

Independent Commission on Freedom of Information

Minutes of the 3rd meeting

4pm to 6pm, Wednesday 7th October 2015

102 Petty France, Room 10.50b

Attendees

Lord Burns (Chairman)

Narinder Tamana (Secretariat)

Lord Carlile of Berriew

Alexandra Avlonitis (Secretariat)

Dame Patricia Hodgson

Lord Howard of Lympne

The Rt Hon Jack Straw

Apologies

Stephen Jones (Secretary)

1. Minutes of last meeting

1.1 The minutes of the meeting held on the 7th September were agreed.

2. Paper 1: Engagement Plan and proposals for engagement seminars

2.1 The Chairman introduced the paper on the engagement plan and explained it covered draft letters to peers and Members of Parliament. It also set out: a cross –section list of stakeholders who might be approached to be encouraged to reply to the call for evidence paper; and suggestions for meetings that should be held during the call for evidence period. The Commissioners suggested a small change to the opening paragraph of the letters to set out the terms of reference in layman terms but were otherwise content with the plan.

2.2 The proposals for the engagement seminars were discussed and it was agreed that they would not be taken forward at this time. Instead bilateral meetings would be held and the need for oral evidence would be considered in light of the written evidence.

Action: Secretariat to change letters and send out on the launch date for the call for evidence paper.

3. Paper 2: Age and type of section 35/36/37 information ordered for release by ICO

3.1 The Chairman explained that the paper set out detailed information about the age and type of material which has been ordered to be released under sections 35, 36 and 37 of the Freedom of Information Act 2000 by the Information Commissioner, and builds on the advice shared with the Commission on 7 September. The reason for this analysis was two-fold: it seeks to establish whether the material covered by these exemptions is of a particular age; or a particular type. The following points were made:

- Section 35 cases data showed that that 41% of material falling under section 35 and being ordered for release is relatively recent, being up to two years old. A considerable proportion of the material is up to 5 years old (61%). Within the “up to 10 years” category, 79% of the material is to be found.
- For Section 36 cases the majority of the material being ordered for release is relatively recent. Of the 70 cases, nearly 86% of them were less than 3 years old.
- There were very few adverse section 37 cases and there was no noticeable trend in terms of the age of the material.
- The type of material most frequently ordered for release under section 35 was categorised as “official or expert advice or reports” (37%). The second most common (28%) category was ‘ministerial meetings, discussion and or correspondence’. The third most common (17%) category was ‘official meetings, discussions and or correspondence’. These three categories represent approximately 81% of the material ordered for release.
- In terms of section 36 cases “official policy meetings, discussions, and correspondence” represented the most common (18% of total) category ordered for release. The next most significant category are miscellaneous requests, (18% of total), followed by “official or expert advice or reports (incl. legal advice)” (15% of total).
- For section 37 cases: there seemed to be a smaller set of cases to draw from but the three most common categories were: “Ministerial meetings, discussions, correspondence”; “official meetings / discussions / correspondence – non-policy”; and ‘miscellaneous’ requests representing 75% of all the cases.

3.2 The Commissioners noted the contents and agreed to consider alongside the written evidence that would be submitted. The Secretariat also indicated that further work was being undertaken on understanding the Information Commissioner’s decision notices for section 35, 36, and s37.

4. Paper 3: High Profile cases

4.1 The Chairman explained that Paper 3 sets out examples of high profile cases which had attracted media attention. Some of these cases were reported by the media to be potentially affected by the work of the Commission. The paper covered cases both affected by section 35, 36 and 37 and the veto cases. The Commissioners noted the contents of the paper and agreed to consider alongside the written evidence that would be submitted.

5. Paper 4: Development of the Freedom of Information Bill

5.1 Paper 4 provided a chronology of the passage of the FOI Bill focussing particularly on section 35 and 36 exemptions, the veto and how the public interest test developed. The Commissioners noted the passage of the Bill and how concessions and changes were made.

6. Paper 5: Options for discussion

6.1 The Chairman explained that Paper 5 set out potential options available for reform of the veto, exemption and the appeals system. The Commissioners noted that the paper was helpful and agreed to consider in parallel to the written evidence that was submitted.

7. Any other business

7.1 None. The next meeting would be held on the 3rd November.

Stephen Jones

Secretary to the Independent Commission on Freedom of Information

October 2015