First-tier Tribunal
(General Regulatory Chamber)
Information Rights

Appeal Reference: EA/2016/0078

Decided without a hearing
On 19 November 2018

Before

JUDGE BUCKLEY

MELANIE HOWARD

MARION SAUNDERS

Between

ANTHONY MORLAND

Appellant

and

THE INFORMATION COMMISSIONER

First Respondent

THE CABINET OFFICE

Second Respondent

OPEN DECISION

1. For the reasons set out below the Tribunal allows the appeal against Decision Notice FS50588594 and issues the following substitute decision notice.

2. All parties consented to the matter being determined on the papers and the Tribunal considered that it was appropriate to determine the appeal without an oral hearing.

3. There is also a closed annex in order not to undermine the Tribunal's decision on what information should be disclosed in accordance with rule 14. The annex will remain closed until after the latest date for applying for permission to appeal or until the conclusion of any appeal. A redacted version of the annex will be released after that date.

SUBSTITUTE DECISION NOTICE

Public Authority: The Cabinet Office

Complainant: Anthony Morland

The Substitute Decision – FS50588594

1. For the reasons set out below s 35(1)(a) and s 37(1)(b) of the Freedom of Information Act 2000 (FOIA) are engaged but the public interest in disclosure outweighs the public interest in maintaining the exemption in relation to the parts of the withheld information identified in the closed annex.

2. For the reasons set out below s 35(1)(a) and s 37(1)(b) of the Freedom of Information Act 2000 (FOIA) are engaged and the public interest in disclosure is outweighed by the public interest in maintaining the exemption in relation to the remainder of the withheld information identified in the closed annex.

Action Required

1. The Public Authority is required to respond to the complainant's request within 42 days of the promulgation of this judgment by supplying the information identified in the closed annex.

REASONS

Introduction and procedural background

1. The request for information arises out of a campaign for the introduction of. National Defence Medal ('NDM') to recognise the service of Armed Forces members who did not serve in specific conflicts. The request dated 8 April 2015 asks for minutes of the Honours and Decorations Committee ('HD Committee') held on 23 February 2015.

2. This is Mr Morland's appeal against the Commissioner's decision notice of 1 March 2016 FS50588594 which held that the Cabinet Office was entitled to rely on s 37(1)(b) of the Freedom of Information Act (FOIA) and that the public interest favoured withholding the information.

3. Mr Morland's appeal was heard by a differently constituted first tier tribunal which allowed the appeal. That first-tier tribunal will be referred to in the decision as the '2017 Tribunal'. It concluded on 16 January 2017 that:

   3.1. The scope of the request was limited to item 3, paragraph 4 of the 23 February 2015 HD Committee minutes headed 'National Defence Medal".

   3.2. Section 37 was not engaged because it applied only to the conferral of existing Honours and Decorations, not the creation of new Honours and Decorations.

   3.3. Section 35 was not engaged because the 2017 Tribunal was not satisfied that policy was still being formulated or developed.

4. The Cabinet Office's appeal of that decision was allowed by the Upper Tribunal on 1 March 2018. The Upper Tribunal concluded that:

   4.1. The 2017 Tribunal had been entitled to find as a matter of fact that the process of policy formulation and development was over by the time Mr Morland made his request. It did not follow that the s 35(1) exemption was not engaged and the 2017 Tribunal should have found that it was.

   4.2. The 2017 Tribunal should also have found that the exemption in s 37(1)(b) was engaged.

5. The matter was remitted to this Tribunal. In accordance with the Upper Tribunal decision we must proceed on the basis that s 35 and 37 are engaged and decide where the balance of public interest lies.

6. Four appeals arising out of a similar factual background have been heard by the Tribunal on the same day. They are: EA/2016/0078 (Morland v IC and Cabinet Office); EA/2017/0295 (Cabinet Office v IC and Scriven); EA/2016/0281 (Cabinet Office v IC and Farrar); and EA/2018/0098 (Cabinet Office v IC and Halligan). Much of the factual background appears in each decision.

Factual background

7. The National Defence Medal ('NDM') proposed by campaigners is a medal in recognition of service which, subject to certain criteria, would be awarded to

all Regular and Reserve servicemen and women who have served in the Armed Forces since the end of the Second World War. It is intended to honour veterans who did not participate in a specific conflict, but who stood ready to do so as members of the Armed Forces. Mr Morland is the co-chair of the NDM campaign.

8. A medal review was carried out by the Ministry of Defence in 2011. This review is described as 'flawed and discredited' by the UK NDM campaign for the reasons set out at pp5-8 of their NDM submission dated 3 May 2012. On 30 April 2012 the Prime Minister announced a further independent review.

9. In May and June 2012 Sir John Holmes conducted an independent review of the policy concerning military medals including the case for a National Defence Medal. The review team received over 200 submissions and spoke to more than 50 individuals including representatives from veteran groups.

10. The report was published in July 2012 ('the Holmes Report'). In relation to NDM Sir John Holmes recommended that it was 'worthy of consideration' and that:

> Its merits, and examples from other countries, should be looked at by a Cabinet Office-led working group in the first place, before consideration by the reconstituted HD Committee and its sub-committee. Any recommendations should be made initially to the government, rather than The Queen, and would then need to be the subject of wider political and other consultation, since this is a decision of broad national significance which would require a broad political and public consensus. (P123 of the Holmes Report)

11. Paragraph 17, p 10 of the Holmes Report reads as follows:

> … the current system of decision-making is vulnerable to the charge of being a "black box" operation, where those outside have no knowledge of what is being decided or why and have no access to it; and where the rules and principles underlying the decisions, while frequently referred to, have never been properly codified or promulgated.

12. With specific reference to the HD Committee, the Holmes Report stated, on p27:

> The process is also largely invisible and inaccessible to those outside the system, which has substantially added to the frustration of veterans and other campaigners, unable to penetrate beyond bland official statements that a particular decision has been taken.

13. Under the United Kingdom Constitution, honours and decorations are created and conferred by Her Majesty the Queen in her personal capacity as Monarch rather than on behalf of the Government. The 'HD Committee' (the Committee on the Grant of Honours, Decorations and Medals) is a sub-committee of the

Cabinet. It is a permanent standing committee established in 1939 at the request of George VI to provide advice to The Sovereign on policy concerning honours, decorations and medals. It operates under the direction of the Head of the Civil Service, who nominally chairs the Committee, and its current terms of reference are:

> To consider general questions relative to the Grant of Honours, Decorations and Medals; to review the scales of award, both civil and military, from time to time, to consider questions of new awards, and changes in the conditions governing existing awards.

14. The HD Committee directly advises The Queen on policy relating to the grant of individual honours, decorations and medals. It also considers general questions relating to this topic, including the introduction of new awards. The Committee's more general recommendations are also put forward for The Sovereign's formal approval.

15. The HD Committee meets typically two or three times a year. The role of chair of the HD Committee is currently formally delegated to Sir Jonathan Stephens, Permanent Secretary to the Northern Ireland Office. The members of the HD Committee are:
Private Secretary to HM The Queen
Principal Private Secretary to the PM
Permanent Secretary, FCO
Permanent Secretary, Home Office
Permanent Secretary, Ministry of Defence
Defence Services Secretary
Secretary, Central Chancery of the Orders of the Knighthood.

16. Following the Holmes report, the Prime Minister asked Sir John Holmes to lead a second stage of work to make further recommendations using the principles he had proposed to implement his findings. Reviews of certain claims for medallic recognition were undertaken by an independent review team, and Sir John Holmes's recommendations in relation to these were put before the Advisory Military Sub-Committee (the 'AMSC' – a sub-committee of the HD Committee set up in response to the Holmes report) at the first meeting of the AMSC, on 12 December 2012 and 29 August 2013. An NDM paper, prepared by Cabinet Office officials was put before the AMSC on 29 August 2013. At that meeting on 29 August Sir John Holmes outlined 21 further claims for medallic recognition which had not yet been looked at by the independent review team, and gave recommendations as to the way forward, i.e. whether or not these should be reviewed.

17. All these claims, including the NDM, came before the HD Committee on 29 January 2014 and/or on 9 June 2014.

18. On 29 July 2014 a written ministerial statement from Baroness Stowell informed the House of Lords that the review was complete, stating that:

> Sir John was therefore commissioned to review independently a number of cases which had been brought to his attention as possible candidates for changed medallic recognition. The aim was to draw a definitive line under issues which in some cases had been controversial for many years… Each of the reviews has been subject to detailed discussion by the Committee on the Grant of Honours, Decorations and Medals and its conclusions submitted for Royal Approval….The outcomes where detailed reviews were carried out are listed in the Annexe to this statement.

19. In relation to the NDM Baroness Stowell stated that the HD Committee was 'not persuaded that a strong enough case can be made at this time but has advised that this issue might usefully be considered in the future'. This was in contrast to other historic claims for medallic recognition where it was stated that there would be no possibility of reconsideration in the absence of significant new evidence of injustice.

20. The NDM options paper that was considered by the HD Committee at the point that it made its recommendations was placed in the Library of the Lords. We accept the Cabinet Office's assertion that although it is dated after the HD Committee meeting, that is merely the date of publication and that it is the same options paper that was before the Committee.

21. Correspondence subsequently took place between the Cabinet Office and the NDM campaign and the HD Committee considered that correspondence at a meeting on 23 February 2015, concluding that the time was not right for a review. These minutes are the subject of the request in this appeal.

22. Following that meeting the co-chair of the NDM campaign, Colonel Scriven, was informed of the conclusion by letter dated 4 March 2015:

> …I brought our recent correspondence on the National Defence Medal to the attention of HD Committee at its last meeting. The Committee had a further discussion, carefully noting the points that you have made. It was particularly concerned that some veterans have gained the impression that it made its decision on the basis of a diluted submission. It has therefore asked me to reassure you that its discussion have taken proper account of the arguments put forward by many veterans and in your own letters. However, the Committee remained unpersuaded of the case at this time'.

23. In an email to Mr Morland dated 8 April 2015, Gary Rogers of the Cabinet Office stated, in relation to the meeting of 23 February 2015:

> HD Committee had before it recent correspondence from Colonel Scriven, Co-Chairman of the UK National Defence Medal Campaign, but whilst the Committee noted the points made by Colonel Scriven, members remained unpersuaded of the case for an NDM at this time. In light of this, there are no plans for further work on this issue… You will be aware that Stephen Gilbert's Private Member's Bill on the

National Defence Medal which was due to have a second reading on 27 February, we not reached.

24. There was a House of Commons Debate on NDM on 12 April 2016. The HD Committee considered reopening the NDM issue again on 1 February 2017 and remained unconvinced.

25. By letter dated 14 February 2017 Colonel Scriven made an official complaint under the Cabinet Office complaints procedure to the minister for the Cabinet Office, Ben Gummer MP. The complaint alleged failures by the head of the Honours and Appointments Secretariat to appropriately oversee the Cabinet Office responsibilities of the Holmes review and the alleged provision of misinformation about the veracity of the medal review process. Mr Gummer tasked Sir Jonathan Stephens, the chair of the HD Committee, with carrying out an investigation into the complaint.

26. Sir Jonathan Stephens asked a retired former senior civil servant to consider the complaint. His conclusions were that the review was handled entirely properly, but that the figure used in the Westminster debate on 12 April 2016 for the cost of introducing NDM (£475m) was wrongly attributed to the Holmes review, whereas it was an MOD estimate. The error was repeated in a Written Parliamentary Answer on 25 April 2016. Colonel Scriven was informed of the outcome and sent a copy of the report by letter dated 28 July 2017. In that letter Sir Jonathan Stephens apologised for the error of attribution and indicated that the parliamentary record would be set straight. He concluded 'I am afraid I will not be able to correspond further with you on this issue. As you know, the Minister decided in July 2014 not to introduce a National Defence Medal. That remains the position and unless, or until, there is change of policy there will be nothing more to add.'

27. Colonel Scriven wrote again to Sir Jonathan Stephens on 15 January 2018. He asserted that the investigation and its conclusions were flawed. His letter requests either that the military medal review is reopened or that the matter is referred to the parliamentary ombudsman for an in-depth evaluation of the whole process, with a view to reopening the review.

Request, Decision Notice and appeal

Request

28. This appeal concerns the following request made on 8 April 2015 in the context of an exchange of correspondence about the National Defence Medal. It is important to note that it forms part of a reply to an email from the Cabinet Office informing Mr Morland that the NDM had come before the HD Committee again on 23 February 2015 and that members remained unpersuaded of the case for an NDM at this time. The request from Mr Morland, in response to that email was:

Perhaps you could also pass on (under the FOI Act) a request to see the minutes of the HD Committee meeting which reached this conclusion. At least we will then be able to address the perceived weaknesses in the case, and you can stop fielding the same questions.

Reply and review

29. The Cabinet Office responded on 1 May 2015, refusing the request on the basis of s 35(1)(a) and s 37(1)(b). It upheld its decision on internal review on 27 May 2015. Mr Morland referred the matter to the Information Commissioner on 5 August 2015.

Decision Notice

30. In a decision notice dated 1 March 2016 the Commissioner decided that the Cabinet Office was entitled to rely on s 37(1)(b) and that the public interest favoured withholding the information. The Commissioner did not go on to consider s 35. In balancing the public interest, the Commissioner accepted the need for a level of confidentiality to provide a safe space which allows free and frank discussion of proposals, and that disclosure of views and opinions made in confidence is likely to have a chilling effect in future.

31. In relation to the minutes that did not relate to the National Defence Medal the strong public interest in protecting a safe space outweighed the public interest in transparency. In relation to the minutes relating to the National Defence Medal, the Commissioner found that there was a strong public interest in transparency and in particular in understanding why the UK has an approach which differs from other Commonwealth nations. Further weight was added to the public interest in protecting a safe space by the fact that the matter was not completed. The Commissioner found that the public interest was finely balanced but that, by a narrow margin, the public interest favoured maintaining the exemption in relation to this section of the minutes.

Notice of Appeal

32. Mr Morland appealed against the Commissioner's decision notice. In summary, the relevant parts of the notice of appeal challenge the Commissioner's decision notice on the grounds that the public interest favours disclosure. He also asserts that the decision-making process was criticised for its lack of transparency by Sir John Holmes in the Military Medals Review and that the Military Sub-Committee stage was not independent.

The Commissioner's response

33. The ICO's response dated 29 April 2016 submits that the Commissioner took proper account of the public interest in disclosure. The alleged lack of independence from government was not evidenced, nor was it relevant to the public interest balance.

The Appellant's reply to the Commissioner

34. In his replies dated 10 and 11 May 2016 Mr Morland makes the following points:
    34.1. Confidentiality should have less weight in the case of the NDM because of the large number of people affected.
    34.2. A redacted copy, including removing names, would preserve confidentiality.
    34.3. The decision-making process has been criticised in the Holmes Report for being a 'black box' where outsiders have no knowledge of what is being decided and why.
    34.4. It is in the public interest to know if matters were properly considered, how long the attendees took to reach a conclusion, how many members attended, what influence was exercised, whether it was unanimous or a close-run thing.
    34.5. The government has made it clear that they have no intention of revisiting the case.
    34.6. It is important to know what figures on the cost of the medal influenced the decision, in the light of debate around the accuracy of the figures relied upon. If the debate is not closed, it is important to know this to inform a decision on what new evidence should be brought forward on cost.
    34.7. The references to Sir John Holmes' 'recommendations' on the NDM in a debate on 12 April 2016 raise questions as to what was before the HD Committee. Providing the minutes would clarify this.

The Cabinet Office's reply

35. In its reply dated 28 June 2016 the Cabinet Office makes the following points:
    35.1. The confidentiality of the honours system is important in ensuring its effective and efficient operation.
    35.2. It would be a considerable departure from the general approach of the Commissioner to order disclosure.
    35.3. The high level of public interest and emotion in the NDM proposal is a key reason why there is a particular need to preserve a safe space.
    35.4. S 35 should be considered in the alternative.
    35.5. The perception of a lack of independence is irrelevant.
    35.6. The Appellant has significantly overstated the extent to which consideration of the NDM proposal has been kept private. It is not a secretive and undemocratic process. A lot of information is in the public domain. The conclusions on the NDM of the Ministry of Defence

Advisory Military Sub-Committee of the HD Committee have been made public. The HD Committee conclusions were made public. Only the detail of the HD Committee deliberations has been withheld.

The Appellant's reply to the Cabinet Office

36. In his reply dated 9 July 2016 Mr Morland makes a number of points including:
    36.1. The need for a safe space is acknowledged but outweighed because no judgment can be made on the fairness of the decision without detailed rationale.
    36.2. This is a matter of great national importance.
    36.3. The decision was made by only four unelected representatives out of the 14 strong committee.
    36.4. It was not independent: all four had a duty towards supporting the government position
    36.5. It was not an in-depth review. Less than 5-6 minutes were spent discussing each submission including the NDM.
    36.6. Because the Queen has already approved a similar award for Australia and New Zealand, the rationale needs to be transparent.
    36.7. The considerable interest in and emotion surrounding NDM is a factor that supports disclosure rather than the withholding of the information.
    36.8. Once a decision is taken the need for a safe space diminishes.
    36.9. Scrutiny strengthens or allows challenge of decisions.

Legal framework

37. The relevant parts of s 1 and 2 of the FOIA provide:

> General right of access to information held by public authorities.
> 1(1) 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.
>
> Effect of the exemptions in Part II.
> .....
> 2(2) 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.

38. Section 35(1)(a) of FOIA provides as follows:

> 35 Formulation of government policy, etc.

(1) Information held by a government department or by the Welsh Assembly government is exempt information if it relates to—
(a) the formulation or development of government policy

39. The question of whether the policy-making process is still 'live' is an issue that goes to the assessment of the public interest balancing test (**Morland v Cabinet Office** [2018] UKUT 67 (AAC).

40. The inter-section between the timing of the FOIA request and its relevance to the public interest balancing test is helpfully analysed by the First-tier Tribunal in **Department for Education and Skills v Information Commissioner and the Evening Standard** (EA/2006/0006) ("**DFES**") at paragraph 75(iv)-(v) (a decision approved in **Office of Government Commerce v Information Commissioner** [2008] EWHC 774 (Admin); [2010] QB 98 ("**OGC**") at paragraphs 79 and 100-101):

> (iv) The timing of a request is of paramount importance to the decision. We fully accept the DFES argument, supported by a wealth of evidence, that disclosure of discussions of policy options, whilst policy is in the process of formulation, is highly unlikely to be in the public interest, unless, for example, it would expose wrongdoing within government. Ministers and officials are entitled to time and space, in some instances to considerable time and space, to hammer out policy by exploring safe and radical options alike, without the threat of lurid headlines depicting that which has been merely broached as agreed policy. We note that many of the most emphatic pronouncements on the need for confidentiality to which we were referred, are predicated on the risk of premature publicity. In this case it was a highly relevant factor in June 2003 but of little, if any, weight in January 2005.
>
> (v) When the formulation or development of a particular policy is complete for the purposes of (iv) is a question of fact. However, s. 35(2) and to a lesser extent 35(4), clearly assume that a policy is formulated, announced and, in many cases, superseded in due course. We think that a parliamentary statement announcing the policy, of which there are examples in this case, will normally mark the end of the process of formulation. There may be some interval before development. We do not imply by that that any public interest in maintaining the exemption disappears the moment that a minister rises to his or her feet in the House. We repeat – each case must be decided in the light of all the circumstances. As is plain however, we do not regard a "seamless web" approach to policy as a helpful guide to the question whether discussions on formulation are over.

41. The public interest can wax and wane and the need for a safe space changes over time in relation to development of policy. If disclosure is likely to intrude upon the safe space then there will, in general terms, be significant public interest in maintaining the exemption, but this has to be assessed on a case by case basis.

42. S 37 FOIA provides where relevant as follows:

37 Communications with Her Majesty, etc. and honours.
(1) Information is exempt information if it relates to –
…
(b) the conferring by the Crown of any honour or dignity.

43. Sections 35 and 37 are not absolute exemptions. The Tribunal must consider if, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure.

44. In considering the factors that militate against disclosure the primary focus should be on the particular interest which the exemption is designed to protect, in the case of s 35 this is the efficient, effective and high-quality formulation and development of government policy (see e.g. para 57 in the FTT decision in **HM Treasury v ICO** EA/2007/0001).

45. The Upper Tribunal in **Morland v Cabinet Office** [2018] UKUT 67 (AAC) held that:

> …the purpose of section 37 itself is to protect the fundamental constitutional principle that communications between the Queen and her ministers are essentially confidential. Section 37(1)(a)-(ad)…specifically protects the actual communications with the Sovereign and certain other members of the Royal Family and the Royal Household. Section 37(1)(b) must be concerned with activities other than communications with the Sovereign. The logical purpose of section 37(1)(b) is to ensure candour and protect confidences in the entire process of considering honours, dignities and medals.

46. The balance of public interest should be assessed as it stood at the time of the outcome of the internal review (**Savic v ICO AGO and CO** [2016] UKUT 0534 (AAC) at para 10).

47. The **APPGER** case gives guidance on how the balancing exercise required by section 2(2)(b) of FOIA should be carried out:

> … when assessing competing public interests under FOIA the correct approach is to identify the actual harm or prejudice that the proposed disclosure would (or would be likely to or may) cause and the actual benefits its disclosure would (or would be likely to or may) confer or promote. This … requires an appropriately detailed identification of, proof, explanation and examination of both (a) the harm or prejudice, and (b) benefits that the proposed disclosure of the relevant material in respect of which the exemption is claimed would (or would be likely to or may) cause or promote.

48. The public interest is not the same as being of interest to the public.

49. When a qualified exemption is engaged, there is no presumption in favour of disclosure. The proper analysis is that, if, after assessing the competing public

interests for and against disclosure having regard to the content of the specific information in issue, the Tribunal concludes that the competing interests are evenly balanced, we will not have concluded that the public interest in maintaining the exemption (against disclosure) outweighs the public interest in disclosing the information (as section 2(2)(b) requires) (**Department of Health v Information Commission and another** [2017] EWCA Civ 374).

The role of the Tribunal

50. The Tribunal's remit is governed by s.58 FOIA. This requires the Tribunal to consider whether the decision made by the Commissioner is in accordance with the law or, where the Commissioner's decision involved exercising discretion, whether she should have exercised it differently. The Tribunal may receive evidence that was not before the Commissioner and may make different findings of fact from the Commissioner.

Evidence

51. The Tribunal read and took account of a closed and an open witness statement dated 11 May 2018 of Helen Ewen, Head of the Honours Secretariat, on behalf of the Cabinet Office. The contents of this statement will not be summarised here, but it has been taken into account, where relevant, in making findings on the factual background and in our conclusions below. Mr Morland's assertions as to the accuracy of this statement and the Cabinet Office's response have been noted and taken account of where relevant.

52. We note for example that the Cabinet Office accepts an error in paragraph 12 which states 'The conclusions of Sir John Holmes report (HE10/1-70) (to which I refer below) were put before The Sovereign for approval'. This is intended to state that the Options Paper was put before the Sovereign for approval.

53. The Tribunal was referred to and took account of a large number of documents.

Submissions

54. The Tribunal read closed and open submissions from the Information Commissioner and the Cabinet Office and open submissions from Mr Morland. All the submissions were read and taken account of where relevant. There are a large number of submissions in this case and we do not repeat all the points here.

55. The closed submissions were short and dealt with certain specific details in the withheld information which both the Commissioner and the Cabinet Office agreed increased the public interest in maintaining the s 37 exemption. We cannot provide further information on the gist of those submissions without undermining the effect of this decision.

Submissions from Mr Morland dated 12 April 2018

56. FOIA revelations have disclosed substantial discrepancies in the way the NDM submission and the medal review process was handled. The indication of alleged wrongdoing having been committed impacts on the credibility of the HD Committee. This invalidates the safe space argument.

57. The myriad of FOIA requests submitted demonstrate the significant dissatisfaction with the military review process and disclosure of apparent wrongdoing within government.

58. Policy formulation was no longer in process.

59. The close relationship between the disputed information and the whole medal review of the NDM means that the Tribunal should take account of the public interest relating to the whole military medal review process. There is significant public interest in:

    59.1. knowing who decided, and why, that the AMSC would be located within the MoD and that it would not include independent members;

    59.2. knowing why the finalised minutes of the AMSC meeting on 5 December 2012 were lost or not produced, whether action was taken to deal with this and if it was brought to the attention of the HD Committee;

    59.3. knowing why, in the HD Committee meeting on 29 August 2013, some medal submissions were not reviewed fully or at all, why the secretariat did not rectify this and if the HD Committee were aware of this;

    59.4. knowing how many HD Committee members did not attend meetings dealing with the military medals review findings;

    59.5. knowing if the HD Committee were aware that the Secretariat was sending misleading correspondence claiming that the HD Committee had carried out lengthy, full and careful discussions prior to making decisions.

60. Further Mr Morland asserts that:
    60.1. the Secretariat failed to exercise due diligence;
    60.2. the investigation of Colonel Scriven's complaint was a cause of concern.

61. Given the loss of the AMSC minutes; the failure of the AMSC to review every medal submission properly or at all and a lack of substance in the comments on other medal submissions shown in the minutes of 29 August 2013, the HD Committee could only have made unsound decisions and recommendations.

It is in the public interest to know why the HD Committee took no action in the February 2015 meeting.

62. The HD Committee's attention was drawn to the misinformation and overestimates in relation to cost of the NDM and it is in the public interest to know what was discussed in the February meeting in relation to cost. Release of the February minutes would show if the erroneous attribution of £475m had influenced the HD Committee's position, contrary to the conclusion in the report on the investigation of Colonel Scriven's complaint.

63. Mr Morland alleges wrongdoing by the government as follows:

63.1. MoD becoming gatekeeper of the advice submitted to the HD Committee
63.2. The loss of minutes
63.3. Failure to appropriately or at all review all the medal submissions
63.4. Failure of all members of HD Committee to attend vital decision meetings
63.5. Failure to account for expenditure of tax payers' money on legal representation to keep details of the medal review out of the public domain
63.6. Misinformation given about the veracity of the medal review
63.7. Lack of due diligence by the HD Committee secretariat
63.8. A flawed investigation into Colonel Scriven's complaint resulting in a fudged report endorsed by the Chair of the HD Committee on behalf of the Cabinet Office.

64. The HD Committee meeting which took place on 9 June 2014 should have allowed plenty of time for the ministerial statement to be factored into Parliament's order of business prior to its summer recess. It was presented the day after Parliament had risen on 29 July 2014. The delay avoided debate by MPs about the decision not to institute the NDM.

65. The options paper is dated 28 July 2014. This casts doubt on whether or not HD Committee members saw it or were aware of its contents prior to promulgation.

66. The Tribunal is asked to consider directing that the right to claim a 'safe space' is invalidated in cases where it can be shown that unsound decisions have been reached based on inaccurate and/or erroneous advice.

Open submissions from The Cabinet Office dated 11 May 2018

Aggregation

67. Where more than one exemption is relevant in a case, then the exemptions should be aggregated, so that the Tribunal considers whether overall the public interest in maintaining the exemptions outweighs the public interest in disclosure (**Office of Communications v IC** [2009] EWCA Civ 90 at para. 35-

43, confirmed by the CJEU in Case C71-10 [2011] 2 Info LR 1, [2012] CMLR 7; **Home Office and Ministry of Justice v the Information Commissioner** [2009] EWHC 1611 (Admin) para.25; **Department of Health v IC** (EA/2013/0087) at para. 49-58.

68. This is so even if the exemptions are unrelated, because of the impact of s 6 of the Interpretation Act 1978 see **Office of Communications v IC** para.37. The exemptions are in any event related because there is a clear overlap. Aggregation is an intellectual not a mathematical exercise.

Public Interest in disclosure

69. The public interest in disclosure is minimal. A substantial amount of information was in the public domain. Disclosure of one section of the minutes of one meeting does little to serve the public interest to see that the HD Committee functions effectively and properly. The content of the withheld information would add nothing to the public understanding of the issues related to NDM. It will not identify the perceived weaknesses in the NDM case. None of the arguments advanced by Mr Morland in para. 41 of his additional submissions of 12 April 2018 are relevant to the particular information in scope of this request.

70. The requested information will add very little to public understanding of the functioning of the committee or of the debate on NDM.

Public interest in maintaining the exemption

71. Under s.35(1)(a) and s 37(1)(b) taken alone, the public interest favours withholding the information. Aggregated together, they clearly outweigh the public interest in disclosure.

S 35(1)(a)

72. The information falls within the exemption for two reasons: it relates to ongoing handling of the policy on NDM (macro) and it relates to policy in relation to responding to recent correspondence from the NDM campaign (micro).

73. The fact that policy development has ceased does not mean that the public interest in maintaining the exemption disappears although it may be reduced.

74. The Cabinet Office accepts the factual finding of the 2017 Tribunal that policy in relation to NDM was not still being formulated or developed but that is only part of the picture. The meeting on 23 February 2015 was about whether there was any case for reviewing the previously announced policy position which continues to arise. The question of whether a policy should be reviewed is a

question of policy. There was still a live issue on macro policy issue at the relevant date and so considerations of 'safe space' remain relevant to NDM policy and considerations of NDM policy by the HD Committee. With a long-running campaign it is important to have a safe space for the frank exchange of views before an agreed position is communicated publicly.

75. The fact that the agreed position is communicated publicly does not remove the need for a safe space because the public interest in maintaining the safe space in which that decision was taken and in which future decisions will be taken remains (see HE para 34-55). Those involved thought they were operating in a safe space because of constitutional conventions and the way in which the minutes were expressed. There would be a chilling effect on the way in which views were expressed and in the way in which minutes were taken to the detriment of the administrative and historic records.

S.37(1)(b)

76. It is a fundamental constitutional principle that communications with the Sovereign are confidential, reflected in the absolute exemption in s 37(1)(a). In considering the weight to be given to s 37(1)(b) its close relationship with s 37(1)(a) must be appreciated. The purpose of s 37(1)(b) is to protect confidences and ensure candour in the entire process of considering honours, dignities and medals, a process which involves making recommendations to the Queen. There is potential for the constitutional principle to be undermined if the deliberations of the Queen's advisors in the form of the HD Committee are made public. There is a strong expectation, in accordance with the constitutional principle that these deliberations should also be confidential.

77. The maintenance of confidentiality in the entire process is important because it ensures that participants are free to express their views with complete frankness and candour. There is significant interest in the quality of debate and and in these views being reflected in the historical record (s 37(1)(b) being time-limited to information under 60 years old). This would be affected if information falling within the s 37(1)(b) were routinely disclosed.

78. Therefore, the public interest in maintaining the exemption will only be outweighed where there is a clear public interest in disclosure.

79. The safe space and chilling effect submissions made under s.35 apply equally to s 37(1)(b).

80. Under s.37(1)(b) taken alone, the public interest favours withholding the information.

Open submissions from the Commissioner dated 25 May 2018

81. S 35 (1)(a) adds very modest weight to the public interest in maintaining the exemptions in this case because policy formulation had effectively ceased. There is therefore little public interest in maintaining a safe space for policy formulation. The remaining public interest considerations are similar to those in maintaining the s 37 exemptions and must not be double counted.

82. The interest that lies at the core of s 37 is the protection of the fundamental constitutional principle of the confidentiality of communications between the Queen and her ministers. S37(1)(b) protects a distinct aspect of this principle: the process of considering honours, dignities and medals because communication with the Sovereign is at the core of this process. However, the purpose of s.37(1)(b) is not to protect the entire honours process per se, but to ensure candour and confidences during the process. The public interest in maintaining the exemption will be weightiest where the requested information consists of or reveals the content of confidential information or candid discussions.

83. The Commissioner accepts that the requested information in this case engages this fundamental purpose because it is a record of a confidential discussion and there is a risk that the candour of future discussions would be compromised by disclosure. The Commissioner accepts the points made at paras. 44-45 of its submissions and in para 39 of Ms Ewen's witness statement.

84. The Commissioner does not accept that there is a general rule to the effect that it should only be in cases that there is a clear public interest in disclosure that the public interest in maintaining the exemption will be outweighed. Where information does not reveal something confidential or candid discussions the public interest in maintaining it may be weak and only modest interests in its disclosure would be required for the balance to fall in favour of release.

85. In the absence of any current review or plan to review it, the policy on NDM cannot be regarded as under development in any meaningful sense. If there were a live question of whether to review a policy, it would give rise to a weaker public interest in protecting information than that relating to the original policy formulation.

86. In the meeting of which minutes are requested, the committee confirmed its earlier decision not to institute an NDM. This was communicated by letter dated 8 April 2015: 'there are no plans for further work on this issue'. The position at the time of the request was that a decision had been taken and there were no plans to review it. Although non-government actors continue to press for consideration to be re-opened there is no indication that the Government regards it as a live question. There are therefore no compelling public interests in maintaining the s 35(1)(a) exemption that relate to preservation of a safe space for policy formulation. The interests in maintaining the exemption in

relation to confidentiality and candour have already been weighed in the balance in consideration of the s 37(1)(b) exemption.

Submissions from Mr Morland dated 2 June 2018

87. Mr Morland submits that Ms Ewen's witness statement misrepresents the military medal review process in a number of significant ways, set out in detail in the submission. The Cabinet Office responded to this by email dated 15 June 2018. We have considered all the points made by both parties and the supporting evidence and taken account of them in our decision and in the summary of factual background where relevant.

88. The content of the exchange of correspondence between November 2014-January 2015 which was to be discussed in the HD Committee meeting of 23 February 2015 should have 'set alarm bells ringing' about the soundness of decisions/recommendations and should have led to a wish to address deficiencies. Disclosure of the minutes is of public interest, particularly if such discussion did not take place, or if few members attended the meeting.

89. Policy development in relation to NDM is not live: no further arguments have been put forward in support of the NDM since the original submission. The correspondence has related to re-opening the review.

90. Ms Ewen's statement refers to a further previous meeting at which the policy position to be adopted in relation to correspondence was discussed. This adds to the public interest in disclosure.

91. The redaction of specific names with comments attributed would ensure confidentiality and candour and would counter the chilling effect of full disclosure.

92. The integrity and robust nature of the honours system has already been dented by the way in which the medal review has been carried out.

93. In summary, the public interest favours disclosure because:

    93.1. The NDM could embrace realistically 2-4 million recipients and up to 7 million recipients.
    93.2. There has been a concerted effort to conceal unfairness in this flawed medal review.
    93.3. Redactions of attributability could counter the chilling effect of full disclosure and protect confidentiality and candour.

Open submissions from the Cabinet Office dated 14 August 2018

94. The Cabinet Office notes that the Commissioner agrees that the requested information does, on the facts, engage the fundamental purpose of s 37(1)(b) in

that it is a record of confidential discussions and there is a risk that future candour would be compromised. The Cabinet Office was not addressing cases where anodyne information fell within the scope of s 37(1)(b) and has no difficulty with the limitation that the Commissioner seeks to put on the Cabinet Office's submissions in this respect.

95. The Commissioner is in effect contending that once the process of policy and formulation and development is complete there is never any public interest in maintaining the exemption. This is wrong. There may continue to be public interest in maintaining confidentiality in order to preserve the safe space for future policy formulation or for other reasons such as to avoid unnecessary distraction or diversion of public funds.

96. The information requested relates to a point at which policy formulation and development was still 'live' and there has been a public commitment to Parliament that the NDM might be considered again in the future. The fact that there were no specific plans to reconsider has to be seen in the context of (i) that public indication (ii) the ongoing campaign that needed careful handling and response (iii) that fact that the issue has been looked at subsequently which casts light on how the position should be viewed at the time. S35 does therefore make a material contribution.

97. Release of the closed material will not add materially to the public understanding and debate around NDM.

98. Redacting individual names would not affect the public interest in maintaining the exemption in this case.

Submissions from Mr Morland dated 31 August 2018

99. Mr Morland criticises the way in which the bundle has been compiled, submitting that the order of the documents portrays his case unfairly. He asserts that Ms Ewen's open statement is misleading and inaccurate, and so, it is reasonable to assume, is her closed statement.

100. It is astonishing that the HD Committee had been informed of the shortfalls of the medal review process and how the NDM submission has been dealt with but had decided to take no remedial action.

101. Ms Ewen's comments in para 29 that disclosure of the HD Committee meeting minutes will not identify perceived weaknesses in the NDM case or add materially to the public understanding and debate around the case for NDM and her comments on the public interest in maintaining the exemptions at para 33, 35, 36 and 40 give a different representation of the content of the discussions to the information on the discussions given by Mr Tilbrook in his letter dated 4 March 2015. This difference adds weight to the public interest in disclosure.

102. Paragraph 36 of Ms Ewen's statement leads to reasonable questions about whether the decision by the HD Committee was influenced by political interventions by those present at the meeting. This heightens the public interest in disclosure.

103. The Cabinet Office highlights a reduction of almost two thirds of estimated veterans from seven million to 2.5 million. This questions the validity of the Ministerial Statement on 29 July 2014 and increases the public interest in understanding what correspondence was placed before the HD Committee on 23 February 2015, which can only be achieved by disclosure of the requested minutes.

104. There is no evidence to support the claim that policy discussions were still live. The assertion that the NDM campaign requires 'careful handling and response' is not a valid reason for claiming that policy formulation is still live.

105. Release of the minutes would alleviate public feelings of 'a cover up'. If disclosure would increase those feelings, that is not a reason for withholding the information.

106. The 'safe-space' is not relevant to the issues raised by the NDM campaign which have related to the inadequacies of the process and the way the NDM submission was dealt with.

107. The letter from Mr Tilbrook dated 4 March 2015 suggests that the content of discussions in the relevant meeting was such that redaction of the minutes to remove names would be appropriate.

108. There is clear evidence that information and advice presented to the HD Committee was incorrect and lacked veracity. The decisions of the HD Committee on NDM have been shown to be unsound. The Cabinet Office are continuing to refuse to confirm how many members of the Committee attended the meeting on 23 February 2015. In these circumstances it is untenable to rely solely on the maintenance of the safe space under s 37 on the balance of public interest.

109. Mr Morland agrees in principle that there is a need to protect candour and confidences but submits that the free and frank discussions and advice proffered should have substance if good government is to be achieved and the protection of a safe space appropriately applied.

110. The military medal review was to be open and transparent, this should include the HD Committee deliberations. Her Majesty would expect the advice from the HD Committee to be sound, based on fact and therefore free from criticism.

There is a public expectation that members of the HD Committee would be present and play an active part in discussions on the military medal review.

111. The protection of the 'safe space' should not be used where information before the HD Committee lacked veracity, most members of the Committee were absent, there are conflicting versions of what happened at the meeting of 23 February 2015 and decisions and recommendations were unsound.

112. In conclusion, the number of FOI claims and requests show that the review has not been open and transparent, nor has it addressed the inconsistency and injustice nor drawn a line in the sand. The situation is worse than before the 2011 review.

113. The minutes were requested so that Mr Morland could address the perceived weaknesses of the case for NDM in any future submission. Much has since been revealed about the deficiencies in the review. Most occurred prior to the request. They weigh heavily in the balance of public interest. The areas of neglect are highlighted in the submission of 12 April 2018. They are added to by the matters outlined in this submission.

114. A lack of accountability and questionable performance of the HD Committee have dented the integrity of the honours system. It is in the public interest to know why.

Discussions and Conclusions

115. We agree with the 2017 tribunal that the scope of the request is limited to item 3 (paragraph 4) of the minutes.

Aggregation

116. We note the parties' submissions in relation to aggregation. We do not need to decide whether or not exemptions need to be related in order to be aggregated: they are related in this case. We have looked at the aggregate effect of the exemptions in an impressionistic rather than mathematical way, considering where the different exemptions add weight and, conversely, where they overlap. While carrying out this exercise we have kept in mind the different interests protected by the different exemptions.

The relevant date at which to assess the public interest

117. The public interest balance has to be assessed at the time of the request or at the latest at the date of the outcome of the internal review which took place in this case on 27 May 2015. The Tribunal cannot take account of matters that have happened since then, save where they shed light on the position at the relevant

date. This includes some of the factors listed at paragraph 45 and detailed elsewhere in Mr Morland's additional submission dated 31 August 2018.

A contents-based approach

118. In our view it is not appropriate to assess the public interest in relation to a particular category of document (here, 'minutes of the HD Committee'), irrespective of content. We find the following paragraphs in the Upper Tribunal's judgment in **Department of Health v Information Commissioner** [2015] UKUT 159 to be of assistance in relation to a contents-based approach to public interest:

> 30. So a contents based assertion of the public interest against disclosure has to show that the actual information is an example of the type of information within the class description of an exemption (e.g. formulation of policy or Ministerial communications or the operation of a Ministerial private office), and why the manner in which disclosure of its contents will cause or give rise to a risk of actual harm to the public interest. It is by this route that:
>
> i) the public interest points relating to the class descriptions of the qualified exemptions, and so in maintaining the exemptions, are engaged (e.g. conventions relating to collective responsibility and Law Officers' advice) and applied to the contents of the information covered by the exemption, and
> ii) the wide descriptions of (and so the wide reach of) some of the qualified exemptions do not result in information within that description or class that does not in fact engage the reasoning on why disclosure would cause or give rise to risk of actual harm (e.g. anodyne discussion) being treated in the same way as information that does engage that reasoning because of its content (e.g. examples of full and frank exchanges).
>
> 31. That contents approach will also highlight the timing issues that relate to the safe space argument. The timing issues are different to the candour or chilling effect arguments in that significant aspects of them relate to the likelihood of harm from distracting and counterproductive discussion based on disclosure before a decision is made.
>
> 32. Finally, I record that I agree that a contents approach does not mean that the information is not considered as a package (see Foreign and Commonwealth Office v Information Commissioner and Plowden [2013] UKUT 275 (AAC) at [16]). Indeed, such a consideration accords with the nature of a contents-based assessment because it reflects the meaning and effect of the content of the relevant information.

119. These parts of the judgment remain binding on us. Further the Court of Appeal [2017] EWCA Civ 374 approved a contents-based approach at para 46 (my emphasis):

> I agree with Charles J that, when a qualified exemption is engaged, there is no presumption in favour of disclosure; and that the proper analysis is that, if, after assessing the competing public interests for and against disclosure **having regards to**

the content of the specific information in issue, the decision-maker concludes that the competing interests are evenly balanced, he or she will not have concluded that the public interest in maintaining the exemption (against disclosure) outweighs the public interest in disclosing the information (as section 2(2)(b) requires.)

120. We note the decision in **Plowden** referred to by the Upper Tribunal above, and we look at the information in context, i.e. on the basis that it appears in the minutes of discussions of the HD Committee. However, this does not mean that we must treat the document as a whole without regard to its contents. The FOIA regime is concerned with information not documents. When considering the public interest, we must look at the particular information contained in the document (see e.g. paras 33-36, **DBERR v Information Commissioner and Friends of the Earth EA/2007/0072)**.

Timing and the public interest

121. The question of the timing of the request is important because of the risks of the adverse effects of premature publicity on the particular interest which s 35 is intended to protect: the efficient, effective and high-quality formulation and development of government policy.

122. We do not consider that the question of the 'liveness' of a policy nor the question of the effect on the public interest should be seen as binary. Looking firstly at the effect on the public interest, it is clear that the public interest waxes and wanes with the circumstances: it is not a question of any public interest in maintaining a safe space disappearing the moment a policy is announced. The corollary of this, in our view, is that a policy's liveness can also wax and wane. We do not accept that the policy development process should be seen a seamless web, because this suggests that the policy development process is always live. Nor do we accept that a policy development process is necessarily 'dead' the moment a policy is announced publicly.

123. All the circumstances must be taken into account in order to assess, at the relevant point in time, whereabouts on the spectrum the facts fall: a policy in the very early stages of development or at a critical point in its development process would fall near the live end of the spectrum and consequently the weight of the public interest in maintaining the exemption would be much greater. A policy which is announced with no intention of further work would fall near the other end of the spectrum. Somewhere in between lie policies which have been placed 'on the backburner', or that are due to be reviewed after a certain period of time. The policy development process does not move smoothly from one end of the spectrum to the other – as stated above, its 'liveness' waxes and wanes. The task for the Tribunal is to consider, taking into account the facts before it on the state of policy development at the relevant date, what impact the disclosure of this particular information at the relevant time might have on the particular interest of protecting the efficient, effective and high-quality formulation of government policy.

124. On the facts we find that, at the relevant time, there was no ongoing process of policy formulation and development in terms of the substantive consideration of whether or not to introduce the NDM. The question of whether, at some point, that process would be rekindled was explicitly left open. On occasion, the decision on whether or not to re-open that substantive process was considered and taken. For example, the question of whether or not to re-open the process was considered and taken at the meeting of the HD Committee on 23 February 2015. We also accept that it was likely that the question of whether or not to re-open the substantive discussion on NDM would have to be considered again in the future. Further, a decision on how to respond to recent correspondence from the NDM campaign was taken at the meeting on 23 February 2015 and acted upon. There is nothing in the minutes of 23 February 2015 to support the suggestion that the discussions in that meeting related to any ongoing consideration of a policy on how to respond in general to correspondence from the NDM campaign. The Tribunal accepts that the question of how to respond to correspondence from the NDM campaign was something that was likely to have to be considered again in the future. We accept that the public interest in maintaining the exemption does not disappear the moment that a policy is announced.

125. Leaving aside the broader chilling effect arguments, which we consider below, we have asked ourselves whether, in the light of all the circumstances, the efficient, effective and high-quality formulation and development of government policy would be harmed or prejudiced by disclosure of this information in May 2015 because it was likely that these issues would have to be considered again. This is not a situation where disclosing the information requested would lead to the 'threat of lurid headlines depicting that which has been merely broached as agreed policy'. The decision on how to respond had been made and acted upon at the time of the request. Further, the minutes, as redacted, contain no discussion of policy options, whether safe or radical. We cannot see how the disclosure of the requested information, as redacted, could have any adverse effect on the future policy formulation or development in this area. We cannot see how the release of this particular information at this particular time could undermine the Committee's ability to respond appropriately and effectively to lobbying by groups with particular interests.

The public interest under s 37 and s 35

126. The purpose of s 37(1)(b) is to ensure candour and protect confidences in the entire process of considering honours, dignities and medals. We accept that the HD Committee is a Committee that makes recommendations that are put before The Queen. We accept that underlying s 37 as a whole is the fundamental constitutional principle that communications with The Queen are confidential.

127. We do not accept that this means that minutes of the HD Committee should never be disclosed. In our view, the content and context of the information will affect the public interest balance. Where the information contains or reveals confidential information or candid discussions, the public interest in maintaining the exemption will be stronger. Where that confidential information or those candid discussions result directly in recommendations to The Queen, the public interest in maintaining the exemption will be stronger.

128. We accept in relation to part of this information that revealing that information might compromise the candour of future discussions. Further reasons for this are provided in the closed annex. We find that this carries significant weight in the public interest balance. We accept that this effect on the candour of future discussions might also have an adverse effect on future policy formulation under s 35 in this area in terms of a more general chilling effect. There is a greater expectation of confidentiality in this sphere compared with other areas of policy development because of the role of The Sovereign and the underlying constitutional principle. We are therefore prepared to accept the risk of a chilling effect, even taking account of the robustness expected of civil servants. We find that the s 35 'chilling effect' mainly overlaps with the matters set out above and therefore only adds limited additional weight. It does however add some weight: it is policy that is being discussed rather than a one-off decision on whether to award an individual a medal, and that has been statutorily recognised as a particular interest which is worthy of specific protection under s 35.

129. In relation to most of the information, we do not accept that revealing the information could compromise the candour of future discussions. It is a fairly anodyne description of the issue and an outline of the action that would be taken. It does not contain any substantive discussion of whether or not and NDM should be introduced, or whether any individual should be awarded a medal. It does not lead to a recommendation which would be put before The Sovereign. We conclude that the public interest in maintaining the exemptions, taken together, in relation to this part of the information is consequently very limited.

130. In terms of the public interest in disclosure there are many matters raised in this case that we do not think weigh in the balance, because they are not interests that would in fact be served by the disclosure of the particular information. We will not list all these irrelevant factors but, for example, disclosure of the information would not show who attended the meeting and therefore that is irrelevant to the public interest balance.

131. We find that the following matters add weight to the public interest in disclosure and that there is some public interest in disclosure.

132. Firstly, it is not for us to judge whether or not the allegations made by the NDM campaign and Mr Morland about the review are well-founded. However, the medals review potentially impacted on a large number of people and we accept that allegations about the improper handling of medals review were put before the HD Committee. We find that there is some public interest in knowing what was said or not said about those allegations and that this public interest would be served, to a fairly limited extent, by the disclosure of this paragraph of the minutes.

133. Secondly, whilst we accept that much other information relating to the medals process has now been put in the public domain, we find that the general public interest in transparency in decision making in the medals process is heightened because the process was said, in the Holmes Report, to be 'vulnerable to the charge of being a "black box" operation, where those outside have no knowledge of what is being decided or why'. It is clear that matters have moved on since the Holmes Report to some extent, but we find that there remains an enhanced general public interest in transparency in relation to the operation of the entire process.

134. In conclusion, for the reasons set out above we decide that in relation to part of the information the public interest in maintaining the exemptions is very limited. For the reasons set out above we decide that there is some public interest in disclosure of this information and in our view, it outweighs the very limited public interest in maintaining the exemption. In relation to part of the information, the public interest favours maintaining the exemption. Further reasons for this are contained in the closed annex.

135. Our decision is unanimous.

Signed Sophie Buckley

Judge of the First-tier Tribunal
Date: 20 February 2019
Promulgated: 4 March 2019