

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 30 July 2007

Public Authority: The Vale of Glamorgan Council
Address: Civic Offices
Holton Road
Barry
Vale of Glamorgan
CF63 4RU

Summary

1. The complainant requested a copy of an internal audit report prepared by the public authority. The request was initially refused by the public authority, citing the exemptions at sections 40, 41 and 42 of the Act. In its response to a request for internal review, the public authority released some information but stated that, in addition to the exemptions already cited, the information was also exempt by virtue of the section 30(2) exemption. During the course of the Commissioner's investigation the public authority also claimed that the exemption at section 44 of the Act applied, because schedule 12A of the Local Government Act 1972 (as amended) acted as a statutory bar for disclosure. The Commissioner's decision is that the exemptions at sections 30, 40, 41 and 44 have been applied inappropriately. In terms of the section 42 exemption, the Commissioner's decision is that it has been applied appropriately only in a small number of instances. Accordingly, the Commissioner requires the public authority to disclose the information withheld, with that information that has been appropriately withheld by virtue of section 42 redacted. The public authority also initially breached the requirements of section 10 and 17(1).

The Commissioner's Role

2. The Commissioner's role 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

3. On 6 January 2006 the complainant requested the following information from the public authority:

“a copy of the Internal Audit report that reviewed the levelling work undertaken at Gladstone Primary School at the time of the installation of the football pitch in 1999.”

4. On 30 March 2006 the public authority issued a refusal notice, stating that the internal audit report (the ‘report’) requested is exempt by virtue of the exemptions at sections 40, 41 and 42 of the Act.
5. On 6 April 2006, the complainant requested an internal review of this decision. He explained that he thought the public interest test had been applied inaccurately and that “any information in the report that relates to my property could be reasonably attained via a partial release of the report ... I would be prepared for such a partial release of the data, with any information, not relevant to my property being ‘blacked out’”.
6. On 30 June 2006 the public authority wrote to the complainant, providing him with a limited extract from the report and upholding the initial decision to withhold the information requested, citing the exemptions at sections 40, 41 and 42. In addition, the public authority stated that the exemption at section 30(2) also applies to the information withheld.

The Investigation

Scope of the case

7. The complainant first contacted the Commissioner in October 2005 to seek assistance in obtaining a copy of the report. Following receipt of the outcome of the public authority’s internal review on 30 June 2006, the complainant stated that he wished to complain about the decision to withhold the majority of the report.
8. The Commissioner has considered whether the public authority applied the Act correctly in seeking to withhold the report citing the exemptions at sections 30, 40, 41 and 42 of the Act. In addition, during correspondence with the Commissioner the public authority stated that it also wished to rely on the exemption at section 44 of the Act. The Commissioner has therefore considered the application of the section 44 exemption.
9. As is evident from the chronology of the case (below), the public authority clearly believed that the complainant had narrowed down his request when seeking an internal review of the original decision to withhold the report. The public authority therefore asked the Commissioner to only investigate those aspects of the report

relevant to the complainant's property that were withheld. However, the Commissioner considers his powers as set out in section 50 of the Act require him to investigate the public authority's response to the complainant's request for information. Accordingly, the Commissioner has considered the public authority's refusal to disclose the full report.

Chronology of the case

10. On 31 July 2006 the public authority provided the Commissioner with a copy of the report. The public authority was then asked to explain precisely which exemptions it applied to which sections of the report.
11. On 25 August 2006 the public authority wrote to the Commissioner explaining the exemptions that were applied to each paragraph of the report. In this letter the public authority also stated that it believed the exemption at section 44 of the Act applied to this report, because the Local Government Act 1972 provided a statutory prohibition to disclosure. The letter also set out additional public interest arguments in relation to the exemptions at sections 30 and 42 of the Act.
12. On 19 October 2006 the Commissioner requested further information from the public authority in relation to the application of the sections 30, 40, 41, 42 and 44 exemptions.
13. On 3 November 2006 the public authority replied to the Commissioner, seeking clarification on the scope of his investigation. In particular, the public authority pointed to the wording of the complainant's request for internal review (see paragraph 5, above). The public authority argued that, in his request for internal review, the complainant effectively narrowed down his original request to only that information contained within the report that related directly to his own property. The public authority contended that, under cover of its letter of 30 June 2006, it had already disclosed those limited extracts relating to the complainant's property.
14. On 8 November 2006, 13 December 2006 and 4 January 2007, the Commissioner clarified that the scope of his investigation encompassed the original request for information (that is, for a copy of the full report), as it is a matter of debate rather than fact as to what information is and is not relevant to the complainant's property.
15. On 1 February 2007 the public authority provided additional information in relation to the exemptions cited.
16. On 26 April 2007 the Commissioner wrote to the public authority, stating that his preliminary view was that the public authority had applied the Act inappropriately in seeking to rely on the exemptions at section 30, 40, 41 and 44 of the Act. The Commissioner invited the public authority to either provide further evidence in support of the use of those exemptions or consider disclosing the information to the complainant. In relation to the section 42 exemption, the Commissioner explained that, in all but a small number of instances, it was his preliminary view that this had also been applied inappropriately.

17. On 18 May 2007 the public authority replied to the Commissioner reiterating its arguments for withholding the information.

Findings of the case

18. The information withheld in this case consists of a report written by the public authority's internal audit section. It was submitted to the authority's Scrutiny Committee on 17 October 2002 as what is called a 'Part II item'. Part II items are reports that are exempt from the local government access to information provisions by virtue of Schedule 12A of the Local Government Act 1972 (as amended).

Analysis

19. The Commissioner has considered the public authority's response to the complainant's request for information.

Procedural breaches

20. The Commissioner notes that the request for information was delivered to the authority by hand on 6 January 2006. A refusal notice was not issued until 30 March 2006. This is significantly longer than the twenty working day deadline imposed by the combined provisions of sections 17(1) and 10(1) of the Act. Accordingly, the Commissioner notes that the public authority breached the requirements of section 17(1) of the Act

Exemptions

Section 30(2) – Investigations and proceedings

21. In order for a public authority to rely on the exemption at section 30(2) of the Act, it must satisfy two distinct tests. Firstly, it must demonstrate that the information was obtained or recorded by the authority for the purposes set out in under subsection (a). Secondly, in accordance with subsection (b), the information must relate to the obtaining of information from confidential sources. A public authority cannot rely on the section 30(2) exemption unless both tests are satisfied. The sections of the Act referred to are reproduced in full in the legal annex to this Notice.
22. In terms of subsection (a) of section 30(2) of the Act, in its refusal notice dated 30 March 2006 the public authority cited subsection (iii) and specifically the purposes set out in section 31(2)(a) to (d) of the Act. The Council has stated that the report in question is an internal audit report prepared by its internal audit section.
23. The purposes set out in section 31(2) cover various investigative functions. The report was written following an investigation that was conducted by the public authority in order to ascertain various matters relating to the installation of a sports pitch at Gladstone Primary School. It is not clear that the report was

recorded for the purposes of the public authority's functions relating to investigations conducted for any of the purposes set out in subsections (a) to (d) of section 31(2). However, for the reasons set out below, the Commissioner does not consider that the test at section 30(2)(b) is met and therefore the public authority cannot rely on the section 30 exemption.

24. In terms of subsection (b) of section 30(2) of the Act, the public authority must demonstrate that the information 'relates to the obtaining of information from confidential sources'. The Commissioner's Awareness Guidance 16 states:

"If information held by a public authority is for the purposes of any of these functions and it has been obtained from a confidential source, any information relating to the informant is covered by this exemption. The exemption will not always apply to the information supplied by the informant."

25. The information contained in the report can only be exempt if it was obtained from a confidential source (or sources) and the information relates to the confider in some way, for example by identifying directly or indirectly the source of the information. In this case, the confiders have not been identified by the public authority in any correspondence, but it is assumed that they are those individuals interviewed by the report's authors in the context of the audit.
26. The public authority has cited the section 30(2) exemption to withhold the majority of the report. The Commissioner accepts that the report was written following discussions with individuals involved in the matter. However, as the majority of individuals are likely to have been employees of the public authority, it is unlikely that they could be considered confidential sources. Nevertheless, the report does not relate to the confiders themselves and indeed the Commissioner has been unable to ascertain who the confidential sources are or how they could be identified. The refusal of the public authority, however unreasonable, to indicate to the Commissioner who these supposedly confidential sources are has not in fact prevented him from reaching a decision in this case.
27. Accordingly, the Commissioner has concluded that the section 30(2) exemption is not engaged for any of the information contained in the report. The Commissioner has not, therefore, considered the public interest test in relation to this exemption.

Section 40 – Personal Data

28. The public authority has stated that the report contains the personal data of a number of individuals. It has identified those individuals to the Commissioner and provided an explanation of how the data protection principles would be breached if disclosure of this data was permitted. In particular, the public authority considers disclosure would breach the first data protection principle.
29. The first question to consider is whether the information constitutes 'personal data'. Section 1 of the Data Protection Act 1998 (the 'DPA') states that:

“personal data” means data which relate to a living individual who can be identified –

- (a) from those data, or*
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller*

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual”.

30. The Commissioner notes that much of the report relates to procedures and processes and is not about any identifiable individuals nor does it set out the views of any individuals (save those of the auditors) on the procedures used in connection with the subject matter of the report. Accordingly, the Commissioner considers that the majority of the instances where the public authority has cited the section 40 exemption do not actually contain the personal data of individuals and therefore the section 40 exemption has been applied inappropriately in those instances.
31. The report does mention the job titles of various individuals, but the Commissioner considers that in the majority of these instances the information is about the procedures used rather than about those individuals themselves. All references are to individuals acting in their official roles and not as private individuals.
32. The Commissioner is mindful that, even if the information in question were to fall within the definition of personal data, the section 40 exemption would only operate where the disclosure of the personal data would breach at least one of the data protection principles.
33. In this particular case, where information in the report is found to be covered by the definition of personal data (albeit personal data about an individual acting in an official or work capacity) the Commissioner does not believe that it would be ‘unfair’ (in breach of the first principle) to disclose it. As stated in the Commissioner’s Awareness Guide 1:

“information which is about someone acting in an official or work capacity should normally be provided on request unless there is some risk to the individual concerned.”

34. The disclosure of personal data about an individual acting in an official capacity is usually only found to be unfair where the data is about a junior employee, or in certain limited circumstances about a senior official, where the individual in question would have no expectation that information about their individual work decisions or actions might be disclosed. In circumstances where personal data is about a senior figure acting in an official capacity, it is highly unlikely that it would be found to be unfair that information shedding light on their actions in their official role be disclosed. Any such individual should anticipate that information

as to their actions or decisions while in post might be disclosed in response to a request for such information.

35. Accordingly, the Commissioner does not believe that the Council has applied the Act appropriately in seeking to rely on the section 40 exemption.

Section 41 – Information provided in confidence

36. The public authority has stated that it is normal practice within the authority for internal auditors to deal with matters upon a confidential basis. However, just because matters were considered 'confidential' does not in itself mean that the section 41 exemption is engaged.
37. In order to rely on the section 41 exemption a public authority must be able to demonstrate that the information was provided by another individual (subsection (1)(a) refers) and that its disclosure would result in an actionable breach of confidence (subsection (1)(b)).
38. The authority has not provided the Commissioner with information about who the confider/confiders are for each of the sections of the report it has sought to rely on section 41. It is likely that some of the individuals interviewed during the course of the audit will have been employees of the authority and in these instances the test at subsection (a) is not met and therefore the section 41 exemption is not engaged.
39. Others that have provided information contained in the report include third parties and in these instances the test at subsection (a) will be met. However, in order to satisfy the test at subsection (b), the council must demonstrate that:
- The information was imparted in circumstances giving rise to a duty of confidence;
 - The information has the necessary quality of confidence;
 - The confider has a legal right to take action in relation to the breach; and
 - The public authority could not mount a public interest defence of any disclosure.
40. In relation to the first condition, the public authority has argued that 'it is normal practice for audit officers to deal with such matters upon a confidential basis'. This constitutes an implied duty of confidence. However, it is unclear whether persons outside the authority would have been aware of the normal practice of the authority. There is also a distinction to be drawn between officials of other public bodies giving evidence 'voluntarily' and those individuals and companies who have been contracted to carry out work on behalf of the authority.
41. Even if the Commissioner accepts that the first condition is met (i.e. there was a duty of confidence), he has not been presented with evidence to suggest that the information confided has the necessary quality of confidence. Furthermore, it is hard to see how any confider could take action in relation to any breach.

42. The Commissioner therefore believes that the public authority has not been able to demonstrate that any part of the report can be withheld by virtue of the section 41 exemption.

Section 42 – Legal Professional Privilege

43. The public authority has cited the exemption at section 42 to withhold information relating to a number of sections of the report. The report itself is not a communication between a legal advisor and a client and therefore the only sections of the report that will fall within the section 42 exemption are those that contain extracts from, or summaries of, legal advice.
44. The public authority has stated that it had instructed solicitors to provide advice in connection with the report. The authority has provided the Commissioner with evidence to show that such advice was received, and that furthermore the content of that advice was reflected in the report.
45. The Commissioner believes that the majority of the sections of the report, for which the public authority has cited the section 42 exemption, do not contain extracts of legal advice and therefore the section 42 exemption is not engaged.
46. However, in a minority of instances, the Commissioner is satisfied that the section 42 exemption is engaged. This is because the information is essentially a summary of legal advice received by the authority (the client), and the Commissioner considers that it attracts advice privilege. The Commissioner believes that the report is essentially disseminating the legal advice received from the legal advisors to other parts of the authority (and therefore other parts of the client).

The public interest test

47. In relation to the information which the Commissioner is satisfied contains legal advice that attracts privilege, the Commissioner has considered whether the public interest in maintaining the section 42 exemption outweighs the public interest in disclosure.

48. The Commissioner is mindful of the Information Tribunal's rulings in relation to section 42, in particular the case of Bellamy vs the Information Commissioner (EA/2005/0023). In this case (paragraph 35) the Tribunal 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."

49. The Commissioner recognises that there is therefore a very strong generic public interest in maintaining the exemption in relation to section 42. Whilst the Commissioner acknowledges that there are public interest factors in favour of disclosure in this case – in terms of greater transparency and accountability for actions taken by the public authority, and also public confidence that lessons from this matter have been learned by the authority – the Commissioner does not

believe that these outweigh the public interest in maintaining the exemption. Accordingly, the Commissioner believes that the public authority applied the Act appropriately in withholding certain information citing the section 42 exemption.

Section 44 – Prohibitions on disclosure

50. The public authority has argued that schedule 12A of the Local Government Act 1972 operates as a statutory bar to disclosure and therefore the exemption at section 44 of the Act is engaged. Schedule 12A sets out categories of information considered to be “exempt information” – i.e. information that is exempt from the duty to disclose under the Local Government Acts. It has been replaced by Schedule 12A of the Local Government (Access to Information) (variation) Order 2006 (SI 2006/88).
51. It is the Commissioner’s belief that schedule 12A operates only to exempt information from being disclosed for the purpose of the formal decision-making process and other local government proceedings. The Commissioner does not accept that information which is exempt under those provisions for those specific purposes is necessarily exempt from disclosure under the Freedom of Information Act. When a request to which the Freedom of Information Act applies is received, the relevance of any exemptions under that Act must be considered as at the time the request is received.
52. Accordingly, it is the Commissioner’s view that schedule 12A does not operate as a statutory prohibition to disclosure under the Act and therefore the exemption at section 44 of the Act does not apply in this instance.

The Decision

53. 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. Application of the section 42 exemption to some of the information
54. However, the Commissioner has also decided that the public authority did not deal with the following elements of the request in accordance with the Act:
 - i. Did not provide a refusal notice within the time for compliance. This constitutes a breach of section 17(1) of the Act
 - ii. Applied the section 40 exemption inappropriately
 - iii. Applied the section 41 exemption inappropriately
 - iv. Applied the section 42 exemption inappropriately, in those instances not covered in paragraph 53, above.
 - v. Applied the section 44 exemption inappropriately

Steps Required

55. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
 - Disclose those sections of the report that have not been exempted appropriately by virtue of the section 42 exemption. Details of which sections the Commissioner believes can be withheld are identified in a separate letter to the public authority.
56. The public authority must take the steps required by this notice within 35 calendar days from the date of this notice.
57. 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

58. 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

**Graham Smith
Deputy Commissioner**

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

Legal Annex

General Right of Access

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”.”

Time for Compliance

Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

Section 10(2) provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.”

Section 10(3) provides that –

“If, and to the extent that –

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

Section 10(4) provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

Section 10(5) provides that –

“Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.”

Section 10(6) provides that –

“In this section –

“the date of receipt” means –

- (a) the day on which the public authority receives the request for information, or
- (b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”

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.”

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.”

Investigations and proceedings conducted by public authorities.

Section 30(1) provides that –

“Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of-

- (a) any investigation which the public authority has a duty to conduct with a view to it being ascertained-
 - (i) whether a person should be charged with an offence, or
 - (ii) whether a person charged with an offence is guilty of it,
- (b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or
- (c) any criminal proceedings which the authority has power to conduct.”

Section 30(2) provides that –

“Information held by a public authority is exempt information if-

- (a) it was obtained or recorded by the authority for the purposes of its functions relating to-
 - (i) investigations falling within subsection (1)(a) or (b),
 - (ii) criminal proceedings which the authority has power to conduct,
 - (iii) investigations (other than investigations falling within subsection (1)(a) or (b)) which are conducted by the authority for any of the purposes specified in section 31(2) and either by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under any enactment, or
 - (iv) civil proceedings which are brought by or on behalf of the authority and arise out of such investigations, and
- (b) it relates to the obtaining of information from confidential sources.”

Section 30(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) or (2).”

Section 30(4) provides that –

“In relation to the institution or conduct of criminal proceedings or the power to conduct them, references in subsection (1)(b) or (c) and subsection (2)(a) to the public authority include references-

- (a) to any officer of the authority,
- (b) in the case of a government department other than a Northern Ireland department, to the Minister of the Crown in charge of the department, and
- (c) in the case of a Northern Ireland department, to the Northern Ireland Minister in charge of the department.”

Section 30(5) provides that –

“In this section-

"criminal proceedings" includes-

- (a) proceedings before a court-martial constituted under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 or a disciplinary court constituted under section 52G of the Act of 1957,
- (b) proceedings on dealing summarily with a charge under the Army Act 1955 or the Air Force Act 1955 or on summary trial under the Naval Discipline Act 1957,
- (c) proceedings before a court established by section 83ZA of the Army Act 1955, section 83ZA of the Air Force Act 1955 or section 52FF of the Naval Discipline Act 1957 (summary appeal courts),
- (d) proceedings before the Courts-Martial Appeal Court, and
- (e) proceedings before a Standing Civilian Court;

"offence" includes any offence under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957.”

Section 30(6) provides that –

“In the application of this section to Scotland-

- (a) in subsection (1)(b), for the words from "a decision" to the end there is substituted "a decision by the authority to make a report to the procurator fiscal for the purpose of enabling him to determine whether criminal proceedings should be instituted",
- (b) in subsections (1)(c) and (2)(a)(ii) for "which the authority has power to conduct" there is substituted "which have been instituted in consequence of a report made by the authority to the procurator fiscal", and
- (c) for any reference to a person being charged with an offence there is substituted a reference to the person being prosecuted for the offence.”

Law enforcement

Section 31(1) provides that –

“Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders,
- (c) the administration of justice,
- (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,
- (e) the operation of the immigration controls,
- (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,
- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),
- (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
- (i) any inquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.”

Section 31(2) provides that –

“The purposes referred to in subsection (1)(g) to (i) are-

- (a) the purpose of ascertaining whether any person has failed to comply with the law,
- (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,
- (c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,
- (d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on,
- (e) the purpose of ascertaining the cause of an accident,
- (f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration,
- (g) the purpose of protecting the property of charities from loss or misapplication,
- (h) the purpose of recovering the property of charities,

- (i) the purpose of securing the health, safety and welfare of persons at work, and
- (j) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work.”

Section 31(3) 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, prejudice any of the matters 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) the 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.

Information provided in confidence

Section 41(1) provides that –

“Information is exempt information if-

- (a) it was obtained by the public authority from any other person (including another public authority), and
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.”

Section 41(2) provides that –

“The duty to confirm or deny does not arise if, or to the extent that, the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) constitute an actionable breach of confidence.”

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.”

Section 42(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 involve the disclosure of any information (whether or not already recorded) in respect of which such a claim could be maintained in legal proceedings.”

Prohibitions on disclosure

Section 44(1) provides that –

“Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it-

- (a) is prohibited by or under any enactment,
- (b) is incompatible with any Community obligation, or
- (c) would constitute or be punishable as a contempt of court.”

Section 44(2) provides that –

“The duty to confirm or deny does not arise if the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) fall within any of paragraphs (a) to (c) of subsection (1).”