

## **20. REQUESTS FOR BUDGETARY INFORMATION**

As a number of departments have received FOI requests seeking details of the information prepared as part of the priorities and budget process, Ministers have stressed the need for a consistent appropriate approach across the NICS to such requests. The Central Freedom of Information Unit has therefore prepared the guidance below which indicates that information which constitutes policy advice to Ministers should not normally be considered disclosable. This reflects the approach taken by Treasury and Whitehall departments to the national Budget and Spending Review Process and advice from DFP.

### **Subject**

The handling of requests for information under the Freedom of Information Act 2000 concerning the priorities and budget process in general and the detail in particular, of reduced requirements, options for reductions, bids for additional resources and associated policy advice prepared by officials for consideration by Ministers and the Secretary of State.

### **Summary**

Information about policy advice prepared by officials for Ministers and the Secretary of State ahead of decisions by the Secretary of State on his draft and final priorities and budget is unlikely to be disclosable. HM Treasury has indicated that it has (to date) refused requests for information about the Chancellor's budget process citing Section 35 (1) (a) and (b). And, DCA have advised that Section 43 may also be relevant when withholding information. See below for further details concerning the application of appropriate exemptions.

The importance of handling requests on a 'case by case' basis cannot be over stated. A 'blanket approach' to the handling of requests concerning the priorities and budget process is inappropriate. Such an approach would attract criticism and probably an adverse Decision Notice by the Information Commissioner. All requests must be the subject of a comprehensive decision-making process and must consider carefully the nature of the information sought in each request received. See below for detailed advice on the process for weighing up the factors for and against disclosure.

### **Appropriate Exemptions**

Section 21 provides an 'absolute' exemption for information which is reasonably accessible to the applicant/requester by other means. For example, if the information about the priorities and budget process and the decisions taken by the Secretary of State is available on a Department's website, then the requester should be advised accordingly and provided with

the website address or preferably the relevant webpage address. A 'public interest test' is not required in cases where an absolute exemption is applied.

Section 35(1) (a) policy formulation and/or (b) Ministerial communications apply. Whether (a) and (b) both apply or whether (a) or (b) apply solely will depend on the content of the information. It should be noted that 35(1)(b) only applies only to communications between Ministers of the Crown or between Northern Ireland Ministers. It does not apply to communications between Ministers and officials.

The rationale behind section 35(1)(a) and (b) is the protection of the policy formulation process, and the protection of the convention of collective responsibility, where it is in the public interest to do so. DCA's exemptions guidance on section 35 states that:

'The protection of collective responsibility of Ministers of the Crown, and the free and frank provision of advice and exchange of views are not explicitly mentioned in section 35. Section 35 does however deal with the formulation of policy, ministerial communications and the need to protect Cabinet documents, all of which are likely to involve the provision of advice, exchange of views and collective decision making.'

The principle of collectivity is also relevant when considering requests for information created during devolution. Although collective responsibility does not, on the face of it, apply to an involuntary coalition, Ministers in the Executive were bound by the Pledge of Office and Ministerial Code of Conduct, the provisions of which imposed duties tantamount to collective responsibility.

Furthermore, DCA's 'working assumption' regarding the 'policy advice' category of information states that '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).'

In the case of the working assumption on 'policy advice', DCA states that it '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'.

Please note that the DCA Clearing House also points to the relevance of the Section 43 commercial interests exemption in that the bidding process is 'competitive', and that individual Departments need to protect their negotiating strategies. The weighting that Treasury (in our case DFP) gives to some bidding factors as opposed to others also needs protection.

### **Examples of factors in favour of disclosure**

These include:

- general presumption in favour of disclosure;
- furthering understanding of and participation in the public debate of budget issues;
- promoting accountability and transparency by Departments for decisions taken by them during the budget process; and
- promoting accountability and transparency in the spending of public money.

### **Examples of factors against the disclosure of information**

The main factors counting against the disclosure of information are those which are set out in the exemptions (Sections 35 and 43) themselves. In the context of the priorities and budget process these include:

- undermining the budget process and principle of collectivity;
- impairing the integrity and viability of the policy formulation and decision-making process to a significant degree without a compensating benefit to the public;
- reducing the effectiveness of Ministerial communications and decisions;
- preserving confidentiality in the context of the nature of the bidding process by which officials draw up information on their reduced requirements, options for reductions, bids etc for consideration by Ministers and the Secretary of State; and
- improving the collective capacity of Ministers and the Secretary of State to reach balanced decisions on their priorities and associated financial allocations, taking account of their overall assessment of how best to allocate limited resources to competing priorities for funding.

## Statistical material

DCA's exemptions guidance on Section 35 states that: 'Statistical information used to provide an informed background to decision-taking is treated differently from other types of information covered by Section 35. It ceases to be exempt under subsection (1) (a) and subsection (1) (b) once a decision as to government policy has been taken'.

Furthermore, DCA's 'working assumption' regarding the 'policy advice' category of information states that:

*'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 (e.g. Green Paper, White Paper, Bill): release.'*

and also that:

*'Background factual material and statistical information is generated as part of the day to day maintenance process, in general the assumption is to release, except where release could prejudice the policy maintenance process.'*

## Schedule of Records

The use of a 'schedule of records' (laid out in tabular form) is recommended in order to:

- (a) manage effectively the handling of the request;
- (b) document comprehensively the nature and scope of the information considered in response to the request; and
- (c) show clearly which information is to be disclosed or withheld, and therefore help to reduce the possibility of accidental disclosure of material to be withheld.

The schedule should describe each piece of information (or document if appropriate) relevant to the request, and indicate whether it is to be disclosed in full, partially disclosed or withheld. Where information is to be refused in part or in full, the schedule should note the relevant exemption(s) that apply. It would be helpful if the schedule noted briefly the reasons for the decision to exempt the information. This would supplement the fuller and more detailed explanation provided by the Department in its letter of response to the applicant/requester.

The schedule itself may be disclosable. If you decide that it would be helpful and/or appropriate to provide it, then it is important to ensure that appropriate steps are taken to protect the information withheld. For example, by redaction of sensitive names and information or by using a general description of the information being withheld.

## Contentious Issues

The NICS 'Co-ordination Arrangements' paper (page 7) issued by the Central FOI Team (OFMDFM) in June 2005 sets out arrangements for proceeding in cases where disputes arise between NI Departments concerning the handling of a request. The relevant paragraphs are reproduced below for the sake of convenience:

*'There may be occasions when Departments will want to take different lines of response to requests for information. CFI must be informed immediately if there is a disagreement between Departments. It will work with the Departments concerned to resolve the disagreement. Similarly, there could be occasions when a Department(s) takes a different line to that advised by CFI. If agreement cannot be reached then Departments/CFI may need to approach their respective Ministers.*

*If Departmental Ministers are unable to resolve the issue then the Secretary of State (or, should devolution return, the First and Deputy First Ministers) should be asked to intervene.*

*Executive Information Service (OFMDFM) should be involved in all stages of the disagreement resolution process, so that issues which become public knowledge are handled carefully and sensitively.'*

