by pointing towards the future publication of the information, and secondly, it allows us to take control of the process. Rather than having to respond to numerous requests we will be able to manage the process and resource implications of these requests in a manageable way.

At annex A, I set out a proposed process and timetable for such an approach. I recognise that there are other alternatives, either for a longer period on the first occasion and/or a different period of arrears, however I believe my proposal is a measured approach in the first instance. Additionally, at annex B in response to queries from colleagues I set out two examples of how these circulars might appear. One is broadly based on my diary, the other on Patricia Hewitt's, whom I must thank for allowing me to use her diary as an example in this way.

This letter is copied to members of the Cabinet, MISC28 and Sir Andrew Turnbull.

Yours sincerely,



PR. LORD FALCONER OF THOROTON

(Approved by Lord Falconer and signed
on his behalf by the Private Secretary)

Annex A – The Proactive Approach

Why should we proactively disclose?

Proactive disclosure provides a sustainable and positive approach to the release of diary information. The proactive approach gives Government control of the process by which diary information is released and allows a co-ordinated and common approach to the release of information, whilst minimising the resource implications.

What would we disclose?

A list of meetings / engagements drawn from each Minister's diary based on the principles set out under part (a) of the proposal.

In addition to the detail, a general form of words would be agreed to cover general inter-ministerial and minister-civil servant engagements, the detail of which will generally be withheld citing section 35(1)(a).

How would we disclose this?

In order to meet colleagues concerns about security, I propose we release the information in the form of a weekly list, not specifying the day or the time. For example:

Diary Circular of the Lord Chancellor and Secretary of State for Constitutional Affairs, Lord Falconer

Engagements 1 November 2004 to 31 January 2005

Week commencing Monday 1 November 2004

Lord Falconer met with the Law Society, the Bar Council and...

Lord Falconer attended the Law Society dinner and gave a speech on...

Lord Falconer attended a conference on reform of family justice..

In addition, the Lord Chancellor attended a range of meetings with ministerial colleagues and his officials to discuss a range of policy issues.

When would we disclose this?

I propose that the first tranche would be published in March, containing information from November, December and January. This would allow time to prepare the Circulars and for the Minister responsible to agree them. It would also allow officials to check any cross references and ensure consistency. A longer time lag is likely to be unacceptable to the Information Commissioner.

Publication date	Information from
March 2005	November 2004 December 2004 January 2005
June 2005	February 2005 March 2005 April 2005
September 2005	May 2004 June 2004 July 2005

It would be sensible to review progress in the light of experience after the releases in June – by which time six months' worth of diary material will have been released.

The review should cover:

- Time lag between diary engagements and date details released
- Number and nature of requests that follow on from release of circulars, e.g. regarding dates of engagements
- Response of the Information Commissioner

How would the process work?

Whilst the precise details can be agreed in consultation with Minister's offices, we would propose:

Private Offices complete a template and send through to the Clearing House. In it they would identify meetings in category (a). Where there are concerns about releasing a particular meeting in this category, this should be highlighted and Clearing House would advise on a case by case basis.

Private Offices may wish to consider putting in place a procedure to highlight where meetings/engagements may need to be removed from the return.

Annex B: Examples

Diary Circular of the Lord Chancellor and Secretary of State for Constitutional Affairs, Lord Falconer

Week commencing Monday 7 June 2004

Lord Falconer carried out swearing-in ceremonies for Shari Barnes, David Turner, Peter Wulwk, District Judge Nicolas Madge, Richard Foster and Jeremy Carey.

He attended the weekly Cabinet meeting and two Cabinet Committees.

His Parliamentary commitments comprised sitting as Speaker of the House of Lords, participating in the Lords Committee stages of the Constitutional Reform Bill and appearing before a session of the Constitutional Affairs Select Committee to answer questions on the Supreme Court elements of that Bill.

He attended a reception in honour of Lord Irvine at which Lord Irvine was awarded the Commander's Cross of the Order of Merit of Poland and a dinner at the Law Society.

He gave interviews to Hearsay magazine, Legal Week and Frances Gibb of The Times.

He made a visit to Liverpool and met resident groups in Kirkby and Huyon, attended a lunch hosted by Knowsley Metropolitan Borough Council, met local police to hear views on courts and the use of ASBOs, and visited a Community Justice Centre Pilot Team and Liverpool City Magistrates' Court.

In addition, Lord Falconer attended a range of meetings with ministerial colleagues, his officials and others to discuss a range of policy issues.

Examples of engagements not included in the circular

- Weekly Forward Look meeting with officials and Special Advisers
- Ministers Lunch
- Briefing meeting in advance of MISC28
- Briefing meeting on Government amendments for Committee stage of Constitutional Reform Bill
- Pre-Committee meeting with peers on Constitutional Reform Bill
- Meeting with officials, Special Advisers and Chief Executive of Legal Services Commission to agree way forward on Very High Cost Criminal Cases.
- Phonecall with Judge LJ to discuss the Technology and Construction Court
- Political meeting with Special Advisers and Ministers
- Meeting to discuss Supreme Court with Senior Law Lord, Lord Bingham

Examples of details 'not held' for the purposes of the FOI Act

- Private dinner on Monday evening

- Private lunch with Andrew Rawnsley and Patrick Wintour
- Wedding attended on Saturday

Diary Circular of the Secretary of State for Trade and Industry

Week commencing Monday 1 November 2004

Patricia Hewitt attended the weekly Cabinet meeting and two Cabinet Committees and answered oral parliamentary questions on DTI and women's issues [or suitable formula for describing oral PQs].

She chaired the first meeting of the West Cumbria Strategic Forum, spoke at an Efficiency Seminar for senior DTI officials, and attended a reception to celebrate the 30th birthday of Women's Aid.

She held meetings or phone calls with Julie Mellor, Equal Opportunities Commission; Bert Massie, Disability Rights Commission; Bryan Gray, North-West England Development Agency; Allan Leighton, Royal Mail; David Frost and Bill Midgley, British Chambers of Commerce; and area MPs and local representatives from the North and West of Scotland.

She participated in a two-day British-Spanish conference in Madrid, Spain, at which she gave a keynote speech.

In addition, Patricia Hewitt attended a range of meetings with ministerial colleagues, her officials and others to discuss a range of policy issues.

Examples of engagements not included in the circular

- Lobbying phonecalls made to Stephen Hughes MEP and Dutch Minister De Geus
- Meeting with recruitment consultants to discuss senior appointment
- Regular meeting to discuss Royal Mail issues with DTI officials
- Phonecall with Group Vice-President of Ford Cosworth
- Bilateral meeting with Alan Milburn
- Bilateral meeting with DTI Permanent Secretary
- Bilateral meeting with Charles Clarke
- Political meeting on childcare with other Ministers and No 10 special advisers

Examples of details 'not held' for the purposes of the FOI Act

- Political engagement with the Parliamentary Labour Party
- Cross-party meeting with Leicestershire Chief Constable on constituency issues

CONFIDENTIAL

Antony
I think we should refer to release as
correspondence with foreign leaders as I
just do it except the precedent point.

JONATHAN POWELL

Thurs.

1/3

From: Antony Phillipson
Date: 25 February 2005

cc: Nigel Sheinwald
Kim Darroch
Ivan Rogers
Daniel Thornton
Ian Gleeson

FOI REQUEST: MARTIN ROSENBAUM

Martin Rosenbaum, a BBC Radio executive producer, has submitted an FOI request asking to see all correspondence between the Prime Minister and Goran Persson since 1 May 1997. We have told Rosenbaum that we have such documents, which are covered by the s27 exemption concerning relations with a foreign government, and are assessing whether the public interest is best served by releasing them or withholding them.

I attach the relevant papers (for you only). **I recommend that we release them** (NB - Rosenbaum has expressed a preference, as he is entitled to do under the Act, to come here to inspect the documents in person). The reasons for doing so in this case (this does not set a precedent as all cases are judged on their merits) are as follows:

- there is nothing contentious or sensitive in the papers to merit using the exemption on this occasion;
- even if we did withhold there is a high likelihood that Rosenbaum would make a similar request to the Swedish Government and the Embassy advises that this would be granted. Indeed it is possible that this is Rosenbaum's aim.

We do not have a duty to consult Persson's office to seek their consent or even to inform them. But I believe that we should do the latter as a matter of courtesy.

If you are content I will ask the Embassy to inform Persson's office, and then write to Rosenbaum as attached. **OK?**

Signed 25/02/05

ANTONY PHILLIPSON

CONFIDENTIAL

CONFIDENTIAL

- 2 -

DRAFT /LETTER TO MARTIN ROSENBAUM

Thank you for your e-mail of 19 January requesting access to all correspondence between the Prime Minister and Goran Persson, Prime Minister of Sweden, since 1 May 1997. Your request is being dealt with under the terms of the Freedom of Information Act 2000.

I can confirm that the Prime Minister's Office holds information which is relevant to your request. It is potentially subject to exemption under section 27(1)(a) – this permits exemption of information if its disclosure would, or would be likely to, prejudice relations between the United Kingdom and any other State. On this occasion we have assessed that the public interest is best served by disclosing the information.

Your e-mail suggested that you would prefer to inspect the documents in person. Please contact [...] to arrange this. Or we would be happy to send you copies (21 pages in total).

CONFIDENTIAL

Lalini Phoolchand



From: Grace Cassy
Sent: 10 February 2005 14:43
To: Lalini Phoolchand
Cc: Antony Phillipson
Subject: RE: FOI - Chase up

I don;t recall seeing this one. But we would anyway argue that all correspondence between the PM and other heads of government is exempt under section 27. I have done a similar response in relation to a request for info on PM-Prodi contacts: could you see if you can find the draft?

thanks

-----Original Message-----

From: Lalini Phoolchand
Sent: 10 February 2005 14:34
To: Grace Cassy
Subject: FOI - Chase up

Hi Grace

The attached case was emailed to you sometime time ago for any views / comments you may have.

The boundary date is coming up, and I would be grateful for your views / comments by COP tomorrow please.

thanks

Lalini

Rosenbaum

FOI Request

The attached document is an FOI request and has been passed to you for your assistance in identifying any relevant documents or files.

No information will be released without you being consulted

Please do not pass this request to anyone else. If you feel you are unable to help please return to DCU asap.

Any information you can provide is much appreciated. by ..27.11.05.. please

Thank you
The DCU FoI team.
Date. 24.11.05.....

Recipient's signature.....
Date.....

From: on behalf of Openness.Team
To: Martin Rosenbaum
Subject: RE: FOI request - Correspondence between Tony Blair and Goran Persson
COFOI05216

-----Original Message-----

From: Martin Rosenbaum [mailto:martin.rosenbaum@bbc.co.uk]
Sent: 19 January 2005 14:40
To: Openness.Team
Subject: FOI request - Correspondence between Tony Blair and Goran Persson

This is a request under the Freedom of Information Act.

The information I would like access to is all correspondence between Tony Blair and the Swedish Prime Minister Goran Persson since 1 May 1997.

In accordance with section 11 of the Act, I am entitled to express a preference as to how this information is to be communicated to me. I would like to visit your office in order to inspect the documents in person.

If you need any further information from me in order to deal with my request, please call me at once on 07719 437 761.

Please can you acknowledge receipt of this request by emailing me at 'martin.rosenbaum@bbc.co.uk' as soon as you receive it.

Many thanks for your co-operation.

Martin Rosenbaum

Martin Rosenbaum
 Executive Producer, Radio
 BBC Political Programmes, 6th floor, 4 Millbank, London SW1P 3JQ
 Tel: 020 7973 6132; Internal: (02) 36132; Mob: 07719 437 761

<http://www.bbc.co.uk/>

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Further communication will signify your consent to this.

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Please see <http://www.gsi.gov.uk/main/notices/information/gsi-003-2002.pdf> for further details.

NEXUS Correspondence Record

Correspondent: HE Mr Goran Persson
Swedish PM

-----:-----

Subject: No incoming letter PM handwritten thank you for brilliant way he handled the
Presidency.

Type: Ministerial

Comments:

Medium:

-----:-----

Date of Letter: 16/06/2001

Date of Receipt:

Date of Reply: 16/06/2001

Date Note Sent To Dept:

**Expected Reply Date from
Dept:**

Date Note Sent From Dept:

-----:-----

Referral Dept:

Dept Secretary:

Active: True

Stock Reply Code: 0 - Ministerial

Letter of Reply Text:

Action: PM

Pending:

File: Destroyed

-----:-----

Petition Desc:

Petition Cause:

Petition Signatory:

-----:-----

Enclosure Attached: False

Enclosure Desc:

Status:

Logged By: dsteel

Date Logged: 18/06/2001 16:54:48

-----:-----

Attachments: NONE

-----:-----

NEXUS Search IDs: CONTACT: 4732 // POSTCODE: // CORRESPONDENCE: 7769

NEXUS Correspondence Record

Correspondent: HE Mr Goran Persson
Swedish PM

-----:-----
Subject: Debate on future development of the EU

Type: Ministerial

Comments: cc Stephen Wall, Richard Abel (CO) and all E(DOP) Ministers Original letter received and filed with copy LEB 14/3 Call to FCO(Ann) who said draft returned to John Sawyer 21/3. Asked if she could send me a copy so I can clear the system. Will fax over copy. LEB 22/3 Fax copy received and sent to G Rooms with original papers. LEB 22/3 Checking with DCO/MT before typing that JS hasn't actioned original (eam) 22/3 It was actioned by JS on 21/3 and is typed and in box. Back papers given to DCO (eam 22/3) cc FCO, HMA. SLH 27/3

Medium:

-----:-----
Date of Letter: 07/03/2001

Date of Receipt:

Date of Reply: 27/03/2001

Date Note Sent To Dept: 08/03/2001

Expected Reply Date from

Dept:

Date Note Sent From Dept: 22/03/2001 13:26:37

-----:-----
Referral Dept: FCO

Dept Secretary:

Active: True

Stock Reply Code: 0 - Ministerial

Letter of Reply Text:

Action: pm mt

Pending:

File: DCO filing

-----:-----
Petition Desc:

Petition Cause:

Petition Signatory:

-----:-----
Enclosure Attached: False

Enclosure Desc:

Status: X

Logged By: shughes

Date Logged: 08/03/2001 18:56:28

-----:-----
Attachments: NONE
-----:-----

NEXUS Search IDs: CONTACT: 4732 // POSTCODE: // CORRESPONDENCE: 10881

Rosalind Redfern

From: Alex Kinnard
Sent: 21 January 2005 13:06
To: Duty Clerks FOI
Cc: Grace Cassy; Karen Lovesey; Helena Hopkins; Rosalind Redfern; Daniel Thornton
Subject: FOI request: Rosenbaum



Scanned_.pdf

✓ DCO: To search please.

Regards,
Alex DCU

Correspondence attached.
22/1

To attach
to file

Rosenbaum

FOI Request

The attached document is an FOI request and has been passed to you for your assistance in identifying any relevant documents or files.

No information will be released without you being consulted

Please do not pass this request to anyone else. If you feel you are unable to help please return to DCU asap.

Any information you can provide is much appreciated. by 27.11.05. pvc52

**Thank you
The DCU FOI team.
Date 27.11.05....**

Recipient's signature.....

Date.....

From: on behalf of Openness.Team
To: Martin Rosenbaum
Subject: RE: FOI request - Correspondence between Tony Blair and Goran Persson
COFOI05216

-----Original Message-----

From: Martin Rosenbaum [mailto:martin.rosenbaum@bbc.co.uk]
Sent: 19 January 2005 14:40
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If you need any further information from me in order to deal with my request, please call me at once on 07719 437 761.

Please can you acknowledge receipt of this request by emailing me at 'martin.rosenbaum@bbc.co.uk' as soon as you receive it.

Many thanks for your co-operation.

Martin Rosenbaum

Martin Rosenbaum
Executive Producer, Radio
BBC Political Programmes, 6th floor, 4 Millbank, London SW1P 3JQ
Tel: 020 7973 6132; Internal: (02) 36132; Mob: 07719 437 761

<http://www.bbc.co.uk/>

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Date of Letter: 16/06/2001

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Date of Reply: 16/06/2001

Date Note Sent To Dept:

**Expected Reply Date from
Dept:**

Date Note Sent From Dept:

-----:-----
Referral Dept:

Dept Secretary:

Active: True

Stock Reply Code: 0 - Ministerial

Letter of Reply Text:

Action: PM

Pending:

File: Destroyed

-----:-----
Petition Desc:

Petition Cause:

Petition Signatory:

-----:-----
Enclosure Attached: False

Enclosure Desc:

Status:

Logged By: dsteel

Date Logged: 18/06/2001 16:54:48

-----:-----
Attachments: NONE

-----:-----
NEXUS Search IDs: CONTACT: 4732 // POSTCODE: // CORRESPONDENCE: 7769

NEXUS Correspondence Record

Correspondent: HE Mr Goran Persson
Swedish PM

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Type: Ministerial

Comments: cc Stephen Wall, Richard Abel (CO) and all E(DOP) Ministers Original letter received and filed with copy LEB 14/3 Call to FCO(Ann) who said draft returned to John Sawyer 21/3. Asked if she could send me a copy so I can clear the system. Will fax over copy. LEB 22/3 Fax copy received and sent to G Rooms with original papers. LEB 22/3 Checking with DCO/MT before typing that JS hasn't actioned original (eam) 22/3 It was actioned by JS on 21/3 and is typed and in box. Back papers given to DCO (eam 22/3) cc FCO, HMA. SLH 27/3

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File: DCO filing

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Petition Desc:

Petition Cause:

Petition Signatory:

-----:-----
Enclosure Attached: False

Enclosure Desc:

Status: X

Logged By: shughes

Date Logged: 08/03/2001 18:56:28

-----:-----
Attachments: NONE

-----:-----
NEXUS Search IDs: CONTACT: 4732 // POSTCODE: // CORRESPONDENCE: 10881



10 DOWNING STREET
LONDON SW1A 2AA

10 July 2001

THE PRIME MINISTER

Dear Goran,

I read your report to the European Parliament on your Presidency. It is an impressive tally. You pulled off some particular coups on enlargement - against the odds. By the time you get to the end of a Presidency you tend to be too tired to be able to judge. But others can and you and Anna and Lars and all your teams deserve our congratulations and warm thanks.

Yours ever
Tony

His Excellency Mr Goran Persson



10 DOWNING STREET
LONDON SW1A 2AA

THE PRIME MINISTER

4 SEPT 01

Dear Goran,

You are a star.

You can appear on British
radio anytime. And thank
you for Sweden!

Yours ever
Tony

HE MR GÖRAN PERSSON

JC



REGERINGSKANSLIET

15 November 2001

Prime Minister

The Rt. Hon. Mr. Tony Blair
Prime Minister of the United Kingdom of
Great Britain and Northern Ireland

Dear Tony !

Due to the tragic events in New York and Washington on September 11th, the Stockholm Progressive Summit, planned to be held on September 14-15th, was postponed. Even though we still cannot see all consequences of the latest developments, one thing is clear - the last few months have shown the world the crucial need for international cooperation. Thus we, the members of the Network for Progressive Governance, ought to continue and strengthen our work.

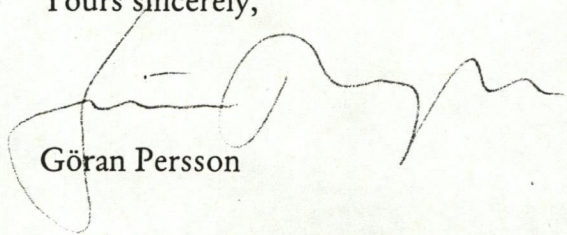
Therefore, I am very pleased to announce the new dates for the Stockholm Progressive Summit and at the same time invite you to participate. The summit will now be held on February 22nd-23rd, 2002.

The two highlighted themes that we identified for the Stockholm Progressive Summit, democracy and development, are two urgent topics that have gained an increased interest after September 11th. I am confident that our network can make important contributions in these fields, by our discussions, as well as our common actions.

The Network for Progressive Governance has an increasing role to play in the globalised and interdependent world of today. We need to increase the exchange of experiences and knowledge. We need to identify common national, as well as global, strategies in our progressive political mission for development, equality and a globalisation beneficial to all.

I would be delighted to welcome you in Stockholm in February 2002.

Yours sincerely,



Göran Persson

Postal address
SE-103 33 STOCKHOLM
SWEDEN

Visitors' address
Rosenbad 4

Telephone
+46 8 405 10 00

Fax
+46 8 723 11 71

E-mail: registrator@primeminister.ministry.se
X400: S=Registrator; O=Primeminister; P=Ministry; A=SIL; C=SE



REGERINGSKANSLIET

Prime Minister's Office
Stockholm, Sweden

State Secretary
International and EU affairs

15 November 2001

Amb. David Manning
10 Downing Street
London SW1A 2AA
Great Britain

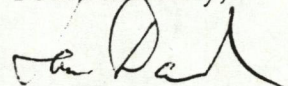
f 3411
cc JSW
JRO
RL
JS
AC
AS
Ked

Dear colleague,

Please find attached a new invitation to the Stockholm Progressive Summit. The meeting was originally planned to be held in September but was postponed due to the terrorist attacks in the US. The summit will now be held on February 22nd-23rd, 2002.

I would be grateful if you could forward the invitation from Prime Minister Persson to Prime Minister Blair.

Yours sincerely,


Lars Danielsson

cc. also
✓ Robus Hill
Sally Morgan
3 Fiona Miller
Gert Morgan
Andrew Adonis

Katie
for you?

Anne
3/12



REGERINGSKANSLIET

25 January 2002

Prime Minister

The Rt Hon Tony Blair MP
Prime Minister
LONDON

MP
C:DM
JB
An
Kk

157EH

Your Excellency,

"The Stockholm International Forum on Holocaust Education, Remembrance and Research", held in January 2000, was the first international conference since the end of the Second World War to focus on strengthening the memory of the Holocaust and other crimes against humanity. At the Forum a consensus emerged around a proposal to follow up the results of the conference by further promoting efforts to combat intolerance; racism, anti-Semitism, xenophobia and other challenges to democratic societies and basic human values. In response to that initiative, my Government organised *"The Stockholm International Forum: Combating Intolerance"* in January 2001.

The insights and experience gained from these conferences form the basis for a new conference - *"Stockholm International Forum: Truth, Justice and Reconciliation"*, to be held in Stockholm on 23-24 April 2002.

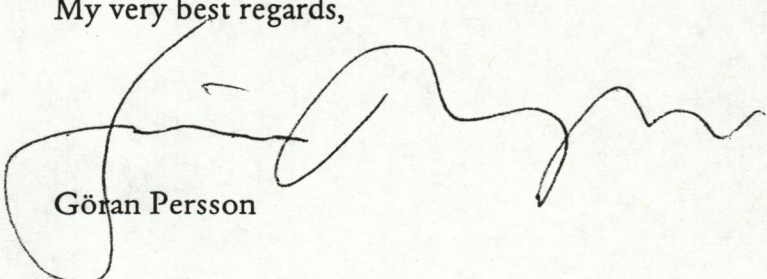
I would greatly appreciate your acceptance of my personal invitation to nominate a delegation to represent your country at this conference.

Remembrance is the starting point for the exchange of experience of reconciliation processes and results following intractable conflicts both between and within states, the ultimate aim of reconciliation being to prevent genocide.

This conference will have a work-oriented agenda aimed at contributing to the active exchange of experience between governments, individual experts and local, national and international organisations in the fields of legislation, education and media. I venture to suggest that you consider having a cabinet minister to head your country's delegation, which, in addition to experts in the field, should ideally include an individual, possibly an NGO representative, who is or has recently been involved in practical, concrete reconciliation efforts. The maximum number of members in your delegation should not exceed five. A draft program will be sent to you as soon as possible. The delegation is welcome to submit a written three-page report on national experience of the topics to be discussed prior to the conference.

I look forward to our further cooperation.

My very best regards,



Göran Persson



REGERINGSKANSLIET

Prime Minister

15 February 2002

To the members of the Network of
Progressive Governance

MT

rec 15/2
JTB
SW
AC
RL/FC
MC/GM
SK/PH
BVP

Dear Tony,

It is an honour and a pleasure for me, to welcome you to Stockholm for our summit with the Network for Progressive Governance, on February 22-23.

At the Stockholm Progressive Summit, we will continue our discussions on important current issues and our exchange of policy experiences and best practices.

The special focus planned for the postponed summit in September – *a progressive agenda for democracy and development* – has become even more urgent to discuss after the horrible attacks on the US on September 11th. There are several important international meetings during 2002, which are related to these issues. As progressives we must seize these opportunities to speed up global development, work for a more democratic globalisation and strengthen international cooperation – especially the crucial relation between south and north. It is my hope that we in Stockholm can formulate a new progressive global agenda. I also hope that we will have plenty of time for exchanges of policy-experiences and for the informal and open-minded type of discussion that characterises our network.

Our meeting will start with a dinner at the Wasa Museum in Stockholm. Heads of State and Government are expected to arrive in the lobby of the Grand Hotel at 18.30 hours and then we will take a short boatride to the Wasa Museum.

I suggest that we devote our dinner to a round-table discussion on *global issues of common interest*, such as the world after September 11th, the Earth Summit in Johannesburg, and the global economic environment, including Argentina's situation and financing for development.

Postal address
SE-103 33 STOCKHOLM
A-SIL: C-SE
SWEDEN

Telephone
+46 8 405 10 00

E-mail: registrator@primeminister.ministry.se
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Visitors' address
Korsbod 4

Fax
+46 8 723 11 71

We will start again Saturday morning at 09.00 with a discussion on the many democratic challenges facing the world today. It would be particularly interesting to hear your views on how to strengthen the political tools in the age of globalisation, and how to increase the legitimacy for international cooperation. It would also be useful to discuss how to combat the increasing apathy for political participation and how we, as progressives, can respond to the criticism to the effects of today's globalisation.

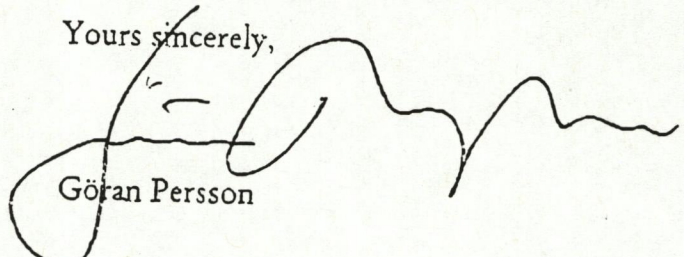
We should also discuss the future work of our network, the general political environment for progressive policies and the communiqué. However, it is my hope that most of the drafting of the communiqué will be completed at this time, so this session can be used for a free discussion.

The communiqué will be introduced at a webcasted press conference at 12.15 on Saturday, in which we all are expected to participate as we did at the Berlin Summit in June 2000.

After the press conference I would like to invite you to a luncheon at the Grand Hotel. This will give us a chance to continue our discussion on issues of common interest.

I am convinced that we will have constructive and fruitful discussions at the Stockholm Progressive Summit. I look forward to welcoming you to our meeting and to Stockholm.

Yours sincerely,



Göran Persson



10 DOWNING STREET
LONDON SW1A 2AA

8 March 2002

THE PRIME MINISTER

Dear Goran

Thank you for your letter of 25 January inviting the UK to attend the Stockholm International Forum on Truth, Justice and Reconciliation, to be held on 23-24 April 2002. I very much support your efforts in maintaining the momentum in this important field.

I am pleased that Dr Denis MacShane, the Foreign Office Minister, will lead the UK delegation this year. Our Embassy will be in touch with your officials on the detailed arrangements.

I wish the conference every success.

Well done on Stockholm. I
thought it went really well.

Yours ever
Tony

His Excellency Mr Goran Persson



10 DOWNING STREET
LONDON SW1A 2AA

SUBJECT
MASTER
Filed:

THE PRIME MINISTER

16 September 2002

Dear Gordon,

My warmest congratulations on your success yesterday.

The result is a tribute to your leadership, and to the success of your policies over the last few years. I am delighted that we will continue to work together, both in the EU, and internationally.

We have the chance, in the months to come, to make significant progress on our shared priorities: enlargement, reform of the CAP, the Lisbon Process and changes to the institutions of the EU. We can achieve much by working together.

The next European Council is only a few weeks away. It will be good to have you there.

We also have a common international agenda, based on the values we share with other progressive governments around the world - justice and opportunity for all. As we work to improve the environment, defeat terrorism, eliminate poverty, and prevent proliferation of weapons of mass destruction, Sweden's contribution, and your personal involvement, will be vitally important.

I look forward to seeing you next month, and to talking to you before then.

yours ever,

Tom

His Excellency Mr Goran Persson



10 DOWNING STREET
LONDON SW1A 2AA

THE PRIME MINISTER

21 January 2003

SUBJECT
MASTER
Filed:

Dear Gorman,

I am pleased to invite you to participate in the Progressive Governance Summit which I will host on 13 and 14 July.

The Summit, which will follow on from our successful meetings in Stockholm and Berlin, will provide an opportunity for us as like minded heads of government to review developments and share experiences in domestic and international policy.

The Summit will take place at Pennyhill Park near Bagshot in Surrey. It will start with dinner on 13 July and will end with a press conference at lunchtime the following day. Formal presentations will be kept to a minimum to allow as much time as possible for informal discussions.

In parallel, and to prepare the ground for the Summit, a number of working groups will be organised by the Policy Network, involving experts from all of the countries in the network. These will be discussed at workshops at the London School of Economics in April to which I hope you will send some of your senior policy advisers, and will culminate in a conference at the LSE on 12 and 13 July, just ahead of the Summit.



REGERINGSKANSLIET

Prime Minister

The Rt. Hon. Tony Blair
Prime Minister of the United Kingdom of
Great Britain and Northern Ireland

LONDON

Filed:

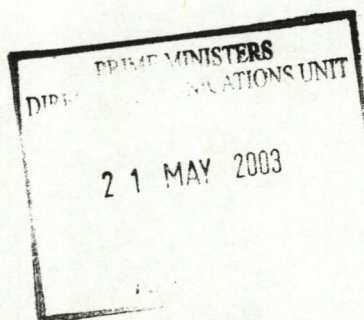
Dear Tony!

Allow me to convey my warmest congratulations on your 50th birthday!
I hope you will be able to celebrate this happy occasion with family and
friends and enjoy a moment of reflection and togetherness.

I look forward to continued excellent cooperation with you and your
government for many years to come.

Yours sincerely,

Göran Persson





10 DOWNING STREET
LONDON SW1A 2AA

THE PRIME MINISTER

11 September 2003

Dear Göran,

It was with shock and great sadness that I learnt this morning of Anna's death. Our thoughts are with her family at this time. She was a special person and a brave politician, never afraid to speak her mind. She brought moral force to her work as Foreign Minister, compassion and an instinctive sympathy for those less fortunate in life. I know that she was held in enormous regard by her Foreign Minister colleagues, not just in the EU but throughout the world. She will be sorely missed by us all. My thoughts are with you at this sad and difficult time.

Yours ever,
Tony

His Excellency Mr Goran Persson

Unseen Reels
182
FILE

bec fco
HMA
JPO
JH
JSW
NC
MR
PMOS



PRIME MINISTER

1. cc J.P. NS. SW. JFM. J.P.ve
2. File: Sweden.
16 8515/03
18 September 2003
X. VERUS
2. MTK
3. MR.

1. cc Matthew Gycoft NO 10

Given to me in Stockholm on
Friday 19/9.

H.E. Mr Tony Blair
Prime Minister of the United Kingdom

2. Tim Barron, SW-E

cc PS
PS/Br MacShane
PS/PJ
K. Barron
Sp As

Grateful for PS-PS/NO 10 + PM replies. NO 10
steer is v. unlikely.

Dear Mr Prime Minister,

John
22/9

I have the honour of inviting you to the *Stockholm International Forum 2004 on Preventing Genocide: Threats and Responsibilities* due to take place on 26-28 January 2004.

This fourth and concluding conference in the *Stockholm International Forum* series will address some of the most acute humanitarian, political and moral challenges facing us today. After the Holocaust, 'never again' became a unifying vision in the community of nations. It was an important achievement of the time that the United Nations could establish principles on the collective obligation to prevent and punish genocide. Yet the years since have seen further genocides, mass murders and incidents of ethnic cleansing. Cambodia, Rwanda and Bosnia are but a few horrific examples.

Government leaders share the burden for failing to protect human life and dignity in these and other instances. As leaders active today we can, however, benefit from experience and accept a shared responsibility for preventing new atrocities.

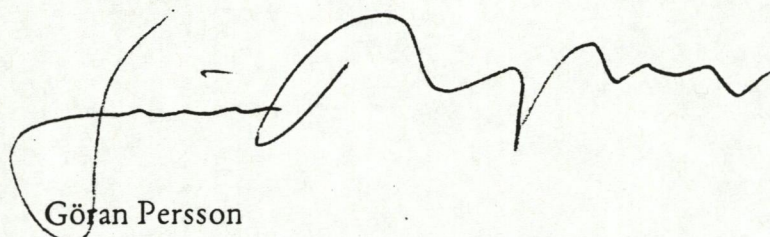
There are some key questions: How do we identify threats of a genocidal nature in today's world? What are the political, ideological, economic

and social roots of genocidal violence? How do we bridge the gap between early-warning signals and timely international responses? Is there a need to develop institutional and normative frameworks? Can we prevent genocidal violence by using diplomatic, humanitarian, economic and military instruments in a more effective way?

The *Stockholm International Forum* provides a unique format for discussion of such issues. It brings together government leaders, prominent scholars and experts with field experience for common reflection upon fundamental issues concerning human values and political practice. The inaugural Forum, held in 2000, resulted in the "*Stockholm Declaration on Holocaust Education, Remembrance and Research*". Themes of the following two conferences were "*Combating Intolerance*" and "*Truth, Justice and Reconciliation*".

The forthcoming conference will focus on the future, on how to protect the peoples of the world from new genocides. It is my sincere hope that you will accept my invitation. I would welcome inclusion in your delegation of any cabinet member, leading scholar or other individual who can contribute to our discussions and conclusions. Further details on the conference will be forwarded through diplomatic channels.

Sincerely yours,

A handwritten signature in black ink, appearing to be 'Göran Persson', with a large, stylized initial 'G' and a series of loops and waves extending to the right.

Göran Persson



10 DOWNING STREET
LONDON SW1A 2AA

THE PRIME MINISTER

13 October 2003

Ila Goran

Thank you for your letter of 18 September inviting me to the Stockholm International Forum 2004 on 'Preventing Genocide: Threats and Responsibilities'.

I greatly value the work of the Stockholm International Forum and have followed its work with interest. The UK has taken an active interest since the first meeting in 1998, which created an International Task Force and published the 'Declaration on the Holocaust'. The issue you have chosen for this year is a vital one and I am sure that the upcoming Forum will make an equally significant contribution.

Unfortunately, given diary commitments, I will be unable to attend myself. But I can assure you that the UK will be represented at a senior level. We will contact your officials with details as soon as we can.

Yours truly,

Tony

His Excellency Mr Goran Persson

21A



10 DOWNING STREET
LONDON SW1A 2AA

THE PRIME MINISTER

9 December 2003

Dear Goran

I was delighted to hear of your marriage to Anita on Saturday. It is wonderful news.

I look forward to seeing you in Brussels at the end of the week. I am sure we will have plenty of time then to catch up.

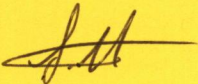
Congratulations !

Yours ever,

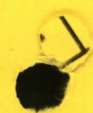
Tony

His Excellency Mr Goran Persson

THE	
NATIONAL	
ARCHIVES	

DEPARTMENT/SERIES PREM 49 PIECE/ITEM 4102/1 (one piece/item number)	Date and sign
Extract details: Letter dated 1 October 2004	
CLOSED UNDER FOI EXEMPTION 40(2)	 19.09.2024
RETAINED UNDER SECTION 3(4) OF THE PUBLIC RECORDS ACT 1958	
TEMPORARILY RETAINED	
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NUMBER NOT USED	
MISSING (TNA USE ONLY)	
DOCUMENT PUT IN PLACE (TNA USE ONLY)	

Instructions for completion of Dummy Card



Use black or blue pen to complete form.

Use the card for one piece or for each extract removed from a different place within a piece.

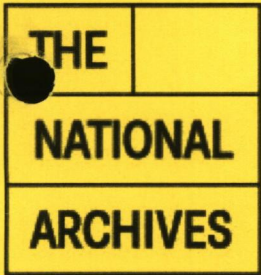
Enter the department and series,
eg. HO 405, J 82.


Enter the piece and item references, .
eg. 28, 1079, 84/1, 107/3

Enter extract details if it is an extract rather than a whole piece.
This should be an indication of what the extract is,
eg. Folio 28, Indictment 840079, E107, Letter dated 22/11/1995.
Do not enter details of why the extract is sensitive.

If closed under the FOI Act, enter the FOI exemption numbers applying to the closure, eg. 27(1), 40(2).

Sign and date next to the reason why the record is not available to the public ie. Closed under FOI exemption; Retained under section 3(4) of the Public Records Act 1958; Temporarily retained; Missing at transfer
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DEPARTMENT/SERIES PREM 49 PIECE/ITEM 4102/1 (one piece/item number)	Date and sign
Extract details: Letter dated 4 June 2004	
CLOSED UNDER FOI EXEMPTION 40(2)	 19.09.2024
RETAINED UNDER SECTION 3(4) OF THE PUBLIC RECORDS ACT 1958	
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NUMBER NOT USED	
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Series:	File Name	Date	From	To	Part No	Class	Subject
EUROPEAN	EUROPEAN COUNCI	10/07/2001	PM	Sweden/PM	1	C	(H) - Presidency report
FOREIGN PO	THIRD WAY	21/01/2003	PM	Sweden/PM	3	U	(H) Invitation to the Progn
SWEDEN	RELATIONS	04/09/2001	PM	Sweden/PM	1	U	(H) Personal Note of Thai
SWEDEN	RELATIONS	08/03/2002	PM	Sweden/PM	1	U	(H) Invitation to attend the
SWEDEN	RELATIONS	16/09/2002	PM	Sweden/PM	1	U	(H) Congratulations on ek
SWEDEN	RELATIONS	11/09/2003	PM	Sweden/PM	2	C	(H) Condolences re death
SWEDEN	RELATIONS	13/10/2003	PM	Sweden/PM	2	U	Stockholm International F
SWEDEN	RELATIONS	09/12/2003	PM	Sweden/PM	2	U	(H) Congratulations on yo
SWEDEN	RELATIONS	04/06/2004	PM	Sweden/PM	2	U	(H) Get well soon

Series:	File Name	Date	From	To	Part No	Class	Subject
FOREIGN PO	THIRD WAY	15/11/2001	Sweden/PM	PM	1	U	(H) Stockholm Progressiv
FOREIGN PO	THIRD WAY	15/02/2002	Sweden/PM	PM	1	U	Welcome letter to Stockh
SWEDEN	RELATIONS	25/01/2002	Sweden/PM	PM	1	U	(H) Invitation for nominati
SWEDEN	RELATIONS	06/05/2003	Sweden/PM	PM	2	U	(H) Congratulations on 50
SWEDEN	RELATIONS	18/09/2003	Sweden/PM	PM	2	U	(H) Invitation to the Stock
SWEDEN	RELATIONS	01/10/2004	Sweden/PM	PM	2	U	Get Well Soon