

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

### **Decision notice**

**Date:** 17 September 2013

**Public Authority:** The Ministry of Defence  
**Address:** Main Building  
Whitehall  
London SW1A 2HB

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

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1. The complainant requested information relating to an incident in Cherbourg Marina in September 2011. The MOD disclosed some information within scope of the request but withheld the remainder, citing the exemptions in sections 31 (law enforcement), 40 (personal information) and 42 (legal professional privilege). During the course of the Commissioner's investigation the MOD clarified that it also considered that section 36 (prejudice to effective conduct of public affairs) was engaged.
2. The Commissioner has investigated and decided that the MOD correctly withheld the withheld information by virtue of sections 31, 36, 40 and 42. He requires no steps to be taken.

#### **Request and response**

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3. On 25 July 2012 the complainant requested information of the following description:  
  
*"Please may I have all the Recorded Information held within the MOD on the boating incident in Cherbourg (Chatereyne) Marina in September 2011".*
4. The MOD provided a substantive response on 3 December 2012. It provided some information within the scope of the request but refused to provide the remainder. It cited the following exemptions as its basis for doing so:
  - section 40 personal information;

- section 31 law enforcement;
  - section 42 legal professional privilege.
5. Following an internal review, the MOD wrote to the complainant on 11 February 2013. It upheld its original position.

### **Scope of the case**

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6. Following earlier correspondence about the matter, the complainant contacted the Commissioner on 12 February 2013 to complain about the way his request for information had been handled. He told the Commissioner:

*"You will see that they have not sent me any meaningful information".*

*"They seem to concentrate on the legal protection of the main culprit... whose name I know from other sources... However what I am much more interested in is the reputation of British sailors and our relationship with the French".*

7. With the agreement of the complainant, the Commissioner considers the scope of his investigation to be whether the MOD is entitled to rely on the exemptions in sections 31, 40 and 42 of FOIA as a basis for refusing to provide some of the requested information.
8. During the course of the Commissioner's investigation, the MOD confirmed that it considered section 36 was also engaged. The Commissioner has addressed this matter below.

### **Reasons for decision**

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#### **Section 31 law enforcement**

9. Section 31 of FOIA creates an exemption from the right to know if releasing the information would, or would be likely to, prejudice one or more of a range of law enforcement activities. Section 31 can be claimed by any public authority, not just those with law enforcement functions.
10. In order to engage a prejudice based exemption such as section 31 there must be likelihood that disclosure would cause prejudice to the interest that the exemption protects. In the Commissioner's view, three criteria must be met in order to engage a prejudice based exemption.

- First, the actual harm which the public authority alleges would, or would be likely to, occur if the disputed information was disclosed, has to relate to the applicable interests within the relevant exemption.
  - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the disputed information and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance.
  - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie disclosure '*would be likely*' to result in prejudice or disclosure '*would*' result in prejudice. In relation to the lower threshold (*would be likely*), the Commissioner believes that the chance of prejudice occurring must be more than a hypothetical possibility; rather, there must be a real and significant risk. The Commissioner considers that the higher threshold places a stronger evidential burden on a public authority to discharge. The chances of the prejudice occurring should be more probable than not.
11. Consideration of the exemption at section 31 is a two-stage process: even if the exemption is engaged, the information should be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.
12. In this case, the MOD is relying on section 31(1)(c) of FOIA. This states that information is exempt if its disclosure would, or would be likely to, prejudice the administration of justice.

*The applicable interests*

13. The first step in considering whether this exemption is engaged is to address whether the prejudice predicted by the public authority is relevant to the law enforcement activity mentioned in section 31(1)(c) - the administration of justice.
14. The MOD told the complainant that FOIA states that:
- "careful consideration must be given to the release of any information that may prejudice any criminal or internal disciplinary proceedings against an individual".*
15. The MOD told the Commissioner:
- "The redacted information relates directly to the incident in Cherbourg Harbour".*

16. During the course of the Commissioner's investigation, the MOD confirmed that the investigation into the incident was ongoing at the time of the request. Accordingly it was believed that disclosure of the information withheld by virtue of section 31(1)(c) would be likely to have an impact on the requirement to conduct proceedings fairly.
17. In the Commissioner's view, 'the administration of justice' is a broad term. It applies to the justice system as whole. Amongst other interests, the exemption will protect information if its disclosure would undermine particular proceedings.
18. The Commissioner is satisfied that the prejudice the MOD is envisaging in this case is relevant to the particular interest that the exemption is designed to protect.

*The nature of the prejudice*

19. The Commissioner has next considered whether the MOD has demonstrated a causal relationship between the disclosure of the information at issue and the prejudice that section 31(1)(c) is designed to protect. In his view, disclosure must at least be capable of harming the interest in some way, ie have a damaging or detrimental effect on it.
20. In this case, the MOD explained to the Commissioner that, in its view, the withheld information could be combined with other evidence available to the police or the court and that this would be likely to result in the outcome predicted.
21. Having considered what the content of the information suggests about the likelihood of prejudice, the Commissioner is satisfied that there is a causal link between disclosure of the disputed information and prejudice occurring. He accepts the argument put forward by the MOD in relation to the nature of the prejudice that could occur if the requested information was to be disclosed into the public domain - that, if released, the information would be likely to prejudice any proceedings involving the individuals concerned and impair the opportunity for a fair trial.

*The likelihood of prejudice*

22. With respect to the level of likelihood of prejudice, the MOD confirmed that it considers that prejudice would be likely to result - rather than would result - if the information was released.

*Is the exemption engaged?*

23. The test that the Commissioner applies when considering whether prejudice would be likely to result is that the likelihood of this must be real and significant, and certainly more than hypothetical or remote.
24. During the Commissioner's investigation, the MOD confirmed that an investigation into all the circumstances of the incident at Cherbourg was ongoing at the time of the request and therefore, in its view, the case was still live.
25. In the Commissioner's view, while it is impossible to state with certainty that prejudice would be likely to occur, the nature of the information requested and the context in which it was obtained makes it more likely than not that any proceedings and investigations could be jeopardised if the information were to be released.
26. Having viewed the withheld information, and considered the MOD's arguments about the effect of disclosure, the Commissioner is satisfied that it has demonstrated how prejudice to the administration of justice could arise and that there is a real possibility of this occurring. He therefore finds the exemption at section 31 engaged.

*The public interest test*

27. As a qualified exemption, section 31 is subject to the public interest test which is set out in section 2(2)(b) of the FOIA. Section 2(2)(b) provides that such an exemption can only be maintained where:

*"... in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure of the information".*

28. In other words, where a public authority is satisfied that the release of the information requested would be likely to prejudice law enforcement activities, it can only refuse to provide the information if the public interest in withholding it outweighs the public interest in its disclosure.

*Public interest arguments in favour of disclosing the requested information*

29. Although it does not appear that his argument was specifically in relation to the information withheld by virtue of section 31, the complainant told the MOD:

*"You have carried out an 'MOD/Army Interest Test' not a 'Public Interest Test'....This was an appalling incident ....It not only let down the MOD but also British sailors. It is most certainly of public interest that we understand the full circumstances".*

30. The MOD cited generic arguments, telling the complainant that the public interest in favour of disclosure largely concerns the general aims behind the FOIA "*of promoting accountability and transparency*".

*Public interest arguments in favour of maintaining the exemption*

31. In favour of maintaining the exemption in this case, the MOD said that there is a general recognition that it is in the public interest to safeguard the investigatory process. It also said that releasing the information at issue could impact on the duty to protect an individual's right to a fair trial.

*Balance of the public interest arguments*

32. When balancing the opposing public interests in a case, the Commissioner is deciding whether it serves the public interest better to disclose the requested information or to withhold it because of the interests served by maintaining the relevant exemption. If the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure, the information in question must be disclosed.
33. The weight given to arguments in favour of disclosure will depend both on the need for greater transparency, and any other arguments in favour of disclosure, and also the extent to which the information in question will meet those needs.
34. The public interest test under section 2 of the FOIA requires that all the circumstances of the case are considered. This will include the significance of the information itself and the issues that it addresses. It is important to remember, however, that the public interest test relates to the disclosure of the information, not purely to the wider issue at stake. A matter referred to in the information may be of very grave importance, and the requester may have strong reasons for wishing to pursue it, but the information itself may still be of limited value, as when a requester wrongly believes that more or different information exists than is actually the case.
35. In reaching his decision in this case, the Commissioner is mindful of the nature of the requested information and has taken into account what purpose disclosure would serve and what this information would add to those matters which are already in the public domain.
36. The Commissioner accepts that there is a presumption running through the FOIA that openness is, in itself, to be regarded as something which is in the public interest.

37. He recognises that there will always be a general interest in transparency. In this case the Commissioner recognises that the incident in Cherbourg marina is of public concern and that there is considerable public interest in obtaining a clearer picture of what may have happened.
38. While the Commissioner understands the complainant's reasons for wanting access to the information held by the MOD, in reaching a decision in this case the Commissioner has to take into account the fact that neither the identity of the applicant nor the purpose of the request is relevant to the consideration of a freedom of information request. He must consider whether or not it is appropriate for the withheld information to be released to the general public.
39. The Commissioner has carefully considered the arguments in favour of disclosing the withheld information, and those in favour of maintaining the exemption. While he accepts that the public may be interested to learn more about the incident, in his view there is not a sufficiently compelling case for disclosure. He finds that the need to safeguard the ongoing investigatory process is particularly compelling and therefore concludes that the balance of the public interest in all the circumstances of this case lies in favour of maintaining the exemption at section 31(1)(c).

#### **Section 40 personal information**

40. Section 40 of the FOIA provides an exemption from the right to know where the information requested is personal data protected by the Data Protection Act (DPA).
41. Personal data of any person other than the requester (third party data) is exempt under section 40(2) if disclosure would breach one of the data protection principles. Generally this will mean balancing the legitimate interests of the public in having access to the information against the interests of the individual under the first principle and, in particular, considering whether it is unfair to release the information.
42. Although assessing fairness involves balancing the rights of data subjects against the legitimate interests in disclosure, this is not the same as carrying out the public interest test for qualified exemptions in the FOIA. The balancing exercise in section 40 is carried out in order to decide whether the absolute exemption in section 40(3) is engaged.

#### *Is the information personal data?*

43. In the Commissioner's view, the two main elements of personal data are that the information must 'relate to' a living individual and that person must be 'identifiable'. Information will 'relate to' a person if it is about

them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.

44. The MOD told the complainant:

*"The data consists of names of individuals, their actions and opinions. As such it is their personal data".*

45. Accordingly, the Commissioner accepts that this is the personal data of those parties concerned.

*Is the information sensitive personal data?*

46. Sensitive personal data is defined in section 2 of the DPA. In this case, the Commissioner is satisfied that, given the nature of the incident that is the subject matter of this complaint, some of the requested information satisfies the definition of sensitive personal data under section 2(g):

*"the commission or alleged commission by him of any offence".*

*Would disclosure contravene a data protection principle?*

47. Having accepted that the information requested constitutes the personal data, and in some cases the sensitive personal data, of living individuals other than the applicant, the Commissioner must next consider whether disclosure would breach one of the data protection principles.

48. In this case, the MOD told the complainant that it considered the main principle at issue is principle 1. This principle deals particularly with the privacy rights of individuals and the balance between those rights and other legitimate interests in processing personal data. It states that:

*"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –*

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

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

49. The complainant told the MOD that he had "gleaned more information" from press releases. In that respect he asked the MOD:

*"Why have you been so careful to remove all names, when I know from the Press releases that the main culprit is ....?"*



50. Notwithstanding that articles may have appeared in the press, the Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of FOIA. In that respect, he considers that, in the case of an FOIA request, the personal data at issue is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be fair, lawful and meet one of the DPA schedule 2 conditions (and in the case of sensitive personal data would also meet a schedule 3 condition). If disclosure would fail to satisfy any one of these criteria, then the information is exempt from disclosure. The Commissioner considers that public disclosure, by a public authority, can still cause harm, despite information being reported by the media. The personal information can also be of a different nature. The Commissioner has not used the media speculation as a significant factor in favour of disclosing the information. The media speculation is indicative of the further impact disclosure may have on the data subject, also noting that an investigation is not complete.

*Would it be fair to disclose the requested information?*

51. In answering the question of fairness, the Commissioner recognises the importance of considering whether a data subject has consented to the disclosure.
52. Additionally, in considering whether it would be fair to disclose personal information, the Commissioner will take account of the following factors – whether the information is sensitive personal information, the individuals' reasonable expectations, whether disclosure would cause any unnecessary or unjustified damage or distress to the individuals and whether the legitimate interests of the public are sufficient to justify any negative impact to the rights and freedoms of the individuals in question.
53. In the Commissioner's view, in most cases, the very nature of sensitive personal data means it is more likely that disclosing it will be unfair. The reasonable expectation of the data subject is that such information would not be disclosed and that the consequences of any disclosure could be damaging or distressing to them.

*Has the data subject consented to the disclosure?*

54. The public authority advised the Commissioner that it had not sought consent of any of the parties involved. However, in the circumstances of this case, the Commissioner would not expect it to seek such consent.

*Reasonable expectations*

55. In assessing what information third parties should expect to have disclosed about them, the Commissioner considers a distinction should be drawn on whether the information relates to the third party's public or private life. Where the information relates to the individual's private life (ie their home, family, social life or finances) it will deserve more protection than information about them acting in an official or work capacity (ie their public life).

56. The MOD told the complainant:

*"There was no expectation on the part of the individuals that their personal involvement in this matter would be released to the public".*

57. In correspondence with the Commissioner during the course of his investigation, the MOD explained its approach in this case with respect to the redacting of personal information and the basis on which it had withheld the names of military personnel. For example, it confirmed that names below the level of the Senior Civil Service - and military equivalent - had been withheld in line with its normal policy for the use of section 40.

58. Having considered the matter, the Commissioner is satisfied that the individuals concerned are not likely to have reasonably expected their personal information to be disclosed.

*Consequences of disclosure*

59. The MOD has not provided the Commissioner with any arguments in relation to the possible consequences of disclosure. It has therefore not provided any specific reasons or evidence as to why disclosure would cause significant distress or damage to the individuals concerned.

*Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure*

60. Despite the reasonable expectations of individuals and the fact that damage or distress may result from disclosure, it may still be fair to provide the information if there is an overriding legitimate interest in disclosure to the public. Under the first principle, the disclosure of the information must be fair to the data subject, but assessing fairness involves balancing their rights and freedoms against the legitimate interest in disclosure to the public.

61. As disclosure under the FOIA is considered to be disclosure to the public at large and not to the individual applicant, it is the legitimate interests

of the public in disclosure that must be balanced against the interests of the data subject. The private interests of the requester, or even of a small group of people, are not relevant in this context.

62. Legitimate interests include general public interest in transparency, public interest in the issue the information relates to and any public interest in disclosing the specific information.
63. In bringing his complaint to the Commissioner's attention, the complainant told him:  
  
*"the incident directly impacted on the public and the public deserve an explanation".*
64. In the Commissioner's view, there is always some legitimate interest in the disclosure of information held by public authorities in line with the general principles of promoting transparency and accountability.
65. However, in the circumstances of this case, given the nature of the withheld information and the reasonable expectations of the data subjects, the Commissioner considers that any legitimate public interest in disclosure of the information is question could not be characterised as compelling and there would be significant prejudice to the rights and freedoms of the data subjects concerned.
66. The Commissioner has therefore concluded that, as disclosure of the personal data at issue in this case would be unfair and breach the first data protection principle; the section 40(2) exemption is therefore engaged. This is an absolute exemption, which means that if, as in this case, the condition is satisfied, there is no additional public interest test to consider.

## **Section 42 legal professional privilege**

67. The Commissioner has next considered the MOD's application of section 42 to the withheld information. Section 42 of FOIA provides an exemption for information protected by legal professional privilege (LPP). LPP protects confidential communications between lawyers and clients: it is a fundamental principle of English law.
68. The MOD told the complainant:  
  
*"Many of the redacted emails contain legal advice..."*
69. LPP is intended to provide confidentiality between professional legal advisers and clients to ensure openness between them and to safeguard access to fully informed, realistic and frank legal advice, including potential weaknesses and counter-arguments.

70. The Commissioner recognises that there are two types of privilege within LPP: litigation privilege and advice privilege. In this case, the MOD is relying on the fact that some of the withheld information is subject to legal advice privilege.
71. Advice privilege applies where no litigation is in progress or contemplated. It covers confidential communications between the client and lawyer, made for the dominant purpose of seeking or giving legal advice.
72. Having viewed the withheld information and considered the context in which it was recorded, the Commissioner is satisfied that the exemption is engaged.

*The public interest test*

73. Section 42 is a qualified exemption, subject to the public interest test.

*Public interest arguments in favour of disclosing the requested information*

74. The MOD acknowledged that there are arguments in favour of release. It told the complainant:

*"The assumption in the Act in favour of disclosure, along with its implications for accountability, transparency and furthering public debate, applies in this case (as with all requests for information). However, beyond the notion of furthering the public's understanding of MOD's deliberative process with regard to this case, I am unable to identify any further factors in favour of release".*

*Public interest arguments in favour of maintaining the exemption*

75. Arguing in favour of maintaining the exemption, the MOD said:

*"However, the Act also acknowledges the very substantial public interest in maintaining the confidentiality of LPP material, and notes that only in exceptional circumstances would this give way to the public interest in disclosure".*

*Balance of the public interest arguments*

76. In balancing the opposing public interest arguments in cases such as this, involving the section 42 exemption, the Commissioner is mindful of the Information Tribunal's decision in *Bellamy v Information Commissioner (EA/2005/0023)* which gave considerable weight to the public interest in withholding information which attracts legal professional privilege.

77. He recognises that the general public interest inherent in the exemption will always be strong due to the importance of the principle behind LPP: safeguarding openness in all communications between client and lawyer to ensure access to full and frank legal advice, which in turn is fundamental to the administration of justice.
78. In line with the relevant case law, the Commissioner accords significant weight to the maintenance of LPP. While mindful that this should not mean that this exemption becomes effectively absolute, in the Commissioner's view it is the case that there will need to be very clear and specific public interest grounds for the public interest in the maintenance of LPP to be overridden.
79. In reaching his decision in this case the Commissioner has taken into account the inbuilt public interest in the concept of legal professional privilege, as well as what the particular factors in this case suggest about the balance of the public interest. This includes what specific harm may result – the Commissioner also accepts that further weight can be given to maintaining the exemption, as the legal advice related to a live and on-going matter.
80. The Commissioner recognises the genuine interest of the complainant in the subject matter of the advice in this case. He also accepts that there is a clear public interest in knowing that public authorities have reached decisions on the basis of sound advice. However, in his view this general principle does not in itself overturn the public interest in protecting the confidentiality of legal advice.
81. The Commissioner's decision is that, on this occasion, the public interest favours the maintenance of the exemption and therefore the MOD correctly withheld the information.

### **Section 36 prejudice to conduct of public affairs**

82. The Commissioner has next considered the MOD's application of section 36 to the remaining withheld information. That information is recorded within a background note and a draft response.
83. Section 36 provides an exemption if disclosure would or would be likely to:
  - (a) prejudice collective responsibility or the equivalent in Wales and Northern Ireland;
  - (b) inhibit the free and frank provision of advice or exchange of views; or

(c) otherwise prejudice the effective conduct of public affairs.

84. Section 36 requires that, other than for statistical information, the qualified person for the public authority must give their reasonable opinion that the exemption is engaged.

85. The qualified person is required to give a reasonable opinion about the likelihood of prejudice or inhibition under section 36(2). In the Commissioner's view, the qualified person's opinion is crucial in order to engage the exemption. If the opinion is not given by the appropriate person, then the exemption cannot apply.

86. When widening his request in this case to include "*all the recorded information*" about the incident, the complainant told the MOD:

*"the Minister is obviously aware of this incident".*

87. In requesting an internal review, he said:

*"I cannot believe that the only recorded information within the MOD is confined to this list of emails, there must be much more and I know the Minister has written on the matter".*

88. In response, the MOD told the complainant that all of the information it held at the time of the request had been considered for release.

89. However, during the Commissioner's investigation, the MOD told the Commissioner that while the information relating to the Ministerial correspondence was initially deemed to be out of scope:

*"MOD's view is that it is in scope and should be withheld under section 36. However, a Minister, as the qualified person is being consulted and his decision is pending on whether the exemption is engaged".*

90. The Commissioner considers that the terms in which the request was framed were clear enough for the MOD to have been in a position to respond correctly from the outset. He is therefore disappointed that it was not until he had commenced his investigation that the MOD confirmed that it considers section 36(2)(b)(i) is engaged in this case. However, he accepts that a public authority has the right to claim section 36 during his investigation. He also notes the limited nature of the submission and the arguments made by the MOD.

91. Information may be exempt under section 36(2)(b)(i) if its disclosure would, or would be likely to, inhibit the ability of public authority staff and others to express themselves openly, honestly and completely, or to explore extreme options, when providing advice as part of the process

of deliberation. It should be noted that the exemption is about the processes that may be inhibited, rather than what is in the information. The issue is whether disclosure would inhibit the process of providing advice.

92. In support of its belated reliance on section 36, the MOD provided the Commissioner with a copy of the submission that was provided to the qualified person.
93. Accordingly, the Commissioner is satisfied that the Minister for Defence Personnel, Welfare and Veterans – the qualified person in this case – was provided with a submission in relation to the request.
94. Notwithstanding his concerns about the quality of the submission, the Commissioner is satisfied that the opinion given by the qualified person is reasonable in this case. It follows that he finds the exemption engaged with respect to the MOD's citing of the exemption in section 36(2)(b)(i).
95. With respect to the level of likelihood, having considered the submission and the qualified person's opinion, the Commissioner has carried the lower level of likelihood - that inhibition would be likely to occur – through to the public interest test.

*The public interest test*

96. Even where the qualified person has concluded that the exemption applies, the public interest test must be applied to the decision whether or not to disclose the withheld information.

*Public interest arguments in favour of disclosing the requested information*

97. The MOD acknowledged that disclosure “*would follow the Act's principle of openness*” and “*would demonstrate that this case has been correctly handled*”.

*Public interest arguments in favour of maintaining the exemption*

98. In favour of withholding the information at issue the MOD said:

*“disclosure is likely to prevent open and honest advice being submitted to Ministers in future”.*

99. It also considered disclosure in this case:

*“ Likely to inhibit Ministers in seeking formal advice in future”.*

100. *Balance of the public interest arguments – free and frank provision of advice*
101. The Commissioner considers that, having accepted the reasonableness of the qualified person's opinion that disclosure of the information would be likely to have the stated detrimental effect, he must give weight to that opinion as an important piece of evidence in his assessment of the balance of the public interest. However, he will also consider the severity, extent and frequency of inhibition to the subject of the effective conduct of public affairs. Where the severity, extent and frequency of inhibition resulting from disclosure results in prejudice to the ability of the public authority to conduct itself effectively, this contributes to the argument that maintaining the exemption is in the public interest.
102. The Commissioner accepts the importance of ministers receiving free and frank advice from officials to the ability of the MOD to function effectively. In the context of the request in this case, the Commissioner accepts that it is important that officials do not feel inhibited by possible disclosure of any advice they give on this or other similarly sensitive issues. Given this, the Commissioner finds that the inhibition arising from disclosure would be sufficiently severe that it contributes significant weight in favour of maintenance of the exemption.
103. The Commissioner also considers the timing of the request to be significant in this case, coming at a time when the matter was still effectively a live issue for the Minister. The Commissioner is of the view that disclosure at the time would have been likely to inhibit the free and frank provision of advice. In his view this is an important factor and he therefore affords strong weight to it.
104. In considering the public interest in disclosure the Commissioner accepts there a general weight in the public interest in understanding the issues considered by the MoD when drafting the Ministerial correspondence. However, the Commissioner has concluded there is only limited public interest in disclosure in relation to the specific information.
105. In balancing the opposing public interest arguments in this case, and taking all the circumstances into account, the Commissioner has concluded that, on balance, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. The MOD is not therefore required to disclose the information it withheld by virtue of section 36.



## **Right of appeal**

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

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

Tel: 0300 1234504

Fax: 0116 249 4253

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

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

107. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

108. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Steve Wood**  
**Head of Policy Delivery**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**