

Independent Commission on Freedom of Information

Minutes of the 9th meeting
8:00 to 9:30, Wednesday 24th February 2016
102 Petty France, Room 10.50B

Attendees

Lord Burns (Chairman)
Lord Carlile of Berriew
Dame Patricia Hodgson
The Rt Hon Lord Howard of Lympne
The Rt Hon Jack Straw

Secretariat

Stephen Jones (Secretary)
Narinder Sahota
Alexandra Avlonitis

Introduction and minutes of the last meeting

- 1.1 LB welcomed Commissioners to the final meeting of the Commission.
- 1.2 The minutes of the last meeting had been agreed by email.

Consideration of Evidence

- 2.1 All of the Commissioners confirmed that they had access to all of the responses to the call for evidence, and that they had read and considered carefully all of the responses received, or summaries thereof.
- 2.2 They had considered these alongside the evidence obtained at the two oral sessions, and the supplementary evidence received from some witnesses afterwards.
- 2.3 They had also taken into account the views expressed at stakeholder meetings, and the advice and research provided by the Secretariat.

Consideration of recommendations

- 3.1 The Commissioners considered a paper provided by the Secretariat that presented a wide range of options for reform in respect of the areas covered by the Commission's terms of reference, as well as the issue of extending the Act to new bodies. The Commissioners also considered a draft report which set out provisional views developed as the evidence had been considered.
- 3.2 The Commissioners agreed that, having taken into account all of the evidence received, that they were content to agree the provisional recommendations set out in the draft report, subject to some final amendments to the text. Those recommendations are annexed to these minutes.

Publication of report

- 4.1 The Commissioners discussed the arrangements for submitting the final report. It was agreed that it should be possible to finalise the report and have it prepared for submission by Monday 29 February.
- 4.2 The report would be submitted to Matthew Hancock, Minister for the Cabinet Office. The Commissioners understood that he would make arrangements to publish the report in the near future.

4.3 The Commissioners agreed that as the report would be published by the government, there would be no need for them to make any public announcements.

Any other business

5.1 The Chair and Commissioners extended their thanks to the Secretariat for their support, flexibility and hard work in helping the Commission to reach its final recommendations.

Stephen Jones
February 2016

Agreed recommendations

Recommendation 1: That the government legislates to amend section 10(3) to abolish the public interest test extension to the time limit, and replace it instead with a time limit extension for requests where the public authority reasonably believes that it will be impracticable to respond to the request on time because of the complexity or volume of the requested information, or the need to consult third parties who may be affected by the release of the requested information. This time limit extension will be limited to an additional 20 working days only.

Recommendation 2: That the government legislates to impose a statutory time limit for internal reviews of 20 working days.

Recommendation 3: That the government legislates to make the offence at section 77 of the Act triable either-way.

Recommendation 4: That the government legislates to impose a requirement on all public authorities who are subject to the Act and employ 100 or more full time equivalent employees to publish statistics on their compliance under the Act. The publication of these statistics should be co-ordinated by a central body, such as a department or the IC.

Recommendation 5: That the government legislates to impose a requirement on all public authorities who are subject to the Act and employ 100 or more full time equivalent employees to publish all requests and responses where they provide information to a requestor. This should be done as soon as the information is given out wherever practicable.

Recommendation 6: Public bodies should be required to publish in their annual statement of accounts a breakdown of the benefits in kind and expenses of senior employees by reference to clear categories.

Recommendation 7: The government should give the IC responsibility for monitoring and ensuring public authorities' compliance with their proactive publication obligations.

Recommendation 8: The government should legislate to replace section 35(1)(a) with an exemption which will protect information which would disclose internal communications that relate to government policy.

Recommendation 9: The government should legislate to expand section 35(1)(b) so that, as well as protecting inter-ministerial communications, it protects any information that relates to collective Cabinet decision-making, and repeal section 36(2)(a).

Recommendation 10: The government should legislate to amend section 35 to make clear that, in making a public interest determination under section 35(1)(a), the public interest in maintaining the exemption is not lessened merely because a decision has been taken in the matter.

Recommendation 11: The government should legislate to amend section 35 to make clear that, in making a public interest determination under section 35, regard shall be had to the particular public interest in the maintenance of the convention of the collective responsibility of Ministers of the Crown, and the need for the free and frank exchange of views or advice for the purposes of deliberation.

Recommendation 12: The government should legislate to amend section 36 to remove the requirement for the reasonable opinion of a qualified person.

Recommendation 13: The government should legislate to put beyond doubt that it has the power to exercise a veto over the release of information under the Act.

Recommendation 14: The government should legislate to make clear that the power to veto is to be exercised where the accountable person takes a different view of the public interest in disclosure. This should include the ability of the accountable person to form their own opinions as to all the facts and circumstances of the case, including the nature and extent of any potential benefits, damage and risks arising out of the communication of the information, and of the requirements of the public interest.

Recommendation 15: The government should legislate so that the executive veto is available only to overturn a decision of the IC where the accountable person takes a different view of the public interest in disclosure. Where a veto is exercised, appeal rights would fall away and a challenge to the exercise of the veto would be by way of judicial review to the High Court. The government should consider whether the amended veto should make clear that the fact that the government could choose to appeal instead of issuing a veto will not be a relevant factor in determining the lawfulness of an exercise of the veto. Until legislation can be enacted, the government should only exercise the veto to overturn a decision of the IC.

Recommendation 16: The government should legislate to allow the veto to also be exercised even where the IC upholds a decision of a public authority. This would mean that the right of appeal would fall away and challenge would be instead by way of judicial review.

Recommendation 17: That the government legislates to remove the right of appeal to the First-tier Tribunal against decisions of the IC made in respect of the Act. Where someone remained dissatisfied with the IC's decision, an appeal would still lie to the Upper Tribunal. The Upper Tribunal appeal is not intended to replicate the full-merits appeal that currently exists before the IC and First-tier Tribunal, but is limited to a point of law.

Recommendation 18: That the government legislates to clarify section 11(1)(a) and (c) of the Act so that it is clear that requestors can request information, or a digest or summary of information, be provided in a hard copy printed form, an electronic form, or orally. Where a requestor specifies a specific electronic document format, that request should be granted if the public authority already holds the information in that format, or if it can readily convert it into that format. Where the information requested is a dataset, the requirements at section 11(1A) will apply. The legislation should make clear that the obligations on public authorities to provide information in a particular format extend no further than this.

Recommendation 19: That the government reviews section 45 of the Act to ensure that the range of issues on which guidance can be offered to public authorities under the Code is adequate. The government should also review and update the Code to take account of the ten years of operation of the Act's information access scheme.

Recommendation 20: That the government provides guidance, in a revised Code of Practice issued under section 45, encouraging public authorities to use section 14(1) in appropriate cases.

Recommendation 21: That the government reviews whether the amount of funding provided to the IC for delivering his functions under the Act is adequate, taking into account the recommendations in this report and the wider circumstances.