

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 26 March 2007

Public Authority: Cabinet Office
Address: 70 Whitehall
London
SW1A 2AS

Summary

The complainant requested a list of the recipients of Christmas Cards from the Prime Minister in the years 2003 and 2004. The Cabinet Office confirmed to the complainant that the only information it held in relation to the request was the Prime Minister's working Christmas card list for 2004. Following an internal review the Cabinet Office refused to disclose the list to the complainant through the application of the following exemptions under the Freedom of Information Act: Section 27 (International relations), section 36 (Prejudice to effective conduct of public affairs), Section 38 (Health and safety) and Section 40 (Personal information).

The Commissioner accepts that the only information held in relation to the request is the 2004 working list. He agrees that the majority of the list of names on the list should remain exempt for the reasons provided by the Cabinet Office. However, the Commissioner has also decided that the names of foreign leaders and heads of state on the list should be released, together with the names of headings used in the list and the number of recipients listed under each heading. This is because the Commissioner does not consider any exemption under the Act to apply to this information.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 5 January 2005 the complainant requested: "All documents held by Downing Street or the Cabinet Office that relate to the Prime Minister's Christmas Cards for the year 2003 and 2004, including any that relate to the identity of the recipients".

3. The complainant subsequently refined his request on 11 February 2005 to a request for: "A list of the recipients of Christmas Cards from the Prime Minister in the years 2003 and 2004".
4. The Cabinet Office responded to the complainant on 3 March 2005, stating that information relevant to the request is held, in the form of an official Christmas card list for 2004 ('the list') but confirming that a list was not held for 2003.
5. The Cabinet Office informed the complainant that the Prime Minister sends Christmas cards to a wide range of people including leaders of other governments, religious leaders, senior officials and politicians and others. However, it refused to supply the identity of the recipients of the Christmas cards, stating that it is exempt under section 40(2) of the Act (Personal information) as disclosure would contravene the Data Protection Act 1998 (DPA).
6. The complainant requested an internal review of the Cabinet Office's decision on 7 March 2006, in which he stated three grounds for his complaint:
 1. The names of people on the list alone do not constitute personal data under the DPA.
 2. The Cabinet Office is under a duty to seek people's consent to pass on information requested under the Act.
 3. The rejection is almost identical to a previous one in relation to a request for a list of dinner guests entertained by the Prime Minister at Chequers that was overturned by the Cabinet Office following further consideration.
7. Cabinet Office replied to the complainant on 4 May 2005, in which it upheld its decision not to provide the complainant with any of the requested information but reconsidered its grounds for doing so. It stated that in reviewing the case it came to the conclusion that section 40(2) cannot be applied to the names of those individuals with a public profile who one would reasonably expect to receive a Christmas card from the Prime Minister as this could not be considered 'personal data'. For the other names on the list it upheld its decision to apply section 40(2).
8. However, Cabinet Office further concluded that section 36(2)(c) (prejudice to the effective conduct of public affairs) applies to all the information requested in that releasing any of the names of those people who receive Christmas cards from the Prime Minister may offend some people who did not receive cards. It stated that this could damage important relationships and would not therefore be in the public interest and to the extent that this applies to foreign leaders section 27(1)(a) of the Act (international relations) also applies. Finally, Cabinet Office stated that section 38(1)(b) of the Act (Health and safety) applies to some of the information requested in that releasing the names of individuals associated with the personal protection of the Prime Minister would pose a security threat.

The Investigation

Scope of the case

9. On 16 June 2005 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
 - i. As his original request asked for “all information” relating to the 2003 list, he would have expected there to be more information in existence than just the final list. The Cabinet Office also did not disclose whether the final list for 2003 was now archived somewhere else or, under the duty to provide advice and assistance, disclose whether it was held by another department.
 - ii. Whether there were any surrounding documents relating to the 2004 list.
 - iii. Section 40 cannot be applied to people acting in a work or official capacity and the Cabinet Office should have sought consent from those on the list to have their names disclosed.
 - iv. Whether the list should be disclosed in its entirety or on a name-by name basis.
 - v. Section 36(2)(c) has not been used credibly in this case.
 - vi. Whether the Cabinet Office’s reasoning for applying section 27(1)(a) to the names of foreign leaders is justified.
10. The Commissioner decided to focus his investigation upon the Cabinet Office’s refusal to supply the complainant with the 2004 list, analysing the application of each exemption in order to decide whether the list should be disclosed. In terms of the request for the 2003 list and any other supporting documentation, the Commissioner decided that he would judge whether or not this information was held on the basis of the Cabinet Office’s previous assertions to the complainant.

Chronology

11. The Commissioner considered all the documents and information received from the complainant. On 1 March 2006, he wrote to the Cabinet Office to request a copy of the requested information and clarification on its application of each of the exemptions used (sections 40(2), 36(2)(c), 27(1)(a) and 38(1)(b)). The following ten requests are quoted directly from the Commissioner’s letter:
 1. A copy of the information that Mr Adams has requested, namely *“All documents held by Downing Street or the Cabinet Office that relate to the Prime Minister’s Christmas Cards for the year 2003 and 2004, including any that relate to the identity of the recipients”*.

2. An indication of which data protection principle(s) the Cabinet Office would contravene if it disclosed No. 10 staff names and the Cabinet Office's basis for that view.
3. A copy of Jim Murphy MP's formal opinion as to why the release of some of the information that Mr Adams has requested would prejudice (or would be likely to prejudice) the effective conduct of public affairs (FOIA Section 36(2)(c)) including an indication of which part of the requested information this refers.
4. An explanation of how the Cabinet Office reached its decision that the public interest in avoiding prejudice to the effective conduct of public affairs outweighed, in this case, the public interest in disclosure (where this is not already included in Mr Murphy's statement about this case).
5. An explanation of the Cabinet Office's view that the release of some of this information would prejudice (or would be likely to prejudice) relations between the United Kingdom and any other State. Please illustrate this point with particular reference to the requested information.
6. An explanation of how the Cabinet Office reached its decision that the public interest in avoiding prejudice to relations between the UK and any other State outweighed, in this case, the public interest in disclosure.
7. Confirmation of whether the risk of endangered safety that Cabinet Office has identified relates to the Prime Minister's safety or to the safety of those associated with his personal protection (or both).
8. An outline of the functions of those on the Christmas card list associated with the Prime Minister's personal protection but who are not personal protection officers (if applicable).
9. Further detail about the risks that have been identified including comments on how personal protection officers and associated staff could be identified as fulfilling that role if the requested information were to be released.
10. An outline of the competing public interest arguments that the Cabinet Office identified in considering the application of Section 38(1)(b) before reaching its decision that the public interest in maintaining that exemption outweighed the public interest in disclosure.
12. The Cabinet Office replied to the Commissioner on 5 April 2006, in which it supplied a copy of the working list for 2004 (excluding the names of those people involved with the Prime Minister's personal protection) and made the following points:

Information about the list that Cabinet Office has disclosed to the public

- i. The only list held is a working list, which was used as a guide to deciding who should be sent cards. (Therefore those on the list may well not be the only recipients of a Christmas card from the Prime Minister.)
- ii. The Prime Minister's Office recognises the public interest arguments where the expenditure of taxpayers' money is involved and discloses annually the total costs of the Christmas cards as well as the approximate number sent. This fully satisfies the public interest in the matter.

Section 40(2) – Personal information

- i. This relates to names of all those people without a public profile and releasing the names of these individuals would contravene the first data protection principle in that it would not be 'fair' processing.
- ii. Individuals who are not public figures and who received a card in a personal capacity may well have a legitimate expectation that the fact they receive a card will remain personal to them. Releasing these individuals' names risks exposing them to an unfair level of media scrutiny.

Section 36(2)(c) – Prejudice to the effective conduct of public affairs

- i. At the time the request was dealt with, the relevant qualified person was David Miliband MP (then Minister for the Cabinet Office), who indicated his approval for the application of section 36 on 30 March 2005, when he was of the opinion that the release of the requested information would prejudice the effective conduct of public affairs. This continues to be the view of the qualified person, who is now Jim Murphy MP (Parliamentary Secretary at the Cabinet Office). (In a letter to the Commissioner dated 8 May 2006, the Cabinet Office provided the Commissioner with full details of the process by which this approval was supplied.)
- ii. Individuals in the Prime Minister's office are very strongly advised on appointment not to tell anyone outside Government, other than immediate family and close friends, where they work. This is based on the advice of Number 10's security section as a result of a previous incident caused by the disclosure of the name of a member of staff. The Cabinet Office believes that disclosure of their names into the public domain would be likely to disrupt their work and there is also no public interest in releasing the details of members of staff whose work would not otherwise require them to have contact with the public.
- iii. With respect to other names on the list, Cabinet Office considers that there is a strong public interest against disclosing an inaccurate working list, where it is not possible for it to say with certainty that everyone on the list received a card.

- iv. It is important that decisions as to who does and does not receive a card can be made away from public scrutiny. Disclosure of the list would inhibit this means of building and maintaining relationships and could even damage some relationships, in that releasing the names of those people who receive Christmas cards from the Prime Minister might offend people who did not receive cards when they see others did or might have done. It would very likely result in something of a trivial media circus and would significantly inhibit the freedom to produce a list in that it would make it very difficult in the future to remove somebody from the list (for whatever reason). Consequently, an exercise which is currently undertaken efficiently with a very limited use of public resources would need more resources devoted to it in the future. This would be contrary to the public interest.

Section 27(1)(a) – International Relations

- i. This was applied to those on the list who are heads of States and diplomatic representatives from other countries. Personal cards of this nature from the Prime Minister to other Heads of Government form a key part of relationship building at the highest level. Publication of a list which showed which countries had and which had not received cards could cause offence to those countries who had not (when they see that other similar countries did) and might well lead to media speculation about why a particular country had been 'snubbed' which could in itself be prejudicial to our international relations.
- ii. There is the possibility that in the future it might privately wish to remove someone from the list. But routine publication of the list would result in removal being publicly identifiable and interpreted by the media and others as a very public snub. This is particularly the case for foreign leaders where there might be private disagreements or tensions with a particular country which meant that a Christmas card was not sent from the Prime Minister (a card might instead, for example, be sent from the Foreign Office) but it would not wish this to be disclosed so that it is escalated in a way that created a public furore.

Section 38(1)(b)

- i. Releasing the names of individuals associated with the personal protection of the Prime Minister and his family would endanger their personal safety and could pose a security threat to the Prime Minister and his family if their names became public. The names of these individuals are never made public. Furthermore, acquaintances of those individuals who were aware of their profession but not their location of work would now be able to match this information up and it would not be long before this information was used more widely. There is no public interest in releasing this information. The Cabinet Office outlined a previous incident to illustrate this point.

Identifying the personal details of individuals with no public profile

- i. Given the nature of the list there would be some people who would not be easily identifiable. However, its understanding is that it is relatively straightforward once a person's name is known to link that name with a residential address with a minimum of supporting information, using resources such as telephone directories, electoral rolls and credit registers. Internet directories bring together a range of such resources, and can be used essentially anonymously. It also has no way of knowing what other information is in the possession of those who might wish to target individuals in this way.
 - ii. Even if an individual were not identified in this way, his or her name would still be in the public domain in circumstances where a connection with the Prime Minister can be inferred.
13. Having considered the Cabinet Office's reply, the Commissioner wrote to the Cabinet Office on 18 September 2006 to seek comment on a number of additional points, namely:
 - i. It does not appear that any prejudice which may be caused to international relations if the list were released is sufficiently strong for the section 27 exemption to be engaged, particular in relation to its view that offence could be caused to countries not appearing on the list and any media speculation this may cause.
 - ii. Although a working list may be misleading in terms of who actually receives a card, the Cabinet Office could simply make this clear when supplying the list.
 - iii. 'Embarrassment' is not a factor the Commissioner would take into account in deciding whether an exemption applies.
 - iv. Who it considers to be the names of people on the list who do not have a public profile.
 - v. How its position can be considered consistent with a previous Cabinet Office case whereby the names of guests at Chequers had been disclosed under the Act.
14. The Cabinet Office responded to the Commissioner on 17 November 2006, in which it made the following additional points:
 - i. Having considered the matter, it is not thought that making clear the status of the list when supplying it would deal with the prejudice that could arise were the names of those who had been removed from the final list and who had not eventually been sent cards entered the public domain. The possibility of 'embarrassment' is not a factor that has ever been considered or taken into account in this case. It remains the case that there is no public interest in disclosing an inaccurate list.

- ii. The categories of people on the list to whom section 40 applies includes individuals working at the House of Commons, people who provide services to number 10, people the Prime Minister has come into contact with on his visits during the year and staff at Chequers. Such individuals' contact with the Prime Minister's office is not on the basis of any expectation of public recognition.
- iii. Guests at Chequers will have accepted an official invitation to attend an official function and can have an expectation that the details of such events will be made public. Cabinet Office does not believe that this is the case with recipients of Christmas cards who will not have been contacted in advance to ask whether they wish to receive a card.
- iv. Only the most senior people working at 10 Downing Street are publicised (via the Downing Street website). This list consists of eight people. Disclosure of others who work there is not the same as the disclosure of names of individual members of staff when corresponding with particular individuals.

Findings of fact

15. During the course of the Commissioner's investigation he established that the Cabinet Office holds a working list for 2004 and that this working list does not necessarily reflect all those in receipt of a Christmas card.
16. The Commissioner further established the categories used in the 2004 working list under which each of the recipients are listed.
17. The Cabinet Office advised the Commissioner that Heads of State who do not receive a card from the PM may still have received a card from HM Government (e.g. from the Foreign Office).
18. The Commissioner analysed the contents of the list and obtained full documentation to be satisfied that the reasonable opinion of the qualified person (under section 36) was obtained in accordance with the requirements of the Act. The Commissioner did so by asking the Cabinet Office to provide clarification that would enable him to:
 - Establish that an opinion was given,
 - Ascertain who is the qualified person/s for the Cabinet Office,
 - Ascertain when the opinion was given,
 - Consider whether the opinion given was both objectively reasonable in substance and reasonably arrived at.

Analysis

Procedural matters

Duty to confirm or deny

19. Section 1(1)(a) of the Act states that “Any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request.”
20. The Commissioner is satisfied with the Cabinet Office’s response that in relation to the complainant’s refined request of 11 February 2005 it only holds a 2004 working list. This is because the Cabinet Office provided written representation to the complainant to explain that on the basis of a search of its records it was able to confirm that an official Christmas card list for 2003 was not held. The Commissioner accepts this explanation and notes that the complainant did not dispute the explanation for the 2003 list in his request for an internal review. The Commissioner therefore considers the Cabinet Office to have correctly met its obligation under section 1(1)(a) of the Act.

Exemptions

21. The full provisions of all the exemptions relied upon by the Cabinet Office can be found in the legal annex.
22. The exemptions under sections 27, 36 and 38 are qualified exemptions and therefore the public interest test must also be considered in applying these exemptions. This test is set out in section 2(2)(b) of the Act and states that the obligation to disclose information under section 1(1)(b) does not apply if or to the extent that “in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.”

Section 27(1)(a) – International Relations

23. In analysing the application of section 27, the Commissioner considered the High Court ruling in the case of *R (on the application of Lord) v Home Office*, a Data Protection case, which considered the meaning of the phrase ‘likely to prejudice’. It stated that the phrase connotes “a degree of probability where there is a very significant and weighty chance of prejudice to the identified public interests. The degree of risk must be such that there ‘may very well’ be prejudice to those interests, even if the risk falls short of being more probable than not.” This ruling has also been referred to in previous decisions of the Information Tribunal.
24. Bearing this ruling in mind, the Commissioner analysed whether disclosure of the names of foreign leaders on the list would prejudice relations between the UK and any other State(s) and reached the conclusion that he does not consider section 27(1)(a) to be engaged in relation to the names of foreign leaders. This is because the Cabinet Office has not provided any evidence to show that the UK’s international relations would be likely to be prejudiced by disclosure and the

Commissioner cannot see how this can be the case. Specifically, he reached this conclusion after considering the following factors:

- A Head of State would be aware of whether or not they had received a Christmas card, regardless of whether or not the list was disclosed.
- The list contains no obviously controversial entries/omissions.
- It is reasonable to assume that those Heads of State and government on the list receive a Christmas card.
- Foreign leaders who are on the list but did not receive a card from the PM may still have received a card from HM Government (e.g. from the Foreign Office).

25. As the Commissioner does not consider this exemption to be engaged in relation to the names of foreign leaders, he did not assess the public interest in its maintenance.

Section 38(1)(b) – Health and safety

26. Section 38(1)(b) provides that information is exempt if its disclosure under the Act would, or would be likely to endanger the safety of any individual. The Commissioner considers this exemption to be engaged in relation to the names of individuals involved in the personal protection of the Prime Minister. He has concluded that disclosure of these names would be likely to put the safety of these individuals and their families at risk. This is because other personal details about these individuals are likely to become identifiable if their names were disclosed. Should this happen it would be likely to leave these individuals vulnerable to those who might wish to undermine the security of the Prime Minister and his family.

27. Section 38 is a qualified exemption. This means that even if the information requested is exempt the public authority must decide whether the public interest in maintaining the exemption outweighs the public interest in its disclosure. In other words the harm that would be likely to be caused to any individual by the disclosure would be greater than the public interest in the disclosure.

28. The Commissioner considers that the general factors that could weigh in favour of disclosure under section 38 in a case such as this are:

- Furthering the understanding and participation in the public debate of issues of the day.
- Promoting accountability and transparency by public authorities for decisions taken by them.
- Promoting accountability and transparency in the spending of public money.

The Commissioner was therefore required to weigh the risk to the safety of those involved in the personal protection of the Prime Minister (and their families) against the benefit that disclosure of the identity of these individuals might bring in terms of informing public debate and promoting accountability and transparency. The Commissioner concluded from this exercise that none of the above factors in favour of disclosure apply in this case and he therefore believes that there is no public interest in the disclosure of these names.

Section 40(2) – Personal information

29. The Commissioner accepts that the names of people appearing on the list with no public profile constitute personal data for the purposes of the Data Protection Act 1998 (DPA).
30. The Commissioner accepts the Cabinet Office's reasoning for applying section 40(2) to the names of people with no public profile. This is because it is likely that such individuals would not have expected to receive a card from the Prime Minister whether they are received the card in a personal or public capacity. He also believes that it would be possible for the public to discover other personal information about the individuals such as their personal addresses and telephone numbers were their names to be disclosed.
31. Specifically, the Commissioner believes that disclosure of these names would breach the first Data Protection principle, which states that personal data shall be processed both fairly and lawfully.
32. However, the Commissioner is unable to identify the exact names on the list to which he considers this exemption to apply. This is because the list is structured in such a way that does not allow for one to be able to distinguish those recipients who do not have a public profile.

Section 36(2)(c) – Prejudice to effective conduct of public affairs

33. As section 36(2)(c) refers to prejudice to the effective conduct of public affairs, it is not restricted solely to the functions of a public authority and its ability to perform those functions. The Commissioner considers that section 36(2)(c) is only available in cases where the disclosure would or would be likely to prejudice the public authority's ability to offer an effective public service, or to meet its wider objectives or purpose (rather than simply to function) due to the disruption caused by the disclosure and the diversion of resources in managing the impact of disclosure.
34. The Commissioner accepts that section 36(2)(c) is engaged in this case and notes that the opinion of the relevant qualified person has been sought on two occasions and each time this individual found that prejudice to the effective conduct of public affairs would be caused by disclosure of any of the names of those people who receive cards from the Prime Minister. The Commissioner has seen nothing to suggest that these two opinions were not reasonable.

35. The Commissioner wishes to highlight the Information Tribunal decision of 8 January 2007 (*Guardian Newspapers Limited and Heather Brooke v Information Commissioner and British Broadcasting Corporation*, in which the Tribunal states that “if the opinion is reasonable, the Commissioner should not under section 36 substitute his own view for that of the qualified person. Nor should the Tribunal.”
36. However, section 36 is a qualified exemption and therefore subject to the public interest test. In determining the public interest under section 36, the Commissioner considered the following arguments put forward in favour and against the maintenance of the exemption:

In favour:

- The fact that, on two occasions, the relevant qualified person was of the opinion that disclosure would (or would be likely to) prejudice the effective conduct of public affairs is in itself evidence supporting the public interest in maintaining the exemption.
- The working list does not provide an accurate list of individuals receiving cards from the Prime Minister. (Simply explaining this when disclosing the list would be unlikely to deal with any offence caused to individuals who are on the list but did not receive a card.)
- There is a public interest in maintaining the free space to enable the PM and his staff to decide whom to send cards to. Disclosure of the list could inhibit this method of building and maintaining relationships.
- Releases of the list would result in a trivial annual media circus meaning that the creation and maintenance of the list would be far more laborious than is currently the case. It would also make it very difficult to remove people from the list.

Against:

- Disclosure would assist the public in understanding how public funds are used (although this is mitigated by the response provided by the Prime Minister to a parliamentary question on the matter, detailing the cost and number of cards sent).
 - Disclosure could enhance the public's understanding of public affairs through being aware of who received cards from the PM.
37. The Commissioner disregarded the potential inaccuracy of the list or the potential of offence being caused to people who are not on the list in his analysis of the public interest test. This is because he does not consider these factors to be a relevant public interest argument.
38. Using the Information Tribunal's analysis of section 36, the Commissioner has concluded that section 36(2)(c) is engaged in relation to the details of foreign leaders but, in all the circumstances, does not consider that the public interest arguments for maintaining this exemption in relation to those names outweigh the public interest in disclosure.

39. However, having considered the public interest arguments put forward by the Cabinet Office, the Commissioner has also concluded that, in all the circumstances of the case, on balance the public interest in maintaining the exemption in relation to all the remaining names on the list outweighs the public interest in disclosure.

The Decision

40. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- i. The application of section 1(1)(a) in relation to information held in relation to the request
 - ii. Section 36 in relation to all recipients of cards, excluding foreign leaders
 - iii. The application of Section 38
 - iv. The application of section 40
41. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- i. The application of section 27
 - ii. The application of section 36 in relation to the names of foreign leaders
42. The Commissioner notes that all the reasoning provided by the Cabinet Office relates to the names of individuals on the list. However, the Commissioner has decided that there is other information contained within the list (and therefore falls within the scope of the complainant's request) which does not identify any individual recipients and to which none of the Cabinet Office's arguments for non-disclosure apply. They are:
1. The headings used in the list under which recipients are listed
 2. The numbers of recipients listed under each heading
43. The Commissioner has decided that the above information falls within the scope of the complainant's request and does not consider the information to fall within an exemption from disclosure under the Act. Accordingly, he has also decided that the following additional element of the request was not dealt with in accordance with the Act:
- iii. Section 1(1)(b) in relation to all information contained in the list, other than the names of recipients

Steps Required

44. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- i. Disclose to the complainant the names of all foreign leaders/heads of state on the 2004 list.
 - ii. Disclose to the complainant the headings on the list under which recipients are listed.
 - iii. Disclose to the complainant the numbers of recipients on the list under each heading.
45. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

46. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

47. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 26th day of March 2007

Signed

**Richard Thomas
Information Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal annex

International Relations

Section 27(1) provides that –

“Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) relations between the United Kingdom and any other State,
- (b) relations between the United Kingdom and any international organisation or international court,
- (c) the interests of the United Kingdom abroad, or
- (d) the promotion or protection by the United Kingdom of its interests abroad.”

Section 27(2) provides that –

“Information is also exempt information if it is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court.”

Section 27(3) provides that –

“For the purposes of this section, any information obtained from a State, organisation or court is confidential at any time while the terms on which it was obtained require it to be held in confidence or while the circumstances in which it was obtained make it reasonable for the State, organisation or court to expect that it will be so held.”

Section 27(4) provides that –

“The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a)-

- (a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1), or
- (b) would involve the disclosure of any information (whether or not already recorded) which is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court.”

Section 27(5) provides that –

“In this section-

"international court" means any international court which is not an international organisation and which is established-

- (a) by a resolution of an international organisation of which the United Kingdom is a member, or
- (b) by an international agreement to which the United Kingdom is a party;

"international organisation" means any international organisation whose members include any two or more States, or any organ of such an organisation;

"State" includes the government of any State and any organ of its government, and references to a State other than the United Kingdom include references to any territory outside the United Kingdom."

Prejudice to effective conduct of public affairs

Section 36(1) provides that –

"This section applies to-

- (a) information which is held by a government department or by the National Assembly for Wales and is not exempt information by virtue of section 35, and
- (b) information which is held by any other public authority.

Section 36(2) provides that –

"Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act-

- (a) would, or would be likely to, prejudice-
 - (i) the maintenance of the convention of the collective responsibility of Ministers of the Crown, or
 - (ii) the work of the Executive Committee of the Northern Ireland Assembly, or
 - (iii) the work of the executive committee of the National Assembly for Wales,
- (b) would, or would be likely to, inhibit-
 - (i) the free and frank provision of advice, or
 - (ii) the free and frank exchange of views for the purposes of deliberation, or
- (c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

Section 36(3) provides that –

"The duty to confirm or deny does not arise in relation to information to which this section applies (or would apply if held by the public authority) if, or to the extent that, in the reasonable opinion of a qualified person, compliance with section 1(1)(a) would, or would be likely to, have any of the effects mentioned in subsection (2)."

Section 36(4) provides that –

"In relation to statistical information, subsections (2) and (3) shall have effect with the omission of the words "in the reasonable opinion of a qualified person".

Section 36(5) provides that –

"In subsections (2) and (3) "qualified person"-

- (a) in relation to information held by a government department in the charge of a Minister of the Crown, means any Minister of the Crown,
- (b) in relation to information held by a Northern Ireland department, means the Northern Ireland Minister in charge of the department,
- (c) in relation to information held by any other government department, means the commissioners or other person in charge of that department,
- (d) in relation to information held by the House of Commons, means the Speaker of that House,
- (e) in relation to information held by the House of Lords, means the Clerk of the Parliaments,
- (f) in relation to information held by the Northern Ireland Assembly, means the Presiding Officer,
- (g) in relation to information held by the National Assembly for Wales, means the Assembly First Secretary,
- (h) in relation to information held by any Welsh public authority other than the Auditor General for Wales, means-
 - (i) the public authority, or
 - (ii) any officer or employee of the authority authorised by the Assembly First Secretary,
- (i) in relation to information held by the National Audit Office, means the Comptroller and Auditor General,
- (j) in relation to information held by the Northern Ireland Audit Office, means the Comptroller and Auditor General for Northern Ireland,
- (k) in relation to information held by the Auditor General for Wales, means the Auditor General for Wales,
- (l) in relation to information held by any Northern Ireland public authority other than the Northern Ireland Audit Office, means-
 - (i) the public authority, or
 - (ii) any officer or employee of the authority authorised by the First Minister and deputy First Minister in Northern Ireland acting jointly,
- (m) in relation to information held by the Greater London Authority, means the Mayor of London,
- (n) in relation to information held by a functional body within the meaning of the Greater London Authority Act 1999, means the chairman of that functional body, and
- (o) in relation to information held by any public authority not falling within any of paragraphs (a) to (n), means-
 - (i) a Minister of the Crown,
 - (ii) the public authority, if authorised for the purposes of this section by a Minister of the Crown, or
 - (iii) any officer or employee of the public authority who is authorised for the purposes of this section by a Minister of the Crown.”

Section 36(6) provides that –

“Any authorisation for the purposes of this section-

- (a) may relate to a specified person or to persons falling within a specified class,
- (b) may be general or limited to particular classes of case, and
- (c) may be granted subject to conditions.”

Section 36(7) provides that –

A certificate signed by the qualified person referred to in subsection (5)(d) or (e) above certifying that in his reasonable opinion-

- (a) disclosure of information held by either House of Parliament, or
- (b) compliance with section 1(1)(a) by either House, would, or would be likely to, have any of the effects mentioned in subsection (2) shall be conclusive evidence of that fact.

Health and safety

Section 38(1) provides that –

“Information is exempt information if its disclosure under this Act would, or would be likely to-

- (a) endanger the physical or mental health of any individual, or
- (b) endanger the safety of any individual.”

Section 38(2) provides that –

“The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, have either of the effects mentioned in subsection (1).”

Personal information

Section 40(1) provides that –

“Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.”

Section 40(2) provides that –

“Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.”

Section 40(3) provides that –

“The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.”

Section 40(4) provides that –

“The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).”

Section 40(5) provides that –

“The duty to confirm or deny-

- (a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and
- (b) does not arise in relation to other information if or to the extent that either-
 - (i) he giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or
 - (ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).”

Section 40(6) provides that –

“In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.”

Section 40(7) provides that –

In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;

"data subject" has the same meaning as in section 1(1) of that Act;

"personal data" has the same meaning as in section 1(1) of that Act.