

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 20 November 2007

Public Authority: Ministry of Justice
Address: Selborne House
54 Victoria Street
London
SW1E 6QW

Summary

The complainant requested for access to all correspondence undertaken, and minutes of meetings between officials at the DCA and the West Midlands Magistrates Court Committee (WMMCC) regarding a letter issued to all magistrates in Coventry dated 12 May 2004. This letter stated that several magistrates had reported to court officials racist comments made by fellow magistrates. The public authority refused to disclose the requested information citing sections 21, 36 and 42 of the Freedom of Information Act 2000.

After a careful evaluation of the requested information, the submissions of the parties and the relevant provisions of the Act, the Commissioner's decision is that the public authority had validly applied the section 21 and 42 of the Act. With regard to section 36, the Commissioner found that the DCA had validly applied the exemption to parts of the information, and that it was in the public interest to partially disclose other parts of the requested information. The Commissioner has therefore ordered the Ministry of Justice to disclose a redacted version of the relevant information to the Complainant.

The Commissioner has also found that the public authority had breached section 17(1) of the Act.

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.

This request for information was originally made to the Department for Constitutional Affairs (DCA) in March 2005. The DCA has now ceased to exist and its functions have been transferred to the Ministry of Justice (MOJ). Therefore this notice has been served on the MOJ, the public authority referred to above

The Request

2. On 24 March 2005 (the relevant date), the complainant made a request for *“all correspondence undertaken, including emails, and minutes of meetings between officials at the DCA and the [WMMCC]”* regarding a letter issued to magistrates in Coventry dated 12 May 2004 (“the requested information”).

This letter (“the May letter”) stated that several magistrates had reported to court officials racist comments made by fellow magistrates.

3. In its response dated 3 May 2005, the DCA informed the complainant that it held the requested information and stated that in its view the Section 36 of the Act applied to the requested information.
4. On 14 June 2005, the DCA wrote to the complainant stating that it had decided to withhold parts of the requested information under section 21 of the Act because it understood that the WMMCC had already provided copies of this information to him.
5. The complainant was also advised that some information was being withheld under section 42 because the information was correspondence with, instructions to and advice from its departmental lawyers. Finally, the DCA informed the complainant that, under section 36, the qualified person had formed the view that disclosure of some information would or would be likely to prejudice the effective conduct of public affairs.
6. The DCA confirmed to the complainant that, after consideration of the public interest test, it was satisfied that the public interest in maintaining the applied exemptions in sections 36 and 42 outweighed the public interest in disclosure of the withheld information.
7. On 23 February 2006 the complainant made a request for an internal review of the public authority’s decision. On 2 May 2006, the DCA confirmed that the internal review had taken place. The internal review upheld the original decision to withhold the requested information.

The Investigation

Scope of the case

9. The complainant was dissatisfied with the result of the internal review and, on 20 September 2005, he made a complaint to the Commissioner under section 50 of the Act for a review of the DCA decision to withhold the requested information.
10. This Decision Notice has utilised information submitted in another request for identical information made by the complainant to the WMMCC (see paragraphs 17 to 19)

Chronology

11. On 7 September 2006, the Commissioner contacted the DCA to request copies of the withheld information, and further comments on its handling of the complainant's requests.
12. In its response dated 19 January 2007¹, the DCA provided further comments to justify its application of sections 21, 36 and 42 of the Act to withhold information from the complainant.

Findings of fact

13. There are about 30,000 magistrates in the UK and they are formally known as Justices of the Peace (JP). These terms have been used interchangeably in this notice.
14. From 1 April 2005 magistrates joined with the professional judiciary to work with Her Majesty's Courts Service which administers all the courts in England and Wales².

Background

15. On 12 May 2004, the May letter was written to magistrates in Coventry by senior officials of the Coventry Magistrates Court³ reminding all magistrates about the need to observe appropriate behaviour when discharging their duties as magistrates.
16. The May letter stated that, over *"recent weeks a number of members of the Bench have reported to me and the Court Centre Manager racist comments that have been made by magistrates in the assembly room, the retiring rooms and on training courses. Although there has been no formal complaint...it has been agreed that a letter be sent to all magistrates on the bench reminding you of what is expected..."*
17. The content of the May letter was reported in the Coventry Evening Telegraph on or around 17 June 2004, after which the matter was taken up by a Coventry City councillor, who wrote to the Clerk of the Justices demanding that swift action be taken to identify the magistrates responsible.
18. However, all efforts to identify the magistrates responsible for the racist comments proved unsuccessful.
19. The complainant had made an identical request to the WMMCC on 12 January 2005. On 8 February and 18 February 2005 the WMMCC disclosed the following information to the complainant:

¹ The DCA response was originally sent to the caseworker investigating the other WMMCC complaint. However it has been adopted for use in this complaint. See paragraph 10 above.

² www.hmcourts-service.gov.uk

³ The letter was signed by the Clerk to the Justices, Chairman of the Bench and his deputies.

- (i) a copy of the May letter,
- (ii) a copy of a letter dated 21 June 2004 to the Clerk to the Justices from a local councillor,
- (iii) a copy of a letter dated 6 July 2004 to the local councillor from the Clerk to the Justices,
- (iv) letters dated 4 and 18 October 2004 to the local councillor from a DCA official, and
- (v) a letter dated 21 October 2004 to the councillor from the Clerk of the Justices.

In refusing to disclose the balance of the information requested by the complainant, the WMMCC had applied section 36 of the Act.

- 20. On 15 July 2005, the complainant made a request to the Commissioner to investigate the decision taken by the WMMCC. The Commissioner commenced his investigation of the WMMCC complaint on 31 August 2006.
- 21. On 2 March 2007, an official of the DCA sent an email to the caseworkers investigating the DCA and WMMCC complaints. In the email, the DCA official stated that he had “...retrieved [all] the information that fell [within] the scope of the [complainant's] request to what was the old West Midland Magistrates Court Committee. All the information that they held is held separately by the [DCA] in its own right...” The DCA official suggested that an invitation be extended to the complainant to close the WMMCC request and concentrate his request for access to the requested information on the DCA complaint.
- 22. In a letter dated 2 March 2007, the Commissioner informed the complainant that the DCA had advised that all of the relevant information relating to the WMMCC was held by the DCA separately in its own right. The complainant was also advised that as the WMMCC no longer existed the WMMCC complaint would be closed and the matter investigated under the DCA complaint.

Analysis

Procedural matters

- 23. To establish initially whether the DCA has correctly handled the complainant's request, the Commissioner has to determine whether the DCA has fulfilled its procedural obligations under the Act.

A full text of the statutory provisions referred to is contained in the legal annex.

24. Section 17(1) provides that where the authority is relying on an exemption relevant to the applicant's request, it must issue a Refusal Notice within 20 working days, specifying the exemption and how it applies.
25. The Commissioner notes that the complainant's request for information was made on 24 March 2005. The response from the DCA was dated 3 May 2005. As this was more than 20 working days, the Commissioner finds that the DCA was in breach of the requirements of section 17(1) of the Act.

Exemption

26. The DCA has applied sections 21, 36 and 42 of the Act to withhold the information requested by the complainant. The requested information consists of:
 - (i) *Accessible Information*, i.e. information which DCA assert was readily accessible to the complainant by other means, under section 21,
 - (ii) *Official Information*, i.e. information, which DCA described as "*communications between DCA Officials, and between DCA officials and the Justices Clerk*". DCA asserts that disclosure of this information would cause prejudice to the effective conduct of public affairs under section 36, and
 - (iii) *Advice Information*, i.e. communications with, and advice given by the DCA departmental lawyer. The DCA asserts that this information should be withheld as it is covered by legal professional privilege under section 42 of the Act.
27. The Commissioner will now deal with this case by considering the public authority's application of these exemptions. A full text of the relevant sections of the Act referred to are contained in the legal annex.

Section 21

28. Under section 21(1) of the Act, information that is reasonably accessible to the complainant by means other than the Act is exempt. The DCA states that parts of the requested information were supplied to the complainant by the WMMCC. The Accessible Information is made up of copies of letters from a named Councillor, and responses to those letters from the WMMCC and the DCA.
29. The Commissioner has noted that the Accessible Information was sent to the complainant on 8 and 18 February 2005 (please see paragraph 19, above). Therefore the Commissioner is satisfied that this information has been provided to the complainant and is clearly accessible to him.
30. Consequently, the Commissioner finds that the DCA has correctly applied section 21 of the Act to the Accessible Information.

Section 36

31. The DCA stated that, disclosing the requested information would prejudice the effective conduct of public affairs. Consequently, subject to the public interest test, the requested information is exempt as provided for by section 36(2)(c) of the Act.
32. Section 36 requires the production of a reasonable opinion by the qualified person that, disclosure of the Official Information would or would be likely to prejudice the effective conduct of public affairs. The DCA has confirmed that in this case, the qualified person was Lord Falconer, then Secretary of State for Constitutional Affairs.
33. The Commissioner has taken into account the DCA's summary of the key issues considered by the qualified person in relation to section 36(2) (c), which were:
- *“the prejudicial effect of disclosure on the frankness and candour of internal discussion;*
 - *the prejudicial effect of disclosure on making a written record of confidential discussion; and*
 - *the prejudicial effect on the investigative process, and the DCA's ability to deal with similar issues should they arise in the future which...*
 - *in turn would prejudice the Secretary of State's ability to effectively carry out his disciplinary functions in relation to the members of the judiciary and therefore prejudice the effective conduct of public affairs.”*
34. The Commissioner does not concur with the qualified person's opinion with regard to an item of Official Information contained in an email from the DCA to the WMMCC dated 25 May 2004. This email contains a paragraph (the extract) taken from the: Lord Chancellor's Directions for Advisory Committees on Justices of the Peace (the Directions).
35. The Commissioner's investigation revealed that the extract (paragraph 19.1 of the Directions) was readily available to the public on the relevant date⁴. There is also evidence to show that the extract may have at one time been published on the former Lord Chancellor's Department website.⁵

⁴ For example, see Annex to the reply from the Lord Chancellor dated 9 January 2003 (www.publications.parliament.uk/pa/ld200203). In the main reply the Lord Chancellor states "...his powers of removal are described in the published Directions for Advisory Committees on Justices of the Peace".

⁵ The Lord Chancellor's Department was a precursor to the DCA. In paragraph 5.15 of the Judicial Appointments Annual Report 2001-2002 (see www.dca.gov.uk/judicial/ja_arep2002), the DCA stated that it plans to "issue the revised Lord Chancellor's Directions for Advisory Committees on Justices of the Peace in autumn 2002. They will be available on the Department's website (www.lcd.gov.uk)"

36. In *Guardian Newspapers Limited and Heather Brooke vs. Information Commissioner and BBC*⁶ (the Brooke Appeal⁷), the Information Tribunal considered the sense in which the qualified person's opinion under section 36 is required to be reasonable. The Tribunal concluded that, "...the opinion must be both reasonable in substance and reasonable arrived at."⁷
37. The Commissioner therefore considers that the Lord Chancellor's opinion that - disclosure of this extract would, or would be likely to prejudice the effective conduct of public affairs – cannot be considered to have been objectively reasonable in circumstances where the information was as of the relevant date already available in the public domain.

Consequently, the Commissioner finds that section 36 is not engaged with regard to the extract.

38. Notwithstanding the above, the Commissioner is satisfied that, leaving aside the extract taken from the Directions (paragraph 34), the opinion of the qualified person is reasonable in respect of the Official Information.

Consequently he finds that the exemption under section 36 is correctly engaged.

Public interest test

39. Having decided that the exemption is engaged, the Commissioner must then consider whether the public interest in maintaining the exemption outweighs the public interest in disclosing the Official Information.
40. In his approach to the competing public interest arguments in this case, the Commissioner has drawn heavily from the Information Tribunal's Decision in the Brooke Appeal⁸, where the Tribunal considered the law relating to the balance of public interest in cases where the section 36 exemption applied.
41. The Commissioner notes and adopts in particular its conclusions that, having accepted the reasonableness of the qualified person's opinion that disclosure of the information would, or would be likely to, have the stated detrimental effect, the Commissioner must give weight to that opinion as an important piece of evidence in his assessment of the balance of public interest. However, in order to form the balancing judgment required by s 2(2) (b), the Commissioner is entitled, and will need, to form his own view on the severity, extent and frequency with which detrimental effect will or may occur.
42. Applying this approach to the present case, the Commissioner recognises that there are public interest arguments which pull in competing directions. Leaving aside the extract taken from the Directions (see paragraphs 34 to 37), he gives full weight to the qualified person's reasonable opinion that there would, or would be likely to be, some prejudice to the effective conduct of public affairs.

⁶ Appeals Numbers: EA/2006/0011 and EA 2006/0013

⁷ paragraph 64.

⁸ at paragraphs 81 – 92.

43. The complainant asserts that the public interest is in the information being disclosed because in his view, *“openness and transparency are paramount when allegations of such serious nature are levelled at people in such a position as magistrates. It must be the case that the people of Coventry have a right to see how the people who administer justice in the city are dealt with when such allegations are made. They also have the right and expectation that the discussions of public officials regarding a matter of such great public importance are not held in secret”*.
44. The DCA’s position that the public interest lies in withholding the official information is based on the prejudicial effects of disclosure which were considered by the qualified person (see paragraph 34). According to the DCA, the public interest rests in withholding the Official Information because *“officials need the space in which to discuss sensitive issues, free from external pressure and scrutiny, in order to ensure that all the options are properly considered. The discussion of this type of information would make officials less likely to engage in written discussions as part of the investigative process. Weakening the confidentiality of such investigations would impact on, and prejudice, the department’s ability to deal with similar issues, should they arise in the future”*.
45. The Commissioner acknowledges the arguments which have been submitted by the parties.
46. The Commissioner recognises that there is an inherent public interest in ensuring that public authorities are transparent in the decisions they take in order to promote accountability. He also accepts that there is a strong public interest in disclosing information where to do so would help determine whether public authorities are acting, or have acted appropriately. This is specially so given the background of this case – an allegation of racist comments made against several magistrates. Therefore, in his view, disclosing information about the conduct of business in the court may provide court users with confidence in the legal system and allow the public to be satisfied that the legal system is operating effectively.
47. Notwithstanding the above, the Commissioner is also aware that frank and honest internal deliberation among the DCA and the WMCC officials (together referred to as “justice officials”) is essential for investigating allegations of improper conduct made against magistrates. There is a public interest, in these circumstances, in maintaining this private space for discussion away from public scrutiny in order to ensure an effective investigation, and adequate treatment of issues that may arise from such investigations.
48. The Commissioner has considered these competing public interest arguments in favour of maintaining the exemption and in favour of disclosure. He has concluded that the public interest lies in a partial disclosure of the Official Information.
49. To facilitate the partial disclosure of this information, the Commissioner has edited the documents in question to remove from them all of the information which he considers that it is not in the public interest to disclose.

This edited version of the Official information is contained in Annex 2 of this notice and will be provided exclusively to the public authority.

50. The Commissioner's conclusion on the partial disclosure of the Official Information is based on following considerations.

Redacted information

51. With regard to the information that he has redacted, the Commissioner believes that the potential harm that would be caused by its disclosure would outweigh the public interest in disclosure.
52. Magistrates play a vital role in the English Legal System. Magistrates courts deal with 95 per cent of the cases in the criminal justice system and many civil cases, for example, family matters, liquor licensing and betting and gaming. As magistrates come from every sector of society, it is in the public interest that magistrates possess a high standard of personal conduct to command the confidence of the communities which they serve, especially with regard to their ability to discharge their judicial duties. This high standard requires an acute sense of impartiality combined with the ability to make well-informed and merit-based judicial decisions, without any pre-conceived notions that discriminates on the basis of race, gender, disability and so on.
53. The Commissioner fully recognises the solemnity and binding nature of the Judicial Oath⁹ taken by magistrates. In his view, magistrates that fail to observe and discharge their judicial duty in accordance with the Judicial Oath, should be quickly identified and appropriately disciplined.
54. The Commissioner believes categorically that prejudice-based judicial decisions are not in the public interest. Therefore he considers that an effective process for investigating all such allegations of racism is in the greater public interest because of the benefits to public confidence; especially within the local communities in which the magistrates discharge their judicial duties.
55. The Official Information contains candid and frank communications about the circumstances in which the complaints of racist language arose, and considerations on how the complaint should be effectively investigated. The Commissioner recognises that it was important that in the course of dealing with this allegation of racism, justice officials were provided with an opportunity to consider matters candidly and robustly, particularly those issues which were likely to prove complex and contentious, on the understanding that their thinking will not be exposed in a manner likely to inhibit the frank expression of this opinion.
56. In the circumstances of this case, the Commissioner believes that there would be a detrimental impact on the investigation process if the justice officials were not provided with a protected private space to pursue such deliberations. He accepts

⁹ On commencement of office, magistrates take the Judicial Oath by swearing that they "will well and truly serve our Sovereign Lady Queen Elizabeth the Second, in the office of Justice of the Peace and will do right to all manner of people after the laws and usages of the Realm without fear or favour, affection or ill will"

that justice officials would be less likely to enter into the free and frank exchange of views about particular courses of action and options open to them if they thought those views were likely to be subject to public scrutiny.

57. In the particular circumstances of this case, the Commissioner considers that, due to the requirement of ensuring public confidence in the Magistrate Courts (and a high standard of magistrates), the desirability for openness and transparency through disclosing the redacted information is not sufficient to outweigh the harm that would be caused to the process for investigating allegations of racism in the judiciary.
58. Consequently, the Commissioner is satisfied that the public interest in maintaining the section 36 exemption outweighs the public interest in the DCA disclosing the redacted information.

Non-redacted information

59. With regard to the information that has not been edited by way of redaction, the Commissioner believes that the potential harm that would be caused by its disclosure would not outweigh the public interest in disclosure.
60. In the particular circumstances of this case, the Commissioner has doubts about the likelihood, severity or extent of substantial harm to the public interest arising from the disclosure of this information because he considers that the non-redacted information:
- (i) does not consist of a free and frank exchange of views relating to the investigation process, and consequently is not of the type to benefit from the protected space for internal deliberations,
 - (ii) is a repetition of facts contained in letters that have been provided to the complainant under the Act, or already published (see paragraphs 16 to 19), and
 - (iii) provides information beneficial to the public about the kind of support provided to magistrates to enable them discharge their roles effectively.
61. The Commissioner considers that disclosure of the non-redacted information would lead to greater transparency due to the public's right to know that:
- complaints against magistrates (such as complaints about alleged racism in the magistracy) are taken seriously and thoroughly investigated.
 - magistrates are provided with full training and support to enable them to discharge their duties.

This level of transparency would reinforce public confidence in the Magistrates Courts' ability to effectively fulfil their vital role in the English Legal System.

62. Accordingly, the Commissioner is satisfied that the public interest in maintaining the section 36 exemption does not outweigh the public interest in the DCA disclosing the non-redacted information.

Section 42 – Legal Professional Privilege

63. The Commissioner has considered whether section 42 was correctly applied to the Advice Information. This exemption is “*class based*” and therefore it is not necessary to be able to point to some harm or prejudice that may arise as a result of disclosure.
64. The DCA contends that communication with, and advice from departmental lawyers relating to the investigation of the alleged racist remarks is exempt because of legal professional privilege.
65. Legal professional privilege protects the confidentiality of communications between a lawyer and client. It can be described as a set of rules or principles which are designed to protect the confidentiality of legal or legally related communications and exchanges between the client and his, her or its lawyers; as well as exchanges which contain or refer to legal advice which might be imparted to the client, and even exchanges between the clients and their parties if such communication or exchanges come into being for the purpose of preparing for litigation.
66. There are two types of privilege – legal advice privilege and litigation privilege. In both cases, the communications must be confidential, made between a client and professional legal adviser acting in their professional capacity and made for the sole or dominant purpose of obtaining legal advice. Communications made between adviser and client in a relevant legal context will attract privilege. Litigation privilege will be available in connection with confidential communications made for the purpose of providing or obtaining legal advice in relation to proposed or contemplated litigation.
67. After a careful review of the documents, the Commissioner is satisfied that the Advice Information is subject to legal professional privilege and engaged by section 42 because:
- (i) It is confidential correspondence between the justice officials and the DCA lawyers acting in their professional capacity and made for the dominant purpose of obtaining legal advice,
 - (ii) it contains the legal advice provided by the departmental lawyers, and
 - (iii) it includes correspondence which contains or refers to the legal advice provided by the departmental lawyers.

The public interest test

68. Information which is subject to legal professional privilege is exempt from disclosure if the public interest in withholding the Advice Information overrides the public interest in disclosure.
69. The public interest in disclosing the Advice Information lies in promoting probity; and creating accountability and transparency in actions and decisions that affect the public.
70. The Commissioner also considers that disclosure of the Advice Information may further the public's understanding of, and participation in, issues relating to the Magistrates Court, the administration of justice and the role of the DCA in dealing with complaints of serious misconduct by magistrates.
71. However, balanced against the arguments for disclosure is the public interest in maintaining the exemption for information subject to legal professional privilege.

The concept of legal professional privilege is based on the need to ensure that clients receive confidential and candid advice from their legal advisors after having full and frank discussions. This is a fundamental principle in the legal system and there is a strong public interest in maintaining it.

72. The Information Tribunal in its decision in *Bellamy v Information Commissioner* stated that “...*there is a strong element of public interest inbuilt into the privilege itself. At least equally strong counter-vailing considerations would need to be adduced to override that inbuilt public interest...It may well be that...where the legal advice was stale, issues might arise as to whether or not the public interest favouring disclosure should be given particular weight...Nonetheless, it is important that public authorities be allowed to conduct a free exchange of views as to their legal rights and obligations with those advising them without fear of intrusion, save in the most clear case*”.¹⁰
73. In the Commissioner's view the potentially serious consequence of magistrates advancing racist opinions or comments makes it imperative for the justice officials to receive confidential and candid advice and engage in full and frank discussions to facilitate the investigation into any allegations of racism.
74. Mindful of the background context of this complaint, the Commissioner does not consider the Advice Information to be ‘*stale*’ because the advice could be utilised to deal with similar complaints in the future.
75. Therefore, the Commissioner is satisfied that in the particular circumstances of this case, the public interest in withholding the Advice Information outweighs the public interest in disclosure.

¹⁰ Appeal no. EA/2005/0023, FS0066313 at paragraph 35

Consequently, he finds that section 42 was correctly applied to the Advice Information.

The Decision

76. The Commissioner's decision is that the public authority dealt with the following element of the complainant's request for information in accordance with the Act:
77. The Commissioner has concluded that the public authority has correctly applied the exemptions provided at sections 21 and 42 of the Act.
78. With regard to the Redacted Information, the Commissioner's decision is that the public authority validly applied the exemption provided at section 36(2)(c) of the Act.
79. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
80. The Commissioner has concluded that the public authority did not comply with section 17(1) of the Act as it did not issue its refusal notice within the twenty working day time limit.
81. With regard to the Non-Redacted Information, the Commissioner's decision is that the public authority has not correctly applied the exemption provided at section 36(2) (c) of the Act.

Steps Required

82. The Commissioner requires the public authority to take the following step to ensure compliance with the Act:
83. The redacted version of the Official Information contained in Annex 2 of this notice should be disclosed to the complainant within 35 days of the date of this notice.

Failure to comply

84. Failure to comply with the step 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.

Other matters

85. Although it does not form part of this Decision Notice, the Commissioner has noted that, in the letter dated 3 May 2005, the DCA informed the complainant that:
- (i) in its view Section 36 of the Act applied to the requested information,
 - (ii) by virtue of section 10(3) of the Act, it required a further 20 working days to reach a decision on the public interest test, and
 - (iii) it required more time for the qualified person to form a reasonable opinion about whether or not the disclosure of the information would prejudice the effective conduct of public affairs.
86. The Commissioner has noted that the complainant was advised of the qualified person's opinion on 14 June 2005, i.e. 6 weeks after he was first advised by the DCA that, the information he requested was being withheld on the application of section 36.
87. The Commissioner's position is that, the qualified person should initially engage section 36 by giving his reasonable opinion that the disclosure of the information would or would be likely to cause prejudice. The DCA can only employ section 10(3) after the qualified person has provided this reasonable opinion.
88. The Commissioner therefore considers that the DCA's use of section 10(3) - to gain more time to determine if section 36 was engaged and applicable to the complainant's request - was an inappropriate use of the Act.

Right of Appeal

89. 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@tribunals.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 20th day of November 2007

Signed

**Richard Thomas
Information Commissioner**

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

LEGAL ANNEX

Refusal of Request

Section 17(1) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

Information Accessible by other Means

Section 21(1) provides that –

“Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.”

Section 21(2) provides that –

“For the purposes of subsection (1)-

- (a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and
- (b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.”

Prejudice to effective conduct of public affairs.

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.

Legal Professional Privilege

Section 42(1) provides that –

“Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.”