

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 16 March 2009

Public Authority: Cabinet Office
Address: Propriety and Ethics Team
Room 118
70 Whitehall
London
SW1A 2AS

Summary

The complainant requested all records the Cabinet Office holds about the discussion of the Olympics which occurred at the Cabinet meeting of 30 January 2003. The Commissioner has established that the information that the Cabinet Office holds which falls within the scope of this request comprises the formal Cabinet minute and notes of the meeting made by the Cabinet Secretary and another senior civil servant. The Cabinet Office argued that the requested information was exempt from disclosure on the basis of the exemptions contained at section 35(1)(a) (formulation and development of government policy) and section 35(1)(b) (Ministerial communications). The Commissioner has concluded that all of the information falling within the scope of this request is exempt by virtue of section 35(1)(b) and in all of the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. The complainant submitted the following request to the Cabinet Office on 10 September 2007:

'All records of the discussion about the Olympics which occurred at the Cabinet meeting on 30 January 2003, and copies of any papers presented to this meeting which refer to the Olympics.'

3. In submitting this request the complainant noted that Alastair Campbell had given a partial account of this particular Cabinet discussion in his published diaries which revealed that different and conflicting opinions, apparently held by various Ministers, were put forward at the meeting. Furthermore, the complainant noted that Mr Campbell had submitted his book for vetting by the Cabinet Office and on his website Mr Campbell explained that his approach to this process had been 'punctilious'. In light of this the complainant suggested that the normal arguments which have led the Cabinet Office to withhold Cabinet minutes and papers (e.g. the public interest in preserving the collective responsibility and free exchange of views) had been undermined by Mr Campbell's writings and also the Cabinet Office's apparent approval of the content of Mr Campbell's book.
4. The Cabinet Office informed the complainant on 8 October 2007 that it held information relevant to his request. However, the Cabinet Office explained that it considered the information to be exempt from disclosure on the basis of sections 35(1)(a) and 35(1)(b) of the Act, which provide exemptions for information relating to the formulation and development of government policy and Ministerial communications respectively.
5. The complainant requested an internal review of this refusal on 16 October 2007 noting that the Cabinet Office's refusal notice had failed to take into account the fact that Mr Campbell had already published his version of the Cabinet meeting in question.
6. On 29 November 2007 the Cabinet Office informed the complainant that it had conducted an internal review which had concluded that the information requested was exempt from disclosure by virtue of sections 35(1)(a) and 35(1)(b). The Cabinet Office noted that books and memoirs submitted by former Ministers and officials are considered in line with criteria set out in the Radcliffe Rules. However, this did not mean that these publications have received official sanction or approval.

The Investigation

Scope of the case

7. The complainant contacted the Commissioner on 30 November 2007 in order to complain about the Cabinet Office's decision to withhold the information he requested. In particular the complainant argued that the Cabinet Office failed to sufficiently take into account the fact that Mr Campbell had published his account of the Cabinet meeting and presumably the Cabinet Office had made no objection to its publication.

Chronology

8. The Commissioner contacted the Cabinet Office on 16 September 2008 and asked to be provided with a detailed explanation as to why it had concluded that the information falling within the scope of this request was exempt on the basis of sections 35(1)(a) and 35(1)(b). The Commissioner also asked to be provided with a copy of the exempt information. The Commissioner indicated that he assumed that this information would comprise the relevant Cabinet minute; any papers submitted to this meeting referring to the Olympics; and any other 'records' that the Cabinet Office may hold which relates to this particular discussion.
9. The Commissioner received a substantive response on 4 December 2008. In this response the Cabinet Office explained that it was not appropriate given the nature of the requested information – i.e. Cabinet minutes – to provide the Commissioner with a copy of the information. Rather, the Cabinet Office invited the Commissioner (or one his staff) to visit the Cabinet Office to view the requested information 'in situ'.
10. The Cabinet Office also explained that when it originally dealt with this request in September 2007 it had interpreted the complainant's request to simply be seeking the Cabinet minute for this particular meeting as this was its general understanding of the usage of the word 'record'. However, the Cabinet Office noted that this approach had been challenged in a recent Information Tribunal case in which the Tribunal had concluded that a request for records relating to a Cabinet meeting encompassed not only the minute itself but also any notes taken of the meeting in officials' notebooks.¹
11. The Cabinet Office's letter of 4 December 2008 also provided some additional arguments to support their position that the requested information was exempt from disclosure.
12. The Commissioner subsequently contacted the Cabinet Office in order to make arrangements to view the withheld information in this case. The Commissioner explained to the Cabinet Office that in light of the Tribunal's findings in case reference EA/2008/0024 & 0029, he was of the view that the officials' notebooks in which a record of the Cabinet meeting was made also fell within the scope of the request. Therefore, the Commissioner explained that he wished to view both the official minutes of the meeting and the officials' notebooks.
13. The Deputy Commissioner visited the Cabinet Office on 13 January 2009 in order to view the formal Cabinet minutes and on 23 January 2009 in order to view two notebooks in which a record of the meeting was made.

¹ *Cabinet Office v Information Commission and Lamb*, (EA/2008/0024 & 0029) decision promulgated on 11 August 2008 which addressed the preliminary issue of what information fell within the scope of the Dr Lamb's request.

Findings of fact

14. Alastair Campbell was the Prime Minister's director of communications and strategy from 1997 until 2003. In July 2007 he published *'The Blair Years'* which featured extracts from his diaries detailing the period he had worked at No. 10 Downing Street. The diaries contain a brief, about half a page, discussion of the Cabinet meeting which is the focus of this request. Mr Campbell's account of the meeting explained that Jack Straw reported on a number of issues which had been discussed at committee meetings so far, including the estimated cost of the Games, the rise in London council tax and some of the pros and cons of supporting a bid. Mr Campbell's account also indicates whether some leading members of the Cabinet voiced approval or not for the bid.
15. The Radcliffe Rules apply to ministerial memoirs and were established as a result of the report of the Committee of Privy Counsellors on Ministerial Memoirs, chaired by Lord Radcliffe and published in 1976. The Radcliffe principles aim to ensure that Ministers are free to give an account of their work in any memoirs they choose to publish subject to the restrictions on three separate categories of information, namely: information about national security considerations operative at the time of publication; information which would be injurious to the country's relations with other nations; and, communications received in confidence from outside members of the public. The Rules also apply to civil servants, including special advisers, and members of the Diplomatic Service.
16. The information viewed by the Deputy Commissioner consisted of the official Cabinet Minute of the meeting of 30 January 2003; the notes taken of the meeting by the then Cabinet Secretary Andrew Turnbull and also a set of notes taken by a member of the Cabinet Office's Economic and Domestic Affairs Secretariat.
17. On 15 May 2003 the Government announced its intention to support a bid by the British Olympic Association to stage the 2012 Olympic and Paralympic Games in London.
18. On 6 July 2005 The International Olympic Committee announced that London had been awarded the 2012 Games.

Analysis

The scope of the request

19. Before considering the application of the exemptions, the Commissioner wishes to clarify the exact nature of the information which he believes falls within the scope of the request.
20. As noted above the request sought '**all records** of the discussion about the Olympics which occurred at the Cabinet meeting on 30 January 2003...' (emphasis added). In the Commissioner's opinion such a request includes not only the official Cabinet minute of the meeting, but also any records taken by the

Cabinet Secretary (and any other civil servant officials) who attended the Cabinet meeting in question. As noted in the findings of fact section such handwritten notes were made the then Cabinet Secretary Andrew Turnbull and Paul Britton. The Commissioner is satisfied that the Cabinet Office would not, and does not, hold any other records detailing the discussion at the meeting in question.

21. The Commissioner believes that such an interpretation of this request – the alternative interpretation being simply that **only** the formal minutes fall within the scope – is supported by the Tribunal's comments in the decision issued by the Tribunal in EA/2008/0024 & 0029 on 11 August 2008.
22. In that case the complainant submitted a request which sought 'Cabinet minutes and records relating to meetings it held on 7 to 17 March 2003'. Both the Cabinet Office and the Commissioner when initially considering this request concluded that it should be interpreted to simply include the Cabinet minutes themselves and not any less formal records such as notes made by the Cabinet Secretary. Having considered the wording of this request the Tribunal concluded that such an interpretation was incorrect and the complainant's request also covered less formal records of the meeting: 'it [the request] plainly extended beyond just the formal minutes and included any other record held by the Cabinet Office of the discussions which took place on the identified topic during the meetings in question'.²
23. Consequently, on the basis of this finding of the Tribunal the Commissioner believes that the information falling within the scope of this request is the formal minute, the notes taken by Andrew Turnbull and the notes taken by Paul Britton. The Commissioner found no evidence of the existence of any other information which would fall within the scope of the request.

Exemption

24. The Cabinet Office has argued that the information falling within the scope of the request is exempt from disclosure on the basis of the exemptions contained at both section 35(1)(a) and section 35(1)(b) of the Act.
25. The Commissioner has initially considered the application of section 35(1)(b).

Section 35(1)(b)

26. Section 35(1)(b) states that:

'35(1) Information held by a government department or by the National Assembly for Wales is exempt information if it relates to –

(b) Ministerial communications'

² Tribunal at paragraph 15 in its decision of 15 August 2008 in EA/2008/0024 & 0029.

Section 35(5) notes that “Ministerial communications” includes ‘proceedings of the Cabinet or any committee of the Cabinet’.

27. The Commissioner is therefore satisfied that both the formal Cabinet minutes and the two notebooks containing minutes of the meeting fall within the scope of the exemption contained at section 35(1)(b) by virtue of the fact that although, as a documents, they are not strictly ‘communications’, they clearly constitute a record of Ministerial communications.
28. However, section 35 is a qualified exemption and therefore the Commissioner must consider the public interest test set out in section 2(2) of the Act and whether in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
29. The Commissioner has began by considering the balance of the public interest with regard to the formal Cabinet Minutes and then gone on consider the public interest test for the notes taken by the two civil servants.

Public interest test

Public interest arguments in favour of withholding the Cabinet Minutes

30. The Cabinet Office’s arguments as to why the public interest favoured withholding the requested information on the basis of section 35(1)(b) were brief but focused on the maintenance of the convention of collective responsibility. The Cabinet Office argued that this convention requires that Ministers should be able to argue freely in private so that when decisions have been reached they can present a united front in public. In the Cabinet Office’s opinion the maintenance of the convention is fundamental to the continued effectiveness of government, something which is manifestly in the public interest.
31. In the Commissioner’s opinion this argument can be expanded somewhat; the public interest in maintaining the convention of collective responsibility covers two separate, though related, public interest arguments:
32. Firstly, there is a public interest in protecting the safe space required by Ministers to engage in frank and candid debate and reach a collective position in relation to a particular issue away from external scrutiny. This argument is akin to the ‘safe space’ argument often advanced in relation the public interest test under section 35(1)(a).
33. Secondly, there is a public interest in allowing Ministers to promote and defend an agreed position without revealing divergent individual views. Not allowing this could potentially result in valuable government time being spent publicly debating (and defending) views that have only ever been individual views, rather than accepted government positions, and in commenting on the significance of, and implications of, any difference of opinion within the Cabinet on a particular issue. In essence, it is not in the public interest that disclosures of information under the

Act would undermine confidence to an extent that the Cabinet is distracted from devoting its full attention to the process and business of governing.

Public interest arguments in favour of disclosing the Cabinet minutes

34. The Cabinet Office highlighted a number of general public interest arguments in favour of disclosing the Cabinet Minutes. The Commissioner has set these out and expanded on them in the following paragraphs:
35. There is an inherent public interest in the government being accountable for, and transparent about, decisions it has taken. The government's eventual decision to support a bid for the 2012 Olympics is not simply a momentous decision because it has resulted in the UK hosting an international sporting event. Rather, the 2012 Games will have, and indeed have already begun to have, a direct impact on variety of other government policies, e.g. transport policy for the capital city and the regeneration of east London. The impact on such policies is likely to be felt for many years, if not decades to come. London's hosting of the 2012 Games inevitably has an international dimension and the perceived success, or otherwise, of the Games could affect the UK's reputation in the international community. Therefore, to the extent that disclosure would reveal how and why the Government reached the decision to bid, disclosure would be in the public interest.
36. There is also a general public interest in the government being accountable for, and transparent about, money it has spent and committed public funds. At the time of this Cabinet meeting in early 2003 the government's understanding was that the level of public subsidy needed to support a successful bid was in region of £2.375bn which comprised £1.5bn from the National Lottery, £0.625bn from the council tax and £0.250bn from the London Development Agency.³ The cost of the Olympics has increased significantly since the government first announced it was going to bid; in March 2007 the then Culture Secretary, Tessa Jowell, announced the budget for the Games had risen to £9.35bn with the government's contribution comprising £6bn of that.⁴ Given this significant level of public funds which were subsequently committed to the project following the awarding of the Games, there is clearly a public interest in disclosure of information which would inform the public about the issues considered by the Government in relation to the financial implications of a successful bid.
37. There is also a public interest in disclosure of information which would inform public debate. In the Commissioner's opinion it is clear that there are a range of wide public debates surrounding a number of aspects of the 2012 Games. Although these debates may focus on the Government's decision to bid for the Games, the debates also encompass a number of other facets, including the cost overruns and how these will be met; how the Games will regenerate east London; how the regions of the UK in addition to London will benefit from the Games; and

³ Figures taken from Department for Culture Media and Sport report entitled 'Government Response to "A London Olympic Bid 2012" (HC 268) Report of the Culture, Media and Sport Select Committee. The report is available here: <http://www.culture.gov.uk/images/publications/OlympicsCm5867.pdf>

⁴ Source: '[Olympics budget rises to £9.3bn](#)', BBC News, 15 March 2007.

the legacy of the Games. In the Commissioner's opinion disclosure of the Cabinet minutes would inform the public debate in relation a number of these discussions, including of course the initial decision to bid.

38. Disclosure of the Cabinet minutes may reassure the public that the Cabinet gave sufficiently detailed, thorough and objective consideration to the process of discussing whether the government should support a bid for the 2012 Games (presuming of course, that disclosure of the minutes would reveal such a discussion). Disclosure could therefore increase public confidence in the Cabinet system of government being an efficient and effective forum for debating such issues, something which is the public interest given the central role Cabinet discussions and decision making play in the UK's political system.
39. Equally, disclosure of the Cabinet minutes may be said to be in the public interest if the minutes actually reveal that the Cabinet failed to undertake a detailed and reasoned assessment of arguments relevant to bidding for the 2012 Games (on the alternative presumption that disclosure of the minutes would reveal of this). In essence, disclosure may reveal the failure of a decision making process at the heart of government, and it would be in the public interest to expose such a failure, not only to ensure that those involved in Cabinet discussions are encouraged to take better decisions in future, but also to expose any potential failure of the decision making process.

Balance of the public interest arguments with regard to the Cabinet Minutes

40. Before considering the balance of the public interest in detail the Commissioner wishes to clarify that simply because information falls within the scope of section 35(1)(b) this does not automatically mean that the convention of collective Cabinet responsibility is relevant. For example, some information falling within the scope of section 35(1)(b) by virtue of being a communication between two Ministers may be anodyne or deal simply with process rather than policy issues; equally communications may simply be for information purposes.
41. Rather, the convention of collective responsibility allows the government to be able to engage in free and frank debate in order to reach a collective position and to present a united front after a decision has been made. The Tribunal in *Scotland Office v Information Commissioner (EA/2007/0070)* provided the following description:

‘the long standing convention that Ministers are collectively accountable for the decisions of the Cabinet and are bound to promote that position to Parliament and the general public, regardless of their individual views. During the course of meetings of the Cabinet or of Cabinet Committees or through correspondence, Ministers may express divergent views, but once a decision is taken, the convention dictates that they must support it fully. When decisions are announced as Government policy, the fact that a particular Minister may have opposed it in Cabinet is not disclosed.’ (para 82).

42. Having reviewed the information which falls within the scope of section 35(1)(b) in this case the Commissioner is satisfied that they represent substantive and significant communications in the context of government deliberations on whether to bid for the 2012 Games, and therefore it is relevant in considering the public interest test in this case to consider the convention of collective responsibility.
43. In balancing the public interest, the Commissioner is conscious that a number of Tribunals have made it clear that the convention does not elevate section 35(1)(b) to the equivalent of an absolute exemption for information which engages collective cabinet responsibility. However, two Tribunal decisions have noted that: 'We accept that where collective responsibility of Ministers is engaged, there will nearly always be a public interest in maintaining the exemption' and moreover 'very cogent and compelling reasons for disclosure would need to be advanced before the balance tips in favour of disclosure in those situations'.⁵
44. The Commissioner is also mindful of the factors identified by the Tribunal in the balancing of the public interest in section 35(1)(b), again in the Scotland Office case (EA/2007/0070):
- 'Factors such as the context of the information, whether it deals with issues that are still "live", the extent of public interest and debate in those issues, the specific views of different Ministers it reveals, the extent to which the Ministers are identified, whether those Ministers are still in office or in politics, as well as the wider political context are all matters that are likely to have a bearing on the assessment of the public interest.' (Para 87)
45. Although that case involved correspondence between Ministers, rather than minutes of Cabinet meetings, the Commissioner is satisfied that the factors discussed by the Tribunal are relevant to all cases involving the consideration of collective responsibility. The Commissioner has therefore discussed below how the various factors identified by the Tribunal are applicable in this case:
46. With regard to whether the issues discussed are 'live', it is clear that by the time of the complainant's request in September 2007 the government's decision to support a bid for the Olympics had not only be taken, but London had also been awarded the Games. Furthermore, the London Olympics Bill, which had been introduced to Parliament on 14 July 2005 had received Royal Assent in March 2006. The London Olympics Bill established the Olympic Delivery Authority ('ODA') as the public body responsible for developing and building the new venues and infrastructure for the Games. By the time the complainant had submitted his request the ODA had taken, and was beginning to implement, various policy decisions about the 2012 Games.
47. On the basis of such an analysis, the Commissioner accepts that there is some legitimacy to the argument that the issues covered by the Cabinet meeting of 30 January 2003 were no longer live by the time of the complainant's request.

⁵ *Scotland Office v The Information Commissioner* (EA/2007/0070) at paragraph 86 and *Scotland Office v The Information Commissioner* (EA2007/0128) at paragraph 78.

48. However, having reviewed the Cabinet minutes the Commissioner agrees with the position advanced by the Cabinet Office that in addition to discussing what is arguably the macro level policy decision of whether to support a bid for the 2012 games, the minutes also include discussions of a number of related, and in comparison, perhaps micro level policy issues in relation to the bid. For example, how the Games would be funded, London's transport infrastructure and the legacy of the Games. In the Commissioner's opinion policy discussions around such issues at the time on the request were clearly ongoing; to follow the phraseology of section 35(1)(a), they were still being formulated and developed. Therefore, at the time of the request in September 2007 the Commissioner is satisfied that the policy formulation and development process in relation to a number of key aspects of 2012 Games was ongoing and thus a number of issues covered by the minutes can be accurately described as 'live'.
49. As with the formulation of government policy under section 35(1)(a), where a Ministerial communication relates to a live issue, the Commissioner accepts that the public interest in preserving a safe space for Ministers to have a full and open debate about potentially contentious issues is an inherently sound one. Not disclosing the minute and thus preserving this space would allow the Cabinet to engage in frank and candid debate and reach a collective position in any future discussions on the 2012 Games. By implication the Commissioner accepts that disclosure of the minute would be likely to inhibit of future discussions on this issue. As this request dates from 2007, some five years before London is to host the Games, the Commissioner accepts that it is likely that in this intervening period the Cabinet will debate various issues in relation to the Games and thus the public interest in preserving such a safe space has to be given considerable weight.
50. A number of Ministers who were present at the Cabinet meeting of 30 January 2003 are still in government. For example Gordon Brown was Chancellor at the time of the meeting and by the time of the request was Prime Minister; Tessa Jowell who was Secretary of State for Culture, Media and Sport at the time of the meeting was by the time of the request Minister for the Olympics; and Alistair Darling who was Secretary of State for Transport at the time of the meeting had taken up the position of Chancellor by the time of the request. Although the minutes do not attribute every comment made to a particular Cabinet member – as is the convention for Cabinet minutes – the Commissioner noted that the minute is full and does in fact attribute some views to identifiable individuals. Furthermore, even if this were not the case, the minutes could still reveal differences of opinion within the Cabinet.
51. In the Commissioner's view the fact that a number of Ministers who attended the Cabinet meeting of 30 January 2003 are still in government, and moreover some of the views voiced at the Cabinet are attributable in the minutes, adds to the public interest in withholding the minutes.
52. In the circumstances of this case the Commissioner believes that particular weight has to be given to the second strand of the public interest underpinning the convention, i.e. there is a public interest in allowing Ministers to promote and

defend an agreed position without revealing divergent individual views. As discussed above policy issues associated with the Games are not limited to the now historical decision of whether to support a bid. Rather, discussion on topics such as funding, transportation policy, regeneration and legacy issues continue. In the Commissioner's view given the significance of London hosting the Olympics, and the increasing cost of doing so, it is reasonable to argue that debate of these issues will contain to occupy the media and interested individuals right up to the Games themselves and indeed beyond. This is particularly relevant in this case, given that the currency of the debate of the policy issues spans a number of years, including the five-year period from the time of the request to the time when London will host the Games.

53. With regard to attributing weight to the factors in favour of disclosure, the Commissioner believes that the significance of the government's eventual decision to support the Olympics should not be underestimated. Not only did this decision commit around £2.5bn of public funds to the project in 2003, but also ensured that the government would have to meet any increase in the cost of hosting the Games. The Commissioner believes that given the significant amount of public money which was committed by the government to the bid the public interest in disclosing the minutes in order to ensure that the government is transparent about the decision making process involving the expenditure of such funds is strong. (The Commissioner wishes to note that it is not simply the large cost overruns which make the weight attributable this public interest argument strong; rather, in the Commissioner's opinion, this argument is still compelling even if the level of public funds needed to stage the Games had remained within the original forecasts).
54. Equally in the Commissioner's opinion the wide ranging and sweeping consequences of a successful bid – e.g. not just the commitment of billions of pounds of public money but also the impact on London's transport infrastructure; the regeneration of East London; the impact, whether positive or negative of the Games on the rest of the UK; the legacy of the Games; the impact on sport in the UK; the environmental consequences of hosting the Games etc – ensure that the public interest in disclosing the minutes to ensure that the government is transparent about, and accountable for, the issues it considered in whether deciding to support a bid is also strong.
55. By extension, given the wide ranging consequences of London hosting the Games, the public debates on the topic are many and varied. For example, there is some debate as to why tax payers not living in London, and arguably not receiving any direct benefits from the Games, should still have their taxes used to support the Games or indeed the debate as to whether the 2012 Games will benefit grassroots sport in the UK. Given the range of these debates the Commissioner believes that the public interest in disclosing the Cabinet minutes to the extent that they might further such debates is also weighty. Moreover, the fact that these debates relate to live issues and to policies which are still in the course of being formulated and developed arguably lends further weight to this argument. The public could potentially use the minutes to inform current debate and contribute to ongoing policy decisions in relation to the Games.

56. However, the Commissioner believes that several counter-arguments can be made in relation to a number of the arguments in favour of disclosure:
57. With regard to argument advanced by the complainant at paragraphs 3 and 7, the Commissioner accepts that this is not without some logic; it would be difficult for the Cabinet Office to formally approve the publication of political memoirs which reveal in detail the exact nature of specific Cabinet meetings and subsequently claim that disclosure of the minutes of such meetings would undermine the principle of collective responsibility.
58. However, the Commissioner does not believe that this argument can be used to support the public interest in disclosure of these minutes for two reasons: Firstly, the passage in *'The Blair Years'* where Mr Campbell provides his version of the Cabinet meeting in question is only half a page long. It is a far less detailed account than the official minutes themselves and consequently it would be incorrect to argue that disclosure of the detailed minutes would not undermine collective responsibility because the details of the Cabinet's discussions are already in the public domain.
59. Secondly, the Commissioner notes that in providing the complainant with the outcome of its internal review the Cabinet Office noted that:
- 'Books and memoirs submitted by former Ministers and officials are considered in line with the criteria set out in the Radcliffe Rules. It does not mean that these publications had received official sanction or approval. The position remains that discussions between Ministers of a confidential nature, representing collective responsibility, should not in general be released'.
60. When giving evidence during the Tribunal's hearing of EA/2008/0024 & 0029 the current Cabinet Secretary Sir Gus O'Donnell discussed the publication of political memoirs and specifically in relation to the publication of the *'The Blair Years'*; he stated that:
- 'I made clear to Alastair in the letter I wrote that I very much regret this book is being published at all. I was against it. I thought that it was wrong of someone in the position of Alastair to be publishing what he did. It's one thing for ministers, another for special advisers.'⁶
61. Therefore, in the circumstances of this case the Commissioner does not believe that it is accurate to conclude that the Cabinet Office officially sanctioned the publication of the *'The Blair Years'* as the complainant's argument at paragraphs 3 and 7 imply. Moreover, having compared and contrasted the official minutes and the relevant section of the *'The Blair Years'*, the Commissioner believes that disclosure of the minutes would still significantly undermine the convention of collective responsibility by revealing frank discussions more detailed than those indicated by Mr Campbell. The Commissioner considers that there is a very

⁶ As reported in The Times article ['Gus O'Donnell on leaks, secrecy and why Alastair Campbell was wrong to publish his diaries'](#) published on 26 November 2008.

significant difference between the publication of a personal account of events in a memoir or diary and the disclosure of the official record of proceedings at the highest level of government.

62. Furthermore, although the Commissioner cannot go into particular detail as to the content of the minutes themselves, he believes that he can state that their length and the level of detail indicate a full and wide-ranging discussion. Consequently, the Commissioner believes that any public interest argument that disclosing the minutes might reveal inadequate decision making are of little weight in this case.
63. In conclusion the Commissioner is conscious of the significance of the issues that were considered by the Cabinet meeting of 30 January 2003, particularly in light of the fact London's bid was ultimately successful, and thus the public interest in ensuring that the government is accountable for, and transparent about, its discussions on whether to support a bid are weighty. Furthermore, in the Commissioner's opinion there is a strong public interest in improving the level of public debate around the various policy issues associated with the Games. When aggregated the Commissioner believes that there arguments represent a persuasive case in favour of disclosing the minutes.
64. However, the Commissioner is also conscious of the inherently strong public interest in the maintenance of the convention of collective responsibility. The circumstances of each case must always be taken into account. In this case the issues discussed in the minutes are at least in part, ones that are considered to still be live at the time of the request; the minutes may be used to identify the views of individual Ministers; a number of the Ministers involved remain in the Cabinet; the issues considered are likely to be ones which the government will discuss and which will be scrutinised for a number of years to come. There is considerable weight in the arguments which support the case for protecting the convention in this case and withholding the relevant minute of 30 January 2003.
65. Therefore in all the circumstances of this case the Commissioner finds that the public interest in maintaining the exemption outweighs the public interest in disclosing the minutes.

Balance of public interest arguments with regard to the informal notes

66. The Commissioner believes that the public interest arguments in favour of both disclosing and withholding the informal notes closely follow those in favour of disclosing and withholding the formal Cabinet minutes. For example, the underlying public interest in maintaining the convention of collective responsibility in relation to the Cabinet minutes themselves is equally valid in relation to the informal notes. Similarly the strong public interest in disclosing the minutes in order to further the public debate on issues surrounding the 2012 Games, is equally valid to the extent that disclosure of the notes would further these public debates. Therefore, although the Commissioner has not reprised the various arguments set out in paragraphs 30 to 39 in this section, he has taken the arguments contained within them into account in balancing the public interest with regard to the informal notes.

67. Furthermore, given the different nature of the notes compared to the minutes the Commissioner believes that there are number of additional factors which must be taken into account when considering where the balance of the public interest lies in relation to the disclosure of the notes.
68. Firstly, whereas the minutes do not attribute all comments to individual Ministers, the notes of the meeting do directly attribute almost all the specific comments to particular Ministers. Consequently, the Commissioner believes that this further supports the argument accepted above that it would not be in the public interest for individual Ministers' opinions to be disclosed. This would not only undermine the safe space in which Ministers need to discuss issues relating to the Olympics, but also result in pressure on the government to debate and defend the views of individuals which were advanced during the meeting.
69. Secondly, the notes were not made with the intention of being published; they were not even made within the intention of being distributed to those who attended the Cabinet. Rather the notes were taken as part of the administrative process of creating the formal Cabinet minutes. This essentially involves the Cabinet Secretary (and any other civil servant attending in a secretariat function) using their notes of the meeting as a basis upon which to create the formal minutes which become the official record of the discussion. It is the formal official minute which is then distributed to Cabinet members. Inevitably for the formal Cabinet minutes to be an accurate and balanced record of the meeting in question, the notes taken by the Cabinet Secretary (and any other note taker) have to be full and contemporaneous. They will inevitably be written in a personal style, using abbreviations, symbols and other "shorthand". In the Commissioner's opinion the administrative process behind the creation of formal Cabinet minutes is deserving of significant protection.
70. The Commissioner accepts that Cabinet Secretaries' notebooks are retained as historical records and may subsequently be published as such, but this does not detract from the primary purpose of note-taking which, in the Commissioner's view, is administrative.
71. Finally, the Commissioner has compared the two sets of notes to the official minute of the meeting of the 30 January 2003 and is satisfied that the official minute is an accurate representation of the contemporaneous notes which were taken. Therefore, it could not be said that there is an additional public interest in disclosing the notebooks, over and above that in disclosing the official minutes, on the grounds that the notebooks contain extra material which may serve the public interest factors identified in favour of disclosure. Nor could be it be said that the administrative process of creating the minutes in this case was flawed, i.e. there are no discussions of substance recorded in the notes which are not included in the formal minute.
72. In conclusion, the Commissioner believes that the public interest in maintaining the exemption outweighs the public interest in disclosing the notes. In reaching this decision the Commissioner accepts that disclosure of the notebooks, as with disclosure of the minutes, would serve the public interest factors in favour of

disclosure. However, disclosure would also significantly harm the principle of collective responsibility, arguably more so than disclosure of the official minutes. Moreover, disclosure of the notebooks would also harm the administrative process of recording proceedings and debate at Cabinet meetings.

73. On the basis that the Commissioner has concluded that both the official minutes and the informal notes are exempt by virtue of the exemption provided by section 35(1)(b) and the public interest in respect of both favours maintaining the exemption, the Commissioner has not gone on to consider whether the information would also be exempt by virtue of section 35(1)(a).

The Decision

74. The Commissioner's decision is that the information held by the Cabinet Office which falls within the scope of this request is exempt from disclosure by virtue of section 35(1)(b) of the Act and in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the requested information.

Steps Required

75. The Commissioner requires no steps to be taken.

Right of Appeal

76. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 16th day of March 2009

Signed

**Graham Smith
Deputy Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Section 1(1) provides that -

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

Section 1(2) provides that -

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

Section 2(2) provides that –

“In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that –

(a) the information is exempt information by virtue of a provision conferring absolute exemption, or

(b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information”

Section 35(1) provides that –

“Information held by a government department or by the National Assembly for Wales 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 or the provision of such advice, or

(d) the operation of any Ministerial private office.

Section 35(5) provides that –

“In this section-

“Ministerial communications” means any communications-

(a) between Ministers of the Crown,

(b) between Northern Ireland Ministers, including Northern Ireland junior Ministers, or

(c) between Assembly Secretaries, including the Assembly First Secretary, and includes, in particular, proceedings of the Cabinet or

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of any committee of the Cabinet, proceedings of the Executive Committee of the Northern Ireland Assembly, and proceedings of the executive committee of the National Assembly for Wales;