IN THE FIRST-TIER TRIBUNAL **EA/2016/0304**
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

ON APPEAL FROM:
The Information Commissioner's Decision No: FS50617272
Dated: 17 November 2016

Appellant:	**Department for Work and Pensions**
Respondent:	**Information Commissioner**
Hearing:	**2 October 2017, Fleetbank House, London**
Date of decision:	**16 November 2017**

Before

Anisa Dhanji

Judge

Michael Jones
Dave Sivers

Panel Members

Representation:

For the Appellant: Rory Dunlop, Counsel
For the Respondents: Zac Sammour, Counsel

Subject matter:

Freedom of Information Act 2000 – section 35(1)(a) and (b) – whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information

IN THE FIRST-TIER TRIBUNAL **EA/2016/0304**
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DECISION

This appeal is dismissed.

Signed **Date: 16 November 2017**

Judge

REASONS FOR DECISION

Introduction

1. This is an appeal by the Department for Work and Pensions ("DWP"), against a decision notice issued by the Information Commissioner (the "Commissioner"), on 17 November 2016 (the "Decision Notice").

2. The Appellant's appeal arises from a request for information made by Ms Emma Caldwell (the "Requester"), to DWP, under the Freedom of Information Act 2000 ("FOIA").

3. The request was for information relating to the Government's Childcare Implementation Taskforce (the "Taskforce"), the terms of reference for which are as follows:

   "To drive delivery of a coherent and effective government-wide childcare offer to support parents to work. This includes delivery of:

   - an additional 15 hours of free childcare for working parents of three- and four- year olds;

   - Tax-Free Childcare for working families; and

   - up to 85 per cent support with childcare costs in Universal Credit."

The Request for Information

4. On 21 December 2015, the Requester wrote to DWP on the following terms:

   "Please can the DWP advise:

   > *"How many times the Childcare Implementation Taskforce has met since being set up since June?*
   >
   > *The dates of the meeting?*
   >
   > *and, who was in attendance?"*

5. DWP responded on 19 January 2016. It refused to provide the information requested, citing the exemptions in section 35(1)(a) and (b) of FOIA. The Requester asked for an internal review which DWP undertook, but it maintained its original position.

The Complaint to the Commissioner

6. The Requester complained to the Commissioner who investigated the complaint. DWP provided the Commissioner with additional information and submissions. In brief, DWP's position was that:

   - The requested information relates to government policy on childcare.

- Policy development on some aspects of the childcare offer such as the increasing Universal Credit support had been completed when the request was made. However, policy development and other aspects of the childcare offer was on-going.

- The exemptions in section 35(1)(a) and (b) were engaged and the public interest in maintaining the exemptions did not outweigh that in disclosure.

7. The Commissioner accepted that the exemptions in section 35(1)(a) and (b) were engaged. However, she found, for the reasons set out in the Decision Notice, that the public interest balance favoured disclosure.

The Appeal to the Tribunal

8. DWP has appealed against the Decision Notice. The Requester is not a party to the appeal.

9. In advance of the appeal hearing, DWP conceded its position on the Requester's first two questions, namely as to (1) how many times the Taskforce had met since being set up; and (2) the dates of the meetings. On 9 August 2017, it disclosed that (1) the Taskforce had met seven times since being set up; and (2) it had met on 8 June, 24 June, 13 July, 9 September, 22 October, 5 November, and 3 December 2015.

10. The only remaining issue before us, therefore, is whether DWP was entitled to withhold the information about who was in attendance at these meeting (the "Disputed Information").

Evidence & Submissions

11. In determining this appeal, we have considered all the documents and written submissions received from the parties (even if not specifically referred to in this decision), including the documents contained in the agreed open bundle, the documents in the closed bundle, the documents submitted at the hearing, and the further evidence and submissions (both open and closed), received from the parties after the hearing in response to directions made at the hearing. We have also considered the authorities in the separate bundle which the parties have helpfully supplied, although a number of the cases are decisions of the First-tier Tribunal and thus not binding on us.

12. The Disputed Information comprises the list of attendees at each of the seven meetings. In each case, the list is divided in two, the first part setting out the names of the ministers who attended, and the second part setting out the names of officials who attended. Under each heading, the attendee is named along with his or her department, and his or her position. The person who chaired each meeting is also identified.

13. There was a concern raised at the hearing as to whether this information was complete because it does not mention, for example, the name of any staff member present who may have taken minutes of the meetings. DWP confirmed to the Tribunal, after the hearing, that the information identified as the Disputed Information (and reproduced in the closed bundle), is the only information it holds coming within the scope of the request, apart from what has already been disclosed.

14. Some parts of the hearing took place in closed sessions. These were limited to the details of, and arguments about, the Disputed Information. Nobody present needed to be excluded, and for the same reason, it was not necessary to provide a gist of the closed sessions in the open sessions. In line with the Supreme Court's decision in **Bank Mellat v Her Majesty's Treasury [2013] UKSC 38**, we have said as much as we reasonably can in this open decision, about the Disputed Information. We have also kept in mind the Court of Appeal's guidance in **Browning v Information Commissioner and the Department for Business, Innovation and Skills [2014] EWCA Civ. 1050**, and the Upper Tribunal's decision in **Department of Health v Information Commissioner and Lewis [2015] UKUT 0159 (AAC),** as regards closed material and closed sessions, generally. In describing the Disputed Information in this decision, we have not considered it necessary to disclose its substance, and therefore, have not needed to produce a confidential annex.

15. There was only one witness, namely, Sir Oliver Letwin, MP, called by DWP. The Commissioner did not call any witnesses. Sir Oliver submitted a witness statement in open and closed versions, and gave oral evidence at the hearing, in open and closed sessions. He was examined and cross-examined, and we also asked him a few questions. His evidence is summarised below. We are grateful to him for his assistance.

16. Sir Oliver has been an MP since 1997. From 2010-2016, he served as Minister for Government Policy in the Cabinet Office, and then as Chancellor of the Duchy of Lancaster. He says that through this period, he was a member of more cabinet committees and taskforces than any other minister.

17. In his witness statement, he explains that implementation taskforces were created as a result of discussions between him, the Prime Minister, and Sir Jeremy Heywood. On 3rd June 2015, he tabled a Written Ministerial Statement before the House of Commons announcing the membership of cabinet committees and the creation of these taskforces. It provided a list of the permanent members of each cabinet committee and taskforce, and a brief description of the terms of reference for each.

18. He explains that implementation taskforces were created for the purpose of monitoring and driving delivery on key cross-departmental policy commitments. These taskforces bring together relevant ministers, and officials with experts in the issues being discussed (from

across the civil service and outside), to track the progress of Government policy on specific issues in their respective areas. Each taskforce reports to the Prime Minister and Cabinet, and decisions requiring collective agreement are dealt with by the Cabinet and its committees in the usual way. The area of focus for each taskforce is detailed in its terms of reference.

19. He went on to explain that a party's manifesto promises are generally put forward as a high-level statement. The purpose of an implementation taskforce is to turn those ideas into workable policy. Often, this gives rise to conflicts between departments. The idea behind the implementation taskforces is to get everyone from the relevant departments together in a room so that conflicts between departments can be resolved away from the glare of publicity.

20. Such taskforces differ from ordinary Cabinet committees in that their attendance is more variable. While there are certain permanent members, it was agreed from the start that a range of individual experts in given fields from across Whitehall, as well as more widely, would be invited to attend particular meetings on an ad hoc basis, to ensure that the taskforces were properly informed about the specific topic under consideration at any particular meeting.

21. Sir Oliver agrees with the DWP that release of the attendance lists for the meetings of the Taskforce is likely to cause prejudice to the policy development process and inhibit frank discussion within the Taskforce, and other taskforces and Cabinet committees in general.

22. He points out that the Cabinet Manual states that the Government's working assumption is that information relating to the proceedings of Cabinet and its committees should remain confidential. He says that this is certainly the assumption under which Ministers operate in relation to Cabinet committees, and the same holds true for taskforces. If Ministers thought that the content of their policy discussions would be revealed publicly, this would deter them from having free and frank discussions about all available possibilities in relation to any given policy or idea. That, in turn, would have a detrimental effect on the quality of decisions made at the highest level. He further says that inappropriate disclosure has the potential, not only to limit policy discussion between Ministers, but also to distort the advice provided by officials.

23. He accepts that release of the names of attendees at a particular meeting would not directly lead to disclosure of the substantive content of that meeting. However, he believes that such information would make it easier for journalists to pursue the non-ministerial attendees in the hope of asking enough questions to enable stories to be constructed about the nature of the discussions at the meetings. He says that if that became an established pattern, it would have a considerable adverse impact on the nature of the discussions themselves because all taskforce meetings would have to be treated by the participants as semi-public.

24. By way of a hypothetical example, he says that if it were known that the Head of China/Far Eastern Department attended a particular meeting of the immigration taskforce, it would be easy for journalists to infer that the topics of discussion included the immigration rights of Chinese nationals. Journalists could then begin to construct stories about the discussion of this topic. If pursued, it is likely that some participants would say enough to fuel the story. In his view, the problem would be particularly pronounced in relation to taskforce participants from outside government who might also be concerned that if their attendance is disclosed, they would be pursued by journalists seeking to find out what was discussed. Even if this does not prevent them from attending, it might have a detrimental effect on the frankness and quality of their contributions to the discussions.

25. He distinguishes between normal meetings of Ministers with individuals outside government (which he explains are already disclosed on a regular basis), and attendance at Cabinet committees or taskforces. He says that the fact that an individual Minister has met a particular person at a particular time, may inhibit what the Minister will say at the meeting with the outsider, but does not inhibit the openness between Ministers or between Ministers and officials (the nature of whose discussions are not disclosed at present). By contrast, revealing specific attendance of a specific outsider at a specific committee or taskforce meeting, and hence enabling stories to be built by journalists about the content of that meeting on the basis of pursuit of individual attendees after the meeting, will inhibit the openness with which Ministers discuss matters of substance with one another and with the officials present at the meetings.

26. He also says that the potential journalistic use of the attendance lists could further undermine the confidentiality of proceedings by forcing the Government to rebut erroneous conclusions that might otherwise be drawn from the information by the media. For example, the fact that a Director rather than a Permanent Secretary or that a junior Minister rather than a Secretary of State attended a meeting could be used by the media to support an allegation that a taskforce was not being taken seriously. This might then need to be rebutted by explaining that the topic under discussion was of particular relevance to that Director's area of expertise or that priority had to be placed on an alternative meeting. Release of the attendance lists would therefore place the Government in the situation either of allowing such allegations to go unanswered, or else of breaching confidentiality by rebutting the allegations in a way that reveals or confirms the substantive content of the discussions, thereby helping the journalists to build a story.

27. He explained that there was a certain amount of resistance to the creation of the implementation taskforces. Those concerns have now been overcome. However, he points out that at the time when the request was made, implementation taskforces were not all that well established, and he says that had there been the kind of difficulty which he envisages with journalists, then potentially, the decision may have

been taken by Government to abandon the implementation taskforces altogether.

28. There is only one paragraph in Sir Oliver's witness statement that was "closed". In it, he gives a specific example, in relation to the Disputed Information, of his more general concern that the names of attendees could identify what subjects were discussed. He also says that journalists may have pursued those attending the meetings in order to put to them intelligent speculations about what was said about those particular subjects at the meeting, with the likelihood that some participants would have said at least enough to fuel a story.

29. At the hearing, Sir Oliver was asked about a press release concerning an extremism taskforce meeting held to discuss concerns about a number of Birmingham schools (the so-called Trojan Horse issue). It was put to him that in that press release, the Prime Minister specifically informed the public about the meeting, about what was to be discussed, and about who would be attending. He says that the extremism taskforce meeting, like Cobra meetings, are very different. They are publicised and the Government wants the public to know about them.

30. In cross-examination, it was put to him that he was not one of the attendees at the extremism taskforce meeting referred to above, and he was asked whether this caused journalists to speculate that he disagreed with the policy objective of the meeting. He says that he has been a politician for a long time and would have known how to deal with any journalists who may have tried to create a story out of his absence.

31. As to whether other Ministers can be expected to deal effectively with journalistic pressure, he says it depends on their level of experience. An inexperienced junior Minister may not be able to deal with the press effectively. He confirmed that the attendees at the Taskforce meetings would be duty bound not to disclose anything, but says that they can be bludgeoned into making slight admissions on the basis of which journalists can build a story. As to whether attendees could be expected to exercise self-restraint if asked about the content of a meeting, he says that it depends on the individual and his/her experience and position. Ministers have offices to help to deal with difficult situations. However, lower in the ranks, people may not be as experienced and may be inclined to give straightforward answers. If asked direct questions, they might find it difficult to deflect them, particularly if they are asked the same question repeatedly, as often happens. He agreed that senior civil servants of the level that would be attending the Taskforce meetings are trained and experienced, but he says that dealing with journalistic pressure is not a matter of training. Journalists can be "ferocious" and the most innocuous questions can be built into a story. Also, when faced with a large number of persistent questions, people can "crumble". As to how likely it is that the Taskforce would attract such intense media interest, he accepts that while the subject will not attract the level of interest as, for

example, the Trojan Horse affair, if it is known that a particular issue is causing difficulty, then that might happen. It was put to him that it is likely that people attending the meeting would have a logical connection with the subject matter of the Taskforce such that their attendance would not give rise to journalistic speculation. He maintained that details of the attendees were not public and therefore, the risk would still arise.

32. As to whether when non-governmental experts are invited to attend taskforce meetings, it is explained to them that the discussions are confidential, he says that he does not recall anyone explicitly explaining this, but accepts that it is understood. As to whether this could be explicitly explained, he says that it could, but it would not help if there was a media frenzy. He concedes, however, that an explicit explanation would be sufficient to deal with lower level media interest.

33. It was also put to him that the names of permanent members of the Taskforce and all other taskforces, are already published by the Government and there is no evidence of any large media frenzy. He says that this is because it is not known what was being discussed at any particular meeting. As to whether there is a public interest in knowing which particular issues a particular taskforce may be looking at, he accepted that there is, but says this has to be weighed against the public interest in allowing discussions to take place unhindered. He says that if disclosure leads to a taskforce not being able to do its job or being disbanded, that is not in the public interest. He reiterated that the harm does not arise from the disclosure itself, but what the media could do with it. As to whether Sir Oliver's personal experience with the media may be colouring his views, he says he has been through considerable media storms, but is not paranoid.

34. In the closed session, he accepted that he had no difficulty in disclosing the attendees of certain meetings, though not others. There were also questions asked in the closed sessions about whether the concerns raised by Sir Oliver in connection with journalistic pressure, in particular, could be averted if the names of the particular individuals who were not permanent members of the Taskforce, were redacted together with their positions. However, this was not a way forward which DWP pursued in submissions.

The Tribunal's Jurisdiction

35. The Tribunal's jurisdiction in dealing with an appeal from a Decision Notice is set out in section 58(1) of FOIA. If the Tribunal considers that a Decision Notice is not in accordance with the law, or to the extent that the Decision Notice involved an exercise of discretion by the Commissioner, if the Tribunal considers that he ought to have exercised the discretion differently, the Tribunal must allow the appeal or substitute such other notice as could have been served by the Commissioner. Otherwise, the Tribunal must dismiss the appeal.

36. Section 58(2) confirms that on an appeal, the Tribunal may review any finding of fact on which the notice is based. In other words, the Tribunal may make different findings of fact from those made by the Commissioner, and indeed, the Tribunal will often receive evidence that was not before the Commissioner.

Statutory Framework

37. Under section 1(1)(b) of FOIA, a person who has made a request for information to a public authority is entitled to be provided with the information if the public authority holds it.

38. The duty on a public authority to provide the information requested does not arise if the information sought is exempt under Part II of FOIA. The exemptions under Part II are either qualified exemptions or absolute exemptions. Information that is subject to a qualified exemption is only exempt from disclosure if, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Where, however, the information requested is subject to an absolute exemption, then, as the term suggests, it is exempt regardless of the public interest considerations.

39. In the present case, the DWP has relied on the exemptions in section 35(1)(a) and (b) of FOIA. Section 35 is a qualified exemption. It relates to the formulation of government policy. Section 35(1) provides that 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, or

(d) the operation of any Ministerial private office.

40. DWP has not relied on section 40(1) of FOIA relating to personal data. DWP has explained that its practice is not to rely on section 40 in relation to senior civil servants, and that all the non-ministerial individuals named in the Disputed Information are members of the senior civil service.

Findings and Reasons

41. There is no dispute between the parties that section 35(1)(a) and (b) are engaged.

42. The only issue before us is whether in all the circumstances of this case, the public interest balance favours disclosure of the Disputed Information. This is a question to be considered as at the date of the request. That date, being closer in time to the dates of the meetings,

means that the public interest in disclosure is likely to be greater. It also means, however, that the factors against disclosure may be weightier.

43. It is important to make it clear that while some of the evidence, and examples given in the evidence, covered ground beyond this particular Taskforce, we are concerned in this appeal only with the Disputed Information, i.e., the names of the attendees at the seven Taskforce meetings in question. We make this point particularly because to a large extent, Sir Oliver's concerns about the adverse impact of disclosure related not so much to the attendees of these particular meetings, nor even to the Taskforce specifically, but to implementation taskforces and indeed to cabinet committees, generally. We do not say this by way of criticism. The general background Sir Oliver provided is relevant and helpful in providing a context for the question we have to decide, and we are grateful to him for that.

44. Also, although as already noted, Sir Oliver said that he saw no objection to the disclosure of attendees of certain meetings, no list of attendees has yet been disclosed. Our findings apply, therefore, to all seven meetings.

45. We turn now to the parties' respective positions on the public interest balance. It is perhaps not often, in adversarial proceedings, to agree fully with one side or another. In this case, however, we have to say that while DWP has probably marshalled all the arguments that it could, we have found the Commissioner's position to be entirely persuasive.

46. DWP's case on the public interest in maintaining the section 35 exemption has evolved over the course of this appeal. To an extent, this may be because the scope of the information in dispute is now narrower in scope than at the outset. Nevertheless, as the Commissioner has pointed out, there isn't quite the correlation one might have expected between DWP's submissions (at least prior to the hearing), and Sir Oliver's evidence. Be that as it may, its most recent position, as put forward at the hearing, as regards the public interest in maintaining the exemption, has been broadly twofold.

47. First, DWP says that there is little or no public interest in the disclosure of the Disputed Information because it tells the public nothing of substance about when decisions were taken or by whom, and also it is more likely to mislead than inform.

48. We agree with the Commissioner that the public interest in open government and transparency includes knowing how Government operates, and not just what it decides. Knowing who attended the Taskforce meetings assists the public to gauge the intensity with which particular priorities are being pursued, or not, and to hold the Government to account on issues where it does not appear to be as engaged as sections of the public may think it should be.

49. Having said that, we accept that information as to who attended a meeting may not, in all cases, tell the public unequivocally what the

Government's priorities are because the fact that a Director rather than a Permanent Secretary or a junior Minister, rather than a Secretary of State, attended a meeting, for example, does not mean that the issues discussed in that meeting were treated as less of a priority. It has been argued, and we accept, that there can be any number of reasons for the attendance of a Director or junior Minister. For example, the topic under discussion may be more within their expertise than that of the Permanent Secretary or the Secretary of State. Alternatively, a person who might be expected to attend may attend through proxy because of competing diary commitments. However, this simply means that in certain situations, the Government may need to provide additional information to assist the public's understanding; it does not lessen the public interest in disclosure, nor add materially to the public interest in maintaining the exemption.

50. DWP also argues that the public may draw mistaken inferences as to the significance of who attended a particular meeting. So, for example, if a junior Minister attends in place of the Secretary of State because the meeting was to discuss a particular aspect of the policy for which the junior Minister was responsible and/or is the expert, DWP cannot explain that to the public without disclosing what was discussed at the meeting and/or who was responsible for the relevant policy. However, we do not find that DWP has shown that the risk of mistaken inference is likely to arise on the particular content of the Disputed Information. It must be the case, in any event, that any such risk is less, where, as here, the information sought is narrow and factual.

51. DWP has argued that details about who attends a Taskforce meeting paints only part of the picture and that there can be no real public interest in seeing that part alone. However, were that to be an issue, (and DWP has not shown that it is, in the case of the Disputed Information), DWP is of course able to furnish the remainder. So, for example, if a particular individual who might have been expected to attend a meeting did not attend, DWP can explain why, or explain that they provided their views by correspondence or by proxy. We have no doubt that the public can understand that Ministers and civil servants can and do conduct their work not just in person, but also electronically and by phone.

52. Second, DWP says that disclosure of the Disputed Information is likely to result in harm of various types, and that for this reason, the public interest in maintaining the exemption outweighs the public interest in disclosure. In identifying the harm from disclosure of the Disputed Information, DWP has made a number of arguments which at times overlap. In his submissions at the hearing, Mr Dunlop helpfully synthesised DWP's arguments as to the harm from disclosure of the Disputed Information, under 3 key headings, namely:

    1. Risk to the continuation of implementation taskforces;

    2. Disclosure of attendees could lead to disclosure of content; and

    3. The risk of distraction.

53. The first point we would make here is that with the possible exception of part of (2), the harm that DWP asserts arises not directly from disclosure of the Disputed Information, but as a consequence of journalistic intrusion that it is argued could follow from disclosure. As the Commissioner argues, DWP's case depends, therefore, on showing: (1) that at the time of the request, the Disputed Information would have been of interest to professional journalists; (2) that such journalists would then have engaged in a persistent campaign amounting almost to harassment; and (3) that the campaign would have been successful in that attendees, who knowing that the contents of the meeting were to remain confidential, would have "crumbled" (to use Sir Oliver's expression).

54. In our view, DWP's arguments rely on quite a high degree of speculation. As we have already said, this appeal concerns only the names of attendees at seven meetings of the Taskforce. On Sir Oliver's own evidence, such a level of journalistic intrusion is an extreme case, and in most cases, journalist interest is pursued by the appropriate person or press officer being contacted through appropriate channels for comment. There is no evidence before us to support a finding that at the time of the request, any journalistic interest in the Disputed Information would have been as extreme as the scenarios Sir Oliver has described. There is, for example, no evidence of any undercurrent of interest, nor that any other requests were made under FOIA for this information. We find, and as Sir Oliver accepted, Ministers and senior civil servants would likely not disclose any information to mild or moderate enquiries. There is nothing on the evidence before us to support a finding that any journalistic enquiries that might have resulted from disclosure would have been other than that.

55. Given this finding, it may be that we need to go no further. However, for completeness, we will briefly address the specific harms (referred to in paragraph 52), that DWP asserts would follow from disclosure.

Risk to the continuation of implementation taskforces

56. DWP points out that at the time of the request, implementation taskforces had only been in existence for about six months. They were not an embedded part of how Government operated. There was resistance to their creation, and that resistance is likely to have been more successful if, as a result of journalistic harassment, attendees disclosed what was said at the Taskforce meetings. If that had become an established pattern, it could have led to breaches of Cabinet collective responsibility, eroded the safe space for taskforces to make their decisions, and created a chilling effect on the willingness of taskforce attendees to speak frankly at the meetings. In the face of such consequences, DWP says that the Government may have abandoned the implementation taskforces entirely.

57. While we accept Sir Oliver's evidence that there was some resistance to the creation of the implementation taskforces, it is also his evidence

that their creation had the support of the Prime Minister. We consider it far-fetched that any journalistic interest in the Disputed Information would have led to the Government abandoning implementation taskforces if they were a useful process. We also note that the risk of implementation taskforces being abandoned was not an argument that DWP had made before Sir Oliver raised it in his oral evidence, which suggests it is not a reason why the request was refused, nor even that it was a point of particular concern when his witness statement was prepared. To the extent that DWP is relying on the cumulative effect of repeated and successful journalistic intrusion creating what it refers to as an "established pattern", then that goes beyond the disclosure of the Disputed Information. It does not follow from our decision in this appeal that names of attendees at other taskforce meetings will fall to be disclosed. Whether they do or not will depend on the facts of the individual case.

Disclosure of attendees could lead to disclosure of content

58. DWP argues that it is not in the public interest for a taskforce's decision-making to take place "in a goldfish bowl". DWP argues that in order to protect the principle of Cabinet collective responsibility, and enable the Government to present a united front, it is necessary not just to conceal disagreements during Cabinet meetings, but also which particular Ministers took part in which decisions.

59. We accept that safeguarding the principle of Cabinet collective responsibility is a very weighty public interest factor. However, we do not find that the mere attendance by specific Ministers or officials discloses areas of disagreement, nor the position of individual Ministers in relation to the subject matter of the Taskforce.

60. DWP also says, however, that even without journalistic intrusion, disclosure of the identities (and any known expertise), of the attendees would be likely to reveal the agenda for the meeting. They say that this erodes the safe space which taskforces need to function, and that there is a very strong public interest in protecting the confidentiality of the subject matter, as well as the content of discussions. Sir Oliver gives the hypothetical example in his witness statement (which we have referred to in paragraph 24 above), about the immigration taskforce. He says that it is in the public interest for the immigration taskforces to be free to decide that they want to consider a new approach to immigration from China, and call in the Head of the China department, without fear that his or her attendance will prompt a news story about how Chinese immigration is a problem, or that the Government is considering a change to its approach to Chinese immigration.

61. The permanent members of the Taskforce are, of course, a matter of public record. All attendees at the meetings in question were Ministers or senior civil servants. In the case of two meetings in particular (on 5 November and 3 December), we accept that disclosure may give an indication of the agenda or part of the agenda, but it would disclose no

more than that the Taskforce was considering that subject area. It would not disclose the content of the discussions on that subject, much less who expressed what views. It would also not disclose areas of disagreement (if any). In our view, disclosure would simply suggest that the Taskforce was working through different issues within its terms of reference. We do not consider that this would itself be surprising, much less that it would result in a media frenzy. It is quite different from the example that Sir Oliver gives about immigration from China which may have indicated a very specific and perhaps unexpected area of focus.

The risk of distraction

62. Finally, DWP argues that Ministers may be distracted by having to put into context who attended meetings, for example, by having to explain why no inferences should be drawn from the fact that a particular Minister was or was not present at a particular meeting. They say that is not in the public interest that time that could be spent on policy formulation and development should be spent on defending or explaining such peripheral matters. They argue that the Upper Tribunal's decision in **Savic [2016] UKUT 0535 (**at para 76), a case which concerned the decision to commence a military campaign in Serbia and Kosovo, supports the position that if disclosure would lead to the Government to being distracted by discussions about process rather than substance, that can be a significant public interest factor weighing in favour of maintaining the exemption.

63. We consider that in principle, Ministers providing contextual information regarding the progress of the Taskforce, or any other Government committee, increases transparency in the operation of Government and is in the public interest. We accept that concerns about distraction can be a relevant public interest factor against disclosure, but whether it is in any particular case depends on the facts of the case, and the extent and timing of the likely distraction. There is no evidence to support a finding that in relation to the meetings in question of the Taskforce this would involve more than a modest amount of time, or that issues arising from who attended these seven meetings would require anything more than very limited explanations, if any.

64. DWP also says that if the Disputed Information is disclosed, Ministers may schedule unnecessary meetings for the Taskforce for the purpose of avoiding criticism, thereby wasting Ministerial and civil service time. We consider the assumption that Ministers would schedule meetings just to stave off criticism, to be a surprising one. It is one that this Tribunal has been unwilling to accept in other cases (see for example, **Department for Education v Information Commissioner and Evening Standard (EA 2006/0006)**. We also agree with the Commissioner that Ministers already know, or should know, that they may be required under FOIA to disclose details of the number of times that they meet in committees that they participate in. That was made clear by the Upper Tribunal in **Cabinet Office v Information Commissioner [2014] UKUT 0461**, a case concerning a request for information as to the number of times the Reducing Regulation

Committee had met. Judge Turnbull held that it cannot be assumed, in the absence of specific evidence, that disclosure of such information would cause Ministers to alter their future behaviour and schedule unnecessary meetings. There is no evidence before us to suggest that the Upper Tribunal's decision has brought about that change in behaviour, but if it has, then as the Commissioner says, no additional public harm would be caused by the disclosure of the Disputed Information.

Decision

65. For all the reasons given above, we find that in all the circumstances of the case, the balance of public interests favours the disclosure of the requested information.

66. This appeal is dismissed. Our decision is unanimous.

Signed **Date: 16 November 2017**

Promulgation date: 22 November 2017

Anisa Dhanji
Judge