



### Policy Advice

#### Category of Information

1. Advice to Ministers on a question of policy (i.e. a submission asking for a decision on a question of policy, outlining an emerging policy, providing advice on ongoing policy work etc. Distinct from submissions on routine matters like arrangements for a speech to be delivered). It is good practice in these circumstances to ensure that the private office of the Minister in question is aware of requests for information of this type. Any comments that they give you should be taken on board as part of your decision.

#### Working assumption

2. Policy advice, recommendations, suggested options, and opinions: **Withhold** – cite exemption 35(1)(a) (formulation of Government policy). Other exemptions may also apply.
3. Background factual material and statistical information contained in submissions needs to be treated differently, and can be broken down into two main categories.
4. During the linear policy process of developing new policy, background factual information, and statistical information, after a specific stage of the policy making process has been reached (Green Paper, White Paper, Bill): **Release**
4. Background factual material and statistical information is generated as part of the day to day policy maintenance process, in general the assumption is to **release**, except where release could prejudice the policy maintenance process.

## Reason for the assumption

5. **Factual background information** should be released because:
  - of the general public interest in disclosure;
  - as knowledge of the way government works increases, and the information on which it has based its decisions, the public contribution to the policy making process could become more effective and broadly-based; and
  - it would allow more informed debate, give a wider number of people the opportunity to contribute to that debate and increase trust in the quality of the decision making.
6. **Statistical Information** – Once a decision has been taken, the Act specifies that statistical information used to provide background to a decision is no longer considered exempt as contributing to the formulation or development of government policy (although other exemptions may apply).
7. **Advice, recommendations, suggested options, and opinion** -There are strong public interest considerations in withholding policy advice. The main considerations are set out below. It is in the public interest that:
  - decision making is based on the best advice available and a full consideration of all the options;
  - advice should be broadly based - there may be a deterrent effect on experts or stakeholders who might be reluctant to provide advice because it might be disclosed;
  - the impartiality of the civil service is protected - it might be undermined if advice was routinely made public as there is a risk that officials could come under political or public pressure not to challenge ideas in the formulation of policy, thus leading to poorer decision making;
  - Ministers and officials can conduct rigorous and candid risk assessments of their policies and programmes including considerations of the pros and cons without there

being premature disclosure which might close off discussion and the development of better options;

- there is a free space in which it is possible to 'think the unthinkable' and use imagination, without the fear that policy proposals will be held up to ridicule or public criticism; and
- the collective responsibility of the Government is not undermined by disclosure of interdepartmental consideration and views of other ministers (which may reveal disagreement).

### **Referral points**

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 are unsure whether or not a policy decision has been reached;
- the background factual material or statistical information is sensitive (commercially sensitive for example)
- The background factual material is from a sensitive source (such as a police or security services briefing);
- release of the background information or statistical information would be caught by any of the other provisions in the Act;
- 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>
- The information relate to or contain personal data or are concerned with a personal matter; or
- This working assumption should only be considered to be valid in respect of 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.