FOI/EIR FOI/EIR Section/Regulation 535, s36 Issue Public Interest Test for "raw notes" and "aide memoire notes"

12(4

Line to take:

N.B. As part of the guidance review some of the content of this line to take is now covered in external guidance. In some instances new policy positions will be reflected in the guidance and where this is the case this will be highlighted in the existing line. All other sections of this line to take remain

There is no in-built weight in favour of maintaining the exemptions at section 35 and section 36 simply because the document in question is a "raw note" or an "aide memoire note".

General symmets that there is a higher public interest in maintaining the exemptions at \$25 and \$36 in relation to "raw notes" or information recorded to act as a personal "aide memoire" should be treated with some caution. There are counter-arguments to this view, and any decision must to contract information to the contract of the

Evans v the ICO and the Ministry of Defence – the Tribunal's comments

In Evans v the Information Commissioner and Ministry of Defence the Tribunal considered the application of \$36(2)(b)(ii) - inhibition to the free and frank exchange of views for the purposes of deliberation - to the hand written notes taken of a ministerial meeting. It had been envisaged that mor

Although this case considered the public interest in relation to withholding the hand written notes of a meeting under s36(2)(b)(ii), similar arguments about such information could be put forward under the other limbs of s36, and under s35. They could also potentially be made in relation to othe

In considering the public interest test the Tribunal made the following comments about the form of the recorded information which they regarded as "a significant inhibition

There is a considerable public interest in seeing a formal record of the meeting. But the Private Secretary's contemporaneous, handwritten, illegible and incomplete note is not such a record.—Read by the Secretary who made the record, the single word may trigger a recollection of the context

The public interest from disclosure of the raw data is greatly reduced by the lack of intelligibility of much of the recorded information, at least to a reader who was not present at the meeting; and by the significant inhibitory effect on those attending the meeting of publication of raw notes" (pair

The question of timing of the request is also affected by the raw nature of the data. The public interest in not disclosing information in a raw, unfinished format is less likely to diminish quickly with the passage of time, since the potential to mislead would remain undiminished. Moreover the pu

The ICO considers that whilst there is some ment in the Tribunals comments there are also relevant counter arguments, that need to taken into account when considering the public interest test in the particular circumstances of any case. A blanket approach to aide memoir type information sh

"Aide memoire" notes

Before considering the arguments and counter arguments arising from the Evans case, it may be useful to think about what is meant be the term "aide memoire", the different types of notes that may be covered by this term, and the purposes for which such notes may be made. It should be not

Notes made for personal use only - For example where a meeting attendee makes their own note of a meeting to act as their own personal reminder of the salient points, or to prompt or assist them in any actions they may need to take as a result of the meeting. Here the purpose of the note is

Notes made for wider use - For example where a note of a meeting or telephone conversation is made and placed on a case file, or personnel file, or where informal agenda notes are circulated to attendees prior to a meeting. Here the note may act partly as an aide memoir to the note taker, but

Notes made for the sole purpose of producing a separate more formal record – For example the contemporaneous, hand-written note of a meeting that a "minute taker" may take, and from which formal minutes are then produced. Here there is no suggestion that the note needs to be retained

Notes made to serve the dual purposes of producing a separate formal record, and acting as a distinct or more complete record in their own right – For example, sometimes a note of a meeting may be made partly to assist in the production of a formal minute, but also with the intention of retain

Typed (rather than hand written) notes - Although in many cases aide memoire notes will be hand written notes, this doesn't have to be the case. For example, contemporaneous notes could be made straight onto a laptop, or aide memoir notes could be typed up from memory immediately aft

Evans v the ICO and the Ministry of Defence – the counter arguments

The ICO has considered the various arguments made in the Evans case, bearing in mind the above discussion on the nature of "aide memoire" notes, and has the following comments. Again it should be noted that although the Evans case provided the starting point for these considerations, the d

"Aide memoire" notes are an incomplete record and disclosure might mislead the public - The counter-argument to this would be that FOIA provides a right of access to all "recorded information" not just to accurate or complete information and that although there may be a public interest in no Where the information is meaningless rather than misleading, whilst this might reduce the public interest in disclosure it would also mean that there is unlikely to be any adverse effect from disclosure.

Also, whilst an "aide memoire" note is unlikely to ever be a fully complete record, how complete it is will vary from case to case depending upon the individual note taker (styles may vary from recording odd words here and there to attempting to record everything verbatim).

In light of the above the ICO considers that a public authority would need to provide strong arguments about why the effect of misleading the public could not be effectively mitigated against in any particular case for this argument to have much weight. Factors that might have some weight in this

UPDATE: this point is now covered in the following external guidance: The public interest test

The public interest may be met by publication of the official record of the meeting provided in the formal minutes - The ICO response to arguments about information already in the public domain will generally be to consider whether the actual information in question, rather than other similar or

Specifically in relation to "aide memoire" type information a number of issues are relevant. In situations where the only record of a meeting, discussion or similar is the "note" then it could be argued that the public interest in disclosure increases because no official record exists. Even where a for 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 diminished some sowly than for information in a finished form because the potential to mislead would remain undiminished - Firstly the comments above above mitigating the effect of misleading the public will be relevant to mislead would remain undiminished over time. However, where concerns about misleading relate more to the public will be relevant to mislead in this way remains undiminished over time. However, where concerns about misleading relate more to the public above. The relation is a significant inhibitory effect on meeting attendees if it were known that hand written notes might be disclosed. The Tribunal wasn't explicit here about whether it was referring to an inhibitory effect on the frankness of debate, or an inhibitory effect on the relations of the public above. The relation is the relation to the effect on the frankness of debate, or an inhibitory effect on the relations of the public above. The relation is the relation of an inhibitory effect on the relations of the information, the Commissioner would gener upon to now covered in the following external guidance: Government pointy (section 35), Projudice to the effective conduct of public affirs (section 50, and internal communications (seguitators 124(e))

In terms of any inhibitory effect on note keeping, the Commissioner general position is as set out in LTTG1 - that record keeping is a staff management matter, and that arguments of this nature should be given little weight in the public interest test. What may be particularly relevant to "aide mer
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 (such as drafting a new policy), then any inhibitory effect on the author might have little or no impact on the effective for

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 decision to go to war in iraq was discussed. The hand written notes were referred to as the "Additional Material" and comp.
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 record of them was maintained than in the case of the minutes themselves" and the Tribunal agreed. However, it sh 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 to individual attendees and reveal something about the language and mood of the meeting which might not be evide
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 in which an individual takes contemporareous notes is likely to be idiospicated, and could well give a false impression
Ultimately, the Tribunal uphed the Commissioner decision that the Cabinet Secretaries' notebooks should not be released and commented that "This is not to say that circumstances will never arise when it may be appropriate to disclosure informations, but we are unanimous in our condustion
The Commissioner adnowledges: the principle that Cabinet Secretaries' notebooks have been closed for longer than Cabinet minutes? 40 years rather than 30 years but this should not be eleterminative in any decision.***

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 memoire then it will not be an internal communication, but that where the record is communicated to others, or placed or 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 government revisit the Civil Service Code to see whether it needs an amendment to include an explicit injunction to keep full, a

*** 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 archives website.

PREVIOUS / NEXT

 Source
 Details

 IT
 Evans / MOD (26 October 2007)

Related Lines to Take
LTT46, LTT30, LTT30, LTT330, LTT331, LTT322, LTT29
EA/2006/0064 (Evans), EA/2006/00118 0013 (Guardian Brooke), EA/2008/0024 & 0029 (Lamb), review of 30 year rule, Questions about Cabinet Secretaries notebooks – national archives
Contact
Date

Lamb / Cabinet Office (27 January 2009)

Guardian & Brooke /BBC (8 January 2007)

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