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Mr William Thackeray
request-14057-7f0ce262@whatdotheyknow.com

Our Ref: 12325
Date: 17 July 2009

Dear Mr Thackeray

Thank you for your e-mail of 6 July 2009, in which you ask for full un-redacted copies of the three files related to the Church of Scientology on the Department's disclosure log.

While I appreciate that the circumstances of this request are unique, in that you have made the request so you can appeal the original decision to the ICO, I can confirm that our response remains unchanged. The files were fully reviewed at the time of the original request and redactions were made in accordance with the Act. I have re-produced the reasoning behind the redactions below and hope that this assists you in understanding why they were made.

Some information contained in the files concerned is exempt from disclosure by virtue of Sections 27(1)(a), 32(1), 35(1)(a), 36(2)(b) and 42(1) of the Freedom of Information Act. These exemptions respectively relate to international relations, court records, formulation of government policy, the effective conduct of public affairs and legal professional privilege. Sections 27, 35, 36 and 42 are all qualified exemptions, and as such require a public interest test to be conducted. These can be found in the attached annex. Section 32 is an absolute exemption and as such there is no requirement to conduct a public interest test.

Names of officials have been removed as they are considered to be irrelevant to the scope of the request. All other redactions have been made under the exemptions specified in the above paragraph.

If you are dissatisfied with this response you may request an independent internal review of our handling of your request by submitting your complaint within two months to the above address quoting reference 12325.

During the independent review the department's handling of your information request will be reassessed by staff who were not involved in providing you with this response. Should you remain dissatisfied after this internal review, you will have a right of complaint to the Information Commissioner as established by section 50 of the Freedom of Information Act.

I would like to assure you that we have supplied all disclosable information within the three files. Where exemptions were used they were done so only after detailed consideration.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Bragaglia', with a horizontal line above it.

John Bragaglia
Information Access Consultant

Annex

Public Interest Test Considerations

Section 27(1)(a)

The Exemption

'27(1) 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.'

Information to which the exemption applies

During the preparation for the department's defence of the 2003 Judicial Review referred to in the main body of the letter, information was sought from a variety of sources including the internet, expert witnesses and other government departments. This included information relating to the status of Scientology in particular countries. It is this information that is being withheld under Section 27(1)(a).

Considerations Favouring Disclosure

There is a general consideration favouring openness and transparency in government. It is generally accepted that government should be as transparent as possible. Releasing information is likely to ensure the public are better informed about issues of concern or general interest. This in turn is likely to lead to an increased quality of public debate on the matter at hand, and should, eventually, lead to an improvement in the quality of legislation and policy produced.

Considerations Favouring Non-Disclosure

It is strongly in the public interest for information that may prejudice relations with another state to be withheld.

The public interest is generally served by maintaining good relations with foreign governments. Release of information which is likely to prejudice relations between the United Kingdom and another State is clearly not in the public interest, except in the most exceptional of circumstances.

It is also important to consider the effect release may have on diplomatic reporting. It is strongly in the public interest for diplomatic officials to be as frank as possible when responding to requests for assistance. The release of the redacted information may inhibit this process in future. It is strongly in the public interest for diplomatic reporting to be as free and frank as possible. This leads to the development of better foreign policy and relations with other States, which is clearly beneficial to the interests of the United Kingdom.

Section 32(1)

The Exemption

32(1) Information held by a public authority is exempt information if it is held only by virtue of being contained in-

- (a) any document filed with, or otherwise placed in the custody of, a court for the purposes of proceedings in a particular cause or matter,

- (b) any document served upon, or by, a public authority for the purposes of the proceedings in a particular cause or matter, or
- (c) any document created by-
 - (i) a court, or
 - (ii) a member of administrative staff of a court,for the purposes of proceedings in a particular cause or matter.

Information to which the exemption applies

This exemption is applied to information filed as court records for the purposes of the 2003 Judicial Review. These documents include witness statements, skeleton arguments and court applications.

Section 32(1) is an absolute exemption and as such there is no requirement to conduct a public interest test.

Section 35(1)(a)

The Exemption

'35(1) Information held by a government department or by the National Assembly for Wales is exempt information if it relates to-

- (a) the formulation or development of government policy'

Information to which the exemption applies

Information is being withheld under this exemption because it concerns the formulation and development of government immigration policy.

Considerations Favouring Disclosure

As in all considerations favouring disclosure of information there is the position of favouring openness and transparency in government. As referred to above, greater transparency, should lead to deeper public knowledge of particular subjects. This in turn should encourage the public to become more involved in the process of policy development and debate, and ultimately improve the standard of policy that is produced.

Immigration policy in particular is of significant public interest. It could be said that release of this information would not only improve the policy formulation process in general but may also lead to greater understanding of immigration policy, and an appreciation of the reasons for certain aspects of immigration policy being implemented.

Considerations Favouring Non-Disclosure

There is a need for Ministers and officials to exchange advice and opinions regarding matters of policy development in an environment free from the normal pressures of public political debate. It is strongly in the public interest for officials to provide policy advice in a free and frank manner. Should the withheld information be released, there is a likelihood that policy discussion of a similar nature will be inhibited in future.

The policy formulation process often includes meetings and discussions with external parties. These exchanges of information are actively encouraged in order that opinions can be freely divulged, thus improving the end policy product. Views and

opinions are often exchanged in a private manner, which best facilitates honest and open dialogue. Should the withheld information be released, it may have the effect of dissuading external parties from entering in to policy consultations with officials. It must be concluded that such a position would be damaging to the formulation of good quality policy, a cornerstone of good governance. Anything that could potentially damage the formulation of good quality policy is clearly not in the public interest.

Indeed, in Decision Notice (FS50121684) the Information Commissioner acknowledges the importance of officials being able to be free, frank and open when it comes to the process of policy formulation – ‘both Ministers and Officials are entitled to hammer out policy without the threat of lurid headlines depicting that which has been merely broached as agreed policy.’

Section 36(2)(b)(i) and (ii)

The Exemption

‘36(2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act-
(b) would or would be likely to inhibit-
(i) the free and frank provision of advice, or
(ii) the free and frank exchange of views for the purposes of deliberation’

Information to which this exemption applies

Detailed and candid advice provided to Ministers and exchanged between officials while preparing for the 2003 Judicial Review.

Considerations favouring disclosure

In addition to the principle of transparency in government there are also considerations favouring disclosure specific to this case, including increased public knowledge of the activities of The Church of Scientology. Release of papers relating to the department’s proposed handling of the eventually withdrawn 2003 judicial review would also give an insight in to the government’s reasoning for defending the policy position under review, and would go some way to showing that public money and resources were well spent on the matter.

Considerations favouring non-disclosure

The considerations favouring disclosure, laid out above, must be balanced against those favouring non-disclosure. The main consideration favouring non-disclosure of the information covered by Section 36(2) is that its release could adversely affect the conduct of public affairs by inhibiting the free and frank provision of advice and exchange of views, and the resultant negative impact that this would cause to the Home Office’s ability to deliver against its objectives. The materials under consideration were prepared by officials in the knowledge and expectation that they would not be made available to those outside of the individuals they were originally intended for. Officials are entitled to deliberate and provide advice to Ministers and senior officials in an honest and candid fashion. If such information were to be released there is a substantial risk that advice provided in future, on similarly sensitive subjects, would be less candid than required. It is of paramount importance to the good conduct of government that officials are given the opportunity to prepare briefings and communicate with each other in confidence so that effective

deliberation can take place. There is an inherent public interest, in ensuring that the conduct of government is subject to rigorous deliberation. In my opinion, such a release would, on the balance of probabilities, prevent officials from conducting these deliberations in future with the candour and confidence required to ensure good quality government and decision making.

In a matter as complex and sensitive as a Judicial Review there is an even stronger public interest in retaining materials used to prepare the department's case. It is vital that such preparation can take place in private, in order to ensure that the best case can be presented to the court. The release of the retained material could jeopardise the department's ability to deal with similar matters in future.

Section 42(1)

The Exemption

'42(1) Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.'

Information to which the exemption applies

Legal advice provided to Ministers and officials during the department's preparations for the 2003 Judicial Review and, the formulation of The Home Office's response to a letter from the Charity Commission, during an early consideration of the Church of Scientology's application for charitable status that was eventually refused in 1999.

Considerations favouring disclosure

Once again, in addition to the case for openness and transparency there is a strong additional consideration of accountability for public funds and resources. Legal resources are relatively costly. Release of the information withheld under Section 42(1) would go some way to showing that legal advice was procured in a cost effective fashion.

The release of this information would also show that the eventual positions taken by Ministers and officials were compatible with expert legal advice received from lawyers. This would give added confidence to the public that policy development takes place in an appropriate and considered fashion.

Considerations favouring non-disclosure

Considerations favouring non-disclosure of this information include the need to protect the space of those officials who offer legal advice. The giving of confidential legal advice is central to the process of good governance, and erosion of this principle is likely to severely prejudice the giving of legal advice in similar cases in the future.

The Information Commissioner has repeatedly stated that the public interest in maintaining the convention of Legal Professional Privilege will only be overridden in the most exceptional of circumstances. Indeed, in the case of '*Bellamy v The Information Commissioner and the DTI*' the Information Tribunal has noted:

'there is a strong element of public interest inbuilt into the privilege itself. At least equally strong counter-vailing considerations would need to be adduced to override

that inbuilt public interest...it is important that public authorities be allowed to conduct a free exchange of views as to their legal rights and obligations with those advising them without fear of intrusion, save in the most clear cut case...'

As such, I am satisfied that the public interest favours non-disclosure of the information covered by this exemption.