



Category of Information

1. Any papers prepared for, or relating to, meetings of the Cabinet or Cabinet Committees.

Working Assumption

2. **Withhold:** citing
 - s35(1)(a) or (b) (Formulation of government policy); or
 - s36(2)(a)(i) (Prejudice to the effective conduct of public affairs)

All Cabinet and Cabinet Committee papers should be held by Cabinet Office.

Any request for Cabinet Papers (whether or not the Department is holding the papers) should therefore be referred to the Clearing House, who will record the request and contact Cabinet Office.

Reason for the working assumption

3. It is conceivable that Cabinet papers may, in certain very limited circumstances, be released or that their release may be ordered on review, but in the vast majority of cases, they will not be released. This is because the disclosure of these papers will put at risk the public interest in both collective responsibility and the full and frank discussion of policy.

Collective responsibility

4. Government in the UK has long worked under the convention that Ministers are collectively responsible for policy and its delivery. The concept remains though its practical purchase has been weakened by the publication of Ministerial memoirs and diaries.

5. Nothing in the FOI Act is intended to undermine the principle of collective responsibility. In fact, the importance of collective responsibility is underlined within the Act; Minister-to-Minister communications in general, and proceedings of the Cabinet in particular, explicitly identified as potentially exempt, information subject to the public interest balance (s. 35 (1)(b) and s. 35 (5)).
6. Within that context, the central argument is that disclosure which undermines the convention will change the rules and practices under which Government now functions and it will do so to the detriment of the policy-making process. The convention will be tested in new ways following the implementation of the FOI Act with requests being made that are specifically targeted at unearthing the existence of disagreement.
7. Protecting the convention is conducive to the public interest as the convention creates the space for refining policy positions until Government as a whole can adopt a policy that is sound and likely to be successful. This space also allows for all options to be considered, including radical options consideration of which, if disclosed, might deter Ministers from raising them at the time or in the future.
8. Where there are risks associated with a policy, the space allows those risks to be properly analysed. Collective responsibility also means that all members of the Government are able to give proper consideration to the nature of those risks in the round
9. Disclosure of certain information about the policy-making process, such as the information covered by this working assumption, will begin to erode the space within which policy is developed and may impair the policy discussions that rely on its existence.

Full and frank discussion of policy

10. There is a public interest in the transparency of the policy-making process. However, transparency also has the potential to undermine another powerful public interest, which consists in the full and frank discussion of policy within

Government and with stakeholders because that process makes for better quality policy decisions.

11. There is clearly a strong public interest in high quality policy-making and implementation. For Government to succeed in upholding that public interest, Ministers and officials need to be able to consider, as in any other organisation, all available options, however unpalatable, to debate those rigorously, to expose all their merits and demerits and to understand their possible implications. Their candour in doing so will be affected by their assessment of whether the content of their discussions will be disclosed in the near future, when it may undermine or constrain the Government's view on settled policy or policy that is at the time under discussion and development.
12. Inappropriate disclosure also has the potential not only to limit the full and frank discussion of policy between Ministers, but may also distort public perceptions of advice provided by officials. The prospect of early disclosure has the potential to affect the impartiality of the advice provided.

Referral points:

13. Working assumptions do not fit all situations. The referral points set out below describe specific situations where the working assumption - either to release information or withhold information - should not be used.

The fact that the assumption does not apply **does not mean you should automatically release the information.**

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

- You do not think that the assumption applies to the information, perhaps because the information is uncontroversial (such as a notice of a Cabinet committee meeting);

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

This working assumption should only be considered to be valid in relation to requests for information less than 10 years old, since the public interest in withholding the information is likely to have changed and mean that a more careful argument is needed when refusing to release information. All such cases should be referred.