

Independent Commission on Freedom of Information

Minutes of the 5th meeting

10am to 12pm, Thursday 19th November 2015

102 Petty France, Room 10.50b

Attendees:

- Lord Burns (Chairman) (TB)
- Lord Carlile of Berriew (AC)
- Dame Patricia Hodgson (PH)
- Lord Howard of Lympne (MH)
- The Rt Hon Jack Straw (JS)

Secretariat

- Stephen Jones (Secretary) (SJ)
- Narinder Tamana (NT)
- Alexandra Avlonitis (AA)
- Poli Stuart-Lacey (Press Office) (PSL)

Introduction

1. The Chairman opened the meeting by welcoming members of the Commission to their fifth meeting.

Update on Responses to the Call for Evidence

2. The Secretary to the Commission provided an update on the tone of responses received thus far. He explained that approximately 28,000 responses had been received through a website called 38 Degrees; around 500 responses from interested individuals had been received directly; and that a number of large organisations and stakeholders, including the News Media Association and the Information Commissioner, had submitted their evidence already. The Secretary expected an influx of responses from organisations and from key stakeholders leading up to the deadline. The group discussed the importance of due process in relation to the call for evidence, and agreed that they should ensure that consideration is given to each and every response.
3. There was further discussion about the delays to the Commission's existing timetable caused by the significant number of responses, and the Secretary explained that additional resources were being sought from the Cabinet Office, but he expected a three to four week delay due to processing the large volume of 38 degrees responses. The Commission supported seeking additional resources from the Cabinet Office.

Communications Update

4. The group begun by discussing generally recent media coverage of the Commission's work. PSL explained that there had been an increase in coverage over the last few days, and that she expected this to continue to rise throughout the week. PSL gave a summary of next steps, and the Secretariat agreed to publish as soon as possible minutes of Lord Burns' meetings with key stakeholders, in addition to those of the Commission's meetings.

5. The Commission asked that the final report be clear on which types of cases would, and would not, be affected by the Commission's recommendations, whatever they were.
6. The group went on to discuss the draft minutes of Lord Burns' meetings with key stakeholders; they agreed that there were some recurring themes. They discussed briefly the evidence submitted by the Information Commissioner and the case by case approach that he takes to considering appeals before him. The Commission picked up specifically on the point raised in Lord Burns' meeting with the Lords Beith and Marks about the extension of the Act to private contractors, which was also raised in a large number of the call for evidence responses. The Commission agreed to consider further.
7. The Commission then turned its attention to the issue of receiving oral evidence and agreed that it would do so in January. The Secretariat agreed to begin organising the evidence sessions.
8. PLS was asked to provide advice at the next meeting about how to handle the publication of the report itself.

Paper 1: Options for revising sections 35 and 36 of the Act

9. The Chair introduced the paper by briefly outlining the proposals contained in it; he asked in general terms what the Commission thought about keeping separate the two provisions, although no decision could be made as the responses to the Call for Evidence had not yet been considered.
10. The Commission considered that clarity might be brought to the drafting of sections 35 and 36, improving the understanding both of requesters and of bodies subject to the Act about the information exempt under each provision. The Commission thanked the Secretariat for providing the paper, and confirmed that they would look again at the options after considering the responses to the call for evidence.

Paper 2: Protection for sensitive policy information

11. The group considered the paper and discussed generally the different categories of information described in it. They focused specifically on the protection afforded to different types of risk assessments and the Secretary confirmed that risk assessments relating to policy would most likely be covered by section 35, and other kinds of risk assessment would usually be able to rely on section 36. The Commission asked for further advice on the different types of risk registers (subsequently provided).

Paper 3: Options on the burdens of FOI

12. The Commission considered paper 3, noting the wide range of options for addressing burdens, if that was something that the Commission wished to make a recommendation on, once it had considered the evidence received. They also discussed the Information Commissioner's evidence and the reference to 'vexatious requesters' in it and the extent to which this might be used to help public authorities in reducing the burdens imposed on them by the FOI regime.

Stephen Jones, Secretary
November 2015