

ICO Hearing 40-02813 – Part 2  
**Decision**

Cabinet Office

Jan Liebaers  
Acting Information Commissioner for the Cayman Islands

14 November 2014

**Summary:**

On 19 July 2013 a request was made for “agendas and minutes of the Cabinet meetings since 1 January 2012”, as well as a number of related reports, under the *Freedom of Information Law, 2007*.

The Cabinet Office claimed that complying with the request would constitute an “unreasonable diversion of resources”, under section 9(c), and deferred access to reports under section 11(2)(b). It also withheld the records relying on the exemption in section 19(1)(b) which relates to “consultations and deliberations arising in the course of proceedings of the Cabinet”

In the course of the appeal with the Information Commissioner’s Office all but five of the reports were disclosed, and the Applicant agreed to narrow the request to “topics, motions, decisions, and records containing material of a factual, scientific or technical nature” relating to the eight Cabinet meetings prior to 20 December 2012.

In the first part of the Hearing Decision dated 22 July 2014, the Acting Information Commissioner found that the deferral was unwarranted, and that complying with the narrowed request would not unreasonably divert the resources of the Cabinet Office. Since the Cabinet Office had not yet properly reviewed and argued the application of the claimed exemption, it was invited to make a new submission, which it did on 5 September 2014.

In this second part of Decision 40-02813 the Acting Information Commissioner considered the new submission, and found that the sections of the minutes containing the requested information, entitled “Deferred papers”, “New papers and notes”, and “Any other business”, are subject to the exemption in section 19(1)(b), as they constitute “a record of consultations and deliberations arising in the course of proceedings of the Cabinet”.

The Acting Information Commissioner also found that the Cabinet Office did not meet its obligations under section 11(1) and regulation 21(b) of the *Freedom of Information (General)*

*Regulations 2008* to assist the Applicant by clarifying the request for “motions” of the Cabinet, and expressed concern about the Cabinet Office’s blanket approach to the claimed exemptions, which contradicts the requirements on partial access in section 12(1).

**Statutes<sup>1</sup> Considered:**

*Freedom of Information Act 2000 (2000 Ch.36)*  
*Freedom of Information Law 2007*  
*Freedom of Information (General) Regulations 2008*  
*Interpretation Law (1995 Revision)*

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**A. INTRODUCTION**

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- [1] This second part of Decision 40-02813 follows from the first part of the Decision dated 22 July 2014.
- [2] On 19 July 2013 the Applicant made a request for “agendas and minutes of the Cabinet meetings since 1 January 2012” under the *Freedom of Information Law 2007* (FOI Law), covering some 78 meetings of the Cabinet.
- [3] On 14 August 2013 the Cabinet Office refused access, relying on sections 19(1)(a) and (b), respectively exempting from disclosure a record which contains (a) “opinions, advice or

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<sup>1</sup> In this decision all references to sections are to sections under *the Freedom of Information Law, 2007*, and all references to regulations are to regulations the *Freedom of Information (General) Regulations 2008*, unless otherwise specified.

recommendations prepared for”, and (b) “a record of consultations or deliberations arising in the course of”, proceedings of the Cabinet.

- [4] The Applicant requested an internal review and the Cabinet Secretary conducted the review and issued his decision on 13 September 2013, confirming the same exemptions, and also claiming that disclosure would be an unreasonable diversion of resources pursuant to section 9(c).
- [5] On 14 September 2013 the matter was appealed to the Information Commissioner’s Office (ICO) under section 42(1), which accepted the appeal on 1 October 2013.
- [6] In the course of the ICO’s pre-hearing investigation the request was narrowed down to “minutes from the eight Cabinet meetings prior to December 20<sup>th</sup>, 2012”.
- [7] On 23 October 2013, the Applicant agreed to exclude the following from the request:
- a. meeting agendas.
  - b. discussions between Cabinet members or other meeting participants;
  - c. how individuals voted;
  - d. “records specifically exempted from disclosure by section 19(1)”.

At the same time, the Applicant narrowed the request to the following “sections of the minutes”:

- e. topics;
  - f. motions;
  - g. decisions;
  - h. “records referred to in section 19(2) of the FOI Law, i.e. records containing material of a factual, scientific or technical nature.”
- [8] On 17 January 2014 the Cabinet Office followed up with a further response to the narrowed request, continuing to rely on section 19(1)(b) in relation to the request for “topics” and “decisions”, and restating its claim that responding to the request would unreasonably divert its resources under section 9(c). The Cabinet Office also stated that there were no “motions” held in relation to Cabinet minutes.
- [9] The dispute between the Applicant and the public authority could not be resolved amicably, and the matter proceeded to a formal hearing on 21 January 2014.
- [10] On 22 July 2014 I issued the first part of Decision 40-02813 in which I found that complying with the narrowed request would not unreasonably divert resources as claimed under section 9(c).
- [11] The reports (i.e. the records caught by point h. in paragraph 7 above) are no longer being contested as they have all been provided to the Applicant, either in the course of the pre-hearing investigation or as a result of my order in the Decision of 22 July 2014.
- [12] In view of the Cabinet Office’s claim of section 9(c) (unreasonable diversion of resources), I also found:
- ... the Cabinet Office has not yet properly reviewed the responsive records and considered whether any exemptions apply to them or parts thereof. Nor have the records been supplied to me.<sup>2</sup>*

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<sup>2</sup> ICO Hearing Decision 40-02813 - Cabinet Office 22 July 2014 para 69

[13] In paragraphs 70-71 of the Decision of 22 July 2014, I called the application of the exemption in section 19(1)(b) “hypothetical”, and “blanket” since it did not appear to be based on the actual examination of the records, and stated that the claim did not take into account the requirement in section 12 to exempt only those parts of a record that are actually exempted.

[14] As a result I concluded:

*Considering the hypothetical nature of the Cabinet Office’s statements in regard to exemptions, I am not in a position to decide whether the claimed exemption applies, and I therefore return the decision to the Cabinet Office for review and processing. The Cabinet Office will then have the opportunity to properly decide whether any exemption(s) apply to the responsive records, in whole or in part.<sup>3</sup>*

[15] On 5 September 2014 the Cabinet Office provided its new submission, and the records were provided to me shortly afterwards.

[16] In this second part of Hearing Decision 40-02813 I will now revisit the question of the exemption of the outstanding records.

## **B. BACKGROUND**

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[17] The Cabinet Office coordinates the weekly meetings of Government ministers and is responsible for the records of Cabinet and Cabinet Working Committees. The Cabinet Secretary attends Cabinet meetings as a non-voting member.

[18] The Cabinet Office is also responsible for a number of cross-governmental policy areas, as reflected in its internal structure which includes a number of sections and departments whose work has a cross-governmental scope.

## **C. PROCEDURAL MATTERS**

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### Determination of issues under review:

[19] In its submission to the first part of the Hearing published on 22 July 2014 the Cabinet Office relied in part on section 19(1)(b) which provides an exemption relating to Government’s deliberative processes:

*19. (1) Subject to subsection (2), a record is exempt from disclosure if it contains-*

*...*

*(b) a record of consultations or deliberations arising in the course of,*

*proceedings of the Cabinet or of a committee thereof.*

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<sup>3</sup> ICO Hearing 40-02813 op cit para 72

[20] Subsection 19(2) provides:

*(2) Subsection (1) does not apply to records which contain material of a purely factual nature or reports, studies, tests or surveys of a scientific or technical nature.*

[21] In the first part of the Hearing Decision of 22 July 2014 I found that:

*...the Cabinet Office has not yet properly reviewed and argued the application of section 19(1)(b) or any other exemption in regard to the records of Cabinet meetings, or parts thereof, and has argued the application of the exemption in section 19(1)(b) on a hypothetical basis only. Therefore, I cannot reach a decision on the application of this exemption.*<sup>4</sup>

[22] Consequently, I required, *inter alia*:

*...that the Cabinet Office review the responsive records relevant to the Applicant's narrowed request, and provide me with a new submission within 45 days from the date of this Decision. In doing so, the Cabinet Office may apply any exemption or exception (not counting section 9(c)) it considers appropriate.*<sup>5</sup>

[23] The Cabinet Office has now provided me with that new submission, dated 5 September 2014. In it, the exemptions in sections 20(1)(a), (b), and (d) are raised and argued. These exemptions are referred to as "additional exemptions that apply to the records requested".

[24] It was unclear to me whether this meant that the Cabinet Office also wished to continue relying on section 19(1)(b), which it had claimed in its first submission, but which was not explicitly stated in the new submission. I therefore asked for and received, via the ICO's Registrar of Hearings, a clarification in which the Cabinet Secretary confirmed that he wished to continue relying on that exemption.

[25] In the reply the Cabinet Secretary considerably muddied the waters by responding as follows:

*... The application of the others are inherent. I have not specified 19(1)(b) or (a) nor any of other exemptions as many of them could be applied. However it remains implicit and I do believe that it both 19(1)(a) and (b) can be applied. [sic]*

[26] No further argumentation was provided for relying on section 19(1)(a) or (b), or on any other implied exemption.

[27] This reply is vague and extraordinarily sweeping considering that sections 7(5) and 27 require a public authority to state its reasons for denying access, and the burden of proof lies with the Cabinet Office to demonstrate that it acted in accordance with the Law, as per section 43(2).

[28] For clarity, I reject the notion that section 19(1)(a) or any other "additional" exemption, as perhaps implied in the Cabinet Secretary's response to my query, quoted above, has properly been raised. Unlike section 19(1)(b), no other exemption formed part of the matters under

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<sup>4</sup> ICO Hearing 40-02813 op cit p.14

<sup>5</sup> Ibid

consideration in the Hearing, and was consequently featured in the first submission from the Cabinet Office, or in my Decision of 22 July.

[29] In any event, while I am not obligated to raise any new exemptions, nor, indeed, all possible exemptions, it is in my discretion to apply any exemption which I believe is pertinent, as provided in section 42(4)(a).<sup>6</sup> For clarity, I do believe that section 19(1)(b) is relevant, and I will therefore consider it further below, but I will not entertain the notion that several more unspecified exemptions may apply, without those exemptions being properly raised and argued by the Cabinet Office, as I gave them ample opportunity to do.

#### **D. ISSUES UNDER REVIEW IN THIS HEARING**

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[30] For the reasons indicated above, the following issue remains under review:

- 1. Whether disclosure of the records of topics discussed, and decisions taken, in the course of eight Cabinet meetings prior to 20 December 2012 are exempt by reason of section 19(1)(b).**

[31] In addition, the new exemptions raised by the Cabinet Office pursuant to my order in the Decision of 22 July 2014 are:

- 2. Whether the responsive records are exempt from disclosure by reason of the exemption in section 20(1)(a).**
- 3. Whether the responsive records are exempt from disclosure by reason of the exemption in section 20(1)(b).**
- 4. Whether the responsive records are exempt from disclosure by reason of the exemption in section 20(1)(d).**

#### **E. CONSIDERATION OF ISSUES UNDER REVIEW**

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**Issue 1: Whether disclosure of the records of topics discussed, and decisions taken, in the course of eight Cabinet meetings prior to 20 December 2012 are exempt by reason of section 19(1)(b).**

The position of the Cabinet Office:

[32] The Cabinet Office confirms that the records that contain the requested information are the minutes of eight Cabinet meetings prior to 20 December 2013.

[33] The Cabinet Office claims that, as records of deliberations and consultations of Cabinet, the minutes are subject to the “absolute” exemption in section 19(1)(b). It states that this exemption

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<sup>6</sup> This point has raised in a number of previous hearing decisions, see for instance: *ICO Hearing Decision 25-00812 – Port Authority of the Cayman Islands* 25 October 2012, para 49; *Hearing Decision 14-00711 – Royal Cayman Islands Police Service* 22 July 2011, paras 18-19.

is not subject to the public interest test which is imposed on a number of other exemptions pursuant to section 26(1).

- [34] The Cabinet Office argues that the narrowing down of the request by the Applicant to “topics discussed and decisions taken”, does not alter the fact that such topics and decisions are contained in the minutes which are records of “consultations and deliberations” as required for section 19(1)(b) to be engaged.
- [35] The Applicant has stated that he does not wish to gain access to “discussions between Cabinet members or other meeting participants”, and this is precisely what most of the minutes represent, according to the Cabinet Office.
- [36] The Cabinet Office further claims that the exemption applies equally to the minutes and to extracts from those minutes, as each extract contains exactly the same information as the relevant part of the minutes it is extracting.
- [37] According to the Cabinet Office, any agenda items or topics discussed, themselves “serve as a partial record of the consultations or deliberations of Cabinet proceedings”. Since they show what the Cabinet discussed in a particular meeting, they too are a record of the Cabinet’s deliberative and consultative processes, and are therefore protected by the exemption.

The position of the Applicant:

- [38] The Applicant submits that the “public interest falls squarely on the side of disclosure”. He describes the central issue as:

*...whether or not ... the matters being decided upon (agenda items), and the decisions Cabinet reached ...are categorically exempt from public disclosure, as Cabinet maintains, or whether Cabinet agendas and minutes are public records that may contain pieces of information that are subject to specific exemptions as outlined in the FOI Law, which I maintain.*

- [39] The Applicant claims that the Cabinet Office itself “has operated under the latter presumption, as evidenced by its selective circulation of ‘extracts’ to relevant parties”, and argues that:

*If the intent of the Law was to make records from Cabinet meetings completely exempt from disclosure, surely the Law would have stated that clearly.*

- [40] Furthermore, the Applicant states that he has received agendas and minutes “from a litany of public authorities and boards, including the Central Planning Authority, the Tourism Attractions Board, the National Drug Council, etc. “. He also compares the refusal by the Cabinet Office with the “Turks and Caicos Islands [which] circulates records of Cabinet decisions regularly and freely.”

- [41] According to the Applicant, the Cabinet Office has conflated the discussions and deliberations with agenda items and decisions. If all the decisions of Cabinet are kept secret, “there is no responsibility, collective or otherwise, as far as the public is concerned.” As well,

*Meeting agendas and minutes are the most basic records that let the public know what a governmental body is doing. Cabinet is the core entity of the Cayman Islands government. Refusing the public access to these key records would be throwing a cloak*

*over the entire government's operations, and would render any further pretenses of "public sector transparency" as laughable.*

Discussion:

[42] The above arguments from both parties raise a number of connected questions relevant to the application of the exemption in section 19(1)(b) to the responsive records. These questions relate to compliance issues such as the extent of the request, and the requirement that partial access be granted. I will deal with these issues first, before considering whether the exemption applies.

a. The extent of the request:

[43] As indicated above, on 23 October 2013 the Applicant agreed to narrow the request to "topics, motions, decisions, and records containing material of a factual, scientific or technical nature".

[44] The Cabinet Office has to some degree addressed the question of access to "topics" and "decisions", as described above. As well, the "records containing material of a factual, scientific or technical nature" have already been released in full, as described above.

[45] The Cabinet Office informed the Applicant that there are no "motions" recorded in the Cabinet minutes. However, it should have done more, under its obligation to assist the Applicant in section 11(1) and regulation 21(b), to explore precisely what the Applicant meant by a "motion".

[46] Section 11(1) provides:

*11. (1) Where the information provided by the applicant in relation to the record is not reasonably necessary to enable the public authority to identify it, the authority shall afford the applicant a reasonable opportunity to consult with the authority with a view to reformulating the application so that the record can be identified.*

[47] Regulation 21(b) provides:

*21. An information manager shall-*

*...  
(b) conduct interviews with applicants to ensure that the appropriate records are located;*

[48] The word "motion" is not defined in the FOI Law, nor in the Interpretation Law (1995 Revision). It should therefore be given its everyday meaning in the relevant context. The Oxford Dictionary defines a "motion" as "a formal proposal put to a legislature or committee". In the present context the "committee" would be the Cabinet. Therefore, although the precise word "motion" is not used in the context of Cabinet deliberations, it would in my view be reasonable to expect the Cabinet Office to assume that the Applicant is interested in the "formal proposals put to the Cabinet", and, if in doubt, to seek clarification from the Applicant on the matter. It appears that the Cabinet Office did not do so.

[49] **Therefore, the Cabinet Office has not adequately met its obligations under section 11(1) and regulation 21(b) to assist the Applicant in regard to clarifying the request for “motions”.**

[50] Given the above, I consider that any “motions”, meaning “proposals put to the Cabinet”, continue to be part of the request. The parts of the minutes that are at issue are therefore the “topics and decisions” as well as any “motions, i.e. proposals put to the Cabinet”.

b. The question of partial access:

[51] When applying an exemption, a public authority is required to redact the responsive record so as to disclose as much as is not exempted to an applicant. Section 12(1) provides:

*(1) Where an application is made to a public authority for access to a record which contains exempt matter, the authority shall grant access to a copy of the record with the exempt matter deleted therefrom.*

[52] As I already quoted in the Decision of 22 July 2014:

*Questions of disclosure under the FOI Law must relate to specific records and a blanket application of an exemption to an entire category of records is unjustifiable and disproportionate. Section 12 requires that exemptions be applied only to those parts of a record that are actually exempted. This could never be achieved with a blanket approach.<sup>7</sup>*

I also noted the same issue in the findings to that Decision.

[53] Despite the displeasure with which I noted the Cabinet Office’s blanket approach towards applying exemptions, in its most recent submission it persists in this practice, candidly stating that,

*This response deals with the records in their entirety.*

[54] It hardly needs to be stated that a public authority cannot exempt itself from fulfilling a statutory obligation - including the obligation to apply section 12(1) of the FOI Law - simply by openly declaring that it does so. That the Cabinet Office has persisted in this approach in its new submission, after being cautioned about it as recently as 22 July, and being given a chance to do better, is of grave concern as it is disrespectful of my earlier Decision and contrary to the demands of the FOI Law.

[55] As cited above, the Applicant rightfully expresses frustration with the Cabinet Office’s blanket approach. However, while I empathize with that sentiment, I wish to point out that I disagree with his assumption that the Cabinet Office has “operated under the presumption [that] ...agendas and minutes are public records that may contain pieces of information that are subject to specific exemptions as outlined in the FOI Law” as a result of having distributed extracts of the minutes to relevant parties, as the Applicant contends.

[56] It is clear that the Cabinet, which is the executive body in charge of formulating government policy in the Cayman Islands, must plainly be able to communicate its decisions to affected parties, mainly the public authorities that are to carry out its policy decisions. It does so by

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<sup>7</sup> *ICO Hearing 40-02813 op cit para 71*

means of extracts of the minutes sent by the Cabinet Office. It seems good practice to communicate only the excerpt that actually deals with the matter at hand to accomplish this, rather than the entire set of minutes, which would inevitably contain much that does not concern the receiving party.

[57] In any event, communications resulting from such operational necessities have no bearing on the question of access under the FOI Law. There is a lot of information that is routinely circulated between public authorities on a daily basis for operational and administrative reasons, but this does not affect the application of exemptions when a request is made for the same information by a member of the general public under the FOI Law.

c. The application of section 19(1)(b):

[58] The exemption in section 19(1)(b) has not yet substantively been considered in previous hearing decisions under the FOI Law. I touched upon it in Decision 22-00712 (Part 2), but only by stating that it did not apply, pursuant to section 6(2), as the records were more than 20 years old. In that case some other records had been exempted under section 19(1)(b), but the exemption was not challenged by the Applicant, and the issue was therefore not reviewed by myself at the time.<sup>8</sup>

[59] The parallel section in the UK Freedom of Information Act 2000 (section 35) is not relevant, as that exemption is worded quite differently from section 19(1)(b) of the Cayman Islands FOI Law, and in fact takes a completely different approach since it focuses on exempting the formulation of government policy. As well, unlike the UK exemption, section 19(1)(b) is not subject to a public interest test. Therefore, UK case law and guidance from the UK Information Commissioner's Office are not helpful.

[60] The Applicant's statement that he has received numerous agendas and minutes in response to FOI requests to, or proactively disclosed by, various other public authorities, is not relevant. It is not the case that all other minutes in the Public Sector are freely available, nor would most other public authorities be able to apply the exemption in section 19(1)(b) as they do not hold records of consultations and deliberations of the Cabinet. In any event each case must be heard on its own merits.

[61] I also do not agree with the Applicant's statement that exempting Cabinet minutes would mean that "there is no responsibility, collective or otherwise, as far as the public is concerned", and that it "would render any further pretenses of 'public sector transparency' as laughable". The suggestion that the FOI Law is a pretense or laughable on the basis of the non-disclosure of the Cabinet minutes, is wholly unfounded. It flies in the face of the very real efforts made by the Public Sector and the Information Commissioner's Office to make government more accountable and open in the last (almost) six years. Although much more needs to be done, particularly in terms of proactively publishing information, openness and transparency are not a matter of "all or nothing", but rather require a carefully balancing of public interests involved on both sides of a particular issue, and such generalizations are not very helpful.

[62] As to the comparison the Applicant draws with the practice of the Turks and Caicos Islands government, which indeed publishes a summary of Cabinet proceedings, this has no bearing on the way the Cayman Islands handles access to its own Cabinet proceedings. There are

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<sup>8</sup> ICO *Hearing Decision 22-00712 – Cabinet Office* 7 December 2012 paras 6 and 14

examples around the world on both sides of this debate (with most countries withholding Cabinet minutes for 20 or 30 years), but it is obvious and trite to note that an entirely different legal context applies – for one, the Turks & Caicos Islands do not have a Freedom of Information Law, although I do recognize the sad irony in stating this fact in the particular circumstances of this case.

[63] Section 19(1)(b), quoted above, applies where “a record of consultations and deliberations arising in the course of proceedings of the Cabinet” is contained in the record. The exemption does not require a prejudice test, but merely that information of the type included in the provision is contained within.

[64] The exemption is intended to preserve a safe space which the consultations and deliberations of the Cabinet must enjoy, if it is to function as provided in the Constitution and consistently with the rules in the Westminster system of democracy.

[65] The responsive records are highly structured, as each set of minutes consists of (numbering added):

- i. Copy number
- ii. Title block with a unique meeting number, date and time;
- iii. Record of attendance;
- iv. Confirmation of (previous) minutes;
- v. Deferred papers
- vi. New papers and notes;
- vii. Any other business;
- viii. Adjournment time; and,
- ix. A summary note from the Clerk of the Cabinet about the date of the approval of the minutes.

[66] Given that the Applicant agreed to reduce the request to “topics, motions [and] decisions” (and given my remarks about “motions”, above), I consider that the items listed above as i, ii, iii, iv, viii and ix, fall outside the request, as they are administrative in nature and deal with the metadata surrounding the meetings, rather than with the “topics and decisions” or the “motions, i.e. proposals put to the Cabinet”. Consequently, I will not consider whether any exemption applies to those sections of the minutes. This leaves only the following parts at issue:

- v. Deferred papers
- vi. New papers and notes; and,
- vii. Any other business.

[67] I have carefully examined the eight sets of minutes, specifically the sections of the minutes that remain at issue entitled “Deferred papers”, “New papers and notes”, and “Any other business”. These sections of the minutes document the discussions that took place in the Cabinet, the topics under consideration by the Cabinet, the proposals brought to the attention of the Cabinet, and the decisions made by the Cabinet. They clearly constitute “a record of consultations and deliberations arising in the course of proceedings of the Cabinet”, which is what the exemption in section 19(1)(b) is intended to protect, and the exemption is therefore engaged in relation to these sections of the minutes.

[68] I do not believe that the partial disclosure of any of the information within these three sections is possible as the exemption applies to every part of these sections of the minutes.

[69] **Therefore, I find that the sections of the minutes of the eight Cabinet meetings prior to 20 December 2012 entitled “Deferred papers”, “New papers and notes”, and “Any other business” are subject to the exemption in section 19(1)(b), as they constitute “a record of consultations and deliberations arising in the course of proceedings of the Cabinet”.**

[70] As already stated above, the exemption in section 19(1)(b) is not subject to the public interest test in section 26(1). This means that, where this exemption is engaged, public interest reasons cannot override the application of the exemption. The Applicant’s statement about the public interest, quoted above,<sup>9</sup> is therefore not relevant to a public interest test under section 26(1).

[71] I want to respond to the charge that the FOI Law is keeping the Cabinet from making its proceedings or decisions public. This sentiment has been uttered on a number of occasions, including prior to the last general election, causing the previous Information Commissioner to set the record straight,<sup>10</sup> and it may very well come up again in the light of this Decision.

The right to obtain access to a record does not apply where a record is exempt, as succinctly stated in section 6(1). However, the FOI Law does not prohibit the disclosure of an exempted record. Even where an applicant may not have a statutory right to obtain access to a record or part thereof, a public authority can still decide to disclose it voluntarily, either in response to a request, or proactively, after considering (I would advise) whether liability may arise from the disclosure of any private, sensitive or confidential matters contained in the record.

In my opinion, voluntary disclosure is particularly appropriate where a matter of great public interest is concerned, such as many of the matters discussed and decided by the Cabinet. Although obvious progress has been made, I have raised the point on a number of occasions, that the government ought to do more to publish information proactively, both because doing so would ensure better communications and improve understanding of government, and also because it would reduce the need for the general public to utilize the formal, and sometimes slow, FOI process to gain access to significant information.

**Issue 2: Whether the responsive records are exempt from disclosure by reason of the exemption in section 20(1)(a).**

**Issue 3: Whether the responsive records are exempt from disclosure by reason of the exemption in section 20(1)(b).**

**Issue 4: Whether the responsive records are exempt from disclosure by reason of the exemption in section 20(1)(d).**

[72] As I have found that the sections of the minutes of the eight Cabinet meetings prior to 20 December 2012 entitled “Deferred papers”, “New papers and notes”, and “Any other business” are exempted under section 19(1)(b), I will not consider whether the exemptions in sections 20(1)(a), (b) and (d) also apply.

[73] The other sections of the Cabinet minutes (listed as items i, ii, iii, iv, viii and ix, above) are no longer at issue, and I will consequently not consider whether any exemptions apply to them.

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<sup>9</sup> See para 38

<sup>10</sup> Cayman Compass *“Dilbert: Cabinet decisions are not ‘secret’”* 21 March 2013

## F. FINDINGS AND DECISION

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Under section 43(1) of the *Freedom of Information Law 2007*, I make the following findings and decisions:

### Findings:

I find that the sections of the minutes of the eight Cabinet meetings prior to 20 December 2012 entitled “Deferred papers”, “New papers and notes”, and “Any other business” are subject to the exemption in section 19(1)(b) of the *Freedom of Information Law 2007*, as they constitute “a record of consultations and deliberations arising in the course of proceedings of the Cabinet”.

The exemption in section 19(1)(b) is not subject to the public interest test in section 26(1).

As well, the Cabinet Office has not met its obligations under section 11(1) of the *Freedom of Information Law 2007* and regulation 21(b) of the *Freedom of Information (General) Regulations 2008* to assist the Applicant by clarifying his request for “motions” of the Cabinet.

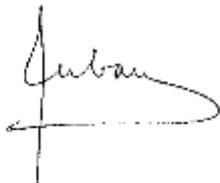
### Decision:

I uphold the decision of the Cabinet Office to withhold access to those sections of the minutes of the eight Cabinet meetings prior to 20 December 2012 entitled “Deferred papers”, “New papers and notes”, and “Any other business”. Those parts of the relevant Cabinet minutes are subject to the exemption in section 19(1)(b), as they constitute “a record of consultations and deliberations arising in the course of proceedings of the Cabinet.”

As per section 47 of the *Freedom of Information Law, 2007*, the complainant, or the relevant public body may, within 45 days of the date of this Decision, appeal to the Grand Court by way of a judicial review of this Decision.

If judicial review is sought, I ask that a copy of the application be sent to the Information Commissioner’s Office immediately upon submission to the Court.

Pursuant to section 48, upon expiry of the forty-five day period for appeals referred to in section 47, the Commissioner may certify in writing to the court any failure to comply with this Decision and the court may consider such failure under the rules relating to contempt of court.



Jan Liebaers  
Acting Information Commissioner

14 November 2014