



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 diminishes more slowly than for information in a finished form because the potential to mislead would remain undiminished - Firstly the comments above about mitigating the effect of misleading the public will be relevant. 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 mislead in this way remains undiminished over time. However, where concerns about misleading relate more to the public interest in the disclosure of information, then 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 here about whether it was referring to an inhibitory effect on the frankness of debate, or an inhibitory effect on the quality of the notes taken. 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 acceptance of an inhibitory effect simply because of the "raw notes" form of the information, the Commissioner would generally accept that there is an inhibitory effect. 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 internal communications (regulation 12(4)(e)). In terms of any inhibitory effect on note keeping, the Commissioner's general position is as set out in LTT61 - 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 memoire" is the fact that, 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 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 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 contemporaneous notes is likely to be idiosyncratic and could well give a false impression of the substance of the discussion". Ultimately, the Tribunal upheld the Commissioner's 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 disclose informal notes, but we are unanimous in our conclusion that the Commissioner acknowledges the principle that Cabinet Secretaries' notebooks have been closed for longer than Cabinet minutes (40 years rather than 30 years) but considers that this should not be determinative in 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 memoire then it will not be an internal communication, but that where the record is communicated to others, or placed on a system, it will be an internal communication.

Footnotes

\*This LTT concentrates on the s35 and s36 exemptions, and information that, if it were not environmental, would fall under s35 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, accurate and up to date records of all decisions and actions taken by civil servants." \*\*\* 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.

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 – national archives  
Contact  
Date

Lamb / Cabinet Office (27 January 2009)  
Guardian & Brooke /BBC (8 January 2007)

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