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Kitty McVey

Our Ref: FOI 255 347

(by email: [request-119-ea46cb7d@whatdotheyknow.com](mailto:request-119-ea46cb7d@whatdotheyknow.com))

28 April 2008

Dear Ms McVey,

### **Request for Information under the Freedom of Information Act 2000**

Thank you for your request for a copy of the Cabinet Secretary's Notebook for all Cabinet meetings on 17th March 2003, and all notes taken by members of the cabinet secretariat during or relating to those meetings. The Cabinet Office received your request on 31 March 2008 and I have dealt with it under the terms of the Freedom of Information Act, 2000 ("the Act").

I can confirm that the Cabinet Office does hold information relevant to your request. All the information you requested is being withheld because it falls under one or more of the exemptions contained in the Act.

The information you have requested is exempt under sections 27(1) (a), (b), (c) and (d) of the Act, which exempts information if its disclosure would, or would be likely to, prejudice relations between the United Kingdom and any other State, prejudice relations between the United Kingdom and any international organisation, prejudice the interests of the United Kingdom abroad, or prejudice the promotion or protection by the United Kingdom of its interests abroad. Information you have requested is also exempt under section 27(2) which exempts confidential information obtained from a foreign state other than the United Kingdom or from an international organisation.

Section 27 is a qualified exemption and I have considered whether the balance of the public interest favours releasing or withholding this information. I recognise there is a general public interest in openness in public affairs in order to ensure that the public are able to scrutinise the manner in which public authorities reach important decisions. This can make for greater accountability, could increase public confidence in government decision-making and may help to encourage greater public engagement with political life. I recognise too that the disclosure of this information would help the public to understand the way Cabinet government operates in practice. There is also a strong public interest in disclosure of information which would increase public understanding of the decision to commit our service men and women to an armed conflict. Release of the information requested would advance all of these public interests.

Against this, there is a clear public interest in Her Majesty's Government being able to pursue our national interests. It is particularly important to remain on good terms with our allies and with other nations. There is a danger that release of this information would revive the intense international controversy that surrounded this issue in the very recent past and would alienate some of our international partners. It is also essential that we do not damage our relations with the international bodies by reawakening a controversy which threatened to undermine the spirit of cooperation which animates these organisations and which do so much to maintain the conditions for our peaceful pursuit of our international interests. We are also very unlikely to be



able successfully to pursue our interests if we do not retain the trust of our international partners by respecting their confidences. Taking into account all the circumstances of this case, I have concluded that the balance of the public interest favours withholding this information.

The information you have requested is also exempt under sections 35(1)(a), (b) and (c) of the Act which protect the formulation of government policy, ministerial communications and information related to the provision of advice by any of the Law Officers. Section 35 is a qualified exemption and I have considered whether the balance of the public interest favours maintaining the exemptions in section 35(1)(a), (b) and (c) of the Act. I recognise again there is a general public interest in openness in public affairs, that the disclosure of this information would help the public to understand the way Cabinet government operates in practice, that there is a general public interest in being able to evaluate the international policy of the government and a public interest in disclosure of information which would shed light on a decision to commit our service men and women to an armed conflict. Release of the information requested would advance all of these public interests.

Against these points I have weighed the vital importance of ensuring that Ministers are able to debate questions of policy freely and in confidence. There is clearly a strong public interest in high quality policy making. The effective formulation of policy requires the preservation of a privileged setting within which policy options can be explored before a decision is made. Ministers and their advisers would be less willing to engage in full and frank discussions of the issues and give their opinions if they anticipated that the record of these discussions would shortly be released. There is also a strong public interest in the maintenance of the constitutional convention of Cabinet collective responsibility and there is a real risk releasing this information would undermine this convention. The convention depends on the Cabinet as a body being accountable to Parliament for the decisions it reaches after extensive and exhaustive discussion among its members in private. If the records of these discussions revealed differences of view, this would make it harder for the Cabinet to maintain its unity. It would encourage factionalism and weaken the accountability of the executive to Parliament. This would erode constitutional arrangements that serve us well.

There is also a general and strong public interest in protecting the confidentiality of consultations between legal advisers and their clients. Maintaining the general principle that communications between lawyers and clients remain confidential strengthens the rule of law, encouraging, as it does, clients, including governments, to seek informed and reasoned legal advice and enabling full and frank exchanges between clients and their lawyers. Without the assurance of confidentiality, clients, including governments, might fear that anything they say to their lawyers, however sensitive or potentially damaging, could be revealed later, and they might be deterred from seeking legal advice at all, or from disclosing all relevant material to their lawyers. Equally there is a danger that, if the government's legal advisers expected their advice to be made public at an early date, they would be more reticent in offering their advice. In considering the public interest I have also taken into account the information already in the public domain in this regard.

Taking into account all the circumstances of the case, I have determined that the balance of the public interest favours withholding the information.

Some information is also being withheld as it is exempt under section 42 of the Act. Section 42 protects information in respect of which a claim to legal professional privilege could be maintained in legal proceedings. It is a qualified exemption and I have considered whether the public interest favours releasing or withholding this information. Again I recognise the general public interest in openness in public affairs in order to ensure that the public are able to scrutinise the manner in which public authorities reach important decisions and that disclosure of this information would help the public to understand the way Cabinet government operates in practice. On the other hand, as above, governments need high quality legal advice for the

effective conduct of public affairs. There are strong interests in the protection to be afforded to legal advice and these I consider outweigh the interests in disclosure.

If you are unhappy with the decisions made in relation to your request from the Cabinet Office you may ask for an internal review. If you wish to do so you should contact:

Howell James CBE  
Permanent Secretary, Government Communication  
Cabinet Office  
26 Whitehall  
Ripley Building  
London  
SW1A 2WH

e-mail: [howell.james@cabinet-office.x.gsi.gov.uk](mailto:howell.james@cabinet-office.x.gsi.gov.uk)

You should note that the Cabinet Office will not normally accept an application for internal review if it is received more than two months after a response was issued.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. Generally, the Commissioner cannot make a decision unless you have exhausted the complaints procedure provided by Cabinet Office. The Information Commissioner can be contacted at:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

If you have any queries about this letter, please contact me. Please remember to quote the reference number above in any future communications.

Yours sincerely,



John Jenkins  
Histories, Openness and Records Unit

