



Scottish Information
Commissioner

**Decision 105/2007 Paul Hutcheon and the Scottish
Executive**

Request for Management Group minutes

**Applicant: Paul Hutcheon
Authority: Scottish Executive
Case No: 200501427
Decision Date: 9 July 2007**

**Kevin Dunion
Scottish Information Commissioner**

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Decision 105/2007 Mr Paul Hutcheon and the Scottish Executive

Request for minutes of management meeting since 1 May 2003 – information withheld under several exemptions – public interest considered – information not held – partial release of information required by Commissioner

Relevant Statutory Provisions and other Sources

Freedom of Information (Scotland) Act 2002 sections 1(1)(General entitlement); 25(1) (Information otherwise accessible); 28(1) (Relations within the United Kingdom); 29(1) (Formulation of Scottish Administration policy); 30 (Prejudice to public affairs); 31 (National security and defence); 32 (International relations); 33(1)(b) (Commercial interests); 36(1) (Confidentiality); 41 (Communications with Her Majesty)

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

Facts

Mr Hutcheon requested all minutes of Management Group meetings and notes since 1 May 2003. The Scottish Executive (the Executive) refused to supply the information requested relying on section 29(1)(a) of the Freedom of Information (Scotland) Act 2002 (FOISA) (formulation or development of government policy). Mr Hutcheon challenged this decision which was upheld on review. Mr Hutcheon applied to the Scottish Information Commissioner. The Commissioner found that the Executive failed to comply with Part 1 of FOISA by withholding certain information from Mr Hutcheon.



Background

1. On 18 January 2005 Mr Hutcheon requested the following information from the Executive:
 - (i) Copies of all minutes taken at each meeting of the Management Group since 1 May 2003
 - (ii) All notes taken at each meeting of the Management Group since 1 May 2003
2. The Executive responded to this request on 17 February 2005. It advised that the information contained in minutes of meetings up until January 2005 was exempt by virtue of section 29(1)(a) of FOISA, which applies to advice to Ministers about the formulation and development of government policy. The Executive advised that consideration had been given as to whether it would be in the public interest to release all or parts of the information, but it had concluded that there was no public interest argument for the release of this information. There was, however, a public interest to maintain the principle of private deliberation within government.
3. The Executive advised that minutes of meetings since 1 January 2005 would be available on the Scottish Executive's website within 3 months of each scheduled meeting. The Executive relied on section 27(1) of FOISA to withhold minutes of meetings from January 2005 but indicated that it would arrange for these documents to be sent to Mr Hutcheon on publication.
4. The Executive advised that it did not hold copies of the notes taken at each meeting of the Management Group since 1 May 2003.
5. Mr Hutcheon was dissatisfied with this response and on 21 February 2005 he sought a review of the decision. He indicated that he considered it strange that the Executive was relaxed about publishing minutes and other documents from January 2005 but not before it. He believed the information requested to be in the public interest.
6. The Executive responded to Mr Hutcheon's request for review on 18 March 2005. It indicated that it was satisfied that the content and subject matter of the minutes prior to January 2005 related to the formulation and development of policy and as such was considered exempt under section 29(1)(a) of FOISA. The Executive confirmed that it considered there was no public interest argument for the release of this information and that it was appropriate to consider it to be in the public interest to maintain the principle of private deliberation within government.



7. The Executive indicated that it had also reviewed its decision to publish minutes from January 2005 but not before. It advised that the minutes of the Management Group minutes held before 1 January 2005 included a detailed record of discussion about the preparation of advice to Ministers and Cabinet, and matters relating to the operation of the Scottish Executive and were therefore considered exempt under FOISA for the reasons stated above. However, the Executive advised that since 1 January 2005 the Management Group discussion was recorded in summary form which supported publication without compromising the free and frank exchanges required in the development of policy or for the efficient management and operation of the Executive.
8. The Executive advised that it had concluded that publication of the minutes within 3 months of the meeting was a reasonable approach.
9. Mr Hutcheon was dissatisfied with this response and on 9 April 2005 applied to me for a decision.
10. The case was allocated to an investigating officer and the application validated by establishing that Mr Hutcheon had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to his request.

The investigation

11. The investigating officer contacted the Executive on 5 May 2005 giving notice that an application had been received and that an investigation into the matter had begun. The Executive was asked to comment on the issues raised by Mr Hutcheon's case in terms of section 49(3)(a) of FOISA and to provide supporting documentation for the purposes of the investigation.
12. In particular, the Executive was asked to provide the investigating officer with the following information:

Request for minutes of meetings

- a) Copies of the minutes of meetings of the Management Group from 1 May 2003 to December 2004.
- b) Indicate which minutes from 1 January 2005 had been forwarded to the applicant.



- c) Copies of any information withheld from the applicant in respect of minutes of meetings from January 2005
- d) Information about the decision to publish minutes of meetings from January 2005 and the decision to publish the minutes 3 months after the scheduled meeting.
- e) Further information about the application of the exemptions in FOISA which the Executive relied on to withhold information from the applicant (sections 29(1)(a) and 27(1)). The Executive was asked to provide a detailed analysis of the use of these exemptions in relation to each set of minutes of meeting.
- f) Indicate whether the Executive had considered the partial release of information in relation to each set of minutes of meetings.
- g) Further information about the application of the public interest test to each exemption in relation to each set of minutes.

Request for notes of meetings

- 13. The Executive was also asked to supply information relating to the request for notes of the meetings and to indicate:
 - a) Which members of the Management Group Secretariat took notes during the course of the Management Group meetings (job titles rather than names).
 - b) Whether the notes formed the basis of the minutes of the meeting.
 - c) What happened to the notes once the minutes had been written.
 - d) Whether the notes were included in the Executive's Records Management policy.
 - e) Whether members of the Management Group took notes at the meetings and what happened to those notes.
- 14. The Executive responded to this request on 1 June 2005. It subsequently sent an analysis of the exemptions applied in a further letter of 8 July 2005. I will consider the Executive's submissions in my analysis and findings below.



Commissioner's analysis and findings

15. In coming to a decision on this matter, I have considered all of the information and the submissions that have been presented to me by both Mr Hutcheon and the Executive and I am satisfied that no matter of relevance has been overlooked.
16. Mr Hutcheon made two requests for information and I will consider each request in turn. Mr Hutcheon requested 1) copies of all minutes of the Management Group (MG) from 1 May 2003 and 2) the notes of those meetings. In respect of the first request, the Executive advised that although it held the information requested the information was exempt. In respect of the latter request, the Executive advised that it did not hold the information.

Request for notes of meetings

17. The Executive provided information about the notes taken at MG meetings in response to questions from the investigating officer (see paragraph 13 above). The Executive advised that all Cabinet/MG Secretariat staff attended MG meetings on a regular basis and took notes. The MG secretariat team leader attended most frequently.
18. The Executive advised that hand written notes taken by Cabinet/MG Secretariat staff formed the basis of the formal minutes of the meeting. These notes were shredded once the notes were finalised, in keeping with practice before the introduction of FOI. The Executive advised that notes taken by the Cabinet/MG Secretariat were not part of the Executive's Records Management policy. The Executive indicated that Cabinet/MG Secretariat staff were responsible for the notes which formed the basis of the formal minutes and that members of the MG did not take notes for this purpose.
19. The Executive advised that any hand written notes taken by individual members related to immediate actions which required to be carried out by them as individuals before the formal minutes were prepared. Any such notes were generally disposed of after the action had been discharged.
20. Following my investigation, I am satisfied that the Executive does not (and did not at the time it dealt with Mr Hutcheon's request) hold copies of notes of meetings of the MG minutes requested by Mr Hutcheon.

Request for minutes of meetings

21. The Executive made a number of submissions in respect of the request for minutes of meetings.



22. The Executive advised that the decision to include minutes of MG meetings from January 2005 in the Scottish Executive Publication Scheme was taken by MG at its meeting on 5 February 2004. The decision was based on a desire to reflect MG's commitment to the principles of FOI and to increase openness, balanced against the recognition that minutes of meetings prior to the introduction of FOISA were written in a detailed format and likely to be covered by exemptions in FOISA.
23. The Executive advised that the rationale for publishing minutes from January 2005 reflected the fact that meetings were recorded in summary form in the latter part of 2004 onwards. This was also a reflection of the changes made to the operation of MG where more detailed policy development and consideration of corporate issues were now being taken forward by a number of sub-groups.
24. The Executive indicated that its decision to publish records of meetings from January 2005 on the Executive's website three months after the date of the meeting allowed sufficient time to elapse between discussions taking place and their publication, and therefore reduced the likelihood that discussion of issues attracting current media attention would be inhibited as a result of publication while the issue remained live. To publish them earlier, the Executive argued, could impact on MG's consideration of current and topical issues, and therefore be to the detriment of effective management of the Executive.
25. The Executive indicated that partial release of information was considered in relation to each set of minutes. However, since significant sections of each set of minutes were covered by one or other exemption the Executive concluded that partial release was not viable. It submitted that extracting the exempt material from the minutes would render them virtually meaningless.
26. In considering in detail the application of the exemptions during the course of the investigation the Executive decided that the minutes from 19 August 2004 were releasable, with the exception of one limited circulation annex, and subject to the redaction of some specific discussions. The Executive indicated that 19 August 2004 was the date on which Management Group approved the new style of minutes. The Executive confirmed, however, that redaction of the earlier sets of minutes would not be feasible, as it was the change to a more succinct report of meetings which had made disclosure feasible from 19 August 2004 onwards.
27. The Executive indicated that it would arrange for the minutes from 19 August 2004 (with the few exceptions) to be supplied to Mr Hutcheon.



28. By way of background to its examination of the exemptions, the Executive supplied some context to the information being considered. The Executive explained that the MG was responsible for the management of the Executive and its business. It was chaired by the Permanent Secretary and its members comprised all Heads of Department, the Finance Director, the Director of Change and Corporate Services and two non-Executive members. Cabinet Secretariat provided the secretariat to MG and its sub-groups and took the minutes of meetings. The Executive advised that from November 2003, some key aspects of MG business had been taken forward by MG sub groups.
29. The Executive indicated that the key role of MG was to ensure that the Executive was organised and managed in the most effective way to support Ministers in the implementation of their policies. It was a forum which helped to ensure that departments within the Executive worked corporately, with a shared understanding of priorities.
30. The Executive advised that MG considered most of its corporate business, issues relating to the Executive's change programme and reports from sub groups on the first meeting of each month, which was attended by the non executive directors. The other three MG meetings of the month focussed mainly on the needs and priorities of the First Minister/Deputy First Minister and Cabinet. MG considered, as standing items, current issues, a report of the previous day's cabinet meeting, progress of future cabinet business, and issues for the First Minister's Questions in Parliament that afternoon.

Application of the exemptions to information from 1 May 2003 to 19 August 2004

31. The Executive indicated that although it had originally relied on section 29(1)(a) only, there were also a number of other exemptions which applied. The Executive indicated that a schedule had been drawn up which summarised the exemptions which applied to each set of minutes, using highlighting to indicate which sections of the minutes were considered exempt.
32. The Executive indicated that there were three categories; exemptions applying to all documents from 1 May 2003 to 19 August 2004; exemptions applying to some specific documents from 1 May 2003 to 23 December 2004; and exemptions applying to documents from 1 January 2005 to 17 February 2004 (the date of the Executive's response to Mr Hutcheon's request). The Executive indicated that the majority of the information contained in the documents qualified as exempt under one or more sections of FOISA.



33. The Executive indicated that some information was considered either as not exempt, or releasable on the basis of the public interest test. It advised that this mostly included factual information, details of Scottish Executive announcements and references to issues which were only discussed in outline. While the Executive considered partial release of this information in response to Mr Hutcheon's original request, it indicated that it was clear that extracting this information would render the documents meaningless due to the extent of redaction required. In addition, much of the factual information and the content of announcements was likely to already be in the public domain in one form or another, and would therefore be exempt under section 25 of FOISA (information otherwise accessible).
34. Before I consider the application of each exemption to the information withheld I consider it helpful to emphasise the nature of the information being assessed in this case. As described above, the minutes are a formal record of discussions between high level officials. As one would expect, the minutes are recorded in a formal format and the language used is temperate, moderate and neutral. The minute of each item normally records a brief description of the matter under discussion and then, where appropriate, records a summary of the key points discussed. Views are rarely attributed to a particular individual and comments of any controversy (of which, I would submit, there are few) are usually written as a point attributable to the meeting as a whole.
35. The context in which this information has been recorded and the way in which discussions have been recorded have been key factors in my assessment of the application of the exemptions.

Application of section 25(1)

36. I have considered the Executive's argument that certain items of factual information would be exempt by virtue of section 25(1) because the information was otherwise accessible. I do not accept this argument. Members of the public will not know the items that have been discussed (without access to the minutes) and therefore will not know where or how they might locate this information. In the circumstances, I do not accept that section 25(1) applies to any of the items of the information the Executive did not highlight in its schedule (and therefore did not consider exempt under any other exemption).
37. I have to record that I cannot accept as reasonable the Executive's arguments that those parts of the minutes to which no exemption other than section 25(1) has been applied would be meaningless if released on their own following redaction. For the most part these are discrete sections of minute relating to particular agenda items considered by the MG and all of them are quite capable of being read and understood in isolation. I can find no justification in any of the provisions of FOISA for the approach taken by the Executive to this information.



38. Appendix 1 to this decision sets out each minuted item and my conclusion in respect of each exemption applied and the public interest test. For the sake of completeness, I have addressed only those items which the Executive indicated were exempt via its highlighting system. All other items not highlighted should, in any event, be disclosed.

Application of section 29(1)(a)

39. The Executive indicated that all documents before 19 August 2004 qualified under section 29(1)a, and that it was not in the public interest for the information to be released.
40. The Executive submitted that the minutes of meetings before 19 August 2004 regularly recorded discussion of the development and formulation of government policy, and information that related to the development of policy. The Executive maintained that the contents of the minutes qualified as exempt under section 29(1)(a) of FOISA.
41. Section 29(1)(a) states that information is exempt if it relates to the formulation or development of government policy. Therefore in order to rely on this exemption the Executive needs to demonstrate not only that the information relates to government policy but also that it relates to that policy's development or formulation.
42. In order for the information to relate to government policy I need to be satisfied that the subject matter is one on which Ministers had been engaged or would be in the future. This is particularly pertinent given that the meetings involve senior civil servants rather than Ministers. In some cases, it seems to me, the information withheld relates to the internal workings of the civil service or amounts to a discussion of an external matter which is simply of relevance to the Executive. Further, simply because a subject falls within the scope of a Minister's portfolio it does not follow that it will automatically relate to government policy. "Relate to" must mean more than simply having some association with an area of activity which is devolved to the Executive.
43. Further, section 29(1)(a) only applies where the information relates to the "formulation or development" of policy. In *Decision 75/2006 Paul Hutcheon and the Scottish Executive* I indicated that "formulation" means the output from early stages of policy process where options are generated and sorted, risks are identified, consultation occurs and recommendations or submissions are put to Ministers. "Development" may go beyond this stage. It may refer to the processes involved in improving on, altering or recording the effects of existing policy.



44. In *Decision 187/2006 Dr JR and Mrs M Cuthbert and the Scottish Executive* I emphasised that information relating to the articulation or implementation of an already determined policy would not normally fall within the scope of section 29(1)(a). Likewise a communication or presentation relating to a finalised policy would not generally relate to its development or formulation unless the communication related to the publication of a new policy as in *Decision 76/2006 Paul Hutcheon and the Scottish Executive*.
45. I am not satisfied that all of the information being withheld by the Executive concerns the formulation or development of policy and, as such, section 29(1)(a) does not apply in every single instance. In reaching a view as to whether the information falls within the scope of section 29(1)(a) I have considered such questions as:
- a) Does the information relate to government policy or is it confined to the internal processes of the civil service?
 - b) Is the matter under discussion a devolved or reserved matter?
 - c) Does the information relate to formulating a “position” on a particular matter? Could this “position” also amount to policy formulation?
 - d) Does the information relate to the “formulation” or “development” of policy or does it concern implementation or articulation of policy?
46. Finally, even if I consider that the information does relate to the formulation or development of government policy I must go on to consider whether the public interest in disclosing the information is outweighed by the public interest in withholding it.

Application of the public interest test to section 29(1)(a) documents

47. The Executive indicated that its internal guidance on applying the public interest test to these documents emphasised the need for a balance between disclosing sufficient information to allow informed debate and protecting the space within which Ministers were advised and within which they formulated policy. In applying the public interest test, the Executive indicated that it had borne in mind the fact that MG was the senior level forum within the Executive for formulating and finalising advice to Ministers on policy formulation. The Executive submitted that the minutes of these discussions recorded full and frank consideration of policy issues. Disclosure would have a significant adverse effect on future discussion, and would therefore be detrimental to the public interest in good governance.



48. My thinking on the application of the public interest test in respect of section 29(1)(a) is set in *Decision 75/2006 Paul Hutcheon and the Scottish Executive* and it is worth emphasising at the outset that there is a general public interest in making information held by public bodies accessible to enhance scrutiny of decision-making processes and thereby improve accountability and participation. This goes to the heart of freedom of information legislation. Without an adequate knowledge of the basis upon which decisions are made, the public will not have an opportunity to call public authorities to account; nor can they hope to participate in the decision-making process and contribute to the formation of policy and legislation if that process is hidden from view.
49. Information is exempt by virtue of section 29(1)(a) if it falls into a particular class of documents; that is, where the information relates to the formulation or development of government policy. In considering the application of this exemption, the authority is not required to consider the significance of the content of the information nor consider the effect of disclosure. This is in contrast to exemptions such as section 33(1)(b) or section 30(b)(ii) where the authority is obliged to consider not only whether the information is of a certain type or nature, that is, that it involves commercial interests or advice, but must also demonstrate that disclosure would “prejudice substantially” or “substantially inhibit” that interest. Therefore the authority must consider the significance and sensitivity of the information as well considering the harm resulting from or effect of disclosure.
50. In the case of section 29(1)(a) the information will be covered by this exemption simply if it relates to the development of government policy regardless of how routine or insignificant the information may be. The use of the term “relates” ensures that the application of section 29(1)(a) is so broad as to include even the most mundane information.
51. As a result, there is clearly a two stage process that an authority relying on section 29(1)(a) must follow. That is:
- Does the information relate to the formulation or development of government policy?
 - If yes, in all the circumstances of the case, is the public interest in disclosure of the information outweighed by the public interest in withholding it?
52. Given the class nature of section 29(1)(a), the second stage must involve consideration of the actual content of the information withheld, including its relative sensitivity and the effect of disclosure.



53. Section 2(1)(b) of FOISA, which contains the public interest test, is worded in such a way as to assume that disclosure would be in the public interest rather than in withholding it. The test is that in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption. Therefore 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 routine and non-sensitive information relating to policy formulation would rarely be released because no resounding public interest argument could be found to justify disclosure.
54. In considering the public interest an authority may reasonably argue that the type and nature of the information or even process to which the information belongs raises an expectation of sensitivity; for example, where the information relates to ongoing negotiations. However, ultimately, that argument will only stand where the content of that information demands protection.
55. I have therefore considered the content of each item of information withheld to determine whether the public interest in disclosing the information is outweighed by the public interest in withholding it. In considering each item I have taken into account the desirability of providing access to information about the policy-making process and how and when decisions are reached and the general need for openness and transparency in government. These factors weigh strongly in favour of release.
56. On the other hand, I have also considered whether the information is sensitive, the subject matter, the nature of the views or comments expressed and the timing of this request for information.
57. A key factor in determining whether the public interest would favour disclosure is the nature of the discussions and comments recorded. Speaking generally, where the exchanges or information are routine in nature this will normally point to disclosure. On the other hand, if I consider that disclosure of the information is likely to significantly harm the candour with which such exchanges or discussions are recorded in the future then this raises an expectation that the information will be withheld.
58. Even where the information has the requisite sensitivity I will still order disclosure where I consider there is some overriding reason for disclosure. Again speaking generally, this would arise, for example, where there is evidence of maladministration, wrongdoing or deviance from usual processes. However, there may be other compelling reasons in any given case for the disclosure of sensitive information.



59. As stated in paragraphs 34 and 35 above, in this case the minutes are a formal record of the discussions by MG and, as such, the record of the discussion is presented in its most sanitised and neutral form. In many cases, in my view, the minutes present the Executive in a positive light by showing the detailed considerations involved in its internal management. These are all factors which I have taken into account in considering whether public interest in disclosure is outweighed by the public interest in withholding the information.
60. My findings in respect of section 29(1)(a) and its application to each individual minuted item are detailed in Appendix 1 to this decision.

Application of section 29(1)(b) (Ministerial communications)

61. The Executive indicated that all documents before August 2004 also qualified under section 29(1)b, and that it was not in the public interest for the information to be released.
62. The Executive advised that a regular part of every MG agenda was the consideration of papers on First Minister's Questions (during parliamentary sessions) and on Cabinet Business (at all times of the year). The Executive indicated that there was a regular report on issues discussed at Cabinet, and a discussion of the preparation of papers for future Cabinet meetings, including the agendas, timing and the content of papers. In addition, the minutes before 19 August 2004 frequently referred to discussions between Ministers in their official capacity. The Executive submitted that the record of these discussions therefore qualified under exemption 29(1)b.
63. Section 29(1)(b) of FOISA provides that information is exempt if it relates to Ministerial communications. Section 29(4) goes on to provide that "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).
64. Therefore for information to fall under this exemption there must be a communication between Ministers.
65. I take the view that this exemption is not limited to written communications between Ministers, such as a letter or email from one Minister to another, but could also cover records of or other references to discussions between Ministers. I accept that information relating to proceedings of the Scottish Cabinet falls within section 29(1)(a) and likewise those cases where the information relates to explicit exchanges between Ministers. However, it is clear that despite the Executive's submissions this exemption applies only to a small proportion of the information being withheld, in that it applies to particular items only.



Consideration of the public interest in respect of section 29(1)(b)

66. The Executive has indicated that it is clear that releasing the minutes of these discussions would prejudice the principle of collective responsibility, which requires the maintenance of privacy of opinions expressed and advice offered within the Executive. The Executive indicated that disclosure of this information would inhibit future discussions between Ministers and have an adverse effect on the relationship between Ministers and Departments. The adverse effect on the maintenance of collective responsibility would be severe, and outweighed the public interest in disclosure of this information.
67. The Executive appears to be arguing that the requirements of collective responsibility make explicit the arguments supporting withholding this information on public interest grounds. However, concerns about the need to preserve the convention of collective responsibility are addressed in section 30(a). The Executive appears to be seeking to rely on another exemption when considering the public interest test.
68. Even if the Executive considers that disclosure of the information would prejudice substantially the convention of collective responsibility, the Executive is still required to consider whether the public interest in any given instance would point to disclosure. This requires consideration of the actual content of the material being withheld. I may accept that information is exempt because its disclosure would prejudice substantially collective responsibility. It does not follow, however, that as a result disclosure would never be in the public interest.
69. In this case, I consider there is a general public interest in members of the public having access to information which potentially gives greater insight into the workings of government, varying in strength depending upon the content of the information. This has to be balanced against the degree of harm that may result to the candour with which future communications of this nature are recorded. I have also considered the timing of the request and the sensitivity of the subject matter. Given the class nature of section 29(1)(b) I consider that very similar public interest considerations will arise as those taken into account in assessing information falling within the scope of section 29(1)(a). I have set out these considerations in some detail in paragraphs 55 to 59 above and do not intend to repeat them here.
70. My findings in respect of section 29(1)(b) and its application to each individual minuted item are detailed in Appendix 1 to this decision.

Application of section 30(b) (free and frank exchange of views)

71. The Executive submitted that all documents before 19 August 2004 also qualify under section 30(b)(i) and (ii), and that it was not in the public interest for the information to be released.



72. The Executive indicated that the minutes recorded MG discussions relating to operational matters, such as financial management, staffing issues, risk management and organisational change. It advised that this reflected the role of MG in ensuring that the Executive was organised and managed in the most effective way to support Ministers in the implementation of their policies. The ability of MG to discuss these issues freely and frankly, and provide advice to Ministers as appropriate, the Executive submitted, was vital to the effective conduct of public affairs. The Executive therefore took the view that the records of all MG discussions were exempt from publication under section 30(b)(i) and (ii).
73. 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 opinion, comment or consideration. The term “inhibit” is not defined in FOISA. However, I take the view that in this context it means to restrain, decrease or suppress the freedom with which opinions or options are expressed. The Executive’s own guidance to its staff on the application of the exemptions in section 30(b) of FOISA points out that the word “inhibit” suggests a suppressive effect, so that communication would be less likely to be made, or would be made in a more reticent or circumscribed fashion, or would be less inclusive.
74. The term “deliberation” tends to refer to the evaluation of the competing arguments or considerations that may have an influence on a public authority’s course of action. I consider that it is likely to include expressions of opinion and recommendations, but is unlikely to include purely factual material or background information. The information should reveal the “thinking process” or reflection that has gone into the decision.
75. The exemptions under section 30(b) of FOISA acknowledge that the prospect of disclosure of information which reveals internal thinking processes may be detrimental to the ultimate quality of decision making within a public authority, and that this could lead to less candid and robust discussions, insufficient records being created, hard choices being avoided and, ultimately, the quality of government being undermined.
76. I am of the view that it is important for public authorities to treat each request for information on a case by case basis. Release of internal communications in one case should not be taken to imply that such communications will “routinely” be released in future. The individual circumstances of each case must be taken into consideration and the public interest in each case assessed on its own merits.



77. In considering the application of any exemption, I must always look at the actual information withheld, not simply the category of information to which it belongs or the type of situation in which the request has arisen. In other words, in considering these particular exemptions, I must consider whether the disclosure of that information would, or would be likely to, in all the surrounding circumstances, have the substantially inhibiting effect described in section 30(b) of FOISA. It cannot necessarily follow from my requiring release of one particular piece of information in particular circumstances that information of that general variety will require to be disclosed routinely in the future.
78. In section 30(b) of FOISA, the chief consideration is not whether the information itself constitutes advice or the exchange of views for the purposes of deliberation, but whether the release of the information that has been withheld would inhibit substantially the free and frank provision of advice or the free and frank exchange of views for the purposes of deliberation.
79. Nevertheless, where information is withheld under section 30(b)(i) of FOISA and that information itself contains the free and frank provision of advice, this is likely to constitute stronger grounds in support of the view that the disclosure of such information would, or would be likely to, inhibit the free and frank provision of advice in future. Conversely, if the information does not constitute free and frank advice, then the case for withholding is likely to be weaker. The same reasoning applies for section 30(b)(ii) of FOISA.
80. Even if the information falls within the categories identified in section 30(b) the authority must still demonstrate that release of the information would or would be likely to inhibit substantially the free and frank provision of advice or exchange of views for the purposes of deliberation.
81. It is clear that the Executive has applied section 30(b) to a class of information, that is, the minutes of meetings, rather than to the specific information being withheld. In *Decision 41/2005 Mr Reiner Luyken and the Scottish Executive* I indicated that the individual circumstances of each case must be taken into consideration. As I emphasised in that case, advice and expressions of opinion are to be exempt from disclosure only where this would have a substantially inhibiting effect in the future. In assessing the inhibiting effect disclosure might have the authority should consider:
- a) the subject matter of the advice or opinion,
 - b) the content of the advice and opinion itself,
 - c) the manner in which the advice or opinion is expressed, and
 - d) whether the timing of release would have any bearing (releasing advice or opinion whilst a decision was being considered, and for which further views were still being sought, might be more substantially inhibiting than once a decision has been taken).



82. It seems to me that in this case, the application of section 30(b) must be considered in the light of the Executive's decision to publish the MG minutes from January 2005. In order for section 30(b) to apply to this information it is arguable that the Executive needs to demonstrate that officials would be less willing to record their free and frank exchanges in the context of this particular forum, that is, in future MG meetings. However, since January 2005 the Executive has published the minutes of these meetings three months after they have taken place. In such circumstances, it is difficult to see what impact disclosure of minutes from 2003 and 2004 would have on future practice; either the Executive is now willing to publish its free and frank exchanges or the new format of the minutes no longer records this kind of information.
83. I recognise that some matters may now be discussed in the sub groups and that views previously recorded in MG minutes might now be recorded in the minutes of the relevant sub-group. However, the extent to which officials will be inhibited within the MG meeting itself must be marginal given the Executive's current practice.
84. It seems to me that the decision by the Executive to now publish its MG minutes must have an impact on the extent to which section 30(b) would apply to this information and it is a key factor I have taken into account when assessing whether section 30(b) applies to the individual items of information within each set of the minutes.

Application of the public interest test in respect of section 30(b)

85. The Executive indicated that while there was a public interest in open policy making, it believed that this was best achieved by the Executive's extensive consultation with stakeholders and the wider public. The Executive indicated that there was significant public interest in maintaining a secure environment in which Ministers and officials could develop their thinking on key policy issues and explore options freely and frankly. The Executive submitted that MG was a crucial forum for the interdepartmental consideration of policy issues, which was a vital part of the process of maintaining collective responsibility, and disclosure would undermine MG's ability to perform this role.
86. I take the view that slightly different considerations will apply when considering the public interest test in respect of section 30(b) to that of section 29. This exemption, unlike section 29(1)(a) and (b), requires consideration of the actual content of the information and the likely effect of disclosure. An authority attempting to rely on section 30(b) must be able to show that disclosure would inhibit substantially the specified interest. Where in this case I have accepted that section 30(b) applies to the information withheld I have also found that the public interest in disclosing the following information is outweighed by the public interest in withholding it.



87. In reaching this decision I have considered the desirability of making information available to the public and the general need for transparency and accountability in decision making. However, I have also taken into account that Ministers and officials should be able to discuss matters of substance freely and openly, the timing of this request and the sensitivity of the subject matter.
88. Finally, I have taken into account the revised general arguments in relation to section 30(b) put forward by the Executive with its letter of 2 May 2007. My views on the Executive's revised position on section 30(b) are set out fully in *Decision 089/2007 Mr James Cannell and the Scottish Executive* and I do not consider it necessary to add anything in relation to these arguments in this particular decision.
89. My findings in respect of section 30(b) and its application to each individual minuted item are detailed in Appendix 1 to this decision.

Other exemptions applied by the Executive to minutes before 1 January 2005

90. The Executive applied a number of other exemptions to individual minuted items. Its submissions in respect of these exemptions are set out below:

Application of section 28(1) (Relations within the United Kingdom)

91. The Executive advised that the MG minutes referred to discussions with UK Ministers and other government departments. These discussions referred to negotiations on sensitive policy issues or discussed the handling of concerns about relationships between the administrations. The minutes also referred to discussions between administrations over future policy announcements. The Executive argued that disclosure of the records of some of these decisions would have a specific and substantial adverse effect on relations between officials and Ministers.
92. In my view all information requests must be considered on a case by case basis, and decisions to withhold or release information must relate to the specific information requested. I have accepted in my briefing on section 28 that this exemption may apply not only to correspondence between administrations but also to internally produced information. However, section 28(1) does not give a blanket exemption to all correspondence between the Executive and the UK Government or to all information in which reference is made to the position or actions of the UK administration. I do not accept that the release of documents in one case should be seen as setting a precedent for the routine release of documents in all cases, which I accept might cause substantial prejudice to relations between the two administrations. 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 the particular minuted item would substantially prejudice relations between the two administrations.



93. The exemption cannot be upheld where the effect of disclosure would be less than substantial prejudice. After examining the contents of the documents withheld and considering the sensitivity of the information within them, I have found that some of the information is of sufficient sensitivity, even with the passage of time, to be likely to damage relations between the Scottish and UK administrations if disclosed. However, I consider other information to be routine and to be expected given the nature of the relationship between the UK Administration and its devolved administrations.
94. Where I have considered that the exemption does apply, I have (as required by section 2 of FOISA) gone on to consider whether the public interest in disclosure would outweigh the public interest in upholding the exemption. The Executive submitted that in applying the public interest test, it had borne in mind that the devolution settlement relied on trust, cooperation and information sharing between the administrations. While there was public interest in discussions between the administrations, the Executive believed that disclosure would have an adverse impact on the effective delivery of government within the UK by affecting relations between the administrations, and therefore that the balance of public interest favoured non-disclosure.
95. I accept that there is a strong public interest in maintaining good and effective relations between the Scottish and UK administrations to be prejudiced substantially, and that any counter argument that disclosure would be in the public interest where the exemption applied would have to be compelling in order to outweigh the public interest in non-disclosure. After weighing up the arguments for and against I have come to the view that, where the exemption applies, the public interest lies in withholding the information rather than in disclosing it.
96. My findings in respect of section 28(1) and its application to each individual minuted item is detailed in Appendix 1 to this decision.

Application of 29(1)(c) (Advice by any Law Officers)

97. The Executive also submitted that section 29(1)(c) applied to some minuted items.
98. The Executive submitted that this exemption related to the provision of advice by Law Officers or request for provision of advice, and included discussion of requests for advice as well as the content of that advice. I accept that information recording discussions about the need to seek advice would fall within this exemption in that they would “relate” to the provision of advice or requests for such advice. Therefore, I accept that certain information included within the minutes falls within this exemption. However, section 29(1)(c) is a qualified exemption and therefore I must go on to consider whether the public interest in disclosing this information is outweighed by the public interest in maintaining the exemption.



99. The Executive submitted that while there was public interest in the proper administration of justice, there was also significant public interest in the privilege of confidentiality of communication, and in ensuring that the Executive takes decisions in a fully informed legal context, particularly in issues of high political sensitivity. The Executive therefore concluded that it was not in the public interest to release the documents identified as exempt under section 29(1)c.
100. I consider that the exemption under section 29(1)(c) and section 36(1) are similar in content as both aim to protect communications between client and lawyer. I have already stated in a series of decisions that where I consider section 36(1) applies to information I am only likely to order release on public interest grounds where I consider that there are highly compelling reasons. I consider that similar considerations may apply to the application of section 29(1)(c), although section 29(1)(c) is potentially wider in its scope in covering any information relating to the provision of advice by a Law Officer or any request for the provision of such advice.
101. Where I am satisfied that the circumstances are such that I would accept that the public interest would favour the maintenance of the exemption were section 36(1) the relevant exemption, I am also satisfied (at least for the purposes of this decision) that I will accept those public interest arguments applying with equal force for the purposes of section 29(1)(c). On the other hand, I do not accept there being a good public interest argument for maintaining the exemption where all that is recorded is the discussion of a particular matter with the Law Officers without any further information on that discussion.
102. My findings in respect of section 29(1)(c) and its application to each individual minuted item are detailed in Appendix 1 to this decision.

Application of section 29(1)(d) (Operation of any Ministerial office)

103. The Executive submitted that section 29(1)(d) also applied to certain minuted items.
104. I accept that information would fall within this exemption not only if it related to the operation of a specific ministerial private office but also if it related to the operation of ministerial offices in general given the use of the term “any” in this exemption.
105. I accept that the information identified by the Executive relates to the operation of any Ministerial private office. Section 29(1)(d) is a qualified exemption, however, and therefore I must go on to consider whether the public interest in disclosing the information is outweighed by the public interest in maintaining the exemption.



106. The Executive has indicated that its guidance on this exemption notes that there is a public interest in compliance with the Ministerial code and in ensuring that private offices operate efficiently. However, the guidance also recognises the fact that the private office has a specific role in providing information on a range of other issues and that there is a public interest in protecting this important aspect of the space around Ministers. The Executive submitted that it was important for MG to be able to discuss the arrangements for the operation of Ministerial private offices fully and frankly, and it was not in the public interest for either details of this discussion or details of the operation of private offices to be released.
107. I have looked carefully at the information the Executive has identified as falling within the terms of this exemption. In all cases the information relates to Ministerial offices in general rather than to a specific office. The discussions are largely anodyne in nature and do not reveal full and frank exchanges. Section 29(1)(d) protects a whole class of documents regardless of the actual nature of the information and its relative sensitivity. I consider that in this case the information identified is routine and not at all sensitive and as a result I am satisfied that in this case the public interest in disclosing the information is not outweighed by the public interest in maintaining the exemption.
108. My findings in respect of section 29(1)(d) and its application to each individual minuted item are detailed in Appendix 1 to this decision.

Application of section 30(a) (Collective responsibility)

109. The Executive submitted that the minutes contained a number of discussions which attributed views to particular Ministers. The Executive argued that these discussions were exempt under section 30(a). The Executive argued that releasing the minutes of these discussions would have an adverse impact on the principle of collective responsibility, which requires the maintenance of privacy of opinions expressed and advice offered within the Executive.
110. The concept of collective ministerial responsibility is a long-standing constitutional convention which is not regulated by statute but is formalised in the Ministerial Code, which provides guidance on the convention. Collective responsibility enables ministers to express their views in the expectation that they can argue freely and frankly in private, whilst maintaining a united front once decisions have been reached. Section 30(a) provides for the exemption of information if its disclosure would undermine the convention.



111. I understand that the Executive is applying section 30(a) to the specified items of information on the basis that they all contain information about views expressed by the Minister. The Executive has not applied this exemption on a partial basis. That is, it has not suggested that the Minister's views are simply redacted and the remainder of the information released. Further, it appears that the Executive has not taken account of the nature and content of the views expressed. The view expressed may simply amount to a procedural matter or relate to a matter of substance but at a mundane or routine level. It is difficult to see how disclosure of information in such cases would prejudice substantially the convention of collective responsibility.
112. The Executive has not distinguished between the views expressed. In order to rely on section 30(a), the Executive is required to do more than assert that the documents contain views expressed by the Minister and therefore should be protected. In order for the maintenance of the convention of collective responsibility to be prejudiced substantially the views would need to be significant. Circumstances where the disclosure of information might prejudice the maintenance of the convention of collective responsibility could arise where the view expressed was at variance with the final policy or where the information revealed disagreement by another Minister.
113. I consider that the Executive has not demonstrated why section 30(a) applies to the information withheld in each case and how disclosure of this information would, or would be likely to, prejudice substantially the maintenance of the convention of the collective responsibility of the Scottish Ministers.
114. My findings in respect of section 30(a) and its application to each individual minuted item are detailed in Appendix 1 to this decision.

Application of section 30(c) (Effective conduct of public affairs)

115. The Executive has also applied section 30(c) to a number of discussions relating to operational decision making by MG. The Executive submitted that disclosure in these cases would be detrimental to the effective management of the Executive and therefore the effective conduct of public affairs. The Executive has, in each case, identified the reason for the application of this exemption using the following categories: Staffing issues; Financial issues; Spending Review 2004; Delivery/Risk management; and Public sector pay, conditions, appointments and industrial action. The Executive set out in more detail its submissions in respect of each category of information.



Staffing issues

116. The Executive argued that it was important that MG should be able to discuss issues relating to the staffing of the organisation freely and frankly. Disclosure of the record of these discussions would inhibit similar discussions taking place in the future, which would have a very negative impact on MG's ability to manage the organisation so that it was equipped to deliver Ministers' objectives.

Financial issues

117. The Executive submitted that taking decisions on financial issues was an important part of Management Group's role. The Executive argued that disclosing the content of these discussions would be likely to have an adverse effect on MG's ability to monitor spending against programme and administrative budgets. Disclosure of the record of these discussions would inhibit similar discussions taking place in the future, which would have a very detrimental effect on MG's ability to manage the organisation's resources in the most effective way to support Ministers in the implementation of their policies.

Spending Review 2004

118. The Executive submitted that discussions on the Spending Review were subject to the same considerations relating to discussion of financial issues set out above. However, the Executive indicated that this had been included as a separate category as it raised important issues relating to collective responsibility. The Executive submitted that free and frank discussion and advice on spending review bids was a vital part of the process of collective responsibility, and disclosure of the records of these discussions would have a detrimental effect on the ability of Ministers and officials to participate in the decision making process in future spending reviews.

Delivery/Risk Management

119. The Executive submitted that free and unconstrained discussion of risk relating to delivery of key commitments or key corporate risks was a vital part of managing risks and delivery. For example, it was vital that the regular discussions of the corporate Risk Register should take place in a context which allowed free and frank sharing of information relating to key corporate risks which were potentially highly sensitive. Disclosure of the records of these discussions would be likely to inhibit officials in disclosing possible risks or problems in future, and therefore would have an adverse impact on the Executive's ability to manage risks to the effective conduct of public affairs.



Public sector pay, conditions, appointments and industrial action

120. The Executive indicated that MG discussed issues relating to the wider public sector, including non-departmental public bodies (NDPBs). The Executive argued that free and frank discussion of these sensitive issues was necessary for MG to support Ministers through management and negotiation with the wider public sector. Disclosure of the content of these discussions would weaken the Executive's ability to carry out this role, and in particular could have a negative impact on the Executive's negotiating position in future discussions.
121. The Executive concluded that it was not in the public interest to release the documents identified as exempt under section 30(c).
122. I have considered carefully the information the Executive considers falls within the scope of section 30(c). In my view it is important for public authorities to treat each request for information on a case by case basis. Release of information in one case should not be taken to imply that such communications will be "routinely" released in future. The circumstances of each case must be taken into consideration and the public interest in each case assessed on its own merits.
123. Authorities seeking to rely on the exemption in section 30(c) will need to show that disclosure will substantially prejudice the interests contained in the exemption. There is no definition of "substantial prejudice" in the Act, but my view is that in order to claim this exemption, the damage caused by disclosing information would have to be real or very likely, not hypothetical. The harm caused must be significant, not marginal, and it would have to occur in the near future not in some distant time. Authorities should therefore consider disclosing the information asked for unless it would cause real, actual and significant harm.
124. The Executive has identified particular subject areas that are discussed in the MG minutes and has argued that in respect of each subject area disclosure of the information would or would be likely to prejudice substantially the effective conduct of public affairs. However, even if an authority identifies a subject area or specific matter that it considers may raise an expectation that section 30(c) applies it is still necessary to consider the actual information contained in the minuted item. Even where a subject matter is sensitive it does not necessarily follow that all information discussing that issue will be sensitive. In some cases, the record of the discussion by MG is routine in nature and in such cases I am unlikely to uphold the application of section 30(c). Even where I consider the record contains information of some sensitivity it seems to me that the timing of the request will be a crucial factor in determining whether the harm test as set out in section 30(c) will be met.



125. The wording of section 30(c) is such that it is not concerned purely with the “inhibiting” effect that disclosure might have on future practice, as is the case in respect of section 30(b), but also the harm that might result to the particular interest or process being discussed. I will address both of these aspects in respect of the information withheld in this case.
126. I accept that the release of discussions while a process is ongoing may well prejudice substantially that process. However, in this case I have taken into account that Mr Hutcheon’s request was made on 18 January 2005 and the minutes now withheld by the Executive are for the period from May 2003 until August 2004 (with several exceptions). In almost all cases the matters being discussed by MG would have been concluded by the time of Mr Hutcheon’s request. In such cases, it will be much harder for the Executive to argue that disclosure of the information would or would be likely to prejudice substantially that process or a particular interest. It seems to me where the process is concluded the authority’s reliance on the application of section 30(c) will depend on the effect that disclosure of the information would have on future practice.
127. In this instance, it is necessary to consider the impact on future practice in the light of the Executive’s decision to publish MG minutes from January 2005. As I indicated in paragraph 77 above, it is difficult to see what impact disclosure of minutes from 2003 and 2004 would have on future practice given the Executive’s decision. The Executive has either decided that disclosure of the same issues from January 2005 would not prejudice substantially the effective conduct of public affairs or the revised format is sufficiently sanitised that disclosure would not be result in substantial prejudice.
128. I have taken into account a number of factors when considering the application of section 30(c) to each item of information identified. In addition to the decision to publish minutes from January 2005, these include the relative sensitivity of the specific information (not just the subject matter), whether the matter to which it relates has now completed and the timing of the request in respect of the information. Only in a few cases have I upheld the application of section 30(c).
129. Where I have upheld the application of section 30(c) I have gone on to consider whether the public interest in disclosing the information is outweighed by the public interest in withholding it.



130. In reaching this decision I have considered the desirability of making information available to the public, the general need for transparency and accountability in decision making, and whether disclosure would contribute to ensuring effective oversight of expenditure of public funds and obtaining value for money in the expenditure of those funds. However, I have also taken into account that certain processes do need to be carried out in private if they are to be carried out effectively, the timing of the request and the sensitivity of the subject matter.
131. My findings in respect of section 30(c) and its application to each individual minuted item are detailed in Appendix 1 to this decision.

Application of section 31 (National security)

132. The Executive indicated that certain identified information was exempt by virtue of section 31(1) and that it would not be in the public interest to disclose this information.
133. I have considered carefully the information the Executive considers falls within this exemption. It seems to me that it might have been arguable at the time the information was recorded that it was exempt under section 31(1) but it is difficult to see why the exemption was required at the time of Mr Hutcheon's request. In any event, it is hard to see how the information could be seen to be secret or confidential; rather the information recorded by MG appears self-evident. In all the circumstances, I have not upheld the application of section 31(1) to the information identified. As a result, I have not gone on to consider the public interest test.
134. My findings in respect of section 31(1) and its application to each individual minuted item are detailed in Appendix 1 to this decision.

Application of section 32(1)(a)(ii) (International relations)

135. The Executive indicated that the MG also discussed issues relating to negotiations with the European Commission. The Executive submitted that it was important for MG to be able to discuss these issues freely and frankly in order to provide advice to Ministers, and publication would affect MG's ability to discuss these issues in future. In addition, publication of this information would have an adverse affect on the Executive's relations with the Commission, and in particular have an adverse effect on the Executive's need to discuss policy issues in preparation for negotiation. The Executive therefore concluded that it was not in the public interest to release the documents identified.
136. For the purposes of the this application I accept that the European Commission falls within the meaning of international organisation as defined in section 32(3).



137. In order to claim this exemption, I take the view that the damage caused by disclosing information would have to be real or very likely, not hypothetical. The harm caused must be significant, not marginal, and it would have to occur in the near future not in some distant time. Authorities should consider disclosing the information asked for unless it would cause them real, actual and significant harm.
138. In my briefing on section 32 I emphasise that in considering the application of the exemption under section 32(1)(a) authorities should be aware that it is the international relations and interests of the United Kingdom **as a whole** which should be at risk of substantial prejudice from the release of information, not those of a component region, part, or sector of the UK, nor indeed those of the public authority itself. Authorities should therefore only consider the application of this exemption if it can be clearly demonstrated that substantial prejudice to the international relations or interests of the entire UK would result from the release of information.
139. I also state that the exemption requires the public authority to concentrate on the potential impact that release may have on a particular relationship or interest, rather than looking solely at the nature, content and/or sensitivity of the information. There may be circumstances where potentially controversial information concerning one state or international organisation may have little or no impact on their relations, while seemingly innocuous information relating to a second may have a substantial impact. This may depend on the political relations and diplomatic sensitivities that exist at the time, or may depend on cultural, religious or legislative differences. Authorities should therefore consider the content of the information only in terms of the impact that it may have on particular relations or interests were it to be released.
140. Even if a negative reaction is anticipated from the release of information, an assessment will have to be made as to whether this reaction is likely to substantially prejudice international relations. There may be circumstances where the release of information may cause diplomatic annoyance or irritation, but would not result in significant, long-term harm to the relations between countries.
141. I have therefore considered the content of each minuted item where the Executive has applied this exemption. It is not enough that the MG was discussing a matter of European policy. I must be satisfied that disclosure of the information is such that its disclosure would or would be likely to prejudice substantially international relations. In no case cited by the Executive, am I satisfied that the views expressed or information recorded is of such sensitivity that it would cause the harm required by section 32(1)(a)(ii). I am not satisfied that disclosure of the information would or would be likely to harm international relations substantially.



142. My findings in respect of section 32(1)(a)(ii) and its application to each individual minuted item are detailed in Appendix 1 to this decision.

Application of section 36(1) (Confidentiality of communications)

143. The Executive submitted that certain information was exempt by virtue of section 36(1) in that it was information in respect of which a claim of confidentiality of communications would be maintained in legal proceedings. The Executive submitted that while there was public interest in the proper administration of justice, there was also great public interest in the privilege of confidentiality of communication, and in ensuring that the Executive took decisions in a fully informed legal context.
144. This section provides that information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings is exempt information. One type of communication covered by this exemption is communications between legal adviser and client. For the exemption to apply to this particular type of communication, certain conditions must be fulfilled. For example:
- a) the information being withheld must relate to communications with a legal adviser.
 - b) the legal adviser must be acting in his/her professional capacity and the communications must occur in the context of his/her professional relationship with his/her client.
 - c) the privilege does not extend to matters known to the legal adviser through sources other than the client or to matters in respect of which there is no reason for secrecy.
 - d) the privilege does not extend to communications which relate to fraud or to the commission of an offence.
 - e) the fact that advice was sought is not necessarily privileged.
 - f) it is likely that communications are privileged whether or not they relate to pending or contemplated litigation.
145. I am satisfied that certain of the information identified by the Executive would fall within the scope of section 36(1). I do not, however, accept that that certain other statements, which simply report the consideration of legal issues arising or the taking of action following such consideration, fall within the scope of the exemption.
146. In any event, section 36(1) is subject to the public interest test and therefore I must go on to consider whether the public interest in disclosure of information is outweighed by the public interest in withholding it.



147. In *Decision 023/2005* I advised 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, I am likely only to order the release of such communications in highly compelling cases.
148. FOISA has brought about many changes to public life in Scotland, not least that for the first time communications between a legal adviser and a public authority client may be made public if it is in the public interest for those communications to be released.
149. The courts have long recognised the strong public interest in maintaining the right to confidentiality of communications between legal adviser and client on administration of justice grounds. Many of the arguments in favour of maintaining confidentiality of communications were discussed in the House of Lords case, *Three Rivers District Council and others v Governor and Company of the Bank of England (2004) UKHL 48*.
150. After considering the content of the information identified in each case I am satisfied that there are no compelling reasons requiring disclosure of this information on public interest grounds. In the circumstances, I am satisfied that the public interest in disclosing the information is outweighed by the public interest in withholding it.
151. My findings in respect of section 36(1) and its application to each individual minuted item are detailed in Appendix 1 to this decision.

Application of section 33(1)(b) (Commercial interests)

152. The Executive submitted that in one minute MG discussed the awarding of a contract for electronic document and record management, and commented on the bid. The Executive argued that disclosure of this information might have an adverse impact on the company's financial interests. The Executive concluded that it was not in the public interest to release the documents identified which are exempt under section 33(1)(b).
153. There are certain elements to section 33(1)(b) of FOISA which an authority needs to demonstrate when relying on this exemption. In particular, it needs to indicate whose commercial interests might be harmed by disclosure, the nature of those commercial interests and how those interests will be substantially prejudiced. Where an authority is arguing that the commercial interests of a third party will be harmed, the authority must make this clear and must indicate the nature of those commercial interests and how these interests would, or would be likely to, be substantially prejudiced.



154. Paragraph 72 of the Scottish Ministers' Code of Practice on the Discharge of Functions by Public Authorities under the Freedom of Information (Scotland) Act 2002 (the Section 60 Code) indicates that the prejudice caused to a particular interest following release of information should be "real, actual, and of significant substance" before the test of substantial prejudice can be considered to have been met.
155. The Executive has simply asserted in this case that the commercial interests of the company might be adversely affected. It has not identified those interests or set out why disclosure would prejudice substantially those interests. In the circumstances, the Executive has not demonstrated that section 33(1)(b) applies to the information identified. As a result I do not uphold this exemption.
156. As I have not upheld the application of section 33(1)(b) to the information identified I have not gone on to consider the public interest test.

Section 41(a) (Communications with Her Majesty)

157. The Executive identified one minute item which it submitted fell within the scope of section 41(a). The Executive argued that disclosure of such communications would harm the political neutrality of the monarchy. It concluded that the public interest in non-disclosure prevailed.
158. I am satisfied that the information identified by the Executive falls within the description as set out in section 41(a).
159. However, section 41(a) is subject to the public interest test and therefore I must go on to consider whether the public interest in disclosure of the information is outweighed by the public interest in withholding it.
160. Given the class nature of this exemption an authority relying on this exemption must consider the content of the information when assessing the public interest test. The Executive does not wish to reveal the nature of the communication or its substance. I have considered carefully this information which is very brief and, it seems to me, routine in content. I am not persuaded by the Executive's submission that disclosure of this information would harm the political neutrality of the monarchy. Further, it seems to me that there is a strong public interest in transparency in government.
161. In all the circumstances, I am satisfied that the public interest in disclosing this information is not outweighed by the public interest in maintaining the exemption.



Application of the exemptions to MG minutes from 19 August 2004 to December 2004

162. The Executive indicated that all sets of minutes from 19 August 2004 could be supplied to Mr Hutcheon with the exception of several minuted items and two limited circulation annexes. Therefore I have also considered the information withheld during this time period. In almost all cases, my consideration of the exemptions to this information follows my reasoning set out above. However, I have also taken into account that from September 2004 onwards MG apparently identified particular items that it did not want disclosed under FOISA and these were recorded as separate documents entitled limited circulations annexes. Given this system I find it difficult to accept the Executive's arguments that certain other items are also exempt. In my view, from this date onwards there was a clear expectation that minutes might be disclosed under FOISA and/or published (except for those items identified at the time) and I have taken this into account when considering the application of the exemptions.
163. I consider that slightly different considerations will apply in respect of limited circulation annexes. I accept that at the time of recording this information there may have been an expectation (and certainly a desire) that the record would not be published and/or disclosed under FOISA. As a result, I accept that disclosure of such information might have an inhibiting effect in respect of future MG meetings and the content of such annexes. I recognise that there may be cases where specific items should be considered in private without the fear of future publication. This does not mean that I will automatically accept that limited circulation annexes should never be disclosed under FOISA (I have not in every case under consideration here). Rather I will consider each item of information on a case by case basis.
164. As in relation to the other minutes, my conclusions in relation to the exemptions claimed for the minutes from 19 August 2004 to the end of December 2004 are set out in Appendix 1 to this decision.

Application of the exemptions to MG minutes from 1 January 2005

165. The Executive applied section 27(1) to MG minutes from 1 January 2005 to 17 February 2005 (the date of the Executive's response to Mr Hutcheon). In fact, the Executive was only obliged to supply the MG minutes it held at the time of Mr Hutcheon's request, that is, on 18 January 2005.
166. This information has now been supplied to Mr Hutcheon. However, I will go on to consider whether it was appropriate for the Executive to rely on section 27(1) to withhold this information at the time of Mr Hutcheon's request.



167. I have already set out the Executive's submissions in respect of its decision to include all MG minutes from January 2005 in its publication scheme. The Executive indicated that the minutes from 1 January 2005 were exempt under section 27(1) which covers information scheduled for publication within 12 weeks. The Executive indicated that this time delay allowed sufficient time to elapse between discussions taking place and their publication, and therefore reduced the likelihood that discussion of issues attracting current media attention would be inhibited as a result of publication while the issue remained live. The Executive argued that to publish the minutes earlier could impact on MG's consideration of these current and topical issues and therefore be to the detriment of effective management of the Executive.
168. I recognise that a number of authorities provide for a time lapse between the date of the meeting and the publication of the minutes. In most cases, this is to allow for the minutes to be approved by those present. I am not necessarily persuaded by the Executive's arguments set out in paragraph 153 above in that I can see occasions when members of the public should be made aware that a matter is being discussed at MG level and the content of that discussion at the time it is taking place, not three months later.
169. Given that a significant amount of time has now elapsed since Mr Hutcheon first made this request for information and given that the documents have now been supplied to Mr Hutcheon I do not intend to pursue this point in detail. I accept that it may be reasonable for there to be a delay between the meeting and the publication of the minutes in order to allow for approval by those present. I will consider each request, however, on a case by case basis.

Decision

I find that the Scottish Executive partially failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with Mr Hutcheon's request for information, in that it withheld from him certain information which he had requested and which was not exempt from disclosure under any of the exemptions claimed for it and therefore failed to deal with that information in accordance with section 1(1) of FOISA. My findings in respect of particular exemptions claimed are detailed in Appendix 1 to this decision, which forms part of the decision.

I find that the Executive complied with Part 1 of FOISA in withholding certain of the information, as I have indicated in Appendix 1 to this decision.



The information identified in the Appendix as not being exempt should be supplied to Mr Hutcheon within two months of receipt of this decision notice, along with all of the remaining information in the Management Group minutes in respect of which the Executive has either applied the exemption in section 25(1) of FOISA or has claimed no particular exemption.

I find that the Executive does not (and did not at the time it dealt with Mr Hutcheon's request) hold the notes of the meetings requested by Mr Hutcheon and therefore that it deal with that part of his request in accordance with section 17(1) of FOISA.

Appeal

Should either the Executive or Mr Hutcheon wish to appeal against this decision, there is a right to 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
9 July 2007



Appendix 1 - Schedule of information

This schedule only identifies the minuted items that the Executive has sought to withhold. In each case, the relevant exemptions are identified pertaining to the minuted item. The penultimate column indicates whether the exemption has been upheld (yes or no). If no exemption has been upheld in respect of a particular item the information should be disclosed.

The final column indicates whether the public interest in withholding the information is outweighed by the public interest in withholding it. A “yes” in this final column means that the information should be disclosed.

Date of MG Meeting	Document Reference	Subject Matter	Relevant section of FOI act	Exemption Upheld	PI in favour of Disclosure
01-May-03	MG(03)18th	Fire Dispute	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
			31(1)	No	N/A
		Post-Election Guidance	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
		Relations with the Parliament (MG(03)45)	29(1)(a)	Yes	Yes
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
		Review of Procedures for Delivery of Scottish Executive Legislation (MG(03)46)	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
			30(a)	No	N/A
		Changing to Deliver: Public Bodies Project	29(1)(a)	No	N/A



			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
		Risk Management.	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
02-May-03	MG(03)19th	Getting Started: Induction for Ministers (MG(03)47)	29(1)(a)	No	N/A
			29(1)(b)	Yes	Yes
			29(1)(d)	Yes	Yes
			30(a)	No	N/A
			30(b)(i) & (ii)	No	N/A
		Manifesto Grids: Final Version	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
		08-May-03	MG(03)20th	Coalition Talks	29(1)(a)
29(1)(b)	Yes				Yes
30(a)	No				N/A
30(b)(i) & (ii)	No				N/A
End Year Flexibility for NDPBs and Agencies	29(1)(a)			No	N/A
	29(1)(b)			No	N/A
	30(b)(i) & (ii)			No	N/A
	30(c)			No	N/A
	Getting Started: Specification for Private Office (MG(03)48).			29(1)(a)	No
29(1)(b)				Yes	Yes
29(1)(d)				Yes	Yes
30(b)(i) & (ii)				No	No
15-May-03	MG(03)21st			Coalition Talks	29(1)(a)
		29(1)(b)	No		N/A



			30(a)	No	N/A	
			30(b)(i) & (ii)	No	N/A	
		Fire Dispute	29(1)(a)	No	N/A	
			29(1)(b)	No	N/A	
			30(b)(i) & (ii)	No	N/A	
			30(c)	No	N/A	
			31	Yes	Yes	
			Nursery Nurses Strike Action	29(1)(a)	No	N/A
				29(1)(b)	No	N/A
		30(b)(i) & (ii)		No	N/A	
		30(c)		No	N/A	
		UK Olympic Bid	29(1)(a)	No	N/A	
			29(1)(b)	No	N/A	
			30(b)(i) & (ii)	No	N/A	
		Scottish Water	29(1)(a)	No	N/A	
			29(1)(b)	No	N/A	
			30(b)(i) & (ii)	No	N/A	
			30(c)	No	N/A	
		Cabinet Business (MG(03)49) (MG(03)50)	29(1)(a)	Yes	Yes	
			29(1)(b)	Yes	Yes	
			30(a)	No	N/A	
			30(b)(i) & (ii)	No	N/A	
		Joint MG/DMB with Legal and Parliamentary Secretariat	29(1)(a)	No	N/A	
			29(1)(b)	No	N/A	
			30(b)(i) & (ii)	No	N/A	
22-May-03	MG(03)22nd	First Minister's concerns	29(1)(a)	No	N/A	
			29(1)(b)	Yes	Yes	



		30(b)(i) & (ii)	No	N/A
	Ministers and Portfolios	29(1)(a)	Yes	Yes
		29(1)(b)	Yes	Yes
		30(b)(i) & (ii)	No	N/A
		30(b)(i) & (ii)	No	N/A
	Initial Contacts with Ministers	29(1)(a)	No	N/A
		29(1)(b)	Yes	Yes
		30(b)(i) & (ii)	No	N/A
	Fire Dispute	29(1)(a)	No	N/A
		29(1)(b)	Yes	Yes
		30(b)(i) & (ii)	No	N/A
		30(c)	No	N/A
	GP Pay	29(1)(a)	Yes	Yes
		29(1)(b)	No	N/A
		30(b)(i) & (ii)	No	N/A
		30(c)	No	N/A
	Private Office Workshop	29(1)(a)	No	N/A
		29(1)(b)	No	N/A
		29(1)(d)	Yes	Yes
		30(b)(i) & (ii)	No	N/A
	Portfolio Plans	29(1)(a)	Yes	Yes
		29(1)(b)	Yes	Yes
		30(a)	No	N/A
		30(b)(i) & (ii)	No	N/A
	Cabinet Business (MG(03)51)	29(1)(a)	No	N/A
		29(1)(b)	Yes	Yes
		30(b)(i) & (ii)	No	N/A
	Programme Expenditure: Monthly Report to March and Provisional Outturn	29(1)(a)	No	N/A
		29(1)(b)	Yes	Yes



		2002-03 (MG(03)52);	30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
29-May-03	MG(03)23rd	First Minister's Concerns	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
		Relocation	29(1)(a)	Yes	Yes
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
		Cabinet Business	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(a)	No	N/A
			30(b)(i) & (ii)	No	N/A
		Turning the Partnership Agreement into Action (MG(03)54)	29(1)(a)	Yes	Yes
			29(1)(b)	No	N/A
			30(a)	No	N/A
			30(b)(i) & (ii)	No	N/A
		Staff Survey 2003 (MG(03)55)	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
30(b)(i) & (ii)	No		N/A		
30(c)	No		N/A		
05-Jun-03	MG(03)24th	First Minister's Concerns	29(1)(a)	Yes	Yes
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
		Fire Dispute	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A



			31	No	N/A
		Financial Implications of Bills	29(1)(a)	Yes	Yes
			29(1)(b)	No	N/A
			30(b) (i) & (ii)	No	N/A
		Cabinet Business	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(a)	No	N/A
			30(b) (i) & (ii)	No	N/A
		Corporate Activity and Performance Report (MG(03)57)	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b) (i) & (ii)	No	N/A
			30(c)	No	N/A
		Scottish Executive Administration Costs: 2002-03 Estimated Outturn and Allocations for 2003-04 (MG(03)58)	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b) (i) & (ii)	No	N/A
			30(c)	No	N/A
12-Jun-03	MG(03)25th	First Minister's Concerns	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			29(1)(c)	Yes	Yes
			30(a)	No	N/A
			30(b)(i) & (ii)	No	N/A
		Ministerial Responsibility	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(a)	No	N/A
			30(b)(i) & (ii)	No	N/A
		Cabinet Business	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(a)	No	N/A



			30(b)(i) & (ii)	No	N/A
		Structures to Support the Finance Function in SE Core Departments	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
		Quarterly Staffing Report	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
19-Jun-03	MG(03)26th	First Minister's Concerns	28(1)	No	N/A
			29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(a)	No	N/A
			30(b)(i) & (ii)	No	N/A
		Fire Dispute	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
		Reform of the Common Agricultural Policy	28(1)	No	N/A
			29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b) (i) & (ii)	No	N/A
		Joint MG/DMB: Justice Department	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
		Relationships with Scotland Office and UK Government	28(1)	No	N/A
			29(1)(a)	No	N/A
			29(1)(b)	No	N/A



			30(b)(i) & (ii)	No	N/A
		Cabinet Business (Paper MG(03)61)	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
26-Jun-03	MG(03)27th	First Minister's Concerns	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b) (i) & (ii)	No	N/A
		Caledonian MacBrayne Industrial Action	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
		Common Agricultural Policy Reform	29(1)(a)	Yes	Yes
			29(1)(b)	No	N/A
			30(b) (i) & (ii)	No	N/A
		Legislative Proposals	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
		Consultants' Contract	29(1)(a)	Yes	Yes
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
		Cabinet Business	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b) (i) & (ii)	No	N/A
		Best Value in the Executive: Progress Report	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b) (i) & (ii)	No	N/A
			30(c)	No	N/A
		03-Jul-03	MG(03)28th	NHS Consultants	29(1)(a)



			29(1)(b)	No	N/A
			30(b) (i) & (ii)	No	N/A
			30(c)	No	N/A
		UK Supreme Court	29(1)(a)	Yes	Yes
			29(1)(b)	No	N/A
			29(1)(c)	No	N/A
			30(b)(i) & (ii)	No	N/A
		Cabinet Business	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(a)	No	N/A
			30(b)(i) & (ii)	No	N/A
10-Jul-03		NO MEETING: RECESS			
17-Jul-03	MG(03)29th	First Minister's Concerns	29(1)(a)	Yes	Yes
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
		Morning-After Pills in Schools	29(1)(a)	Yes	Yes
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
		Community Health Partnerships	29(1)(a)	Yes	Yes
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
		Cabinet Business (MG(03)64)	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			29(1)(c)	Yes	Yes
			30(a)	No	N/A
			30(b)(i) & (ii)	No	N/A
		Accountable Officer Directions	29(1)(a)	No	N/A



			29(1)(b)	No	N/A	
			30(a)	No	N/A	
			30(b)(i) & (ii)	No	N/A	
24-Jul-03		NO MEETING: RECESS				
31-Jul-03	MG(03)30th	Relocation Policy	29(1)(a)	No	N/A	
			29(1)(b)	No	N/A	
			30(b)(i) & (ii)	No	N/A	
		Budget Reallocation Exercise	29(1)(a)	No	N/A	
			29(1)(b)	Yes	Yes	
			30(b)(i) & (ii)	No	N/A	
		Programme Expenditure: Monthly Report to 30 June 2003 (MG(03)65)	29(1)(a)	No	N/A	
			29(1)(b)	No	N/A	
			30(b)(i) & (ii)	No	N/A	
			30(c)	No	N/A	
		7-Aug-03		NO MEETING: RECESS		
		14-Aug-03	MG(03)31st	Dungavel	29(1)(a)	Yes
29(1)(b)	No				N/A	
30(b)(i) & (ii)	No				N/A	
Caledonian MacBrayne	29(1)(a)			No	N/A	
	29(1)(b)			No	N/A	
	30(b)(i) & (ii)			No	N/A	
	30(c)			No	N/A	
Residential Schools/Access to Files	29(1)(a)			No	N/A	
	29(1)(b)			Yes	Yes	
	30(b)(i) & (ii)			No	N/A	
Family Law Reform: Principles, Priorities, Presentation (MG(03)67)	29(1)(a)			Yes	Yes	
	29(1)(b)			Yes	Yes	
	30(b)(i) & (ii)			No	N/A	



		Cabinet Business	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(a)	No	N/A
			30(b)(i) & (ii)	No	N/A
		Draft Secondary Best Value Guidance to the Wider Public Sector (including the Executive) (MG(03)68)	29(1)(a)	Yes	Yes
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
14-Aug-03	MG(03)31 st LCA	Location and Relocation of Staff (MG(03)69)	29(1)(a)	Yes	No
			29(1)(b)	Yes	No
			30(b) (i) & (ii)	No	N/A
			30(c)	No	N/A
28-Aug-03	MG(03)32 nd	First Minister's Concerns	29(1)(a)	Yes	Yes
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
		National Waiting Times	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
		Nursery Nurses	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
		Cabinet Business	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(a)	No	N/A
			30(b)(i) & (ii)	No	N/A
			MG Delivery Sub-Group (MG(03)72)	29(1)(a)	Yes



			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
		Getting Started - Programme of Ministerial Seminars	29(1)(a)	Yes	Yes
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
28-Aug-03	MG(03)32nd LCA	Report on Scottish Executive Accommodation (MG(03)74)	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
04-Sep-03	MG(03)33rd	First Minister's Concerns	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	No
		Scottish Natural Heritage	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
		Dungavel Home Office Accommodation Centre	28(1)	No	N/A
			29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
		Fraser Inquiry	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
			36(1)	No	N/A
		Nursery Nurses	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
30(b)(i) & (ii)	No		N/A		
30(c)	No		N/A		



		Cabinet Business	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(a)	No	N/A
			30(b)(i) & (ii)	No	N/A
		Administration Costs (MG(03)77)	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
		Portfolio Plans (MG(03)78)	29(1)(a)	Yes	Yes
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
		NHS Executive Pay	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
		11-Sep-03	MG(03)34th	First Minister's Concerns	28(1)
29(1)(a)	Yes				Yes
29(1)(b)	No				N/A
30(b)(i) & (ii)	No				N/A
Dungavel Asylum and Immigration Removal Centre	28(1)			No	N/A
	29(1)(a)			No	N/A
	29(1)(b)			No	N/A
	30(b)(i) & (ii)			No	N/A
Ninth Report into Standards in Public Life (Wicks)	29(1)(a)			No	N/A
	29(1)(b)			No	N/A
	30(b)(i) & (ii)			No	N/A
Cabinet Business	29(1)(a)			Yes	Yes



			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
		Working Family Tax Credits (MG(03)80)	29(1)(a)	Yes	No
			29(1)(b)	Yes	No
			30(b)(i) & (ii)	Yes (paragraphs 23 to 25(a) only)	No
18-Sep-03	MG(03)35th	First Minister's Concerns	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
		Dungavel Asylum and Immigration Removal Centre	29(1)(a)	No	N/A
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
		Fire Dispute	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
		Nursery Nurses	29(1)(a)	No	N/A
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	NA
			30(c)	No	N/A
		Allegations of abuse in former List D Schools	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
		Cabinet Business	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
		25-Sep-03	MG(03)36th	UK ID Cards	29(1)(a)



			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
		Single Rubella Vaccine	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
		Assessment Testing in Schools	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
		Cabinet Business	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
02-Oct-03	MG(03)37th	Nursery Nurses	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
		Planning Strategic Communication Themes	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
		Cabinet Business	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
		Relations with CoSLA (MG(03)84)	29(1)(a)	Yes	No
			29(1)(b)	Yes	No
			30(b)(i) & (ii)	Yes	No
		Portfolio Plans	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
30(b)(i) & (ii)	No		N/A		
09-Oct-03	MG(03)38th	First Minister's	29(1)(a)	Yes	Yes



		Concerns	29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
		Office of the Permanent Secretary (OPS)	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
		Joint Ministerial Council Europe (JMCE)	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
		Science Centres	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b) (i) & (ii)	No	N/A
		Cabinet Business	29(1)(a)	No	N/A
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
		Widening the Right of Appeal in Planning (MG(03)38)	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
		16-Oct-03	MG(03)39th	Charity Finances	29(1)(a)
29(1)(b)	No				N/A
30(b)(i) & (ii)	No				N/A
Memoranda of Understanding	29(1)(a)			Yes	Yes
	29(1)(b)			No	N/A
	30(b)(i) & (ii)			No	N/A
23-Oct-03	MG(03)40th	Crown Office and Procurator Fiscal Service	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
		Cabinet Business			



			29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
30-Oct-03	MG(03)41st	Holyrood Inquiry	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			29(1)(c)	No	N/A
			30(b)(i) & (ii)	No	N/A
			36(1)	No	N/A
		Ministerial Bilateral Meetings	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(a)	No	N/A
			30(b)(i) & (ii)	No	N/A
		Social Work Services	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
		Cabinet Business	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
		Targets Across the Executive	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
30(b)(i) & (ii)	No		N/A		
06-Nov-03	MG(03)42nd	Fire Dispute	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
		Cabinet Business	29(1)(a)	No	N/A
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A



		Appraisal of Chairs of Public Bodies (Paper MG(03)91)	29(1)(a)	No	N/A		
			29(1)(b)	No	N/A		
			30(b)(i) & (ii)	No	N/A		
			30(c)	No	N/A		
		In Year Financial Report to 30 September (Paper MG(03)92)	29(1)(a)	No	N/A		
			29(1)(b)	No	N/A		
			30(b)(i) & (ii)	No	N/A		
			30(c)	No	N/A		
		Report back from Delivery Sub-Group (Paper MG(03)94)	29(1)(a)	Yes	Yes		
			29(1)(b)	No	N/A		
			30(b)(i) & (ii)	No	N/A		
			30(c)	No	N/A		
		13-Nov-03	MG(03)43rd	Fire Dispute	29(1)(a)	No	N/A
					29(1)(b)	No	N/A
					30(b)(i) & (ii)	No	N/A
					30(c)	No	N/A
Dungavel Asylum and Immigration Removal Centre	28(1)			No	N/A		
	29(1)(a)			No	N/A		
	29(1)(b)			No	N/A		
	30(b)(i) & (ii)			No	N/A		
First Minister's Questions	29(1)(a)			Yes	Yes		
	29(1)(b)			Yes	Yes		
	30(a)			No	N/A		
	30(b)(i) & (ii)			No	N/A		
Cabinet Business	29(1)(a)			Yes	Yes		
	29(1)(b)			Yes	Yes		
	29(1)(c)			Yes – second sentence only	No		



			30(b)(i) & (ii)	No	N/A		
20-Nov-03	MG(03)44th	Cabinet Business Process	29(1)(a)	Yes	Yes		
			29(1)(b)	Yes	Yes		
			30(b)(i) & (ii)	No	N/A		
		Cabinet Business	29(1)(a)	Yes	Yes		
			29(1)(b)	Yes	Yes		
			30(a)	No	N/A		
			30(b)(i) & (ii)	No	N/A		
		27-Nov-03	MG(03)45th	Queen's Speech	29(1)(a)	Yes	Yes
29(1)(b)	No				N/A		
30(b)(i) & (ii)	No				N/A		
NHS Waiting Times	29(1)(a)			No	N/A		
	29(1)(b)			No	N/A		
	30(b)(i) & (ii)			No	N/A		
Cabinet Business	29(1)(a)			Yes	Yes		
	29(1)(b)			Yes	Yes		
	30(a)			No	N/A		
	30(b)(i) & (ii)			No	N/A		
04-Dec-03	MG(03)46th			First Minister's concerns (current issues)	29(1)(a)	No	N/A
					29(1)(b)	Yes	Yes
		30(b)(i) & (ii)	No		N/A		
		Scottish Opera	29(1)(a)	No	N/A		
			29(1)(b)	No	N/A		
			30(b)(i) & (ii)	No	N/A		
			30(c)	No	N/A		
		First Minister's Questions	29(1)(a)	No	N/A		
			29(1)(b)	No	N/A		



			30(b)(i) & (ii)	No	N/A
		Cabinet Business	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(a)	No	N/A
			30(b)(i) & (ii)	No	N/A
		Scottish Science Advisory Committee	29(1)(a)	Yes	Yes
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
		Partnership Agreement Commitment on Evaluating Spending Initiatives (MG(03)100)	29(1)(a)	Yes	Yes
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
		Report back from MG Corporate Issues Sub-Group	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
11-Dec-03	MG(03)47th	First Minister's concerns (current issues)	28(1)	Yes (para 2)	No (para 2)
			29(1)(a)	Yes	Yes
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
		Pre-Budget Report	28(1)	No	N/A
			29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
		Cabinet Business	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
		Electronic Records Data Management	29(1)(a)	No	N/A



		(eRDM)	29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
			33(1)(b)	No	N/A
18-Dec-03	MG(03)48th	First Minister's concerns (current issues)	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(a)	No	N/A
			30(b)(i) & (ii)	No	N/A
		Audit Scotland Report on NHS Scotland	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
		New Variant Creutzfeldt Jakob Disease (CJD): Infection via Blood Products	28(1)	Yes	Yes
			29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
		School League Tables	29(1)(a)	Yes	Yes
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
		Spending Review 2004: Process (Paper MG(03)105) and Efficiency Review (Paper MG(03)106)	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
		Remuneration of the Chief Executive of Scottish Water.	29(1)(a)	Yes	Yes
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
		Cabinet Business	29(1)(a)	Yes	Yes



			29(1)(b)	Yes	Yes		
			30(a)	No	N/A		
			30(b)(i) & (ii)	No	N/A		
25-Dec-03		NO MEETING: RECESS					
01-Jan-04		NO MEETING: RECESS					
08-Jan-04	MG(04)1st	First Minister's concerns (current issues)	29(1)(a)	No	N/A		
			29(1)(b)	Yes	Yes		
			30(b)(i) & (ii)	No	N/A		
		Analogue Broadcasting	29(1)(a)	No	N/A		
			29(1)(b)	No	N/A		
			30(b)(i) & (ii)	No	N/A		
		Cabinet Business	29(1)(a)	Yes	Yes		
			29(1)(b)	Yes	Yes		
			30(a)	No	N/A		
			30(b)(i) & (ii)	No	N/A		
		In Year Financial Report to 30 November 2003 (MG(04)3)	29(1)(a)	Yes	Yes		
			29(1)(b)	Yes	Yes		
			30(a)	No	N/A		
			30(b)(i) & (ii)	No	N/A		
			30(c)	No	N/A		
		Portfolio Plans (MG(04)5)	29(1)(a)	Yes	Yes		
			29(1)(b)	No	N/A		
			30(b)(i) & (ii)	No	N/A		
		15-Jan-04	MG(04)2nd	Prison Officers Association (POA)	29(1)(a)	No	N/A
					29(1)(b)	No	N/A
					30(b)(i) & (ii)	No	N/A
30(c)	No				N/A		
Nursery Nurses	29(1)(a)		No	N/A			



			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
		Pay Review Bodies	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
		Strategic Communications Grid	29(1)(a)	No	N/A
			29(1)(b)	Yes	Yes
			30(a)	No	N/A
			30(b)(i) & (ii)	No	N/A
		Cabinet Business	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
		DMB Non-Executive Directors	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
		Pay Awards	29(1)(a)	Yes	Yes
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
		End-Year Flexibility	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
22-Jan-04	MG(04)3rd	First Minister's concerns	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A



		Discussion with HRH Prince of Wales	41(a)	Yes	Yes
		First Minister's Questions	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
		Spending Review 2004	29(1)(a)	Yes	Yes
			29(1)(b)	No	N/A
			30(a)	No	N/A
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
		Cabinet Business	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
		Risk Register MG(04)10	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
		Handling of Business in the Education Department	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(a)	No	N/A
			30(b)(i) & (ii)	No	N/A
		NHS Scotland Single Distribution Centre	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
29-Jan-04	MG(04)4th	First Minister's Concerns	28(1)	Yes (except first two sentences)	No
			29(1)(a)	Yes	Yes
			29(1)(b)	No	N/A



			30(b)(i) & (ii)	No	N/A
		Strategic Communications Grid	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
		SR 2004	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
		Cabinet Business	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(a)	No	N/A
			30(b)(i) & (ii)	No	N/A
		Executive Response to STUC Health and Safety Paper	29(1)(a)	No	N/A
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
		Working Time Directive	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
			32(1)(a)(ii)	No	N/A
		Appointments of Non Executive Directors (NEDs) to Departmental Management Boards (DMBs)	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
05-Feb-04	MG(04)5th	First Minister's Questions	29(1)(a)	Yes	Yes
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
		Cabinet Business	29(1)(a)	Yes	Yes



			29(1)(b)	Yes	Yes	
			30(b)(i) & (ii)	No	N/A	
		Programme Costs Monitoring Report (Paper MG(04)15)	29(1)(a)	No	N/A	
			29(1)(b)	Yes	Yes	
			30(a)	No	N/A	
			30(b)(i) & (ii)	No	N/A	
			30(c)	No	N/A	
12-Feb-04			NO MEETING: RECESS			
19-Feb-04	MG(04)6th		Cabinet Business	29(1)(a)	Yes	Yes
		29(1)(b)		Yes	Yes	
		30(b)(i) & (ii)		No	N/A	
		Recruitment	29(1)(a)	No	N/A	
			29(1)(b)	No	N/A	
			30(b)(i) & (ii)	No	N/A	
26-Feb-04	MG(04)7th	First Minister's Concerns	29(1)(a)	Yes	Yes	
			29(1)(b)	Yes	Yes	
			30(b)(i) & (ii)	No	N/A	
		Cabinet Business	29(1)(a)	Yes	Yes	
			29(1)(b)	Yes	Yes	
			30(b)(i) & (ii)	No	N/A	
		Value for Money Review (MG(04)22)	29(1)(a)	Yes	Yes	
			29(1)(b)	Yes	Yes	
			30(a)	No	N/A	
			30(b)(i) & (ii)	No	N/A	
			30(c)	No	N/A	
			Response to Local Pay Policy and Impact for Public Sector Pay Policy Guidance for 2004-2005 (MG(04)23)	29(1)(a)	Yes	Yes
		29(1)(b)	Yes	Yes		
		30(b)(i) & (ii)	No	N/A		



			30(c)	No	N/A
		Cabinet/MG Seminar	29(1)(a)	No	N/A
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
04-Mar-04	MG(04)8th	First Minister's Concerns	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
		Nursery Nurses' Strike	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
		SR2004 and Value for Money Review Updates	29(1)(a)	Yes	Yes
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
		Cabinet Business	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
		Monthly Expenditure Report (Paper MG(04)30);	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
		Public Appointments: Annual Pay Uprate for Chief Executives, Chairs and Board Members (Paper MG(04)27)	29(1)(a)	Yes	Yes
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
		Administration Costs (Paper MG(04)29)	29(1)(a)	No	N/A



			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
		Chief Executive of Learning and Teaching Scotland	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
11-Mar-04	MG(04)9th	First Minister's Concerns	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(a)	No	N/A
			30(b)(i) & (ii)	No	N/A
		SR 2004 and VfMR Update	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	N/A
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
		Cabinet Business	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(a)	No	N/A
			30(b)(i) & (ii)	No	N/A
		The Phillis Review of Government Communications (MG(04)33)	29(1)(a)	Yes	Yes
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
		18-Mar-04	MG(04)10th	Budget 2004	28(1)
29(1)(a)	Yes				Yes
29(1)(b)	No				N/A
30(b)(i) & (ii)	No				N/A
Security Issues	29(1)(a)			Yes	Yes
	29(1)(b)			Yes	Yes



			30(a)	No	N/A
			30(b)(i) & (ii)	No	N/A
		Cabinet Business	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(a)	No	N/A
		SR 2004 and VfMR (Paper MG(04)36, MG(04)37, MG(04)38)	30(b)(i) & (ii)	No	N/A
			29(1)(a)	Yes	Yes
			29(1)(b)	No	N/A
			30(c)	No	N/A
		Grants	29(1)(a)	Yes	Yes
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
		Risk Management;	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
		Public Sector Management	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
		Schools/FE/HE Transition Issues	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
		Regulatory Activity	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
		Review of Commitments	29(1)(a)	Yes	Yes
			29(1)(b)	No	N/A



			30(b)(i) & (ii)	No	N/A
25-Mar-04	MG(04)11th	SR 2004 and VfMR Update	29(1)(a)	Yes	Yes
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
		Cabinet Business	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
01-Apr-04	MG(04)12th	First Minister's Concerns	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
		Cabinet Business	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
		SR 2004 and VfMR Progress	29(1)(a)	Yes	Yes (except fifth sentence)
			29(1)(b)	Yes	Yes (except fifth sentence)
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
		Programme Expenditure (MG(04)43)	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
08-Apr-04	MG(04)13th	Spending Review 2004 and the Value for Money Review	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
		Remuneration of the Chair of the Cultural	29(1)(a)	No	N/A



		Commission	29(1)(b)	No	N/A		
			30(b)(i) & (ii)	No	N/A		
			30(c)	Yes	No		
15-Apr-04	MG(04)14th	Reliance Custodial Service Contract;	29(1)(a)	Yes	Yes		
			29(1)(b)	No	N/A		
			30(b)(i) & (ii)	No	N/A		
		Teachers' Pay	29(1)(a)	Yes	Yes		
			29(1)(b)	Yes	Yes		
			30(b)(i) & (ii)	No	N/A		
		SR 2004 and VfMR	29(1)(a)	Yes	Yes		
			29(1)(b)	Yes	Yes		
			30(b)(i) & (ii)	No	N/A		
			30(c)	No	N/A		
		Performance Management System	29(1)(a)	No	N/A		
			29(1)(b)	No	N/A		
			30(b)(i) & (ii)	No	N/A		
			30(c)	No	N/A		
		22-Apr-04	MG(04)15th	First Minister's Concerns	28(1)	Yes (section from semicolon in penultimate line to end only)	No
					29(1)(a)	Yes	Yes
29(1)(b)	No				N/A		
30(b)(i) & (ii)	No				N/A		
Cabinet Business	29(1)(a)			Yes	Yes		
	29(1)(b)			Yes	Yes		
	30(b)(i) & (ii)			No	N/A		
SR 2004 and VfMR	29(1)(a)			Yes	Yes		
	29(1)(b)			No	N/A		



			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
29-Apr-04	MG(04)16th	Napier	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
			36(1)	No	N/A
		Europe	28(1)	No	N/A
			29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
		Cabinet Business	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
		Delivery Sub-Group	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
Commission for Racial Equality	29(1)(a)	No	N/A		
	29(1)(b)	No	N/A		
	30(b)(i) & (ii)	No	N/A		
	30(c)	No	N/A		
06-May-04	MG(04)17th	Napier	29(1)(a)	No	N/A
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
			36(1)	No	N/A
		Teachers' Pay Negotiations	29(1)(a)	Yes	Yes
			29(1)(b)	No	N/A



		SR2004 and VfMR Update	30(b)(i) & (ii)	No	N/A		
			30(c)	No	N/A		
			29(1)(a)	Yes	Yes		
			29(1)(b)	Yes	Yes		
			30(b)(i) & (ii)	No	N/A		
			30(c)	No	N/A		
		Cabinet Business	29(1)(a)	Yes	Yes – except first 2 lines of para 12		
			29(1)(b)	Yes	Yes		
			30(b)(i) & (ii)	No	N/A		
		13-May-04	MG(04)18th	Napier	29(1)(a)	Yes	Yes
					29(1)(b)	No	N/A
					30(b)(i) & (ii)	No	N/A
36(1)	No				N/A		
Possible Fire Dispute	29(1)(a)			Yes	Yes		
	29(1)(b)			No	N/A		
	30(b)(i) & (ii)			No	N/A		
	30(c)			No	N/A		
Reliance	29(1)(a)			No	N/A		
	29(1)(b)			No	N/A		
	30(b)(i) & (ii)			No	N/A		
	36(1)			Yes – to last 2 sentences only	No		
SR2004 and VfMR Update	29(1)(a)			Yes	Yes		
	29(1)(b)			Yes	Yes		
	30(b)(i) & (ii)			No	N/A		
	30(c)			No	N/A		
Cabinet Business	29(1)(a)			No	N/A		
	29(1)(b)			Yes	Yes		



			30(b)(i) & (ii)	No	N/A		
		Risk Register (Paper MG(04)57)	29(1)(a)	Yes	Yes		
			29(1)(b)	Yes	Yes		
			30(b)(i) & (ii)	No	N/A		
			30(c)	No	N/A		
		Fiscal Rules	29(1)(a)	Yes	Yes		
			29(1)(b)	No	N/A		
			30(b)(i) & (ii)	No	N/A		
			30(c)	No	N/A		
20-May-04	MG(04)19th	Reliance Custodial Services	29(1)(a)	No	N/A		
			29(1)(b)	No	N/A		
			30(b)(i) & (ii)	No	N/A		
		Cabinet Business	29(1)(a)	No	N/A		
			29(1)(b)	Yes	Yes		
			30(b)(i) & (ii)	No	N/A		
		Appraisal for NDPB Chairs and Board Members	29(1)(a)	No	N/A		
			29(1)(b)	No	N/A		
			30(b)(i) & (ii)	No	N/A		
			30(c)	No	N/A		
		27-May-04	MG(04)20th	Spending Review	29(1)(a)	Yes	Yes
					29(1)(b)	No	N/A
30(b)(i) & (ii)	No				N/A		
30(c)	No				N/A		
Efficient Government Review Update	29(1)(a)			Yes	Yes		
	29(1)(b)			No	N/A		
	30(b)(i) & (ii)			No	N/A		
	30(c)			No	N/A		
				Cabinet Business			



			29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
		Managing Programme Expenditure (Paper MG(04)62 and MG(04)63)	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
03-Jun-04	MG(04)21st	Report from PS/First Minister	29(1)(a)	Yes	Yes
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
		Spending Review 2004 and Efficient Government Review Progress; SR 2004: Grants Workstream; SR 2004: Update;	29(1)(a)	Yes	Yes
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
		Balanced Scorecard (Paper MG(04)66);	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
			30(c)	Yes – except for point (h) (para 16), point (c) (para 17)	No
		Report Back from MG Corporate Issues Sub-Group (Paper MG(04)67)	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
10-Jun-04	MG(04)22nd	Report from PS/First Minister	29(1)(a)	Yes	Yes
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
			36(1)	No	N/A
		SR 2004	29(1)(a)	Yes	Yes



			29(1)(b)	Yes	Yes		
			30(b)(i) & (ii)	No	N/A		
			30(c)	No	N/A		
		Efficient Government Review	29(1)(a)	Yes	Yes		
			29(1)(b)	No	N/A		
			30(b)(i) & (ii)	No	N/A		
			30(c)	No	N/A		
17-Jun-04	MG(04)23rd	Report from PS/First	29(1)(a)	Yes	Yes		
			29(1)(b)	No	N/A		
			30(b)(i) & (ii)	No	N/A		
			30(c)	No	N/A		
		Cabinet Business	29(1)(a)	Yes	Yes		
			29(1)(b)	Yes	Yes		
			30(b)(i) & (ii)	No	N/A		
		SR 2004 (Paper MG(04) 71)	29(1)(a)	Yes	Yes		
			29(1)(b)	Yes	Yes		
			30(b)(i) & (ii)	No	N/A		
			30(c)	No	N/A		
		24-Jun-04	MG(04)24th	Report from PS/First Minister	29(1)(a)	Yes	Yes
29(1)(b)	No				N/A		
30(b)(i) & (ii)	No				N/A		
Cabinet Business	29(1)(a)			Yes	Yes		
	29(1)(b)			Yes	Yes		
	30(b)(i) & (ii)			No	N/A		
Contingency Planning (MG(04)73)	29(1)(a)			Yes	Yes		
	29(1)(b)			Yes	Yes		
	30(b)(i) & (ii)			No	N/A		
				Efficient Government			



		and SR2004 Update	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
01-Jul-04	MG(04)25th	In-Year Financial Report to 31 May 2004 (Paper MG(04)79)	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
		Efficient Government Review and SR2004 Update (Paper MG(04)78)	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
		Better Speeches Update	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			29(1)(d)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
		Report back from Delivery Sub-Group (Paper MG(04)81)	29(1)(a)	Yes	Yes
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
08-Jul-04		NO MEETING: RECESS			
15-Jul-04	MG(04)26th	SR2004	28(1)	No	N/A
			29(1)(a)	Yes	Yes
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
		Efficient Government Reivew	29(1)(a)	Yes	Yes
			29(1)(b)	No	N/A



			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
22-Jul-04		NO MEETING: RECESS			
29-Jul-04	MG(04)27th	Spending Review 2004	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
		Efficient Government	29(1)(a)	Yes	Yes
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
		UK Liaison Activity	29(1)(a)	No	N/A
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
		05-Aug-04	MG(04)28th	SR 2004	29(1)(a)
29(1)(b)	Yes				Yes
30(b)(i) & (ii)	No				N/A
30(c)	No				N/A
Efficient Government Review	29(1)(a)			Yes	Yes
	29(1)(b)			No	N/A
	30(b)(i) & (ii)			No	N/A
	30(c)			No	N/A
In-Year Financial Report (Paper MG(04)87)	29(1)(a)			No	N/A
	29(1)(b)			No	N/A
	30(b)(i) & (ii)			No	N/A
	30(c)			No	N/A
12-Aug-04	MG(04)29th	Report from PS/First Minister	29(1)(a)	Yes	Yes



			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
		Agencies and NDPBs	29(1)(a)	No	N/A
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
19-Aug-04	MG(04)30th	Arms Length? Public Bodies and their relationship with Scottish Ministers (Paper MG(04)91)	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
09-Sep-04	MG(04)33rd	In Year Financial Report	29(1)(a)	No	N/A
			29(1)(b)	No	N/A
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
28-Oct-04	MG(04)40 th (LCA)	Ministers and Arms Length Public Bodies (Paper MG(04)119)	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
11-Nov-04	MG(04)42nd	Cabinet Business	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
02-Dec-04	MG(04)45th	Balanced Scorecard (Paper MG(04)139); Delivery; Critical Success	29(1)(b)	Yes	Yes
			30(c)	No	N/A
02-Dec-04	MG(04)45th (LCA)	Scottish Executive Administration Budget (Paper MG(04)138);	30(c)	Yes	No
09-Dec-04	MG(04)46th	Cabinet Business (Paper MG(04)141)	29(1)(a)	Yes	Yes
			29(1)(b)	Yes	Yes
			30(b)(i) & (ii)	No	N/A
			30(c)	No	N/A
30-Dec-04		NO MEETING: RECESS			



06-Jan-05		NO MEETING: RECESS			
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Appendix 2

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.

25 Information otherwise accessible

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

27 Information intended for future publication

- (1) Information is exempt information if-
 - (a) it is held with a view to its being published by-
 - (i) a Scottish public authority; or
 - (ii) any other person,at a date not later than twelve weeks after that on which the request for the information is made;
 - (b) when that request is made the information is already being held with that view; and
 - (c) it is reasonable in all the circumstances that the information be withheld from disclosure until such date as is mentioned in paragraph (a).

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
 - (d) the operation of any Ministerial private office.
- (2) Once a decision as to policy has been taken, any statistical information used to provide an informed background to the taking of the decision is not to be regarded, for the purposes of-
- (a) paragraph (a) of subsection (1), as relating to the formulation or development of the policy in question; or
 - (b) paragraph (b) of that subsection, as relating to Ministerial communications.
- (3) In determining any question under section 2(1)(b) as respects information which is exempt information by virtue of subsection (1)(a), the Scottish Administration must have regard to the public interest in the disclosure of factual information which has been used, or is intended to be used, to provide an informed background to the taking of a decision.
- (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

"Ministerial private office" means any part of the Scottish Administration which provides personal administrative support to a Minister.

- (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
- (c) would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs.

31 National security and defence

- (1) Information is exempt information if exemption from section 1(1) is required for the purpose of safeguarding national security.

32 International relations

- (1) Information is exempt information if-
- (a) its disclosure under this Act would, or would be likely to, prejudice substantially-
 - (ii) relations between the United Kingdom and any international organisation or international court;



(3) In subsection (1)-

"international court" means an international court which-

- (a) is not an international organisation; and
- (b) is established-
 - (i) by a resolution of an international organisation of which the United Kingdom is a member; or
 - (ii) by an international agreement to which the United Kingdom is a party;

"international organisation" means-

- (a) an international organisation whose members include any two or more States; or
- (b) an organ of such an international organisation;

"State" includes-

- (a) the government of any State; and
- (b) any organ of such a government,

and references to a State other than the United Kingdom include references to any territory outwith the United Kingdom.

33 Commercial interests and the economy

- (1) Information is exempt information if-
 - (b) its disclosure under this Act would, or would be likely to, prejudice substantially the commercial interests of any person (including, without prejudice to that generality, a Scottish public authority).

36 Confidentiality

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

41 Communications with Her Majesty etc. and honours

Information is exempt information if it relates to-



- (a) communications with Her Majesty, with other members of the Royal Family or with the Royal Household;