



# Home Office

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Mr Peter John  
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2 March 2010  
Our Ref: 12563

Dear Mr John

I am writing further to my previous e-mail, about your request for an internal review of our response to your Freedom of Information (Fol) request about documents acknowledged by the Director of Public Prosecutions to have been leaked to Damian Green MP by Christopher Galley. I am sorry for the delay in responding.

I have now completed the review. I have examined all the relevant papers, including the information that was withheld from you, and have consulted those involved in the provision of the original response. I have considered whether the correct procedures were followed and assessed the reasons why information was withheld from you. I confirm that I was not involved in the initial handling of your request.

I have decided that the original decision to withhold the information from you under the exemptions contain in sections 31(2)(b) and 36(2)(c) of the Fol Act was correct. I have little to add to the original response, in which the use of these exemptions was explained very thoroughly. However I clarify, given points raised in your internal review request, issues around their application. In relation to section 31(2)(b) you made a point about the investigation into Mr Galley's conduct having been concluded. Irrespective of this the exemption applies given the likelihood of harm being caused to any future investigations of a similar nature.

You also made reference to Director of Public Prosecutions' (DPP) comments about the sensitivity of the leaked documents. The DPP's view that the information was not "highly" sensitive does not mean that it was trivial, and does not weaken our application of section 36(2)(c) in this case for the reasons given previously.

In addition I have decided to withhold the names of junior officials referred to in these documents under section 40(2) of the FoI Act on the basis that disclosure would constitute a breach of the Data Protection Act. A full explanation of the application of section 40(2) can be found at Annex A.

This completes the internal review process by the Home Office. If you remain dissatisfied with the response to your FoI request the Information Commissioner, with whom I understand you have already been in touch about this case, will consider it further.

Yours sincerely

Diana Pottinger

**Information Access Team**

## **Annex A Section 40(2)**

### *The exemption*

The names of individual officials contained in other information relevant to this request are those people's personal data. Personal data can only be disclosed where release is compatible with the provisions of the Data Protection Act (DPA). Unless disclosure can be made in compliance with the provisions of the DPA it is exempt from disclosure under the exemption contained in section 40(2) of the FoI Act.

Junior officials working for the Home Office have no expectation that their names will be released into the public domain through their work for the department, where their roles are not public facing. More senior officials have more of an expectation that their identities will enter the public domain given their seniority, and the fact that their individual involvement in a subject is more relevant than that of one of a number of more junior staff. For this reason the disclosure of junior officials' names is "unfair" within the meaning of the DPA, and is therefore not compliant with the first data protection principle's requirement that all processing of personal data must be "fair and lawful". Therefore section 40(2) applies to the names of junior (but not senior) officials.

## **Annex B – Section 36(2)(c)**

### *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-

(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.'

### *Engagement of the exemption*

The release of information which has been acknowledged as being leaked would result in prejudice to the effective operation of the Department. Indeed in his decision

the DPP recognises the damage that leaks in general do to the functioning of a government department. In paragraph 30 the DPP states:

*'The integrity of the Home Office arrangements for handling restricted and/or confidential information was breached. That caused damage to the proper functioning of the Home Office, which was exacerbated by the prolonged period of the alleged leaks, the on-going relationship between Mr Galley and Mr Green and the sensitivity of the material to which Mr Galley had access.'*

The release of the requested information would serve to partly legitimise the actions of those involved in the leaking of information. The series of leaks alluded to the original request had the potential to damage the integrity of the Department and its ability to fulfil its core objectives. The documents that were leaked were prepared by officials for Ministers. They contained a free and frank appraisal of a variety of areas related to the remit of the Home Office. They were prepared in the expectation that the information contained within them would not be prematurely (and certainly not illegitimately) released in to the public domain. It is vital for the proper functioning of government that Ministers are able to seek free, frank and candid advice from officials, and that this can be provided in an environment in which proper debate and discussion can be had. In essence, Ministers and officials need to have the private space to 'think the unthinkable'. It is only through such debate that potential impacts of policy decisions can be properly weighed up. This series of leaks adversely affected the operation of the space in which such a debate could take place, and thereby impeded the proper functioning of the Home Office.

The release of the six documents relevant to this request would have the clear effect of legitimising the actions of those who leaked the information. Such a release may serve to encourage those who may be thinking of leaking information to do so. The unauthorised release of government information can damage confidence in government and its ability to fulfil its priorities.

The outcomes described above would also affect the reputation and impartiality of the civil service. The impartiality and quality of advice to Ministers is a hallmark of the British civil service. There are well established procedures, laid out in the civil service code, for officials to follow if they have a grievance or concern. The illicit leaking of information can never be condoned and will risk damaging the proper functioning of HMG

### *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. Such an outcome is therefore likely to result in a better quality of debate, which would be clearly beneficial to government and therefore in the wider public interest.

### *Considerations Favouring Non-Disclosure*

The considerations favouring disclosure must however be balanced against those considerations favouring non-disclosure. I have outlined above the harm that would be caused by disclosure and which is, subject to your agreement, sufficient to engage the exemption in section 36(2)(c) of the FOI Act. These include the need to protect the integrity and the effective operation of the Department. Additional considerations include the need to prevent the legitimisation of actions which are damaging to the integrity of the Department and the public's confidence in its work.

The release of this information would serve to partly legitimise the actions of those involved in the leaking of information, and are therefore may encourage further leaks. It is not in the public interest, given the damage that leaks cause (and that the DPP acknowledged that these particular leaks did cause) to encourage or legitimise the practice of leaking information. Even though the DPP stated that the leaked documents in this case were not "highly" confidential that is not to say that the information within them was not worthy of protection. It was certainly in no way trivial and the leaking of information of this type was harmful to the effective conduct of public affairs.

For the reasons described above I am satisfied, that the exemption is engaged, that the public interest in non-disclosure currently outweighs the public interest in disclosure of this information.