EA/2020/0202 and 0300: Appellant's statement

1. I shall be as brief as possible. You have various contributions from me in the two bundles, and I will seek to draw together the threads of the arguments presented there.

2. The background to the two requests will become clear in the course of my remarks, and it is well covered in the two bundles. You have the chronology set out in one of the Ministry's responses (first bundle, A47-51). The one background point I will make is that the principle that there should be a Holocaust Memorial and a co-located Learning Centre (HMLC) in central London is largely uncontested. What has made it deeply controversial is the decision to appropriate a long-established public open space for that government building project.

3. My two requests seek information on how and why that decision was made in 2016, and are for the relevant minutes and the relevant meeting papers of the UK Holocaust Memorial Foundation. (I should add that the first request was initially for all the Foundation's minutes, but the appeal was on the narrower point.) In 2015, when the Government accepted the recommendations of the Holocaust Commission on Holocaust commemoration and education, it set up the Foundation to advise it on implementation, including the establishment of the Memorial and Learning Centre. It was the Foundation that in 2016 made recommendations about the location of the Memorial and Learning Centre, which the Government accepted.

4. As has already been determined, the two requests raise largely the same issues. They were made on widely different dates, but this is not significant, as the earlier request was made in December 2018 and I shall demonstrate that the relevant decisions were definitively made not later than 2017. There is no disagreement about the well-established principle that a request must be assessed against the circumstances at the time it was made or at the latest the time when an internal review should have been completed.

5. There is also no dispute that the qualified exemption in section 35(1)(a) of the Act applies, in that the information requested relates to the formulation and development of government policy. The disagreement is on three issues:

1. What is the policy to which the information requested relates?
2. Was that policy still being formulated or developed at the time of the requests? And
3. Partly in the light of that, where does the balance of public interests lie?

6. I believe that, of these, the first question − what is the policy to which the information relates − is the fundamental one, and that once that is resolved the answers to the other two

questions fall into place. I propose to deal with the first two questions together and then to examine the public interest balance.

The policy concerned, and whether it is still being formulated

7. My case is that the policy to which the information relates is the decision on where to locate the Holocaust Memorial and Learning Centre.

8. The two respondents claim instead that the policy in question is the decision to establish a Holocaust Memorial and Learning Centre, and that all subsequent decision-making is simply development of that policy. According to the Commissioner (first bundle A35 para 30), 'At the time the request was made, while the siting of the HMLC had been announced, a large number of related policy decisions had not yet been made, and as MHCLG highlighted, policy decisions will continue to be taken up until the HMLC is built and functioning'.[1] The Ministry adds (first C166 & second C86) that 'decisions relating to the delivery of the HMLC will continue to be live policy until the HMLC is constructed and open',[2] and that 'a clear and discrete stage of policy formulation has not yet reached its end before implementation takes place'.[3]

9. This is precisely the 'seamless web' or 'continuum' argument that previous tribunals have rejected − the idea that an aspect of government policy must be treated as a whole, even if it has clearly distinct parts determined at different times. It seems to me to be equivalent to regarding the declaration of war in September 1939 as a high-level decision which was still subject to ongoing policy formulation in 1945 because final detailed decisions were still being taken. Indeed the respondents go beyond the seamless web of policy to include implementation: on the Ministry's definition, no part of policy formation could ever be regarded as completed until it had been implemented, even if there was a sequence of decisions committed to and announced over a long period.

10.In contrast, in the Halligan case of 2018 (paras 65-6), the tribunal stated that 'We do not accept that the policy development process should be seen [as] a seamless web, because this suggests that the policy development process is always live'.[4] In the DWP case of 2007 (para 56), the tribunal noted that an earlier tribunal

> found that the wording of section 35(2) seemed to envisage policy formulation as a series of decisions rather than a continuing process of evolution. We agree with this interpretation and go on to find that in this case the two stage decision and policy

[1] 1st A35, para 30. Also 2nd A37, para 31.
[2] 1st C166, para 11; 2nd C86, para 14.
[3] 1st A59-60, para 17.1(1); 2nd C89, para 32. See also 2nd A50, para 17.4 (2)(b).
[4] EA/2018/0098, paras 65-6.

formulation process can be considered separately at each stage rather than as a continuum.[5]

11. Both respondents have cited this case as support for the idea that even though a high-level decision has been made and announced, policy formulation may still be ongoing regarding details,[6] but they failed to mention what the tribunal actually decided and the principle of separate consideration. The tribunal distinguished between the high-level policy, which was well formulated and developed by the time of the request, and the lower-level policies, which were not. As the requested information related to the high-level policy, it upheld the decision that that information should be disclosed, despite the continuing policy formulation on the lower-level policies.[7] A similar approach, with the DWP case as the example, is advocated in the Commissioner's own guidance note about section 35.[8] The parallel with the present case is inescapable.

12. The precedents are probably less important than the simple factual point, which is that, if the decision at one of the levels has already been made, a safe space for considering that matter is not needed and the case for exemption is correspondingly weaker.

13. So next I will examine the circumstances in this particular case. My argument is that there are at least three separate policy decisions or levels: the decision on whether to establish a Memorial and Learning Centre; the decision on where to locate it; and subsequent decisions, at least partly contingent on the choice of location. They are a sequence of separate decisions, of which the first can be seen as the high-level decision and the others as two lower levels of decisions. I will show that these different levels can be considered separately, just like in the DWP case, and that for two of the three levels the process of policy formulation and development was complete by the time of my requests.

<u>First-level decision</u>

14. The first decision − that there should be a Memorial and Learning Centre in a prominent central London location − was recommended by the Holocaust Commission and announced by the Prime Minister in January 2015; you have the announcement in the first bundle D345-6. It was a firm and final decision, publicly announced, and not in any way a provisional one. Implementing that decision and other Holocaust Commission recommendations was the reason for setting up the UK Holocaust Memorial Foundation. There has never been any indication subsequently that the Government might reconsider the decision. I don't believe it is contested that the high-level decision was made in 2015, and I won't waste time by citing

[5] EA/2006/0040, para 56. See also EA/2006/0006, paras 57, 75(v) (the latter quoted at 2nd A34).
[6] 1st A35, para 30; 2nd A49, para 17.4(2)(a).
[7] EA/2006/0040, paras 57, 100, 104, 112.
[8] ICO guidance on government policy (section 35), para 83.

the numerous statements of government commitment, other than to draw your attention to the most recent one, by the Ministry's counsel at the start of the planning inquiry in October (1st D101 para 21). He said:

> The Government has decided that there should be a United Kingdom Holocaust Memorial and Learning Centre. Many of the objectors question this decision and explain why for all sorts of reasons they disagree with it. In a healthy democracy we are all entitled to our opinions. But this is not an inquiry into *whether* there should be a UKHMLC. That decision has been made and this inquiry cannot gainsay it.[9]

15. This statement of course post-dates my two requests. W've quoted it here for two reasons: to emphasise that there's been no wavering in the Government's commitment to the Memorial and Learning Centre at any time in the period from 2015 to the present; secondly, and more importantly, to show that the Ministry's own counsel distinguished clearly between a decision on whether there should be a Memorial and Learning Centre, which had already been made, and a separate decision on where it should be. In this case he was distinguishing between a policy decision by the Government and a decision by a planning inspector about what recommendation to make, but the principle is clear: whether there should be a Memorial and Learning Centre and where it should be located are separate decisions. If it suited the Ministry to argue this for its own purposes in the planning inquiry, it is hardly open to it to argue the opposite in this tribunal.

Second-level decision

16. Now I come to the second-level decision, concerning the location of the Memorial and Learning Centre. The Victoria Tower Gardens site was recommended by the Foundation and announced by the Prime Minister in January 2016. You have the announcement − all six lines of it − in the first bundle, at the top of page D287. As the Commissioner has described the announcement as 'provisional', and claims that 'the matter of the location has not been settled'[10] and the Ministry has described it as 'conditional',[11] let us examine how provisional and conditional it was.

- The Prime Minister's announcement in January 2016 was that 'Today I can tell the House that this memorial will be built in Victoria Tower Gardens'; not 'we are proposing that this Memorial be built in Victoria Tower Gardens'; not even 'this

[9] 2nd D101, para 21.
[10] 2nd A38, para 33; 2nd A10, para 52.
[11] 2nd A49, para 17,4(1).

Memorial will be built in Victoria Tower Gardens subject to planning permission', but 'this Memorial will be built in Victoria Tower Gardens'.[12]

- In September 2016 the Government launched a design competition for proposals bespoke to Victoria Tower Gardens. As the design competition brief makes clear, the Memorial and Learning Centre were to be built in Victoria Tower Gardens, and were to fulfil several conditions relating specifically to the Gardens, such as addressing the sensitivities of the site.
- On the *only* occasion when the matter has been debated in Parliament, at an adjournment debate in February 2017, the Minister opened his remarks are (2nd D93) by saying 'I need to begin by making it clear that the decision has already been taken to select this particular site, so I cannot go too far into the specifics, or rerun the arguments about which site has been selected for what reason'.[13]
- In December 2018 the Secretary of State submitted a planning application for the building of the Memorial and Learning Centre in Victoria Tower Gardens, with detailed designs and numerous lengthy documents;
- In October and November 2020 there was a planning inquiry relating to the Victoria Tower Gardens proposal lasting 20 days.

17. Given that history, to describe the decision on the location of the Memorial as provisional and not settled is simply to misuse language. There is no evidence that there has ever been any sort of review of that decision, and there have been repeated statements of the Government's commitment to the Victoria Tower Gardens site, culminating in the Secretary of State's statement in February 2020 that the Government remained 'implacably committed' to it.[14] In her Decision Notice on the second request (2nd A10 para 52), the Commissioner provides no reasons at all for her belief that the matter of the location has not been settled.[15] In fact it is abundantly clear, using the definitions in the Commissioner's own published guidance, that the end of policy formulation was marked by the announcement of January 2016, and that there has been no policy development since 2017 at the latest.[16]

18. There is a small complication as regards the Learning Centre. The Prime Minister's announcement referred explicitly only to the Memorial being in Victoria Tower Gardens, and whether the January 2016 recommendation and decision were in fact to locate both the Memorial and Learning Centre in Victoria Tower Gardens is unclear; that the Learning Centre will also be built there has never been explicitly announced. There is good evidence that that decision was made in 2016.[17] Nevertheless, I suggest that, for the time being, we

[12] 1st D287.
[13] 2nd D93.
[14] 1st D411.
[15] 2nd A10, para 52.
[16] ICO guidance on government policy (section 35), paras 46, 54-5.
[17] 2nd D96, No. 3; UKHMF, redacted minutes, 13 July 2016; 2nd D93-5.

take the Ministry's later statements in parliamentary answers at face value (2nd D96): it says that it decided in September 2016 that the Learning Centre as well as the Memorial could be located in Victoria Tower Gardens, subject to certain 'constraints' being overcome, and that it decided in October 2017 that the constraints could be overcome.[18] So the decision on the location of the Learning Centre as well as the Memorial was made not later than October 2017.

19. The other complication − or more accurately a red herring − is the suggestion by the respondents that the decision can't have been finally made until planning permission has been obtained. But the submission of a planning application is proof that a decision *has* been made on the location. You do not submit a planning application for a building specific to one site with all the expensive preparatory work and detailed documents and drawings required if you are still pondering where to locate your development. The decision would normally be reconsidered only if planning permission was refused. Furthermore, the whole point of the planning process is that there should be a separate decision on whether the proposed development is consistent with planning policy; planning permission is not, or ought not to be, merely a continuation of the Government's policy development process.

20. As it happens, the planning application was called in, the Secretary of State recused himself, and the decision on the application will now be made by a junior minister in the Ministry whose proposal it is. Elaborate arrangements have been made to ensure that in the process he does not receive advice from people who have been developing or promoting the proposal or have already made public pronouncements on it (that's in the second bundle, pages D108-115). This emphasises the point that it is meant to be a separate decision rather than part of the government's policy development. The planning regulations (2nd D108) require 'a functional separation ... between the persons bringing forward a proposal for development and the persons responsible for determining that proposal'.[19]

21. In the almost inconceivable future circumstance of the Minister rejecting the proposal so firmly endorsed by his own Secretary of State and the Prime Minister, the decision on the location would become open again, but that cannot be relevant to the situation at the time of my two requests. As was demonstrated in the Healey case of 2012, a policy which is closed at the time of one request, favouring disclosure, may be open the time of a later request, favouring exemption, but the subsequent reopening of the policy process does not affect the decision on the earlier request.[20] Moreover, if the proposed location were rejected, finding a new location would not be a development of the earlier policy because the policy of building

[18] 2nd D96, Nos. 1, 2, 4.
[19] 2nd D108.
[20] EA/2011/0286 &0287, paras 83-4, 89-91.

in Victoria Tower Gardens would be dead; it would be a new policy on the location. As the tribunal in the Scotland Office case concluded in 2007 (para 67):

> It is inevitable many policy decisions, particularly if they are controversial or effecting a dramatic change, will be subject to further debates and perhaps development of a new policy to amend the existing one, but that does not mean that the policy itself is still being formulated or developed.[21]

22. Although I have argued that the decision on whether there should be a Memorial and Learning Centre was separate from the decision on its location, in the end it does not greatly matter, because the more important point is that they were both firmly made and announced before my requests were submitted.

Third-level decisions

23. In fact the key point is the relationship between the second-level decision, on the location, and the third-level decisions about the implementation of the policy in Victoria Tower Gardens. These are listed by the Ministry, at first C166 para 10, as 'including but not limited to design, exhibition content, the scope and nature of the operating body and plans for raising philanthropic donations to supplement government funding'. The Ministry says (same page para 12) that

> we consider that the Department has been undertaking a period of discussion with partners and interested parties, refining analysis as the policy process progresses, and final detailed decisions by Ministers have yet to be taken on the decided policy in the light of such considerations, meaning the "*formulation*" stage has not yet been concluded for any of the strands of work – design, implementation and operation of the Memorial and its Learning Centre content.[22]

24. What it does not say here is that the formulation stage was still live for the strand of work relating to the location, and it fails to show that any of these third-tier decisions call into question the decision on the location. Indeed they are largely or entirely decisions which are bespoke or specific to Victoria Tower Gardens, whether it is the detailed design to fit an awkwardly shaped and constricted site, the amount of funding needed to build on a difficult and largely underground site, the operating arrangements for a facility within a public park and close to prime terrorist targets, or the contents of the Learning Centre. Most of this policy formulation work assumes that a final decision has already been made about the location, and it is therefore consequential on that decision and separate from it.

[21] EA/2007/0128, para 67.
[22] 1st C166, para 12.

25. The Commissioner says that, as in the DWP case, 'while a "high-level" decision on the siting of the HMLC has been announced, policy formulation relating to implementation and the finer details of that decision are − and in particular, were at the time of the request – ongoing', but she again fails to engage with what the tribunal in the DWP case actually decided about the different levels of policy.[23] It seems to me that she also, in pages A34-5 in the first bundle and A36-7 in the second, muddles up the separate questions of whether section 35(1)(a) applies and whether a policy was still undergoing development or formulation; the Ministry does the same.[24] Neither respondent has provided a shred of evidence that any detailed or related policy decisions have been or are due to be taken subsequent to my two requests which might call into question the choice of Victoria Tower Gardens; nor of any discussions with partners or interested parties which might have that effect. If they have any such evidence, I challenge them to provide it today.

26. The absurdity of the Ministry's position is captured by its reference to 'the final policy decision to be taken by Ministers' (2nd C87 para 20), as if there will be some final overarching decision wrapping up the entire process. It is a nonsense, as the Government is already committed to the proposal and 'implacably committed' to the site. Equally strange is the Ministry's suggestion that the meeting papers I am requesting, which gave rise to the decision of January 2016, 'will inform the final policy decision to be taken by ministers'.[25] As you have the papers, I'm sure it is clear to you that, even if you can identify what 'the final policy decision' refers to, the requested papers will not contribute to it.

27. In the light of these remarks, I respectfully suggest that were the tribunal to accept the arguments of the respondents that everything from initial policy formulation to implementation and opening of the Memorial and Learning Centre is a single seamless policy, still undergoing formulation in its entirety, it would be overturning the settled views of previous tribunals on this matter. It would also be turning a qualified exemption in section 35(1)(a) into something approaching an absolute exemption, because it would almost always be open to government departments to claim that some overarching policy was still in development. And it would thereby negate much of the purpose of the Freedom of Information Act as intended by Parliament.

<u>The public interest balance between withholding and disclosure</u>

28. I now come to the third question: the balance of public interests between withholding the information and disclosing it, and will start with the arguments against disclosure. The

[23] 2nd A37, para 31.
[24] 2nd A51, para 17.7.
[25] 2nd C87, para 20.

purpose of the qualified exemption is of course to protect the decision-making process, not to protect ministers and civil servants from scrutiny until after their decisions have been irrevocably implemented. In the present case, that protection boils down essentially to two arguments: the safe space argument and the chilling effect argument. In both cases the timing of the request is crucial, and, according to the Commissioner's guidance and previous tribunal decisions, the arguments must not be generic but must relate to the content of the information requested and the specific harm that it is claimed will result.

29. In the present case, the only specific argument made about a safe space is that 'The need for a safe space is heightened because the Holocaust is a sensitive subject that can provoke strong views'.[26] Of course it can, and indeed should, but the matter at issue is not the Holocaust itself but whether a Memorial and Learning Centre should be on one particular site or somewhere else. And the sensitivity of the information is only relevant if policy is in fact being formulated or developed. On the evidence I have provided so far, the safe space argument falls away, because since 2016 or at the very latest 2017 there has been no decision-making on the location of the Memorial and Learning Centre which could require such a safe space.

30. The Commissioner has put forward a novel safe-space argument (2nd A38 paras 32-3), which seems to me bizarre. Contradicting the principle that an FOI decision must relate to the situation at the time of the request, emphasised in her own published guidance[27] and in at least one of her own recent decisions,[28] she suggests that the documents requested should not be disclosed because in some hypothetical circumstance in the future the decision on the location of the Memorial and Learning Centre might be reopened and then, in some unspecified way, the earlier disclosure of the documents requested might harm the decision-making process.[29] Such a principle would massively extend the scope for withholding documents, and would turn section 35(1)(a) into something close to an unqualified exemption. I make three points in reply: (i) in the unlikely event of the decision on the location being reopened, this would not affect the fact that it was closed at the time of the requests; (ii) in that event it would not be the development of an existing policy but the formulation of a new one; and (iii) the four-year-old documents requested, now seriously out of date, could not possibly affect the safe space of someone making a decision in 2021 or later.

31. The Commissioner's argument in this respect is so novel and so potentially harmful in its impact that I hope the tribunal will express a view about it in its decision.

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[26] 2nd C88, para 26.
[27] ICO guidance on government policy (section 35), para 78.
[28] IC-45042-Z4G2, paras 28-30.
[29] 2nd A38, paras 32-3.

32. Both respondents have attempted to apply the safe space argument to the Minister's decision-making on the planning application following the recommendation from the planning inspector next year. This is entirely misconceived. The Minister is meant to be receiving the recommendation and taking advice from a restricted circle of civil servants, not including those who have been involved in the policy or who have expressed views in public about it. He is not meant to be consulting interested parties and receiving new advice (2nd D108-15).[30] The Foundation in particular has no role in this process. The Minister already has his safe space, set out in detail in the handling arrangements, and whether or not the documents requested are disclosed has no bearing on it whatever.

33. As for the chilling effect argument, the Upper Tribunal has pointed out, in the Simon Lewis case of 2014-15, para 28, the weakness of the argument in respect of any qualified FOI exemption, 'because any properly informed person will know that information held by a public authority is at risk of disclosure in the public interest'.[31] Although both respondents claim that there was an expectation of confidentiality at the Foundation's meetings in 2015 and 2016, such an expectation would have been unfounded at any time since the passing of the Freedom of Information Act. Unless ignorant of the law, the Foundation's members must have been aware that a decision to build on a public park would generate FOI requests which might be successful. And if they were making a decision that was well founded and in good faith, why should this have bothered them? Any dissenters from the January 2016 decision might have been embarrassed by disclosure, but one of the joint chairs of the Foundation has indicated that there were no dissenters (2nd D104),[32] and many of the Foundation's board members are on the record as publicly defending the decision or contributing to the decision-making process.[33] Consequently the idea that use of the requested documents in the planning inquiry would have discouraged frank comments subsequently is unfounded.[34] The character of the Foundation's board members, listed by me at first A42 para 21, virtually all of them public figures, makes it highly unlikely that disclosure in this case would inhibit them from speaking frankly in future. They are independent members of an advisory body, and are not analogous to lobbyists, despite attempts by both respondents to draw on the DBERR case of 2008 about lobbyists.[35] Furthermore, upholding my appeal relating to the minutes would not create a new precedent for disclosing future minutes, as each case has to be considered on its merits.

34. Essentially what we have from the two respondents is the generic chilling effect argument. For example, (2nd A10 para 54) the Commissioner says merely that 'it is possible

[30] 2nd D108-15.
[31] GIA/2410/2014, paras 28-9.
[32] 2nd D104.
[33] 2nd D69.
[34] e.g. 2nd A39, para 37.
[35] 1st A36, para 33; 1st A60, para 17.1(2); 2nd A39, para 36.

that disclosure at this stage could cause a chilling effect on the future deliberations of the UKHMF'.[36] The chilling effect argument could hardly be expressed more weakly, and as the Commissioner herself has put it in her guidance, 'generic chilling effect arguments about unspecified future policy debates are unlikely to be convincing, especially if the information in question is not particularly recent'.[37] As the tribunal observed in the Healey case, para 73, putting a generic chilling effect argument in relation to a qualified exemption is tantamount to calling for it to be made an absolute exemption,[38] and that is in effect what the Ministry has done.[39] No credible case has been made that disclosure would have caused or would cause members of the Foundation's board to speak less frankly. The case is even weaker for the meeting papers than for the minutes.

35. Therefore the public interest in withholding the documents is extremely weak. In contrast, all the considerations set out in the Commissioner's guidance favouring disclosure are engaged in this case, as I have set out in submissions to this tribunal.[40] Indeed the Commissioner describes my arguments for disclosure as 'compelling'.[41] There can be no doubt about the public interest in the policy, and a glance at the before and after photos on page A43 of the first bundle shows why. It is not just 'some local opposition' as the Ministry claims.[42] Building the Memorial and Learning Centre in Victoria Tower Gardens, when other sites are available, would not only wreck this particular park, but would set a precedent, encouraging both national and local government to appropriate open spaces for building projects claimed to be of public benefit. Therefore, not only is the public interested, but there is a strong public interest in knowing how and why this decision was made.

36. The second point is the inadequacy and contradictory nature of the information currently available about the decision-making in 2015-16, and I have set out that contradictory information on pages A73 to 77 of the first bundle, so you can draw your own conclusion. That situation was not resolved by the planning inquiry, which instead generated additional questions. In particular, did the Foundation's recommendation of 13 January 2016 cover the Learning Centre as well as the Memorial? What were the main reasons for the choice of site at that time, as opposed to the reasons that have been drawn up retrospectively years later? How important was it, for example, that the site chosen was free because already in government ownership? And was there one meeting in January 2016, as the redacted minutes indicate, or two meetings, as one of the joint chairs of the Foundation stated during the planning inquiry?[43] Lots of information is available about some aspects of the proposed

[36] 2nd A10, para 54.
[37] ICO guidance on government policy (section 35), para 89.
[38] EA/2011/0286 & 0287, para 73.
[39] e.g. 1st A60, para 17.1(5).
[40] ICO guidance on the public interest test, paras 28-39; 2nd A16-17, para 12.
[41] 2nd A9, para 49.
[42] 2nd C88, para 23.
[43] 2nd D104.

Memorial and Learning Centre, but there is far too very little information about the decision-making process in 2015-16 for there to be public understanding.

37. The third point is that the irregular or flawed nature of the decision made in January 2016 was confirmed by the evidence given by the joint chairs of the Foundation at the planning inquiry, and you have a transcript of the relevant sections in the second bundle at pages D103 to 107. Almost certainly it was only because some information had already been elicited through parliamentary questions and FOI requests that any such evidence was given at all. The Ministry's witnesses had the difficult task of explaining how due process could have been followed if the professional advice on possible sites was received on 11 January, a single alternative site was brought to the Foundation's board for the first time on 13 January and was immediately recommended to the Government, despite not meeting the published criteria, and the Prime Minister made a definitive announcement just two weeks later that that site had been chosen. No systematic comparison of sites can have been made, and the published criteria were set aside.

38. The witnesses' response to this problem at the inquiry was to suggest that the Foundation's board had had 'a moment of genius' on 13 January. It became clear in cross-examination that they had received no planning advice. Other evidence indicates that they were unaware that under the 1900 Act, which gave rise to the part of Victoria Tower Gardens containing the proposed site, the land had to be maintained as 'a garden open to the public'. I have set out what other information was missing at 1st A105-6. I believe this is a case where the tribunal would perform a public service by exposing a poor decision-making process and thereby through the deterrent effect contribute to better-quality decision-making in future.

39. I must also make a more general point about lack of accountability and transparency. When the Prime Minister announced the choice of site in January 2016 this was the first time anyone outside Government had heard that Victoria Tower Gardens was even being considered. There had been no consultation about the choice of site, and there has been none subsequently. The choice was announced during Prime Minister's questions, when it was almost impossible for it to be discussed. No information was provided about other sites considered and how they were assessed and compared. The comparison of possible sites, which you have at 1st D418 onwards, was compiled and published only in 2020, incorporating information from that year. The only parliamentary proceedings, apart from written questions, have been the single adjournment debate, included in the second bundle, when the Minister said that he could not discuss the proposed location because it had already been decided. The decision that the Learning Centre as well as the Memorial should be in Victoria Tower Gardens has never been explicitly announced at all.[44] When I submitted an FOI request in 2017 for basic information such as the dates of decisions I did not receive a

[44] 1st A106-7, paras 27-32.

response until seven months later, and then only when the same information was requested in parliamentary questions. As for the planning process, the local accountability which this might have brought about was bypassed by calling in the planning application.

40. The decision on where to build the Holocaust Memorial and Learning Centre ought to have been a rational decision based on evidence which could be explained to the public and on which the public could have been consulted, and it is something of a mystery why, unless there has been irregularity, there has been such a determined effort to keep the entire process secret. This is one of the reasons why I believe it is important that my appeal is upheld.

41. In summary then, my case is that the decision on the location of the Holocaust Memorial and Learning Centre was a distinct policy; the decision on that policy was made long before I submitted my two FOI requests and has not been subject to any further formulation or development; no safe space for discussion was needed then or is needed now and any chilling effect is likely to be weak or non-existent; the public interest in the matter is strong, the available information is patchy and contradictory, and there is clear evidence of a flawed decision-making process; so the public interest is strongly in favour of disclosing the documents. Therefore I respectfully ask you to uphold the appeal.

42. And one final point. I understand that the normal time before a decision is issued is six weeks, but there is a possibility of expediting a decision. I believe the Ministry has been playing for time on these requests, and, given the possibility of appeals, time is short before a final decision on the planning application is expected to be made around the end of April. I therefore ask you to consider expediting the decisions in these two cases. Thank you for this opportunity to address you.