



**HM Courts
& Tribunals
Service**

IN THE MATTER OF AN APPEAL TO THE FIRST-TIER TRIBUNAL (INFORMATION RIGHTS) UNDER SECTION 58 OF THE FREEDOM OF INFORMATION ACT 2000

Appeal No: EA/2011/0070

BETWEEN:

THE CABINET OFFICE

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

CONSENT ORDER APPROVAL

PURSUANT to Rule 37(1) of the Tribunal Procedure (First-tier) (General Regulatory Chamber) Rules 2009, upon reading the parties' agreed statement dated 7 June 2011:

In accordance with the provisions of the above Rule, the Tribunal approves the consent order in this matter attached hereto and dated 7 June 2011.

Signed:

John Angel

Principal Judge

Dated: 8 June 2011



BETWEEN:

THE CABINET OFFICE

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

CONSENT ORDER

PURSUANT to rule 37(1) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009

AND UPON reading the parties' agreed statement (in Annex A),

BY CONSENT it is ordered that:

1. The appeal be allowed.
2. The Decision Notice FS50300732 dated 15 February 2011 be substituted in accordance with Annex B.
3. No further steps are required to be taken by the Appellant.
4. There be no order for costs.

Dated this 7th day of June 2011

ANNEX A

Statement of reasons for consent order

1. This appeal concerns the Respondent's Decision Notice FS50300732. That Notice sets out the terms of the original information request at paragraph 2.
2. On 28 July 2010, following an internal review, the Appellant wrote to the requester and confirmed that it held information falling within the request, but withheld the information in reliance on sections 35(1)(a) and 42(1) of the Freedom of Information Act 2000.
3. In the said Decision Notice the Respondent ordered the Appellant to disclose the information in full, on the basis that the Appellant had not provided sufficient evidence to show that the exemptions it cited were engaged.
4. In accordance with the Decision Notice the Appellant disclosed most of the requested information. However, it appealed against the Decision Notice in relation to certain parts of the information ('the Disputed Information'), which it contended were exempt from disclosure under section 35(1)(a) FOIA (alternatively section 36(2)(b)(ii) FOIA) and, in the case of some parts of that information, also section 42(1) FOIA.
5. In the light of the information provided in the Appellant's Grounds of Appeal and the Appellant's Reply of 26 April 2011, the Respondent is satisfied that the information to which the Appellant seeks to apply section 42(1) FOIA summarises legal advice given by government lawyers, that the information is exempt information under section 42(1) FOIA, and the public interest is in favour of maintaining that exemption.
6. The Respondent also accepts that the remainder of the Disputed Information is exempt under section 35(1)(a) FOIA and that the public interest balance favours the maintaining of that exemption.
7. The Respondent considers that reform of the Civil Service Compensation Scheme was, at the time of the request, a matter of significant public interest. However, while

the 'Fairness for All' consultation commenced in July 2009 can be characterised as a 'significant phase' in the policy formulation / development process, it was not the end of that process. The Respondent notes that the policy itself was not settled until February 2010, several months after the information request was made. Given that the process of policy formulation was still 'live' and underway at the time of the request, the Respondent considers that the Appellant's arguments relating to a 'safe space' for policy formulation carry weight in this particular case.

8. The Respondent therefore does not require any further disclosure, and the parties are agreed that the Appellant is not required to take any further steps.

9. In the circumstances, the parties jointly submit that it would be appropriate for this appeal to be determined by way of a consent order, and invite the Tribunal to consider their joint application without holding a hearing, as envisaged by rule 37(2)).

ANNEX B

Decision Notice FS50300732 dated 15 February 2011 is substituted as follows:

The final sentence of the “Summary” is replaced as follows:

“The Commissioner requires the Cabinet Office to disclose the requested information to the complainant, with the exception of the information identified in the Confidential Schedule to this Decision Notice, which is exempt from disclosure under section 35(1)(a) FOIA or section 42(1) FOIA.”

Paragraph 17 is replaced as follows:

“17. The Commissioner’s decision is that the Cabinet Office did not deal with the request in accordance with the Act and that the requested information should therefore be disclosed to the complainant, with the exception of the information identified in the Confidential Schedule to this Decision Notice, which the Commissioner has found to be exempt information under section 35(1)(a) or 42(1) FOIA.”

Paragraph 18 is replaced as follows:

“18. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

- disclosure of the requested information to the complainant, with the exception of the information identified in the Confidential Schedule to this Decision Notice.”