



**IN THE FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
(INFORMATION RIGHTS)**

**Appeal No: EA/2014/0320**

**ON APPEAL FROM:**

**The Information Commissioner's Decision Notice No: FS5051570  
Dated: 2 December 2014**

**Appellant: John Cross**

**First Respondent: The Information Commissioner**

**Second Respondent: The Cabinet Office**

**Heard at: Field House**

**Date of Hearing: 13/14 October 2015**

**Before**

**HH Judge Shanks**

**and**

**Henry Fitzhugh and Narendra Makanji**

**Representation:**

**Appellant/First Respondent: Did not appear**

**Second Respondent: Colin Thomann**

**Date of decision: 7 January 2016**

**Subject matter:**

Freedom of Information Act 2000

s.41	Absolute exemption: <i>Confidential information</i>
s.23	Absolute exemption: <i>Information supplied by, or relating to, bodies dealing with security matters</i>
s.37(1)(a) to (ad)	Absolute exemption: <i>Communications with the Sovereign, Heir to Throne and next in line</i>
s.40	Absolute exemption: <i>Personal data</i>
s.41	Information provided in confidence
s.35(1)(c)	Qualified exemption: <i>Advice by Law Officers</i>
s.37(1)	Qualified exemption: <i>Communications with some members of the Royal Family</i>
s.35(1)(a)	Qualified exemption: <i>Formulation or development of government policy</i>
s.38	Qualified exemption: <i>Health and safety</i>
s.27	Qualified exemption: <i>International relations</i>
s.42	Qualified exemption: <i>Legal professional privilege</i>
s.35(1)(b)	Qualified exemption: <i>Ministerial Communications</i>
s.24	Qualified exemption: <i>National security</i>
s.35(1)(d)	Qualified exemption: <i>Operation of Ministerial private office</i>

**DECISION OF THE FIRST-TIER TRIBUNAL**

For the reasons set out below the Tribunal allows the appeal in part and issues the following substituted decision notice.

**SUBSTITUTED DECISION NOTICE**

**Public authority:**                      **The Cabinet Office**

**Name of Complainant: John Cross**

**The Substituted Decision**

The Cabinet Office did not deal with Mr Cross's request for information made on 4 November 2012 in accordance with the requirements of FOIA in that it ought to have supplied him with a copy of Chapters 1 to 10 and 12 of the 1992 Precedent Book redacted in accordance with the Annex hereto.

**Action Required**

The Cabinet Office is required to supply to Mr Cross with copies of Chapters 5 to 10 and 12 of the Precedent Book redacted in accordance with the Annex by 16.00 on 29 January 2016

HH Judge Shanks

7 January 2016

## **REASONS FOR DECISION**

### **Introduction**

1. This decision follows that issued by the Tribunal in this case on 14 August 2015 and should be read with it.
2. Following that decision a hearing was held on 13/14 October 2015 at which the Tribunal considered in detail the Cabinet Office's proposed redactions to the Precedent Book based variously on FOIA sections 23 and 24 (National security), 27 (International relations), 35 (Formulation of government policy etc), 37 (Communications with Her Majesty), 38 (Health and safety), 40(2) (Personal information), 41 (Information provided in confidence), and 42 (Legal professional privilege). These proposed redactions were set out in a closed schedule which cross-refers to tabs in copies of the full unredacted Precedent Book which were supplied to the Tribunal.
3. It is right to record at the outset that, after rather a false start, the Cabinet Office has been extremely helpful to the Tribunal in this case and has taken active steps to see that Mr Cross was provided with as much information as fairness dictated. This is we suspect in large measure due to the work of Mr Thomann who was instructed by the Cabinet Office after our earlier decision and for whose contributions at the hearing we are very grateful. We are also very grateful for the helpful and frank evidence given in the course of the hearing by Mr Smethurst and by Helen Ewen, an official in the Propriety and Ethics Team at the Cabinet Office.
4. The Information Commissioner and Mr Cross not unreasonably chose not to attend the hearing. We were invited by Mr Thomann to consider whether it was right to proceed without Mr Cross and on consideration we were of the view that it was indeed right to proceed. We note that after our earlier decision Mr Cross was supplied with a copy of the closed schedule (excluding the summaries of the text), with the

chapter headings for the Precedent Book and with the full text of Chapters 1 to 4. Following the hearing on 13/14 October, he was also supplied with a detailed note prepared by Mr Thomann giving him as much information as possible about what happened at the hearing (most of which was necessarily closed). Following that, all parties put in further written submissions, resting with those from the Cabinet Office dated 11 November 2015.

### **Our approach on this part of the appeal**

5. The Information Commissioner decided in his notice dated 2 December 2014 not only that the Cabinet Office was entitled to withhold the whole Precedent Book on the basis of section 22 but also that they were entitled to rely on sections 35, 37 and 41 to withhold it. However, it is not clear from the decision notice which parts of the Precedent Book the Commissioner considered to be covered by these exemptions or whether he was provided with the Precedent Book and the proposed redactions supplied to us. Since we have power to review all the facts and Mr Cross invites us to reach our own views on the disputed information we have considered the whole matter afresh having regard to the Precedent Book, the redactions proposed by the Cabinet Office based on the exemptions now relied on and the evidence and submissions presented to us by the parties.
  
6. We first consider the Precedent Book itself and the public interest in its disclosure, then the applicability of the specific exemptions relied on and then, in an Annex, we address each of the proposed redactions in the light of these considerations.

### **The Precedent Book**

7. We have already described the Precedent Book and its purpose at paragraphs 1 to 3 of our decision dated 14 August 2015. The chapter headings of the Precedent Book are as follows:
  - 1 Introduction Collective Responsibility**
  - 2 The Cabinet**
  - 3 Cabinet Committees**

- 4 Cabinet Documents**
- 5 General Elections, Changes of Administration and Ministerial Changes**
- 6 Ministers' Private Interests**
- 7 Speeches, Broadcasts and Writings by Ministers**
- 8 Constituency and other miscellaneous matters**
- 9 Appointments by Ministers**
- 10 Memorial and other services**
- 11 Relations with Buckingham Palace**
- 12 Contacts with the Opposition.**

As we mentioned in our earlier decision the Book contains many historical notes and examples of past practice. Save in relation to Chapter 10 which was revised in 2005, all these notes and examples relate to events pre-dating 1993 (ie at least 20 years before Mr Cross's request for information) and many are of some antiquity and/or relate to individuals who are now dead.

8. As we have also mentioned, in our view there is a very clear and strong public interest in the disclosure of the contents of the Precedent Book: it gives a very valuable insight into the workings of government and the constitution and is also of considerable historical interest. We also regard it as generally desirable that in so far as possible redactions are kept to a minimum and the public is able to see the document as a whole.

### **Exemptions relied on**

#### ***Section 35 (Formulation of government policy, etc)***

9. Section 35 is relied on by the Cabinet Office in support of a large number of proposed redactions in Chapters 5, 7 to 10 and 12. The relevant parts of section 35 provide as follows:

**(1) Information held by a government department ... is exempt information if it relates to-**

- (a) the formulation or development of government policy**

**(b) Ministerial communications**

**(c) the provision of advice by any of the Law Officers or any request for the provision of such advice**

**(d) the operation of any Ministerial private office.**

Section 35 provides for “qualified exemptions” so that only if the public interest in maintaining the relevant exemption outweighs the public interest in the disclosure of the information does it entitle the government department to withhold the information. The relevant public interest in maintaining the section 35(1)(a) exemption is the maintenance of good and efficient government (and in particular the need for a “safe space” in which government policy can be discussed and developed) and that in maintaining the section 35(1)(b) exemption is the convention of collective Cabinet responsibility. Section 35(1)(c) only arises in a few cases and really overlaps with section 42 (Legal professional privilege) and section 35(1)(d) is only relied on in relation to Chapter 9 and adds little or nothing to sections 35(1)(a) and (b) which are also relied on in relation to that Chapter.

10. Although the Cabinet Office only rely on section 35(1)(a) and (b) to withhold parts of the Precedent Book, we accept that the whole contents of the document relate to “... the formulation or development of government policy” and “Ministerial communications”. However, the “government policy” concerned is not normal everyday government policy; rather it relates to the overall constitutional arrangements of the country as developed over the long term. And the “Ministerial communications” are communications which took place at least 20 years ago and did not necessarily involve the convention of collective Cabinet responsibility.
11. The Cabinet Office sought to persuade us, in particular through the evidence of Ms Ewen, that disclosure of much of the redacted material would have a “chilling effect” on the on-going debates about the issues addressed in the Precedent Book. Given the nature of the issues addressed in the Precedent Book and the long time scale over which they arise, we do not think, with due respect to the forceful and sincere evidence of Ms Ewen, that this argument carries great weight.

12. Further, the fact that the information concerned relates to events taking place many years ago tends in itself to substantially reduce the weight of the public interest in maintaining these exemptions. In this context we think it is also relevant to note section 63(1) of FOIA which disapplies sections 35 in the case of a “historical record”. The effect of this section is that if in 2012 Mr Cross had sought contemporaneous records relating to specific events predating 1982 (ie thirty years before) no reliance could have been placed on section 35 or 42 in relation to that information. Furthermore, by a legislative change made by the Constitutional Reform and Governance Act 2010 which came into effect on 1 January 2013 the thirty year period is in stages being reduced to twenty years. These provisions in our view provide a clear “legislative steer” in relation to the public interest debate in this case.
13. In general, with the particular exception of two annexes to Chapter 10 and two passages in Chapter 12, we have reached the view, taking all the circumstances into account, that the public interest in maintaining the section 35 exemptions did not outweigh the public interest in disclosure of the relevant information.

***Section 37 (Communications with Her Majesty, etc)***

14. Section 37(1)(a) is relied on in support of a large number of proposed redactions in Chapter 5 and (along with section 37(1)(ad)) in support of the redaction of the whole of Chapter 11. The relevant parts of section 37 provide:

**(1) Information is exempt information if it relates to**

**(a) communications with the Sovereign ...**

**(ad) communications with the Royal Household (other than communications which fall within ... paragraph (a) ...)**

Section 37(1)(a) (although not section 37(1)(ad)) provides an absolute exemption so that if it applies the information can be withheld and no question of any public interest balance arises.



15. We accept Mr Thomann’s submission that the exemption covers the content of all types of communications with the Sovereign and information regarding the fact of such communications including the “when, where, how, by whom and to whom” of them. However, there clearly has to be some limit on the concept and not every single reference, however tenuous, involving a communication with the Sovereign is going to come within the exemption: for example, we were of the view that the redacted sentence at flag O in Chapter 5, which referred to the “Audience” in the context of the timing of informing opposition leaders of an election, did not “relate to” a communication with the Sovereign.
16. Save in one or two cases in Chapter 5 (including the example we cite above), we accept that these exemptions are properly claimed and, since section 37(1)(a) is an absolute exemption, the relevant redactions must be upheld.

***Section 41 (Information provided in confidence)***

17. Section 41 provides so far as relevant:

**(1) Information is exempt information if**

- (a) it was obtained by the public authority from any other person ... and**
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.**

The exemption is an absolute one although public interest issues can arise in considering whether any disclosure would constitute a breach of confidence.

18. The Cabinet Office has claimed this exemption (along with the section 40(2) exemption) in relation to a number of proposed redactions from Chapters 5, 6, 7 and 8 of the Precedent Book. In general the passages in question describe advice given to Ministers or their relatives who are still alive about proposed actions of theirs and we think it can properly be inferred that the advice was based on information supplied by them in confidence for the purpose of obtaining that advice and that disclosure of the relevant passages would have the effect of disclosing the information supplied in

confidence. *Prima facie* the disclosure of the redacted passages would therefore constitute actionable breaches of confidence.

19. However, given that many of the passages which the Cabinet Office proposed to redact on the basis of section 41 did not reflect in any way badly on those seeking advice (indeed, often the reverse) the Tribunal raised the issue of whether it was a necessary ingredient of an actionable breach of confidence for there to be “detriment” to the claimant. Mr Thomann referred us to the well-known case of *Attorney General v Guardian Newspapers* [1990] 1 AC 109 and in particular to a passage in the speech of Lord Keith of Kinkel at p256B where he says: “... I would think it a sufficient detriment to the confider that information given in confidence is to be disclosed to persons whom he would prefer not to know of it, even though the disclosure would not be harmful to him in any positive way.” That would appear to answer this point.
  
20. The public interest can, as we have said, be relevant to the question whether there is an actionable breach of confidence but there was an issue between Mr Cross and the Cabinet Office as to its significance. Mr Cross referred the Tribunal to a passage in the judgment of the Court of Appeal in the case of *HRH Prince of Wales v Associated Newspapers* [2008] Ch 57 which suggested that today the relevant test was simply one of proportionality. However, we accept the Cabinet Office’s submission that in a case like ours where the putative breach of confidence is not one involving the exercise of a human right (in the *Prince of Wales* case, the right of a journalist to free speech) it remains the position that the public interest in disclosure must outweigh that in maintaining confidence, as confirmed in the *Attorney General v Guardian Newspapers* case.
  
21. Mr Cross refers in this context to the age of the information; that may be a relevant factor in assessing the public interest in disclosure. However, Ms Ewen made a strong case (which we accept) that it is important that Ministers continue to seek advice and that if there is a danger that their confidences will be breached at some stage in the future they will be discouraged from doing so. Taking that into account, and bearing in mind that the Cabinet Office have not sought to rely on section 41 in

relation to anyone who is dead, we do not think that the public interest in disclosure would outweigh that in maintaining confidence in these cases. We have upheld the redactions in almost all cases where section 41 was relied on.

***Section 40(2) (Personal information)***

22. Section 40(2) provides an absolute exemption in relation to information which constitutes “personal data” under the Data Protection Act 1998 if its disclosure would involve the contravention of a “data protection principle”. The relevant data protection principle is the first, which requires among other things that at least one of the conditions in Schedule 2 to the 1998 Act is met and, in the case of “sensitive personal data” that at least one of the conditions in Schedule 3 is also met. In FOIA cases, the most relevant condition likely to be met in Schedule 2 is para 6(1) which requires the disclosure to be “... necessary for the purposes of legitimate interests pursued by the ... parties to whom the data are disclosed [in this context generally the public at large], except where the [disclosure] is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.”

23. In almost every case where the Cabinet Office have cited section 41 they have also cited section 40(2) as a ground for redaction. Given the nature of the information relating to Ministers and their relatives and that the Cabinet Office are not seeking to withhold information relating to those who are dead, we agree that the information in question is personal data and the considerations in relation to the applicability of both exemptions are likely to overlap. The fact that information was given in confidence by the Minister in the expectation it would remain confidential is a very strong indicator that its disclosure would be “unwarranted.” Accordingly in any case where section 41 is applicable we think section 40(2) is also applicable and the two can effectively be considered together.

***Sections 23 and 24 (National security)***

24. Section 24 provides:

**(1) Information which does not fall within section 23(1) is exempt information if exemption ...is required for the purpose of safeguarding national security.**

This is a qualified exemption so that notwithstanding it relates to national security the exemption only applies if the public interest in maintaining it outweighs that in disclosure. In considering whether the information falls within the section and the public interest balance this Tribunal exercises its own judgment but for obvious reasons accords the greatest of respect to the opinion of the executive branch of government. Although it was not expressly relied on in the closed schedule, section 23 (an absolute exemption applying to information relating to, among other bodies, the Security Commission) was also relevant to a few cases where section 24 had been relied on and we allowed the Cabinet Office to rely on it without objection from Mr Cross.

25. We have upheld redactions on the basis of national security in a number of cases, including some where it had not been expressly relied on in the closed schedule.

***Section 38 (Health and Safety)***

26. Section 38 provides:

- (1) Information is exempt information if its disclosure ... would, or would be likely to ...**
- (b) endanger the safety of any individual**

The phrase “would be likely to” connotes a real and significant risk. The exemption is a qualified one so the public interest balance must be considered.

27. The Cabinet Office sought to rely on this exemption in only one case, in which they might equally have relied on section 24; in that case it seemed to us that their reliance was valid and the public interest balance was clearly in favour of maintaining the exemption.

***Section 27 (International relations)***

28. Section 27 provides:

**(1) Information is exempt information if its disclosure ... would, or would be likely to, prejudice-**

**(a) relations between the United Kingdom and any other State**

Again, this is a qualified exemption. Again, the views of the executive are accorded the greatest of respect by the Tribunal. We have referred to the interpretation of the phrase “would be likely to”. In practice this exemption only applied in one case in Chapter 6.

***Section 42 (Legal professional privilege)***

29. Section 42 provides:

**(1) Information in respect of which a claim to legal professional privilege ... could be maintained in legal proceedings is exempt information.**

This exemption is, surprisingly, a qualified one, so that the public interest balance has to be applied. However, for obvious reasons, it is recognised that there is a significant “in-built” public interest in the maintenance of legal professional privilege. The passage of time will tend to diminish the public interest in maintaining the exemption but if the advice is still being implemented or relied upon the passage of time may have little impact. We note that section 63(1) FOIA applies to section 42 as it does to section 35.

30. The Cabinet Office sought to rely on section 42 in three cases. We considered that their position on each should be upheld. It is noteworthy that they could have relied on section 35(1)(c) in one of these cases, though the relevant considerations and the result would very likely be the same.

**Environmental information**

31. Mr Cross raised a particular issue as to whether any of the information which the Cabinet Office sought to redact was “environmental information” as defined in the Environmental Information Regulations 2004, in which case those regulations, which

have a somewhat different regime of exemptions, would apply rather than FOIA. We note what Mr Cross says in his submissions of 1 November 2015 on this topic, but we accept the Cabinet Office's submission that none of the redacted information is "environmental".

### **Disposal**

32. Our detailed conclusions are set out in the Annex. The Cabinet Office is to prepare a redacted version of the Precedent Book for disclosure to Mr Cross in accordance with the Annex. Given the nature of the Book we cannot see any justification for directing that it is supplied in electronic form as Mr Cross has asked.
  
33. Our decision is unanimous. We record that in accordance with normal practice a copy was supplied to the Cabinet Office in draft in case the Tribunal was proposing to disclose inadvertently any information which should not be disclosed at this stage.

HH Judge Shanks

Date: 7th January 2016

**ANNEX**

**CHAPTER 5**

- Flag I Redact : s 37(1)(a) applies.
- Flag A Redact E1-4 only: s 23 applies as the Cabinet Office now submits.
- Flag B Redact : s 37(1)(a) applies
- Flag F Redact : s 37(1)(a) applies
- Flag G Redact: s 37(1)(a) applies
- Flag J Redact only the sentence concerning the Queen in para 55 (s 37(1)(a)) and para 56 (section 42). The remainder is covered by s35(1)(a) but public interest favours disclosure.
- Flag K Leave in: s 35(1)(a) applies but public interest favours disclosure.
- Flag L Redact: s 37(1)(a) applies.
- Flag M Redact: s 37(1)(a) applies
- Flag N Redact: s 37(1)(a) applies
- Flag O Leave in: s 37(1)(a) does not apply; there is a mention of a Royal Audience but the information does not relate to it.
- Flag P Redact: s 37(1)(a) applies
- Flag Q Redact the words “and The ... Secretary” in para 102: s 37(1)(a) applies to them. Leave in the balance: no actionable breach of confidence or contravention of a data protection principle in para 102 and para 103 is wholly unexceptionable.
- Flag S Redact: s 37(1)(a) applies
- Flag T Redact: s 37(1)(a) applies
- Flag U Redact: s 38 applies and public interest favours maintaining exemption.
- Flags V to AB Redact: s 37(1)(a) applies.
- Flag AC Redact: s 42 applies and public interest favours maintaining exemption.
- Flag EWA1 Redact: s 37(1)(a) applies.
- Flag AH Leave in: s 35(1) applies but public interest favours disclosure.

- Flag AI Redact: s 24(1) applies and public interest favours maintaining exemption.
- Flag AJ Redact: s 24(1) applies and public interest favours maintaining exemption.
- Flag EWA2 Redact: s 37(1)(a) applies because the Queen was involved in agreeing contents and s 24(1) also applies (although not claimed in the closed schedule) and the public interest favours maintaining exemption.

## CHAPTER 6

All redactions sought are allowed on the basis of s 41 except

- para (iv) at flag BA which is allowed under s 27 (taking account of public interest balance) and
- the section concerning Lord Young at flag S (ie first nine lines on the page) which must remain in since its inclusion would not constitute an actionable breach of confidence or contravention of a data protection principle.

## CHAPTER 7

- Flag A Redact (iii): s 41 applies. Leave in (iv): no actionable breach of confidence or contravention of a data protection principle and, though section 35(1) applies, the public interest favours disclosure.
- Flag B Redact: s 41 applies.
- Flag C Redact: s 41 applies.
- Flag D Redact: s 41 applies.
- Flag E Redact para 7.34 and 7.33 down to "... fuller clearance": s 41 applies. Leave in the balance: it is not covered by ss 40/41 and, although s 35 applies, the public interest favours disclosure.
- Flag F Redact: s 41 applies.
- Flag G Redact: s 41 applies.
- Flag H Redact: s 41 applies.
- Flag I Redact apart from paras about Lord Hailsham who is deceased: s 41 applies.
- Flag J to M Leave in: flags J and M are not covered by ss 40/41 as claimed and, although s 35 applies throughout, the public interest favours disclosure.
- Flag N Cabinet Office no longer seeks to redact.



## CHAPTER 8

- Flag A Redact: s 41 applies.
- Flag B Leave in para 8.9: although s 35 applies, public interest favours disclosure as Cabinet Office now accept. Redact para 8.10: although not claimed s 41 applies as with flag A.
- Flag C Leave in: although s 35 applies, the public interest favours disclosure.
- Flag D Redact on basis of s 40(2).
- Flag E Leave in: no actionable breach of confidence or contravention of a data protection principle and, though section 35(1) applies, the public interest favours disclosure.
- Flag F Leave in: s 35(1) applied but public interest favoured disclosure.
- Flag G Redact: s 24(1) applied and the public interest favoured maintaining exemption.
- Flag H Redact: s 42 (and indeed s 35(1)(c)) applied and the public interest favoured maintaining exemption (s). Also redact Annex D (relating to defamation of Ministers) on basis of s 42.
- Flag I Redact: s 24(1) applied and the public interest favoured maintaining exemption.
- Flag J Leave in: s 35(1) applied but the public interest favoured disclosure as Cabinet Office now accepts. Although not claimed in the schedule the single para relating to flights in MoD aircraft is covered by s 24(1) and is of no particular interest in itself so that the public interest in maintaining that exemption prevails and that para alone may be redacted.

## CHAPTER 9

S 35(1) applied to the whole chapter but the public interest favours disclosure (as the Cabinet Office now accepts in relation to Annex C).

Although not claimed in the schedule the Cabinet Office raised s 40/41 in relation to various passages. On this basis redact **only** paras 9.13 and most of para 9.27. Leave in paras 9.16, 9.17 and 9.27 (i) and (ii) (except the words “after ... to Secretary of State” which are sensitive personal data).

## CHAPTER 10

The Cabinet Office sought to rely on s 35(1)(a) and (b) in relation to the whole chapter and s 27(1) in relation to two passages. The Tribunal accept that s 35(1) applied to the whole chapter.

Although the main text of chapter 10 (ie pages 2 to 9) appears to have been drafted in 2005 the Tribunal did not regard the overall subject matter or content to be sufficiently sensitive to warrant maintaining the s 35(1) exemption, a position which the Cabinet Office did not argue strongly against.

Annexes A to F were either innocuous or related to events so long ago that the public interest in maintaining the exemption was outweighed by that in disclosure.

Only in the case of Annexes G and H, which relate to actual decisions made in 2005, did the Tribunal consider that the public interest in maintaining the exemption outweighed the public interest in disclosure, on the basis that the disclosure of the details of the organisation of funerals of recently deceased former Prime Ministers may tend unnecessarily to “tie the hands” of those making such decisions in the near future.

In the circumstances there was no need to consider the s 27(1) exemption.

## CHAPTER 11

The Tribunal infers that the whole chapter was approved by the Sovereign and that it is covered by s 37(1)(a) and therefore need not be disclosed.

## CHAPTER 12

Flag A Redact apart from non-security related references in the Contents page. The Tribunal do not accept that exemption of this material was “required for the purpose of safeguarding national security” but the material in paras 12.3 to 12.6 was covered by s 35(1)(a) and relates to security and is of a sensitive nature where it is easy to see that a Prime Minister would not want to have his/her “hands tied” by an earlier precedent being published so that the public interest would favour maintaining the exemption. Further, paras 12.3 to 12.6 and the references to them and to Annex B in the contents page are covered by s 23 which is an absolute exemption.

Flag B Leave in: the Tribunal could see no real sensitivity in these simple examples and accordingly, even if s 24 as well as s35(1)(a) applies to them, the public interest in disclosure outweighed that in maintaining the exemptions.

Flag C Redact para 12.53: it was covered by s 35(1)(a) and relates to events in 1992 which are sensitive and may tend to tie the hands of Prime Ministers in the near future; in those circumstances the Tribunal consider that the public interest in maintaining the exemption outweighed that in disclosure.

Leave in para 12.54: although covered by s 35(1)(a) it related to events in 1985 and was of little sensitivity; the public interest in disclosure outweighed that in maintaining the exemption.

Annexes A and B are covered by section 23 which provides an absolute exemption and entitled the Cabinet Office to withhold them.

MS 7.1.16