

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 January 2017

Public Authority: The Cabinet Office
Address: 70 Whitehall
SW1A 2AS
London

Decision (including any steps ordered)

1. The complainant submitted a request to the Cabinet Office seeking Cabinet minutes and correspondence dating from 1991 in which the Bank of Credit & Commerce International was discussed. The Cabinet Office relied on section 35(3) of FOIA to refuse to confirm or deny whether it held any Cabinet minutes. The Cabinet Office confirmed that it held relevant correspondence but it considered this to be exempt from disclosure on the basis of sections 21, 23, 27, 35 and 41 of FOIA.
2. The Commissioner has concluded that the Cabinet Office is entitled to rely on section 35(3) in the manner which it did. However, for the reasons set out in this notice the Commissioner has also concluded that the various exemptions cited by the Cabinet Office only provide a basis to withhold some of the correspondence that it acknowledges holding. The remaining correspondence is not exempt from disclosure.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with the following documents listed in the annex: 3, 4 (with the redactions identified in the confidential annex applied), 5, 6 (with the redactions identified in the confidential annex applied), 10, 11, 15, 19, 20, 27, 36 (with the redactions identified in the confidential annex), 45, 48, 50 and 56.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court

pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. The complainant submitted the following request to the Cabinet Office on 18 April 2015:

'I am writing to make an open government request for all the information to which I am entitled under the freedom of information act. In order to assist you with this request, I am outlining my query as specifically as possible. If however this request is too wide or too unclear, I would be grateful if you could contact me as I understand that under the act, you are required to advise and assist requesters.

I am looking for documents relating to the investigation and closure of the Bank of Credit & Commerce International during the period of 1991.'

6. The Cabinet Office responded to this request on 8 May 2015 and directed the complainant to a copy of Lord Bingham's report into supervision of the Bank of Credit & Commerce International (BCCI).¹
7. The complainant contacted the Cabinet Office on 12 May 2015 and explained that he already had a copy of the Bingham report but explained that he would *'be interested in minutes of cabinet meetings and correspondence where the matter was discussed.'*
8. The Cabinet Office contacted him on 9 June 2015 and explained that it considered sections 35(1)(a) and (b) of FOIA to apply but it needed more time to consider the balance of the public interest.
9. The Cabinet Office provided him with a substantive response on 4 August 2015. The response explained that it had considered the request in two parts. Firstly, with regard to the request for the minutes of Cabinet meetings, the Cabinet Office refused to confirm or deny on the basis of section 35(3) whether it held any minutes at which the subject of BCCI's investigation and closure was discussed. In relation to the aspect of the request which sought correspondence on this subject, the Cabinet Office confirmed that it held information of this description.

¹ Background details regarding BCCI are set out in a previous decision notice issued by the Commissioner at paragraphs 2 to 9: https://ico.org.uk/media/action-weve-taken/decision-notices/2009/505806/FS_50202116.pdf

However, it explained that it considered this information to be exempt from disclosure on the basis of sections 27(1)(a),(c) and (d), 35(1)(a) and (b) and section 41(1). The Cabinet Office also explained that on the basis of section 23(3) of FOIA it could neither confirm nor deny whether any of the requested information was exempt from disclosure on the basis of section 23(1).

10. The complainant contacted the Cabinet Office on 7 August 2015 and asked it to conduct an internal review of this decision.
11. The Cabinet Office concluded its internal review on 4 January 2016. The review upheld the application of the various exemptions cited in the refusal notice.

Scope of the case

12. The complainant initially contacted the Commissioner on 18 October 2015 about the Cabinet Office's handling of his request. He explained that he disputed the Cabinet Office's reliance on the various exemptions. He explained that he was also dissatisfied with the nature of the Cabinet Office's initial response of 8 May 2015 to his request, ie simply providing a link to the Bingham report rather than addressing his request for the documents actually held. Furthermore, he explained that he was also dissatisfied with the Cabinet Office's delays in conducting the internal review.
13. During the course of the Commissioner's investigation, the Cabinet Office explained that it wished to rely on section 23(1) of FOIA to withhold certain parts of the requested information, as opposed to relying on section 23(5) to refuse to confirm whether or not it held any further information falling within the scope of the request which relates to the security bodies.

Reasons for decision

The request for correspondence

14. The Cabinet Office has relied upon a variety of exemptions to withhold the documents which fall within the scope of this request. The Commissioner has considered whether these exemptions have been applied correctly. For some documents, the Cabinet Office has cited more than one exemption. For such documents, if the Commissioner has concluded that one exemption applies then he has not gone on to consider whether the other exemptions also cited by the Cabinet Office are applicable.
15. For clarity, the Commissioner has created a schedule of the withheld documents and a version of this schedule is attached to this notice. The Commissioner has also provided the Cabinet Office with a confidential annex which includes a more detailed version of this schedule which makes reference to the specific withheld information to support the Commissioner's findings in respect of the various exemptions.

Section 27 – international relations

16. The Cabinet Office withheld a significant amount of the documents on the basis of sections 27(1)(a), (c) and (d) of FOIA. These sections state that information is exempt from disclosure if its disclosure would, or would be likely to, prejudice:

'(a) relations between the United Kingdom and any other State...

...(c) the interests of the United Kingdom abroad, or

(d) the promotion or protection by the United Kingdom of its interests abroad'

The Cabinet Office's position

17. In its refusal notice the Cabinet Office explained to the complainant that it could not provide him with any detailed reasoning to support its view that these exemptions were engaged. By adopting this approach the Cabinet Office explained that it was relying on section 17(4) of FOIA which provides that public authorities are not obliged to explain why exemptions apply if to do so would involve the disclosure of information which itself would be exempt from disclosure.
18. However, in its submissions to the Commissioner the Cabinet Office set out in detail why it believed that the information in question was exempt from disclosure on the basis of sections 27(1)(a), (c) and (d). In doing so the Cabinet Office identified with which states the UK's relations

would be harmed if the information was disclosed and why it considered this to be the case. For obvious reasons the Commissioner cannot set out the detail of these submissions in this notice.

The complainant's position

19. The complainant argued that there was a significant amount of information already in the public domain concerning the collapse of BCCI given what was released in Senator's John Kerry and Hank Brown's Congress of Foreign Affairs Report entitled 'The BCCI Affair', published in December 1992. Additionally, he noted that information was discussed in the House of Representative's Committee on Banking, Finance & Urban Affairs (1991-92) including declassified documents including CIA reports concerning the status of the bank.
20. Additionally, the complainant argued that as the liquidators of BCCI finished all lawsuits in 2012, there is no risk of any information now jeopardising the UK's relations with any other states now.

The Commissioner's position

21. In order for a prejudice based exemption, such as section 27(1)(a), to be engaged the Commissioner considers that three criteria must be met:
 - Firstly, the actual harm which the public authority alleges would, or would be likely, to occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
 - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
 - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie, disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority. The anticipated prejudice must be more likely than not.
22. Furthermore, the Commissioner has been guided by the comments of the Information Tribunal which suggested that, in the context of section

27(1), prejudice can be real and of substance *'if it makes relations more difficult or calls for a particular damage limitation response to contain or limit damage which would not have otherwise have been necessary'*.²

23. With regard to the first criterion of the three limb test described above, the Commissioner accepts that potential prejudice to the UK's relations with the states identified by the Cabinet Office clearly relates to the interests which the exemptions contained at sections 27(1)(a), (c) and (d) are designed to protect.
24. With regard to the second and third criteria, for the majority of the information that has been withheld on the basis of section 27, the Commissioner is satisfied that these are met. He has reached this conclusion because it is self-evident from its content, and the submissions provided by the Cabinet Office, that disclosure of such information presents a real risk of prejudicing the UK's relations with the states in question. Moreover, the Commissioner is satisfied that disclosure of the withheld information would be likely to have the prejudicial effects envisaged by the Cabinet Office.
25. In reaching this conclusion the Commissioner has taken into consideration the arguments raised by the complainant. Having done so, and again based upon specific points raised by the Cabinet Office, the Commissioner accepts that the withheld information remains sensitive despite the passage of time.
26. Furthermore, the Commissioner is satisfied that the information contained in the withheld information contains markedly different information about BCCI to that already in the public domain.
27. However, as noted above, the Commissioner only accepts that the latter two criteria are met for the majority of the information withheld on the basis of section 27. He is not persuaded that the exemptions contained at section 27(1)(a), (c) and (d) are engaged in respect of a small amount of information.. The Commissioner has explained his reasoning for this decision in the confidential annex.

² [Campaign Against the Arms Trade v The Information Commissioner and Ministry of Defence \(EA/2006/0040\)](#), paragraph 81.

Public interest test

28. Section 27 is a qualified exemption and therefore the Commissioner must consider the public interest test and whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Public interest in disclosure of the information

29. The Cabinet Office recognised the public interest in understanding and evaluating the foreign policy of the government and its interactions with other states, particularly in matters of complex international financial governance and cooperation between governments.

Public interest arguments in favour of maintaining the exemption

30. However, the Cabinet Office argued that there is also a very significant public interest in the UK being able to successfully pursue its national interests abroad. Consequently, there is a very strong public interest in maintaining diplomatic relations with other states. The Cabinet Office argued that it was essential that the UK government can operate in the diplomatic sphere without being concerned that information relating to its relations with other governments is received by those governments and by international partners if it is to successfully pursue the UK's national interest.

Balance of the public interest test

31. In the Commissioner's opinion disclosure of the information which he agrees is exempt from disclosure on the basis of section 27 would provide a detailed insight into the UK's discussions and interactions with other states in respect of BCCI. The Commissioner agrees that there is a value in the public being able to understand, and assess, the effectiveness of the government's foreign policy decisions. Moreover, the Commissioner acknowledges the need the transparency in respect of the government's actions in this case is particularly acute given the high profile nature of the collapse of BCCI, a multinational banking operation, and as a consequence the financial losses sustained by a large number of UK citizens.
32. However, in the Commissioner's opinion there is a very strong public interest in protecting the UK's relations with other states. In the Commissioner's opinion it would be firmly against the public interest for the UK's relations with the various states identified by the Cabinet Office to be harmed. In reaching this conclusion the Commissioner accepts that there is a particular public interest in the UK preserving its relations with countries in the Middle East given the ongoing political and civil difficulties being experienced by some states in the region. If the UK's relations with friendly and influential states in that region were harmed,

that could damage the ability of the UK government to protect UK interests and citizens in the region. Consequently despite the public interest in disclosure of the withheld information, the Commissioner has concluded that the public interest firmly favours maintaining the exemptions contained at sections 27(1)(a), (c) and (d).

Section 35(1)(a) – formulation and development of government policy

33. Information is exempt from disclosure on the basis of section 35(1)(a) if it is held by a government department and relates to the formulation and development of government policy.
34. Section 35 is a class based exemption, therefore if information falls within the description of a particular sub-section of 35(1) then this information will be exempt; there is no need for the public authority to demonstrate prejudice to these purposes.
35. The Commissioner takes the view that the 'formulation' of policy comprises the early stages of the policy process – where options are generated and sorted, risks are identified, consultation occurs, and recommendations/submissions are put to a minister or decision makers. 'Development' may go beyond this stage to the processes involved in improving or altering existing policy such as piloting, monitoring, reviewing, analysing or recording the effects of existing policy.
36. Whether information relates to the formulation or development of government policy is a judgement that needs to be made on a case by case basis, focussing on the precise context and timing of the information in question.
37. The Commissioner considers that the following factors will be key indicators of the formulation or development of government policy:
 - the final decision will be made either by the Cabinet or the relevant minister;
 - the government intends to achieve a particular outcome or change in the real world; and
 - the consequences of the decision will be wide-ranging.
38. The Cabinet Office explained that the information withheld under this exemption related to the government's policy on illicit finance, money laundering and sanctions. It emphasised that a small amount of information in the scope of the request contained sensitive information which related to the government's ongoing development of policy issues in this area.

39. Having considered this information the Commissioner is not persuaded that it can be said to relate to the formulation or development of government policy in respect of illicit finance, money laundering or sanctions which follow as a result of such activities. Rather in the Commissioner's opinion the information concerns the operation or implementation of government policy in respect of these areas. It is difficult for the Commissioner to further explain why he is of this view without referring directly to the content of the withheld information. Therefore, the Commissioner's full reasoning which sets out why he considers section 35(1)(a) not to be engaged is set out in the confidential annex.

Section 35(1)(b) – Ministerial communications

40. Section 35(1)(b) provides an exemption for information which relates to ministerial communications. The Commissioner accepts that this exemption will also cover communications from a private secretary writing on behalf of their minister to another minister (or indeed to another private secretary receiving the communication on behalf of their minister).
41. Having examined the information which the Cabinet Office has sought to withhold on the basis of section 35(1)(b) the Commissioner is satisfied that it clearly falls within the scope of this exemption.

Public interest test

42. Section 35 is a qualified exemption and therefore the Commissioner must consider the public interest test and whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Public interest in disclosure of the information

43. The Cabinet Office acknowledged that there is a general public interest in greater transparency around the actions of government and the ways in which ministers communicate and reach decisions. Moreover, it acknowledged that there was a particular public interest in relation to the collapse of a multi-national banking operation and the financial losses sustained by a large number of UK citizens. Furthermore, greater understanding of the way in which the government has acted would assist those who were affected by the collapse of BCCI.

Public interest arguments in favour of maintaining the exemption

44. The Cabinet Office argued that there was a very strong public interest in protecting the confidentiality of all aspects of communications between ministers. It argued that there is a public interest in creating a clear space, away from public glare, in which ministers can debate, discuss and refine proposals and options. If discussions were routinely disclosed there is a risk that ministers may feel inhibited from being frank and candid in discussions. As a result the quality of debate underlying collective decision making would decline, leading to worse informed and poorer decision making. In particular, the Cabinet Office emphasised that ministers need to be able to discuss unpalatable options freely and raise issues which they might not feel comfortable airing in public in order to better inform decision making. It argued that government ministers are rightly answerable for the decisions they take, not for the options they consider or other influences on policy formulation process. The Cabinet Office argued that disclosure of information about how the government took decisions on the issues arising from the collapse of BCCI would invite judgments about whether these procedures were appropriate and could lead to attempts to regulate future decision making in this area. Ultimately this would be corrosive of parliamentary democracy since it would hold ministers to account for the discussion rather than the decision.
45. The Cabinet Office argued that although a number of years have passed since the exchange of this correspondence, the litigation in this area was only brought to a close in 2012 and the issue remains live and sensitive for many of those affected by the collapse of BCCI. The Cabinet Office argued that it would be the legitimate expectation of ministers that sensitive information – such as that which has been withheld under section 35(1)(b) in this case – would not be released before the 30 year rule (ie the point at which records of historical value are transferred to The National Archives and usually open for public access) and, potentially, not for some time after that if the issues remained live.
46. The Cabinet Office noted that the information in this case included correspondence where ministers, and the Prime Minister, consider options, policy advice and agree a government position on the collapse of BCCI. The Cabinet Office emphasised that there is a very strong public interest in protecting the privacy of the deliberative process at this level; if ministers cannot be confident that their discussions will be protected they may be inhibited in their deliberations. More specifically, the Cabinet Office suggested that they may seek to have key discussions outside the confines of meetings, or encourage minimal recording of discussions. This, the Cabinet Office argued, would be contrary to good government which requires ministers and their officials engage in full, frank and uninhibited consideration of policy options.

Balance of the public interest test

47. The Commissioner is satisfied that the arguments advanced by the Cabinet Office focus on the interests which this exemption is designed to protect, namely protecting ministerial unity and effectiveness, and protecting ministerial discussions and collective decision making processes. With regard to the weight that such arguments will attract, the Commissioner considers that these will depend entirely on the content and sensitivity of the particular information in question and the effect its release would have in all the circumstances of the case.
48. In the circumstances of this case the Commissioner accepts that the collapse of BCCI was clearly a high profile and sensitive issue with both a domestic and international dimension. Moreover, the Commissioner accepts that the information withheld under this exemption contains frank and detailed discussions, at the highest level of government, about various aspects of the BCCI case. The information also reveals the individual views of particular ministers. Consequently, in the Commissioner's opinion disclosure of the withheld information would represent a real risk of undermining the convention of collective responsibility and thus there is significant public interest in maintaining the exemption for this reason. In reaching this particular finding the Commissioner recognises that whilst the collapse of BCCI is for some still considered to be sensitive, she does not accept that issue could still be described as live. Nevertheless, she does not consider that this materially reduces the public interest in maintaining collective responsibility because of the constitutional importance in maintaining the general principle of collective responsibility for the sake of government unity.
49. With regard to attributing weight to the chilling effect arguments advanced by the Cabinet Office, in the Commissioner's view such arguments do not automatically carry significant weight. Factors which will determine how much weight they carry include the timing of the request, whether the policy or decision making process is still live, and the actual content and sensitivity of the information in question.
50. In the circumstances of this case, as suggested above, the Commissioner does not accept that the issue of the BCCI's collapse can still be considered to be live. Furthermore, some considerable time has passed since the information in question was created. Nevertheless, as discussed above, the information withheld under this exemption includes free and frank, and indeed detailed, exchanges between ministers discussing the various issues in respect of BCCI. Despite the passage of time, the Commissioner accepts that disclosure of information of this nature concerning an issue which was at the time such a sensitive and high profile one would still be likely to have a chilling effect, albeit a limited one, on discussions by ministers of difficult decisions in the future.

51. In the Commissioner's opinion disclosure of the information withheld on the basis of section 35(1)(b) would provide an informative insight into how the government reached decisions following the collapse of BCCI. As noted above, in the Commissioner's view the need for transparency in respect of the government's actions in this case is particularly acute given high profile nature of the collapse of BCCI, a multinational banking operation, and as a consequence the financial losses sustained by a large number of UK citizens. The public interest arguments in disclosure should not therefore be underestimated.
52. However, the Commissioner has concluded that the public interest narrowly favours maintaining the exemption. She has ultimately reached this finding given the weight that she considers should be attributed to the public interest in protecting collective responsibility.

Section 41 – information provided in confidence

53. Section 41 of FOIA states that:

'(1) Information is exempt information if—

(a) it was obtained by the public authority from any other person (including another public authority), and

(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.'

54. Therefore for this exemption to be engaged two criteria have to be met; the public authority has to have obtained the information from a third party and the disclosure of that information has to constitute an actionable breach of confidence.
55. With regard to whether disclosure would constitute an actionable breach of confidence the Commissioner follows the test of confidence set out in *Coco v A N Clark (Engineering) Ltd* [1968] FSR 415. This judgment suggested that the following three limbed test should be considered in order to determine if information was confidential:
- Whether the information had the necessary quality of confidence;
 - Whether the information was imparted in circumstances importing an obligation of confidence; and
 - Whether an unauthorised use of the information would result in detriment to the confider.

56. However, further case law has argued that where the information is of a personal nature it is not necessary to establish whether the confider will suffer a detriment as a result of disclosure.

Was the information obtained from a third party?

57. The Cabinet Office explained to the Commissioner that the majority of the information withheld under this exempt originated from HM Treasury (HMT). Moreover, many of these documents included information provided by the Bank of England to HMT regarding the collapse of BCCI.
58. The Cabinet Office explained that there was an additional set of correspondence which had been received from a number of further third parties. The Commissioner cannot identify these third parties without revealing information which itself is exempt from disclosure.
59. Nevertheless, he can confirm that in respect of both sets of information, he is satisfied that the Cabinet Office received the information from a third party and thus section 41(1)(a) is met.

Would disclosure constitute an actionable breach of confidence?

60. The Cabinet Office argued that the information provided by the Bank of England to HMT was made in the expectation of confidence and any disclosure of this confidential information could form the basis of an action for breach of confidence. The Cabinet Office explained that for the avoidance of doubt it had consulted with the Bank of England in respect of this information and it had confirmed that it still considered this information to be confidential and in its view remained highly sensitive.
61. The Cabinet Office also provided the Commissioner with submissions to support its view that disclosure of the additional set of information would constitute an actionable breach of confidence but for the reasons explained above he has not included them in this notice.
62. Having considered the Cabinet Office's submissions, the Commissioner is satisfied that for the majority of the information withheld on the basis of section 41(1) disclosure would constitute an actionable breach of confidence. It is clear to the Commissioner that such information was obviously shared by the Bank of England and other third parties with the expectation that it be treated confidentially. Furthermore, the Commissioner accepts that the disclosure of the information would be detrimental. However, although section 41 is an absolute exemption, the law of confidence contains its own built in public interest test with one defence to an action being that disclosure is in the public interest. Nevertheless, the Commissioner does not consider that there is a sufficient basis to form a defence to any action for a breach of confidence that may arise out the disclosure of this information.

63. However, for some of the information the Commissioner does not accept that section 41(1)(b) is engaged. His reasons for this finding vary depending upon the document in question and the Commissioner has set out in detail, in the confidential annex, why in respect of certain documents he does not consider them to be exempt from disclosure on the basis of section 41(1)(b). Nevertheless, he can confirm in this notice that this is essentially because either the information in question does not have the quality of confidence or because of the effect of section 81(2)(a) of FOIA. This section precludes government departments from relying on section 41(b) in respect of information provided in confidence by other government departments.

Section 21 – information accessible to the applicant by other means

64. The Cabinet Office explained to the Commissioner that it considered some of the withheld information to be exempt from disclosure on the basis of section 21 of FOIA. This provides an exemption to disclosure for information which is reasonably accessible to the applicant. The Commissioner notes that the Cabinet Office did not cite this exemption to the complainant in either its refusal notice or its internal review. It follows that the Cabinet Office has not explained to the complainant what the information is which is being withheld on the basis of section 21 nor indeed provided him with an indication as to how he could access this information.
65. In such circumstances, the Commissioner is not persuaded that the information withheld on the basis of section 21 can be said to be reasonable accessible to the complainant. Consequently, the exemption is not engaged.

Section 23(1) – information supplied by or relating to bodies dealing with security matters

66. Section 23(1) of FOIA provides an exemption which states that:

'Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).'

67. To successfully engage the exemption at section 23(1), a public authority needs only to demonstrate that the relevant information was directly or indirectly supplied to it by, or relates to any of the bodies listed at section 23(3). This means that if the requested information falls within this class it is absolutely exempt from disclosure under FOIA. This exemption is not subject to a balance of public interests test.
68. The Cabinet Office has argued that two parts of document 6 fall within the scope of the exemption provided by section 23(1) of FOIA. Having examined the information in question, the Commissioner is satisfied that

the information in question clearly falls within the scope of the section 23(1) and is therefore exempt from disclosure by virtue of this exemption.

The request for Cabinet minutes

Section 35(3)

69. Section 35(3) provides that:

'the duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of [section 35] subsection (1)'.

70. The practical consequence of this is that if the information requested, ie Cabinet minutes concerning the collapse of BCCI, falls within the scope of the exemptions contained at section 35(1) of FOIA then the Cabinet Office can refuse to confirm or deny whether it holds it, subject to a balance of public interest test.
71. The Commissioner is satisfied that Cabinet minutes, if held, would clearly fall within the exemption provided by section 35(1)(b) as they are form of ministerial communication. He is therefore satisfied that section 35(3) is engaged.
72. Section 35(3) is subject to a public interest test and therefore the Cabinet Office can only maintain this exclusion from its duty to provide confirmation or denial where the public interest in doing so outweighs the public interest in disclosure.
73. The Cabinet Office argued that by confirming or denying whether a specific topic had been discussed at Cabinet would weaken the ability of ministers to determine the agenda for Cabinet without inappropriate consideration to public pressure dictating what should, or should not, be considered for Cabinet. This is because revealing what has been considered by Cabinet may create pressure for ministers to place undue weight on what the public reaction would be when deciding the Cabinet's business. The Cabinet Office argued that this would have a detrimental effect on the ability of the Cabinet to most effectively manage its business.
74. The Commissioner accepts that it is for the Cabinet and the government to determine the level at which matters are discussed and that process, in itself, deserves protection. If confirmation or denial of the level at which decisions are made were routinely provided, this would inevitably lead to pressure on the government to make more decisions at the highest level.

75. That said, the Commissioner considers that it is important to recognise that some time has passed since the collapse of BCCI. In the Commissioner's opinion the passage of time arguably weakens the public interest in maintaining the exclusion to confirm or deny. Furthermore, the Commissioner accepts that there is a genuine public interest in confirming whether or not matter of such significance such as the collapse of BCCI was considered by the Cabinet. Nevertheless, the Commissioner is persuaded that by a narrow margin, the public interest favours maintaining the exemption.

Procedural matters

76. The complainant is also dissatisfied with the nature of the Cabinet Office's initial response of 8 May 2015 to his request of 18 April. That is to say it simply provided a link to the Bingham report rather than addressing his request for the documents actually held.
77. In the Commissioner's opinion the complainant's request of 18 April clearly asked for documents on the subject in question and the Cabinet Office should have either provided these documents or issued a refusal notice if intended to withhold them, which as it transpired was the position adopted by the Cabinet Office. The failure to issue refusal notice in response to the complainant's request of 18 April 2015 constitutes a breach of section 17 of FOIA.

Other matters

78. FOIA does not impose a statutory time within which internal reviews must be completed albeit that the section 45 Code of Practice explains that they should be completed within a reasonable timeframe. In the Commissioner's view it is reasonable to expect most reviews to be completed within 20 working days and reviews in complex cases to be completed within 40 working days.
79. In the circumstances of this case the complainant requested an internal review on 7 August 2015. The Cabinet Office informed him of the outcome of the internal review on 4 January 2016. It therefore took the Cabinet Office 102 working days to complete its internal review. The Commissioner considers this to be unsatisfactory. In the future he expects the Cabinet Office to ensure that internal reviews are completed within the timeframes set out within his guidance.

Right of appeal

80. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504
Fax: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

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

82. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

**Gerrard Tracey
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Wilmslow
Cheshire
SK9 5AF**

Annex – schedule of information

As indicated in the decision notice itself the Commissioner has compiled this annex to further explain his findings in relation to each of the particular documents falling within the scope of the complainant's request.

Document number	Exemptions cited by Cabinet Office	ICO's findings
1	27(1)(a), (c) and (d); 35(1)(a) and 41(1)	Exempt from disclosure on the basis of sections 27(1)(a), (c) and (d).
2	27(1)(a), (c) and (d); 35(1)(a)	Exempt from disclosure on the basis of sections 27(1)(a), (c) and (d).
3	27(1)(a), (c) and (d); 35(1)(a)	Sections 27(1)(a), (c) and (d) and section 35(1)(a) are not engaged. Document 3 needs to be disclosed.
4	35(1)(a) and 41(1)	Section 35(1)(a) is not engaged. Section 41(1) is only engaged in respect of some of the content. The remaining information – which is identified in the confidential annex - needs to be disclosed. Document 4 needs to be disclosed with the redactions identified in the confidential annex.
5	35(1)(a) and 41(1)	Section 35(1)(a) and section 41 are not engaged. Document 5 needs to be disclosed.
6	35(1)(a) and section 23(1)	Section 35(1)(a) is not engaged. Section 23(1) is engaged. Document 6 needs to be disclosed with the redactions identified in the confidential annex.
7	27(1)(a), (c) and (d);	Exempt from disclosure on the basis

	35(1)(b)	of sections 27(1)(a), (c) and (d).
8	27(1)(a), (c) and (d); 35(1)(a); 35(1)(b)	Exempt from disclosure on the basis of sections 27(1)(a), (c) and (d).
9	27(1)(a), (c) and (d); 35(1)(a); 35(1)(b)	Exempt from disclosure on the basis of sections 27(1)(a), (c) and (d).
10	41(1)	Section 41(1) is not engaged. Document 10 needs to be disclosed.
11	21(1)	Section 21 not engaged for the reasons set out in the decision notice. Document 11 needs to be disclosed.
12	27(1)(a), (c) and (d)	Exempt from disclosure on the basis of sections 27(1)(a), (c) and (d).
13	27(1)(a), (c) and (d); 35(1)(a);	Exempt from disclosure on the basis of sections 27(1)(a), (c) and (d).
14	27(1)(a), (c) and (d); 35(1)(a);	Exempt from disclosure on the basis of sections 27(1)(a), (c) and (d).
15	27(1)(a), (c) and (d); 35(1)(a);	Section 35(1)(a) and sections 27(1)(a), (c) and (d) are not engaged. Document 15 needs to be disclosed.
16	35(1)(b)	Exempt from disclosure on the basis of section 35(1)(b) for the reasons set out in the decision notice.
17	35(1)(b)	Exempt from disclosure on the basis of section 35(1)(b) for the reasons set out in the decision notice.
18	41(1)	Exempt from disclosure on the basis of section 41(1).

19	41(1)	Section 41(1) not engaged. Document 19 needs to be disclosed.
20	21(1)	Section 21 not engaged for the reasons set out in the decision notice. Document 20 needs to be disclosed.
21	35(1)(b)	Exempt from disclosure on the basis of section 35(1)(b) for the reasons set out in the decision notice.
22	35(1)(b); 41(1)	Exempt from disclosure on the basis of section 35(1)(b) for the reasons set out in the decision notice.
23	35(1)(b); 41(1)	Exempt from disclosure on the basis of section 35(1)(b) for the reasons set out in the decision notice.
24	41(1)	Exempt from disclosure on the basis of section 41(1).
25	27(1)(a), (c) and (d)	Exempt from disclosure on the basis of sections 27(1)(a), (c) and (d).
26	35(1)(a); 41(1)	Exempt from disclosure on the basis of section 41(1).
27	35(1)(a);	Section 35(1)(a) not engaged. Document 27 needs to be disclosed.
28	27(1)(a), (c) and (d); 35(1)(a)	Exempt from disclosure on the basis of sections 27(1)(a), (c) and (d).
29	41(1)	Exempt from disclosure on the basis of section 41(1).
30	41(1)	Exempt from disclosure on the basis of section 41(1).
31	27(1)(a), (c) and (d); 35(1)(a); 41(1)	Exempt from disclosure on the basis of sections 27(1)(a), (c) and (d).

32	27(1)(a), (c) and (d); 41(1)	Exempt from disclosure on the basis of sections 27(1)(a), (c) and (d).
33	27(1)(a), (c) and (d); 35(1)(a); 41(1)	Exempt from disclosure on the basis of sections 27(1)(a), (c) and (d).
34	27(1)(a), (c) and (d); 35(1)(a); 41(1)	Exempt from disclosure on the basis of sections 27(1)(a), (c) and (d).
35	27(1)(a), (c) and (d); 35(1)(a); 41(1)	Exempt from disclosure on the basis of sections 27(1)(a), (c) and (d).
36	35(1)(a); 41(1)	<p>Section 35(1)(a) is not engaged.</p> <p>Section 41(1) is only engaged in relation to some parts of the document.</p> <p>Document 36 needs to be disclosed with the information identified in the confidential annex redacted.</p>
37	27(1)(a), (c) and (d); 35(1)(a); 41(1)	Exempt from disclosure on the basis of sections 27(1)(a), (c) and (d).
38	27(1)(a), (c) and (d); 35(1)(a); 41(1)	Exempt from disclosure on the basis of sections 27(1)(a), (c) and (d).
39	27(1)(a), (c) and (d); 35(1)(a); 41(1)	Exempt from disclosure on the basis of sections 27(1)(a), (c) and (d) and section 41(1).
40	27(1)(a), (c) and (d); 35(1)(a); 41(1)	Exempt from disclosure on the basis of sections 27(1)(a), (c) and (d).
41	27(1)(a), (c) and (d); 35(1)(a); 41(1)	Exempt from disclosure on the basis of section 41(1).
42	27(1)(a), (c) and (d); 35(1)(a); 41(1)	Exempt from disclosure on the basis of sections 27(1)(a), (c) and (d).
43	27(1)(a), (c) and (d); 35(1)(a); 41(1)	Exempt from disclosure on the basis of sections 27(1)(a), (c) and (d).
44	35(1)(a); 41(1)	Exempt from disclosure on the basis of section 41(1).
45	21(1)	Section 21 not engaged for the

		<p>reasons set out in the decision notice.</p> <p>Document 45 needs to be disclosed.</p>
46	27(1)(a), (c) and (d); 35(1)(a); 41(1)	Exempt from disclosure on the basis of sections 27(1)(a), (c) and (d).
47	27(1)(a), (c) and (d); 35(1)(a); 41(1)	Exempt from disclosure on the basis of sections 27(1)(a), (c) and (d).
48	35(1)(a); 41(1)	<p>Section 35(1)(a) and section 41(1) are not engaged.</p> <p>Document 48 needs to be disclosed.</p>
49	35(1)(a); 41(1)	Exempt from disclosure on the basis of section 41(1).
50	35(1)(a); 41(1)	<p>Section 35(1)(a) and section 41 are not engaged.</p> <p>Document 50 needs to be disclosed.</p>
51	27(1)(a), (c) and (d); 35(1)(a); 41(1)	Exempt from disclosure on the basis of sections 27(1)(a), (c) and (d).
52	27(1)(a), (c) and (d); 35(1)(b); 41(1)	Exempt from disclosure on the basis of section 35(1)(b) for the reasons set out in the decision notice.
53	41(1)	Exempt from disclosure on the basis of section 41(1).
54	35(1)(a)	Section 35(1)(a) is not engaged.
55	41(1)	Exempt from disclosure on the basis of section 41(1).
56	35(1)(a); 41(1)	<p>Sections 35(1)(a) and 41(1) are not engaged.</p> <p>Document 56 needs to be disclosed.</p>

