

interest in maintaining the exemption). Finally even if the notes don't reveal any new content, there may still be a public interest in disclosure in order to demonstrate that about removal of "suspicion of spin").

UPDATE: this point is now covered in the following external guidance: *Information in the public domain*

- **The public interest in maintaining the exemption for information in a raw form diminishes more slowly than for information in a finished form because the undiminished** - Firstly the comments above about mitigating the effect of misleading the public will be relevant here. Secondly, whilst in many cases the potential to mislead may not always be the case.

Where the potential to mislead relates to problems with mis-understanding abbreviations or shorthand terms used within the notes, then it may well be that the potential to undiminished over time. However, where concerns about misleading relate more to the public being misled because they won't fully understand the complexity of the issue have been made, then the passage of time may actually act to reduce the potential for misunderstanding, because it brings with it the benefit of hindsight. For example the about time limits for retention of suspects without charge now than it did 4 years ago. In other words the potential for the public to be misled by the release of "unconsider because the public is inherently, with the benefit of hindsight, more able to put the information into some sort context itself. This will need to be considered in the context

- **There would be a significant inhibitory effect on meeting attendees if it were known that hand written notes might be disclosed.** The Tribunal wasn't explicit inhibitory effect on the frankness of debate, or an inhibitory effect on the quality of the note taking, or on both (both had been argued by the MOD) .

In terms of the effect on the frankness of debate, case officers should first consider LTT130 on the "chilling effect". Whilst the Tribunal's comments in Evans suggest some a simply because of the "raw notes" form of the information, the Commissioner would generally be cautious about arguments which only consider the form, without giving du information. The pure "raw notes" argument would be that a chilling effect would occur just because raw notes have been released, rather than because of the individual cc Commissioners view (in line with LTT130) is that the wider or more general the effect being argued the more difficult the argument will be to sustain, and that a likely chilli particular information in question would need to be demonstrated. (see also comments below on *Cabinet Office v the Information Commissioner & Lamb*)

UPDATE: this point is now covered in the following external guidance: *Government policy (section 35), Prejudice to the effective conduct of public affairs (section 36), and 12(4)(e)*

In terms of any inhibitory effect on note keeping, the Commissioner general position is as set out in LTT61 - that record keeping is a staff management matter, and that argumen in the public interest test. What may be particularly relevant to "aide memoire" notes is not just whether any inhibitory effect would occur, but also, taking into account the type would actually impact on the interest being protected by the exemption claimed.

For example, where notes have been made solely to act as an "aide memoire" for the author, and do not feed into any policy making deliberations, or policy formulation work (sur inhibitory effect on the author might have little or no impact on the effective formulation and development of government policy or the effective conduct of public affairs (s35 cou there might be minimal impact on the formulation and development process the information could still "relate to" it) However, if it could be demonstrated that less complete not inadequate formal minutes, or agreed actions not being followed up, then a likely prejudice to the effective conduct of public affairs might be said to have been shown. Similarly, so that they can act as a fuller version of events (maybe attributing comment to individuals) that may be needed for a future business need, then there may be a prejudice to the future business need cannot be met because of the inadequacy of the note taking. These will be considerations to be taken into account in the circumstances of the case, and alw to expect staff to take adequate notes as part of their job, (and in line with the authority's records management policies and the s46 code) regardless of any prospect of future dis

Cabinet Office v the Information Commissioner & Lamb

In *Lamb v the Information Commissioner and the Cabinet Office* the appeal concerned both the official minutes and the hand written notes of Cabinet Minutes at which the decisio hand written notes were referred to as the "Additional Material" and comprised the Cabinet Secretaries' notebooks .

The Commissioner accepted that disclosure of the Cabinet Secretaries' notebooks "would be likely to have a greater impact on debates within Cabinet, and the manner in which a case of the minutes themselves" and the Tribunal agreed. However, it should be noted that the Commissioner's submissions closely related these effects to the specific content of relying on general arguments about the notes being in a raw form.

In particular the Commissioner's open submissions (which are not set out in full in the Tribunals decision) took account of the extent to which the notes might attribute comments about the language and mood of the meeting which might not be evident in the formal minutes and how revealing such matters might affect the frankness of debate and note tak responsibility (see also LTT132) . In this case, he considered that the overall balance of all the public interest factors lay in favour of maintaining the exemption for the hand writt

It should be noted that it is such information specific reasons that the Commissioner considers to be relevant, rather than the more general point of the Tribunal that "the manner contemporaneous notes is likely to be idiosyncratic and could well give a false impression as to the weight and importance that should be attributed to a particular part of the deb expressed" The Commissioner does not accept that an idiosyncratic style of note-taking is in itself an argument for maintaining s35 or s36, and refers back to the comments abou creating a false impression by providing explanation or context.

Ultimately, the Tribunal upheld the Commissioner decision that the Cabinet Secretaries' notebooks should not be released and commented that "this is not to say that circumstan appropriate to disclosure informal notes, but we are unanimous in our conclusion that this is not such a case and the no disclosure of the Additional Material should be made"

The Commissioner acknowledges the principle that Cabinet Secretaries' notebooks have been closed for longer than Cabinet minutes (40 years rather than 30 years) but consid any decision.***

EIR

Whilst the arguments in this LTT may have some relevance to particular EIR cases, it cannot just be assumed that the line equally applies to regulation 12(4)(e).

Regulation 12(4)(e) covers internal communications, and our line (as per LTT104) is that where information is recorded simply to be used by its author, for example as an aide m communication, but that where the record is communicated to others, or placed on file to be referred to by others it will be. This regulation will not therefore necessarily even be information. *N.B. This point has been developed. The new position is now covered in the following external guidance - Internal communications (regulation 12(4)(e)).*

Footnotes

*This LTT concentrates on the s35 and s36 exemptions, and information that, if it where not environmental, would fall under 35 or s36.

** The recent "review of the 30 year rule" discusses the issue of record keeping and makes the following recommendations (amongst others). "We recommend that the govern whether it needs an amendment to include an explicit injunction to keep full, accurate and impartial records of government business" (para 8.4). "We recommend that the govern political records are not exempt from the Public Records Act and the FOI Act; that as temporary civil servants they, too, are under a duty to keep a full record of their deeds and c these matters on the part of ministers departments or special advisers is removed" (Para 8.10)



*** Useful background on how the position in relation to Cabinet Secretaries' notebooks has changed, generally in favour of earlier disclosure, can be found on the national archiv

Source	Details
	Evans / MOD (26 October 2007)
IT	Lamb / Cabinet Office (27 January 2009)
	Guardian & Brooke /BBC (8 January 2007)
Related Lines to Take	
LTT43, LTT66, LTT104, LTT130, LTT131, LTT132, LTT229	
Related Documents	
EA/2006/0064 (Evans), EA/2006/0011& 0013 (Guardian Brooke), EA/2008/0024 & 0029 (Lamb), review of 30 year rule, Questions about Cabinet Secretaries notebooks – natio	
Contact	LS
Date	11/04/2013 Policy Reference

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