

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 30 July 2007

Public Authority: Cabinet Office
Address: Admiralty Arch
North Entrance
The Mall, London
SW1A 2WH

Summary

The complainant asked the Cabinet Office for minutes, correspondence and any other information about meetings between the Multinational Chairman's Group and the Prime Minister and his officials. The Cabinet Office provided some of the information but withheld the rest as exempt under sections 35(1)(a) and 36 of the Freedom of Information Act 2000 ('the Act'). The Commissioner decided that the Cabinet Office breached section 17(1) of the Act, in that it failed to explain adequately which exemption applied to each element of the requested information and why. The Cabinet Office also breached section 17(3) as its refusal notice failed to deal adequately with the reasons for claiming that the public interest in maintaining the exemption under section 35(1)(a) outweighed the public interest in disclosing the requested information.

The Commissioner decided that all of the information is exempt under section 35(1)(a) but, in breach of section 1(1), the Cabinet Office failed to disclose some of this information where the public interest in disclosure was not outweighed by the public interest in maintaining the exemption under section 35(1)(a) of the Act. The Commissioner requires that the Cabinet Office disclose 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 4 January 2005 the complainant made a request to the Cabinet Office for:
 - *'Minutes of any meetings between the Multinational Chairman's Group and The Prime Minister or any of his officials';*
 - *'Correspondence between the Multinational Chairman's Group and The Prime Minister or any of his officials';*
 - *'Any other information relating to meetings between the Multinational Chairman's Group and The Prime Minister or any of his officials'.*
3. The Cabinet Office asked on 24 January 2005 for further clarification of the request. After the complainant had provided this, it informed him on 2 March that the information requested was exempt under section 35(1)(a) of the Act because it related to the formulation or development of government policy. It concluded that it was not in the public interest to release the information because there might be a deterrent effect on external experts or stakeholders to provide advice in the future if it might be disclosed.
4. On 7 March 2005 the complainant requested a review of this decision, pointing out that the government had already set a precedent in favour of the release of this information by way of a document which had been released to the Guardian newspaper in October 2004. He expressed his view that there was a strong public interest argument for documents relating to the Multinational Chairman's Group to be released.
5. In its internal review decision of 17 June 2005 the Cabinet Office stated that some of the material requested should in fact be provided to the complainant. It enclosed a list of dates and attendees of meetings between the Prime Minister and Multinational Chairman's Group since 1997, together with a brief outline of some of the matters discussed at those meetings (*'the European and UK economy, UK business environment and competitiveness, the world economy and globalisation, sustainable development, Africa, trade, the Millennium Bug and corporate governance issues'*). The Cabinet Office informed the complainant that any further information which it held was exempt under section 35(1)(a) of the Act and, to the extent that that did not apply, section 36(2)(b)(i) and (ii) (relating to the free and frank provision of advice). It explained that release of the information would have a deterrent effect on experts or stakeholders giving free and frank advice to government, as well as adversely affecting the relationship of trust, and that this would lead to poorer decision making as well as deterring the future exchange of views.

The Investigation

Scope of the case

6. On 10 August 2005 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He specifically asked the Commissioner to consider whether there was further categories of information that the Cabinet Office could have released without damaging policy formation. The Commissioner has considered the Cabinet Office's application of section 35 and, to the extent that this does not apply, the application of section 36.

Chronology

7. The Commissioner asked the Cabinet Office on 3 October 2006 to provide the requested information. He also requested clarification of a number of issues. He sent a chasing letter on 21 November 2006.
8. The Cabinet Office sent its comments together with the requested information on 6 December 2006. In relation to both sections 35(1)(a) and 36(2)(b)(i) and (ii) the Cabinet Office elaborated on its application of the public interest test. In favour of disclosure it identified greater transparency allowing for a better understanding of the way government works and a more informed debate, although it expressed its view that this was already assisted by the routine publication of:

'details of meetings between the Prime Minister and the Multi-national Chairman's Group, for example in response to Parliamentary Questions and at press briefings'.

On the other hand, there were a number of factors in favour of withholding the information:

- discussions between the Prime Minister and major stakeholders had to be on an understanding of mutual candour and confidentiality, otherwise trust would break down;
 - much of the discussion related to policy formulation which was current;
 - key advisers had to be able to provide candid briefings;
 - the Prime Minister might not have spoken as briefed so that disclosure could give a misleading impression.
9. The Commissioner asked the Cabinet Office on 22 February 2007 to confirm that the information which it had provided comprised all of the information requested by the complainant which was being withheld. On 21 March the Cabinet Office reported that it had conducted a further search and could confirm that no further information was held.

Analysis

Procedural matters – section 17

10. Section 17(1) of the Act provides that:

'A public authority which ... is to any extent relying:

.....

- 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.'

In this case the Cabinet Office failed to specify in sufficient detail in its refusal notice dated 2 March 2005 which exemption applied to each element of the requested information and why it did so. The Commissioner has therefore concluded that the Cabinet Office was in breach of section 17(1).

11. Section 17(3) of the Act provides that a public authority which is relying on a claim that the public interest in maintaining the exemption outweighs the public interest in disclosing the information must:

'either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming –

.....

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.'

The Commissioner takes the view that in this case the Cabinet Office failed to explain to the complainant adequately how the two exemptions applied to the requested information. Neither the refusal notice nor the internal review decision identified any factors in favour of disclosure of the requested information. In this case the Commissioner does not consider that the Cabinet Office's assessment of the public interest in its original refusal notice or internal review decision adequately stated the reasons for claiming that the public interest in maintaining the exemption under section 35(1)(a) outweighed the public interest in disclosing the requested information, since no attempt at all was made to identify and weigh up the effect of factors in

favour of disclosure, nor alternatively did the Cabinet Office claim that there were no such factors. The Commissioner has therefore concluded that the Cabinet Office acted in breach of section 17(3) of the Act.

Exemptions

12. The complainant's request was for minutes, correspondence and any other information relating to meetings between the Multinational Chairman's Group and the Prime Minister or any of his officials. (The Multinational Chairman's Group is a lobbying group composed of leading executives of multinational companies). Following the complainant's request for an internal review, the Cabinet Office decided on 17 June 2005 that some of the material should be provided to him – a list of dates and attendees of all meetings between the Prime Minister and the Multinational Chairman's Group since 1997, together with a list of some of the issues discussed. It considered that the remaining information was exempt under section 35(1)(a) of the Act and, to the extent that that did not apply, under section 36(2)(b)(i) and (ii). In its view the balance of the public interest favoured maintaining both of these exemptions.

13. In his request for an internal review on 7 March 2005, the complainant pointed out that the government had:

'already set a precedent in favour of release of information relating to the MCG and formulation of policy. I have attached a document released to the Guardian newspaper in October 2004, which describes in detail policy suggestions made at a MCG meeting'.

In its letter of 6 December 2006 the Cabinet Office expressed its view that the previous release of a letter did not set a precedent, for the following reasons:

- *'the information in question was not disclosed to the Guardian by the Cabinet Office';*
- *'the Freedom of Information Act 2000 requires the public interest to be judged on a case-by-case basis. We do not consider that the suggested "precedent" raised by the requester changes that position';*
- *'Nor do we accept the argument that because the Guardian newspaper had obtained a copy of a letter from a third party which mentioned a meeting of the Multi-national Chairman's Group that we are then required to release further details of all such meetings or correspondence relating to those meetings without first considering relevant exemptions and, where a qualified exemption applies, carrying out a public interest test'.*

14. The Commissioner considers that the Cabinet Office is correct to argue that information requests should be addressed on a case-by-case basis

through an assessment of the relevant exemptions and public interest test. Furthermore, he does not believe that the release of information by a third party can create a precedent requiring a public authority to release other information it holds of the same sort (though it might nevertheless have some bearing on the assessment of the information request, such as in weighing up the public interest test). In the circumstances of this case, the Commissioner does not accept the complainant's argument regarding the alleged 'precedent'.

15. The complainant also suggested to the Commissioner that:

'there is further information that could be released in the public interest, without having a damaging effect on policy formation. This might include agendas for each meeting, terms of reference of the MCG, internal government correspondence and briefings about the meetings, letters to the companies involved in the meetings and even minutes of the meetings'.

16. The Cabinet Office had cited two exemptions – section 35(1)(a), or section 36(2)(b)(i) and (ii) – as justification for its non-disclosure of the information. It did not attempt to identify to the complainant which of these it considered applied to each element of the withheld information, but simply stated its view that if section 35(1)(a) was inapplicable to any element of the information then section 36(2)(b) would apply instead. Upon the Commissioner's request for clarification, it gave a further explanation of the information to which the sections applied. Having regard to this explanation, it is still not entirely clear to the Commissioner which elements of that information are considered by the Cabinet Office to fall under each exemption. Indeed, in its letter to the Commissioner dated 6 December 2006 the Cabinet Office also explained that at the internal review stage it had reconsidered its original decision that the information was exempt under section 35(1)(a) and had '*recognised that while some of the information **might** not be considered to relate directly to the formulation of government policy section 36(2)(b) would apply*' (emphasis added).

17. The Commissioner has obtained and considered the requested information. The information relates to meetings with representatives of business interests regarding various general issues of interest to them. The Commissioner considers that all of the withheld information therefore does indeed relate to the formulation and/or development of government policy, whether directly or indirectly, and so the exemption under section 35(1)(a) is engaged in respect of all of the information.

Exemption – section 35(1)(a)

18. Section 35(1)(a) of the Act provides that:

'Information held by a government department or by the National Assembly for Wales is exempt information if it relates to-

(a) *the formulation or development of government policy*'.

Since section 35(1)(a) is a qualified exemption it is subject to a public interest test under section (2)(2)(b) of the Act. This favours disclosure unless, *'in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure of the information*'.

19. In its refusal notice of 2 March 2005 the Cabinet Office did not provide any detailed analysis of the public interest, although its internal review decision on 17 June 2005 gave a fuller explanation of the factors which it considered favoured maintaining the exemption. These were:

- release of the information would have a deterrent effect on experts or stakeholders giving free and frank advice;
- disclosure would be likely to affect adversely the relationship of trust necessary for advice and views to be obtained.

20. After receiving the complaint, the Commissioner obtained comments from the Cabinet Office which included a further explanation on 6 December 2006 of its assessment of the public interest test. In favour of disclosure it recognised the role of greater transparency in informing public debate, leading to greater understanding of the way government works. It pointed out that the Cabinet Office had at the internal review stage provided the applicant with a list of dates and attendees of all of the meetings that the Multinational Chairman's Group had had with the Prime Minister since 1997, and also that the Prime Minister's Office routinely published details of such meetings, for example in response to Parliamentary Questions and at press briefings.

21. In favour of maintaining the exemption, the Cabinet Office identified the following factors.

- Free and frank internal policy discussions – *'If the Prime Minister and his key advisers were unable to rely on the understanding of confidentiality between each other that attaches to that process [of free and frank discussions], there is a real risk that in future the briefing would not be given in this uninhibited way*'.
- Free and frank external policy discussions – *'It is in the public interest that the Prime Minister can hold free and frank discussions with major stakeholders on key issues to ensure that policy proposals...take account of commercial and other realities, command broad support, and will be workable in practice. Such discussions must take place on the basis of an understanding of mutual candour and confidentiality otherwise trust will break down and stakeholders will be unwilling to enter such discussions in future*'.

- Policy currently under formulation – *'In addition, much of the discussion at these meetings related to issues where the policy was still being formulated at the time when the freedom of information request was received and in many cases is still being taken forward now'*.
22. The Commissioner has obtained and considered the information withheld by the Cabinet Office. He takes the view that it is comprised of two basic categories: speaking notes for the Prime Minister which do not necessarily reflect what was actually said at the meeting; and background briefing material.
23. In respect of the first category of information (which the Commissioner refers to as 'bundle A' – the specific information contained in this bundle is identified in a separate Schedule and will be communicated to the Cabinet Office for the purposes of the steps outlined below), the Commissioner believes that disclosure of this information would indeed create a risk of inhibiting the candour of officials in future, resulting in the Prime Minister being less well informed and prepared. On the other hand, the Commissioner agrees with the Cabinet Office that there is a public interest in disclosure of this information because that would allow for a more informed public debate. He considers that there is a further public interest in disclosure – that it would increase public confidence in the conduct of government policy-making. He is also mindful of the length of time that has elapsed since the meeting took place in August 2003, which he believes will to some extent have diminished the deterrent effect of disclosure on the candour of officials. However, having considered all of these public interest factors, the Commissioner has decided that the public interest in disclosure of this information is outweighed by the factors identified by the Cabinet Office as supporting maintenance of the exemption. In reaching this conclusion he has put considerable weight on the fact that this element of the information represents speaking notes which do not necessarily reflect what was actually said at the meeting, thereby diminishing its value both in informing public debate about the Prime Minister's exchanges with the Multinational Chairman's Group and in increasing public confidence about how government policy-making has been conducted.
24. In relation to the remaining withheld information, amounting mainly to background briefing material ('Bundle B' in the Schedule), the Commissioner has had regard to the three points made by the Cabinet Office: he accepts that, depending on circumstances, there may well be a public interest in withholding information during a period when policy is still under formulation, and also in order to facilitate free and frank internal and external policy discussions. However, in relation to policy discussions with external stakeholders the Commissioner takes the general view that the likelihood of those parties being deterred from freely expressing their views is diminished when they are in effect being given an opportunity to lobby the policy-makers, as in this case. More significantly, having regard

to the specific nature of the remaining information the Commissioner does not accept that the public interest factors cited by the Cabinet Office apply to any significant degree in respect of this information. Furthermore, the Commissioner notes that there is a strong public interest in informing public debate, as recognised by the Cabinet Office. In addition, he considers that there is a public interest in facilitating understanding of how government formulates policy, and also in increasing public confidence that decisions are properly made. He has therefore concluded that these public interest factors in favour of disclosure outweigh the relatively weak factors in favour of maintaining the section 35(1)(a) exemption, and that therefore this information cannot be withheld under section 35(1)(a).

Exemption – section 36(2)(b)(i) and (ii)

25. In its comments on 6 December 2006 the Cabinet Office attempted to explain which information fell within each of sections 35(1)(a) and 36(2)(b). Although the two sections were not used as alternatives, that explanation was not clear to the Commissioner as the letter explaining its assessment of the public interest test did not differentiate between sections 35 and 36. This is, however, academic. As set out above, having reviewed the information, the Commissioner has taken the view that all of it relates to policy formulation and development which falls under section 35(1)(a). Section 36(1)(a) of the Act specifies 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.'

Since section 36 does not apply to information which is exempt by virtue of section 35, and the Commissioner has decided that section 35 does in fact apply to all the information in this case, the information therefore cannot be exempt by virtue of section 36. This remains the case even though the Commissioner has concluded that, by virtue of the section 2 public interest test, the duty to disclose remains..

26. Even if section 36 had been engaged, the Commissioner considers that the public interest test would have raised similar issues, and produced the same result, as in relation to section 35.. The central public interest argument advanced by the Cabinet Office in this context was that:

'It is in the public interest that the Prime Minister can hold free and frank discussions with major stakeholders on key issues to ensure that policy proposals that the Government is considering and/or taking forward take account of commercial and other realities, command broad support, and will be workable in practice. Such discussions must take place on the basis of an understanding of mutual candour and confidentiality otherwise trust will break down and stakeholders will be unwilling to enter such discussions in future'.

However, as already explained in relation to section 35, while the Commissioner accepts that there may be a public interest in withholding information in order to facilitate free and frank policy discussions with external stakeholders, he also takes the view that the likelihood of those parties being deterred from freely expressing their views is diminished when they are in effect being given an opportunity to lobby policy-makers, as in this case. Furthermore, the Commissioner notes that there is a strong public interest in informing public debate, facilitating understanding of how government formulates policy, and also in increasing public confidence that decisions are properly made and that undue influence is not exerted on policy-makers.

The Decision

27. 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:

- the Cabinet Office complied with section 1(1), in that information (specified in the Schedule provided to the Cabinet Office as Bundle A, and the parts of Bundle B identified for redaction) was properly withheld as being exempt information under section 35.

However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- in breach of section 1(1), the Cabinet Office failed to communicate to the complainant information to which he was entitled, identified in Bundle B of the Schedule, on the mistaken basis that it was exempt from disclosure under section 35 or section 36;
- in breach of section 17(1), it failed to specify in sufficient detail in its refusal notice dated 2 March 2005 which exemption applied to each element of the requested information and why;
- in breach of section 17(3), in its refusal notice of 2 March 2005 it failed to deal adequately with the reasons for claiming that the public interest in maintaining the exemption under section 35(1)(a) outweighed the public interest in disclosing the requested information, since no attempt was made to identify any factors in favour of disclosure or, alternatively, to claim that there were no such factors.

Steps Required

28. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

- the Cabinet Office shall disclose the information identified as Bundle B in the Schedule in accordance with its duty under section 1(1).
- The Cabinet Office must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

29. 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

30. 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 30th day of July 2007

Signed

**Richard Thomas
Information Commissioner**

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

Legal Annex

Section 1(1) provides that -

“Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.”

Section 1(2) provides that -

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

Section 1(3) provides that –

“Where a public authority –

- (a) reasonably requires further information in order to identify and locate the information requested, and
 - (b) has informed the applicant of that requirement,
- the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”

Section 1(4) provides that –

“The information –

- (a) in respect of which the applicant is to be informed under subsection (1)(a), or
 - (b) which is to be communicated under subsection (1)(b),
- is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”

Section 1(5) provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

Section 1(6) provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.”

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.”

Section 17(2) states –

“Where–

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-
 - (i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
 - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and
- (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.”

Section 17(3) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

- (a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or
- (b) that, in all the circumstances of the case, the public interest

in maintaining the exemption outweighs the public interest in disclosing the information.”

Section 17(4) provides that -

“A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

Section 17(5) provides that –

“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.”

Section 35(1) provides that –

“Information held by a government department or by the National Assembly for Wales is exempt information if it relates to-

- (a) the formulation or development of government policy,
- (b) Ministerial communications,
- (c) the provision of advice by any of the Law Officers or any request or the provision of such advice, or
- (d) the operation of any Ministerial private office.

Section 35(2) provides that –

“Once a decision as to government policy has been taken, any statistical information used to provide an informed background to the taking of the decision is not to be regarded-

- (a) for the purposes of subsection (1)(a), as relating to the formulation or development of government policy, or
- (b) for the purposes of subsection (1)(b), as relating to Ministerial communications.”

Section 35(3) provides that –

“The duty to confirm or deny 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).”

Section 35(4) provides that –

“In making any determination required by section 2(1)(b) or (2)(b) in relation to information which is exempt information by virtue of subsection (1)(a), regard shall be had to the particular public interest in the disclosure of factual information which has been used, or is intended to be used, to provide an informed background to decision-taking.”

Section 35(5) provides that –

“In this section-

"government policy" includes the policy of the Executive Committee of the Northern Ireland Assembly and the policy of the National Assembly for Wales;

"the Law Officers" means the Attorney General, the Solicitor General, the Advocate General for Scotland, the Lord Advocate, the Solicitor General for Scotland and the Attorney General for Northern Ireland;

"Ministerial communications" means any communications-

- (a) between Ministers of the Crown,
- (b) between Northern Ireland Ministers, including Northern Ireland junior Ministers, or
- (c) between Assembly Secretaries, including the Assembly First Secretary, and includes, in particular, proceedings of the Cabinet or of any committee of the Cabinet, proceedings of the Executive Committee of the Northern Ireland Assembly, and proceedings of the executive committee of the National Assembly for Wales;

"Ministerial private office" means any part of a government department which provides personal administrative support to a Minister of the Crown, to a Northern Ireland Minister or a Northern Ireland junior Minister or any part of the administration of the National Assembly for Wales providing personal administrative support to the Assembly First Secretary or an Assembly Secretary;

"Northern Ireland junior Minister" means a member of the Northern Ireland Assembly appointed as a junior Minister under section 19 of the Northern Ireland Act 1998.”

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.