



Scottish Information
Commissioner

**Decision 143/2007 Mr Barry Winetrobe and the
Scottish Executive**

Information relating to the Sewel Convention

**Applicant: Mr Barry Winetrobe
Authority: Scottish Executive
Case No: 200501751
Decision Date: 21 August 2007**

**Kevin Dunion
Scottish Information Commissioner**

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Decision 143/2007 Mr Barry Winetrobe and the Scottish Executive

Information relating to the development of the Sewel Convention – information withheld – Commissioner found that the Executive had partially complied with the requirements of FOISA – Commissioner required disclosure of some of the information requested by Mr Winetrobe

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA), sections 1(1) (General entitlement), 2 (Effect of exemptions), 25(1) (Information otherwise accessible), 28(1) (Relations within the United Kingdom), 29(1)(a), (b) and (c) (Formulation of Scottish Administration policy etc), 30(a) and (b) (Prejudice to effective conduct of public affairs), 36(1) (Confidentiality), 38(1)(b) (Personal information).

The Data Protection Act 1998 (DPA), sections 1 (Basic interpretative provisions) and 2 (Sensitive personal data); schedules 1 (The data protection principles) and 2 (Conditions relevant for purposes of the first principle: processing of any personal data).

The full text of each of these provisions is reproduced in the Appendix 1 to this decision. The Appendix forms part of this decision.

Facts

Mr Winetrobe made a request to the Scottish Executive (the Executive) for information relating to the “Sewel Convention”, dating from the first Scottish Parliamentary elections until 10 July 1999. The Executive advised Mr Winetrobe that all relevant information was exempt from disclosure under the terms of a number of provisions within Part 2 of FOISA, and stated its conclusion that the public interest in maintaining these exemptions, where relevant, outweighed the public interest in the disclosure of the information. The Executive upheld this initial decision following an internal review of the request. Mr Winetrobe then made an application to the Commissioner in relation to this matter.



The Commissioner found that the Executive had acted in accordance with the requirements of Part 1 of FOISA in withholding some of the information requested by Mr Winetrobe. However, he found that the Executive had acted in breach of section 1(1) of FOISA in withholding certain information, as set out in Appendix 2 to this decision. The Commissioner required the Executive to disclose the information specified in Appendix 2 to Mr Winetrobe within 45 days of the receipt of this decision.

Background

1. On 15 February 2005, Mr Barry Winetrobe emailed the following information request to the Executive:

“I wish to request such information that you possess or possessed, after the first Scottish Parliament elections until 10 July 1999, that relates to the Sewel Convention, including, but not exclusively, information on the procedures for the Parliament’s consent to legislation being dealt with by the UK Parliament under what became known as the ‘Sewel Motion’ procedure (in particular including material relating to the First Minister’s statements to the Parliament on 9 and 16 June 1999 , and the first Sewel Motion debates on 23 June 1999), and what Bills or proposed Bills were considered for such procedure.”

Mr Winetrobe’s email went on to set out some of the types of information he would expect to fall under the scope of his request.

2. The Executive responded to this request in a letter dated 24 March 2006. This letter confirmed that relevant information was held by the Executive, but stated that all information requested was exempt from disclosure under the terms of the exemptions contained in sections 25(1), 28(1), 29(1)(a), 29(1)(b), 30(b)(i) and (ii), and 36(1) of FOISA. The Executive stated that it had concluded that the public interest in maintaining relevant exemptions outweighed the public interest in the disclosure of the information.
3. Mr Winetrobe emailed the Executive on 12 April 2005 asking for a review of the decision to withhold the information he had requested.
4. The Executive notified Mr Winetrobe of the outcome of its review in a letter dated 9 May 2005. The Executive upheld its decision to withhold the information requested by Mr Winetrobe.



5. Mr Winetrobe made an application for decision by me in relation to his information request on 17 May 2005. The application was then validated by establishing that Mr Winetrobe had made a request for information to a Scottish public authority (i.e. the Executive) and had applied for a decision only after asking the authority to review its response to his request.

Investigation

6. A letter was sent to the Executive on 19 May 2005, in terms of section 49(3)(a) of FOISA, giving notice that an appeal had been received and that an investigation into the matter had begun. The Executive was invited to comment on matters raised by the applicant and on the application as a whole. The Executive was also asked to provide copies of all information withheld in response to Mr Winetrobe's information request, and details of the exemptions applied to each item.
7. The Executive's response to this request was received on 24 June 2005. This provided copies of 52 items (documents or groups of documents) that had been identified as relevant to Mr Winetrobe's information request.
8. Further information and clarification was requested in September 2005 and March 2006. In particular, the investigating officer asked the Executive to confirm with greater clarity which exemptions were being relied upon in relation to each item withheld or part thereof. Further details of the reasoning for the Executive's application of exemptions was also requested.
9. In its further responses, the Executive confirmed the exemptions being relied upon in relation to each item. Although these had not been cited in its correspondence with Mr Winetrobe, the Executive confirmed that it now sought to rely upon exemptions in sections 30(a), 29(1)(c) and 38(1)(b) of FOISA in relation to some of the information under consideration. The Executive also confirmed that some items previously considered relevant to Mr Winetrobe's request were no longer considered to be such. In some such cases, the Executive indicated that, if I judged the items to be relevant to Mr Winetrobe's request, the items in question would not be considered exempt from disclosure, while in other cases it removed its reliance on certain exemptions.
10. In August 2006, Mr Winetrobe was invited to comment on the case in the light of the Executive's submissions, and in particular to set out his views on the public interest. Mr Winetrobe provided detailed comments in response to this request.



11. In the final stages of the investigation, the investigating officer also sought clarification from Mr Winetrobe with regard to the intended scope of his information request. The Executive was also asked to confirm its interpretation and provide comments in the light of Mr Winetrobe's comments on this matter.
12. In May 2007, the Executive also provided further general submissions to my office on the application of the exemptions contained in section 30(b) of FOISA. It indicated that these should be taken into consideration when considering ongoing cases where these exemptions had been raised, and so I have had regard to these submissions when reaching my decision below.
13. The table overleaf lists the information under consideration in this case. The "Executive position" in the right hand column states for each item the exemptions judged to apply by the Executive at the end of my investigation. This column also highlights those items the Executive, no longer considered to be relevant, and those it no longer considered to be exempt from disclosure. A second version of this table, which confirms my decision as it relates to each item, is appended to this decision notice as Appendix 2 and forms part of this decision. The table at Appendix 2 should be read in conjunction with the contents of the analysis and findings section below.
14. In coming to a decision on this matter, I have considered all of information and submissions that have been presented to me by both Mr Winetrobe and the Executive and I am satisfied that no matter of relevance has been overlooked.



Table 1 – Items identified by the Executive in response to Mr Winetrobe’s request

| No. | Type | Executive position |
|-----|---|---|
| 1 | Extracts from briefing | Exempt – s28(1), s30(b)(i) |
| 2 | Email | Exempt - s28(1), s29(1)(a), s30(b)(ii) |
| 3 | Email | Only partly relevant to request Exempt - s29(1)(a), s29(1)(b), s30(b)(ii) |
| 4 | Memo | Only partly relevant to request Exempt – s28(1), s29(1)(a), s29(1)(b), s30(b)(i) |
| 5 | Email and attachment | Only partly relevant to request Exempt – s25(1) |
| 6 | Memo | Exempt - s28(1), s29(1)(a), s30(b)(ii) |
| 7 | Email (attachment no longer held) | Exempt - s29(1)(a), s30(b)(ii), s36(1) |
| 8 | Email | Exempt - s29(1)(a), s30(b)(ii) |
| 9 | Memo | Only partly relevant to request Exempt - s29(1)(a), s29(1)(b), s30(b)(i) |
| 10 | Email attaching draft letter and memo | Exempt – s28(1), s29(1)(a), s29(1)(b), s30(b)(i), s30(b)(ii) |
| 11 | Memo attaching draft statement and paper | Exempt - s29(1)(a), s29(1)(b), s30(b)(i) |
| 12 | Email | Exempt - s29(1)(a), s30(b)(ii) |
| 13 | Memo | Exempt – s29(1)(a), s30(b)(ii), s.36(1) |
| 14 | Email | Exempt – s29(1)(b), s30(a), s30(b)(ii) |
| 15 | Email attaching amended statement | Exempt – s29(1)(a), s30(b)(i), s30(b)(ii) |
| 16 | Email attaching memo, draft statement and paper | Exempt – s29(1)(a), s30(b)(i) |
| 17 | Extract from Official Report of Scottish Parliament and draft SPICe paper | Official Report - Exempt under s25(1) Draft paper – Exempt – s30(b)(i) |
| 18 | Email | Exempt – s29(1)(a), s29(1)(b), s30(b)(i) |
| 19 | Email and attached Memo | Exempt – s28(1), s29(1)(a), s30(b)(ii), s36(1) |
| 20 | Minute | Exempt – s29(1)(a), s30(b)(ii), s36(1) |
| 21 | Minute | Exempt – s29(1)(a), s30(b)(ii), s36(1) |
| 22 | Email | Exempt – s29(1)(a), s30(a), s30(b)(ii) |
| 23 | Minute and attached letter and briefing | Exempt – s28(1), s29(1)(a), s30(b)(ii), s36(1) |



| | | |
|----|---|--|
| 24 | Email and attached minute | Only partly relevant to request Exempt – s29(1)(a), s30(b)(ii), s36(1) |
| 25 | Email | Exempt – s28(1), s29(1)(a), s30(b)(ii), s36(1) |
| 26 | Email | Exempt – s28(1), s29(1)(a), s30(b)(ii), s36(1) |
| 27 | Minute attaching draft motion, documents and letter | Exempt – [s25(1) applying only to some attachments], s29(1)(a), s30(b)(i) |
| 28 | Minute | Exempt – s29(1)(a), s30(b)(ii), s36(1) |
| 29 | Email | Outwith scope of request, but willing to disclose |
| 30 | Email | Outwith scope of request, but willing to disclose |
| 31 | Email | Outwith scope of request, but willing to disclose |
| 32 | Minute attaching various documents | Exempt - [s25(1) applying only to some attachments], s29(1)(a), s30(b)(i). s38(1)(b) applied only to an official's home telephone number |
| 33 | Email | Outwith scope of request, but willing to disclose |
| 34 | Email | Exempt - s29(1)(a), s30(b)(ii) |
| 35 | Email | Exempt – s30(b)(ii) |
| 36 | Email | Outwith scope of request, but willing to disclose |
| 37 | Email | Outwith scope of request, but willing to disclose |
| 38 | Email | Exempt – s28(1), s29(1)(a), s30(b)(ii), s36(1) |
| 39 | Minute | Exempt – s29(1)(a), s29(1)(b), s29(1)(c), s30(b)(ii), s36(1) |
| 40 | Minute | Only partly relevant to request Exempt - s29(1)(a), s30(b)(ii), s36(1) |
| 41 | Minute | Exempt - s29(1)(a), s30(b)(ii), s36(1) |
| 42 | Email | Outwith scope of request, but willing to disclose |
| 43 | Minute and draft paper | Exempt - s29(1)(a), s30(b)(i), s36(1) |
| 44 | Emails | Exempt - s29(1)(a), s30(b)(i) |
| 45 | Email and attached paper with annotations | Exempt - s29(1)(a), s30(b)(i), s36(1) |
| 46 | Email attaching draft letter | Only partly relevant to request Exempt - s29(1)(a), s29(1)(c), s30(b)(i), s36(1) |
| 47 | Email | Exempt - s28(1), s29(1)(a), s29(1)(b), s30(b)(ii) |
| 48 | Extract from Official Report of Scottish Parliament | Exempt s25(1) |
| 49 | Email | Exempt – s29(1)(a), s30(b)(ii) |
| 50 | Emails and annotated memo (as at item 45) | Exempt - s28(1), s29(1)(a), s30(b)(i), s30(b)(ii), s36(1) |
| 51 | Email | Exempt s29(1)(a), 30(b)(ii) |
| 52 | Memo and draft documents | Only partly relevant to request Exempt - s28(1), s29(1)(a), s30(b)(i), s36(1) |



The Commissioner's analysis and findings

15. This case requires me to consider a number of matters. In what follows, I will consider:
- a) Mr Winetrobe's information request and whether the Executive interpreted this appropriately.
 - b) The extent to which the 52 items identified by the Executive should be considered to fall under the scope of Mr Winetrobe's request
 - c) Whether the Executive has appropriately applied the various exemptions listed in table 1 to those items falling within the scope of Mr Winetrobe's request.

However, before doing so, it is helpful to provide some background on the subject matter of this request.

Background information on the "Sewel Convention"

16. Mr Winetrobe has requested information on the development and first use of the "Sewel Convention" in the period following the first devolved Scottish elections in 1999.
17. The Scotland Act 1998 provided for the creation of the Scottish Parliament and the transfer of powers in those areas in which it is empowered to legislate. However, nothing in the Scotland Act prevents the UK Parliament from legislating on matters which are within the devolved powers of the Scottish Parliament.
18. During the passage of the Scotland Act through the Westminster Parliament, Lord Sewel, then a Minister in the UK Government, announced that the Government "would expect a convention to be established that Westminster would not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament."
19. Procedures have since been developed whereby, with the consent of the Scottish Parliament, the Scottish Ministers will on occasion agree with the UK Government that a Westminster Bill should include provisions on devolved matters. The consent of the Scottish Parliament is provided by the approval of a Legislative Consent Motion (often referred to as a Sewel Motion).



20. The Sewel Convention is therefore an important aspect of the devolution settlement, which manages the relationship between the legislatures at Westminster and Holyrood.
21. There has been significant public interest in and debate about the operation of the Sewel Convention. For example, criticisms have been made of the number of times consent has been granted for Westminster to legislate on areas falling within the powers of the Scottish Parliament, and about the Parliamentary procedures followed.
22. In 2005, the Scottish Parliament's Procedures Committee conducted an inquiry on the Sewel Convention and in its report made a range of recommendations about the associated Parliamentary procedures. A revised set of procedures governing the Legislative Consent process was introduced in December 2005, and these are now set out in the Parliament's standing orders.

The interpretation of Mr Winetrobe's information request

23. Mr Winetrobe's information request is set out fully in paragraph 1 above. This sought "... all information that you [the Executive] possess or possessed, after the first Scottish Parliament elections until 10 July 1999, that relates to the Sewel Convention..."
24. When responding to this request, the Executive identified a range of documents that were produced in the period between the first Scottish Parliament elections on 6 May 1999 and 10 July 1999. One of these contains two attachments predating this period. Otherwise, no information predating the period specified in Mr Winetrobe's information request was considered to fall within its scope.
25. However, Mr Winetrobe's request could potentially be interpreted more widely, in that it asks for information *possessed* in the relevant period, rather than just information created within it.
26. Mr Winetrobe was asked to comment on the intended scope of his request in the course of my investigation. He indicated that his request was intended to capture not only information created within the relevant period, but also information that predated devolution that may have been transferred to or shared with the Executive by the Scottish Office or other government departments.



27. The Executive was also asked to comment on its interpretation of the request in the light of Mr Winetrobe's comments. In response, the Executive confirmed that it had understood the request to be seeking only information dating from the period from the Scottish Parliament elections to 10 July 1999. The older documents attached to one item had been included because it was judged to be unreasonable to exclude them. The Executive noted that, had Mr Winetrobe been seeking to access all papers on the subject of the Sewel Convention prior to 10 July, then he might simply have asked for all papers predating that day.
28. I note that, although elections were held on 6 May 1999 and the first meeting of the Scottish Parliament was held on 12 May 1999, the Scottish Executive did not formally come into existence until 1 July 1999, when the powers of the Scottish Parliament were formally transferred under the terms of the Scotland Act 1998.
29. I am therefore aware that on a strict technical reading of Mr Winetrobe's request, the Executive might have chosen to argue that the Executive could not itself possess any relevant information before 1 July 1999. The Executive did not adopt such a technical reading and instead considered all information held dating from the election of 6 May 1999 onwards. The Executive did not, however, consider any information that might have been held by other branches of government. I am of the view that, given the historical, legal and constitutional context of Mr Winetrobe's request, and its particular wording, the approach taken by the Executive was reasonable.
30. Having considered the terms of Mr Winetrobe's original request and the comments made by both parties on these, I have concluded that the Executive's interpretation, and so the range of documents identified in response, was appropriate in the circumstances. I will therefore go on to consider the documents that the Executive identified only.

Information claimed to fall outwith the scope of the request

31. Having initially identified the 52 items listed in table 1 above, the Executive indicated in the course of my investigation that a number of items fell either partially or wholly outwith the scope of the request.
32. Items 29, 30, 31, 36, 37, and 42 are emails relating to the administrative arrangements for a meeting. While the meeting itself may have touched upon the subject of the Sewel Convention, the content of these emails relates only to the attendance at a meeting of various parties. Item 33 is an email sent to inform various parties that a particular Bill had been incorrectly named throughout a document previously circulated. The content of this email relates solely to this administrative matter.



33. I accept that there is no content in items 29, 30, 31, 33, 36, 37, or 42 relating directly to the Sewel Convention, and so I accept the Executive's assertion that they fall outside the scope of Mr Winetrobe's request. I will not consider the items further.
34. The Executive has also stated that it believes that items 3, 4, 5, 9, 24, 40, 46 and 52 are only partially relevant to Mr Winetrobe's request. It noted that, although these items contained information relevant to Mr Winetrobe's request, they also contained information relating to matters other than the Sewel Convention. The Executive noted that Mr Winetrobe's request sought (among information more widely on the Convention) information on *what bills or proposed bills were considered for such procedure [i.e. for a Sewel motion]*". It indicated that it believed this part of the request should not be interpreted as capturing information relating more generally to the policy underlying such Bills, but rather it should be restricted to the issue of the Sewel Convention in relation to those Bills.
35. I accept the Executive's view that Mr Winetrobe's request should not be interpreted as incorporating information that relates solely to policy matters in relation to Bills that were considered for a Sewel Motion. However, I do not accept that the distinction between information relating to the policy of relevant Bills, and that relating to the potential application of Sewel procedures can always be made.
36. The Scottish Ministers' decision on whether a Westminster Bill should be the subject of the Sewel procedure will be influenced by policy considerations (such as whether a proposed Westminster Bill would achieve the Executive's desired policy objectives). Furthermore, the views of the Scottish Ministers on such a Bill may also influence the policy development process for that Bill, to ensure that the relevant provisions are acceptable to both UK and Scottish Governments.
37. Given the relationships described in paragraph 36, I take the view that, in some cases, information relating to the policy of a Bill for which a Sewel motion was being considered does also relate to the Sewel Convention.
38. Having considered the contents of the items listed in paragraph 34 and the Executive's comments on these, I am unable to accept in full the Executive's views on which parts are relevant to Mr Winetrobe's request. I set out my views on each item in turn below.
39. With respect to item 3, the Executive asserted that the first paragraph of the email fell outside the scope of Mr Winetrobe's request. However, I can see no reason to exclude this paragraph and not the following one, particularly given the terms of its third sentence. Therefore, I have considered item 3 in its entirety in what follows.



40. With respect to item 4, I accept the Executive's view that much of the content falls outside the scope of the request, although I have judged some additional information to be relevant beyond those parts identified by the Executive. The parts I have considered relevant in what follows are:
- a) the covering minute;
 - b) the first attached briefing, excluding paragraphs 3 -16, 18 - 21 and associated headings;
 - c) the attached letter, excluding the (unnumbered) first to fifth and seventh paragraphs.
 - d) the second attached briefing, excluding paragraphs 3-6 and 8, associated headings, and the first two lines to take following paragraph 8.
41. With respect to item 5, I have concluded that the covering email falls within the scope of the request. The attached memo does not. Item 7 within the attached Annex does fall within the scope of the request, but the remaining parts (excluding the table headings) do not. I have considered all of the exemptions that were originally cited by the Executive (and later withdrawn on the basis that the Executive no longer considered this information relevant) in relation to the covering email when reaching my final decision on whether this should be disclosed.
42. I have not accepted the Executive's submissions on the scope of Mr Winetrobe's request as it relates to item 9. This item includes briefings and draft speaking notes circulated to Ministers in advance on a Scottish Parliament debate on the Food Standards Bill (which created the Food Standards Agency as a UK-wide body). These documents relate to both the policy contained in the Bill and the process around the Scottish Parliament's agreement to a Sewel motion in relation to this. In this instance, my view is that the two cannot be separated, in that that the Parliament's consideration of the policy was central to its decision to agree to the Sewel motion. Therefore, I consider all parts of item 9 to fall under the scope of Mr Winetrobe's request in their entirety.
43. However, I note that the final attachment in item 9 is a memo that is duplicated in item 19. This memo has therefore been disregarded in my consideration of item 9.
44. In item 24, the Executive has questioned the extent to which the covering email falls under the scope of the request. I have concluded that this item is relevant in its entirety, given that this email discusses timings of parliamentary activities (both at Westminster and Holyrood) with respect to a Bill for which a Sewel process was proposed.



45. With respect to item 40, the Executive has suggested that only one paragraph is relevant to the request. I have concluded that the entire item is relevant because I do not accept that the policy issues raised therein can be separated from the matters relating to the Sewel Convention.
46. I accept the Executive's view that only part of item 46 is relevant to Mr Winetrobe's request. I have concluded that paragraphs 2-7 and 11-12 of the draft letter, along with the associated headings, fall outside the scope of the request. The remaining parts of this letter, and the covering email have been considered fully in what follows.
47. With respect to item 52, I agree with the Executive's that the various documents therein are almost entirely concerned with matters other than the Sewel Convention. I have accepted the submission that only paragraph 7 of the second paper is relevant to the request, although I consider the additional material revealing the author, recipients, date and title of this paper to be relevant in order to also provide the context for this paragraph. I have considered only these parts of item 52 in what follows below.
48. Finally, I have disregarded a number of items in my consideration of the exemptions, because they are duplicated elsewhere in the documents supplied by the Executive. Item 26 is entirely replicated within item 38 and so is redundant and has been disregarded. I have also disregarded item 28, which is replicated in full in item 19. The emails in item 50 have been disregarded as they are duplicates of items, 47 and 51.

Consideration of exemptions

49. I now turn to consider the Executive's application of exemptions to those items that I have concluded are relevant to the request.

Section 25(1) information otherwise accessible

50. Section 25(1) of FOISA provides that information is exempt information where an applicant can reasonably obtain it other than by making a request under section 1(1) of FOISA. The Executive has relied upon this exemption when withholding (parts of) items 5, 17, 27, 32 and 48. This is an absolute exemption and as such is not subject to the public interest test in section 2(1)(b) of FOISA.
51. I note that when the Executive responded to Mr Winetrobe's information request, he was directed to online sources of information about the Sewel Convention where this information could be found. In his request for review, Mr Winetrobe indicated that he was aware of the sources of publicly available information, and that he was concerned with gaining access to information that was not publicly available.



52. Items 17 and 48 both contain extracts from the Official Report of the Scottish Parliament which are publicly available from the Scottish Parliament's website. The content within item 5 to which section 25(1) has been applied is drawn from a (UK) Parliamentary Select Committee report on procedures following devolution, available from the House of Commons website.
53. I accept the Executive's assertion that the relevant information in each of these items is reasonably accessible to the applicant, other than by making a request under section 1 of FOISA, and therefore that the exemption in section 25(1) has been correctly applied to these.
54. With respect to items 27 and 32, the Executive has indicated that some of the enclosed documents are publicly available from the Scottish Parliament *in their final form*. The versions incorporated within these items, however, in most cases differ (albeit in relatively minor ways) from the final versions that are publicly available. As such, I do not accept that these versions are reasonably accessible to the applicant other than by making a request under section 1 of FOISA. I do not accept that the exemption in section 25(1) of FOSIA applies to those draft documents that differ from the publicly available final versions.
55. However, I note that Appendices 1 – 3 contained within item 32 contain the exact form of the legislative consent memoranda with respect to the Limited Liability Partnerships Bill, the Electronic Commerce Bill, and the Financial Services and Markets Bill that are available on the Scottish Executive's website. As such, I accept that these parts of item 32 are exempt from disclosure under the terms of section 25(1) of FOISA.

Section 29(1)(a) formulation of Scottish administration policy

56. The Executive has applied the exemption in section 29(1)(a) to most of the information withheld from Mr Winetrobe; items 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 27, 32, 34, 38, 39, 40, 41, 43, 44, 45, 46, 47, 49, 50, 51, 52.
57. For information to fall under the section 29(1)(a) exemption, it must be held by the Scottish Administration, and it must relate to the formulation or development of government policy, i.e. to the development of options and priorities for Ministers, who will subsequently determine which options should be translated into political action and when. The formulation of government policy suggests the early stages of the policy process where options are considered, risks are identified, consultation takes place and recommendations and submissions are presented to Ministers. Development suggests the processes involved in improving upon or amending already existing policy and could involve the piloting, monitoring, reviewing, analysing or recording the effects of existing policy.



58. For the purposes of this exemption, “government policy” refers to the policy of the Scottish Administration, or, where information was created before 1 July 1999, that of the UK Government. This means that in this case, the exemption is being applied on the basis of information relating to the formulation of both pre-devolution UK Government policy, and post-devolution Scottish Administration policy.
59. The reasoning behind the section 29(1)(a) exemption in FOISA is to ensure that, where appropriate, Scottish Administration policy can be formulated and developed effectively by allowing the Administration to discuss matters in a candid and frank manner.
60. Section 29(1)(a) is a qualified exemption, which means that even if the exemption applies, the application of this exemption is subject to the public interest test required by section 2(1)(b) of FOISA.
61. The Executive has pointed out that the time period specified in Mr Winetrobe’s request coincided with the period in which the Scottish Executive’s policy on the operation of the Sewel Convention was formed. In some instances, it is argued, the documents under consideration also relate to the UK Government or the Scottish Executive’s policy on the Bills for which a Sewel procedure was considered.
62. I accept that in this period, the development of the Sewel Convention, the Executive’s interpretation of this, and the procedures that would apply in circumstances where it would be invoked, should be considered a policy making process.
63. Having considered the contents of these, I accept that the exemption in section 29(1)(a) applies to all of the items listed in paragraph 56 above on the basis that they relate to the formulation of the Scottish Executive’s policy on the Sewel Convention, or to the Executive’s policy on the Bills to which its application was being considered.

The public interest in relation to section 29(1)(a)

64. Having concluded that the information listed in paragraph 56 is exempt under the terms of section 29(1)(a), I must go onto consider whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in the disclosure of the information. Under the terms of section 2(1)(b) of FOISA, exempt information should only be withheld where the public interest in doing so outweighs the public interest in disclosure. Where the two are evenly balanced, the information should be disclosed.



The Executive's submissions on the public interest

65. The Executive's submissions on the public interest as it relates to section 29(1)(a) asserted that there was a strong public interest in high quality policy-making and implementation and that in order to uphold that public interest, Ministers and officials needed to be able to consider all available options, however unpalatable, to debate those rigorously, to expose their merits and demerits and to understand their implications. The Executive suggested that its candour in doing so would be affected by the assessment of whether the content of discussions would be disclosed in the near future, when it might undermine the Government's view on settled policy of policy that was at that time under review or development. The Executive suggested that inappropriate disclosure had the potential to limit full and frank policy discussion between Ministers and might also distort the public perception of advice provided by officials. The Executive concluded that the prospect of disclosure therefore had the potential to affect the impartiality of the advice provided.
66. The Executive went on to argue that there was a strong public interest in ensuring that, where necessary, advice in areas of ongoing policy development could take place in a non-public arena which would enable rigorous and frank debate on the basis of the best possible advice. It also stated that the public interest lay in ensuring that Ministers and officials could conduct rigorous and candid risk assessments of their policies and programmes without premature disclosure that would close off discussion.
67. The Executive noted that the public interest must be considered on a case-by-case basis, but stated that the policy in question in this case (the Sewel Convention, its scope and the procedures followed in relation to this) remained in development and under consideration. It asserted that the ambit and coverage of the Convention was continually emerging and that disclosure of information about the development of policy on the Convention would prejudice the ongoing development of the Convention. It went on to state that, therefore, there was a public interest in the protection of that specific policy formulation process.

Submissions from Mr Winetrobe

68. In making his comments on this case, Mr Winetrobe did not have the benefit of access to the documents under consideration. However, he first of all emphasised that FOISA creates a presumption towards disclosure.
69. He also argued that, with respect to the public policy area concerned, there had been a lack of public disclosure and debate, which had in turn contributed to the problems in the operation of the Sewel Convention. Mr Winetrobe suggested that fuller disclosure sooner would have led to problems with the Convention being addressed sooner.



70. Mr Winetrobe also commented upon the Executive's assertion that the Convention remained a live policy area and that disclosure would prejudice this ongoing development. He asked whether this would in turn mean that FOISA would only provide access to information concerning "dead" issues, and did not apply to matters that were actually or potentially current. He went on to suggest that public awareness of earlier development of policy would serve to strengthen accountability and increase public involvement in decision making.
71. Mr Winetrobe also noted that much of the information concerned must relate to administrative processes and practices designed to make devolution operational, and that these items should be disclosed as not subject to any genuine policy or confidentiality ground. Mr Winetrobe suggested that denying disclosure of this information would make much of the pre-devolution and early devolution material on the operations of devolution out of bounds. He suggested that such an outcome would undermine freedom of information itself.

Conclusions on the public interest with respect to section 29(1)(a)

72. The Executive's submissions on the public interest in this case appear to suggest that where a "live" policy (whether this policy is in development, settled or subject to review) is concerned, current or historic information relating to its formulation or development should not be disclosed, to avoid inhibiting officials and Ministers from engaging in rigorous discussions of all policy options in future.
73. I have commented on this blanket approach to the policy formulation exemption in a number of decisions, particularly 076/2006 and 056/2007 (both concerning Mr Paul Hutcheon and the Scottish Executive). I will not repeat my reasoning in full here. However, I wish to reiterate that I do not accept this approach.
74. For example, I have made clear that disclosure of internal policy discussions in one case should not be taken to imply that all internal discussions will be routinely disclosed in future. Such communications must always be considered on the basis of their particular circumstances and content to establish whether the information concerned is of a type that requires protection. A number of considerations, such as timing of a request, the proximity to the information to a policy-making process, the sensitivity of discussions and whether these remain ongoing will all contribute to a final decision on whether information should be disclosed.
75. My thinking on the public interest test has also been informed by a recent Information Tribunal decision concerning an appeal brought under the Freedom of Information Act 2000 (appeal no. EA/2006/0006 between the Department for Education and Skills and the Information Commissioner and the Evening Standard).



76. In this decision, the Tribunal concluded that, when considering a class exemption of this type, it should not be assumed that information's membership of a relevant class brings with it a presumption that the public interest favours the maintenance of the exemption. The fact of the exemption's application should therefore not be seen as a public interest factor weighing against disclosure. Instead, once the exemption has been judged to apply, the balancing act of applying the public interest test starts with the scales level.
77. In my view, it is for the authority to show why, on public interest grounds, the information should not be released. To proceed otherwise would leave us in a position where innocuous and non-sensitive information relating to policy formulation would rarely be released because no resounding public interest argument could be found to justify disclosure.
78. It can of course be argued that is generally in the public interest that the process of policy formulation and development should be able to be carried out with some degree of privacy, so that (for instance) officials are not inhibited from considering a wide range of policy options, expressing their views upon them, and discussing problems that present themselves during the process. However the weight to be given to that argument will depend upon the circumstances of each particular case.
79. In this particular case, I do not accept that this public interest consideration carries great weight with respect to the exemption in section 29(1)(a). I note for example, that the information relating to policy formulation that Mr Winetrobe has requested relates to both the Executive's development of the Sewel Convention, and those Bills to which it was applied. The Bills concerned have had either been passed or had fallen by the time of Mr Winetrobe's information request, with or without the Sewel Convention having been invoked. With respect to the policy making around these Bills, therefore, I believe these processes to be completed, and so the public interest in maintaining the exemption is less than had these been ongoing issues.
80. The historical and constitutional context of the period covered by Mr Winetrobe's request is also a relevant consideration in this case. The transition to devolution was in progress and the Sewel Convention was being established and operated for the first time, while the relationships between Whitehall and the Executive as well as Westminster and Holyrood were being formed. It is clear from a number of documents under consideration in this case that the transitional period brought with it particular practical challenges that were unique to that period, requiring the development of solutions would not necessarily reflect future standard practice. The uniqueness of the time period concerned and of the issues being addressed by the officials and Ministers, in my view again limits the public interest case for maintaining the exemption on the basis that disclosure would harm policy making now and in the future.



81. With respect to the Sewel Convention, I do accept the Executive's assertion that this continues to develop and evolve. However, I do not accept that this means that no information about its early development should be disclosed. I would also note that, following a number of years of devolution and the evolution of the procedures by which the Sewel Convention operates, any ongoing policy development with respect to the Convention will now be of a far more restricted nature than in 1999. In this context, I have concluded that the potential for disclosure of historic information to prejudice current policy formulation or development on the subject of the Sewel Convention is limited (and would have been at the time the Executive dealt with Mr Winetrobe's request for information).
82. On the other side of the public interest test, a number of considerations favour the disclosure of the information that I have judged to be exempt under the terms of section 29(1)(a).
83. As Mr Winetrobe has pointed out, the operation of the Sewel Convention is a matter of significant public interest. This Convention is a key mechanism that exists to ensure the effective operation of the devolution settlement. However, concerns have been expressed about the frequency with which the Scottish Parliament has allowed Westminster to legislate on its behalf, and the level of scrutiny by the Scottish Parliament when such proposals are put forward.
84. I agree with Mr Winetrobe that the disclosure of information relating to the early operation of the Convention, and the thinking of officials and Ministers around this time, would contribute to public understanding of this process, and the establishment of the devolution settlement. In so doing, I believe it would contribute to public debate on this subject and allow greater and more informed public involvement in any future policy making on this subject.
85. Given the case-specific considerations set out above, alongside the general presumption contained in FOISA that disclosure of information is in the public interest, I have concluded that the public interest in the maintenance of the exemption in section 29(1)(a) is generally overridden by the public interest in disclosure of the information concerned. However, I do not consider the public interest in the disclosure of draft versions of documents that later became publicly available in a finalised form, or in the disclosure of drafts of internal documents for which a final version is also under consideration in this case, overrides the public interest in the maintenance of the exemption.
86. Given this conclusion, I require the Executive to disclose to Mr Winetrobe any information that is exempt only by virtue of the application of section 29(1)(a), except where the information concerned is a draft version of a document which was later made publicly available, or which remained internal but where the final version is also under consideration in this case. This is identified in the table at Appendix 2 to this Decision.



87. However, most of the information under consideration in this case has been judged by the Executive to be exempt under the terms of one or more further exemptions. If judged to apply, these exemptions in turn require the public interest to be considered. I will now go onto consider these exemptions in turn, and where relevant, the balance of public interest with respect to these.

Section 29(1)(b) Ministerial communications

88. Section 29(1)(b) of FOISA provides that information held by the Scottish Administration is exempt information if it relates to Ministerial communications. Section 29(4) describes Ministerial communications, which are any communications between Ministers (including junior ministers) and includes, in particular, communications relating to proceedings of the Scottish Cabinet (or a sub-committee thereof).
89. For information to fall under this exemption there must be a communication between Ministers. I accept that this exemption is not limited to direct written communications between Ministers, such as a letter or e-mail from one Minister to another, but could also cover records of discussions between Ministers.
90. The Executive has submitted that this exemption applied to (part of all of) items 3, 4, 9, 10, 11, 14, 18, 39 and 47 on the basis that they detail or reveal proceedings of the Scottish Cabinet, record discussions and Ministers' views, or note comments from one Minister to another.
91. The Executive has noted that although the Scottish Executive did not formally exist until 1 July 1999, the Scotland Act 1998 (Commencement) Order 1998 SI No. 3178 provided that Ministers could be appointed from 6 May 1999, and the First Minister was sworn into office on 17 May 1999. I am satisfied that from this date, the First Minister and the Ministers he later appointed could share communications that would be relevant for the purposes of the exemption in section 29(1)(b).
92. Having examined the documents withheld under section 29(1)(b), I am satisfied that the following information falls under the scope of this exemption: item 3, paragraph 4 of the covering submission in item 4, the Cabinet memorandum at item 9, paragraphs 5, 8 and 9 of the final document within item 10, paragraphs 3 and 14 within item 11, item 18 and paragraph 1 only within item 39.
93. I am satisfied that the information listed in paragraph 92 falls within the definition of Ministerial communications as provided for by section 29(4) of FOISA or it relates to such communications. I do not find that the remaining parts of items 4, 9, 10, 11 and 39 to fall under the scope of the exemption in section 29(1)(b) (it should be noted that this coincides with the Executive's position in respect of this exemption and these documents, with the exception of item 39).



94. I also do not accept that this exemption applies to items 14 or 47. Item 14 contains a note from a Minister's private secretary (acting on the Minister's behalf) to an official. The note comments upon a briefing that was sent to another Minister, but it does not relate to or constitute any direct communication between the two Ministers concerned. As such, I do not accept that this item relates to a Ministerial communication as defined by section 29(4) of FOISA. Item 47 refers in passing to the balance of Ministerial opinion, but this item does not contain any communication by ministers relating to this matter or provide any detail of how and where such opinions were expressed. As such, I am unable to conclude that this reference relates in any direct way to an actual communication between Ministers.

The public interest in relation to section 29(1)(b)

95. With respect to the items listed in paragraph 92, I must go onto consider the whether, in all the circumstances of the case, the public interest in maintaining the exemption in section 29(1)(b) outweighs the public interest in the disclosure of the information concerned.
96. The Executive has indicated that it does not believe that the public interest in disclosing the information exempt under section 29(1)(b) outweighs the public interest in maintaining the exemption. It has indicated that there is a significant public interest in maintaining both collective responsibility and the opportunity for full and frank discussion at the highest level of Government. The Executive has indicated that any disclosure of relevant communications (or information relating to these) could undermine the convention of collective responsibility to the detriment to the policy making process.
97. The Executive has also suggested that disclosure in cases where Ministerial communications (or information relating to these) reveal agreement between Ministers would encourage the inference that Ministers had disagreed in other cases where the exemption in section 29(1)(b) had applied.
98. Once again, the Executive's submissions appear to suggest that the application of a class-based exemption should generally be accompanied by a presumption that the public interest in maintaining that exemption outweighs the public interest in the disclosure of the information. Once again, I am unable to accept this position.
99. I have considered the actual contents of the communications concerned to consider the public interest in the light of the Scottish Executive's comments on the public interest, and also in relation to the general public interest considerations set out above in relation to my consideration of information exempt under section 29(1)(a).



100. Once again, I have taken the view that the passage of time since the creation of the documents concerned to the time of Mr Winetrobe's request means that their sensitivity, along with the policy-making processes to which they relate have diminished considerably. I have also borne in mind my view of the considerable public interest in enhancing public awareness of the establishment of the devolution settlement and the Sewel Convention within it.
101. On balance, I have concluded that, in each case where section 29(1)(b) has been correctly applied by the Executive, the public interest in the disclosure of that information outweighs the public interest in the maintenance of the exemption.

Section 29(1)(c) the provision of advice by law officers

102. The exemption in section 29(1)(c) provides that information held by the Scottish Administration is exempt from disclosure if it relates to the provision of advice by any of the Law Officers, or relates to any request for such advice. Section 29(1)(c) is a qualified exemption, which means that even if the exemption applies, the application of this exemption is subject to the public interest test required by section 2(1)(b) of FOISA.
103. The relevant "Law Officers" for the purposes of this exemption are listed in section 29(4) as the Lord Advocate, Solicitor General for Scotland, the Advocate General for Scotland, the Attorney General, the Solicitor General and the Attorney General for Northern Ireland.
104. The Executive has applied this exemption only to paragraphs 2 and 3 of item 39, and item 46 in its entirety.
105. With respect to item 39, I accept that paragraph 2, and the first sentence of paragraph 3 relate to the seeking of and provision of advice by one of the Law Officers. This content (but not the remaining part of paragraph 3) is therefore exempt under section 29(1)(c).
106. With respect to item 46, I accept that the exemption in section 29(1)(c) applies to all parts falling under the scope of Mr Winetrobe's request. I will consider the public interest in relation to this exemption following my consideration of the exemption under section 36(1)



Section 36(1) confidentiality

107. The exemption in section 36(1) of FOISA exempts from disclosure information in respect of which a claim of confidentiality of communications could be maintained in legal proceedings. Such a claim can be made in relation to advice from a solicitor to a client and information passed by a client to their solicitor for the purposes of obtaining legal advice. This includes circumstances where staff in a public authority take legal advice from solicitors employed within the same authority. This exemption is subject to the public interest test in section 2(1)(b) of FOISA.
108. The Executive has applied this exemption in relation to (part or all of) the following items: 7, 13, 19, 20, 21, 23, 24, 25, 38, 39, 40, 41, 43, 45, 46, 50 and 52, stating that (the relevant parts of) these items contain legal advice on the operation of the Sewel Convention or the Bills to which it was applied, or contain communications seeking or commissioning legal advice.
109. I have considered the content of each item to which the Executive has applied this exemption and concluded that the Executive has correctly applied the exemption in section 36(1) to those items (or parts thereof) listed in paragraph 108, except in relation to the draft document attached to item 43, item 45 and item 50.
110. With respect to item 43, I accept that the covering minute consists of a request for legal advice on an attached document and so it is exempt under the terms of section 36(1) of FOISA. However, the attached document was not created for the purpose of sending to the advisor in order to gain advice, but for another purpose (that of providing advice to a Minister). I do not accept that documents passed to a legal adviser for the purpose of seeking their advice, but which were not created for that purpose, could attract a claim of confidentiality of communications and so I do not accept that this is exempt under section 36(1).
111. Items 45 and 50 contain copies of the same minute containing advice to Ministers, but the versions have been annotated in different hands and so both have been considered in this decision. I am certainly satisfied that the advice contained in this minute has been drafted in the light of legal advice that has been received. However, the minute itself does not constitute legal advice, does not identify any content within it as legal advice, and does not indicate whether the position set out follows or diverges from any legal advice. In these circumstances, I do not accept that any part of the the information in these minutes is exempt under the terms of section 36(1) of FOISA.



The public interest in relation to sections 29(1)(c) and 36(1)

112. With respect to the legal advice falling under the scope of this request, the Executive has maintained that it would be harmful to the public interest if solicitors could not discuss relevant issues and give and receive legal advice in confidence. It therefore considered the public interest in maintaining this confidence to outweigh the public interest in the disclosure of the documents. The Executive has suggested that the harm that could follow from the disclosure of legal advice is two-fold – first by unreasonably exposing legal positions to challenge, and secondly by diminishing the range and quality of that advice, in turn harming the quality of decision making.
113. The Executive has also noted that information relating to the provision of advice by the Law Officers is granted particular protection within FOISA.
114. The Courts have long recognised the strong public interest in maintaining the right to confidentiality of communications between legal advisor and client on administration of justice grounds.
115. In my decisions under FOISA, e.g. 023/2005 (Mr David Emslie and Communities Scotland), I have also accepted that there will always be a strong public interest in maintaining the right to confidentiality of communications between legal adviser and client. As a result, while I will consider each case on an individual basis, I am likely only to order the release of such communications in highly compelling cases. The public interest issues in favour of releasing the information might include enhancing scrutiny of the legality of the actions of a public body and, by extension, effective oversight of expenditure of public funds and obtaining value for money.
116. I have considered each of the items that are exempt under sections 29(1)(c) and 36(1), and I have concluded that in each case the public interest in maintaining these exemptions outweighs the public interest in the disclosure of the information concerned.

Section 28(1) relations within the UK

117. Section 28(1) states that information is exempt information if its disclosure under FOISA would, or would be likely to, prejudice substantially relations between any administration in the United Kingdom and any other such administration. Section 28(2) states that “administration in the United Kingdom” means the Government of the United Kingdom, the Scottish Administration, the Executive Committee of the Northern Ireland Assembly or the National Assembly for Wales.



118. In this case, section 28(1) has been applied to the following documents on the basis that disclosure would be likely to prejudice substantially relations between the Scottish Administration (i.e. the Executive) and the Government of the United Kingdom (the UK Government): 1, 2, 4, 5, 6, 10, 19, 23, 25, 38, 47, 50 and 52.
119. The Executive's submissions on this exemption noted that the relevant items included documents prepared by the UK Government and shared with the Scottish Office, or the Executive. They also contained references to discussions between the Scottish Office or Executive and the UK Government; commentaries on the views of UK Government departments; commentary on aspects of the relationship between the Executive and Whitehall; and drafts of correspondence exchanged between UK Government Ministers and the First Minister.
120. The Executive has noted that several of the documents listed in paragraph 118 predate the formal transfer of devolved powers to the Scottish Parliament and the associated creation of the Scottish Executive. As such, these documents actually reveal information shared between the Scottish Office and other central Government departments, or commentaries made by Scottish Office, rather than Scottish Executive, officials.
121. However, the Executive has stressed that in this transition period, the views expressed reflect the position of the soon to be created Scottish Executive, and reflect the involvement of the newly appointed Scottish Ministers. In these circumstances, the Executive has asserted that with respect to the Scottish Office papers, any prejudice that would follow from disclosure would be of the same character as if the papers were Scottish Executive creations.
122. I have noted these comments, and accept in general that relevant documents created by Scottish Office officials reflect the position of the future Scottish Executive in the transitional period immediately before the formal devolution of powers. I have considered the information in items to which the Executive has applied the exemption in section 28(1) as if they were created by the Scottish Executive, or were shared with the Scottish Executive by the UK Government.
123. However, I have not been able to accept this position with respect to the two items attached to item 23. These are dated March 1999, and so predate the Scottish elections and the appointment of the Scottish Ministers. As such, I consider these to reflect the Scottish Office position before devolution, rather than the position of the soon to be formed Scottish Executive. For this reason, I do not accept that disclosure by the Executive would harm its relations with the UK Government, since these documents were created by the UK Government.



124. With respect to information created by the UK Government (other than the Scottish Office) and shared with the Scottish Office or Executive, The Executive has noted the terms of the Memorandum of Understanding between the UK Government and the devolved administrations, which states that information shared between administrations should be treated with “appropriate discretion”. The Executive has indicated that disclosure in response to Mr Winetrobe’s request would not respect this discretion, and that disclosure would substantially prejudice relations within the UK, making the UK Government less likely to share information with it in the future. The Executive has emphasised that it believes that it is important that the UK Government is willing to share its legislative proposals with the Scottish Executive so that the Sewel procedure can continue to be properly managed.
125. With respect to documents created by the Scottish Office or Scottish Executive, the Executive has drawn my attention to particular content, and how it believes disclosure of this might be substantially prejudicial to relations with the UK Government.

Conclusions on section 28(1)

126. I have considered the content of each of the items listed in paragraph 118 above in the light of the Executive’s submissions. I should note that Section 28(1) does not create a blanket exemption for all communications between the Executive and the UK Government, or all documents that refer to the relationship between the two. The disclosure of documents in one case should not be seen as setting a precedent for the routine release of documents in all cases. In order for the exemption to apply to the information withheld in this case, the Executive must be able to demonstrate that the release of these particular documents would substantially prejudice relations between the two administrations.
127. In this case, I have also taken into consideration the age of the documents, and taken the view that the likelihood of harm as a consequence of disclosure would be less at the time of Mr Winetrobe’s request than had information been disclosed in 1999 when the operation of the Sewel Convention and the Executive’s relationship with UK Government in respect of this were first being established.
128. I accept that the (relevant parts of) items 25, 38 and 52 are exempt under the terms of section 28(1). I also find that section 28(1) applies to the relevant parts of the final briefing only within in item 4. These items contain internal discussions around the practical operation of the Sewel Convention and the relationship between the Scottish Executive and UK Government. Given the particular content of these documents, I agree that their disclosure would be likely to prejudice substantially relations between the two administrations.



129. However, I have concluded that this exemption has been incorrectly applied to items 1, 2, the remaining relevant parts of item 4, items 5, 6, 10, 19, 23, 47 and 50. Although these items contain internal discussions about the operation of the Sewel Convention, and briefings by Scottish Office officials to UK Government Ministers, I do not consider their specific contents to be such that disclosure would be likely to prejudice substantially the Executive's relations with the UK Government.
130. In particular, I have noted the content of certain of these items is broadly factual (e.g. item 1). I have also noted that in the time that passed between the creation of these documents and Mr Winetrobe's information request in 2005, many of the procedural matters raised would have been resolved through the establishment of practices followed by both Westminster and Holyrood Governments in relation to the Sewel Convention. I also note that policy discussions between Whitehall and the Executive with regard to the Bills for which Sewel procedures were considered will have been completed some time ago, and so their sensitivity will have diminished in the interim.

The public interest in relation to section 28(1)

131. The Executive has indicated that it would not be in the public interest for information exempt under section 28(1) to be disclosed because it would reduce the likelihood of important information being freely shared with the Executive in future. The Executive has emphasised that for the Sewel Convention to be properly managed, it is important that the UK Government is free to share information about legislative proposals with the Executive. More generally, it has indicated that it is important that open and frank dialogue is maintained between the two administrations on sensitive topics.
132. I accept that there is a significant public interest in the maintenance of effective working relationships between the UK Government and the Scottish Executive, particularly with respect to the operation of the Sewel Convention. Having concluded that the disclosure of the (relevant parts of the) items listed in paragraph 128 would be likely to prejudice substantially the relations between the two administrations, I also accept that their disclosure would have an impact that is contrary to the public interest.
133. When considering the public interest in relation to section 28(1), I have balanced this public interest in maintaining the exemption against the public interest factors favouring disclosure that I have identified previously in this decision. Having considered the content of these items, I do not believe that the contribution their disclosure would make to public understanding of the issues around the Sewel Convention is such that the public interest in disclosure outweighs the public interest in the maintenance of this exemption. Therefore, I conclude that the Executive correctly withheld the (relevant) parts of items 25, 38 and 52, and the relevant parts of the final briefing in item 4.



Section 30(a) collective responsibility of Scottish Ministers

134. Section 30(a) of FOISA states that information is exempt information if its disclosure under FOISA would, or would be likely to, prejudice substantially the maintenance of the convention of the collective responsibility of the Scottish Ministers. The concept of collective ministerial responsibility is a long-standing constitutional convention, which is not regulated by statute, but is formalised in the Scottish Ministerial Code which provides guidance on the convention.
135. The Executive has applied this exemption to items 14 and 22, which contain details of a Minister's views.
136. In my decision 056/2007, I noted that In order to rely on the exemption in section 30(a) of FOISA, the Executive is required to do more than assert that the documents contain views expressed by a Minister and therefore should be protected. It is required to show that disclosure would, or would be likely to, prejudice substantially the maintenance of the convention of the collective responsibility of the Scottish Ministers.
137. In order to judge whether disclosure of information would have such an effect, I need to consider what the information reveals about the Ministers' views and the context in which they were expressed. I have considered whether the views expressed were at variance with the final policy, and whether the information reveals disagreement among Ministers.
138. Having considered the contents of items 14 and 22, and noted that the Executive made no specific submissions with regard to how and why their disclosure would be likely to prejudice substantially the convention of collective responsibility of the Scottish Ministers, I have concluded that the exemption in section 30(a) does not apply to either of these items.
139. As I have not found that the exemption in section 30(a) applies to any information in this case, I am not required to go onto consider the public interest test as it relates to this exemption.

Sections 30(b)(i) and (ii)

140. Generally speaking, the exemptions in section 30(b) of FOISA allow for information to be withheld if its disclosure would, or would be likely to, inhibit substantially the imparting or commissioning of advice, or the offering or requesting of opinions or considerations. Section 30(b)(i) of FOISA states that information is exempt information if its disclosure under FOISA would, or would be likely to, inhibit substantially the free and frank provision of advice. Section 30(b)(ii) of FOISA states that information is exempt information if its disclosure under FOISA would, or would be likely to, inhibit substantially the free and frank exchange of views for the purposes of deliberation. These exemptions are both subject to the public interest test required by section 2(1)(b) of FOISA.



141. In decision 166/2006 (Mr Martin Williams of The Herald and the Scottish Executive) I discussed in detail my views on the issues that should be considered in deciding whether the exemptions in section 30(b)(i) and (ii) can apply. I will not repeat my comments in full in this decision notice, but they can be summarised as follows. Information must be treated on a case-by-case basis: release of information in one case need not imply release in another case. The nature of the information in question must be considered, rather than considering “advice” or “exchange of views” as categories of information. If the information withheld does not in itself constitute advice or an exchange of views, the argument for exemption under section 30(b) may be weaker. The standard to be met in applying the tests in 30(b) is high.
142. My consideration of the Executive’s application of the exemptions under section 30(b) has also been informed by the recent case in the Court of Session *Scottish Ministers v Scottish Information Commissioner (re Alexander’s Application)* 2007 G.W.D. 3-48 Times, January 29, 2007. The Court’s conclusions made clear that the actual content of the information must be considered in determining whether disclosure would be likely to have a substantially inhibitive effect, rather than proceeding on an assumption that disclosure of certain types of information, such as advice to Ministers, would always lead to future substantial inhibition for the purposes of these exemptions.
143. I have also taken into consideration the comments on these exemptions made in the Executive’s letter to my office of 2 May 2007. I have summarised these in detail in my decision 089/2007 *Mr James Cannell and Historic Scotland*. In that decision, I also responded in some detail to the Executive’s general comments on the application of these exemptions. I will not repeat my arguments or those of the Executive in this decision, but I have had regard to these when considering the application of these exemptions to the documents under consideration in this case. In particular, it should be clear that I cannot as a rule accept an automatic presumption that harm will be caused by the release of information simply because it falls into a particular category.
144. In what follows, I have only considered the application of the exemptions in section 30(b) in relation to items that I have not already judged to have been correctly withheld by the Executive under the terms of one of the exemptions considered above.

Section 30(b)(i)

145. The Executive has applied the exemption in section 30(b)(i) to items 1, 4, 5, 9, 10, 11, 15, 16, 17, 18, 27, 32, 44, 45 and 50. (I have not considered items 43, 46 and 52 as I have already found these to have been correctly withheld under sections 36(1) and 29(c).) It has stated that each of these comprise advice from officials to Ministers, and include comments on the drafting of such advice between officials.



146. The Executive has asserted that the disclosure of such advice and drafts would inhibit the future free and frank provision of advice to Ministers. It has noted in relation to draft documents that revealing the changes to these would prejudice the ability of Ministers to be offered candid views of possible approaches.
147. I have considered the content of each of the items listed in paragraph 146 in the light of the Executive's submissions and the considerations set out above.
148. I have concluded that the following items are not exempt from disclosure under section 30(b)(i): 1, 4, 5, 9, 10, 11, 15, 16, 17, 18, 27, 32, or 44.
149. In reaching this decision, I note I have judged that the passing of time will have diminished the sensitivity of any content therein. I also note that the various issues raised in these documents will since have been decided and settled through the passing of legislation and the bedding in of the relationship between the Scottish Executive and Whitehall Government. I note that the language and content of these documents and any advice therein is largely unexceptional, particularly in the light of the passage of time. I do not accept the Executive's view that their disclosure in response to Mr Winetrobe's request would have been likely to cause substantial inhibition to the future provision or commissioning of advice.
150. However, I have concluded that the exemption in section 30(b)(i) has been correctly applied to the minute contained in items 45 and 50. These items each contain exchanges giving and seeking advice on policy and procedural options. I am satisfied that disclosure of these items would be likely to inhibit the free and frank provision of advice in future.
151. I will consider the public interest in relation to these items after first considering the application of section 30(b)(ii).

Section 30(b)(ii)

152. The Executive has applied the exemption in section 30(b)(ii) to items 2, 3, 6, 8, 10, 12, 13, 14, 15, 21, 22, 23, 24, 34, 35, 47, 49, 50 and 51. (I have not considered the Executive's application of this exemption to items 7, 19, 20, 39, 40 and 41 as I have already judged (the relevant parts of) these items to have been correctly withheld under one or more exemption(s)).
153. The Executive has noted that these items contain exchanges between officials often giving very frank opinions on the development of the policy around the Sewel Convention. They also include notes from Ministerial Private Offices setting out the views of Ministers on the issues put to them. The Executive stated that the exchange of views in this area contributed to the deliberations and the development of the policy area. It went on to state that to disclose such discussions would inhibit the future free and frank internal exchange that is essential to the development of government policy.



154. The Executive has stated that there is no doubt that the disclosure of the documents under discussion would have a substantial prejudicial effect on the ability of officials and Ministers to express themselves freely in future.
155. The Executive has highlighted particular content within certain documents where officials have expressed their views in frank or candid language. However, it has also stated that the purpose of the exemptions in section 30(b) is not simply to protect internal communications where officials have used strong or trenchant language. It has suggested that although the disclosure of more moderately expressed advice might appear reasonable, it could still have a corrosive effect on the confidence with which officials would feel able to express themselves.
156. I have again considered the specific information contained in the items to which the Executive has applied the exemption in section 30(b)(ii), along with the comments made by the Executive, and the considerations set out in paragraphs 140-143 above.
157. I have concluded that items 3, 6, 13, 21, 22, 23, 24, 47, 49, 50 and 51 are not exempt from disclosure under the terms of section 30(b)(ii). Given the nature of the content of these documents, the passage of time, and the settlement of the various issues addressed therein, I have concluded that disclosure in response to Mr Winetrobe's request would not be likely to substantially inhibit the future free and frank exchange of views for the purposes of deliberation.
158. However, I have accepted that items 2, 8, 10, 12, 14, 15, 34 and 35 do fall under the scope of the exemption in section 30(b)(ii) of FOISA. I have concluded in each of these cases that the nature of the exchange, its content or the circumstances in which it was made make it likely that disclosure in response to Mr Winetrobe's request would lead to substantial inhibition of the free and frank exchange of views for the purposes of deliberation in future.

Consideration of the public interesting relation to sections 30(b)(i) and 30(b)(ii)

159. With respect to these exemptions, the Executive has indicated that it believes that disclosure of advice to Ministers would inhibit the future free and frank provision of advice that is essential to the development of robust policy. The Executive stated its view that the public interest in disclosure did not outweigh the public interest in maintaining the confidentiality of advice to Ministers on developing policy. The Executive also indicated that disclosure of information about the early use of the Sewel Convention might inhibit future policy development.



160. I have considered the public interest in relation to these items in the light of all of the Executive's comments in the context of this case. Once again, I cannot accept such a general view that the public interest will always favour the maintenance of a private sphere for policy development. I have also viewed the relevant items in the context of my views on how disclosure of information relating to the Sewel Convention would enhance public understanding and debate on this subject.
161. However, having applied the test associated with these exemptions, I do accept that disclosure would be contrary to the public interest where I have accepted that substantial inhibition in the exchanging of advice or views. Having concluded that the exemption applies, I have also concluded that the public interest in maintaining that exemption outweighs the public interest in the disclosure of the information concerned in each case. I do not find that the content of these documents is such that the (in some cases limited) contribution to public understanding they would make is sufficient to override the likely harm that would be caused by disclosure.
162. I therefore conclude that each of the items listed in paragraphs 150 and 158 above was correctly withheld by the Executive.

Section 38(1)(b) – personal data

163. Under section 38(1)(b) of FOISA (read in conjunction with section 38(2)(a)(i) or, as appropriate, section 38(2)(b)), information is exempt information if it constitutes personal data and the release of the information would breach any of the data protection principles contained in the DPA. This is an absolute exemption and as such is not subject to the public interest test in section 2(1) of FOISA.
164. The Executive has applied this exemption only to an official's home telephone number that is included within item 32. The Executive has stated that it believes disclosure of this information would breach the first data protection principle, which states that personal data must be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in Schedule 2 of the DPA is met and, in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met. I am satisfied that the information in question is not sensitive personal data as defined by section 2 of the DPA.
165. In his comments to my office, Mr Winetrobe has indicated that he does not have any problem with the proper application of this exemption, and this matter is not the basis of his appeal. I will therefore not consider this exemption in great detail here.



166. I accept the Executive's assertion that this telephone number is personal data relating to the relevant official. This was provided in a work context and I am satisfied that it was not given in the expectation that it would be made publicly available. I do not consider that the official would have had any reasonable expectation that the number would be disclosed and therefore am satisfied that disclosure would not be fair for the purposes of the first data protection principle.

167. I therefore accept that the Executive has applied the exemption in section 38(1)(b), read in conjunction with section 38(2)(a)(i) or (b) to this information.

Decision

I find that the Scottish Executive (the Executive) has failed to comply fully with the requirements of Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in its handling of Mr Winetrobe's request for information. I have found that in some instances, the Executive has correctly applied exemptions contained in sections 28, 29, 30, 36 and 38 of FOISA. In other instances, I have judged that the exemptions relied upon have been misapplied.

I find that by refusing to release some of the information covered by Mr Winetrobe's request, the Executive failed to comply with the requirements of section 1(1) of FOISA and, in doing so, failed to comply with Part 1 of FOISA. I now require the Executive to release the information to Mr Winetrobe as set out Appendix 2 to the decision. This Appendix forms part of this decision, but should be read in conjunction with the text of the analysis and findings section of this decision.

I require the Executive to provide information to Mr Winetrobe as set out in Appendix 2 within 45 days of the receipt of this decision.



Appeal

Should either Mr Winetrobe or the Executive wish to appeal against this decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days of receipt of this notice.

Kevin Dunion
Scottish Information Commissioner
21 August 2007



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –
 - (a) the provision does not confer absolute exemption; and
 - (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

25 Information otherwise accessible

- (1) Information which the applicant can reasonably obtain other than by requesting it under section 1(1) is exempt information.

28 Relations within the United Kingdom

- (1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice substantially relations between any administration in the United Kingdom and any other such administration.
- (2) In subsection (1), "administration in the United Kingdom" means-
 - (a) the Government of the United Kingdom;
 - (b) the Scottish Administration;
 - (c) the Executive Committee of the Northern Ireland Assembly; or
 - (d) the National Assembly for Wales.



29 Formulation of Scottish Administration policy etc.

- (1) Information held by the Scottish Administration is exempt information if it relates to-
- (a) the formulation or development of government policy;
 - (b) Ministerial communications;
 - (c) the provision of advice by any of the Law Officers or any request for the provision of such advice; or
- ...
- (4) In this section-
- "government policy" means-
- (a) the policy of the Scottish Administration; and
 - (b) in relation to information created before 1st July 1999, the policy of the Government of the United Kingdom;
- "the Law Officers" means the Lord Advocate, the Solicitor General for Scotland, the Advocate General for Scotland, the Attorney General, the Solicitor General and the Attorney General for Northern Ireland;
- "Ministerial communications" means any communications between Ministers and includes, in particular, communications relating to proceedings of the Scottish Cabinet (or of any committee of that Cabinet); and
- ...
- (5) In the definitions of "Ministerial communications" and "Ministerial private office" in subsection (4), "Minister" means a member of the Scottish Executive or a junior Scottish Minister.

30 Prejudice to effective conduct of public affairs

Information is exempt information if its disclosure under this Act-

- (a) would, or would be likely to, prejudice substantially the maintenance of the convention of the collective responsibility of the Scottish Ministers



- (b) would, or would be likely to, inhibit substantially-
 - (i) the free and frank provision of advice; or
 - (ii) the free and frank exchange of views for the purposes of deliberation; or

...

36 Confidentiality

- (1) Information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings is exempt information.

...

38 Personal information

- (1) Information is exempt information if it constitutes-

...

- (b) personal data and either the condition mentioned in subsection (2) (the "first condition") or that mentioned in subsection (3) (the "second condition") is satisfied;

...

- (2) The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998 (c.29), that the disclosure of the information to a member of the public otherwise than under this Act would contravene-

- (i) any of the data protection principles; or

...

- (b) in any other case, that such disclosure would contravene any of the data protection principles if the exemptions in section 33A(1) of that Act (which relate to manual data held) were disregarded.

...



(5) In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to that Act, as read subject to Part II of that Schedule and to section 27(1) of that Act;

"data subject" and "personal data" have the meanings respectively assigned to those terms by section 1(1) of that Act;

...

Data Protection Act 1998

1 Basic interpretative provisions

(1) In this Act, unless the context otherwise requires –

...

“personal data” means data which relate to a living individual who can be identified –

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual

2 Sensitive personal data

In this Act 'sensitive personal data' means personal data consisting of information as to-

(a) the racial or ethnic origin of the data subject,

(b) his political opinions,

(c) his religious beliefs or other beliefs of a similar nature,

(d) whether he is a member of a trade union (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992,

(e) his physical or mental health or condition,

(f) his sexual life,



(g) the commission or alleged commission by him of any offence, or

(h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.

Schedule 1: The data protection principles

Part 1: The principles

1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.



Appendix 2 – Decision in relation to each item under consideration

| No. | Executive position | Commissioner's decision |
|-----|--|---|
| 1 | Exempt – s28(1), s30(b)(i) | <ul style="list-style-type: none">• Not exempt s28(1)• Not exempt s30(b)(i)• Disclose |
| 2 | Exempt - s28(1), s29(1)(a), s30(b)(ii) | <ul style="list-style-type: none">• Exempt s29(1)(a)• Not exempt s28(1)• Exempt s30(b)(ii)• Public interest favours the maintenance of s30(b)(ii) - withhold |
| 3 | Only partly relevant Exempt - s29(1)(a), s29(1)(b), s30(b)(ii) | <ul style="list-style-type: none">• Entire item is relevant to request.• Exempt s29(1)(a)• Exempt s29(1)(b)• Not exempt s30(b)(ii)• Public interest favours disclosure - disclose |
| 4 | Only partly relevant Exempt – s28(1), s29(1)(a), s29(1)(b), s30(b)(i) | <ul style="list-style-type: none">• Only partly relevant – see para 40.• Exempt s29(1)(a)• Para 4 of covering minute only, exempt s29(1)(b)• Relevant parts of final briefing only, exempt s28(1)• Not exempt s30(b)(i)• Public interest favours the maintenance of section 28(1), but the disclosure of remaining relevant parts – disclose relevant parts, excluding those within the final briefing. |
| 5 | Only partly relevant , relevant part exempt – s25(1) (s28(1), s29(1)(a) and s30(b)(i) initially cited) | <ul style="list-style-type: none">• Covering email and item 7 in the attached annex are relevant. Remaining parts fall outside scope.• Item 7 in attached annex – exempt s25(1) |



| No. | Executive position | Commissioner's decision |
|-----|--|---|
| | | <ul style="list-style-type: none"> • Exempt s29(1)(a) • Not exempt s28(1) • Not exempt s30(b)(i) • Public interest favours disclosure of covering email. <p>Disclose email</p> |
| 6 | Exempt - s28(1), s29(1)(a), s30(b)(ii) | <ul style="list-style-type: none"> • Exempt s29(1)(a) • Not exempt s28(1) • Not exempt s30(b)(ii) • Public interest favours disclosure - disclose |
| 7 | Exempt - s29(1)(a), s30(b)(ii), s36(1) | <ul style="list-style-type: none"> • Exempt s29(1)(a) • Exempt s36(1) • Public interest favours maintenance of s36(1) - withhold • s30(b)(ii) not considered |
| 8 | Exempt - s29(1)(a), s30(b)(ii) | <ul style="list-style-type: none"> • Exempt s29(1)(a) • Exempt s30(b)(ii) • Public interest favours the maintenance of s30(b)(ii) - withhold |
| 9 | Only partly relevant Exempt - s29(1)(a), s29(1)(b), s30(b)(i) | <ul style="list-style-type: none"> • Final memo is duplicated in item 19 - disregarded. • All remaining parts fall under scope of the request. • Exempt s29(1)(a) • Cabinet memorandum only, exempt s29(1)(b) • Not exempt s30(b)(i) • Public interest favours disclosure except for draft statement – disclose covering submission and cabinet memorandum |
| 10 | Exempt – s28(1), s29(1)(a), s29(1)(b), s30(b)(i), s30(b)(ii) | <ul style="list-style-type: none"> • Exempt s29(1)(a) • Paras 5, 8, 9 of final document only - exempt s29(1)(b) • Not exempt s28(1) • Not exempt s30(b)(i) • Exempt s30(b)(ii) • Public interest favours the maintenance of s30(b)(ii) - |



| No. | Executive position | Commissioner's decision |
|-----|---|---|
| | | withhold |
| 11 | Exempt - s29(1)(a), s29(1)(b), s30(b)(i) | <ul style="list-style-type: none"> • Exempt s29(1)(a) • Paras 3 & 14 only, exempt s29(1)(b) • Not exempt s30(b)(i) • Public interest favours disclosure, excluding draft statement and document – disclose, excluding draft statement and document |
| 12 | Exempt - s29(1)(a), s30(b)(ii) | <ul style="list-style-type: none"> • Exempt s29(1)(a) • Exempt s30(b)(ii) • Public interest favours the maintenance of s30(b)(ii) - withhold |
| 13 | Exempt – s29(1)(a), s30(b)(ii), s.36(1) | <ul style="list-style-type: none"> • Exempt s29(1)(a) • Paragraph 3 only, exempt s36(1) • Not exempt s30(b)(ii) • Public interest favours maintenance of s36(1) – Disclose, excluding paragraph 3 |
| 14 | Exempt – s29(1)(b), s30(a), s30(b)(ii) | <ul style="list-style-type: none"> • Not exempt s29(1)(b) • Not exempt s30(a) • Exempt s30(b)(ii) • Public interest favours the maintenance of s30(b)(ii) - withhold |
| 15 | Exempt – s29(1)(a), s30(b)(i), s30(b)(ii) | <ul style="list-style-type: none"> • Exempt s29(1)(a) • Not exempt s30(b)(i) • Exempt s30(b)(ii) • Public interest favours the maintenance of s30(b)(ii) - withhold |
| 16 | Exempt – s29(1)(a), s30(b)(i) | <ul style="list-style-type: none"> • Exempt s29(1)(a) • Not exempt s30(b)(i) • Public interest favours disclosure of covering email and minute, but not draft statement and document – disclose email and minute |
| 17 | Official Report - Exempt under s25(1) | <ul style="list-style-type: none"> • Extract from Official report exempt s.25(1) |



| No. | Executive position | Commissioner's decision |
|-----|--|---|
| | Draft paper – Exempt – s30(b)(i) | <ul style="list-style-type: none"> • Not exempt s30(b)(i) • Disclose draft paper |
| 18 | Exempt – s29(1)(a), s29(1)(b), s30(b)(i) | <ul style="list-style-type: none"> • Exempt s29(1)(a) • Exempt s29(1)(b) • Not exempt s30(b)(i) • Public interest favours disclosure - disclose |
| 19 | Exempt – s28(1), s29(1)(a), s30(b)(ii), s36(1) | <ul style="list-style-type: none"> • Exempt s29(1)(a) • Exempt s36(1) • Not exempt s28(1) • Public interest favours maintenance of s36(1) – withhold • s30(b)(ii) not considered |
| 20 | Exempt – s29(1)(a), s30(b)(ii), s36(1) | <ul style="list-style-type: none"> • Exempt s29(1)(a) • Exempt s36(1) • Public interest favours maintenance of s36(1) – withhold • s30(b)(ii) not considered |
| 21 | Exempt – s29(1)(a), s30(b)(ii), s36(1) | <ul style="list-style-type: none"> • Exempt s29(1)(a) • Paragraph 2 only, exempt – s36(1) • Not exempt s30(b)(ii) • Public interest favours maintenance of s36(1) – disclose, excluding paragraph 2 |
| 22 | Exempt – s29(1)(a), s30(a), s30(b)(ii) | <ul style="list-style-type: none"> • Exempt s29(1)(a) • Not exempt s30(a) • Not exempt s30(b)(ii) • Public interest favours disclosure - disclose |
| 23 | Exempt – s28(1), s29(1)(a), s30(b)(ii), s36(1) | <ul style="list-style-type: none"> • Exempt s29(1)(a) • Paragraph 2 of covering minute only, exempt s36(1) • Not exempt s28(1) • Not exempt s30(b)(ii) • Public interest favours maintenance of s36(1) – disclose excluding paragraph 2 |
| 24 | Only partly relevant | <ul style="list-style-type: none"> • Entire item is relevant to |



| No. | Executive position | Commissioner's decision |
|-----|---|---|
| | Exempt – s29(1)(a), s30(b)(ii), s36(1) | request. <ul style="list-style-type: none"> • Exempt s29(1)(a) • Attached memo only, exempt s36(1) • Not exempt s30(b)(ii) • Public interest favours maintenance of s36(1) – Disclose, excluding attached memo |
| 25 | Exempt – s28(1), s29(1)(a), s30(b)(ii), s36(1) | <ul style="list-style-type: none"> • Exempt s29(1)(a) • Exempt s36(1) • Exempt s28(1) • Public interest favours maintenance of s28(1) & s36(1) - withhold • s30(b)(ii) not considered |
| 26 | Exempt – s28(1), s29(1)(a), s30(b)(ii), s36(1) | <ul style="list-style-type: none"> • Disregarded – duplicated in item 38. |
| 27 | Exempt – [s25(1) applying only to some attachments], s29(1)(a), s30(b)(i) | <ul style="list-style-type: none"> • Not exempt section 25(1) • Exempt s29(1)(a) • Not exempt s30(b)(i) • Public interest favours disclosure of covering minute, but not attached draft documents – disclose covering minute |
| 28 | Exempt – s29(1)(a), s30(b)(ii), s36(1) | <ul style="list-style-type: none"> • Disregarded – duplicated in item 19 |
| 29 | Outwith scope of request, but willing to disclose | <ul style="list-style-type: none"> • Outwith scope of request |
| 30 | Outwith scope of request, but willing to disclose | <ul style="list-style-type: none"> • Outwith scope of request |
| 31 | Outwith scope of request, but willing to disclose | <ul style="list-style-type: none"> • Outwith scope of request |
| 32 | Exempt - [s25(1) applying only to some attachments], s29(1)(a), s30(b)(i). s38(1)(b) applied only to an official's home telephone number. | <ul style="list-style-type: none"> • Appendices 1-3 only, exempt s25(1) • Exempt s29(1)(a) • Not exempt s30(b)(i) • Telephone number only, exempt s38(1)(b) • Public interest favours disclosure of content exempt only under section 29(1)(a) – disclose |



| No. | Executive position | Commissioner's decision |
|-----|--|--|
| | | excluding appendices 1-3 and telephone number |
| 33 | Outwith scope of request, but willing to disclose | <ul style="list-style-type: none"> • Outwith scope of request |
| 34 | Exempt - s29(1)(a), s30(b)(ii) | <ul style="list-style-type: none"> • Exempt s29(1)(a) • Exempt s30(b)(ii) • Public interest favours the maintenance of s30(b)(ii) – withhold |
| 35 | Exempt – s30(b)(ii) | <ul style="list-style-type: none"> • Exempt s30(b)(ii) • Public interest favours the maintenance of s30(b)(ii) - withhold |
| 36 | Outwith scope of request, but willing to disclose | <ul style="list-style-type: none"> • Outwith scope of request |
| 37 | Outwith scope of request, but willing to disclose | <ul style="list-style-type: none"> • Outwith scope of request |
| 38 | Exempt – s28(1), s29(1)(a), s30(b)(ii), s36(1) | <ul style="list-style-type: none"> • Exempt s29(1)(a) • Exempt s36(1) • Exempt s28(1) • Public interest favours maintenance of s36(1) and s28(1) – withhold • s30(b)(ii) not considered |
| 39 | Exempt – s29(1)(a), s29(1)(b), s29(1)(c), s30(b)(ii), s36(1) | <ul style="list-style-type: none"> • Exempt s29(1)(a) • Paragraph 1 only, exempt s29(1)(b) • Paragraph 2 and first sentence of paragraph 3 only, exempt s29(1)(c) • Exempt s36(1) • Public interest favours maintenance of s36(1) and 29(1)(c) – withhold • s30(b)(ii) not considered |
| 40 | Only partly relevant Exempt - s29(1)(a), s30(b)(ii), s36(1) | <ul style="list-style-type: none"> • Entire item is relevant to request. • Exempt s29(1)(a) • Exempt s.36(1) • Public interest favours maintenance of s36(1) – withhold • s30(b)(ii) not considered |



| No. | Executive position | Commissioner's decision |
|-----|--|--|
| 41 | Exempt - s29(1)(a), s30(b)(ii), s36(1) | <ul style="list-style-type: none"> • Exempt s29(1)(a) • Exempt s36(1) • Public interest favours maintenance of s36(1) – withhold • s30(b)(ii) not considered |
| 42 | Outwith scope of request, but willing to disclose | <ul style="list-style-type: none"> • Outwith scope of request |
| 43 | Exempt - s29(1)(a), s30(b)(i), s36(1) | <ul style="list-style-type: none"> • Exempt s29(1)(a) • Covering minute only, exempt s36(1) • Public interest favours maintenance of s36(1) – withhold covering minute • Public interest favours maintenance of s29(1)(a) in relation to attached draft document– withhold attached document • s30(b)(i) not considered |
| 44 | Exempt - s29(1)(a), s30(b)(i) | <ul style="list-style-type: none"> • Exempt s29(1)(a) • Not exempt s30(b)(i) • Public interest favours disclosure - disclose |
| 45 | Exempt - s29(1)(a), s30(b)(i), s36(1) | <ul style="list-style-type: none"> • Exempt – s29(1)(a) • Not exempt – s36(1) • Attached minute only exempt – s30(b)(i) • Public interest favours maintenance of s30(b)(i) – withhold minute. • Public interest favours disclosure of covering email – disclose email. |
| 46 | Only partly relevant Exempt - s29(1)(a), s29(1)(c), s30(b)(i), s36(1) | <ul style="list-style-type: none"> • Only partly relevant – paragraphs 2-7 and 11 – 12 of draft letter fall outside scope of the request • Exempt s29(1)(a) • Exempt s29(1)(c) • Exempt s 36(1) • Public interest favours maintenance of s36(1) and |



| No. | Executive position | Commissioner's decision |
|-----|---|--|
| | | s29(1)(c) - withhold • s30(b)(i) not considered |
| 47 | Exempt - s28(1), s29(1)(a), s29(1)(b), s30(b)(ii) | • Exempt s29(1)(a) • Not exempt s29(1)(b) • Not exempt s28(1) • Not exempt s30(b)(ii) • Public interest favours disclosure - disclose |
| 48 | Exempt s25(1) | • Exempt s25(1) • Withhold |
| 49 | Exempt – s29(1)(a), s30(b)(ii) | • Exempt s29(1)(a) • Not exempt s30(b)(ii) • Public interest favours disclosure - disclose |
| 50 | Exempt - s28(1), s29(1)(a), s30(b)(i), s30(b)(ii), s36(1) | • Emails disregarded as duplicates of items 47 and 51 • Exempt s29(1)(a) • Not exempt s36(1) • Not exempt s28(1) • Exempt s30(b)(i) • Not exempt s30(b)(ii) • Public interest favours maintenance of s30(b)(i). Withhold minute |
| 51 | Exempt s29(1)(a), 30(b)(ii) | • Exempt s29(1)(a) • Not exempt s30(b)(ii) • Public interest favours disclosure - disclose |
| 52 | Only partly relevant Exempt - s28(1), s29(1)(a), s30(b)(i), s36(1) | • Only paragraph 7 of the second document, along with title, sender and recipients of this document are relevant to the request. • Exempt s29(1)(a) • Exempt s36(1) • Exempt s28(1) • Public interest favours maintenance of s36(1) and s28(1) – withhold • s30(b)(i) not considered |