



**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
[INFORMATION RIGHTS]**

Case No. EA/2010/0030

ON APPEAL FROM:

**Information Commissioner's
Decision Notice No: FS50085720
Dated: 22 December 2009**

Appellant: Stephen Marcus Gradwick

Respondent: The Information Commissioner

Additional Party: The Cabinet Office

On the papers

Date of decision:

**Before
CHRIS RYAN
(Judge)**

and

**JOHN RANDALL
ROSALIND TATAM**

Subject matter:

Information supplied by, or relating to, bodies dealing with security matters s.23
International relations s.27
National security s.24

DECISION OF THE FIRST-TIER TRIBUNAL

The appeal is substantially dismissed and the Decision Notice dated 22 December 2009 is upheld on all points save for the minor elements of withheld information which are to be disclosed, as set out in Confidential Schedule 1 to this Decision.

REASONS FOR DECISION

Introduction.

1. We have decided that, subject to the disclosure of a few minor elements of information, (which are explained in a separate Confidential Schedule), the Information Commissioner's Decision Notice dated 22 December 2009 is upheld. The Decision Notice itself substantially upheld the right of the Cabinet Office to withhold from disclosure substantial parts of its Manual of Protective Security. We add some comments at the end of our decision about the way in which the Appeal was presented to us.

The Request for Information and the Information Commissioner's investigation of the reasons for its partial refusal

2. The Appellant, Mr Gradwick, made a request to the Cabinet Office on 20 March 2005 ("the Request") for disclosure, under the Freedom of Information Act 2000 ("FOIA"), of the Cabinet Office's Manual of Protective Security ("the Manual"). The Manual contains detailed information and guidance on the controls required to protect government assets and information which must remain confidential in the national security interests of the country. Since it was first published in 1994 it has been subject to the overall editorial control of the Cabinet Office but has had individual sections provided by other departments, including those involved in security matters. Over a period of time it was revised and updated on a 6 monthly cycle with different organisations being responsible for keeping up to date the sections for which they were primarily responsible. We were told (in a letter from the Cabinet Office shortly before we made our determination) that a number of errors developed in its formatting and paragraph numbering as a result. We were also told that, although when responding to the Request the Cabinet Office was working from a hard copy of the Manual, in preparing for this Appeal (five years later) it was working from a mix of paper files and XML files. These contained material in different formats from different parts of the Manual, which

was reconstructed as it had been at the date of the Request. This led to practical difficulties during the appeal process, which we will come back to at the end of this decision.

3. Parts of the Manual were disclosed in response to the Request, but other parts were withheld. Following an internal review requested by Mr Gradwick the Cabinet Office maintained its decision on the limited disclosure it was prepared to make and on 28 July 2005 Mr Gradwick complained to the Information Commissioner.
4. In the course of the Information Commissioner's investigation the Cabinet Office conceded that other parts of the Manual should have been disclosed and agreed to do so. At the end of the investigation a Decision Notice was issued on 22 December 2009, which directed the Cabinet Office to disclose further parts, but supported the claims to exemption for the rest.

The Appeal to this Tribunal.

5. Mr Gradwick was not satisfied with the Information Commissioner's decision and appealed to this Tribunal on 14 January 2010. At that time it was constituted as the Information Tribunal. However, by virtue of the Transfer of Tribunal Functions Order 2010, it is now constituted as a First-tier Tribunal.
6. The Information Commissioner's investigation took no less than four years and four months to complete. During that time the Manual was withdrawn (in 2008) and was replaced by the Security Policy Framework. This Appeal is therefore concerned with a document that is of historical interest only, although we must decide whether the Cabinet Office's decision was justified under the FOIA at the time of the decision, not today.
7. Mr Gradwick opted in his Notice of Appeal for a paper hearing and the Information Commissioner indicated that he had no objection to that means of determining the Appeal. Directions were accordingly given joining the Cabinet Office as an Additional Party and providing for the filing of evidence and written submissions by the parties and the preparation of an agreed bundle of documents. In the event we were also provided with closed bundles, which contained those parts of the Manual that had not been disclosed.
8. The closed bundles could not be disclosed to Mr Gradwick for the obvious reason that to do so would have prejudged the outcome of the Appeal. He has therefore had to make his case without having sight of the material in dispute. He has also told us that he has prepared his case without the assistance of lawyers. However, the case for disclosure set out in his Grounds of Appeal and his written submission has been expressed in clear and, on the whole, measured terms and

has helped us to identify and decide the issues we are required to determine.

The issues to be determined on the Appeal.

9. We deal first with the three main issues that fell to be determined before dealing with some other matters, which we considered to be of less significance.

First Issue: FOIA section 23 (information supplied by, or relating to, bodies dealing with security matters).

10. The Cabinet Office justified its refusal to disclose some parts of the Manual on the grounds that they had either been supplied by one of the security bodies listed in FOIA section 23(3), or they related to one or more of those bodies. Section 23(1) reads:
“Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3)”.
The exemption is an absolute exemption (FOIA section 2(3)), which means that, if we are satisfied that it applies, no question arises as to whether or not the public interest in maintaining the exemption outweighs the public interest in disclosing it.
11. The Cabinet Office relied on this exemption in respect of both complete sections of the Manual and individual passages in other sections that had been disclosed to Mr Gradwick in redacted form.
12. Section 23(2) provides that a ministerial certificate to the effect that the exemption applies shall be conclusive evidence of that fact. However, that has not been relied on in this case and we are therefore required to consider the evidence that has been provided and to decide whether, on a balance of probabilities, the relevant parts of the manual came from, or related to, a section 23(3) body.
13. The evidence took the form of a witness statement by Ciaran Martin together with the material itself, made available to us in the closed bundles. Mr Martin’s witness statement was an open document provided in his capacity as the Director of the Cabinet Office and head of both its Intelligence and Government Security Secretariats. He referred to a letter dated 22 May 2007, written by his predecessor, which had been provided to the Information Commissioner. The letter and its enclosures was said to provide both an assurance that the exemption had been properly applied and evidence demonstrating that the material in question had been directly or indirectly supplied by one of the exempt bodies listed in FOIA section 23(3). Mr Martin added his own confirmation that this was the case in respect of all the withheld material.

14. The witness statement did not go so far as to suggest, as the letter had, that it should be taken as “conclusive evidence that s.23 has been appropriately applied”. Clearly it could not be, since it is only a Ministerial certificate that has that effect. However, having carefully reviewed in the closed bundles each of the passages of the Manual that were withheld under this exemption, in the context set out in the witness statement, we are satisfied that the exemption does apply in every case and that, accordingly, the Cabinet Office had been justified in refusing the original request in respect of those passages. We reach that decision notwithstanding the arguments for disclosure put forward by Mr Gradwick. He urged us to order disclosure on the ground that only a Minister’s certificate triggers the exemption (which was a clear misreading of the section, for the reason we have already given) and because there were in his view good reasons for doubting the veracity of the security services. However, he put forward no grounds to justify his scepticism in that regard and we were therefore not able to pursue the objection further.
15. In the case of some passages the Cabinet Office relied on both section 23 and other exemptions. However, having concluded that the section 23 exemption applies in all cases for which it was claimed, it is not necessary for us to consider whether any other exemption might apply.

Second Issue: FOIA section 24 (exemption required for national security purposes)

16. FOIA section 24 reads:
“Information which does not fall within section 23(1) is exempt information if exemption from [the obligation to disclose it] is required for the purpose of safeguarding national security”
In this case the exemption is qualified by the requirement in FOIA section 2(2)(b) that, if it is found to be engaged, the information should still be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.
17. As mentioned above, where this exemption was relied on in addition to section 23 we have not considered it further. However, there was one section of the Manual in respect of which it was the only exemption relied on, (Supplement 15), and other sections where it was said to be the sole justification for the omission of passages from material that had been disclosed to Mr Gradwick in redacted form.
18. In respect of Supplement 15 we noted that it had been cross referenced to from paragraph 189 of section 6 of the Manual (“personnel security”), which had been disclosed to Mr Gradwick. However, whereas Section 6 deals with the subject under broad headings, supplement 15 provides more detailed information.
19. Mr Gradwick’s challenge to the application of section 24 seemed to be based on his scepticism about the ability of Government in general to

maintain confidentiality and his belief that his view of what constitutes “national security” differed from that of the Cabinet Office and the Information Commissioner. We have to say, with respect to Mr Gradwick’s first point, that it was not relevant to the issue we have to decide and, as he did not expand on the second point, it is not possible for us to take it further. However, as previously mentioned, he did not have the advantage of seeing the withheld information, as we have done, and it was therefore difficult for him to argue that any particular passage fell outside the definition of material to which the section applied. Our own decision has been based on a careful assessment of whether each of the withheld passages, which we have studied in the closed bundles, fell within the exemption.

20. Mr Martin explained in his witness statement that the Cabinet Office’s approach had been to disclose material that provided general security principles and high level guidance, but to withhold passages that disclosed detailed technical and procedural advice, since this could assist a person to circumvent government security controls. He stressed that harm could result from disclosing, not just information that might give direct assistance in this respect, but also material demonstrating that certain available security measures were not applied or information which might enable someone to create a link with information obtained from other sources in order to provide a complete picture of a protective measure. He mentioned, as particular examples, the risk of hostile persons obtaining information in this way that made it easier to bypass security procedures by impersonation or by circumventing procedures designed to prevent such individuals securing employment positions with access to sensitive material. We believe that this approach was the correct one to adopt in the circumstances and we were satisfied that in most cases it had been correctly applied to the withheld material. We were satisfied, on that basis, that it was appropriate to withhold Supplement 15 and most of the other information in question, for the purposes of safeguarding national security. We were also satisfied that the public interest in maintaining secrecy on this basis comfortably outweighed the limited public interest in seeing the detailed assessment mechanisms. However, in a few instances we thought that the exemption did not apply and that material should be disclosed. In order to preserve confidentiality for the time being we have set out details of those passages, together with our reasons for ordering disclosure, in Confidential Schedule 1 attached to this decision. The Schedule should only be disclosed once the time limit for appealing our decision has expired, without an appeal having been launched, or, in the event that our decision is appealed, to the extent ordered by a relevant appellate tribunal.
21. In one case our decision in favour of maintaining the exemption was so finely balanced that we felt that it should be explained in some detail. We have set out our reasons in Confidential Schedule 2. In this case

the schedule should only be disclosed if our decision is successfully appealed and the relevant appellate tribunal so orders.

Third Issue: Section 27 (prejudice to international relations).

22. The part of FOIA section 27 that is relevant to this Appeal reads:
*“Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice –
(a) relations between the United Kingdom and any other State”*

Section 27 creates a qualified exemption. If we find that it is engaged, therefore, we will also have to consider whether the public interest in maintaining the exemption outweighs the public interest in disclosure.

23. There is no section of the manual for which this is the only exemption relied on. However, a few passages had been omitted on this basis from sections of the Manual disclosed to Mr Gradwick. Mr Martin’s witness statement explained the Cabinet Office’s perception that disclosure of security co-operation between the United Kingdom and other States, and the measures the UK applies to protect information that has been provided in confidence by other States, would be likely to erode the basis of confidentiality and trust which is required to ensure full and frank dialogue with those States. Mr Gradwick proceeded on the assumption that the only foreign State likely to be affected was the United States and seemed to accept that disclosure would damage the UK’s relationship with it, but expressed the view that this was a good idea. While he was forced to speculate because he had not seen the material in issue his argument effectively conceded the point. His views on whether it would be beneficial if the UK’s relationship with one particular State were to be undermined is, of course, a matter of political opinion which bears no relevance to the issues we have to decide.

24. We accept the Cabinet Office’s broad test for determining whether section 27 applies and we were satisfied that the exemption was engaged in respect of all but one of the passages which we studied in the closed bundles. We were also satisfied that the public interest in maintaining the exemption outweighed the public interest in disclosure. In the case of one short passage we were not satisfied that the exemption had been properly applied. We deal with this in more detail in Confidential Schedule 1.

Additional Issues raised on the Appeal

25. Other points were raised by Mr Gradwick, which we consider were of less significance but, for the sake of completeness, we deal with them here.
26. Disclosure of additional information. At the time when Mr Gradwick prepared the grounds of his appeal he had not received the additional

information that was to be disclosed to him either by consent or under the Information Commissioner's direction. However, this was provided to him under cover of a letter from the Cabinet Office dated 26 January. This was within the period of 35 days from the date of the Decision Notice, which the Information Commissioner set as the deadline for disclosure. Although, therefore, the Grounds of Appeal included a complaint that Mr Gradwick had not received the information, that issue has now fallen away.

27. Delay by the Cabinet Office.

- a. Mr Gradwick also complained in his Grounds of Appeal about the Cabinet Office's delay in dealing with his original request. He very fairly accepted the Information Commissioner's determination that the Cabinet Office had complied with the statutory deadline but argued that it had not complied with the obligation under FOIA section 10 to act "promptly". The relevant part of section 10 (1) states that "*a public authority must comply with [its obligation to disclose information it holds] promptly and in any event not later than the twentieth working day following the date of receipt*".
- b. Mr Gradwick included arguments based on his experience with other requests of public authorities and a suggestion that the statutory deadline in this case would have been missed had he not sent the Cabinet Office a reminder by e-mail. We do not think that either argument is relevant to the issue. But his argument based on the language of section 10(1) does require to be considered.
- c. The Information Commissioner submitted this was a procedural issue, involving alleged breaches of section 16 of FOIA (public authorities' obligation to provide advice and assistance to those requesting information) and that it focussed on how the Cabinet Office dealt with the request. The result, he said, was that it did not fall within the Tribunal's jurisdiction. We do not agree that section 16 is involved; the issue clearly arises from the language of section 10(1) and none other. Nor do we agree that the issue falls outside our jurisdiction. Mr Gradwick made it clear in his complaint to the Information Commissioner on 28 July 2005 that it was not just compliance with the 20 working day deadline that concerned him, but also the fact that the Cabinet Office could, in his view, have responded earlier than the last date stipulated; it was not right for it to have left its response to the final day. In his Decision Notice the Information Commissioner concluded that "while an earlier reply might have been possible or desirable, the [Cabinet Office] was under no obligation to respond earlier". As that clearly formed part of his decision it is within our jurisdiction to consider whether, in the language of FOIA section 58(1)(a), the Information Commissioner's conclusion was "in accordance with the law".

- d. We believe that this requires us to consider whether a public authority has an obligation to respond to a request within a period of time that is shorter than the 20 working day limit if the circumstances are such that it could do so more promptly and, if so, whether the Cabinet Office should have done so on the facts of this case. The plain meaning of the language of the statute is that requests should be responded to sooner than the 20 working days deadline, if it is reasonably practicable to do so. However, we consider that the information requested in this case was substantial and complex and the subject matter was of great potential significance. In those circumstances we have no hesitation in saying that the Cabinet Office was entitled to take the full statutory period in responding to Mr Gradwick.

28. Method of Response by the Cabinet Office.

- (a) Mr Gradwick complained in his Grounds of Appeal that the Cabinet Office had ignored his request to receive the information by either recorded delivery or e-mail and did not comply with its obligation under FOIA section 16 (duty to provide advice and assistance) to explain to him why it had done so. He also complained that, if the Cabinet Office felt that it could not use recorded delivery, it had an obligation under FOIA section 11 to use his other preferred option and not just to revert to the normal postal service. The relevant part of section 11 reads:

“(1) Where, on making his request for information, the applicant expresses a preference for communication by any one or more of the following means, namely –

(a) the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,

(b)...

(c)...

the public authority shall so far as reasonably practicable give effect to that preference.”

- (b) Mr Gradwick’s original complaint to the Information Commissioner simply asked him to investigate why the Cabinet Office had failed to comply with his request that the material be sent by registered post. It did not make reference to section 16 or to any obligation on a public authority to explain why a requester’s preference could not, or would not, be complied with. The Information Commissioner decided in his Decision Notice that Mr Gradwick had been entitled to specify that the information be provided in hard copy form, but had no right to specify any particular mode of delivery.
- (c) While it is correct that section 11 makes no reference to the service to be used for delivering hard copy, its language is wide enough to include the use of e-mail: it refers to a form other than “permanent”, which we believe is capable of including an electronic or “soft” form. We therefore conclude that the Cabinet

Office should have used Mr Gradwick's second preference of e-mail unless it was not reasonably practicable for it to do so. It has not provided any evidence or argument as to why this might not have been practicable and we are forced to conclude that it had no justifiable reason to ignore Mr Gradwick's request in this respect. However, given that Mr Gradwick did receive the material we do not require the Cabinet Office to remedy the situation at this stage.

29. FOIA section 21. The Information Commissioner decided in his Decision Notice that, in respect of several elements of the withheld information, the Cabinet Office had been justified in relying on FOIA section 21 (information accessible to the applicant by other means). However, he considered that the Cabinet Office should have disclosed the headings to those parts of the Manual where the material covered by section 21 appeared. His directions for disclosure were complied with and, although Mr Gradwick has not expressly stated that he accepts the conclusion in respect of the material itself, his Grounds of Appeal did not put forward any argument on the point. We have therefore proceeded on the basis that it does not form part of the Appeal.
30. FOIA section 36. The Grounds of Appeal included a complaint about the manner in which the Cabinet Office had relied on FOIA section 36 in refusing disclosure of two parts of the Manual. However, reliance on this exemption was dropped during the course of the Information Commissioner's investigation and although his Decision Notice recorded that fact it did not make any finding on the point. There is no issue that is capable of forming part of the Appeal.
31. We have concluded, in the light of the foregoing, that, with the few exceptions mentioned in this decision and expanded upon in the Confidential Schedules, the Decision Notice should be upheld.
32. An appeal against this decision may be submitted to the Upper Tribunal. A person seeking permission to appeal must make a written application to the Tribunal for permission to appeal within 28 days of receipt of this decision. Such an application must identify the error or errors of law in the decision and state the result the party is seeking. Relevant forms and guidance for making an application can be found on the Tribunal's website at www.informationtribunal.gov.uk.

The Presentation of the Appeal.

33. Although, with the benefit of reading the withheld information (which Mr Gradwick did not enjoy), we have been able to dispose of this Appeal quite shortly, we wish to make some comments on a number of aspects about the manner in which the case was presented to us.

34. First, we were concerned to note that the section 23 exemption was applied to some information which seemed to have no possible impact on security matters. The exemption is, of course, not dependant on the content of the material, only on whether it emanated from, or related to, any one of a number of identified bodies. For that reason it is a relatively blunt instrument and we consider it unfortunate that the Cabinet Office sought to rely on it to protect from disclosure some elements of information that were entirely anodyne and almost certainly available from a number of other sources. We would hope that in future cases public authorities will not use their undoubted right to exemption under this provision to retain secrecy over that type of information. We have identified a number of such instances in Confidential Schedule 2.
35. Secondly, the way in which redacted material was provided, first, to Mr Gradwick and, subsequently, to the Tribunal merits comment. The partial disclosure of the Manual in response to the original request took the form of a document that was described in the Cabinet Office's covering letter of 9 May 2005 as "a version of the manual from which the [withheld information] has either been omitted or redacted." The covering letter went on to inform Mr Gradwick that the Cabinet Office relied on various identified exemptions under FOIA which, it said, applied to various passages of the Manual. But it made no attempt to indicate which parts of the Manual were covered by each claimed exemption. The disclosed version of the Manual appears to have been generated from electronic records, from which the withheld information was deleted with no indication of the quantity of text removed, the context of the part of the document from which it had been removed or the exemption relied on in each case. In some cases close examination of the paragraph numbering demonstrated where text had been removed, but in other cases either the text editor software had re-numbered the document automatically or the text had been manually adjusted in a way that disguised the fact that text had been removed. In other cases it appears that the paragraph numbering was already faulty and this had the effect of obscuring the extent and/or nature of the deletions.
36. A text editor seems also to have been used to prepare the closed bundles that were prepared for the Tribunal. A decision was apparently taken by the Cabinet Office to use the software (or a combination of software and manual manipulation) to remove all the material withheld under one exemption, which was then printed off and placed in a first volume. The text of the rest of the Manual was then printed off and put into a second volume, with the text manipulated to indicate, by the addition of a grey background, the material redacted under each of the other exemptions relied on. In each case the redacted text was annotated to indicate the exemption relied on to justify it being withheld. Separating the material in this way, with no cross referencing or other indication of the juxtaposition of different sections within the original Manual created very considerable difficulty

for us. It also generated a number of queries about apparent inconsistencies which prevented us from reaching a decision at our first meeting for that purpose. We put these to the Cabinet Office and invited further submissions and suggested that it might assist if a full version of the relevant parts of the Manual were to be re-assembled, with the material omitted from the version disclosed to Mr Gradwick being highlighted and accompanied by annotation indicating the exemption relied on in each case. Such a version was prepared but, in the process of doing this and responding to our questions, the Cabinet Office became aware of further discrepancies, which it sought to clarify. In some cases material had been omitted from the version previously made available to us. In other cases material had been included but no claim to an exemption had been made. It seems to us that this type of error is likely to arise if an attempt is made to split an original document into three, one containing the text to be released, a second containing the text to be omitted under one exemption and a third containing the text to be omitted under other exemptions.

37. We were sufficiently concerned about this to raise with the Cabinet Office whether the version released to Mr Gradwick, by giving no clue as to the quantity or location of the removed text or the justification for deleting it, might in fact have failed to comply with FOIA section 1. The Cabinet Office responded with a vigorous defence of its approach. It made the point that the FOIA applies to information, and not documents, with the consequence that it complied with section 1(1)(a) when it provided Mr Gradwick with an edited version of the Manual accompanied by a letter explaining that material had been removed in reliance on certain identified exemptions. It argued that it was not required to give any further indication about the scope and nature of the deletions, or the exemption relied on to justify each one. It also suggested that it was entitled to disclose the information "in digest form".
38. As the point was not fully debated before us, but only dealt with quite shortly in the course of written submissions, it would not be appropriate to make a final determination on the point or to direct that the information to be disclosed under this decision be presented to Mr Gradwick in a particular way. We would only say that it seems to us to strain normal language to describe an edited document as a digest of the information being disclosed. Also, having decided to disclose in the way that the Cabinet Office did, it is at least arguable that a document which sets out the passages that contain the information to be disclosed, but which has the effect of obscuring the nature and extent of the information which has been withheld, does not inform the party making the request whether or not it holds information of the description specified in the request, for which exemption is claimed. We would suggest that it is also arguable that presenting information in that form does not comply with a public authority's obligation to provide assistance to those requesting information pursuant to section 16 of the FOIA. It seems to us, also, that presenting information in this way

increases the likelihood of a complaint to the Information Commissioner and the complexity, scope for confusion during, and resulting cost of, the subsequent investigation.

39. Notwithstanding the points in the previous paragraph, we believe that if a public authority argues that the release of an edited document satisfied its obligation to disclose requested information, it should provide the Tribunal with much clearer documentation than it initially did in this case. Within the practice established by the Tribunal and its users to date, a document characterised as having been redacted has come to mean one in which the extent of the omitted material is indicated by blank spaces and in which, to the extent possible, headings or other indications are retained or inserted to give a fair indication, to both panel members and those presenting submissions, of the broad nature of the information that has been withheld. Annotating the resulting document to indicate the exemption relied on to justify each omission is also a valuable assistance in cases where different exemptions apply to different sections of the document or information.
40. The wisdom of adopting this approach can be seen from our own experience in this case. As previously mentioned, we experienced so much difficulty in tracing deletions and the justification for making each one that we were not able to complete our determination in a single sitting. In response to the various questions we put to the Cabinet Office at that stage a version of the relevant sections of the Manual was provided showing the whole text with the omitted material restored but printed against a grey background and annotated to indicate, passage by passage, the exemption or exemptions that were said to apply in each case. Once the material had been presented in that form, our progress to a final determination was much more straightforward.
41. The third point we wish to make about the presentation of the Appeal arose from the witness statement of Mr Martin. As we have mentioned above, this was an open statement, which disclosed Mr Martin's name and position within the Cabinet Office. However, when it came to exhibit the letter from his predecessor, which was relied on in support of the claim to exemption under FOIA section 23, the name of the individual holding the office of Director, Security and Intelligence at the time was redacted in the copy inserted in the Open Bundle. When we queried this we were told that, although the full text was intended to be included in the closed bundle (it was not, until we pointed out the omission) it had been agreed between the Cabinet Office and the Information Commissioner that the individual's identity should be redacted from the "open" version. We can see no justification for the name of the previous incumbent of the office being withheld in this way when the name of the current office holder is public information.

42. Fourth and finally, none of the members of the panel can recall any previous case with which they have been involved, in which they found a public authority having to correct or clarify the content or indexing of bundles as often as in this case, whether on its own motion or in response to queries raised by the Tribunal. The total time spent on the appeal by panel members as a result has been much greater than needed to have been the case. This is particularly unfortunate in an appeal in which the case in favour of withholding information became quite compelling once the relevant information could be studied in its original context accompanied by all supporting evidence and content-specific explanations.
43. Our overall impression of the manner in which the Cabinet Office presented its case was that it fell short of the standard we would have expected from a well resourced Government Department assisted by the Treasury Solicitor. All parties presenting cases to the Tribunal should bear in mind their obligations (under rule 2(4) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009) to co-operate with the Tribunal and help it to further the overriding objective of dealing with cases fairly, including the avoidance of delay or disproportionate costs. It would also be unwise of them to assume that the Tribunal will, in every future case, take the steps it took in this case that enabled the Cabinet Office to cure defects in the case as originally presented.

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Judge
2010