

Freedom Of Information Act 2015
DECISION NOTICE
Section 42

Decision Number: 2016/0003

Public Authority: Cabinet Office

Address: Third Floor
Government Office
Bucks Road
DOUGLAS
ISLE OF MAN
IM1 3PN

Decision Date: 26 October 2016

Decision & steps to be taken by the Public Authority

1. The review applicant made a request to Cabinet Office for:

"1. All information held by the Chief Secretary regarding my correspondence with him concerning the illegality of the Planning Committee.

2. All information held by the Chief Secretary concerning the formation of the illegal Cabinet Office.

3. All information concerning his appointment as Chief Executive of the Cabinet Office; redacted if appropriate .

4. All information held by the Chief Secretary concerning the formation of the Cabinet Office as a Government Department."

2. Cabinet Office gave the review applicant some information requested but refused to give other information citing the exemptions set out in Sections 20, 23(d), 40 and 25(1)(a) and, after review, confirmed that decision.
3. The review applicant applied for a review of that decision by the Information Commissioner.
4. The Information Commissioner investigated and, in respect of the matters raised by the review applicant, his decision is that:-
 - a) Cabinet Office did respond to the request within 20 working days in accordance with section 12 - Standard processing period for responding to requests.
 - b) Cabinet Office failed to comply with section 18(1) as the refusal notice issued in accordance

with section 17(1) did not specify why it refused to give the information – i.e. why the signature had been redacted.

- c) However, Cabinet Office was justified in refusing to give the information requested.
5. The Commissioner therefore finds, to the extent set out in paragraph 4(b) only, that the Cabinet Office did not respond to the applicant's request for information in full accordance with the requirements of Part 2 of FOIA.
 6. Notwithstanding the failure to comply with section 18(1), Cabinet Office did subsequently explain to the review applicant, in its email dated 3 August, why it refused to give the information requested and stated why it considered the absolute exemption for personal data set out in section 25(2) applied.
 7. **The Commissioner does not, therefore, consider that any further steps are required to be taken by Cabinet Office, but has issued good practice advice.**

Reasons for the Decision

Background

8. The review applicant made a request for information to Cabinet Office on 21 February 2016 for:

- "1. All information held by the Chief Secretary regarding my correspondence with him concerning the illegality of the Planning Committee.*
- 2. All information held by the Chief Secretary concerning the formation of the illegal Cabinet Office.*
- 3. All information concerning his appointment as Chief Executive of the Cabinet Office; redacted if appropriate..*
- 4. All information held by the Chief Secretary concerning the formation of the Cabinet Office as a Government Department."*

9. On 17 March 2016, Cabinet Office responded to the review applicant. Cabinet Office provided some information but refused to provide other information citing the following exemptions in the Freedom of Information Act 2015 ("FOIA"):

Section 20:	Information accessible to applicant by other means
Section 23(d):	Absolutely exempt communications with the Crown
Section 40:	Legal Professional Privilege
Section 25(1)(a):	Absolutely exempt personal information

10. Between 6 April and 21 April 2016, the review applicant submitted three requests for review by Cabinet Office supplemented by additional email correspondence.

11. In summary, those submissions were focused on:

- a. The redaction of signatures in the information provided, and the exemption relied on for doing so;
- b. The application of the exemptions cited;
- c. The reasoning for claiming that the public interest in maintaining the exemption outweighed that in disclosure of the information.

12. Other matters were raised that were not pertinent to Cabinet Office's obligations under FOIA.

13. On 29 July 2016, Cabinet Office responded to the review applicant and confirmed its original decision.

14. On 2 August 2016, the review applicant communicated further with the Cabinet Office, stating that one particular signature:

"does not appear to have been redacted ... I require to know whether or not whether or not (sic) the ... signature has been redacted. And, if it has been redacted, why it has been redacted and what exemption you are relying upon for such redaction."

15. On 3 August 2016, Cabinet Office responded stating:

"Please be advised that the signature ... had been redacted in white instead of black.

Notwithstanding advice that we have received to redact such signatures we also consider that it is absolutely exempt under s25(2). In coming to this conclusion we have determined the following:

- *That the signatures amount to personal data;*
- *It would be reasonable for the data subject to expect that their signature would be kept private and not released as part of a freedom of information response, which is a disclosure to the world;*
- *Disclosure of such signatures increases any likelihood of fraud;*
- *Disclosure of the signatures does not further any public interest in the information which would outweigh the data subject's right to privacy."*

Initial Review

16. On 11 August 2016, the review applicant made an application for a review of the decision of the public authority by the Information Commissioner ('Commissioner').

17. On 12 August 2016, the Commissioner sought further information from the review applicant.

18. The review applicant provided further information and, on 19 August 2016, the application for review by the Commissioner under section 42 of the Freedom of Information Act 2015 ('FOIA') was accepted as valid and receipt acknowledged.

19. The application was clarified to the review applicant and scoped as relating to:

*"Section 12 - Standard processing period for responding to requests
Section 20 - Information accessible by other means
Section 40 - Legal Professional privilege
and the redaction of signatures."*

20. Information was sought from Cabinet Office on 19 August 2016, which was provided by 8 September 2016 as requested.

Commissioner's Analysis and Findings

Consideration of the scope of the request and the reasonableness of the searches

21. The request made to Cabinet Office was complex and comprised four separate questions, each seeking "All information" pertinent to that question.

22. The Commissioner's website ¹ states that

¹<https://www.inforights.im/information-centre/freedom-of-information/your-right-to-ask/how-do-i-make-a->

"requests which are too vague or too wide-ranging might lead to a response taking longer, or might mean unnecessary work and expense for the authority as staff look for information that you don't really want."

23. The freedom of information section² of the Isle of Man Government's website states:

"Aim for one question per request."

24. Notwithstanding the above, the Commissioner notes that Cabinet Office did accept the request as it was formulated and did not seek clarification of the request, or provide any advice or assistance to the review applicant.

25. Despite the extent of the request, the Commissioner is satisfied that the searches undertaken by Cabinet Office were reasonable, proportionate and logical.

Matters relating to section 42(1)(a) – compliance with the requirements of Part 2

26. Section 42(1)(a) states:

"A person (a "review applicant") may apply to the Information Commissioner for a decision on ... whether a public authority has responded to a request for information in accordance with the requirements of Part 2 (access to information held by public authorities);"

27. The review applicant's application to the Commissioner stated:

"The Cabinet Office took 37 days to respond to my Request for Information and almost four months to respond to my Review Request."

28. Section 12, Standard processing period for responding to requests, states:

"(1) A public authority must respond to a request for information in accordance with this Act promptly and, in any event, within the standard processing period.

(2) In this Act —

"standard processing period" means —

(a) the period of time that —

(i) starts on the day on which the public authority receives the request for information; and

(ii) ends on the day that is 20 working days later;"

29. Cabinet Office received the request on Sunday 21 February.

[request/make-the-most-of-your-request/](#)

² <https://www.gov.im/about-the-government/freedom-of-information/how-to-make-a-freedom-of-information-request/#accordion>

30. The Code of Practice³ provides no guidance on calculating the 20 working days. However, in calculating the standard processing period, the Commissioner has taken Monday 22 February as Day 1 – i.e. the first working day.
31. No clarification of the request was sought and the information and refusal notice were given to the review applicant on 17 March, i.e. on the 18th working day.
32. Cabinet Office, therefore, complied with the requirements of section 12(1).
33. In respect of the review applicant's comment regarding the length of time taken to *"respond to my Review Request"*, FOIA makes no provision in respect of requests to public authorities to review decisions. Consideration of the time taken by Cabinet Office to respond to a review request is, therefore, outwith the remit of the Commissioner.

Matters relating to section 42(1)(b) - Refusal to give information requested

34. Section 42(1) states:

"A person (a "review applicant") may apply to the Information Commissioner for a decision on ... whether a public authority was justified in refusing to give information requested."

35. Section 20 - Information accessible to applicant by other means

"(1) Information is absolutely exempt information if it is reasonably accessible to the applicant, whether free of charge or on payment, other than by requesting it under section 9(1) (requests for information).

(2) Without limiting subsection (1), information is taken to be reasonably accessible if —

- (a) it is available in public libraries or archives;*
- (b) it is available on the internet or from any other reasonably accessible source;*
- (c) it is made available under a publication scheme; or*
- (d) the public authority that holds it, or any other person, is obliged by or under any enactment to supply it to members of the public on request."*

36. Cabinet Office's response provided the review applicant with links to information *"that provide further detail on your request"*. Those links were to the Civil Service Act 1990 and two written answers in Hansard.

37. The review applicant's correspondence with the Commissioner on 15 August stated:

"... in its initial Response the Cabinet Office relied upon a s20 exemption to refuse to provide me with all of the information requested - information accessible by other means - but the links which it provided did not provide the information requested. Their response to this ... is simply unacceptable for obvious reasons, and if it wasn't so serious would be laughable."

³ <https://www.gov.im/about-the-government/freedom-of-information/our-response-to-your-request/code-of-practice/>

38. However, the outcome of Cabinet Office's 'Internal Review' given to the review applicant on 29 July stated:

"The links provided to you in the original response, were provided as that information existed in the information on held file in relation to your request, and as this information is publically available, the Act permits the application of absolute exemption under Section 20 of the Act – Information accessible to the applicant by other means. The links were provided in order to offer advice and assistance in providing links to part of the information held."

39. It appears to the Commissioner, therefore, that the absolute exemption at section 20 was engaged in respect of that information.

40. **Section 40 – Legal professional privilege**

"Information is qualified exempt information if it is information in respect of which a claim to legal professional privilege could be maintained in legal proceedings."

41. Guidance on legal professional privilege is available on the Commissioner's website ⁴. That guidance differentiates between litigation privilege and legal advice privilege.

42. Cabinet Office applied the qualified exemption, legal professional privilege, to some information and the Commissioner, having viewed the relevant information, is aware of its context and is satisfied that legal advice privilege can be applied to that information.

43. Section 18(2) states:

"If the public authority's claim is made in respect of qualified exempt information, the refusal notice must state the public authority's reason for claiming that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs that in disclosure of the information."

44. The public interest considerations set out in Cabinet Office's refusal notice of 17 March, were:

"Factors in favour of disclosure

- *There is a public interest in the accountability and transparency of the public service.*
- *There is a public interest in knowing the information on which any decisions are based.*
- *There is a public interest in knowing whether any legal advice was followed.*

Factors in favour of maintaining the exemption

- *There is a strong inherent public interest in the principle of legal privilege including the concept behind it, which is to ensure frankness between lawyer and client which also serves the wider administration of justice.*
- *There is a public interest in maintaining the right to confidentiality of communications between a legal adviser and client.*

⁴ https://www.inforights.im/media/1177/exempt40q_lpp.pdf

- *The provision of legal advice allows decisions to be taken which are fully informed, without which the decision making itself may be compromised.*
- *Legal advisers must be able to present the full picture of advice to their clients, including presenting arguments for and against a particular view.*

Based on your particular request and having balanced the factors in favour of disclosure with the factors in favour of maintaining the exemption we consider that the public interest in maintaining the exemption for legal professional privilege outweighs the public interest in the disclosure of the information."

45. Little information was provided to the Commissioner by the Cabinet Office with regard to the public interest considerations. However, the Commissioner was able to form a view that the public interests cited in the refusal notice were relevant and, after consideration, did, on balance, favour maintaining the exemption.

46. The Commissioner is, therefore, satisfied that Cabinet Office has correctly engaged the exemption and that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

47. However, section 61 states:

"A public authority is taken to comply with a requirement imposed by this Act if the public authority conforms with the provisions of the code of practice in relation to the requirement (if any)."

48. The Commissioner, therefore, must take the public authority's compliance with the Code of Practice ⁵ into account when issuing a decision notice.

49. Section 3 of the Code of Practice ⁶ is concerned with *"Determination of the public interest when considering requests for information concerning qualified exempt information"*. In carrying out the balancing of the relevant public interests in disclosing or withholding the relevant information, the Code of Practice states:

"It requires an appropriately detailed identification, explanation and examination of the harm or prejudice and the benefit of the proposed disclosure."

50. In addition, the Code of Practice requires public authorities to

"prove that there is a pressing need for non-disclosure of the information and that to override the right to access the information is a necessary and proportionate way of meeting that need".

51. In this case, the Commissioner does not consider that Cabinet Office has fully conformed with section 3 of the Code of Practice in respect of its determination of the public interest.

⁵ <http://www.tynwald.org.im/business/opqp/sittings/Tynwald%2020142016/2015-GD-0068.pdf>

⁶ <https://www.gov.im/about-the-government/freedom-of-information/our-response-to-your-request/code-of-practice/>

52. Redaction of signatures

53. The duty of a public authority under section 11(1) - Grant of requests for information - is to

"... give the applicant the information requested in the applicant's request for information and must do so in accordance with this Act."

54. The right under FOIA is, therefore, to be given 'information'; it is not a right to copies of documents.

55. In this particular case, Cabinet Office did supply the review applicant with copies of certain documents containing the information sought. However, the signatures of the Ministers or senior officers were redacted from those documents.

56. The Commissioner notes that many of the redacted documents given to the review applicant are available on the Department of Environment, Food and Agriculture's website ⁷ and Cabinet Office may, in the alternative, have relied on section 20 (Information accessible to applicant by other means) in respect of that information.

57. However, the review applicant's request to the Commissioner does not relate to the information referred to in paragraph 56 but specifically to the part of their request that sought:

"All information concerning [the Chief Secretary's] appointment as Chief Executive of the Cabinet Office; redacted if appropriate".

58. The refusal notice, issued by Cabinet Office on 17 March 2016 in accordance with section 17(1), did not specify, as required by section 18(1)(a), why it refused to give certain information – i.e. why the signatures had been redacted.

59. The review applicant's 'Internal Review' focused on the redaction of the signatures and sought an explanation as to why redaction had occurred and specifically asked *"which exemption you are relying upon for such redaction"*.

60. Cabinet Office's internal review response of 29 July, dealt with the issue of redaction under the heading "Matters outwith FOI request" and stated:

"... information released under FOI is considered to be released to the world. On this basis all signatures have been redacted from documents released on the advice of the Information Commissioner due to the potential for signatures to be used for fraudulent purposes. Additionally it is important to be mindful the Act creates a right to information, not documents."

61. On 2 August, the review applicant repeated the question to Cabinet Office stating that the

⁷ <https://www.gov.im/categories/planning-and-building-control/planning-building-control-library/planning-building-control-legislation/>

signature:

"does not appear to have been redacted ... I require to know whether or not whether or not (sic) the ... signature has been redacted. And, if it has been redacted, why it has been redacted and what exemption you are relying upon for such redaction."

62. On 3 August, Cabinet Office replied to the review applicant stating:

"Please be advised that the signature ... had been redacted in white instead of black. Notwithstanding advice that we have received to redact such signatures we also consider that it is absolutely exempt under s25(2). In coming to this conclusion we have determined the following:

- *That the signatures amount to personal data;*
- *It would be reasonable for the data subject to expect that their signature would be kept private and not released as part of a freedom on information response, which is a disclosure to the world;*
- *Disclosure of such signatures increases any likelihood of fraud;*
- *Disclosure of the signatures does not further any public interest in the information which would outweigh the data subject's right to privacy."*

63. On 8 August, the review applicant replied to Cabinet Office in respect of the explanation regarding the redaction of signatures, stating:

"Frankly, I don't believe you..."

64. Despite receipt of Cabinet Office's email of 3 August, the review applicant stated to the Commissioner that Cabinet Office:

"hasn't actually referred to an exemption for redacting Minister's signatures ...[and] I do not believe that the signature of the Chairman of the Public Services Commission, which did not appear on the Form which was sent to me, and there wasn't any indication that it had been redacted, was redacted in white..."

65. Whilst the Commissioner agrees that neither the refusal notice issued on 17 March, nor the outcome of the internal review communicated to the review applicant on 29 July, referred to the application of any exemption in respect of the signature, the Commissioner is satisfied that Cabinet Office's email of 3 August did state that it considered the information *"absolutely exempt under s25(2)"* and provided its reasoning.

Consideration of section 25(2) - Absolutely exempt personal information

66. The Commissioner has considered the following:

Section 8(1) - Right of access to information held by public authorities

"every person who is resident in the Island has a legally enforceable right to obtain access, in

accordance with this Act, to information held by a public authority”

Section 3 – purpose of the Act:

*“the information should be available to the public to promote the public interest” and
“exceptions to the right of access are necessary to maintain a balance with rights to privacy,
effective government, and value for the taxpayer.”*

67. Any disclosure of information under FOIA must be considered as a disclosure to the world or the public at large, and not in the constraints of a disclosure to the applicant.
68. As expressed in section 3, the right of access to information under FOIA is balanced against an individual's right to privacy and compliance with the Data Protection Act 2002 (DPA), which regulates the processing of personal data, must be considered by public authorities when a question arises as to whether a disclosure of personal data can be made under FOIA.
69. The interaction between freedom of information legislation and data protection legislation was considered by the UK Supreme Court in the case *South Lanarkshire Council v The Scottish Information Commissioner* (“South Lanarkshire”) ⁸.
70. In *South Lanarkshire*, Lady Hale stated that FOIA:

“give[s] the person who requests the information a right to have that information disclosed to him ... provided that this does not contravene the DPA. This is, of course, a right which he did not have before the [FOIA] was passed, but it is not a right which trumps the provisions of the DPA” ⁹

71. Lady Hale also stated:

“the safeguards against the disclosure of personal data which applied before the enactment of the [FOIA] continue to apply”.¹⁰

72. Section 25(2), an absolute exemption in respect of personal data provides such a “safeguard”, and states:

*“(a) ... of which the applicant is not the data subject; and
(b) one of the following applies —
(i) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 2002, the disclosure of the information to a member of the public (otherwise than under this Act) would contravene any of the data protection principles; ...”*

73. Section 1 of the DPA defines “data” as:

⁸ [2013] UKSC 55 <https://www.supremecourt.uk/cases/docs/uksc-2012-0126-judgment.pdf>

⁹ [2013] UKSC 55 <https://www.supremecourt.uk/cases/docs/uksc-2012-0126-judgment.pdf> para 6

¹⁰ Ibid. Para 5

"information which —

(a) is being processed by means of equipment operating automatically in response to instructions given for that purpose,

(b) is recorded with the intention that it should be processed by means of such equipment,

(c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system,

(d) does not fall within paragraph (a), (b) or (c) but forms part of an accessible record

(e) does not fall within paragraph (a) to (d) but is recorded information held by a public authority".

74. "Personal data" is defined in section 1 of the DPA as:

"data which relate to a living individual who can be identified —

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual".

75. A handwritten signature is a typical example of 'biometric data' which can be defined as

"repeatable actions where those features and/or actions are both unique to that individual and measurable, even if the patterns used in practice to technically measure them involve a certain degree of probability ... A particularity of biometric data is that they can be considered both as content of the information about a particular individual ... as well as an element to establish a link between one piece of information and the individual." ¹¹

76. The Commissioner accepts that a handwritten signature clearly relates to and identifies a living individual and, therefore, constitute 'personal data' in the terms of the DPA. This concurs with the view of the UK Information Commissioner ¹².

77. The signature in question is not that of the review applicant and, therefore, the absolute exemption at section 25(2) is relevant.

78. For section 25(2) to be engaged, it is necessary to consider whether the disclosure of the signature in response to the request would contravene any of the data protection principles which are set out in Schedule 1 to the DPA.

79. The first principle states:

¹¹ Article 29 Data Protection Working Party, 01248/07/EN, WP 136, Opinion 4/2007 on the concept of personal data, Adopted on 20th June 2007, http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2007/wp136_en.pdf page 8

¹² Decision Notice FS50555821 issued 10 December 2014 - https://ico.org.uk/media/action-weve-taken/decision-notice/2014/1042907/fs_50555821.pdf

“Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless —
(a) at least one of the conditions in Schedule 2 is met, and
(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.”

80. Of the conditions for processing personal data set out in Schedule 2 to the DPA, the only condition that appears relevant to the disclosure of personal data under FOIA is that set out in paragraph 6(1), which states:

“The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.”

81. Condition 6(1) of Schedule 2 to the DPA replicates the equivalent provision in the UK Data Protection Act 1998. That particular condition for processing was considered by Lady Hale in South Lanarkshire as being:

*“the only paragraph which contains a built-in balance between the rights of the data subject and the need to process the data”*¹³

82. At paragraphs 18-28 of South Lanarkshire, the consideration of that condition for processing was split into three separate questions:

- a. Does the requester have a legitimate interest in obtaining this personal data?*
- b. If yes, is the disclosure necessary to achieve these legitimate interests?*
- c. Even if the processing is necessary for the legitimate interests of the requester, would the disclosure nevertheless cause unwarranted prejudice to the rights and freedoms or legitimate interests of the data subjects?*

Does the review applicant have a legitimate interest in obtaining the signature?

83. Cabinet Office did give the information in the form of a copy of the document, albeit with redacted signatures on 17 March, and confirmed to the applicant by email on 3 August that *“the signature of the Chairman had been redacted”*, stating the reason it refused to supply the information and explaining why it considered the exemption applied to that information.

84. The Commissioner has considered whether the disclosure of the signature would be *“necessary for the purposes of legitimate interests”* pursued by the review applicant.

85. The review applicant has not disputed that the information sought had been provided, but has queried the redaction of the signature in that information.

¹³ [2013] UKSC 55 <https://www.supremecourt.uk/cases/docs/uksc-2012-0126-judgment.pdf> para 8

86. The review applicant, on being informed that the signature *"had been redacted in white instead of black"* stated to Cabinet Office that

"Frankly, I don't believe you, especially so as every signature on every other of the forms in the bundle provided to me and in the all of the other documents which you have provided to me in relation to my many other requests have been redacted in black".

87. The review applicant has, in effect, chosen to disbelieve Cabinet Office's explanation.

88. Other than expressing disbelief of Cabinet Office's explanation, the review applicant has not provided the Commissioner with any other reason, or legitimate interest, in being given the signatures.

89. In this case, whilst accepting that there is a public interest in knowing the identity of the signatory, the Commissioner cannot establish any 'legitimate interest' that necessitates disclosure of the signature itself.

90. Therefore, as no legitimate interest has been established, there is no requirement to go on to consider the test of necessity, or whether the disclosure would cause unwarranted prejudice to the rights and freedoms or legitimate interests of the data subjects, under Condition 6(1) of Schedule 2 to the DPA.

91. The Commissioner is satisfied that the processing would not meet a condition for processing and disclosure of the signature would, therefore, contravene the first data protection principle.

92. In this case, Section 25(2) is engaged and Cabinet Office was entitled to apply that exemption.

Decision

93. The Commissioner's decision is that:

- a) Cabinet Office did respond to the request within 20 working days in accordance with section 12 - Standard processing period for responding to requests.
- b) Cabinet Office failed to comply with section 18(1) as the refusal notice issued in accordance with section 17(1) did not specify why it refused to give the information – i.e. why the signature had been redacted.
- c) However, Cabinet Office was justified in refusing to give the information requested.

94. The Commissioner therefore finds, to the extent set out in paragraph 93(b) only, that the Cabinet Office did not respond to the applicant's request for information in full accordance with the requirements of Part 2 of FOIA.

Steps to be taken

95. Notwithstanding the failure to comply with section 18(1), Cabinet Office did subsequently explain to the review applicant, in its email dated 3 August, why it refused to give the information requested and stated why it considered the absolute exemption for personal data set out in section 25(2) applied.
96. As a result, the Commissioner does not consider that any further steps are required to be taken by Cabinet Office.

Promoting good practice

97. It is the duty of the Commissioner to perform his functions under FOIA to promote good practice and the following general recommendations as to good practice have been made.
98. Public authorities should consider discouraging multi-question requests as this can create confusion for the public authority when dealing with the requests, or any subsequent review requests, and can impact on the time taken for compliance. In addition, the requester may also become confused with the responses provided.
99. Requesters are, of course, entitled to make more than one request at a time, but should be encouraged, through advice and assistance, to make separate requests.
100. The Commissioner expects public authorities to provide a contemporaneous, robust and fully documented reasoning for the application of any exemption and, where necessary, the consideration of the public interest.
101. That contemporaneous reasoning, and any record made in respect of 'internal reviews', should set out the public authority's *"position with respect to the requested information in a clear and analytic way"*¹⁴, capable of scrutiny by the Commissioner and, if the decision is subsequently appealed, by the High Court.
102. Section 3 of the Council of Ministers' Code of Practice refers to such matters in relation to the application of qualified exemptions and PAs should comply with the provisions of that Code. In particular, paragraphs 3.3(b), 3.4, and the 3.7 requirement for *"an appropriately detailed identification, explanation and examination of the harm or prejudice and the benefit of the proposed disclosure"*, should be noted.
103. In this case, the public authority opted to provide the review applicant with information in the form of a copy of a document. In deciding to do so, the public authority considered that certain personal data, i.e. the signature, should not be disclosed, and redacted the signature.
104. Where a public authority applies any exemption to information, it must issue a refusal notice in

¹⁴ https://ico.org.uk/media/action-weve-taken/decision-notice/2016/1624750/fs_50592465.pdf

All URLs correct at the date of issue of this decision notice

accordance with the requirements of sections 17 and 18.

105. Public authorities should consider the content and clarity of all refusal notices, whether they are issued in respect of the original request or at internal review.

Appeal

106. Section 50(1) provides that either party has the right to appeal against this Decision Notice to the High Court on a point of law. An Appeal must be filed within 28 (calendar) days from the date of this Decision Note. Further information about the Appeal process can be found on the General Registry's web site at: <https://www.courts.im/courtprocedures/AppealsCivil/>

An appeal should be filed at or sent to:

The Court Office
Isle of Man Courts of Justice
Deemsters Walk
Bucks Road
Douglas
Isle of Man
IM1 3AR

Enforcement

107. Section 48 provides that if the Cabinet Office fails to comply with this Decision Notice by not taking the steps it is required to take, then the Commissioner may certify in writing to the High Court that the Cabinet Office has failed to comply. The Court must inquire into the matter and may deal with the Cabinet Office as if it had committed a contempt of court.

Publication

108. The Commissioner will publish this decision notice 5 working days after it has been issued to the review applicant and public authority.

Nicola Whiting
Isle of Man Deputy Information Commissioner

26 October 2016