



Hearing 105-202400417

**Decision**

Cabinet Office

Sharon Roulstone  
Ombudsman

12 February 2025

**Summary**

An applicant made a request to the Cabinet Office under the Freedom of Information Act (FOI Act) for a report (Report) completed by the Technical Working Group of the Inter-Ministerial Housing Taskforce (Housing Taskforce). The applicant requested records of all correspondence and documentation of work done on the Report, including the 27 recommendations since its approval by the Cabinet. The records in question were prepared for Cabinet deliberations, a type of record protected against public access under section 19(1)(a) of the FOI Act.

The Ombudsman investigated the appeal and confirmed that the report was exempted from the general right to disclosure, and the Cabinet Office could withhold it. No further action was required on the part of the Cabinet Office.

**Statutes<sup>1</sup> considered**

Freedom of Information Law (2021 Revision) (FOI Act)  
Freedom of Information (General) Regulations 2021 (FOI Regulations)

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<sup>1</sup> In this decision, all references to sections are to sections of the Freedom of Information Act (2021 Revision) as amended, and all references to regulations are to the Freedom of Information (General) Regulations 2021, unless otherwise specified.

## A. INTRODUCTION

- [1] On 26 March 2024, the applicant made a request to the Cabinet Office, under the FOI Act, for various records relating to the work conducted by the Housing Taskforce, particularly the completed Report, which the Cabinet approved on 24 October 2023.
- [2] The Cabinet Office acknowledged receipt and requested clarification on 17 April 2024 concerning the types of records held. The applicant provided clarification on 24 April 2024.
- [3] On 26 April 2024, the Cabinet Office took an extension and provided their decision on 28 June 2024. The Cabinet Secretary granted partial access to some records related to all correspondence and documentation of work done on the Report, whilst others were exempt under section 20(1)(b) - free and frank exchange of views - of the FOI Act. However, the Report completed by the Housing Taskforce was exempt under section 19(1)(a) of the FOI Act because they were "Records revealing Government's deliberative processes".
- [4] Since the Cabinet Secretary/ Chief Officer made the decision, no internal review was required; as such, the applicant requested an appeal.
- [5] During the informal process, the applicant was provided additional context concerning the reasons for the exemption in section 19(1)(a).
- [6] As the matter could not be resolved informally, the applicant requested a hearing.

## B. CONSIDERATION OF ISSUES

- a. **Consideration of whether the Report completed by the Housing Taskforce is exempt under section 19(1)(a) because it contains opinions, advice or recommendations, or a record of consultations or deliberations prepared for, or arising in the course of, proceedings of the Cabinet or the Nationality Security Council or a committee of the Cabinet or National Security Council.**
- [7] The Cabinet Office claimed the Report was exempt under section 19(1)(a). This subsection states:
- (1) Subject to subsection (2), a record is exempt from disclosure if it contains opinions, advice or recommendations, or a record of consultations or deliberations —*
  - (a) prepared for or arising in the course of proceedings of the Cabinet or the National Security Council or a committee of the Cabinet or the National Security Council; or*

*(b) prepared for the Governor or a Minister relating to the formulation or development of Government policy.*

*(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.*

[8] The Cabinet Office asserted:

*The Report represents a Government-wide exploratory initiative aimed at identifying areas for further review, research, or action to address housing needs. This work is a preparatory step in the development of a comprehensive Housing Policy, which will ultimately serve as the country's guiding document for housing matters. The FOI Act explicitly protects records prepared for or arising in the course of Cabinet proceedings under section 19(1)(a) as they include opinions, advice, or recommendations. The confidential nature of these deliberations is fundamental to the effective functioning of the Cabinet, and disclosure of such exploratory work would undermine its purpose.*

[9] Moreover, the Cabinet Office contended that:

*Comparative guidance can be drawn from the UK Freedom of Information Act 2000, particularly section 35, which provides an exemption for information related to the formulation or development of government policy. In the UK, the Information Tribunal has consistently held that protecting the safe space for policy discussions is critical to ensuring effective governance. Similarly, under the Cayman Islands FOI Act, section 19(1)(a) serves to protect this safe space, recognising the need for confidentiality in deliberations that directly inform government policy.*

[10] Additionally, the Cabinet Office noted that:

*It is not a final policy document but one of several resources contributing to the eventual Housing Policy. Disclosure at this stage would misrepresent the status of the work and potentially lead to unwarranted speculation or misinterpretation, thereby undermining the broader policy development process.*

[11] In contrast, the applicant submitted that:

*The document should be released for numerous reasons but largely as a result of the current critical situation relating to the affordable accommodation and housing crisis. The housing task force was billed by officials as very important and that it*

*would find a solution by working together across ministries and portfolios. Every indication was that its work would be made public when concluded as solving the affordable homes issue was a central policy platform of the current administration. It seems absurd that releasing such a document about the work would be somehow against the national interest, rather, the opposite. There is a massive public interest in the subject, and it is hard to imagine why the government would not want to release the findings. As is always the case whatever work was done was done using public funds and we should all see the results of how our money is spent when it is billed as being in the public interest to spend it is in the public interest to account for it. [sic]*

- [12] The Cabinet Office did not provide a reply submission but indicated in their initial submission that:

*The public interest test under section 20(1)(b) was duly considered. While the Public Authority recognises the public interest in promoting greater transparency and understanding of governmental processes, it was determined that the need to protect the integrity of the Government's deliberative processes outweighs the potential benefit of disclosure. The ability of civil servants and other advisors to provide candid opinions and recommendations without fear of external scrutiny is essential to the formulation of sound policy and decision-making. Disclosing such information could have a chilling effect on the willingness of advisors to engage in open and constructive dialogue, thereby undermining the quality of Cabinet's deliberations.*

- [13] The applicant, in their reply submission, challenged the Cabinet's arguments, stating that:

*by discouraging the free and frank exchange of views essential to informed decision-making. The report we understand is a collection of findings and the result of various research not secret cabinet deliberations. Releasing the report would not expose any exchanges that Cabinet may have had or any private discussions merely what was learned as a result of the cross ministerial work as it was not the Cabinet per se that did the actual research work but the various ministries...*

- [14] In considering the claimed exemption, case law from the English courts and guidance from the UK Information Commissioner's Office are not helpful for the most part because the parallel exemption in the Freedom of Information Act, 2000 (section 35) is differently worded, it is a qualified exemption, meaning you must apply the public interest test and it takes a different approach to section 19 of the Cayman Islands FOI Act.

- [15] The exemption in section 19 is, amongst other things, intended to preserve a safe space for the consultations and deliberations of the Cabinet. Having examined the Report and the ancillary documentation closely, it is clear to me that the Housing Taskforce was set up to

provide the Cabinet with high-level recommendations.<sup>2</sup> These recommendations are meant to provide a framework for further evaluation, analysis, research, and consultation to enable the development of a housing policy for the Cabinet’s consideration and approval.<sup>3</sup>

[16] Further, the Report contains detailed findings and recommendations intended for consideration by the Cabinet in the form of “opinions, advice or recommendations prepared for... proceedings of the Cabinet”, as required for the exemption to apply. I understand that additional deliberations by the Cabinet are imminent since the disputed record formed part of a preparatory step in developing a comprehensive Public and Affordable Housing Policy and a forward-thinking 10-year Strategic Plan.<sup>4</sup>

[17] In considering whether the exemption applies, I considered whether the Report stands to “contain material of a purely factual nature or reports, studies, tests or surveys of a scientific or technical nature”, as it would not be exempted pursuant to section 19(2). Neither part of the Report is purely factual, scientific or technical in nature. Therefore, I am satisfied that the exemption is engaged, and the Report is exempt from the general right of access by section 19(1)(a).

[18] I am also satisfied that the entire Report consists of exempt information, and there is no opportunity to provide access to any part of the record, as would be required under section 12(1), which states:

*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.*

[19] Since the amendment of section 26(1), that section no longer applies to the exemption in section 19(1)(a)<sup>5</sup>. Therefore, the exemption is absolute and is no longer subject to a public interest test, which means access cannot be granted in the public interest if the exemption applies.

[20] I note the public interest in this issue; however, section 20(1)(b) was applied to parts of the supporting correspondence already disclosed to the applicant, which was not considered in this hearing. The applicant’s principal interest is in the Report, exempt under section 19(1)(a). Given that this is an absolute exemption, my role is to decide whether the exemption applies.

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<sup>2</sup> <https://www.gov.ky/publication-detail/cabinet-post-meeting-summary-22-march-2022>

<sup>3</sup> <https://www.gov.ky/publication-detail/cabinet-post-meeting-summary-24-october-2023>

<sup>4</sup> “PQ Answer #10 – (Written) National Housing Development Trust” (Parliament of the Cayman Islands, October 10, 2024) <https://parliament.ky/business/house-documents/questions-by-honourable-members/>.

<sup>5</sup> By virtue of section 4 of The Freedom of Information (Amendment) Law, 2019 (Law 26 of 2019).

[21] **In conclusion, for the reasons stated above, the exemption in section 19(1)(a) applies to the responsive records, and this exemption is not subject to a public interest test. The Cabinet Office is not required to take any further steps.**

**C. FINDINGS AND DECISION**

Under section 43(1) of the Freedom of Information Act, for the reasons outlined above, I make the following findings and decision:

- The Report completed by the Housing Taskforce is exempt under section 19(1)(a) of the FOI Act.
- No further action is required on the part of the Cabinet Office.

A handwritten signature in black ink that reads "Sharon Roulstone". The signature is written in a cursive style with a large initial 'S'.

Sharon Roulstone  
Ombudsman