



Home Office

**Information Access Team
Information Management Service
Financial & Commercial Group**

2 Marsham Street, London, SW1P 4DF

Switchboard 020 7035 4848

E-mail: Info.Access@homeoffice.gsi.gov.uk Website: www.homeoffice.gov.uk

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

Our Ref: **CR 12325**
Date: **18th November 2009**

Dear Mr. Thackeray,

I write further to my email of the 2nd November 2009 and in regards to your request for an Internal Review into your Freedom of Information Act request for the release of three un-redacted files concerning the Church of Scientology.

I have now completed a full and independent review that has covered the procedural handling of your request and of the reasons and rationale behind the decisions cited in the response to your request. This review has been conducted on its own merits and all areas of this request have been re-considered as part of this Internal Review.

In your email requesting this Internal Review, you asked that we review the redactions made to three files that were released in response to your original request. You also requested that we review our decision to apply the absolute exemption provisions of s32(1)) and to reconsider the public interest considerations in regards to the application of the qualified exemption provisions of s27(1), s35(1), s36(2)(b) and s42(1).

I have reviewed the initial considerations, the decision-making processes and the substantive response to your request, and I have decided that these exemption provisions of the Act were engaged and applied correctly and sparingly. I have included my considerations regarding the use of these provisions in **Annex A** to this letter.

This Internal Review has also covered procedural aspects and the handling of your original request. These considerations are also included in Annex A to this letter.

In summary, I have decided to uphold the original decisions and the provisions applied in all aspects of this request. The decision to redact certain information under the aforementioned FoI exemptions was done with great care and after considerable consideration. I hope that the explanation in the attached annex will help explain our decision.

Allow me to apologise for the delay in providing you with the findings of this Internal Review. I hope that this has not inconvenienced you unduly. If you have any questions concerning this Internal Review, please feel free to contact me at your convenience.

Thank you for your interest in the Home Office and for your patience in this matter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'I. Lister', written in a cursive style.

Ian Lister
Information Access Consultant
Information Access Team

ANNEX A

Procedural Review

The substantive response to your request, dated the 17th July 2009, met our obligations under s17 of the Act. It explained the decision to engage some of the FoI exemption provisions, what information these exemptions referred to and why certain redactions were made.

The letter of the 17th July provided an explanation as to why this decision was made and explained your right of complaint to request an Internal Review. It also met our obligations under s17(1), (3) and (7) of the Act and section XI (para. 50) of the section 45 Code of Practice.

Section 10 of the Act provides that all requests should be answered within twenty working days following the receipt of a request. The substantive response sent to you on the 17th July 2009 was sent on the 10th working day following the date your request was received. I therefore consider that the Home Office met with its obligations under s10 of the Act.

Internal Review

In responding to your original request, my colleague John Bragaglia clarified that he had located three files that were pertinent to your request and provided details of the information contained in each of those files. Having reviewed these files, I can confirm the specific exemptions that were applied to information in each file. I have detailed these for you below in the hope that it will help you understand why these exemptions were applied given the context of the information in that file.

- **FCU 03 0001/0029/003** (relating to the department's preparation for a Judicial Review)
 - S27(1) – international relations
 - S32(1) – court records
 - S36(2)(b)(i) & (ii) – prejudice to the effective conduct of public affairs
 - S42(1) – legal professional privilege

- **LAB 99 0034/0064/042/A** (discussing immigration policy concerning Ministers of religion)
 - S35(1) – development of government policy
 - S36(2)(b)(i) & (ii) – prejudice to the effective conduct of public affairs
 - S42(1) – legal professional privilege

- **CHA 95 0054/0004/00001** (early consideration of an application by The Church of Scientology for charitable status)
 - S42(1) – legal professional privilege

It is clear from reviewing these files that these exemptions were applied sparingly and in the “spirit” of the Act – only the specific information covered by an exemption has been redacted. I will now briefly clarify the specific information covered by each exemption.

Internal Review – s27(1), s32(1), s35(1), s36(2)(b)(i)&(ii) and s42(1)

Section 27 – International Relations

- (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.*

As explained in our substantive response to you, this exemption was applied to information relating to the status of Scientology in particular countries. I am satisfied that this s27(1)(a) is engaged by some of the information held in the FCU 03 file.

Section 32 – Court records

- (1) *Information held by a public authority is exempt information if it is held only by virtue of being contained –*
- 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 proceedings in a particular cause or matter, or*
 - c. *any document created by –*
 - i. *a court, or*
 - ii. *a member of the administrative staff of a court,**for the purposes of proceedings in a particular cause or matter*

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. S32(1) was applied to the majority of redactions made to the information in the FCU 03 file and I am satisfied this exemption is engaged by this specific information.

Section 35 – formulation or development of government policy

- (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*

We have identified several pages within the LAB 99 file that include free and frank discussions and exchanges that were concerning specific aspects of immigration policy. This information was created at the time this policy was being discussed and I therefore agree that s35(1)(a) is engaged by this specific information.

Section 36 – prejudice to the effective conduct of public affairs

- (2) *Information to which this exemption 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*

Again, as explained in our substantive response, this exemption was applied to withhold detailed and candid advice provided to Ministers and exchanged between officials while preparing for the 2003 Judicial Review. This information is held in the LAB 99 and FCU 03 files and it was in the opinion of a Home Office minister that the release of this information would prejudice the effective conduct of public affairs by inhibiting the free and frank provision of advice and the exchange of views for the purposes of deliberation.

It is still the opinion of a Home Office minister that the release of this particular information would prejudice the effective conduct of public affairs by inhibiting the process allowing officials to deliberate and provide advice to Ministers and senior officials in an honest and candid fashion.

Section 42 – Legal Professional Privilege

- (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.*

The provisions of s42(1) were applied to information held in all three of the files you requested access to. The majority of the information withheld from these three files was covered by this exemption. This exemption was applied to withhold legal advice that was 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. I am satisfied that this exemption is engaged by certain information in these files.

Public Interest Test considerations

The exemption provisions of s27, s32, s35, s36 and s42 can be engaged by a public authority when complying with the duty laid out in section 1(1)(b) of the Act; to provide an applicant with the information that they have requested.

Under section 2(2) of the Act:

In respect of any information which is exempt information by virtue of any provision of Part II [of the Act], section 1(1)(b) does not apply if or to the extent that –

- a. the information is exempt information by virtue of a provision conferring absolute exemption, or*
- b. in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.*

The provisions of s27, s35, s36 and s42 do not confer absolute exemption and therefore require a Public Interest Test be conducted. Section 32(1) is an absolute exemption and, when engaged, there is no requirement to balance the public interest.

The Public Interest Test (PIT) is integral in the application of any of the 'qualified' provisions in Part II of the Act. Where a public authority is considering the use of one or more qualified provisions in response to a request for information, they must

conduct a PIT to balance the public interest considerations for and against the requirement of stating whether the information requested is or is not held.

In conducting a PIT, the “public interest” is not considered to be about that which is of interest to the public but what will be of greater good, if released, to the community as a whole - what is in the *best interest* of the general public if you will. It is on this premise that we conduct the Public Interest Test - the right to know must be balanced against the need to enable effective government and to serve the best interests of the public.

You may be aware that the FoI Act is applicant blind. This means that we cannot, and do not, request the motives of any applicant for information. We have no doubt the vast majority of applications under the act are laudable and proper. However, in providing material to one applicant, we are expressing a willingness to provide it to anyone in the world. This means that a disclosure to a genuinely interested and concerned applicant automatically opens it up to disclosure to anyone.

I have reviewed the comprehensive public interest considerations provided in the original response letter to you on the 17th July 2009 and I believe these considerations to be accurate and relevant to your request. They also evidence in considerable detail the potential harm and prejudice that could arise, and that they successfully balance the public interest arguments for and against the release of the relatively small amount of information that was redacted for the three files.

It is for this reason that I have decided not to reiterate or elaborate on these considerations as I consider that those provided in our substantive response to your request adequately balance the public interest consideration for all of the qualified exemption provisions. I also consider that these same considerations are pertinent at this time. On balance, the public interest still favours withholding the specific information to which these exemptions were applied.

However, given that most of the redactions to these files were concerning legal professional privilege, I have decided to expand on our previous considerations to help explain why we consider that the information exempt under this provision should be withheld.

Additional considerations regarding the engagement of s42(1)

The Home Office recognises the fact that openness in government increases public trust, and engagement. A move towards greater transparency in government is likely to increase public interest in the political process and encourage more people to become actively involved in politics and general policy development work. This would be a highly beneficial development, and would serve a clearly defined public interest.

There is an additional public interest in knowing that decisions made were done so on the basis of sound legal advice. The release of information which would demonstrate this would increase public confidence for the basis on which such decisions are taken and as such would be clearly beneficial to the wider public interest.

Further to our previous reference to the '*Bellamy v The Information Commissioner and the DTI*' Information Tribunal in our substantive response, it is important to stress that public authorities are entitled to give and receive legal advice without fear that that advice will be prematurely released into the public domain. The premature release of such advice would serve to prejudice this process in future by discouraging officials from requesting and sharing such advice where necessary. Such an outcome would clearly be detrimental to the interests of Her Majesty's Government and as such would not be in the public interest.

It is likely that legal advice given in one context will be helpful or relevant to subsequent issues. This means that in assessing the public interest in maintaining the LPP exemption it is necessary not only to consider the circumstances in which legal interests *relating to the current case* could be prejudiced but also to bear in mind that the public interest in protecting the confidential relationship between lawyer and client is a long term public interest *extending into the future* which could be damaged by individual disclosures.

It is also relevant that (subject to very limited exceptions), legal professional privilege can be maintained in proceedings regardless of the circumstances; in particular, there is no scope for the court in proceedings to decide that the privilege should be overridden because of a wider public interest in disclosure. This reflects the fact that there is considerable public interest in any party being able to communicate with its lawyers and prepare for litigation in the knowledge that those communications or preparations will not be disclosed.

ANNEX B – Your Right of Complaint

If you have any questions about this Internal Review, please feel free to contact me at your convenience and I will be happy to discuss your request and review with you.

Following this, and if you are still dissatisfied with this decision, you may make an application to the Information Commissioner for a decision on whether the request and this review have been dealt with in accordance with the requirements of the Act.

For information on how to make an application to the Information Commissioner's Office, please visit their website at <http://www.ico.gov.uk> or write to:

*Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF*