



# Home Office

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M Bimmler  
[request-22262-7dd1cc86@whatdotheyknow.com](mailto:request-22262-7dd1cc86@whatdotheyknow.com)

6 April 2010

Ref: CR13266

Dear Mr Bimmler

**Freedom of Information request (our ref. 13266): internal review**

I am writing further to my e-mail of 9<sup>th</sup> February, regarding your request for an internal review of our response to your Freedom of Information (Fol) request about the Home Secretary's decision to ask Professor Nutt to stand down as chairman of the ACMD.

I have now completed the review. I have examined all the relevant papers, including the information that was withheld from you, and have consulted the policy unit which provided 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.

My findings are set out in the attached report. My conclusion is that the original response was correct.

This completes the internal review process by the Home Office. If you remain dissatisfied with the response to your Fol request, you have the right of complaint to the Information Commissioner at the following address:

The Information Commissioner  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire SK9 5AF

Yours sincerely

**Diana Pottinger**  
**Information Access Team**

Internal review of response to request under the Freedom of Information (Fol) Act 2000 by Mr Bimmler (reference 13266)

**Responding Unit: Drug Strategy Unit**

**Chronology**

Original Fol request:	30 October 2009
Interim response/PIT letter	30 November 2009
Drug Strategy Unit response:	27 January 2010
Request for internal review:	28 January 2010

**Subject of request**

Mr Bimmler asked for:

- The letter to Professor Nutt asking him to stand down as chair of the ACMD
- The response letter from Professor Nutt
- All internal drafts of this letter and all memoranda, notes, e-mails and other documents which were produced in connection with the preparation of this letter.
- Any internal advice which suggested that the Home Secretary should ask Professor Nutt to resign

**The response by Drug Strategy Unit**

The Drug Strategy Unit provided Mr Bimmler with a link to the information requested in questions 1 and 2, which is in the public domain. Drug Strategy Unit confirmed that the information requested in was held by the Home Office, but informed the applicant that it had decided that the information requested in questions 3 and 4 was exempt by virtue of section 36(2)(b) and (c), and 42 of the Freedom of Information Act.

**Mr Bimmler's request for an internal review**

Mr Bimmler has requested an internal review into the public interest test on questions 3 and 4.

**Procedural issues**

Drug Strategy Unit confirmed that the information requested in was held therefore section 1(1)(a) of the Act was complied with. This is the part of the Act which requires public authorities to say whether or not they hold the requested information.

A response was not issued within the 20 day deadline. Section 17 of the Act allows departments to extend the deadline for a reasonable period of time beyond 20 days to consider the public interest if a qualified exemption is under consideration. In this case, letters were sent on 30 November, and 16 December extending the deadline to consider the public interest test.

The letter sent on 30 November provided the applicant with a link to the information requested in questions 1 and 2, informed him that more time was required to consider the public interest test, and gave him a date by which he might expect a response. A further letter was sent on 16<sup>th</sup> December, giving a new deadline of 20 January.

Two qualified exemptions were being considered, section 36(2)(a) and (c) and 42, therefore the public interest extension was applied correctly and, although the final response was issued after the second deadline, this was within 40 days of the original target date, which would constitute a reasonable amount of time to consider the public interest test. Therefore section 10 of the FOI Act was complied with.

A clear explanation of why sections 36 and 42 of the Act are engaged, and consideration of the public interest in applying section 36(2)(b) and (c), and 42 were included in the response letter. Therefore the response complied with the requirement in section 17 of the Act to name the exemptions being relied on, and to explain their application.

### **Consideration of the response**

The Drug Strategy Unit argued that the draft letters, emails and submission relating to the decision to ask Professor Nutt to stand down were exempt by virtue of 36(2)(a) and (c) because disclosure would lead to civil servants being under pressure not to challenge ideas, which would lead to poorer decision making, and 42 because there is an in-built public interest in maintaining legal professional privilege to ensure that lawyers are able to present the full picture, including arguments for and against the final conclusion.

As section 36(2)(a) and (c) and section 42 are qualified exemptions, they can only be applied where the balance of the public interest favours disclosure. Mr Bimmler has challenged Drug Strategy Unit's conclusion that, in this case, the balance of the public interest favours applying the exemptions.

Drug Strategy Unit have acknowledged that there is some public interest in disclosure, as this is a high profile subject, and openness would aid public debate on the subject. However, I concur with their conclusion that the public interest falls in favour of maintaining the exemptions, because of the inhibiting

effect disclosure would have on the decision making process, and the ability of Home Office Legal Advisers to offer full and impartial advice.

## **Conclusions**

- Section 10 was complied with – an extension was correctly used in order to consider the public interest test on qualified exemptions, and a full response was issued within a reasonable time
- Section 1(1)(a) was complied with – applicant informed that the requested information was held.
- Section 17 complied with – applicant was told which exemptions apply and why.
- The exemptions in sections section 36(2)(a) and (c) and section 42 were applied correctly

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