

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 16 December 2014

**Public Authority:** The Cabinet Office

**Address:** 70 Whitehall  
London  
SW1A 2AS

### **Decision (including any steps ordered)**

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1. The complainant has requested information about the Extremism Task Force. The Cabinet Office argued that some of the information was already publically available (section 21) and that the remainder was exempt from disclosure under provisions of section 35 (formulation/development of government policy. It further argued that some of the information was exempt under section 23 (security bodies). The complainant did not dispute the Cabinet Office's use of section 21 at internal review but did challenge the other exemptions cited. The Cabinet Office, following its internal review, argued that some of the information was not held as described in the request but that related information was exempt under section 40(2) (unfair disclosure of personal data). It otherwise upheld the use of the other exemptions it had already cited.
2. The Commissioner's decision is that the Cabinet Office is entitled to rely on the provisions of section 35 that it has cited as its basis for refusal.
3. No steps are required.

### **Request and response**

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4. On 5 December 2013, the complainant requested information of the following description:  
  
"[1] A list of the MPs, Ministers and advisors that make up the Task Force on Tackling Radicalisation and Extremism

[2] A list of any experts advising the Task Force on Tackling Radicalisation and Extremism

[3] The minutes from all meetings held by the Task Force on Tackling Radicalisation and Extremism

[4] Copies of all written submissions made to the Task Force on Tackling Radicalisation and Extremism

[5] Transcripts of all oral submissions made to the Task Force on Tackling Radicalisation and Extremism

[6] Any reports submitted to the Task Force on Tackling Radicalisation and Extremism

[7] Any other documentation used by the Task Force on Tackling Radicalisation and Extremism to reach its recommendations".

5. For ease of future reference the Commissioner has numbered these requests.
6. On 2 January 2014, the Cabinet Office responded.
7. It argued that the information described in request 1 was readily accessible by other means and therefore exempt under FOIA by virtue of section 21. It provided a link to a published list of the Task Force's members.
8. It argued that the remainder was exempt by virtue of section 35(1)(a) and (b) (Formulation/Development of government policy and communications between Ministers). It also argued that some of the remainder was exempt under section 23(1) (Security Bodies information).
9. The complainant requested an internal review on 20 February 2014 in respect of Requests 2 - 7. The complainant did not contest that the exemptions at section 35(1)(a) and (b) were engaged but argued that the balance of public interest favoured disclosure. He also asked for a more detailed explanation as to why section 23 had been applied.
10. After a protracted delay, the Cabinet Office sent the complainant the outcome of its internal review on 25 April 2014. The Commissioner had, by that date, advised the Cabinet Office that he was taking the complaint forward because he considered it eligible. He considered it to be eligible because the Cabinet Office had failed to respond to the internal review request in a timely manner

11. In its letter to the complainant, setting out the outcome of its internal review, the Cabinet Office explained that there were no advisers formally appointed to advise the Task Force (Request 2 refers). However, it said that it did hold the names of a number of external speakers. It argued that this information was exempt under section 40(2) (Unfair disclosure of personal data). It also upheld its use of section 35(1)(a) and (b) and section 23(1).

## **Scope of the case**

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12. The complainant contacted the Commissioner on 22 April 2014 to complain about the Cabinet Office's failure to respond to his request for internal review and to complain about the exemptions that the Cabinet Office had sought to rely on.
13. The Commissioner has considered whether the Cabinet Office is entitled to rely on the exemptions it has cited as a basis for withholding the information described in requests 2 – 7. The Commissioner notes that the Cabinet Office asserts that no advisors were formally appointed to advise the Task Force (Request 2 refers) but that it held the names of external speakers. The Commissioner has therefore looked at whether the Cabinet Office is entitled to withhold the names of external speakers on the basis of the exemptions it has cited.

## **Reasons for decision**

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### **Section 35(1)(a) and (b) – formulation and development of government policy/Ministerial communications**

14. Section 35(1) provides that "Information held by a government department or by the National Assembly for Wales is exempt information if it relates to-
  - (a) the formulation or development of government policy,
  - (b) Ministerial communications,
15. Section 35 is a class based exemption, therefore if information falls within the description of a particular sub-section of 35(1) then this information will be exempt; there is no need for the public authority to demonstrate prejudice to these purposes
16. The Cabinet Office provided an explanation as to why sections 35(1)(a) and (b) were engaged.

17. It drew attention to the publication (in December 2013) of the Extremism Task Force's report<sup>1</sup> and explained that its work was part of its "Prevent" strategy<sup>2</sup> which is referred to via the link available at Note 1. It explained that the policy in question related to "Prevent" and provided further detail about that. The Commissioner does not propose to set out that information on the face of this notice because, to do so, would disclose withheld information.
18. The information provided via the link at Note 1 also sets out the membership of the Task Force. This membership list self-evidently includes ministers, including the Prime Minister. Communications between those members also falls within the class of information described in section 35(1)(b).
19. The Commissioner normally requires access to withheld information in order to consider properly the application to it of the relevant exemptions. However, in the particular circumstances of this case, such access is not necessary. The explanation provided by the Cabinet Office, coupled with what is already in the public domain about the Extremism Task Force, is sufficient to enable him to determine whether the information in question fell within the class of information described in section 35(1)(a) and (b).
20. The Commissioner also notes that the complainant did not dispute that section 35(1)(a) and section 35(1)(b) applied to this information. That said, the complainant did query whether the Cabinet Office could properly rely on section 35(1)(a) where its arguments in its refusal notice focussed on the formulation of policy rather than the development of policy. As such, the complainant was sceptical as to whether the Cabinet Office could properly rely on section 35(1)(a). He also queried how section 35(1)(b) could apply to information within the scope of his requests that was not exchanged between Ministers.
21. For the avoidance of doubt, the Commissioner is satisfied that the Cabinet Office's arguments to him provide a satisfactory explanation as to why section 35(1)(a) and section 35(1)(b) are engaged. As noted above, the Cabinet Office provided a more detailed explanation to the

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<sup>1</sup> <https://www.gov.uk/government/publications/tackling-extremism-in-the-uk-report-by-the-extremism-taskforce>

<sup>2</sup>

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/97976/prev-ent-strategy-review.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97976/prev-ent-strategy-review.pdf)

Commissioner as to how the withheld information related to the formulation and development of government policy. The Commissioner is also satisfied that the term “relates to” (as set out in section 35) can be construed widely such that information relating to ministerial communications includes for these purposes any information exchanged between ministers even if it was not originally created by ministers or it was also communicated to or between others.

22. By virtue of section 2(2), section 35(1)(a) and section 35(1)(b) are both qualified by a public interest test. This means that even if the information described in the request falls within section 35(1)(a) and section 35(1)(b), the Cabinet Office can only rely on one or both of these exemptions as a basis for withholding the requested information if the public interest in doing so outweighs the public interest in disclosure.

### **The public interest test - the complainant's arguments**

23. The complainant emphasised that section 35(1)(a) and section 35(1)(b) should be considered separately. He also quoted extensively from the Commissioner's own guidance in support of his position.<sup>3</sup>
24. The complainant set out the following arguments in favour of disclosure of information to which section 35(1)(a) applied:
- The public interest in preventing further criminal attacks is clearly very high as is the public interest increasing the public's confidence in the credibility of the government's counter-terrorism strategy.
  - The public needs greater certainty that the government is sufficiently well-informed and that it has not excluded or alienated credible sources of information.
  - The disclosure would not be of a routine nature and therefore the risk of undermining the safe space in which sensitive discussions are held would not arise.
  - The policy development process on this matter has come to an end (the Task Force has published its report). The public interest in protecting the information has therefore diminished. The

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[http://ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/government-policy-foi-section-35-guidance.ashx](http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/government-policy-foi-section-35-guidance.ashx)

complainant cited a decision of the Information Tribunal in support of this argument <sup>4</sup> as well as the Commissioner's guidance (see Note 3 – paragraph 83).

- Little weight can be attached to arguments as to the “chilling effect” of disclosure which the Cabinet Office appeared to argue in its refusal notice.
  - The withheld information must include background statistical information which, by virtue of section 35(2) should be disclosed.
25. The complainant set out the following arguments in favour of disclosure of information to which section 35(1)(b) applied:
- There is no inherent public interest in withholding ministerial communications. This argument is endorsed in, for example, *Scotland Office v Information Commissioner*.<sup>5</sup>
  - The exemption is designed to protect ministerial communications and the public interest favours disclosure where the information in question involves information about discussions between non-ministers as must be applicable here.

26. The complainant also stated that arguments made regarding section 35(1)(a) were also relevant to the section 35(1)(b) information.

### **The public interest test - the Cabinet Office's arguments**

27. The Cabinet Office said that there was considerable overlap in the public interest arguments which favoured maintaining the exemptions at section 35(1)(a) and section 35(1)(b).
28. The Cabinet Office acknowledged a general public interest in transparency to enhance and increase public understanding and participation in public affairs. It acknowledged that this is particularly the case in relation to the development of policies on tackling extremism.

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<sup>4</sup> <http://www.informationtribunal.gov.uk/DBFiles/Decision/i71/DWP.pdf>

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[http://www.informationtribunal.gov.uk/DBFiles/Decision/i202/Scotland%20Office%20v%20ICO%20\(EA-2007-0070\)%20-%20Decision%2008-08-08%20+%20Annexes%20A&B.pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i202/Scotland%20Office%20v%20ICO%20(EA-2007-0070)%20-%20Decision%2008-08-08%20+%20Annexes%20A&B.pdf)

29. However, it identified factors which added weight to the public interest in maintaining the exemptions at section 35 which it had cited:

- It said discussions at this level on topics of considerable sensitivity such as countering extremism must remain confidential.
- Ministers must have discretion as to how they organise themselves when formulating and developing policies of this level of sensitivity which includes who they invite to attend policy development meetings.
- It is important not to undermine parliamentary scrutiny of how ministers worked.
- There is already a considerable amount of information about the Extremism Task Force in the public domain.
- The information is of very recent provenance – all the information was less than 12 months old at the time of the request.
- Those involved remain active in public life which adds weight to the public interest in maintaining the exemptions.

30. It also provided arguments which made specific reference to the withheld information. They relate to national security matters, the safety and welfare of citizens and the fact that these are areas of ongoing consideration. These cannot be reproduced here as to do so would reveal exempt information.

### **The Commissioner's view**

31. The Commissioner has considered the public interest test in relation to section 35(1)(a) first. In considering the balance of the public interest arguments in relation to section 35(1), the Commissioner has taken into account the comments of a key Tribunal Decision involving the application of the section 35(1)(a) exemption. In that case, the Tribunal confirmed that there were two key principles that had to be taken into account when considering the balance of the public interest: firstly the timing of the request and secondly the content of the requested information itself.<sup>6</sup>

32. The Commissioner accepts that the government needs a safe space to develop ideas, debate live issues, and reach decisions away from external interference and distraction. This will carry significant weight in

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<sup>6</sup> *DFES v Information Commissioner and Evening Standard (EA/2006/0006)*



some cases. The need for a safe space will be strongest when the issue is still live. Once the government has made a decision, a safe space for deliberation will no longer be required and this argument will carry little weight.

33. The Commissioner recognises, however, that tackling extremism is an ongoing issue and government policy will continue to be developed and shaped by events and the gathering of intelligence. The simple formulation – development – implementation analysis of policy cannot be said to apply in the current circumstances of extremist activity and terrorist threat.
34. The Commissioner recognises that there are weighty arguments in favour of disclosure. He agrees with the complainant that there is a public interest in providing reassurance to the public that the government is not alienating credible sources of information when considering how to counter extremism. This public interest would be served by disclosure in this case.
35. He recognises the crucial importance of parliamentary scrutiny of ministers' work. This is referred to in the Cabinet Office's arguments for maintaining the exemptions. However, he does not think that this would be undermined by disclosure. There is clear public benefit in the electorate being better informed about important matters such as strategies for tackling extremism. This can enhance public debate, with elected representatives and others on this and related topics of significant public interest. This, in the Commissioner's view, can enhance, rather than detract from, scrutiny in a parliamentary democracy.
36. However, in the Commissioner's view, the argument which carries the greatest weight is the need to protect the space in which matters of considerable sensitivity and major national and international importance have been recently discussed and will inevitably be the subject of continuous review.

### **Section 35(1)(a) - conclusion**

37. In light of the above, the Commissioner has concluded that the Cabinet Office is entitled to rely on section 35(1)(a) as its basis for withholding all the requested information. In the light of his view on section 35(1)(a), he has not gone on to consider the balance of public interest in relation to section 35(1)(b).



## Other matters

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38. In correspondence with the Commissioner the Cabinet Office did not provide further arguments in support of its use of section 40(2) or section 23(1) although it explained that it reserved the right to do so at a later date. The Commissioner had invited the Cabinet Office's arguments on the application of these exemptions. Given the Commissioner's view on section 35(1) he has not sought the Cabinet Office's further arguments on other exemptions.
39. When the Commissioner contacted the complainant setting out the scope of his investigation, the complainant asked the Commissioner if he could submit arguments about section 40. At this stage, the Commissioner had not reached a view on the application of any of the exemptions contained in section 35. The Commissioner agreed that he could do so and urged him to provide them as quickly as possible. Unfortunately, the Commissioner never received these arguments. He did not press for them once he had reached a view on section 35. Had he concluded that section 35 did not apply, he would have pressed the complainant for his further arguments on section 40.
40. Whilst there is no explicit timescale laid down by the Act for completion of internal reviews, the Commissioner considers that they should be completed as promptly as possible. The Commissioner believes that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.
41. The Commissioner is concerned that in this case, it took 46 working days for an internal review to be completed. The Commissioner does not believe that any exceptional circumstances existed to justify that delay, and he therefore wishes to register his view that the Cabinet Office fell short of the standards of good practice by failing to complete its internal review within a reasonable timescale. He would like to take this opportunity to remind the Cabinet Office of the expected standards in this regard and recommends that it aims to complete its future reviews within the Commissioner's standard timescale of 20 working days. He also notes that the Cabinet Office was subject to formal monitoring during this period.<sup>7</sup>

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<sup>7</sup> [http://ico.org.uk/what\\_we\\_cover/monitoring\\_compliance](http://ico.org.uk/what_we_cover/monitoring_compliance)

## Right of appeal

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

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

Tel: 0300 1234504

Fax: 0870 739 5836

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

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

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

**Signed .....**

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