



Tribunals Service

Information Tribunal

Information Tribunal Appeal Number:
Information Commissioner's Ref:

EA/2008/0035
FS50119029

Heard at Procession House, London, EC4
On 13th October 2008

Decision Promulgated
4th November 2008

BEFORE

CHAIRMAN
Fiona Henderson

And

LAY MEMBERS
Jacqueline Blake
and
Ivan Wilson

Between

MARTIN GEORGE ROSENBAUM

Appellant

and

INFORMATION COMMISSIONER

Respondent

and

HOUSE OF LORDS APPOINTMENTS COMMISSION

Additional Party

Subject matter:

- Public interest test s.2 FOIA
- Legal professional privilege s.42 FOIA

Cases:

Bellamy v ICO and Secretary of State for Trade and Industry EA/2005/0023

Three Rivers District Council v Bank of England (No.5) [2003] QB 1556 (CA)

Jonathan Fuller v Information Commissioner (EA/2008/0005),

Pugh v IC and MOD EA/2007/055

Mersey Tunnel Users Association v Information Commissioner and Merseytravel EA/2007/0052

Decision

The Tribunal allows the appeal in part and amends the Decision Notice dated 12th March 2008 as set out below. The withheld information (as defined in 62i below) should be provided to the Appellant within 30 days from the date of this Decision.

The Tribunal has sought to give the fullest reasons possible in an open Decision and has not resorted to a Confidential Schedule.

Dated this 4th day of November 2008

Signed

Fiona Henderson

Deputy Chairman, Information Tribunal

Information Tribunal

Appeal Number: EA/2008/0035

SUBSTITUTED DECISION NOTICE

Dated 30TH October 2008

**Public authority: House of Lords Appointments
Commission,**

Address of Public authority: 35 Great Smith Street, London, SW1P 3BQ.

Name of Complainant: Martin Rosenbaum

Substituted Decision

62.i. For the reasons set out in the Decision below, the public interest in maintaining the section 42 exemption is outweighed by the public interest in disclosure in relation to the following information:

- a) the Minutes of 6th December 2005 (item 1) the sub-heading and first sentence of paragraph 4,
- b) the Minutes of 9th March 2006 (item 3) the first 2 sentences of paragraph 7.

which should be disclosed.

62.ii. For the reasons set out in the Decision below, the public interest in maintaining the section 42 FOIA exemption outweighs the public interest in disclosure, in relation to the following information:

- a) the Minutes of 6th December 2005 (item 1) from sentence 2 onwards of paragraph 4,
- b) The Minutes of 16th January 2006 (item 2) The heading, and sentences 1 and 2 of paragraph 4,
- c) The Minutes of 9th March 2006 (item 3) paragraph 8.

which should remain withheld.

The Decision

83. The following elements of the request were not dealt with in accordance with the Act
- iv the application of section 42 to some of the requested information

Steps Required

- 84.iii Disclose the information set out at 62.i. above within 30 days.

Dated this 4th day of November 2008

Signed

Fiona Henderson

Deputy Chairman, Information Tribunal

Reasons for Decision

Introduction

1. The House of Lords Appointments Commission was established in 2000, its key role being to recommend to HM the Queen, people for appointment as non-party-political life peers. It also carries out a vetting function in which it offers advice to the Prime Minister on the propriety of all nominations for membership of the House of Lords.
2. At the time of Mr Rosenbaum's requests there was great media and public interest in the work of the Commission as there had been a leak (not by the Commission) to the press of some nominees' names in 2005, and in early 2006 the Police inquiry into allegations of the sale of honours and peerages under the Honours (Prevention of Abuses) Act 1925 had begun.

The request for information

3. On 6th December 2005 Mr Rosenbaum, an executive producer at the BBC emailed the House of Lords Appointments Committee (HOLAC) as follows:

"I am making this request under the Freedom of Information Act.

Please can you send me copies of the minutes of all meetings of the House of Lords Appointments Commission since 1 January 2005 along with the agendas for those meetings and any papers distributed to Commission members for discussion or information."

4. HOLAC responded on 2nd February 2006 enclosing redacted copies of agreed minutes (as those from more recent meetings had not yet been agreed by the Commission), and other redacted enclosures falling within his request, the redacted passages were pursuant to:

Sections 36(2)(b), 37(1)(b), 40(2) and 41(1)(a) FOIA.

5. Mr Rosenbaum requested an internal review on 6th February 2006, in particular challenging the reliance upon section 41 FOIA, and asking for draft minutes where the formal minutes have not yet been agreed.
6. The results of the internal review were communicated to Mr Rosenbaum on 23rd March 2006 upholding the redactions under sections 36(2)(b), 37(1)(b) and 40(2) FOIA but accepting that:

“section 41 should not have been used as a reason for non-disclosure, as the release of the information would not lead to an actionable breach of confidence”

And

“You also asked for the draft minutes of commission meetings. We did interpret your initial request for minutes as being only for finalised minutes, but now that you have requested the draft minutes, I have considered this as a fresh request..”

And relying upon section 36 FOIA in deciding to withhold them, but that:

“Once the minutes have been finalised, I would be happy to consider their release to you under the Freedom of Information Act”.

7. As a result of this second request for information, HOLAC have taken the view that the minutes of meetings up until 9th March 2006 fall to be considered for disclosure under this provision.
8. HOLAC wrote to Mr Rosenbaum on 2nd June 2006 confirming that the draft minutes from October 05- March 06 had now been agreed and providing the information in redacted form pursuant to the exemptions in sections:

36(2)(b), 37(1)(b), 40(2) and now also section 42(1) FOIA (legal professional privilege).

9. Mr Rosenbaum requested an internal review on 7th June 2006; accepting redactions withholding the name of an individual, but challenging the rest of the redactions. HOLAC completed its review on 5th July 2006 in which it upheld its earlier decision apart from the naming of certain officials who attended meetings.

The complaint to the Information Commissioner

10. Mr Rosenbaum complained to the Commissioner on 15th May 2006 in relation to his original information request and again on 5th July 2006 in relation to his second request. The 2 complaints were dealt with together by the Commissioner.
11. During the course of the investigation Mr Rosenbaum confirmed that he did not dispute the application of section 40 FOIA to the disclosure. The Commissioner saw an un-redacted version of all the information, and received representations from HOLAC as to the applicability of section 36(2)(b) and 37(1)(b) FOIA. In his Decision Notice the Commissioner ruled that all the information redacted under those exemptions did not apply and ordered the disclosure of that part of the redacted material.
12. In considering the exemption under section 42 the Commissioner requested that HOLAC explain how the material redacted had a claim to privilege and to consider if privilege had been waived at any point. HOLAC were also asked to expand on the public interest arguments for and against maintaining the exemption.
13. HOLAC disclosed further information on 5th October 2007 on the basis that the work of the Commission had progressed and the public interest no longer favoured withholding the information.
14. The Commissioner concluded that in relation to all the withheld information for which legal professional privilege was claimed, the exemption under section 42 was engaged.

15. Additionally the Commissioner applied the public interest balancing test set out in *Bellamy v ICO and Secretary of State for Trade and Industry EA/2005/0023* and concluding that whilst there was a strong public interest in greater public understanding of how the Commission reaches decisions:

“there was a risk that disclosing confidential legal advice could undermine the Commission’s ability to obtain this advice in a timely fashion and have confidence that the advice given is done so freely without the consideration of its wider disclosure.”

And that therefore the balance of public interest lay in maintaining the section 42 FOIA exemption.

The appeal to the Tribunal

16. The Appellant appealed on 9th April 2008 indicating that he disputed the Information Commissioner’s decision in respect of his finding in relation to section 42 FOIA. The Appellant’s grounds:

- in relation to the information relating to 16th January 2006 were:
“I contend that a document which does not contain the communication in any form contains nothing to which privilege attaches and that section 42 FOIA was not therefore engaged.”
- In relation to all information withheld under section 42 FOIA, were that the public interest in disclosing the requested information outweighed the public interest in maintaining the exemption.

17. On 18th June 2008 HOLAC released additional information contained in the Minutes of the meetings held on 16th January and 9th March 2006. No party asks this Tribunal to adjudicate upon whether in respect of that information, the Commissioner erred in his Decision Notice and as such this Tribunal does not consider that information. Consequently

the only information that remains in dispute for the purposes of this appeal is:

- Minutes of 6th December 2005 paragraph 4 and the heading (item 1).
- Minutes of 16th January 2006 paragraph 4 (sentences 1 and 2) and the heading (item 2).
- Minutes of 9th March 2006 paragraph 7 (sentences 1 and 2) and paragraph 8. (item 3)

The questions for the Tribunal

18. In light of the most recent disclosures all parties agree that the matters that remain before the Tribunal are:

- Whether in relation to the Minutes of 16th January 2006 paragraph 4 (sentences 1 and 2) and the heading (item 2), legal professional privilege attaches.
- Whether the public interest in disclosing all of the outstanding information outweighs the public interest in maintaining the exemption.

19. The fact that LPP applies to items 1 and 3 is not disputed by Mr Rosenbaum who is content to be led by the descriptions given within the Decision Notice, however the Tribunal notes that Mr Rosenbaum has not had sight of the disputed material and therefore feels bound to satisfy itself that the material in items 1 and 3 is legally privileged before going on to consider the public interest test.

The Law

20. Section 42 of FOIA provides:

“(1) Information in respect of which a claim to legal professional privilege...could be maintained in legal proceedings is exempt information.”

Section 2(2)(b) of FOIA provides that information is exempt pursuant to section 42 if:

(b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.”

21. The Tribunal's powers in relation to appeals under section 57 FOIA are to be found in section 58 FOIA which provides:

“(1) If on an appeal under section 57 the Tribunal considers-
(a) that the notice against which the appeal is brought is not in accordance with the law, or
(b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,
the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner; and in any other case the Tribunal shall dismiss the appeal”.

22. The question of whether the exemption in section 42 FOIA is engaged and if so whether the public interest test was applied properly are all questions of law based upon the analysis of the facts. This is not a case where the Commissioner was required to exercise his discretion.

Evidence

23. The Tribunal has seen the un-redacted information, instructions to legal adviser and the legal advice, and also a bundle of documents which comprises correspondence between the parties, including HOLAC's justifications for withholding the information under section 42 FOIA.

24. The correspondence between HOLAC and the Commissioner included the following analysis of the public interest test:

- In their letter to the Commissioner dated 17th August 2007 HOLAC argued that paragraph 4 of Minutes of 6th December 2005:

“that transparency in the decision-making process and access to the information upon which decisions have been made can enhance accountability”.. but that also it was in the public interest that “decisions taken by the Commission are taken in a fully informed legal context without fear of such advice being placed in the public domain”.

- In their letter to the Commissioner dated 31st October 2007 HOLAC argued that discussions based upon legal advice sought or given should remain private under 36 and 42 FOIA:

“It is in the public interest that public bodies obtain legal advice where appropriate but are then able to discuss and apply it in formulating its policies, procedures or in making decisions without being inhibited that such discussions (so closely based on the legal advice sought or given) will be made public. There is a strong public interest in communications between legal advisers and clients remaining confidential. This would include public authorities that have an additional pressure to ensure that their policies, procedures and actions are lawful and mitigate the risk of legal challenge.”

25. In relation to the question of whether item 2 attracted legal professional privilege the letter from HOLAC to the Commissioner dated 31st October 2007 states

“... The paragraphs in question do not reiterate the written advice nor do they set out any details of that advice. However, as the subheading illustrates, they do indicate the confidential subject matters that were communicated to legal advisers by the Commission when seeking legal advice. Legal professional privilege clearly applies to confidential communications between clients and legal advisers.

What is being protected, therefore is the information contained in the instructions and [redacted] as well as the fact that legal advice was sought on a particular subject – all of which are indicated in these paragraphs”.

Legal submissions and analysis

Whether legal professional privilege attaches.

26. Mr Rosenbaum argues that a document which indicates the subject matters on which legal advice was sought, and the fact that legal advice was sought on a specific subject, is not covered by legal professional privilege at all.

27. The Commissioner and HOLAC argue that legal advice privilege will attach to documents that evidence the content of communications between client and lawyer just as it does to the communications themselves *Three Rivers District Council v Bank of England (No.5) [2003] QB 1556 (CA)* at para 21 per Longmore LJ:

*“legal advice privilege was a well established category of legal professional privilege, but that such privilege could not be claimed for documents other than those passing between the client and his legal advisers and **evidence of the contents of such communications. (emphasis added)**”.*

28. The Tribunal has considered the un-redacted minutes, the legal advice and instructions and agrees with the Commissioners analysis of the nature of the redacted material:

“it does indicate the confidential subject matters on which legal advice was sought... the information contained in these instructions .. the fact that legal advice was sought on a specific subject”.

29. The Tribunal (differently constituted) has recently indicated in *Jonathan Fuller v Information Commissioner (EA/2008/0005)*, that information which confirms, by implication, the 'general effect' or 'broad thrust' of legal advice is covered by legal advice privilege (at paragraph 11):

“Whether legal advice has been obtained is a question which does not, of itself, give rise to issues of legal privilege. Where, however, a request is framed so as to require the public authority to disclose in its answer, by implication, the general effect of that advice, then we agree with the IC that issues of legal advice privilege arise. Where a government department must clearly have been advised, a request, as in this case, to state whether it holds advice confirming a specified opinion is a request to disclose the broad thrust of the advice which it has received. Section 42 is therefore engaged.”

30. Having viewed the disputed evidence, the Tribunal agrees with HOLAC's contention that the redacted words in item 2 are secondary evidence of privileged communications between client and lawyer, disclosure of which would reveal, the broad content of the advice referred to. Consequently the Tribunal is satisfied that the material is subject to legal professional privilege and the exemption under section 42 FOIA is engaged.

31. Additionally the Tribunal has considered the rest of the redacted material to confirm whether it is also legally professionally privileged. Whilst Mr Rosenbaum does not dispute that the exemption is engaged in relation to the rest of the material, in light of the fact that he has not seen the material, the Tribunal must still satisfy itself that the exemption is engaged. Applying the principles in *Three Rivers*, the Tribunal is so satisfied.

Public interest test

32. Mr Rosenbaum concedes that some weight must be given to the protection of LPP but argues that the extent will vary and that it has been overstated in this case by the Commissioner.

33. LPP has been considered by this Tribunal on a number of occasions. Whilst this Tribunal is not bound by these decisions which largely turn upon their own facts, it is of assistance to review the approach taken in these cases. The Higher Courts case law which binds the Tribunal in relation to LPP was set out in *Bellamy v ICO and Secretary of State for Trade and Industry EA/2005/0023* which concluded at paragraph 35:

*“As can be seen from the citation of legal authorities regarding legal professional privilege, there is a **strong element of public interest inbuilt into the privilege itself**. At least equally strong countervailing considerations would need to be adduced to override that inbuilt public interest. ... it is important that public authorities be allowed to conduct a free exchange of views as to their legal rights and obligations with those advising them without fear of intrusion, save in the most clear case, of which this case is not one”.***(emphasis added)**

34. This Tribunal considers *Bellamy* might suggest that it is only in exceptional cases that the public interest in disclosure will be able to override LPP and has therefore taken note of the more recent analysis of the “inbuilt” weight in favour of maintaining the exemption to be found in *Pugh v IC and MOD EA/2007/055*:

“ that with all exemptions under FOIA that the exemption itself will usually represent the principal public interest in maintaining the exemption and therefore can be described as an “inherent” public interest in favour of maintaining the exemption. The Tribunal does not accept that there is any inbuilt weight automatically applicable to qualified exemptions, whether class based or not. However in the case of the LLP exemption the weight of judicial opinion referred to in

[Bellamy and other Tribunal cases] gives the exemption itself greater weight and to that extent may be described as having an “inbuilt” weight requiring equally weighty public interests in favour of disclosure, if the exemption is not to be maintained”.

35. This Tribunal also notes the approach as set out in *Mersey Tunnel Users Association v Information Commissioner and Merseytravel EA/2007/0052* in which the Tribunal warns:

“we should be careful not to erect a qualified privilege into, in practice an absolute one, through deference to the importance of legal privilege”.

36. The Tribunal's consideration of the application of LPP to the facts of this case follows below, however, the Tribunal does not agree with Mr Rosenbaum that LPP merits only “some weight” or that in his general approach the Commissioner has overstated this. From the cases referred to above, this Tribunal is satisfied that LPP has an inbuilt weight derived from its historical importance, it is a greater weight than that inherent in other exemptions to which the balancing test applies, but it can be countered by equally weighty arguments in favour of disclosure. If the scales are equal disclosure must take place.

37. Mr Rosenbaum draws the Tribunal's attention to the general guidance set out in considering the public interest test by the Tribunal (differently constituted) in *Pugh v Information Commissioner and MOD EA/2007/0055* which concluded that:

a) *There is an assumption built into FOIA that disclosure of information by public authorities on request is in the public interest in order to promote transparency and accountability in relation to the activities of public authorities. The strength of that interest and the strength of competing interests must be assessed on a case-by-case basis.*

b) *The passage of time since the creation of the information may have an important bearing on the balancing exercise. As a general*

rule, the public interest in maintaining an exemption diminishes over time.

c) In considering the public interest factors in favour of maintaining the exemption, the focus should be upon the public interests expressed explicitly or implicitly in the particular exemption provision at issue.

d) The public interest factors in favour of disclosure are not so restricted and can take into account the general public interests in the promotion of transparency, accountability, public understanding and involvement in the democratic process.

38. This Tribunal has considered the disputed information, and notes:

- In general terms the information is still current, informing as it does present HOLAC policy.
- The general guidance indicates that the public interest factors in favour of applying the exemption should be focussed upon the exemption itself. This Tribunal understands this to suggest that for example public interest considerations pertinent to the exemption previously relied upon (i.e. section 36 FOIA) should not be added into the scales when considering section 42. This Tribunal agrees with this approach and has therefore confined its considerations to the section 42 FOIA factors.
- The Tribunal also agrees that the public interest factors to be considered are those relevant to the benefits of disclosing information, not just the benefits of disclosing legally privileged information.

39. In favour of disclosure Mr Rosenbaum sets out the exceptional role in British public life performed by HOLAC. The Tribunal accepts that HOLAC has unique and important powers in that it:

- recommends non-party life peers
- vets all nominations for peerages for propriety.

Consequently it:

- has an enormous influence over the composition of the House of Lords,
- the proportion of peers who have passed through its processes is increasing,
- has been seen to exercise an effective power of veto.

The decisions of the House of Lords impact upon the lives of the rest of the population and therefore each of the six members of HOLAC has a significant influence on the composition of parliament and thus indirectly on its decisions.

40. The Tribunal notes the comments in the letter dated 15th September on behalf of HOLAC which argues that the process by which HOLAC reaches its decisions is not analogous to a voter deciding for whom to vote. This is because the personal views and preferences of each member of HOLAC are not acted upon but instead published criteria are applied, and members are bound to act in accordance with prescribed standards which include requirements to take decisions solely in terms of the public interest and on merit.

41. Nevertheless the Tribunal accepts Mr Rosenbaum's portrait of the exceptional role in public life played by HOLAC (as set out at paragraph 40 above) and his contentions that:

- It recommends (and in practice, itself appoints) non-party life peers. In 2006 it blocked several party nominations.

Therefore whilst the appointment is technically made by HM the Queen, a rejection by HOLAC is in effect the end to an application.

- Democracy is dependent on the process being entirely legitimate and seen to be such – and that this can be achieved by maximum openness,

- Full public understanding of the methods and working of the HOLAC and how it reaches its decisions are necessary if this process is to be properly scrutinised and discussed.

42. Mr Rosenbaum also argues that well informed public scrutiny will assist HOLAC to develop and improve its own ways of working and that even if the information demonstrates that HOLAC is reaching its decisions in an exemplary manner, the Public are entitled to full reassurance of this and that depends on it being able to see the information for itself.

43. Additionally the Tribunal notes that at the time when the Decision was being made there was great media and public interest in the work of the Commission as there had been a leak (not by the Commission) to the press of some nominees' names in 2005, and in early 2006 the Police inquiry into allegations of the sale of honours and peerages under the Honours (Prevention of Abuses) Act 1925 had begun.

44. In addition to the inherent importance of LPP (as set out at paragraphs 33-38 above) in considering the arguments in favour of withholding the information HOLAC rely upon:

- a) the strong public interest in decisions being taken by HOLAC in a fully informed legal context without fear of such advice being placed in the public domain,
- b) the risk that disclosing confidential legal advice could undermine HOLAC's ability to obtain advice in a timely fashion and have confidence that the advice is given freely, without the consideration of its wider disclosure,

45. They also point to the decision of this Tribunal (differently constituted) in *Jonathan Fuller (EN200810005)* which acknowledges that:

"There will be some cases in which there could be stronger contrary interests [than upholding LPP]; for example, if the privileged material discloses wrongdoing by or within the authority or a

misrepresentation to the public of the advice received or an apparently irresponsible and wilful disregard of advice, which was merely uncongenial.”

46. From consideration of the disputed material the Tribunal notes that:

- it was contemporaneous with the original information request,
- it is mostly still current, in that it continues to inform HOLAC's approach to its functions,
- there is no evidence of wrongdoing, or any evidence that HOLAC has misrepresented the nature of advice it has received, or that it has irresponsibly disregarded any advice it has received.

47. HOLAC argue that although their functions were and remain a matter of public interest, in these circumstances there is no specific public interest factor that is 'equally weighty' to the strong public interest inherent in protecting confidential legal advice.

48. Whilst the Tribunal notes that the initial approach taken by HOLAC was one of substantial redaction, the Tribunal is impressed at HOLAC's continued willingness to review the situation and to give effect to the spirit of disclosure enshrined in FOIA. The Tribunal notes that it accepted the Commissioner's rulings in relation to the applicability of sections 36 and 37 FOIA and that in the case of the June 2008 disclosures it has given greater disclosure than required to by the Commissioner. The Tribunal is of the view that the amount of material in the public domain to inform and fuel the public debate is of relevance. The amount of material that remains redacted under section 42 FOIA is very small in comparison to the disclosure given thus far. The public have a significant insight into the procedures and processes of HOLAC which goes some way to meeting the points set out by Mr Rosenbaum in his arguments.

Conclusion and remedy

49. The tribunal is satisfied that all the disputed information engages section 42 FOIA. Having weighed the competing arguments in relation to public interest as set out above, the Tribunal has decided that in relation to some of the disputed information the public interest lies in disclosure. The Tribunal therefore orders HOLAC to disclose the information set out in paragraph 50 below within 30 days of the date of the promulgation of this decision.

50. i) In relation to the Minutes of 6th December 2005 (item 1):

a) the sub-heading should be disclosed. This is because it does not indicate the topic, the instructions or the contents of any advice. Whilst there may be circumstances where it would be appropriate to withhold the heading (where to do so would have given away the instructions or advice) in this context this is not such a case. The Tribunal is of the view that there is no significant public interest in withholding the heading.

b) The first sentence of the paragraph should be disclosed. The Tribunal is of the view that this disclosure adds nothing to the disclosure already given, consequently there is little if any public interest in withholding the information.

ii) Minutes of 9th March 2006 (item 3)

a) Sentences 1 and 2 of paragraph 7 should be disclosed

The information here is very general and does not give the advice in full. In particular it does not indicate which options were put forward but rejected, or the strengths and merits of any of the arguments.

51. The Tribunal is satisfied that the disclosures which it has ordered are on a par with disclosures already made and on their facts would not inhibit the free flow of information between lawyers and HOLAC. The public interest in disclosure therefore outweighs the public interest in

maintaining the exemption. In concluding this the Tribunal has considered all the matters advanced above, and has been particularly alert to the arguments put forward by Mr Rosenbaum that:

“even if the information demonstrates that HOLAC is reaching its decisions in an exemplary manner, the Public are entitled to full reassurance of this and that depends on it being able to see the information for itself.”

52. Having weighed the competing arguments in relation to public interest as set out above, the Tribunal has decided that in relation to some of the disputed information the public interest lies in upholding the section 42 exemption. The Tribunal has sought to give the fullest reasons within the main body of the decision without trespassing upon the content of the withheld material.

53. i) In relation to the minutes of 6th December 2005 (item 1)

a) Sentence 2 onwards of paragraph 4:

The Tribunal found that this went to the heart of the instructions to the legal adviser and highlighted legal areas where HOLAC felt that it might have concerns. In the absence of any evidence of wrong doing, there would be significant harm in disclosure and no strong public interest against withholding the information.

ii) Minutes of 16th January 2006 (item 2)

a) The heading and sentences 1 and 2 of paragraph 4 should remain withheld.

- Disclosure would specify the broad area upon which advice had been provided,
- Disclosure of this material might constitute waiver of privilege and make it far harder for HOLAC to resist an information request for the detailed advice were one to arise.
- The arguments advanced by HOLAC were therefore much stronger in relation to this withheld information.

iii) Minutes of 9th March 2006 (item 3)

a) paragraph 8 should be withheld.

The Tribunal was satisfied that this paragraph disclosed the advice itself and was concerned that disclosure of this information would highlight an area where HOLAC might have concerns and that disclosure of this would disadvantage HOLAC, consequently the public interest arguments for withholding this materially significantly outweighed the public interest arguments for disclosure.

54. In relation to the passages which remain exempt from disclosure pursuant to Section 42 FOIA the Tribunal was satisfied that the public interest in maintaining the exemption outweighed the public interest in disclosure.

55. Our decision is unanimous.

Signed

Fiona Henderson
Deputy Chairman

Dated this 4th day of November 2008