



Scottish Information  
Commissioner

**Decision 053/2007 - Mr Mark Latham, Shetland  
Times, and the Scottish Executive**

*Runway extensions and the building of new runways at Scatsta and  
Sumburgh Airports since 1995*

**Applicant: Mr Mark Latham, Shetland Times**  
**Authority: The Scottish Executive**  
**Case No: 200501512**  
**Decision Date: 22 March 2007**

**Kevin Dunion**  
**Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews  
Fife  
KY16 9DS



## **Decision 053/2007 Mr Mark Latham, Shetland Times, and the Scottish Executive**

***Request for information about runway extensions and the building of new runways at Scatsta and Sumburgh Airports since 1995 – whether the request fell under the ambit of the Environmental Information (Scotland) Regulations 2004 – whether information should be withheld under sections 29(1)(a), 29(1)(b), 30(a), or 30(b)(i) and (ii) of the Freedom of Information (Scotland) Act 2002***

### **Relevant Statutory Provisions and Other Sources**

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Freedom of Information (Scotland) Act 2002 sections 1 (General entitlement); 29(1)(a) and (b) (Formulation of Scottish Administration policy etc.); 30(a) and (b)(i) and (ii) (Prejudice to effective conduct of public affairs).

The Environmental Information (Scotland) Regulations 2004 regulation 2(1) (Interpretation).

The full text of each of these provisions is reproduced in Appendix I to this decision. The Appendices form part of this decision.

### **Facts**

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Mr Mark Latham emailed the Scottish Executive (the Executive) and requested information relating to possible runway extensions at Scatsta and Sumburgh airports in the Shetland Islands. The Executive responded, disclosing certain factual information to Mr Latham but withholding the remainder on the basis that it was exempt from disclosure under sections 29(1)(a) and 30(b)(i) and (ii) of the Freedom of Information (Scotland) Act 2002 (FOISA). Mr Latham requested that the Executive review its decision to withhold certain information from him, and received a further response relating to this. In the response to his request for review, the Executive disclosed a small amount of additional information to Mr Latham but in the main upheld its application of sections 29 and 30 of FOISA to the information requested, and also cited sections 25(1) and 33 of FOISA. Mr Latham remained dissatisfied and applied to the Scottish Information Commissioner to investigate the matter on his behalf.



Following the investigation, in the course of which Mr Latham narrowed the scope of his request to encompass a reduced number of documents, the Commissioner partially upheld the Executive's application of exemptions to the information requested. However, the Commissioner required the Executive to disclose further information to Mr Latham as he concluded that the exemptions cited in sections 29 and 30 of FOISA did not apply to all of the information withheld.

## Background

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1. On 7 February 2005 Mr Latham contacted the Executive requesting the following:

“Copies of all of the information held by the Executive (including feasibility studies and correspondence with relevant organisations such as the Department for Transport, Highlands and Islands Airports Limited, Shetland Islands Council, Shetland Enterprise, the Highlands and Islands Partnership Programme, the Sumburgh Airport Strategic Partnership and consultant engineers) about:

  - a) The possibility of extending the existing runway at Scatsta Airport in Shetland (Ove Arup Consulting Engineers did a feasibility study in 2002-03)
  - b) The possibility of building a new runway at Scatsta Airport (the Ove Arup study included analysis on this option) ;
  - c) The proposed extension to the main runway at Sumburgh Airport in Shetland; and
  - d) Comparative studies on the costs and the benefits of the above projects.”
2. After receiving this communication the Executive contacted Mr Latham by telephone and requested that he clarify certain details of his request. Subsequently Mr Latham emailed the Executive on 9 February 2005, clarifying that he sought:



“Information on the subject of runway extensions and the building of new runways at Scatsta and Sumburgh Airports since 1995. In particular, anything that sheds light on why it is that proposals to build a new 1700 metre runway at Scatsta Airport were not pursued following the Ove Arup study which established that such a runway was feasible and instead the more costly alternative of extending the main runway at Sumburgh by about 100 metres into the sea was chosen. In view of the large amounts of public subsidy ploughed into keeping Sumburgh open, have any assessments been made of how much would be saved by closing Sumburgh and transferring all operations to Scatsta.”

3. On 7 March 2005 the Executive responded to Mr Latham providing him with copies of factual information: in particular the Ove Arup study relating to Scasta and Sumburgh Airports; the original and second versions of the Scottish Transport Appraisal Guidance appraisals; a report by A B associates Ltd. dated July 2001; exchanges between the Executive and the Sumburgh Airport Strategic Partnership and other bodies, and a list of published documents. The remainder of the information, it claimed, was exempt from disclosure by virtue of sections 29(1)(a) (as it related to the formulation and development of government policy) and 30(b)(i) and (ii), of FOISA (as disclosure would, or would be likely to, inhibit substantially the free and frank provision of advice or the free and frank exchange of views for the purposes of deliberation). The Executive went on to state that, as both of these exemptions were subject to the public interest test as set out in section 2(1) of FOISA, it had considered the public interest and concluded that the public interest in maintaining the exemptions outweighed that in disclosing the information withheld.
4. Mr Latham was not satisfied with the response he had received and emailed the Executive again on 15 March 2005 requesting that it review its decision to withhold certain of the information which he had requested.
5. On 14 April 2005 the Executive responded to Mr Latham again and in the main upheld its initial response to him. It acknowledged that some of the papers had been withheld initially under sections 33 and/or 36 of FOISA, although he had not been informed of this. It accepted that the section 36 exemptions (which relate to confidentiality) did not apply to the information requested and disclosed certain further documents. However, it did state that the remainder of the documents withheld under section 36 were press cuttings and therefore exempt from disclosure under section 25(1) of FOISA as they were otherwise accessible to the public. The remainder of the documents, the Executive maintained, were exempt from disclosure by virtue of sections 29(1) and 30(b)(i) and (ii) of FOISA.



6. Mr Latham remained dissatisfied with the Executive's response and so applied to the Commissioner on 20 April 2005, seeking a decision as to whether the Executive was correct in applying the sections of FOISA cited above to the information requested. He was of the view that, given the large amount of public money to be spent on extending and refurbishing the runway at Sumburgh and the annual revenue subsidy required to keep it open, the public interest favoured disclosing why that option was pursued instead of the apparently cheaper alternative of transferring Shetland's air services to Scatsta Airport (with a new runway).
7. The case was allocated to an investigating officer and the application validated by establishing that Mr Latham had made a request for information to a Scottish public authority and had applied to the Commissioner only after asking the authority to review its response to his request.

## The Investigation

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8. The investigating officer formally contacted the Executive on 19 May 2005 in terms of section 49(3) of FOISA, asking it to comment on the application as a whole, and in particular on its application of the exemptions contained within sections 29 and 30 of FOISA (and the public interest test) to the information requested, and also its reasons for dealing with the request under FOISA rather than the Environmental Information (Scotland) Regulations 2004 (the EIRs).
9. The Executive responded on 1 July 2005 providing comment on the exemptions which it had claimed, on the possible application of the EIRs to the information, and supplying copies of the withheld information.
10. In relation to the question of whether the request for information fell under the remit of the EIRs, the Executive considered that the documents which it held revolved around the policy issue of the potential for closing one of the main airports in Shetland, considering (for example) the socio - economic impact rather than any environmental implications of such a move.



11. The Executive argued that section 29(1)(a) of FOISA applied to much of the information withheld, as it related to the formulation or development of government policy on the matter, whether wholly internally or in reaction to external events and lobbying. It highlighted that its internal guidance on the exemption clarified that it applied to information relating to policy development and was not tied only to the substantive policy information itself. The exemption, it continued, could also apply to information about policy information. The Executive held that there was a significant public interest in maintaining the exemption because disclosure of such information would be to the detriment of future internal communications which were vital to the operation of effective government. It went on to state that there was a significant public interest in ensuring that policy formulation and development could take place in an arena which would enable rigorous and frank debate about the merits and demerits of alternative courses of action without fear that such considerations will be picked over out of context. The Executive maintained that if there was a perceived risk of internal discussions being made publicly available, their quality would be undermined.
12. In stating its case for the application of sections 30(b)(i) and (ii) of FOISA the Executive continued to argue the inhibiting effect on future communications, both internal and external, should information of this nature be disclosed. Officials required a secure environment in which to take important decisions on the basis of strong advice and discuss the different possible options. It went on to say that it relied on good working relationships with its stakeholders and other third parties and a continuing open avenue of communications with them. Citing a particular example where a stakeholder had objected to disclosure, the Executive was adamant that these relationships would be endangered by wholesale release of correspondence with third parties.
13. The Executive accepted that it had misapplied section 36(1) of FOISA (Confidentiality) to some of the information which it had withheld. As it no longer wishes to rely on that exemption I will not consider it further in my decision.
14. The Executive also wished to apply in retrospect sections 29(1)(b) of FOISA (which relates to ministerial communications) and 30(a) (which relates to the collective responsibility of ministers) to certain documents which had been withheld.
15. Finally, the Executive stated that following the outcome of its review, it considered that further documents should have been disclosed to Mr Latham. It informed me that it had now forwarded copies of those documents to him.



16. There followed correspondence between the investigating officer and Mr Latham relating to the scope of his request. This led to the Executive disclosing the schedules of documents to Mr Latham, who subsequently considerably narrowed the scope of his request to a reduced number of documents which had been withheld by the Executive (for details of the reduced request, see Appendix II attached to this decision). This, followed by further discussion, led the Executive to change its position in relation to a number of the documents which it had previously withheld. I shall discuss this briefly here.

### **Documents falling outwith the scope of Mr Latham's request**

17. Following discussions with the investigating officer the Executive accepted that it had mistakenly found a large number of documents which it held to fall within the scope of Mr Latham's request.
18. The terms of Mr Latham's request are set out in paragraph 1 above, with the clarification he provided for the Executive in paragraph 2.
19. After having seen a copy of the Executive's original schedule of documents withheld in response to his request, Mr Latham highlighted the documents which he would be particularly interested in seeing. Naturally, however, Mr Latham did not see the content of the documents which the Executive had withheld.
20. Regardless of which particular documents Mr Latham highlighted, I am satisfied, following my investigation, that certain of these fall outwith the scope of the request. I have identified the documents which Mr Latham requested but nonetheless fall outwith the scope of the request in Appendix II. I am not required to (and therefore will not) consider any of these documents further in my decision.

### **Information released by the Executive during the course of the investigation**

21. During the course of the investigation the Executive withdrew its application of exemptions from documents 4-7, 12, 15, 17, 22 (paragraph 1.3 - the remainder of the document falls out with the scope of Mr Latham's request), 27-31, 34 (paragraph 2 - the remainder of the document falls outwith the scope of Mr Latham's request), 35 (paragraph 2 - the remainder of the document falls outwith the scope of Mr Latham's request), 44 (page 3, paragraph 1 - the remainder of the document falls outwith the scope of Mr Latham's request) and 45 (the first and second bullet points in the "infrastructure" section - the remainder of the document falls out with the scope of Mr Latham's request).



22. Somewhat confusingly the Executive indicated that it had withdrawn its application of exemptions to document 13 and had issued it to Mr Latham. However it transpired that this was an unnumbered document which Mr Latham had indicated that he no longer wished to see. The original document 13 has not been released, and I deal with the Executive's reasons for withholding it when considering the exemptions applied to it later in this decision. For the purposes of reference I have called the released Document 13 (a) in the schedule attached as an Appendix to this decision and the withheld document retains its original numbering as 13."
23. It subsequently released the information listed above to Mr Latham. For completeness I have identified these documents in Appendix A.
24. In a letter of 8 September 2006, the Executive stated that it had discovered that document number 50 (still part of Mr Latham's reduced request) had been misplaced from its file. I shall discuss this matter briefly in my analysis and findings.
25. Throughout the investigation, further correspondence relating to the case passed between the Executive, the investigating officer and Mr Latham. I have addressed all of the points raised within my analysis and findings.

## **The Commissioner's Analysis and Findings**

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26. In coming to a decision on this matter I have considered the following issues:
  - a) whether the Executive held document number 50;
  - b) whether the information requested falls under the ambit of the EIRs;
  - c) whether any of the information withheld falls under the exemption in section 29(1)(a) or (b) of FOISA;
  - d) whether any of the information withheld falls under the exemptions within section 30(a) or (b) of FOISA.However, I shall begin by giving a summary of the issues surrounding this request.
27. Over the last decade, much debate has been entered into concerning the future of Shetland's two main airports. The first, Sumburgh, is the larger and deals with public and some commercial freight services to and from the islands. Sumburgh Airport is owned and operated by HIAL, a publicly owned company whose sole shareholder is the Scottish Ministers. The smaller airport (Scatsta) is operated privately and is used for oil related transport.





28. Recent changes to safety regulations for aircraft taking off meant that Sumburgh's runway would become unsuitable for certain types of passenger airport. Numerous discussions followed on how to address this issue, and it became clear that two options remained open: either to extend the runway at Sumburgh onto reclaimed land to take account of the new safety regulations, or for HIAL to close Sumburgh and take over the operation and management of Scatsta in its place. The key stakeholders (the Executive, HIAL, Shetland Islands Council (SIC) and an umbrella body, the Sumburgh Airport Strategic Partnership) decided to pursue the option of extending Sumburgh's runway. Mr Latham believes this to be the most costly option, and is requesting to see the information which supports the taking of that option as opposed to closing Sumburgh (which he argues is a loss making enterprise) and transferring operations to Scatsta.

#### **Document number 50**

29. In its letter to me of 8 September 2006, the Executive informed me that it had misplaced a document (document number 50) which the applicant had requested. The document is a copy of a draft letter written by the Minister for Transport to the local MSP. The Executive was questioned on this further and I am satisfied that it did not hold document number 50 at the time of Mr Latham's request (and therefore that it did not fall within the scope of the request in any event).

#### **Whether the EIRs apply to the information requested by Mr Latham.**

30. Mr Latham requested information on the subject of runway extensions and the building of new runways at Scatsta and Sumburgh Airports since 1995. On first sight, the investigating officer questioned whether such information would fall within the definition of environmental information as set out in regulation 2(1) of the EIRs. She asked the Executive to comment on whether it had considered this in responding to the applicant.
31. As I have set out earlier, the Executive responded that the documents which it held revolved around the policy issue of the potential for closing one of the main airports in Shetland, considering (for example) the socio - economic impact rather than any environmental implications of such a move, and as such would not fall under the ambit of the EIRs.



32. Having considered the categories of environmental information as defined in regulation 2(1) of the EIRs (for which see Appendix I to this decision), I am inclined to agree with the Executive's position. Where information relates specifically to the impact of policy on the environment it is likely to fall within the definition of environmental information for the purposes of the EIRs, but where information relates to policy which may affect the environment but is focused on other matters, such as the socio- economic context, it is more likely to fall under FOISA. Having looked at the information withheld by the Executive I am of the view that it does not relate directly to the impact of certain policies on the environment, but rather to assessment of the financial and social impact of those policies (albeit that the policies themselves may affect the environment). Any potential effect of the policies on the environment is not considered in the information withheld. In all the circumstances, I am satisfied that, in this instance, the request was properly dealt with under the provisions of FOISA rather than those of the EIRs.

**Information withheld under section 29(1)(a) of FOISA: Formulation and development of government policy**

33. Section 29(1)(a) of FOISA states that information held by the Scottish Administration is exempt information if it relates to the formulation or development of government policy.
34. In this case, the Executive has withheld 31 documents which Mr Latham has requested on the basis that the information falls under the exemption contained within section 29(1)(a) of FOISA. The information contained within the withheld documents records analysis and discussions on the options available to the Executive with regard to airports in Shetland.
35. The Executive argues that internal discussions on whether to extend the runway at Sumburgh or pursue an alternative course of action constitute the formulation of policy. It also states that records of the development of policy with third parties can still be classed as the development of policy. It has pointed out that its internal guidance on FOISA states that information that relates less directly to the development of policy is also captured by this exemption even though no issues of substantive policy may be considered within the information itself.
36. In my investigation into whether section 29(1)(a) of FOISA applied to the information withheld by the Executive, I first considered whether the Executive could develop policy on an issue that HIAL, a separate entity, had jurisdiction over.



37. Although HIAL is a publicly owned company, and not an executive agency of the Executive, its shares are owned by the Scottish Ministers. Its articles of association state that any policy decision it takes which costs over £1 million to implement must be approved by the Scottish Ministers. Developing the runway at Sumburgh cost £9.75 million and so the Scottish Ministers were required to approve the decision to extend the runway. In any event, there is no doubt as to the Scottish Ministers' devolved powers in relation to the provision of airports, if not other aspects of air transport. I am of the view, therefore, that the Scottish Ministers were entitled to formulate and develop policy on whether to approve the extension of the runway at Sumburgh.
38. Having accepted that this is the case, and having examined the documents which have been withheld on the basis they are exempt under section 29(1)(a), I am satisfied that they are discussions over whether the Ministers should approve HIAL's proposal to extend the runway at Sumburgh and record the formulation of policy in that respect. I am of the view that the information withheld falls under the exemption contained within section 29(1)(a) of FOISA relating to the formulation of policy. I shall now consider the public interest.

### **The public interest**

39. The exemption in section 29(1)(a) is a qualified exemption and is subject to the public interest test contained in section 2(1) of FOISA. Therefore, even when a public authority considers that this exemption applies to the information requested, it must go on to consider whether, in all circumstances of the case, the public interest in disclosing the information is not outweighed by the public interest in maintaining the exemption. If the two are evenly balanced, the presumption should always be in favour of disclosure.
40. Information is exempt by virtue of section 29(1)(a) if it falls into a particular class of documents; that is, where the information is held by the Scottish Administration and relates to the formulation or development of government policy. In considering the application of this exemption, the authority is not required to consider the significance of the content of the information, or the effect of disclosure. This is in contrast to the exemptions contained in, for example, section 30(a) or section 30(b)(ii) of FOISA, where the authority must demonstrate that disclosure would "prejudice substantially" or "inhibit substantially" a particular interest. In dealing with those exemptions, therefore, the authority must consider the significance and sensitivity of the information as well as the harm which might result from disclosure.



41. In the case of section 29(1)(a) of FOISA, however, the information will be covered by this exemption simply if it is held by the Scottish Administration and relates to the formulation or development of government policy, regardless of how routine or insignificant the information may be. The use of the term “relates” ensures that the application of section 29(1)(a) of FOISA is so broad as to include even the most innocuous information.
42. There is clearly, therefore, a two stage process that an authority relying on section 29(1)(a) of FOISA must follow, i.e.:
  - a) Is the information held by the Scottish Administration and does it relate to the formulation or development of government policy?
  - b) If yes, in all the circumstances of the case, is the public interest in disclosing the information outweighed by the public interest in maintaining the exemption?
43. The applicant in this case believes that disclosure of the information requested is in the public interest as it is imperative to know why, in his view, a simpler and more cost effective option in terms of the use of public money was not pursued.
44. The Executive states that there is a prevailing public interest in allowing rigorous and frank debate about alternative courses of action, contributing to the formulation of policy, to take place without fear of misinterpretation through disclosure: should disclosure occur, such debate would be endangered in future. The Executive has argued that the public interest in maintaining the exemption outweighs that in disclosure for those reasons.
45. In considering the public interest I focussed on whether the information withheld under the exemption is of a controversial or sensitive nature, the age of the information, and the status of the policy being discussed.
46. The policy in question was whether to provide funding and approval for the decision taken by HIAL to extend the runway at Sumburgh. Discussions on this have been ongoing since 1996. The decision to extend the runway was finalised on 12 July 2005, when the Executive wrote to Shetland Islands Council offering to pay the grant for the extension of the main runway. Work on the runway extension finished in September 2006, where the runway was officially opened by the Minister for Transport. The Executive has confirmed that, since that date, it does not consider any policy issues to be outstanding relating to the extension of the runway.
47. The “youngest” document withheld by the Executive under section 29(1)(a) of FOISA dates from January/February 2004.



48. From looking at the information and the context, I am satisfied that the formulation or development of any policy relating to the airport (and in particular the runway extension), having been discussed within the Executive and with other stakeholders, had been concluded by the time Mr Latham made his request for information. By that point, a preferred contractor had been confirmed and announced by HIAL and the funding package was in place. Thus the sensitivity of the documents, and any ability that they might have had to influence or inhibit the decision to extend the runway at Sumburgh Airport had become negligible by the time Mr Latham's request was dealt with by the Executive.
49. Secondly, having looked at the content of the information withheld under this exemption, I am satisfied that disclosure would not bring to light any new information which would threaten the Executive's ability to make or discuss policy on such matters in the future. Therefore the public interest in avoiding harm to the policy making process is satisfied.
50. I acknowledge that the Executive has already released information about the formal decision making process behind the extension of the runway at Sumburgh and that it could be argued that further disclosure would not facilitate new debate on the matter. However, I am also of the view that disclosure of the remaining information withheld under section 29(1)(a) would serve to provide useful background information on the issue and to that extent there is public interest in disclosure of information which would shed light on the process of decision making the Executive undertook in this case
51. In summation, I cannot concur with the Executive in concluding that there is a prevailing public interest in maintaining the section 29(1)(a) exemption in relation to the information withheld which relates to the development of policy. Section 2(1)(b) of FOISA states that information does not fall under the scope of section 29(1)(a) if, in all circumstances of the case, the public interest in disclosure of the information is not outweighed by that in maintaining the exemption. Having taken both the authority's and the applicant's arguments into consideration, and having evaluated the information withheld under this exemption, I cannot conclude that the public interest in maintaining the exemption outweighs that in disclosing the information. Therefore I find that section 29(1)(a) does not apply to the information withheld by the Executive.

### **Section 29(1)(b): Ministerial communications**

52. Section 29(1)(b) of FOISA states that information held by the Scottish Administration is exempt information if it relates to ministerial communications.



53. The Scottish Executive has withheld one document (document number 78) from Mr Latham on the basis that it is exempt by virtue of section 29(1)(b) of FOISA. It is an email from the Minister for Finance and Public Services to the Minister for Transport.
54. On examination of the document, I am satisfied that (as a direct communication between Ministers) it falls within the definition of ministerial communications as provided for by section 29(4) of FOISA.

### **The public interest**

55. The exemption in section 29(1)(b) of FOISA, like that in section 29(1)(a), is a qualified exemption. The Executive's public interest arguments in relation to the application of the section 29(1)(b) exemption are identical to those stated above for the application of the section 29(1)(a) exemption.
56. In relation to ministerial communications, the Executive's internal guidance states that the decisions made by Ministers make a significant impact on the lives of the general public and there is a public interest in their deliberations being made transparent.
57. In providing its arguments for the application of the exemption in section 29(1)(b), as well as the public interest arguments that were considered in relation to this exemption, the Executive did not differentiate between sections 29(1)(a) and 29(1)(b) of FOISA. In other words, the same arguments were applied to the Executive's use of both exemptions. The justification for my findings in relation to the application of the section 29(1)(b) exemption can therefore be found in the section above where I have considered at length the application of the section 29(1)(a) exemption.
58. In summary, I have examined the information that has been withheld by the Executive under section 29(1)(b) in this case, and have considered all of the points advanced in its submissions. I am not satisfied that the Executive has provided me with a valid argument as to why there is an overriding public interest in the section 29(1)(b) exemption being maintained in relation to this document. As I find that there are benefits from release, and I have not found sufficient argument in favour of withholding I am of the view that, in this case, the public interest does not favour the maintenance of the exemption.



### **Section 30(b)(i) and (ii): Free and frank provision of advice/exchange of views**

59. Section 30(b)(i) of FOISA states that information is exempt information if its disclosure under FOISA would, or would be likely to, inhibit substantially the free and frank provision of advice. Section 30(b)(ii) of FOISA states that information is exempt information if its disclosure under FOISA would, or would be likely to, inhibit substantially the free and frank exchange of views for the purposes of deliberation. These exemptions are both subject to the public interest test contained in section 2(1)(b) of FOISA.
60. Generally speaking, the exemptions in section 30(b) of FOISA allow for information to be withheld if its disclosure would, or would be likely to, inhibit substantially the imparting or commissioning of advice, or the offering or requesting of opinion, comment or consideration. The term “inhibit” is not defined in FOISA. However, I take the view that in this context it means to restrain, decrease or suppress the freedom with which opinions or options are expressed. The Executive’s own guidance to its staff on the application of the exemptions in section 30(b) of FOISA points out that the word “inhibit” suggests a suppressive effect, so that communication would be less likely to be made, or would be made in a more reticent or circumscribed fashion, or would be less inclusive.
61. The term “deliberation” tends to refer to the evaluation of the competing arguments or considerations that may have an influence on a public authority’s course of action. I consider that it will include expressions of opinion and recommendations, but is not likely to include purely factual material or background information. The information should reveal the “thinking process” or reflection that has gone into the decision.
62. The exemptions under section 30(b) of FOISA acknowledge that the prospect of disclosure of information which reveals internal thinking processes may be detrimental to the ultimate quality of decision making within a public authority, and that this may lead to less candid and robust discussions, inadequate records being created, hard choices being avoided and, ultimately, the quality of government being undermined. Whether the exemption applies, however, will depend in each case on the content of the information, as discussed further below.
63. The Executive has withheld a total of 41 documents from Mr Latham under these exemptions: it has not attempted to differentiate between the two exemptions and has applied both of them to each document in its entirety. The information withheld is, in the main, consideration of the options for airport provision on Shetland and of the specific project to extend the main runway at Sumburgh and its funding. Of necessity, some of the exchanges involve other stakeholders in addition to the Executive.



64. In its letter to me of 1 July 2005, the Executive argued that disclosure of the information requested would endanger the future provision and quality of its dialogue with third parties who had an interest in policy decisions. The inhibiting effect of disclosure would, it argued, have a damaging effect on the quality of government. It went on to state that if officials were to take important decisions on the basis of the provision of strong advice and be able to discuss the different possible options, particularly if the issues were of a politically sensitive nature, a secure environment in which to do this was required.
65. The Executive also stated that it relied on good working relations with its stakeholders and other third parties, and a continuing open avenue of communications with them. The Executive argued that it continued to have a working relationship with the stakeholders in question and was adamant that those interests would be endangered by wholesale release of such correspondence.
66. As stated previously, I am of the view that it is important for public authorities to treat each request for information on a case by case basis. Release of internal communications in one case should not be taken to imply that such communications will “routinely” be released in future. The content of the information and the individual circumstances of each case must be taken into consideration, and the public interest in each case (where relevant) assessed on its own merits.
67. In considering the application of any exemption, I must always look at the actual information withheld, not simply the category of information to which it belongs or the type of situation in which the request has arisen. In other words, in considering these particular exemptions, I must consider whether the disclosure of that information would, or would be likely to, in all the surrounding circumstances, have the substantially inhibiting effect described in section 30(b) of FOISA. It cannot necessarily follow from my requiring release of one particular piece of information in particular circumstances that information of that general variety will require to be disclosed routinely in the future.
68. In section 30(b) of FOISA, the chief consideration is not whether the information itself constitutes advice or the exchange of views for the purposes of deliberation, but whether its release would inhibit substantially the free and frank provision of advice or (as the case may be) the free and frank exchange of views for the purposes of deliberation. Nevertheless, where the information does contain the free and frank provision of advice, this is likely to constitute stronger grounds in support of the view that the disclosure of such information would, or would be likely to, inhibit the free and frank provision of advice in future. Conversely, if the information does not constitute free and frank advice, then the case for withholding is likely to be weaker. The same reasoning applies for section 30(b)(ii) of FOISA.





69. As will be clear from previous decisions, I require authorities to demonstrate a real risk or likelihood that actual inhibition will occur some time in the near (certainly the foreseeable) future, not simply that inhibition is a remote possibility. It is also important to remember that the inhibition in question must be substantial: in other words, it must be of real and demonstrable significance.
70. It is my view that the standard to be met in applying the test in sections 30(b)(i) and (ii) of FOISA is high. When considering the application of the exemptions in section 30(b) of FOISA, each request should be considered on a case by case basis, taking into account the effects anticipated from the release of the particular information involved. This is likely to involve considering:
- the subject matter of the advice or exchange of views;
  - the content of the advice or exchange of views;
  - the manner in which the advice or exchange of view is expressed, and;
  - whether the timing of release would have any bearing (releasing advice or views whilst a decision was being considered, and for which further views were still being sought, might be more substantially inhibiting than once a decision had been taken).
71. In this instance, there are documents withheld which do contain the free and frank provision of advice and/or the free and frank exchange of views for the purposes of deliberation. However, there are two further issues that require to be addressed in relation to the application of the section 30(b) exemption.
72. Firstly, would disclosure mean that those individuals who took part in the exchanges of correspondence would, or would be likely to, be inhibited substantially from continuing to freely and frankly provide advice or exchange views for the purposes of deliberation on this matter?
73. Secondly, would release of the information inhibit substantially others from providing advice or participating in such exchanges of views?
74. The Executive has withheld two broad categories of information under section 30(b)(i) and (ii) of FOISA. Firstly, it has withheld documents 1, 2, 3, 11, 13, 14 and 16. These documents constitute records of internal and third party views and deliberation on the options considered for the future of Sumburgh and Scatsta airports. The stakeholders who contributed to these discussions were SIC, HIAL and British Regional Airlines.



75. Secondly, documents 18-93, insofar as they have not been found to be outwith the scope of the request and have not been disclosed by the Executive during the course of my investigation, have been withheld under section 30(b)(i) and (ii). These documents consider the extension of the runway at Sumburgh Airport and its funding.

### **Documents relating to the future of Sumburgh and Scasta Airports**

76. Documents 1, 2, 3, 11, 13, 14 and 16 all might be regarded as containing, at least to some extent, records of the provision of advice and the exchange of views for the purposes of deliberation. They contain little, however, by way of expression in a particularly free or frank manner and I can identify nothing in their content or in any of the Executive's submissions to persuade me that their disclosure in the circumstances of this case could be expected to have a remotely inhibiting effect on similar future provision or exchanges (whether involving the Executive alone or third parties in addition), or on the full and accurate recording and transmission of similar records in the future. In particular, I have to note that these documents date from between April and June 1998 and relate to matters which had long since ceased to be the subject of active consideration by the time Mr Latham requested the information in February 2005.
77. As I have indicated above, the exemptions in section 30(b) are subject to the public interest test. As I have not accepted that documents 1, 2, 3, 11, 13, 14 and 16 are subject to either exemption, however, I am not required to go on to consider the public interest in relation to the information in those documents.

### **Documents relating to runway extension at Sumburgh and its funding**

78. The remainder of the documents withheld contain discussions on the runway extension at Sumburgh, possible methods of funding and the Executive's contribution to the final funding package. Specifically, they are the following documents:
- 18, 19, 21 (paragraph 9 only), 23 (paragraph 12 only), 24 (Qs & As 8 & 9 only), 32, 58 (sections marked "Sumburgh Runway" & "Scatsta" only), 59, 67, 68, 69, 70, 71, 72, 73, 74 (last 3 points on page 12 only), 75, 76 (paragraph 5 only), 77 (paragraphs 3 & 4 only), 78, 79, 80, 81 (3<sup>rd</sup> paragraph in second email only), 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92 and 93 (Annex B(iii) only).



Incidentally, there would appear to be some scope for confusion as to which document should be treated as document 31 (released by the Executive already) and which 32. For the avoidance of doubt (and noting which document has been released by the Executive as document 31), I am regarding as document 32 the email with attachments (minute of meeting and accompanying slides) from Grace McGuire to Bob MacLeod sent on 22 March 2001 at 11:07.

79. Once again, I have considered fully the arguments advanced by the Executive to justify the withholding of this information under sections 30(b)(i) and (ii). On the whole (subject to certain exceptions – see paragraph 85 below) I cannot accept that the information in question would be capable of having the inhibiting effects claimed by the Executive if disclosed. I note that the information dates from rather closer to the time Mr Latham's request was dealt with by the Executive, but I also have to note that the matter under consideration was to all intents and purposes concluded by the time of the request. On 1 February 2005, HIAL announced publicly that a preferred contractor for the runway extension had been confirmed by its board and that funding commitments from the various partners were in place (subject to an application for match funding from the European Regional Development Fund, which had been made). In all the circumstances, I am not persuaded that the content, expression or recording of future similar exchanges would have been affected to any degree of substance by the disclosure of the majority of the information described in paragraph 23 (i.e. subject to the exceptions I have set out in paragraph 85) in response to Mr Latham's request.
80. I do, however, accept that the exemptions in section 30(b)(i) and (ii) apply to the following information:
- a) In documents 18 and 19, the first sentence of the third paragraph;
  - b) In document 23, the final sentence of paragraph 12, with the exception of the figure at the end;
  - c) In document 59, the first and third paragraphs;
  - d) In documents 79, 84, 85 and 86, the first sentence of the second paragraph and the final sentence of the sixth paragraph in the email sent by Jamie Ross on 27 January 2004 at 09:48, and the whole of the email sent by Sam Ghibaldan on 15 January 2004 at 17:44;
  - e) The whole of documents 92 and 93, insofar as within the scope of the request.



Generally, I accept the arguments advanced by the Executive in relation to the disclosure of this information. The relevant sections of the documents in question contain information of some (generally political) sensitivity, the release of which I think it reasonable to conclude would have a substantially detrimental effect on the necessary expression of similar views in like circumstances. In the circumstances, therefore, I accept that both exemptions apply to the information concerned.

### **The Public Interest**

81. The exemptions in section 30(b) of FOISA are qualified exemptions and, where I have found that one or both of these exemptions apply to the information withheld, I am required to go on to consider where the public interest lies in terms of section 2(1)(b) of FOISA. The public interest arguments advanced by the Executive in relation to these exemptions appear to relate to the need to maintain open avenues for candid communication in the interests of good government, both within the Executive and externally with relevant third parties, and the risk of disclosure endangering these.
82. Sections 30(b)(i) and (ii) of FOISA contain a high test of whether disclosure of the information would inhibit substantially the free and frank provision of advice or (as appropriate) the free and frank exchange of views for the purposes of deliberation.
83. In my view the information described in paragraph 85 above might provide a deeper insight into some of the decisions taken by the Executive and thereby serve the general public interest in transparency and accountability. However, the consequence of this would be either to discourage such views being expressed as strongly as they were in this case or for them not to be shared at all. I accept that this would not be in the public interest. As I have indicated in previous decisions (see, for example, decision 166/2006 Mr Martin Williams and the Scottish Executive), this is not to say that officials and Ministers can say what they like in the knowledge that the information will not be released: each case has to be considered on its own merits and the public interest considerations will differ from case to case.
84. In this case, I have weighed the desirability of making information available to the public and the general need for transparency and accountability in decision making against the need for politicians and officials to be able to discuss matters of substance freely and openly, taking account of the timing of Mr Latham's request and the sensitivity of the subject matter involved. I have considered whether disclosure would bring to light any impropriety, malpractice, maladministration, diversion from normal practice or concealment of key factors in the decision-making process. I have found no evidence of any of these things in the information described in paragraph 85.



85. The passage of time is important in considering whether there is a public interest in disclosing this information. Some considerable time has elapsed since the request was made to the Executive by Mr Latham, and the runway has now been completed. However, at the time the request was made discussions relating to the funding of the runway extension had only recently been concluded and I consider that it was reasonable to argue that some elements of these discussions remained sensitive. I have to consider the application as at the time the applicant's request was dealt with by the authority. If a similar request were to be made now, my consideration of the public interest (and of the exemption as a whole) would necessarily take account of the intervening period of time and it is at least conceivable that I might reach a different conclusion in relation to the application of section 30(b)(i) and (ii).
86. In all the circumstances of this case, however, I have found on balance that the public interest in maintaining the exemptions under section 30(b)(i) and (ii) outweighs the public interest in disclosure of the information described in paragraph 85 above. Therefore, I find that information to be exempt under these provisions. As I have not found any of the other information withheld under section 30(b)(i) and (ii) to be exempt under either provision, I am not required to consider the public interest as it relates to that other information.

### **Section 30(a): Collective responsibility of the Scottish Ministers**

87. Section 30(a) of FOISA states that information is exempt information if its disclosure under FOISA would, or would be likely to, prejudice substantially the maintenance of the convention of the collective responsibility of the Scottish Ministers. The concept of collective ministerial responsibility is a long-standing constitutional convention which is not regulated by statute. Guidance on its application is, however, provided in the Scottish Ministerial Code (*A code of conduct on procedures for Members of the Scottish Executive and Junior Scottish Ministers*, produced by the Executive) and the supplementary *Guide to Collective Decision Making*. Collective responsibility enables ministers to express their views in the expectation that they can argue freely and frankly in private, whilst maintaining a united front once decisions have been reached. Section 30(a) provides for the exemption of information if its disclosure would undermine the convention substantially.
88. The Executive has withheld four documents (documents numbers 79, 84, 85 and 86) from Mr Latham on the basis that they are exempt under section 30(a). The documents, it is argued, contain the views of two Ministers on the funding to be provided by the Executive in order to extend the runway at Sumburgh Airport.



89. I understand that the Executive is applying section 30(a) to all four documents on the basis that they all contain information about views expressed by the Ministers. The Executive has not applied this exemption on a partial basis. That is, it has not suggested that the Ministers' views are simply redacted and the remainder of the information released.
90. However I have already found that parts of those documents, including the exchange of Ministerial views are exempt by virtue of s30(b)i) or (ii), and that the public interest in maintaining that exemption outweighs the public interest in disclosure. Having determined that the information should be withheld I do not therefore intend to consider whether the same information is exempt under s30(a)
91. As for the remaining information, I have to consider it falls within the scope of s30(a).
92. In order for the maintenance of the convention of collective responsibility to be prejudiced substantially it is reasonable to consider whether the views (or at least the issues to which they relate) are significant and whether they have at least some bearing on the application of the principles underlying collective decision making and the convention of collective responsibility. The mere fact that a particular Minister has expressed a view is unlikely, by itself, to engage the exemption. The knowledge that, when views were canvassed on a matter, Ministers offered different views, may not of itself breach the convention. Circumstances where the disclosure of information might prejudice the maintenance of the convention of collective responsibility could arise where the view continued to be pressed which was at variance with the final policy, or where the information revealed strongly expressed disagreement between or among Ministers. The passage of time should also be taken into account. As with other exemptions the harmful effects may have been eroded by time and change of circumstances, such as the composition of Ministerial office - holders.
93. Having considered the remaining information withheld I am satisfied in this particular case, that its release would not be capable of causing the substantial harm generally claimed by the Executive. Whilst I cannot go into details, suffice it to say that the remaining information is effectively advice to a Minister which, of itself, I have already found is not exempt under s30(b)(i) or (ii). Similarly I find that release of the advice itself would not, and would not be likely to, prejudice substantially the maintenance of the convention of collective responsibility of the Scottish Ministers.
94. The exemption in section 30(a) is a qualified exemption and therefore subject to the public interest test.



95. As I have found that section 30(a) does not apply, however, I am not required to consider the public interest in relation to the application of the exemption in this case.

## Decision

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I find that the Scottish Executive (the Executive) failed to act in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA), in particular section 1(1), in withholding information from Mr Latham under sections 29(1)(a), 29(1)(b), 30(a), 30(b)(i) and 30(b)(ii) of FOISA. I find that the Executive misapplied sections 29(1)(a), 29(1)(b) and 30(a) to all of the information withheld under those sections, and that it misapplied section 30(b)(i) and 30(b)(ii) to certain of the information withheld under those provisions (as more particularly detailed in Appendix II below).

However, I find that the Executive correctly applied sections 30(b)(i) and (ii) to the remainder of the information withheld under these provisions, once again as more particularly detailed in Appendix II below.

I require the Executive to release to Mr Latham all of the information which I do not find to be exempt under any provision of FOISA, as more particularly detailed in Appendix II below, within 45 calendar days of the date of receipt of this notice.

## Appeal

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Should either Mr Latham or the Executive wish to appeal against this decision, there is a right of appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days of receipt of this notice.

**Kevin Dunion**  
**Scottish Information Commissioner**  
**22 March 2007**



## APPENDIX I

### Relevant Statutory Provisions

#### Freedom of Information (Scotland) Act 2002

##### 1 General Entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

##### 29 Formulation of Scottish Administration policy etc.

- (1) Information held by the Scottish Administration is exempt information if it relates to-
  - (a) the formulation or development of government policy;
  - (b) Ministerial communications;
  - (c) ...; or
  - (d) ...
- (2) Once a decision as to policy has been taken, any statistical information used to provide an informed background to the taking of the decision is not to be regarded, for the purposes of-
  - (a) paragraph (a) of subsection (1), as relating to the formulation or development of the policy in question; or
  - (b) paragraph (b) of that subsection, as relating to Ministerial communications.
- (3) In determining any question under section 2(1)(b) as respects information which is exempt information by virtue of subsection (1)(a), the Scottish Administration must have regard to the public interest in the disclosure of factual information which has been used, or is intended to be used, to provide an informed background to the taking of a decision.
- (4) In this section-

"government policy" means-

  - (a) the policy of the Scottish Administration; and
  - (b) in relation to information created before 1st July 1999, the policy of the Government of the United Kingdom;

...

"Ministerial communications" means any communications between Ministers and includes, in particular, communications relating to proceedings of the Scottish Cabinet (or of any committee of that Cabinet);...
- (5) In the definitions of "Ministerial communications" and "Ministerial private office" in subsection (4), "Minister" means a member of the Scottish Executive or a junior Scottish Minister.





**30 Prejudice to effective conduct of public affairs**

Information is exempt information if its disclosure under this Act-

- (a) would, or would be likely to, prejudice substantially the maintenance of the convention of the collective responsibility of the Scottish Ministers;
- (b) would, or would be likely to, inhibit substantially-
  - (i) the free and frank provision of advice; or
  - (ii) the free and frank exchange of views for the purposes of deliberation;...



## Appendix II

Doc No.	Exemptions cited by the Executive	Exemptions upheld	Whether document is within the scope of the request	Release or withhold
1	Exempt. s29(1)(a), s30(b)(i) and (ii)	None	Y	Release
2	Exempt. s30(b)(i) and (ii)	None	Y	Release
3	Exempt. s30(b)(i) and (ii)	None	Y	Release
4	Exempt. s29(1)(a), s30(b)(i) and (ii)	n/a	Y	Released by the Executive during my investigation
5	Exempt. s29(1)(a), s30(b)(i) and (ii)	n/a	Y	Released by the Executive during my investigation
6	Exempt. s29(1)(a), s30(b)(i) and (ii)	n/a	Y	Released by the Executive during my investigation
7	Exempt. s29(1)(a), s30(b)(i) and (ii)	n/a	Y	Released by the Executive during my investigation
8	Exempt. s29(1)(a),	n/a	N	n/a



	s30(b)(i) and (ii)			
9	Exempt. s29(1)(a)	None	Y	Release
10	Exempt. s29(1)(a)	None	Y	Release
11	Exempt. s30(b)(i) and (ii)	None	Y	Release
12	Exempt. s29(1)(a), s30(b)(i) and (ii)	n/a	Y	Released by the Executive during my investigation
13	Exempt. s29(1)(a), s30(b)(i) and (ii)	None	Y	Release
13(a)	Exempt. s29(1)(a), s30(b)(i) and (ii)	n/a	N	Released by the Executive during my investigation
14	Exempt. s29(1)(a), s30(b)(i) and (ii)	None	Y	Release
15	Exempt. s28, s30(b)(i) and (ii)	n/a	Y	Released by the Executive during my investigation
16	Exempt. s29(1)(a), s30(b)(i) and (ii)	None	Y	Release
17	Exempt. s29(1)(a), s30(b)(i) and (ii)	n/a	Y	Released by the Executive during my investigation
18	Exempt. s29(1)(a), s30(b)(i) and (ii)	s30(b)(i) and (ii) (part only)	Y	Withhold (first sentence of third paragraph only – rest to be released)



19	Exempt. s29(1)(a), s30(b)(i) and (ii)	s30(b)(i) and (ii) (part only)	Y	Withhold (first sentence of third paragraph only – rest to be released)
20	Exempt. s29(1)(a), s30(b)(i) and (ii)	n/a	N	n/a
21	Exempt. s29(1)(a), s30(b)(i) and (ii)	None	Only Paragraph 9 relevant	Release
22	Exempt. s30(b)(i) and (ii)	n/a	Only point 1.3 relevant	Released by the Executive during my investigation
23	Exempt. s29(1)(a), s30(b)(i) and (ii)	s30(b)(i) and (ii) (part only)	Only paragraph 12 relevant	Withhold (final sentence of paragraph 12 only, with the exception of the figure at the end – rest to be released)
24	Exempt. s29(1)(a), s30(b)(i) and (ii)	None	Only questions and answers 8 and 9 relevant	Release
25	Exempt. s29(1)(a), s30(b)(i) and (ii)	n/a	N	n/a
26	Exempt. s29(1)(a), s30(b)(i) and (ii)	n/a	N	n/a
27	Exempt. s29(1)(a), s30(b)(i) and (ii)	n/a	Y	Released by the Executive during my investigation
28	Exempt. s30(b)(i) and (ii)	n/a	Y	Released by the Executive during my investigation
29	Exempt. s30(b)(i) and (ii)	n/a	Y	Released by the Executive during my investigation
30	Exempt. s29(1)(a), s30(b)(i) and (ii)	n/a	Y	Released by the Executive during my investigation
31	Exempt. s30(b)(i)	n/a	Y	Released by the Executive during my



	and (ii)			investigation
32	Exempt. s29(1)(a), s30(b)(i) and (ii)	None	Y	Release
33	Exempt. s29(1)(a), s30(b)(i) and (ii)	n/a	N	n/a
34	Exempt. s29(1)(a), s30(b)(i) and (ii)	n/a	Only second paragraph	Released by the Executive during my investigation
35	Exempt. s29(1)(a), s30(b)(i) and (ii)	n/a	Only second paragraph	Released by the Executive during my investigation
36	Exempt. s30(b)(i) and (ii)	n/a	N	n/a
37	Exempt. s29(1)(a), s30(b)(i) and (ii)	n/a	N	n/a
38	Exempt. s29(1)(a), s30(b)(i) and (ii)	n/a	N	n/a
39	Exempt. s29(1)(a), s30(b)(i) and (ii)	n/a	N	n/a
40	Exempt. s29(1)(a), s30(b)(i) and (ii)	n/a	N	n/a
41	Exempt. s29(1)(a), s30(b)(i) and (ii)	n/a	N	n/a
42	Exempt. s29(1)(a), s30(b)(i) and (ii)	n/a	N	n/a
43	None	n/a	Y	Released
44	Exempt. s29(1)(a), s30(b)(i) and (ii)	n/a	Only page 3 para 1	Released by the Executive during my investigation
45	Exempt. s29(1)(a), s30(b)(i) and (ii)	n/a	Only bullet points 1 and 2 of the section marked "infrastructure"	Released by the Executive during my investigation
46	Not relevant to request	n/a	N	n/a
47	Exempt. s s30(b)(i)	n/a	N	n/a



	and (ii)			
48	Exempt. s29(1)(a), s30(b)(i) and (ii)	n/a	N	n/a
49	Exempt. s30(b)(i) and (ii)	n/a	N	n/a
50				
51	Exempt. s30(b)(i) and (ii)	n/a	N	n/a
52	Exempt. s30(b)(i) and (ii)	n/a	N	n/a
53	Exempt. s29(1)(a), s30(b)(i) and (ii)	n/a	N	n/a
54	Exempt. s30(b)(i) and (ii)	n/a	N	n/a
55	Exempt. s30(b)(i) and (ii)	n/a	N	n/a
56	Exempt. s29(1)(a), s30(b)(i) and (ii)	n/a	N	n/a
57	Exempt. s30(b)(i) and (ii)	n/a	N	n/a
58	Exempt. s29(1)(a), s30(b)(i) and (ii)	None	Only sections marked "Sumburgh Runway" and "Scatsta" relevant	Release
59	Exempt. s30(b)(i) and (ii)	s30(b)(i) and (ii) (part only)	Y	Withhold (first and third paragraphs only – rest to be released)
60	Exempt. s29(1)(a), s30(b)(i) and (ii)	n/a	N	n/a
61	Exempt. s29(1)(a), s30(b)(i) and (ii)	n/a	N	n/a
62	Exempt. s30(b)(i) and (ii)	n/a	N	n/a



63	Exempt. s30(b)(i) and (ii)	n/a	N	n/a
64	Exempt. s30(b)(i) and (ii)	n/a	N	n/a
65	Exempt. s30(b)(i) and (ii)	n/a	N	n/a
66	Exempt. s30(b)(i) and (ii)	n/a	N	n/a
67	Exempt. s29(1)(a), s30(b)(i) and (ii)	None	Y	Release
68	Exempt. s29(1)(a), s30(b)(i) and (ii)	None	Y	Release
69	Exempt. s29(1)(a), s30(b)(i) and (ii)	None	Y	Withhold
70	Exempt. s29(1)(a), s30(b)(i) and (ii)	None	Only second issue in briefing relevant	Release
71	Exempt. s29(1)(a), s30(b)(i) and (ii)	None	Y	Release
72	Exempt. s29(1)(a), s30(b)(i) and (ii)	None	Y	Release
73	Exempt. s29(1)(a), s30(b)(i) and (ii)	None	Y	Release
74	Exempt. s30(b)(i) and (ii)	None	Only last 3 bullet points on page 12 relevant	Release
75	Exempt. s30(b)(i) and (ii)	None	Y	Release
76	Exempt. s30(b)(i) and (ii)	None	Only fifth paragraph relevant	Release
77	Exempt. s30(b)(i) and (ii)	None	Only paragraphs 3 and 4 relevant	Release
78	Exempt. s29(1)(a), s30(b)(i) and (ii)	None	Y	Release



79	Exempt. s29(1)(a), s30(a), s30(b)(i) and (ii)	s30(b)(i) and (ii) (part only)	Y	Withhold in part (first sentence of second paragraph and final sentence of sixth paragraph in email sent by Jamie Ross on 27 January 2004 at 09:48, and all of email sent by Sam Ghibaldan on 15 January 2004 at 17:44 – rest to be released)
80	Exempt. s29(1)(a), s30(b)(i) and (ii)	None	Y	Release
81	Exempt. s29(1)(a), s30(b)(i) and (ii)	None	Only third paragraph in second email relevant	Release
82	Exempt. s30(b)(i) and (ii)	None	Y	Release
83	Exempt. s29(1)(a), s30(b)(i) and (ii)	None	Y	Release
84	Exempt. s 30(a), s30(b)(i) and (ii)	s30(b)(i) and (ii) (part only)	Y	Withhold as per document 79 – rest to be released
85	Exempt. s29(1)(a), s30(a), s30(b)(i) and (ii)	s30(b)(i) and (ii) (part only)	Y	Withhold as per document 79 – rest to be released
86	Exempt. s 30(a), s30(b)(i) and (ii)	s30(b)(i) and (ii) (part only)	Y	Withhold as per document 79 – rest to be released
87	Exempt. s29(1)(a), s30(b)(i) and (ii)	None	Y	Release
88	Exempt. s29(1)(a), s30(b)(i) and (ii)	None	Y	Release
89	Exempt. s29(1)(a), s30(b)(i) and (ii)	None	Y	Release
90	Exempt. s30(b)(i) and (ii)	None	Y	Release
91	Exempt. s29(1)(a), s30(b)(i) and (ii)	None	Y	Release





92	Exempt. s29(1)(a), s30(b)(i) and (ii)	s30(b)(i) and (ii)	Y	Withhold
93	Exempt. s29(1)(a), s30(b)(i) and (ii)	s30(b)(i) and (ii)	Only Annex B(iii) relevant	Withhold