

1 February 2005

FREEDOM OF INFORMATION - PRESS RELEASES AND COMMUNICATIONS ADVICE

This guidance refers to:

- press releases responding to news items relating to a department; and
- associated communications advice involving timing of release and any background advice.

Working assumptions

Broad working assumptions on release	Decision
<ul style="list-style-type: none"> • Press lines to take 	release
<ul style="list-style-type: none"> • Draft or contingent press lines 	withhold Cite - exemption 36(2)(b)(i) and (ii) (Prejudice to the Effective Conduct of Public Affairs)
<ul style="list-style-type: none"> • Communications advice 	withhold Cite - exemption 36(2)(b)(i) and (ii) (Prejudice to the Effective Conduct of Public Affairs)

Reasons for the working assumptions

Press lines to take

1. Press lines to take are intended for the public domain, and will either be made publicly available in response to a media report, or following an information request. They are routinely produced by departments in response to articles, reports, speeches involving departmental ministers or departmental business.
2. Press lines provide guidance for all officials within a department on how to respond to media interest and their production ensures a consistent response is provided by all within the department.

3. By their very nature, press lines to take are intended for the public domain. They will regularly be made available without the need for an information request. It follows that those not released proactively by a department should be available on request.

Draft or contingent press lines

4. Nevertheless, drafts of press releases should be treated in a separate manner to the final 'line to take'. It is important that officials are able to develop and discuss effective responses to media interest and speculation without inhibition. Section 36(2)(b)(i) and (ii) protect information that would inhibit:

- '...the free and frank provision of advice, and
- the free and frank exchange of views for the purposes of deliberation...'

If officials were unable to freely discuss the appropriate Government response to a media story it could inhibit the ability of officials to share opinions.

Communications advice

5. Communications advice should not be released. There is a strong public interest in officials being able to freely and frankly brief ministers on the best way to publicly announce and defend policies. Part of this free and frank advice involves advising the minister on what can and cannot be publicly stated about the policy, the areas where criticism of the policy could come from, the weakest points of the policy, what the Government's best points are, and so on.
6. Revealing the information that officials have selected for these kinds of categories hampers their ability to provide free and frank advice in two ways:
 - first, by revealing the information, it may make officials afraid that anything they put in briefing will be revealed, and hence make them over-cautious to the detriment of the quality of that briefing; and.
 - secondly, revealing this information outlines to opponents and critics of the Government those areas where the policy in question is weakest, and could allow the Government's political opponents to focus exclusively upon these weaknesses in an effort to try and undermine the policy – again, this could lead to an attitude of over-caution briefing.
7. Hampering the ability of officials to provide high quality, frank handling advice and briefing undermines the ability of Government to defend its policies effectively. In turn, high levels of criticism that the Government is unable to rebut effectively can undermine the effective delivery of policy if officials delivering the policy, and the public who are affected by it, do not believe that it is sound.
8. Government has the right, to ensure that information is released in a responsible and timely manner. Handling strategies contain internal departmental discussions on the best means and timing for the release of information and response to media stories and speculation. Officials must be allowed to formulate such strategies in a free and frank manner.

Referral points

9. Obviously the working assumptions will not fit all situations. The referral points set out below describe specific situations where the working assumption (either to release information or withhold information) should not be used.
10. The fact that the assumption does not apply does not mean you should automatically release the information.

In these circumstances, the information request should be referred to a more senior member of staff, or a dedicated FOI practitioner, to consider whether:

- the request states that the applicant is asking for internal review of an earlier decision to refuse to release information – working assumptions are only designed to be used on the first occasion that information is requested. Appeals against decisions to withhold information may need more careful consideration and should therefore be referred;
- the information relates to a matter covered by the Environmental Information Regulations (EIRs). The EIRs have been closely aligned with the FOI Act to ensure that there are as few operational differences as possible. However, there are some differences between the two regimes, particularly in that some of the exceptions in the EIRs are worded differently from the FOI Act exemptions, and all of the EIR exceptions are subject to the public interest test. If there is any doubt as to whether or not information is covered by the EIRs, the case should be referred. Further guidance on the EIRs can be found at:
 - <http://www.foi.gov.uk/guidance/exguide/sec39/chap02.htm>; and
 - <http://www.defra.gov.uk/corporate/consult/envinfo/index.htm>
- the information relates to or contains personal data or opinions about an individual; and
- the working assumption should only be considered to be valid in respect of requests for information less than 5 years old, since the public interest in withholding the information is likely to have changed and mean that a more careful argument is needed when refusing to release information.

All such cases should be referred.

Further information

11. For further information about press releases and associated handling strategies please contact:

DCA Information Rights Division
Email: clearinghouse@dca.gsi.gov.uk