

13 August 2009

Franc McLaughlin Esq.  
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(by e-mail only)

*Dear Mr McLaughlin,*

## REVIEW OF REQUEST UNDER THE FREEDOM OF INFORMATION ACT 2000

You asked, in your email of 14 July, for an internal review of the Cabinet Office's handling of your request for information of 15 June. I have reproduced your original request below for ease of reference:

*The following proposal appeared in the PMs statement last week on rebuilding the constitution –*

*'As the [Dacre] report recommended, we have considered the need to strengthen protection for particularly sensitive material and there will be protection of Royal Family ..papers.'*

*This was in response to the recommendatin in the Dacre Review which read –*

*'We therefore recommend that, in parallel with the adoption of a 15 year rule, the government, in consultation with interested parties, may wish to consider whether there is a case for enhanced protection of such categories of information.'*

*Please disclose the relevant consultations.*

The Cabinet Office's response to your email confirmed that the Department did hold information relevant to your request and explained that it was exempt under the following sections of the Freedom of Information Act 2000 ('the Act'): 35(1)(a) (formulation and development of policy), 37(1)(a) (communications with Her Majesty etc.), 40(2) (personal data), 41(1) (information provided in confidence) and 42(1) (legal professional privilege).

You also asked that the review consider three points in particular. First, the public interest in withholding the information exempt under section 35(1)(a) of the Act. Second, the fact that our arguments for withholding the information under section 37(1)(a) appear to support non-disclosure of information within the scope of the constitutional convention in every case. Finally, you queried who would take legal action for breach of confidence for the information exempt under section 41(1).



I have now completed my review of the handling of your request and I have decided to uphold the original decision, as explained in the letter of 14 July. I am satisfied that the exemptions cited in that letter are engaged and, for those exemptions subject to the public interest test, the public interest falls in favour of maintaining the exemption and withholding the information. I do not propose to repeat the arguments here, as I know the original response was detailed. I will however address the points you made in your email of 14 July requesting an internal review.

First, I am sorry you feel the response did not sufficiently explain why the public interest falls in favour of maintaining the exemption for the information exempt under section 35(1)(a) of the Act. The response did explain the public interest arguments in favour of releasing the information and those arguments in favour of withholding the information. It is not immediately clear to me what more the response could have had added here. Whilst I appreciate you may not agree with our view on where the balance of public interest lies, I do think the arguments for and against disclosure were clearly set out. (I do of course agree with you that there will be cases when this exemption is engaged and the public interest falls in favour of releasing the information, although I do not think this is one of those cases).

Second, on the issue of the information exempt under section 37(1)(a), there will of course be situations when this exemption is engaged and the public interest falls in favour of disclosure – as this is a qualified exemption. We do however believe, as the response explained, that when any information engages the constitutional convention the public interest arguments in withholding the information will be very strong indeed. I do not agree with your suggestion that if any communications relate to the convention this means there is: *a 'particularly strong interest in transparency to demonstrate that the convention and the exemption are being sensibly applied and protected.'* The public interest in transparency is one of the public interest factors we considered when looking at the arguments in favour of releasing the information, but I do not believe it is stronger if the subject matter is the convention itself.

Finally, you queried who would take legal action for breach of confidence for the information exempt under section 41(1). We believe that legal action could be taken by the person to whom the confidence is owed.

If you remain unhappy with the handling of your request for information you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

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

*Yours sincerely,  
Zara Smart*

pp. **SUE GRAY**