



Scottish Information
Commissioner

Decision 187/2007 Mr K Lachlan Muir and the Scottish Ministers

European Maritime Safety Agency (EMSA) Headquarters

Applicant: Mr K Lachlan Muir
Authority: Scottish Ministers
Case Nos: 200503208 and 200600277
Decision Date: 11 October 2007

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Decision 187/2007 – Mr K Lachlan Muir and the Scottish Ministers

Information on the European Maritime Safety Agency (EMSA) Headquarters

Relevant Statutory Provisions and other Sources

Freedom of Information (Scotland) Act 2002 (FOISA): sections 1(1) (General entitlement); 2 (Effect of exemption); 3(2)(a)(ii) (Scottish public authorities); 28(1) (Relations within the United Kingdom); 29(1)(a) and (b) (Formulation of Scottish Administration policy etc); 30(b)(i) and (ii) (Prejudice to effective conduct of public affairs); 32(1)(a)(i) and (ii) (International relations).

The full text of each of these provisions is reproduced in Appendix 1 to this decision. The appendices form part of this decision.

Facts

Mr Muir wrote to the Scottish Ministers (“the Ministers”) requesting all documentation or correspondence it held relating to the bid to locate the European Maritime Safety Agency (EMSA) in Glasgow. The Ministers refused this request, citing several exemptions under Part 2 of FOISA.

Mr Muir also made a request for information generated by the Ministers as a consequence of his request.

Following an investigation, the Commissioner found in respect of Mr Muir’s first request that the Ministers had complied with Part 1 of FOISA in withholding certain information from Mr Muir, but found that it had breached Part 1 of FOISA in not disclosing other information to him.

The Commissioner found in respect of Mr Muir’s second request that the Ministers had complied with Part 1 of FOISA in withholding certain information from Mr Muir.



Background

1. On 29 August 2005, Mr Muir wrote to the Ministers requesting all documentation and correspondence they held relating to the bid to locate the EMSA in Glasgow.
2. The Ministers replied on 23 September 2005, enclosing some documentation relevant to Mr Muir's request but refusing the remainder on the grounds of sections 28(1), 29(1)(a) and (b), and section 30(b) of FOISA.
3. Mr Muir wrote to the Ministers on 11 October 2005 asking them to review their refusal and questioning the exemptions claimed.
4. The Ministers responded on 9 November 2005 upholding their initial refusal notice and refusing to supply the information on the grounds of sections 28(1), 29(1)(a) and (b), and 30(b)(i) and (ii) of FOISA.
5. On 28 November 2005 Mr Muir applied to the Commissioner for a decision as to whether the Ministers had dealt with his information request in accordance with FOISA ("the first application").
6. Mr Muir made a further request to the Ministers on 12 October 2005 seeking all documentation and correspondence produced by the Ministers as a result of his information request of 29 August 2005.
7. The Ministers replied on 4 November 2005 withholding this information under section 30(b)(i) and (ii) of FOISA.
8. On 13 December 2005 Mr Muir wrote to the Ministers seeking a review of this refusal.
9. The Ministers wrote to Mr Muir on 19 January 2006 upholding their refusal and stating that the withheld information was exempt by virtue of section 30(b)(i) and (ii) of FOISA.
10. On 25 January 2006 Mr Muir applied to the Commissioner for a decision as to whether the Ministers had dealt with this information request in accordance with FOISA ("the second application").
11. These cases were conjoined and were allocated to an investigating officer. Mr Muir's appeals were validated by establishing that he had made valid information requests to a Scottish public authority and had appealed to me only after asking the public authority to review its responses to his requests.



The Investigation

12. On 7 December 2005 my Office contacted the Ministers in terms of section 49(3)(a) of FOISA in respect of the first application. The Ministers were asked to provide a copy of all information withheld from Mr Muir, and an explanation of which information had been withheld under each exemption cited. The Ministers responded on 17 January 2006 providing comments and a copy of the withheld information.
13. On 7 February 2006 my Office contacted the Ministers in terms of section 49(3)(a) of FOISA in respect of the second application. The Ministers responded on 28 February 2006 providing the withheld information and comments on the exemptions on which they relied.

Background information

14. The Ministers advised that in 2000 the European Commission decided to establish the EMSA. The purpose of the EMSA was to provide member states and the European Commission with technical and scientific assistance to apply Community legislation on maritime safety, and to monitor and evaluate implementation measures.
15. The Ministers advised that in 2001 they indicated that they wished a bid to be put forward to locate the EMSA in Scotland. It was decided that Glasgow should be chosen as the Scottish bid. Subsequently, Glasgow was adopted as the UK bid. In December 2003 the European Council decided that the EMSA should be located in Lisbon. Mr Muir's first request relates to information about this bid.

Submissions from the Ministers in respect of the exemptions applied

16. The Ministers sought to rely on a number of exemptions in respect of Mr Muir's two applications. Where an exemption was applied to both first and second applications I have stated this explicitly.



17. In respect of section 28(1) of FOISA, the Ministers argued that there was “a real danger” that release of this information would inhibit the clarity of communication between the Scottish Administration and the UK Government and thus the devolution settlement itself. The Ministers indicated that the Memorandum of Understanding between the devolved administrations and UK Government made it clear that they were committed to the principle of good communication with each other. The Ministers stated that it was in the public interest that this principle be maintained, since it protected the ability to engage in discussions with frankness and candour, to explore all policy options, and to receive and consider each other’s views and concerns. The Ministers argued that if such discussions were inhibited, the result would potentially be ill-informed policy options and decisions. This was of particular relevance to reserved matters (such as the EMSA) which had a regional effect.
18. In response to points raised by Mr Muir, the Ministers stated that it was not the case that all information was already available to the UK administration, or that release would not damage actual relations given that the relevant negotiations were complete.
19. In respect of section 29(1)(a) of FOISA, the Ministers stated that the relevant policy was that the opportunity should be taken for a bid to be put forward for a Scottish site for the EMSA.
20. The Ministers originally relied on section 29(1)(b) for both applications, but subsequently accepted Mr Muir’s point that this subsection applied only to communications between Scottish Ministers. Consequently, the Ministers stated that part of the information withheld in the second application was exempt in terms of section 29(1)(b) since the document was a ministerial communication and the public interest in maintaining the exemption outweighed the public interest in release.
21. In respect of section 30(b)(i) and (ii), the Ministers claimed the release would inhibit the exchange of views on sensitive issues between administrations. In particular, release would inhibit the communication of negative, frank or confrontational communications and this would damage the required uninhibited exchange on the sensitive matters necessary for effective governance. The Ministers also relied on section 30(b)(i) in respect of Mr Muir’s second application, on the basis of substantially the same arguments.



22. The Ministers argued that certain documents covered by application 1 were exempt under section 32(1)(a)(i) and (ii) of FOISA. The Ministers stated that the purpose of this exemption was to protect the international relations of the UK as a whole, its interests abroad, and its ability to protect and promote those interests. The Ministers said that release would prejudice relations between the UK and European Community in two respects. Firstly, through revealing UK tactics in such situations, disclosure would significantly weaken the UK's bargaining position in international negotiations, and inhibit the frankness and candour of diplomatic reporting by the UK's (or Scotland's) European representatives. Secondly, where frank comments had been made about other Member states or the EC, damage might be caused to relations with them. The Ministers stated that there was a public interest in protecting the UK's ability to negotiate on such issues which overrode the public interest in seeing how the negotiations were conducted (which the exempt information would reveal).
23. The Ministers also argued that elements of one document (a Cabinet Office letter and attachment forming part of document 19) were not held by it for the purposes of FOISA, being held in confidence having been supplied by a department of the Government of the United Kingdom and therefore being subject to section 3(2)(a)(ii) of FOISA. This argument was later withdrawn, with the Ministers subsequently accepting that they held the document but claiming that it was exempt under sections 28(1) and 30(b).
24. In relation to the public interest, the Ministers said that disclosure would not substantially increase public understanding of the issue or the transparency of the decision-making process. Given the sensitivity of the information withheld and the need to protect both the negotiating process and the positions of the relevant authorities on such negotiations, the balance of the public interest favoured the maintenance of the exemption.

Submissions for the applicant

25. In respect of section 28(1) of FOISA, Mr Muir stated that he found it difficult to believe that the harm caused by disclosure would be "real, actual and significant". He stated that considerable time had passed since negotiations in respect of the EMSA were completed in 2003, and that consequently disclosure would not harm inter-administration relations. He also argued that if it had been the case that the UK government had not proceeded in a serious way with the bid, or had withdrawn the bid, that the UK government would have been aware of the view of the Ministers on this and that disclosure could not be said to prejudice substantially relations between administrations. He made similar points in relation to the description of disclosure by the Ministers as "premature" for the purposes of sections 29 and 30.



26. Mr Muir drew my attention to articles in the media which alleged that the UK Government had decided that Glasgow's EMSA bid should be withdrawn and he stated that much of the information was in the public domain as evidenced by media articles. During the investigation Mr Muir supplied details of the information released to him by the Ministers, and also from the Department of Transport, in response to requests made under freedom of information legislation. Mr Muir therefore argued that the information was already available to the UK administration and that further disclosure could not prejudice "inter-administration relations."
27. In respect of section 29(1)(a) of FOISA, Mr Muir argued that "the formulation or development of government policy" referred to the policy of the Ministers. Since the EMSA bid was a matter for the UK government, it was not policy in respect of a devolved matter and consequently did not fall within section 29(1)(a) of FOISA.
28. Mr Muir said that section 29(1)(b) related to ministerial communications within the Ministers and would not extend to Scottish ministerial communications with the UK government.
29. Mr Muir said that there was public interest in the EMSA location, as witnessed by media reports, questions in the Scottish Parliament before and during the bid, and that it was strongly in the public interest to establish why the Ministers had continued to spend money when they were allegedly aware that the EMSA bid was going to be withdrawn or unsuccessful. Mr Muir argued that disclosure would illuminate the decision-making process in respect of the EMSA, and in respect of a devolved administration. He stated that it was in the public interest that the public be made aware how the administrations dealt with each other at a Scottish and a UK level. Mr Muir submitted:

"The bare facts as currently known have led to unfavourable press coverage and can easily be interpreted as casting a negative light on the current devolution settlement. Further information on the background to these decisions may go some way in explaining to the public how decision making process work at Scottish and UK levels."
30. In respect of his second application (for all information generated by his request), Mr Muir stated that the EMSA website had not listed Glasgow as a candidate city. However, following his original request (forming the basis of the first application) the EMSA website had listed Glasgow as a candidate city. Mr Muir explained that the purpose of his second request was to ascertain whether the Ministers had requested that the website information be changed. In relation to both applications, he questioned whether the section 30(b) exemptions had been applied on a case-specific basis.



The Commissioner's Analysis and Findings

31. In correspondence with my Office Mr Muir accepted that his second request would logically include information supplied to this Office in relation to his first request. Mr Muir advised that he did not want this information reconsidered as his interest was in any communication with the EMSA in respect of the website entry showing Glasgow as a candidate city. Mr Muir indicated that his second request should be interpreted as “excepting documentation supplied to the Office of the Scottish Information Commissioner.”

Scope of the request

32. The Ministers submitted that several of the withheld documents contained information which did not fall within the scope of either request. In this respect, I consider that the following documents contain information, to the extent specified in Appendix 2 to this decision, outwith the scope of Mr Muir's request:

Documents 1, 2, 9, 12, 22, 29, 30, 70, 71, and 72.

33. I shall now consider the respective exemptions and, if applicable, the public interest in respect of the documents, or parts of documents, which fall within the terms of Mr Muir's two requests. In coming to a decision on these matters, I have considered all of the information withheld and the submissions that have been presented to me by both Mr Muir and the Ministers and I am satisfied that no matter of relevance has been overlooked.

Section 28(1) – relations with the United Kingdom

34. Section 28(1) states that information is exempt information if its disclosure under FOISA would, or would be likely to, prejudice substantially relations between any administration in the United Kingdom and any other such administration. In this case, section 28(1) has been applied on the basis that disclosure would prejudice substantially relations between the Scottish Administration and the Government of the United Kingdom (the UK Government).



35. I accept that a cooperative relationship between central government and a devolved administration is important to the constitutional arrangements established through devolution. Section 28(1) of FOISA assists by exempting information from disclosure which would, or would be likely to, prejudice substantially relations between UK administrations. That is not to say that information which an administration would simply prefer not to be released, or which, if released, might cause a degree of irritation or embarrassment, should be withheld. Rather, the exemption will apply where the consequence of releasing the information would be to harm significantly the relationship such that cooperation and exchange would be (or would be likely to be) adversely affected to an appreciable extent or indeed cease altogether.
36. The bid to locate the EMSA in Glasgow was a reserved matter and involved communication between the Scottish and UK Administration. It is a matter of public record that the UK had legal responsibility for this matter.
37. In my briefing on section 28 I state that it might be argued that disclosure of information against the wishes of a particular administration could harm relations between UK administrations. Examples given are where the information involves details of ongoing negotiations, policy plans received from another administration which have not yet been announced or details of a sensitive UK negotiating position in the EU which, although reserved, impacts on devolved matters. However, I also state that information falling within these categories will not automatically be protected from disclosure: in each case, the authority will need to show that release of the information would, or would be likely to, prejudice relations between UK administrations and, further, that disclosure would not be in the public interest.
38. In this case, the Ministers have applied section 28(1) to information that could be described as relating to ongoing discussions between the administrations disclosing the UK negotiating position.
39. However, it seems to me that the Ministers have not considered the exemption in relation to the specific information in the documents, but that they have taken a more general view of the matter. As I have noted in my guidance on the use of this exemption, I require public authorities to justify the use of section 28 on a case-by-case basis, and to consider disclosing the information unless it would cause them real, actual, and significant harm.
40. Having considered the documents withheld under this exemption, I do not accept in every case that disclosure would have the substantially prejudicial effects that the Ministers have claimed. At most, particularly given the passage of time, I consider that release of certain material might cause a degree of irritation or embarrassment, but this consequence would be insufficient to meet the requirements of section 28(1).



41. On the other hand, I fully accept the need for officials in the different UK administrations to be able to have free and frank discussions about reserved matters in the interests of the effective governance of the whole country and the effective conduct of its external affairs. In this case, having considered all of the information in question, I do accept that the disclosure of some elements of it (particularly those relating to aspects of the UK's negotiating position) would, or would be likely to, prejudice substantially relations between the Scottish Administration and the UK Government and therefore that this information is subject to the exemption in section 28(1) of FOISA.
42. I note that the Ministers are aware that Mr Muir had made a similar request to the Department of Transport and they have indicated to me that the Department shares their view regarding the effect of disclosure. However it is my understanding that subsequently that copies of some of the information withheld by the Ministers e.g. contained within correspondence with the Department or its Ministers, has been released by the Department. This does not nullify the Ministers concerns but it does suggest that the degree of harm is not entirely shared by the UK Government.

The public interest

43. The exemption under section 28 is subject to the public interest test. Therefore, where I have found that information falls within the terms of section 28, I am required to consider whether the public interest in disclosure of the information is outweighed by the public interest in maintaining the exemption.
44. Mr Muir supplied detailed submissions on the public interest test. These submissions applied to the balancing of the public interest in respect of all the exemptions, including section 28, quoted by the Ministers.
45. Mr Muir drew my attention to articles in the media which alleged that the UK Government had decided that Glasgow's EMSA bid should be withdrawn. Mr Muir provided evidence of an official email of 8 August 2001 which he had received from the Ministers in response to his request, and also subsequently from the UK Government in response to a request.
46. He drew my attention in particular to the following passage: "...it is our understanding that securing the EMSA for the UK is not the main objective. The preferred scenario appears to be to attract the European Police Training College to a location in England. Any bid for the EMSA would not therefore proceed in the hope that it could be won, but rather so that it could be tactically withdrawn later to boost the chances of getting the Police College..."



47. Mr Muir said that the content of this official email indicated that the bid to locate the EMSA in the Glasgow was a tactical bid and priority was location of the European Police College in Bramshill. This email was reported in the national media and was quoted in the Scottish Parliament (link below):

<http://www.scottish.parliament.uk/business/businessBulletin/bb-05/bb-10-17f.htm>

48. Mr Muir argued that the Ministers had proceeded to act publicly as if Glasgow were a serious candidate for the EMSA while this email suggested that the Ministers were aware that this was not the case. Mr Muir was seeking information which would clarify the nature of the Glasgow bid – in particular (but not confined to) establishing whether it had been withdrawn by the UK government and if so when.
49. In relation to the public interest, the Ministers said that disclosure would not substantially increase public understanding of the issue or the transparency of the decision making process. Given the sensitivity of the information withheld and the need to protect both the negotiating process and the positions of the relevant authorities on such negotiations, the balance of the public interest favoured the maintenance of the exemption.
50. In particular the Ministers made it clear that the Glasgow bid was not withdrawn and was tabled at the December 2003 meeting of the European Council when it was decided that Lisbon would be the location for the EMSA.



51. My conclusions on the balance of the public interest turn on the particular circumstances of this case. I do not lightly come to the view that information should be released where I have found that the harm test for the application of an exemption is satisfied. In general, I accept that where the devolved administrations are engaged in negotiations undertaken by the UK Government with other states and international organisations such as the EU, it will be important that information of considerable sensitivity, for example in relation to the positions taken by the UK Government in those negotiations, can be shared freely. The sensitivity of such communications is likely to be all the greater while the negotiations are ongoing, but it is in the nature of such negotiations that the sensitivity may remain considerable for some time after negotiations are concluded. However in this particular case an insight into those discussions is already in the public domain and quite clearly it has given rise to political and media comment as to the nature and purpose of the bid for EMSA, not least whether there was an intention that it should be withdrawn and the vigour with which it was pursued. Given that these concerns arise from official information already released I am of the view that the balance of the public interest lies in additional disclosure of some of the information requested. Nevertheless, given that it is the case that the Glasgow bid was not withdrawn, it does not appear to me that the public interest in disclosure justifies disclosure of much of the information which I have considered would be harmful to release. I have concluded, for the most part, that where the exemption applies the public interest in maintaining it is stronger than the public interest in such enhanced transparency as would accrue from disclosure, and therefore I have generally upheld the Ministers' application of the section 28(1) exemption.

Section 29(1)(a) – formulation of Scottish Administration policy etc

52. 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 (that is, unless we are concerned with information created before 1st July 1999, the policy of the Scottish Administration). The section 29(1)(a) exemption is a qualified exemption, which means that even if the exemption applies I must go on to consider whether the public interest in disclosure of the information is outweighed by the public interest in withholding it.
53. As I said in Decision 166/2006, Mr Martin Williams of The Herald and the Scottish Executive (at paragraph 37), the reasoning behind this exemption is to ensure that, where appropriate, Scottish Administration policy can be formulated and developed effectively by allowing the Administration to discuss matters in a candid and frank manner.



54. Information is exempt by virtue of section 29(1)(a) if it falls into a particular class of documents: that is, where the information relates to the formulation or development of government policy. In considering the application of this exemption, the Executive is not required to consider the significance of the content of the information or the effect of disclosure. In the case of section 29(1)(a) the information will be covered by this exemption simply if it relates to the 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) is so broad as to include even the most innocuous information.
55. As a result, there is clearly a two stage process that an authority relying on section 29(1)(a) must follow. That is:
- Does the information relate to the formulation or development of government policy?
 - If yes, in all the circumstances of the case, is the public interest in disclosure of the information outweighed by the public interest in withholding it?
56. The second stage must involve consideration of the actual content of the information withheld, including its relative sensitivity and the effect of disclosure.
57. Firstly, I will consider whether the information fulfils the first stage of this test. For information to fall within this exemption it must relate to the formulation or development of government policy; that is, the consideration of options and priorities for the Ministers, who will subsequently determine which options should be translated into political action. The formulation of government policy suggests the early stages of the process where options are considered, risks are identified, consultation takes place, and recommendations and submissions are presented to the Ministers. The development of government policy suggests the processes involved in improving upon or amending already existing policy and could involve the piloting, monitoring, reviewing, analysing or recording the effects of existing policy.
58. I have examined all of the documents the Ministers consider fall within the scope of section 29(1)(a) of FOISA. The Ministers claimed that the relevant policy was whether the opportunity should be taken for a bid to be put forward for a Scottish site for the EMSA.



59. In Decision 166/2006 (above) I said that it was possible to distinguish two strands in policy making: one strand is focused on the substance of the policy being formulated – the content of drafts, the options on the table, the proposals to Ministers; and the other is the process by which the policy is formulated – who was involved; over what period and what types of documents were being circulated and for what purpose. In the context of Mr Muir’s request I have difficulty in identifying the policy that was being formulated by the Scottish Executive. The location of the EMSA was a reserved matter, as indicated in most of the released documents (including answers to Parliamentary questions). I do not accept Mr Muir’s argument that the Ministers could never formulate or develop a policy in respect of a reserved matter. I accept however that there needs to be clarity when identifying the Scottish Administration policy that is being formulated in this particular case, as it may be thought that effectively, the Ministers were assisting in the UK Government in the formulation and development of its policy in relation to the location of the EMSA.
60. Having examined the information withheld by the Ministers in this case and having considered the submissions made by both the Ministers and Mr Muir, I am generally satisfied that the information withheld under section 29(1)(a) relates to the formulation or development of government policy. The Ministers had at least two policy decisions to arrive at. Firstly did they support the UK’s attempt to secure the location of EMSA in the UK by putting forward or backing a Scottish location and secondly which location(s) should be preferred by the Ministers. This was a matter which engaged the Ministers. As such I regard it as the formulation of policy.

The public interest

61. As noted above, the section 29(1)(a) exemption of FOISA is a qualified exemption which means that even if the exemption applies, I must still go on to consider whether the public interest in disclosing the information is outweighed by the public interest in maintaining the exemption.



62. The Ministers argued that it is essential that Ministers and their officials are in a position where they can discuss policy options and delivery mechanisms for their options freely and frankly. Further it is argued 'the premature disclosure of information' would reduce the private space for such deliberations, and this would have a negative effect on how the Ministers formulate their policies. These general points may well justify withholding information in the public interest. However I am not persuaded that they apply to the information in this case. It cannot be said that providing the information in response to Mr Muir's request would result in premature disclosure. The policy options and policy decisions on the EMSA bid had been taken and were in the public domain by the time of his bid - indeed the outcome of the bid was known by that time. In that respect the free and frank deliberations of Ministers and officials would be unaffected by the disclosure. Furthermore, considering the content of the information withheld, I am not of the view that disclosure would harm the preparation or recording of similar information related to policy formulation, as the contents straightforwardly expand upon a known position
63. I do not intend to repeat the public interest considerations which I have detailed in paragraphs 42-50 (above) but they are applicable here. In the circumstances of this case I am of the view that there is a public interest in knowing how Scottish Ministers arrived at their policy decision not just on knowing what their policy decision was. Accordingly I find that for some of the information the public interest in disclosure outweighs that in maintaining the exemption.

Section 29(1)(b) - Formulation of Scottish Administration policy etc

64. The Ministers applied section 29(1)(b) to Document 1 (Cabinet SCANCE paper) of Mr Muir's second request. The Ministers explained that this was a paper designed to brief the Scottish Cabinet and it consequently fell within the definition of "ministerial communications" contained in section 29(4) of FOISA. The Ministers argued that the briefing was by nature truncated and summarised to provide Ministers with a quick overview of the key issues, and release could be misleading as well as inhibitory of any future briefings.
65. Section 29(1)(b) of FOISA states that information held by the Scottish Administration is exempt information if it relates to Ministerial communications. Section 29(4) of FOISA goes on to provide that "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).



66. Therefore, for information to fall under this exemption there must be a communication between Ministers. I accept that this exemption is not limited to written communications between Ministers, such as a letter or e-mail from one Minister to another, but could also cover records of discussions between Ministers.
67. Having examined this document, I am satisfied that it falls within the definition of Ministerial communications as provided for by section 29(4) of FOISA. The document is a Cabinet SCANCE paper or ministerial briefing document and could be said to be a communication relating to the proceedings of the Scottish Cabinet and therefore to fall within the terms of section 29(1)(b).
68. The exemption in section 29(1)(b) of FOISA is a qualified exemption which means that even if the exemption applies, the application of this exemption is subject to the public interest test required by section 2(1)(b) of FOISA. I must therefore order release of the information unless, in all the circumstances of the case, the public interest in disclosing the information is outweighed by that in maintaining the exemption. Given that I have determined that section 29(1)(b) of FOISA does apply to this document, I shall now consider whether the public interest in disclosing this information is outweighed by the public interest in withholding it.

The public interest

69. In this case, only one document falls under the definition of Ministerial communications. The arguments of the Ministers regarding the public interest in withholding this information under section 29(1)(b) are that release of this information would not offer any particular insight into the decision making process and might inhibit officials from preparing similar communications in future.
70. Arguments which favour disclosure include those already given by Mr Muir (stated in paragraph 29 above) – for example greater transparency of decision making.
71. Having read the withheld document and considered all relevant submissions made to me I am of the view that the public interest in favour of maintaining the exemption outweighs that in release of the document. I do not think that release of the document will increase transparency of decision making and I accept the arguments about the likely effects of release of this information on communications of this specific type.



Section 30(b) – Prejudice to Effective Conduct of public affairs

72. Section 30(b)(i) and 30(b)(ii) of FOISA allow information to be withheld if its disclosure under FOISA 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, respectively. As noted above, the Ministers consider that section 30(b)(i) and (ii) apply to most of the information in this case. In applying these exemptions the chief consideration should not be whether the information constitutes advice or opinion, but whether the release of the information would or would be likely to have the effect set out in the statute – i.e. inhibit substantially (as the case may be) the free and frank provision of advice or the free and frank exchange of views for the purposes of deliberation.
73. Given the harm test contained in these exemptions (“inhibit substantially”), 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 consideration of matters such as :
- 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 views is expressed;
 - 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).
74. The Ministers stated that release would inhibit the exchange of views on sensitive issues between administrations and in particular, that release would inhibit the communication of negative, frank or confrontational communications and this would damage the required uninhibited exchange on sensitive matters necessary for governance.



75. I do not accept that simply because information is prepared, received or commented on by public officials or Ministers that it is *a priori* exempt information. Neither can I accept the automatic presumption that harm will be caused by the release of this type of information. While I have considered the arguments put forward in this regard by the Ministers with their letter of 2 May 2007 (setting out the revised general position of the Ministers on the application of section 30(b)), my views on the Ministers' revised position are set out fully in Decision 089/2007 (Mr James Cannell and the Scottish Executive) and I do not consider it necessary to add anything in relation to these arguments in this particular decision.
76. I have stated in previous decisions that the disclosure of information in one case should not be taken to mean that information in a similar case would require to be disclosed. Each case must be considered separately.
77. In this instance, there are documents withheld which do contain the free and frank provision of advice and the free and frank exchange of views for the purposes of deliberation. However, there are two issues that need to be addressed when assessing the application of the section 30(b):
- a) 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 freely and frankly to provide advice or exchange views for the purposes of deliberation on this matter?
- b) Secondly, would release of the information inhibit substantially others from providing advice or participating in such exchanges of view?
78. Having considered the content and purpose of the information withheld under section 30(b) I note that it includes material which:
- is routine and administrative in nature;
 - simply relates to correspondence about the public line to take on a matter, without any detailed discussion of the options;
 - simply relates to the process of informing persons of outcomes, or of what is happening in a process, without any apparent controversy, and ensuring that various officials and departments are aware of certain issues and lines to take;
 - contains advice or information of a factual nature only: this may include advice or information about the political situation, but not to an extent that is not common knowledge or reasonably obvious to an informed observer;
 - is information which is the public domain, and was at the time Mr Muir's request for review was dealt with by the Ministers; or



- represents the normal exchange of officials in the course of their work, expressed in a manner I would not regard as likely to be affected significantly by disclosure.

Generally, in this case, I have not accepted information falling within the above categories as engaging the section 30(b) exemptions.

79. In all the circumstances, therefore, I do not accept the arguments put forward by the Ministers for withholding certain documents (as specified in Appendix 2 to this decision notice) under the exemptions in section 30(b)(i) and/or section 30(b)(ii). My own view is that, if the information were disclosed, officials would certainly be aware that information from their own reports might be required to be disclosed, and that it is likely that this would be borne in mind. However, I am not convinced that any future inhibition in expressing or recording advice or views that would or would be likely to occur would be of a substantial nature. Other factors would come into play, for instance, the officials' own commitment to a high quality public service, including accurate and realistic advice, and the increasing recognition that accountability for decisions or action means that at least some of that information may be released into the public domain.
80. However, I also consider that certain information on the subject of the location of the EMSA contains advice or views, for example in relation to negotiating positions, which can be described as free and frank and which, I consider, meet the requirements of the relevant part or parts of section 30(b). In these cases, I accept that the relevant exemption or exemptions in section 30(b) apply.

The public interest

81. Where I have found that either or both of the exemptions in section 30(b) apply to information, I am required to go on to consider whether the public interest in disclosure of the information is outweighed by the public interest in maintaining the relevant exemption or exemptions.
82. There is a general public interest in making information held by public authorities accessible, to enhance scrutiny of decision making and thereby improve accountability and participation. I also consider that there is a specific public interest in disclosure in this particular case given that the information relates to the operation of the devolution settlement in practice.



83. I have considered the submissions made by both the Ministers and Mr Muir in respect of the public interest, which are detailed in this decision notice, and are applicable here. In addition to the relevant considerations discussed previously I note that, on the one hand, disclosure of this information might give a deeper insight into some of the decisions taken by the Ministers. On the other hand, disclosure might discourage such views from being expressed as strongly as they were or lead to them not being shared. This would not be in the public interest. That is not to say that officials and Ministers can say what they like and feel sure that the information will not be released. Each case has to be taken on its own merits and the public interest considerations will differ. In this particular case, as I have said previously, an insight into those discussions is already in the public domain and quite clearly it has given rise to political and media comment as to the nature and purpose of the bid for EMSA, not least whether there was an intention that it should be withdrawn and the vigour with which it was pursued, and the extent to which the Ministers were aware of the UK Government's intentions. Given that these concerns arise from official information already released, I am of the view that the balance of the public interest lies in additional disclosure of much of the information requested.
84. Having considered the arguments presented to me and the content of the information withheld, I consider that the public interest in disclosing the majority of the information to which section 30(b) applies outweighs the public interest in maintaining the relevant exemption or exemptions.

Section 32(1)(a)(i) and (ii) – International relations

85. Sections 32(1)(a)(i) and (ii) of FOISA state that information is exempt information if its disclosure under this Act would, or would be likely to, prejudice substantially relations between the United Kingdom and any other state, or relations between the United Kingdom and any international organisation or international court.
86. The Ministers stated that the purpose of this exemption was to protect the international relations of the UK as a whole, its interests abroad, and its ability to protect and promote those interests. The Ministers argued that release of these documents would cause prejudice to relations between the UK and, in this instance, member states of the European Union and the EU as a whole (see paragraph 22 for further details).



87. In the absence of further submissions from the Ministers I am of the view that they have not demonstrated why this information falls within the scope of section 32(1)(a)(ii) and why disclosure of the information at the time of Mr Muir's request would or would be likely to prejudice substantially relations between the United Kingdom and any international organisation (such as the European Union) or international court. I take the same view in relation to much of the information in respect of which section 32(1)(a)(i) has been claimed.
88. While I do not consider that the documents reveal anything about the negotiation process in general that would not be already known by those involved in negotiation on behalf of member states within the EU, or on behalf of the EU as an organisation, I do accept that there are within those documents for which section 32(1)(a) has been claimed certain candid comments about the respective positions of member state which are of some sensitivity and which would, if released, have the potential to prejudice relations between the UK and the member states concerned to the extent required by section 32(1)(a)(i). I therefore find that information to be subject to the exemption in section 32(1)(a)(i).

The public interest

89. Having found that certain information falls within the scope of section 32(1)(a)(i), I am required to consider whether the public interest in disclosing that information is outweighed by the public interest in maintaining the exemption. As I have indicated in relation to the public interest as it affects other exemptions discussed above, I accept the need for (sometimes considerable) candour in internal discussions of the United Kingdom's negotiating position in international negotiations. As I have also indicated above, the sensitivity of such exchanges is likely to be all the greater while the negotiations are ongoing, but it is in the nature of such negotiations that the sensitivity may remain considerable for some time after negotiations are concluded.
90. In this case, having considered the information in question along with all relevant submissions made to me in this connection, I have concluded that where the exemption applies the public interest in maintaining it is stronger than the public interest in such enhanced transparency as would accrue from disclosure, and therefore I have upheld the Ministers' application of the section 32(1)(a)(i) exemption.

Overall conclusions

91. My detailed conclusions in respect of all of the exemptions claimed, in respect of all of the information withheld, are set out in Appendix 2 to this decision. The appendices form part of this decision.



92. Overall in this case I have had to consider the balance of the public interests. I have recognised that legitimate public interest arguments have been made by both Mr Muir and on behalf of the Ministers. In the round I consider that the outcome of this decision provides sufficient information to satisfy the public interest as to whether and to what extent the Scottish bid was pursued, Some of the information which is still to be withheld may have provided an even deeper insight, but to my mind the benefit of that was clearly outweighed by the benefit of protecting the negotiating process, the exchange with the UK government and to allow officials to provide a frank assessment of options and to impart intelligence which they had gathered.
93. In my view I believe that in respect of each item of information, and taken together, the balance of disclosing and withholding in the public interest has been fairly assessed.

Decision

I find that the Scottish Ministers (the **Ministers**) did not deal with Mr Muir's first request for information in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA), in that it misapplied the exemptions in sections 28(1), 29(1)(a), 30(b)(i), 30(b)(ii), 32(1)(a)(i) and 32(1)(a)(ii) of FOISA to certain of the information requested (as more particularly described in Appendix 2 to this decision) and consequently partially failed to comply with section 1(1) of FOISA.

I find that the **Ministers** dealt with Mr Muir's first request for information in accordance with Part 1 of the FOISA, by applying the exemptions in sections 28(1), 30(b)(i), 30(b)(ii) and 32(1)(a)(i) of FOISA to certain of the information requested (as more particularly described in Appendix 2 to this decision) and consequently partially complied with section 1(1) of FOISA.

I find that the **Ministers** dealt with Mr Muir's second request for information in accordance with Part 1 of the FOISA, by applying sections 29(1)(b) and 30(b)(i) of FOISA to the information requested.

I require the **Ministers** to release to Mr Muir the information I do not find to be exempt (as more particularly described in Appendix 2 to this decision) **within 45 days after the date of intimation of this decision notice.**



Appeal

Should either the Ministers or Mr Muir wish to appeal against this decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision notice.

Kevin Dunion
Scottish Information Commissioner
11 October 2007



APPENDIX 1

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.

2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provisions of Part 2, section 1 applies only to the extent that –
 - (a) the provision does not confer absolute exemption; and
 - (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.
- (2) For the purposes of paragraph (a) of subsection 1, the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption –
 - (a) section 25;
 - (b) section 26;
 - (c) section 36(2);
 - (d) section 37; and
 - (e) in subsection (1) of section 38 –
 - (i) paragraphs (a), (c) and (d); and
 - (ii) paragraph (b) where the first condition referred to in that paragraph is satisfied by virtue of subsection (2)(a)(i) or (b) of that section.

28 Relations within the United Kingdom

- (1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice substantially relations between any administration in the United Kingdom and any other such administration.
- (2) In subsection (1), "administration in the United Kingdom" means-
 - (a) the Government of the United Kingdom;



- (b) the Scottish Administration;

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;

- (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); and

- (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-

- (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;

32 International relations

Information is exempt information if-

- (a) its disclosure under this Act would, or would be likely to, prejudice substantially-
 - (i) relations between the United Kingdom and any other state;
 - (ii) relations between the United Kingdom and any international organisation or international court;



APPENDIX 2

Doc No.	Document title	Exemptions cited by the Ministers	Exemptions upheld	Public interest in favour of disclosure	Release or withhold	Details of release (where applicable)
Documents for first request (200503208)						
1	Letter 17 Dec 2003 from First Minister to Sec of State FCA	28(1) 30(b)(ii)	No No	n/a n/a	Partial Release	Release fifth paragraph. Remainder outwith scope of request
2	Submission to Minister for Finance and Public Services (15 Dec 2003)	30(b)(i) 30(b)(ii) 32(1)(a)(i) 32(1)(a)(ii)	No No No No	n/a n/a n/a n/a	Partial Release	Release first three sentences of point 5. Remainder outwith scope of request
3	Internal email exchange 16/17/18 Dec 2003	30(b)(i) 30(b)(ii)	Partial No	No n/a	Partial Release	Release emails of 17 and 18 December 2003 in full. Withhold email of 16 December 2003 [11:22]
4	Internal email exchange 15/16 Dec 2003	30(b)(i) 30(b)(ii)	No No	n/a n/a	Release	Release in full
5	Internal email exchange 15/16 Dec 2003	28(1) 30(b)(i) 30(b)(ii)	No No No	n/a n/a n/a	Release	Release in full
6	Internal email exchange 15 Dec 2003	30(b)(i) 30(b)(ii)	No No	n/a n/a	Release	Release in full
7	Internal email exchange 16 Dec 2003	28(1) 30(b)(i) 30(b)(ii)	No No No	n/a n/a n/a	Release	Release in full
8	Internal email exchange 15 Dec 2003	30(b)(i) 30(b)(ii)	No No	n/a n/a	Release	Release in full



9	Internal email 15 Dec 2003	28(1) 30(b)(i) 30(b)(ii) 32(1)(a)(i) 32(1)(a)(ii)	No No No No	n/a n/a n/a n/a	Partial release	Release in full, except first paragraph (outwith scope of request)
10	BRIX internal briefing 16 Dec 2003	30(b)(i) 30(b)(ii)	Yes Yes	No No	Withhold	Withhold
11	Briefing Note	28(1) 30(b)(i) 30(b)(ii)	No Partial No	n/a Yes n/a	Release	Release in full
12	Internal email exchange 20/21 Nov 2003	28(1) 30(b)(i) 30(b)(ii)	No No No	n/a n/a n/a	Partial release	Emails of 20 November 2003 outwith scope of request
13	Internal email exchange 29 May/3 June 2003	28(1) 30(b)(i) 30(b)(ii) 32(1)(a)(i) 32(1)(a)(ii)	Yes Yes Yes No No	No No No n/a n/a	Withhold	Withhold
14	Email 2 June 2003	30(b)(i) 30(b)(ii)	No No	n/a n/a	Release	Release in full
15	BRIX internal briefing 9 June 2003	30(b)(i) 30(b)(ii)	Yes Yes	No No	Withhold	Withhold
16	Internal email exchange 29/30 May 2003	28(1) 30(b)(i) 30(b)(ii) 32(1)(a)(i) 32(1)(a)(ii)	Yes No Yes No No	No n/a No n/a n/a	Withhold	Withhold
17	Internal email exchange 29 May 2003/ 2 June 2003	28(1) 30(b)(i) 30(b)(ii) 32(1)(a)(i) 32(1)(a)(ii)	Yes Yes No No No	No No n/a n/a n/a	Withhold	Withhold



18	Email 29 May 2003 and attached minute and letter	28(1) 30(b)(i) 30(b)(ii) 32(1)(a)(i) 32(1)(a)(ii)	Yes Yes Yes No No	No No No n/a n/a	Withhold	Withhold
19	Email exchange 16 May 2003 with attached Cabinet Office letter and table	28(1) 30(b)(i) 30(b)(ii)	Yes Yes Yes	No No No	Withhold	Withhold
20	Submission and letter 28 March 2003	30(b)(i) 30(b)(ii)	No No	n/a N/a	Release	Release
21	Oral PQ (27 March 2003) background note	28(1) 30(b)(i) 30(b)(ii)	No No No	n/a n/a n/a	Release	Release in full
22	Email exchange 9 April 2003	30(b)(i) 30(b)(ii)	No No	n/a n/a	Partial release	Release emails in full. Annex, release question 4 only, rest outwith scope of request
23	Letter and email exchange	Releasable – no exemption claimed	n/a	n/a	Release	Release in full
24	Submission 27 March 2003	30(b)(i) 30(b)(ii)	Partial No	No n/a	Partial release	Redact point 3 from briefing note
25	Internal email exchange 3 May 2002 – 16 Oct 2002	30(b)(i) 30(b)(ii)	Yes Yes	No No	Withhold	Withhold
26	MCS case – letter and response	Releasable – no exemption claimed	n/a	n/a	Release	Release in full
27	Internal email exchange 9 Oct 2002	30(b)(i) 30(b)(ii)	Yes Yes	No No	Withhold	Withhold



28	MCS case	Releasable – no exemption claimed	n/a	n/a	Release	Release in full
29	Email exchange 8 – 28 August 2002	30(b)(i) 30(b)(ii)	No No	n/a n/a	Partial release	Release emails and EMSA briefing (rest outwith scope of request)
30	Email and briefing note (21 August 2002)	30(b)(i) 30(b)(ii) 32(1)(a)(i) 32(1)(a)(ii)	No No No No	n/a n/a n/a n/a	Partial release	Release of email 21 August 2002 [13:36] and EMSA part of briefing document (rest of briefing not within scope)
31	Email 12 August 2002 and attached letter (2 July 2002) with draft reply	30(b)(i) 30(b)(ii) Letter releasable – no exemption claimed	Yes Yes	No No	Withhold	Withhold – release letter
32	Email exchange and briefing 20 June 2002 – 10 July 2002	30(b)(i) 30(b)(ii)	Partial No	No n/a	Partial release	Release email exchange 20.06.02 and Briefing Note
33	Email exchange and letter June/July 2002	Releasable – no exemption claimed	n/a	n/a	Release	Release in full
34	Submission 9 May 2002 and draft brochure	28(1) 29(1)(a) 30(b)(i) 30(b)(ii) 32(1)(a)(i) 32(1)(a)(ii)	Partial Yes Partial No No No	No Yes No n/a n/a n/a	Partial release	Redact point 9



		Brochure released				
35	Email exchange 3 – 9 May 2002 and draft brochure	30(b)(i) 30(b)(ii) Brochure released	No No	n/a n/a	Release	Release in full
36	Email 9 May 2002	30(b)(i) 30(b)(ii)	Partial Partial	No No	Partial Release	Redact 3 rd paragraph of email of 9 May 2002 [16:40]
37	Email exchange 8- 9 May 2002	30(b)(i) 30(b)(ii)	Partial Partial	No No	Partial Release	Redact paragraph 6 of email of 9 May 2002 [11:35] “I” to “practice”.
38	Email exchange 3 – 8 May 2002	30(b)(i) 30(b)(ii)	No No	n/a n/a	Release	Release in full
39	Email 6 May 2002	28(1) 30(b)(i) 30(b)(ii)	No No No	n/a n/a n/a	Release	Release in full
40	Email exchange 3 May 2002	30(b)(i) 30(b)(ii)	No No	n/a n/a	Release	Release in full
41	Email exchange 3 May 2002	28(1) 30(b)(i) 30(b)(ii)	No No No	n/a n/a n/a	Release	Release in full
42	Email exchange 8 – 29 April 2002	28(1) 30(b)(i) 30(b)(ii)	No No No	n/a n/a n/a	Release	Release in full
43	Briefing 12 April 2002	28(1) 30(b)(i) 30(b)(ii)	No Partial No	N/a No n/a	Partial release	Release except for point 2
44	Email exchange 8 April 2002	30(b)(i) 30(b)(ii)	No No	n/a n/a	Release	Release in full
45	Email exchange 18 – 19 March 2002	28(1) 30(b)(i) 30(b)(ii) 32(1)(a)(i)	Partial No Partial Partial	No n/a No No	Withhold	Withhold



		32(1)(a)(ii)	No	n/a		
46	Email exchange 18 – 19 March 2002	28(1) 30(b)(i) 30(b)(ii) 32(1)(a)(i) 32(1)(a)(ii)	Partial No Partial Partial No	No n/a No No n/a	Withhold	Withhold
47	Email 18 March 2002	30(b)(i) 30(b)(ii)	No No	n/a n/a	Release	Release in full
48	Email exchange 15 – 18 March 2002	28(1) 30(b)(i) 30(b)(ii) 32(1)(a)(i) 32(1)(a)(ii)	Yes No Yes Yes No	No n/a No No n/a	Withhold	Withhold
49	Email exchange 15 March 2002 and draft brochure	30(b)(i) 30(b)(ii) Brochure released	No No	n/a n/a	Release	Release in full
50	Email 12 March 2002	30(b)(i) 30(b)(ii)	No No	n/a n/a	Release	Release in full
51	Email and briefing 5 March 2002	28(1) 29(1)(a) 30(b)(i) 30(b)(ii) 32(1)(a)(i) 32(1)(a)(ii)	No Yes No No No No	n/a No n/a n/a n/a n/a	Withhold	Withhold in full
52	Email exchange 28 Feb - 1 March 2002	30(b)(i) 30(b)(ii)	Partial No	No n/a	Partial release	Redact email of 01 March 2002 [08:51] (first paragraph last sentence only)
53	Email 27 Feb 2002	30(b)(i) 30(b)(ii)	No No	n/a n/a	Release	Release in full
54	Draft brochure	None claimed - releasable			Release	Release in full



55	Written SPQ 8 Feb 2002 and background note	30(b)(i) 30(b)(ii)	No No	n/a n/a	Release	Release in full.
56	Email exchange 5 Feb 2002	28(1) 30(b)(i) 30(b)(ii)	No No No	n/a n/a n/a	Release	Release in full
57	Email exchange 4 – 5 Feb 2002	28(1) 30(b)(i) 30(b)(ii) 32(1)(a)(i) 32(1)(a)(ii)	No No No No No	n/a n/a n/a n/a n/a	Release	Release in full
58	Email exchange 4 Feb 2002	28(1) 30(b)(i) 30(b)(ii)	No No Yes	n/a n/a No	Withhold	Withhold
59	Letter 25 January 2002	28(1) 29(1)(a) 30(b)(i) 30(b)(ii) 32(1)(a)(i) 32(1)(a)(ii)	Yes Yes Yes No No No	No No No n/a n/a n/a	Withhold	Withhold
60	Email exchange 18 - 24 January 2002, with draft letter	30(b)(i) 30(b)(ii)	No Partial	n/a No	Partial release	Release emails, withhold draft letter
61	Email exchange 24 January 2002	30(b)(i) 30(b)(ii)	No No	n/a n/a	Release	Release in full
62	Email 21 January 2002 with draft letter	28(1) 29(1)(a) 30(b)(i) 30(b)(ii) 32(1)(a)(i) 32(1)(a)(ii)	No Yes No Partial No No	n/a Partial n/a No n/a n/a	Release	Release email, withhold draft letter
63	Submission of 18 January 2002 and draft letter	28(1) 29(1)(a) 30(b)(i) 30(b)(ii) 32(1)(a)(i)	No Yes Partial No No	n/a Yes Partial n/a n/a	Partial release	Redact second point in paragraph 8 and paragraph 18



		32(1)(a)(ii)	No	n/a		
64	Email exchange with draft submission and letter	28(1) 29(1)(a) 30(b)(i) 30(b)(ii) 32(1)(a)(i) 32(1)(a)(ii)	No Partial No Partial No No	n/a No n/a No n/a n/a	Partial release	Release emails. Withhold drafts.
65	Email exchange 15/16 January 2002	28(1) 30(b)(i) 30(b)(ii)	No Partial No	n/a No n/a	Partial release	Redact email of 16 January 2002 [16:07] (fourth paragraph only: "I know" to "expectations.")
66	Email exchange 14-15 January 2002	30(b)(i) 30(b)(ii)	Yes No	No n/a	Withhold	Withhold
67	Email exchange 31 December 2001 – 7 January 2002	30(b)(i) 30(b)(ii)	Yes Yes	No No	Withhold	Withhold
68	Email (7 Jan 2002) and submission of 31 December 2001	28(1) 29(1)(a) 30(b)(i) 30(b)(ii) 32(1)(a)(i) 32(1)(a)(ii)	No Yes Partial Partial No No	N/a Yes No No n/a n/a	Partial release	Redact paragraph 11 and 13-17 (inclusive)
69	Email exchange	30(b)(i) 30(b)(ii)	No No	n/a n/a	Release	Release in full
70	Submission 17 Dec 2001	29(1)(a) 30(b)(i) 30(b)(ii) 32(1)(a)(i) 32(1)(a)(ii)	No Yes No Yes No	n/a No n/a No n/a	Withhold	Withhold (majority outwith scope of request)
71	Email exchange 10 – 11 Dec 2001 (with briefing)	30(b)(i) 30(b)(ii) 32(1)(a)(i) 32(1)(a)(ii)	Yes No No No	Yes n/a n/a n/a	Withhold	Withhold (majority outwith scope of request)



						Release emails of 11 December
72	Email exchange 10 Dec 2001 (with briefing)	28(1) 30(b)(i) 30(b)(ii) 32(1)(a)(i) 32(1)(a)(ii)	No Partial No No No	N/a No n/a n/a n/a	Partial Release	Release briefing paragraph 10 on EMSA (rest of briefing outwith scope of request) Withhold emails
73	Email 30 Nov 2001	29(1)(a) 30(b)(i) 30(b)(ii)	No Yes No	n/a No n/a	Withhold	Withhold
74	Email 30 Nov 2001	29(1)(a) 30(b)(i) 30(b)(ii)	No Yes No	n/a No n/a	Withhold	Withhold
75	File Note 23 Nov 2001	28(1) 30(b)(i) 30(b)(ii)	Yes Yes Yes	No No No	Withhold	Withhold
76	Email exchange 18 – 29 Oct 2001	28(1) 30(b)(i) 30(b)(ii)	No No No	n/a n/a n/a	Release	Release in full
77	Email 22 Oct 2001 and draft letter	28(1) 30(b)(i) 30(b)(ii)	No No No	n/a n/a n/a	Release	Release
78	Email exchange 18 – 30 Oct 2001	28(1) 30(b)(i) 30(b)(ii)	No No Partial	n/a n/a No	Partial Release	Withhold copied email beginning “3 copies”
79	Draft paper on locations	30(b)(i) 30(b)(ii)	No Yes	n/a No	Withhold	Withhold
80	Email exchange 18/20 September 2001 with minute 18 September 2001 and draft	28(1) 29(1)(a) 30(b)(i) 30(b)(ii) 32(1)(a)(i) 32(1)(a)(ii)	No Yes No No No No	n/a Yes n/a N/a n/a n/a	Partial release	Withhold draft letter, redact paragraph of email (undated) from “Would there” to “thinking”.



	letter					
81	Email 10 Sept 2001	29(1)(a) 30(b)(i) 30(b)(ii)	Yes No No	Yes n/a n/a	Release	Release in full
82	Email exchange 7 - 10 Sept 2001	28(1) 29(1)(a) 30(b)(i) 30(b)(ii)	Partial No Partial Partial	No n/a No No	Partial release	Redact email of 10 September 2001 [10:57] third sentence of first paragraph under "Your questions"
83	Email exchange 7 – 10 Sept 2001	28(1) 29(1)(a) 30(b)(i) 30(b)(ii)	Partial No Partial Partial	No n/a No No	Partial release	Same redaction as in 82 above
84	Email exchange 7 Sept 2001	28(1) 30(b)(i) 30(b)(ii)	No Partial No	N/a No n/a	Withhold	Withhold
85	Email 7 Sept 2001 and draft submission	28(1) 29(1)(a) 30(b)(i) 30(b)(ii) 32(1)(a)(i) 32(1)(a)(ii)	Partial No No Partial No No	No n/a n/a No n/a n/a	Partial release	Withhold drafts. Release email of 7 September 2001 [09:20]
86	Email 4 Sept 2001	30(b)(i) 30(b)(ii)	No No	n/a n/a	Release	Release in full
87	Email 3 Sept 2001	30(b)(i) 30(b)(ii)	No No	n/a n/a	Release	Release in full
88	Email 29 August 2001	30(b)(i) 30(b)(ii)	No No	n/a n/a	Release	Release in full (released in error already)
89	Email exchange 3-24 Aug 2001	29(1)(a) 30(b)(i) 30(b)(ii)	Yes No No	Yes n/a n/a	Release	Release in full (released in error already)
90	Email exchange 3-8 Aug 2001 and attachment	28(1) 29(1)(a) 30(b)(i) 30(b)(ii)	No No No No	n/a n/a n/a n/a	Release	Release in full (released in error already)
91	Minute 3 August 2001	28(1) 29(1)(a)	Partial Yes	No Yes	Partial release	Partial release:



		30(b)(i) 30(b)(ii)	Partial No	No n/a		redact point 4 except last sentence.
92	Letter (24 April 2001)	28(1) 30(b)(i) 30(b)(ii)	No No No	n/a n/a n/a	Release	Release in full
93	Email exchange 19 March 2001 and draft letter	29(1)(a) 30(b)(i) 30(b)(ii)	Yes No	Yes n/a No	Release in full	Release in full
94	Minute (16 March 2001) and draft letters	28(1) 29(1)(a) 30(b)(i) 30(b)(ii)	Partial Yes Partial Partial	Yes Yes No No	Partial Release	Release minute with annexes and copy letter, subject to redaction of first sentence of point 5 second sentence of point 8. Withhold drafts.
95	Email exchange (13 – 14 March 2001) and draft letters	29(1)(a) 30(b)(i) 30(b)(ii)	No No Partial	n/a n/a No	Release	Release
Documents for second request (200600277)						
1	Cabinet SCANCE paper 11 Oct 2005	29(1)(b) 30(b)(i)	Yes Yes	No No	Withhold	Withhold
2	Email 12 Oct 2005	None/ Releasable			Release	Release in full