Tribunals Service
Information Tribunal

Information Tribunal Appeal Number: **Case No. EA/2006/0092**
Information Commissioner's Ref: **FS50122830**

Heard at Procession House
London
On 26th September 2007

Decision Promulgated
on 14th November 2007

BEFORE

DEPUTY CHAIRMAN
Peter Marquand
and
LAY MEMBERS
Paul Taylor
Pieter de Waal

B E T W E E N :

DR IZHAR BABAR

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

and

THE BRITISH COUNCIL

Additional Party

Representations:

For the Appellant:	**In person**
For the Respondent:	**Miss Holly Stout, Counsel**
For the Additional Party:	**Mr Garreth Wong, Counsel**

DECISION

The Tribunal dismisses this Appeal except in relation to certain information contained within a letter dated the 29th October 2004 from Dr Peggy Arnell to Dr Humaira Gilani. Apart from the information contained in that letter, the Tribunal's conclusion is that the British Council does not hold the information sought by Dr Babar.

SUBSTITUTED DECISION NOTICE

The Tribunal allows in part the appeal and substitutes the following Decision Notice in place of the Decision Notice dated 23rd November 2006

IN THE MATTER OF AN APPEAL TO THE INFORMATION TRIBUNAL

UNDER SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000

INFORMATION TRIBUNAL APPEAL No: EA.2007/092

SUBSTITUTED DECISION NOTICE

Dated: 14 November 2007

Public Authority: The British Council
10 Spring Gardens
London
SW1A 2BN

Name of Complainant: Dr Izhar Babar

Substitute Decision:

For the reasons set out in the Tribunal's decision, the substituted decision is that the Decision Notice of the 23rd November 2006 is amended in that the British Council failed to disclose to the Complainant the following information:

1. The British Council has been advised that the General Medical Council had revised its guidance to sponsors of doctors of PLAB exempt limited registration. Previously the GMC advised that having nationality of an EEA Member state did not dispense with the requirement for

sponsorship scheme doctors to have a current IELTS certificate. The GMC now advises that EEA nationals in sponsorship schemes are exempt from the requirement to have such a certificate.

This is a change in the guidance previously given by the GMC to the British Council.

Action required:

No action is required from the British Council as this information is already in the possession of the Complainant (although not provided to him by the British Council).

Dated: 14 November 2007

Peter Marquand,
Deputy Chairman, Information Tribunal

Reasons for Decision

Summary Background

1. Dr Babar is a medical practitioner and is married to Dr Humaira Gilani, who is also a medical practitioner. Dr Gilani was sponsored by the British Council to undertake post-graduate training in the United Kingdom, having qualified as a doctor in Pakistan. Dr Babar and Dr Gilani have various complaints about the actions of the British Council and the application of sponsorship schemes run by them. Indeed, there are other potential legal proceedings. Dr Babar has sought information about the British Council schemes but the British Council says it does not hold the information that he has requested.

The Request for Information

2. By email dated the 24th March 2006, Dr Babar requested from the British Council the following information:

"1. A copy of the PGME [Post-Graduate Medical Education] Scheme from GMC [General Medical Council] does not mention anywhere to exclude British and EEC citizens, the same scheme's terms and conditions sent to candidates at the time from British Council though was very specific that for this scheme British and EEC citizens should not apply. BC [British Council], at the time also insisted that those who qualified and worked in EEC will be excluded. It also excluded doctors who qualified more than 10 years ago. This therefore seems that this decision was taken by British Council. Therefore I would be grateful if your office could send me the minutes of the meeting in which this scheme was discussed and these additional guidelines were formulated.

2. GMC since year 2001 have been advising PLAB [Professional and Linguistic Board] candidates that doctors with EU enforceable rights cannot be asked to take IELTS [International English Language Test] exam, this advice was accepted by Dr Arnell, who was Medical Director at the time. I am interested to know when did GMC advice reached British Council. If British Council did not receive any specific advice regarding this point, please clarify, than one has to assume that Dr Arnell was relying entirely on the GMC guidelines on its web pages available since 2001.

3. You attached some information which was supposed to throw some light on why this scheme closed. As the information failed to mention this scheme, I would be grateful if you could send me the Minutes of the meeting in which this scheme was finally closed."

3. This email was written to Ms Antoinette Carter, who is the British Council's Freedom of Information Officer. Ms Carter replied on the 8th May 2006 stating that the British Council did not hold the information requested. On the 15th June 2006 Dr Babar complained to the Information Commissioner whose conclusions may be summarised as follows:

1. The public authority had failed to reply within the 20 working day deadline required by section 10(1) of the Freedom of Information Act (FOIA);
2. The British Council did not hold any information of the sort requested by Dr Babar.

Point 1 above is not the subject of this appeal.

Appeal to the Tribunal

4. Dr Babar appealed to the Tribunal by Notice dated 3rd December 2006. The Tribunal issued Directions on the 14th March 2007 and joined the British Council to the proceedings as an Additional Party. At the Directions hearing Dr Babar raised allegations concerning possible criminal offences. Accordingly the Tribunal gave the Information Commissioner, who has jurisdiction in relation to those possible offences, time to investigate before the final hearing of this Appeal. However, the Information Commissioner did not find any evidence of any offence under section 77 FOIA.

5. The final hearing took place on the 26th September 2007 when the Tribunal heard from Dr Babar and evidence was taken, on oath, from Ms Antoinette Carter.

6. The Tribunal also had the benefit of an agreed bundle of documents, including a witness statement from Ms Carter and in advance of the hearing, the written submissions of the parties.

7. The Tribunal announced its decision at the end of the oral hearing on the 26th September 2007. This is the full record of the Decision and Tribunal's reasons.

Issues for the Tribunal

8. At the Directions hearing the Tribunal determined that the Appeal concerned the following information:

1. Minutes of the meeting in which new guidelines were introduced for the PGME Scheme.

2. Clarification of when the British Council received advice from the General Medical Council on the issue of the validity of doctors with EU enforceable rights being asked to take the IELTS exam.
3. Minutes of the meeting at the British Council in which the decision was taken to close the PGME Scheme.

9. The issue for the Tribunal to determine was whether the British Council held this information.

The Tribunal's Jurisdiction

10. The Tribunal's remit is governed by section 58 FOIA and this is set out below:

> *"58- Determination of Appeal.*
> *2. If on an Appeal under section 57 the Tribunal considers –*
>
> *a. That the Notice against which the Appeal is bought is not in accordance with the law, or*
> *b. To the extent that the Notice involves an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,*
>
> *the Tribunal shall allow the Appeal or substitute such other notice as could have been served by the Commissioner; and in any other case the Tribunal shall dismiss the Appeal.*
>
> *3. On such an Appeal, the Tribunal may review any finding of fact on which the Notice in question was based."*

11. The starting point for the Tribunal is the Decision Notice of the Commissioner but the Tribunal also receives evidence, which is not limited to the material that was before the Commissioner. The Tribunal, having considered the evidence, may make different findings of fact from the Commissioner and consider the Decision Notice is not in accordance with the law because of those different facts.

Nevertheless, if the facts are not in dispute, the Tribunal must consider whether FOIA has been correctly applied.

The Evidence

12. Since the 1980's the British Council provided assistance, known as "Sponsorship" to doctors who had qualified from countries outside the United Kingdom (UK) and the European Economic Area (EEA) in order for such individuals to undertake post-graduate medical training in salaried training posts within the National Health Service (NHS). Doctors who had obtained their medical qualifications in the UK or within the EEA (or another country specifically approved by the GMC) could apply for "full" or "provisional" registration with the General Medical Council (GMC). Otherwise, medical practitioners had to obtain what was known as "limited registration". Section 22(1) of the Medical Act 1983 set out the requirements for limited registration as:

> *"a. That he [the person applying for registration] has been selected for employment in the British Islands of a description approved by the General Council for the purposes of this section;*
> *b. That he holds, has held, or has passed the examination necessary for obtaining some acceptable overseas qualification or qualifications;*
> *c. That he has the necessary knowledge of English or is an exempt person;*
> *d. That he is of good character; and*
> *e. That he has the knowledge of skill, and has acquired the experience, which is necessary for practice as a medical practitioner registered under this section and is appropriate in his case,*
>
> *he shall, if the General Council think fit so to direct, be registered under this section as a medical practitioner with limited registration."*

13. A European Directive of the 5th April 1993 (93/16/EEC) had required member states of the European Union to recognise diplomas,

certificates and other evidence as formal qualifications in medicine awarded to nationals of member states by other member states. But the British Council sponsorship schemes were not concerned with individuals who had obtained their qualifications within the EEA; the scheme specifically excluded such medical practitioners.

14. Until some time in April 2003, the British Council's scheme was known as "Client Funded Training for Overseas Doctors" or the "CFT Scheme" for short, and that is how we will refer to it. After April 2003 the Scheme changed and was known as "Post Graduate Medical Education Sponsorship Scheme" or for short, the "PGME Scheme", which is again, how we will refer to it in this Decision. From the evidence of Ms Carter and from the bundle of documents, it is clear that the schemes are broadly similar, although the documentation is different in some respects. For example:

    1. The PGME documentation specifically refers to excluding "*doctors who are nationals or have right of residency of any EEA member state, including the UK".* This does not appear in the CFT documentation. It should be noted, of course, that the schemes would exclude medical practitioners who have obtained their qualifications in the UK or EEA member state, because by definition they would be able to obtain full or provisional registration with the GMC. The exclusion in the PGME Scheme appears to go further and exclude those who are resident in the EEA or UK and have obtained their qualification outside those areas.

    2. The PGME specifically excluded doctors who had completed their primary medical qualification more than ten years prior to the application. This does not appear within the CFT scheme documentation.

15. Both schemes had a requirement that the applicants must have passed the IELTS, which is an assessment of proficiency in the English language. Ms Carter's evidence was that the schemes were essentially the same, but she was not able to explain the differences set out in paragraphs 14(1) and (2) above.

16. Although the British Council closed the CFT scheme at some time in April 2003, it still was used for those doctors who were part way through the application process and therefore did not actually fully cease to be operational until some time in September 2003. Essentially April or June 2003 was the time at which new applications were not taken in through the CFT scheme.

17. Ms Carter could not give precise dates and the Tribunal does not think that it needs to know exactly when the change took place. Ms Carter explained that the Health Department at the British Council was a small unit. There was a Director of Health, who at the relevant time was Dr Peggy Arnell, and two other members of staff, although at most there have been four members of staff in total. Dr Arnell was the Director of Health when the CFT scheme changed over to the PGME scheme. However, following closure of the PGME scheme, Dr Arnell left the British Council (it should be pointed out that the Tribunal draws no inference from this, but simply records it as a fact) and Mr Stephen Shaw took over to "stand in". Mr Shaw was not involved in the closure of the PGME scheme.

18. The British Council's website, extracts of which the Tribunal had from the 22nd February 2005 and 25th February 2007, confirmed that the PGME scheme permanently closed on the 24th December 2004, but continued to process sponsorship applications until the 7th February 2005. Ms Carter explained that this was, again, to take into account the fact that time needed to be given for those doctors who had applied for sponsorship but not yet had their applications processed. New applications were not accepted from the 24th December 2004.

19. Ms Carter's evidence was that she did not believe, from the inquiries that she had made, that there were any minutes of meetings concerning the change of the CFT scheme to the PGME scheme. In fact, she could not say whether there had been a meeting or meetings at all.

20. In relation to the second type of information sought by Dr Babar (set out in paragraph 8 above) Ms Carter referred to a letter, dated 29th October 2004, from Dr Arnell to Dr Gilani. This letter includes the following:

"Since receipt of your letter, I have been advised that the General Medical Council has revised its guidance to sponsors of doctors for PLAB exempt limited registration. Previously, the GMC advised that having nationality of EEA Member state did not dispense with the requirement for sponsorship scheme doctors to have a current IELTS certificate. The GMC now advises that EEA nationals in sponsorship schemes are exempt from the requirement to have such a certificate.

[…section not relevant to the Appeal deleted…]

I must emphasise that this is a change to the guidance previously given by the GMC to the British Council. My letters sent to you in May, June and July of this year were all based on this earlier guidance."

21. This letter was provided to the Tribunal by Dr Babar as part of the documents for the Appeal, but had been supplied to Dr Gilani by the British Council following a request by her for her personal data made in March 2006 (a "subject access request" under section 7 of the Data Protection Act 1998). Ms Carter explained that she did not feel that this letter was relevant to Dr Babar's request, but that, in any case, it was Dr Gilani's personal data and therefore should not be provided to him as part of a response to his application under FOIA. Ms Carter said that she believed Dr Gilani would have received this letter in or around May 2006 following her subject access request. Ms Carter also explained that the European Directive, referred in paragraph 13 above, did not affect the PGME or CFT schemes, because by definition they did not apply to people who had obtained their medical qualification within the EEA. The British Council was only made aware of this legislation in the context of Dr Gilani's case, because in fact she has dual nationality.

22. In relation to the third type of information requested by Dr Babar, namely minutes of the decision to close the PGME scheme, Ms Carter said that the decision about this scheme took place over about 18 months and was made due to various circumstances. The administration of the scheme placed a very significant burden on the

British Council as compared with the CFT scheme. However, the management fees charged to the applicants were increased to reflect this, but the scheme was effectively running at a loss. Applicants were also expressing dissatisfaction with the scheme and giving a view that they were being exploited to alleviate staffing problems in the NHS. Changes in immigration rules requiring a work permit also occurred and, in combination, Ms Carter explained these made up the reasons for the decision to close the PGME Scheme. Ms Carter said there was no one decision to close the scheme and she did not know if there were any minutes of any such meetings as she did not know if any meetings had taken place or if any minutes existed.

23. Ms Carter gave evidence that following closure of the PGME scheme, the number of operational staff in the Health Department was reduced. Office accommodation, which was at a premium, was required for other departments and projects. A decision was taken that only records that the British Council was required by law to retain, were to be kept, for example, financial records and individual doctor's sponsorship files. Any documents that were retained were sent to off-site storage. This decision was taken at around the time that the PGME scheme closed. The British Council's paper archivist was asked for advice on the destruction of records and audit trails were kept, but only in relation to those records that were stored off-site and were destroyed since archiving.

24. Ms Carter explained that a process of destruction has taken place and although she did not undertake the destruction herself, she has spoken to some of those people who carried it out. Those individuals confirmed that minutes of meetings did not appear to be common in this particular department.

25. Ms Carter's evidence was that the Health Department of the British Council was still in existence, although it was only a residual department, which was wound down following closure of the PGME scheme: it no longer exists in the same form.

26. Following Dr Babar's request for information, Ms Carter explained that she had spent at least 20 working days looking for information. She spoke to the last person responsible for the administration of the

department (although she had joined after the PGME scheme had closed), Mr Shaw and the British Council's legal adviser in London. The legal adviser handed over his file on Dr Gilani and Ms Carter inspected it and found that it contained duplicates of documents which she had already located. Ms Carter searched the Manchester office herself and archived material. In the last year, the GMC did away with limited registration and therefore it was necessary to contact all sponsored doctors. In order to do this the files were taken from archive and Ms Carter took the opportunity to check those files again herself to look for anything that might be relevant: she found nothing. Ms Carter also conducted electronic searches, which included searches of the British Council's main Board minutes. The electronic searches included phrases that would have identified the PGME and CFT schemes. All of these searches drew a blank. Ms Carter could not locate an up-to-date contact address for Dr Arnell. Ms Carter did find information packs relating to both schemes and associated leaflets, that appeared in the bundle of documents before the Tribunal. Finally, Ms Carter explained that she found no evidence to suggest that any documents had been destroyed deliberately in order to avoid responding to Dr Babar. Ms Carter also attempted to retrieve information from the email accounts of health department staff who had left the British Council. However, nothing relevant to Dr Babar's requests were found.

Relevant Law

27. Section 1(1) FOIA states:

> *"Any person making a request for information to a public authority is entitled –*
>
> *a. to be informed in writing by the public authority whether it holds information of the description specified in the request; and*
>
> *b. if that is the case, to have that information communicated to him"*

What amounts to "information" is set out in section 84 as follows:

"Information" subject to sections 51(8) and 75(2) means information recorded in any form;

Sections 51(8) and 75(2) are not relevant.

28. The Tribunal was referred to two previous decisions of the Tribunal on what "holds" in section 1(1)(a) means, as there is no further definition within FOIA. In Bromley v. The Information Commissioner and the Environment Agency EA2006/0072 dated 31st August 2007, the Tribunal stated:

> *"There can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records. This is particularly the case with a large national organisation like the Environment Agency, whose records are inevitably spread across a number of departments in different locations. The Environment Agency properly conceded that it could not be certain that it holds no more information. However, it argued (and was supported in the argument by the Information Commissioner) that the test to be applied was not certainty, but the balance of probability. This is the normal standard of proof and clearly applies to appeals before this Tribunal in which the Information Commissioner's findings of fact are reviewed. We think that its application requires us to consider a number of factors, including the quality of the public authority's initial analysis of the request, the scope of the search that it decided to make on the basis of that analysis and the rigour and efficiency with which the search was then conducted. Other matters may affect our assessment at each stage, including, for example, the discovery of materials elsewhere, whose existence of content point to the existence of further information within the public authority, which had not been brought to light. Our task is to decide, on the basis of our review of all these factors, whether the public authority is likely to be holding relevant information beyond that which has already been disclosed."*

29. We were also referred to the decision is Quinn v. The Information Commissioner and the Home Office EA2006/0010 dated 15th

November 2006. In that case, the Home Office had conducted an enquiry into a riot and a report, "The Dunbar Report", had been produced and submitted to Ministers. In that case the Tribunal referred to the test of whether a public authority held information as being "have they got it?" The Tribunal does not find the Quinn case helpful as, in that case, there was little doubt that the Home Office ought to have held the report, as it was known that it was once in existence and had been held by the Home Office. The issue there was: were they entitled to rely on the exemption in section 12 FOIA that removed the obligation to provide the information where it would exceed "the appropriate limit"?

30. Ms Stout, for the Information Commissioner, submitted that the correct approach was to test whether the public authority had conducted a reasonable search and reasonably concluded on a balance of probabilities that the information did not exist. In those circumstances, it could be said that a public authority did not "hold" information.

31. This Tribunal's conclusion is that under FOIA, in determining whether or not a public authority holds information, all the circumstances need to be taken into account. We are not bound by previous Tribunal decisions but we agree with the Tribunal in Bromley that the circumstances will indicate the chance that information is held by the public authority. In a case where a public authority has not claimed the statutory limitation in section 12 FOIA how extensive should the search be? In our view the search should be a reasonable one. There may be circumstances which indicate a significant chance of information being in existence, which will be relevant to the reasonableness of any searches undertaken. Furthermore, the Tribunal should be satisfied that the conclusion that information is not held should be determined on a balance of probabilities and it should be satisfied that the conclusion is a reasonable one.

32. Dr Babar submitted that FOIA created a legal obligation on public authorities to keep information. He said that the British Council should not have destroyed any minutes of meetings, even before the request for them had been made. The Tribunal does not agree. Section 1(4) provides:

"The information—

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question ***held at the time when the request is received****, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request."* [our emphasis].

33. FOIA does not oblige a public authority to keep information, but provides individuals with a right of access to information that is held by the authority at the time the request is made. Once a request for information has been made it is a criminal office under section 77 FOIA for a public authority to destroy records deliberately in order to avoid an obligation to disclose it, but that is not relevant here.

The Submissions

34. Dr Babar's submissions may be summarised as follows:

a. There is a significant difference between the PGME scheme and CFT scheme. It is inconceivable that a significant change in the scheme would not have been discussed at a meeting, which would have been minuted.

b. The European Directive was a significant change that affected the schemes run by the British Council and would have resulted in a loss of income for them. It is inconceivable that minutes or other communications do not exist of advice from the GMC about the European requirements.

c. There are different versions of the CFT documents and different dates for closure of both the CFT and PGME schemes, which is suspicious.

35. The submissions of the British Council in relation to parts 1 and 3 of Dr Babar's request can be briefly put as: there is no documentation, because no meetings took place and there are no minutes. Even if

there were any such minutes, they had been destroyed well before Dr Babar made his request.

36. The Information Commissioner's submissions are the same as the British Council's, although they identify the letter to Dr Gilani as containing information relevant to the second part of Dr Babar's request and therefore accept that the Decision Notice ought to be amended to reflect the fact that that information existed and ought to have been disclosed by the British Council. The British Council's submissions on this piece of correspondence are that it was Dr Gilani's personal data, but if they are wrong on that, it was reasonably accessible to Dr Babar by virtue of the fact that it was in his wife's possession. These two arguments would mean that the information is covered by exemptions under FOIA (section 21 and section 40 respectively) and not disclosable by the British Council to Dr Babar.

The Findings

37. Ms Carter was a credible and convincing witness who, in the Tribunal's view, gave evidence honestly and to assist the Tribunal as much as she could. She was hampered to some extent because she had no direct knowledge of whether meetings relevant to the PGME and CFT schemes had taken place however, she had clearly carried out, or caused to be carried out, extensive searches for information relevant to Dr Babar's requests. The Tribunal's conclusion is that the British Council does not hold the information sought by Dr Babar, except in relation to the extracts from the letter to Dr Gilani, dated the 29th October 2004, referred to at paragraph 20 above. This, of course, only relates to the second part of Dr Babar's request.

38. It is the Tribunal's view that Ms Carter has carried out a more than reasonable search. We do not accept Dr Babar's suggestion that there is such a difference between the PGME and CFT schemes that more of a search should be undertaken or that the conclusion that the information is not held, is not a reasonable one. We are not in a position to say that the PGME and CFT schemes were the same or substantially different as the documentation does reflect some differences and Ms Carter is not able to give evidence directly on this, because she was not involved in either scheme. However, as we have

indicated above, we are satisfied that any differences are not so significant to mean further searches should be undertaken. However, the Tribunal should point out here, it is not clear what further searches could be undertaken by the British Council, in any event. We do not see that the European Directive and whether or not the British Council knew of its significance is helpful. The European Directive had no impact on the PGME or CFT schemes, as neither scheme applied to those individuals who were subject to the Directive. Furthermore, the Tribunal sees no reason to be suspicious about the fact that the PGME and CFT schemes closed on a particular date to new applicants, but continued to remain open for the processing of those applications that had already been received or were otherwise in train. That seems to be fair to those individuals who had not yet had a final decision on whether or not one of the schemes would apply to them.

39. In relation to the letter of the 29th October 2004, the Tribunal does not accept the submissions by the British Council and agrees with the Information Commissioner, that Dr Babar should have been informed that it held information relevant to the second part of his request. In particular, the Tribunal does not accept that it is open to the British Council to claim for the first time, at the conclusion of this Appeal, exemptions under FOIA. That was really a post-fact attempt to justify what was otherwise in reality, a rather understandable mistake. Ms Carter probably had not really considered the extract quoted at paragraph 20 to be covered by Dr Babar's request, as she dealt with it in the context of Dr Gilani's application under the Data Protection Act. However, the Tribunal is satisfied that that extract is covered by Dr Babar's request and it could have been provided to him as an extract and as such, it would not, in any event, have resulted in the disclosure of Dr Gilani's personal data. The extract could have been:

> *"The British Council has been advised that the General Medical Council has revised its guidance to sponsors of doctors of PLAB exempt limited registration. Previously the GMC advised that having nationality of an EEA Member state did not dispense with the requirement for sponsorship scheme doctors to have a current IELTS certificate. The GMC now advises that EEA nationals in sponsorship schemes are exempt from the requirement to have such a certificate.*

This is a change in the guidance previously given by the GMC to the British Council."

40. The British Council could have said that this information was recorded in a letter dated the 29th October 2004 by Dr Arnell, but that if necessary, the remainder of information had been withheld on the grounds that it was another individual's personal data.

Conclusion and Summary

41. The Tribunal has concluded that on the available evidence, including the bundle of documents, and having heard the oral evidence, that the British Council does not hold information within the meaning of the Freedom of Information Act, sought by Dr Babar, that is the subject of this Appeal. This information is set out at paragraph 8 above.

42. The Tribunal is satisfied on the evidence that first, the British Council has conducted a reasonable search. Secondly that it is reasonable to conclude, on a balance of probability, that the British Council does not hold the information. Therefore, the Appeal is dismissed, except in relation to the information contained in the letter of the 29th October 2004, referred to at paragraph 36 above. To that extent, the Decision Notice should be amended to include a reference to the disclosure of that material. A substituted Decision Notice appears at the beginning of this Decision.

Peter Marquand
Deputy Chairman Dated: 14 November 2007