

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 4 July 2007

**Public Authority:** Department of Trade and Industry  
**Address:** 1 Victoria Street  
London  
SW1H 0ET

### Summary

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The complainant requested a copy of information about meetings/correspondence between the DTI and the CBI for certain divisions of the DTI. The DTI provided the complainant with some of the information but claimed that the rest of the information was exempt from disclosure under sections 35, 36, 40 and 41 of the Act. Having investigated, the Commissioner does not accept that the public interest in withholding all of the information in respect of section 35 and 36 outweighs the public interest in disclosure and consequently finds that the exemptions were improperly applied to some of the information. Some of the information was, however, correctly withheld under the exemptions at sections 35, 36 and 40. The complaint is therefore partially upheld.

### The Commissioner's Role

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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

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2. The complainant has advised that on 1 July 2005 the following information was requested from the Department of Trade and Industry ("DTI") in accordance with Section 1(1) of the Act:
3. *What meetings and correspondence there have been between Ministers and/or senior civil servants (Grade 5 or above) and employees from the CBI since 5 May 2005 in the following divisions of the DTI:*
  - *Fair Markets Group*
  - *Energy Group*

- *Strategy Unit*

*In respect of each meeting, please provide the following details:*

- *The dates of the meetings*
  - *Who participated in the meeting*
  - *Minutes from the meeting*
  - *Correspondence between the parties.*
4. On 26 July 2005, the DTI responded to the complainant's request. It enclosed a schedule listing the dates of meetings and attendees as requested. In accordance with section 17 of the Act, the DTI advised the complainant it was withholding meeting notes and correspondence under the following exemptions:
- section 35 – formulation of government policy
  - section 41 – information provided in confidence
  - section 43 – commercial interests.
5. The DTI also applied the public interest test and found that the public interest in withholding the information outweighed the public interest in disclosing it.
6. The complainant found the response of the DTI unacceptable and requested an internal review on the 28 July 2005.
7. On 5 October 2005, the DTI advised the complainant of the outcome of its internal review. It advised that following the review, it had decided to disclose some of the information, which were notes of business Whitehall Climate Group Meetings on 20 May and 6 July 2005 and were enclosed with its letter. However, in respect of the rest of the information, it upheld the decision previously reached to withhold it. Sections 35 and 41 continued to be relied upon although section 43 was not. In addition, section 40 was relied upon in respect of various names which the DTI considered to be personal information which the individuals would not expect to be disclosed. Where relevant, the DTI also explained the public interest test it had applied.

## **The Investigation**

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### **Scope of the case**

8. On 27 October 2005 the complainant contacted the Commissioner to complain about the way its request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
- Paucity of relevant information identified;
  - Whether the request should have been dealt with under the EIR;
  - The application of the exemptions, whether they are engaged; and
  - Whether the public interest test had been properly applied.

## Chronology

9. The Commissioner began his investigation on 15 March 2006 when he requested a copy of the withheld information and asked the DTI to address the concerns raised by the complainant as detailed in paragraph 8 above. The DTI's detailed response was sent on 18 September 2006, at which time it acknowledged that it had taken too long to respond and confirmed that steps were being taken to avoid such delay in the future.
10. The DTI explained to the Commissioner that it had reviewed the request for information and the complaint in detail which had enabled it to uncover further relevant information. It had reviewed its use of the exemptions and now concluded that in addition to sections 35, 40 and 41, section 36 (prejudice to effective conduct of public affairs) also applied to the withheld information.
11. The DTI also provided a detailed explanation about its use of the exemptions together with a copy of the information marked with the exemptions which applied to the various parts it had withheld.
12. In addition, the DTI explained that it had considered the applicability of the EIR. It advised that it accepted it should have considered the impact of the EIR on the information. However the information which it considered to be environmental had been disclosed (see paragraph 7 above) and whilst there were 2 other passages within the withheld information which could possibly be construed as environmental information, if it was, then the information would be exempt under regulation 12(4)(e).
13. After reviewing the documentation and the explanation provided by the DTI, the Commissioner raised further queries with the DTI about the application of the exemptions, the disclosure of further information to the complainant and whether it was possible that it held any further relevant information falling within the scope of the complainant's request.
14. On 12 October 2006, the DTI responded to the Commissioner's queries and confirmed that in a letter dated 21 September 2006, it had advised the complainant that it had located 4 further documents relevant to the request. With that letter, it had enclosed 2 of them and withheld 2 under the exemptions at sections 35, 36 and 41. The DTI also confirmed that it held no further information relevant to the complainant's request.
15. On further questioning by the Commissioner, it became apparent there was a further document in existence. The DTI confirmed that it was withholding that document under section 35. The Commissioner asked the DTI to carry out a further search for any other relevant information and then confirm the outcome of that search.
16. On 3 April 2007, the DTI advised the Commissioner that it had carried out a subsequent and thorough search of its files. The search comprised an electronic search of documentation in relation to the request which also covered paper files

and the DTI confirmed it was now confident no further documentation relevant to the request exists. The Commissioner accepts the DTI's explanation.

## Analysis

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17. The views expressed and information provided by the parties has been taken into account in the Commissioner's deliberations. The Commissioner notes that the information consists of 10 documents identified as follows:
1. Memo between 2 persons dated 19 May 2005 ("Document 1")
  2. Summary record of Business Whitehall Climate Change Group 20 May 2005 ("Document 2")
  3. Memo between 2 persons dated 20 June 2005 ("Document 3")
  4. Withheld in its entirety ("Document 4")
  5. Withheld in its entirety ("Document 5")
  6. Withheld in its entirety ("Document 6")
  7. Summary record of Business Whitehall Climate Change Group 6 July 2005 ("Document 7")
  8. Withheld in its entirety ("Document 8")
  9. Withheld in its entirety ("Document 9")
  10. Withheld in its entirety ("Document 10")

## Relevant Legislation

18. The Commissioner notes that the complainant believes the information may be environmental information within the definition of the Environmental Information Regulations 2004 (the "EIR"). The DTI has advised that some of the information in the request is environmental information, and this information has already been disclosed (see paragraphs 7 and 12 above). The DTI states that it does not believe that the information which has been withheld is of an environmental nature.
19. The potential application of the EIR has been considered by the Commissioner. The Commissioner focused on the definition of environmental information provided for in the EIR and has taken into account the purpose of the meetings the information records. After a detailed review of the withheld information, the Commissioner finds that, whilst the information refers to, and can be said to be 'on' energy policy, it is policy in respect of supply, demand and pricing rather than policy affecting or likely to affect the elements of the environment or factors affecting or likely to affect those elements. The Commissioner finds that the information is not environmental information as defined in the EIR and so has investigated the case under the Act.
20. The Commissioner accepts that he has received a copy of all relevant information as referred to at paragraph 16 above and which he has described as Documents 1 – 10. The Commissioner does however note that in an email to his office dated 27 February 2007, the DTI claimed that section 36 was applied as an alternative to section 35 where section 35 is not applicable. The Commissioner does not

accept that sections 35 and 36 may be applied in the alternative and he has applied either section 35 or 36 to each redaction as identified by the DTI. The Commissioner is of the view that if the information is found to be exempt it remains so even where the public interest test is found to require the disclosure of the information. Section 36 (1) (a) states that it can only be applied to information held by a government department which is not exempt by virtue of section 35.

21. The DTI has numbered the redactions it has made to each document and has explained which section of the Act it has applied to each redaction. The Commissioner adopts those numberings for ease of identification. The Commissioner has reviewed each exemption to determine whether it is engaged in respect of the withheld information, and if so where the exemption is not absolute, whether the public interest test in maintaining the exemption outweighs the public interest in disclosing the information.

## Exemptions

### Section 35(1)(a)

22. This is a class based exemption which potentially exempts information relating to the formulation or development of government policy. Section 35 of the Act is set out in full in the Legal Annex of this Notice.
23. To engage the exemption, it is not necessary to demonstrate that prejudice would occur if the information was disclosed; the information must simply relate to the topics stated. In the Tribunal Decision '*DfES vs Evening Standard (EA/2006/006)*' the Tribunal conclude that 'relates to' and 'formulation of government policy' should be given a reasonably broad interpretation. However, the exemption is qualified which means that the public authority (in this case the DTI), must apply the public interest test.
24. The DTI argues that the source of the information is irrelevant and relies on the DCA's guidance which provides at paragraph 2.8 that "a suggestion or advice received from a third party in the course of policy development will be covered by the exemption." Consequently, if the information relates to the formulation or development of government policy, the DTI states the exemption is engaged.
25. The Commissioner accepts the exemption is engaged for information relating to advice from third parties if that advice relates to the formulation or development of government policy.
26. The Commissioner has taken each document in turn and reviewed the information exempted under section 35 to determine whether the exemption is engaged. The Commissioner accepts that for all the information redacted under this exemption, the information relates to the formulation or development of government policy and therefore, the exemption is engaged. The Commissioner has then gone on to consider the public interest test.

## Public Interest Test

27. 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 requested information. In applying the public interest test, the Commissioner has considered many issues which are summarised below.
28. The Commissioner recognises that frank and honest debate, whether in a Cabinet Committee or otherwise, is necessary for high quality policy formulation and that there is a public interest, in certain circumstances, in maintaining private space for discussion away from public scrutiny to formulate policy. He notes that the Act will, therefore protect the formulation and development of government policy by maintaining privacy when it is sufficiently in the public interest to do so.
29. The DTI argues that there is likely to be a deterrent effect on third parties in providing input into the policy making process if there was a danger of the discussions entered into being disclosed. The DTI argues that Ministers and officials need to be allowed to weigh up advice and options without the distortion that premature disclosure might create by closing off options that might otherwise be viable. They also need to have regard to the effect of policy announcements on markets and the damaging effect that speculation about government intervention or disclosure of partially formed policies can have on confidence not only in government but also in the private sector. The DTI advises that the CBI is a vital source of advice to it on the potential and actual impact of DTI policies on the business community. In particular the DTI asserts that the CBI also has a deep and sophisticated understanding of the complexities of wider government policies in the UK and Europe – consequently, it is equipped to provide sound advice to inform the policy making process.
30. FOE argue that there will not be a deterrent effect on discussions between the government as CBI officials need to lobby the government as it is in its interest to do so. The complainant considers that the CBI does not provide advice and makes representations on behalf of the business community.
31. The Commissioner notes that the requested information dates from 5 May 2005 to 1 July 2005 being the date of the request and the date specified in the complainant's request. The Commissioner has also considered whether any policy decisions arising out of the information are likely to have been taken at the time of the request.
32. The Commissioner recognises that there is an inherent public interest in public authorities being transparent in the decisions they take in order to promote accountability. If the background information to the decision making process is made public, there is a strong argument that this should improve the quality of future decisions and will ensure public authorities are acting appropriately.
33. The complainant argues that there is a strong public interest in disclosing the representations that private individuals, corporations and lobbying organisations make to public authorities. It referred the Commissioner to the Office of the

Information Commissioner of the Irish Republic, Sunday Times-v-Department of Justice (case No 98058 of 16 June 2000) where it was stated, *“As a general principle, I consider it in the public interest that views and representations which influence the legislative process should be open to public scrutiny....”*.

34. It is the Commissioner's view that the disclosure of information which will shed light on how lobby groups influence policy is desirable as it will ensure transparency and accountability. In addition, it may also improve confidence in the manner in which decisions are taken which would reassure the public and increase trust in the government of the day.
35. The Commissioner notes that it is in the public interest to disclose information where this would help further the understanding of and participation in the public debate of issues of the day. There is an interest in increasing the public's understanding of how public authorities' decisions affect them and, where appropriate, in allowing the public to challenge these decisions.
36. The Commissioner has taken each document in turn and reviewed the information exempted to determine whether the public interest in maintaining the exemption outweighs the public interest in disclosing it.
37. The Commissioner finds that in respect of the redactions in document 1 (1.3), document 3 (3.2), document 4(4.2, paragraph 1) and document 5 (text a-j) the public interest in maintaining the exemption outweighs the public interest in disclosure for the following reasons. In respect of the above redactions the area of policy they relate to remains under discussion. The Commissioner recognises that there is a necessity to strike a balance between disclosing sufficient information to allow informed debate and protecting the space within which Ministers are advised and formulate policy. Having balanced these issues, the Commissioner finds that the greater public interest lies in providing the government with thinking space.
38. The Commissioner finds that in respect of the redactions in document 1 (1.4), document 3(3.5), document 4 (4.2 – paragraph 2, 4.4, 4.6 and 4.8), document 6, document 8 and document 10 the public interest in maintaining the exemption does not outweigh the public interest in disclosure for the following reasons. In respect of the above redactions the public interest lies in encouraging informed public debate and in promoting transparency and accountability. The Commissioner, in reaching his decision, is mindful that the issues involved are of a broad public interest as the information relates to trade policies, strategies and energy. The Commissioner has also considered that some of the information deals with a third party making its view known to the Government in an attempt to influence the decision making process and feels that there is a strong public interest in disclosure of information such as this which would allow the policy process to be scrutinized.

### **Section 36(2)(b)**

- 39 This is a qualified exemption which potentially exempts information where disclosure would prejudice the effective conduct of public affairs. Section 36 of

the Act is set out in full in the Legal Annex of this Notice. The DTI have applied section 36 to specific redactions where section 35 did not apply.

40. The DTI states that disclosing the withheld information would, or would be likely to inhibit the free and frank provision of advice or the free and frank exchange of views for the purposes of deliberation. Consequently, the DTI considers that subject to the public interest test, the information is exempt as provided for by section 36(2)(b)(i) and (ii).
41. Section 36 states that information can only be exempt if in the reasonable opinion of the appropriate qualified person disclosure of the information would cause prejudice to the effective conduct of public affairs as set out in the Act and explained in the Commissioner's Awareness Guidance No 25. In the Tribunal decision '*Guardian & Brooke vs BBC (EA/2006/001)*' the Tribunal found that 'reasonable opinion' for the purposes of section 36 is one which is both objectively reasonable and reasonably arrived at.
42. The initial refusal letter of 26 July 2005 did not mention reliance on section 36. The DTI first mentioned such reliance in its letter to the Commissioner dated 18 September 2006. On questioning by the Commissioner, the DTI confirmed that the opinion was that of Lord Sainsbury, Parliamentary Under Secretary of State for Science and Innovation at the DTI. Lord Sainsbury was asked for his view on 14 September 2006 and provided it on 18 September 2006. The Commissioner accepts that the Parliamentary Under Secretary of State is a qualified person for the purposes of the Act. As the reasons for withholding the information appear to be objectively reasonable, the Commissioner accepts that the release of the information would or would be likely to inhibit the free and frank provision of advice or the free and frank exchange of views for the purposes of deliberation. Therefore, the exemption is engaged in respect of all redactions.

### **Public Interest Test**

43. As section 36 is a qualified exemption, once the exemption is engaged, the release of the information is subject to the public interest test as discussed above.
44. The Commissioner has considered the withheld information and the arguments put forward by the DTI and the complainant. He notes that the public interest arguments set out at paragraphs 30 – 37 above are equally relevant to this exemption which, for the sake of brevity, he will not repeat here.
45. The Commissioner has taken each document in turn and reviewed whether the public interest in maintaining the exemption outweighs the public interest in disclosing it.
46. The Commissioner finds that in respect of the redactions in document 3 (3.3 and 3.4 paragraph 2) and document 4 (4.3 second sentence paragraph 1) the public interest in maintaining the exemption outweighs the public interest in disclosure. The Commissioner has reached this decision as the information is the personal view of an individual. It does not appear that the views are being provided with an intention of pressuring the Government. The Commissioner's view is that there is



no purpose to be served in terms of transparency and accountability nor furtherance of public debate.

47. As regards the redactions from document 1 (1.2, 1.5, 1.6, and 1.7) document 3 (3.4 paragraph 1, 3.6, 3.7, 3.8), document 4 (4.1, 4.3 sentence 1 paragraph 1 and paragraph 2) and document 9 the greater public interest lies in disclosing the information. The Commissioner finds that the greater public interest lies in transparency, accountability and openness as the information is either of a general nature, concerns advice on strategy and funding, concerns the relationships between the DTI and CBI, is already in the public domain, or relates to trade policies, strategies or energy. Consequently thinking space does not need to be protected and the greater public interest lies in transparency and accountability and there is a strong public interest in introducing the information into the public arena.
48. The Commissioner finds that in respect of the information redacted in document 4 (4.7 and 4.9), the greater public interest lies in transparency and accountability as it shows how a third party attempts to influence Government. The information should be disclosed.

## **Section 40(2)**

49. This exemption, which potentially exempts personal information, is absolute and therefore there is no need to apply the public interest test under section 2. Once the exemption is engaged, the information may be withheld. Section 40 of the Act is set out in full in the Legal Annex of this Notice.
50. Initially, the Commissioner must satisfy himself that the information is the personal data of a third party as defined in section 1(1) of the DPA. Such data is then exempt from disclosure under the Act where one of the conditions referred to in section 40(3) is satisfied.
51. One of the conditions in Section 40(3) is satisfied where disclosure of the information requested would result in a breach of any of the 'data protection principles' set out in Schedule 1 Part I of the DPA.
52. The first data protection principle requires that personal data shall be processed fairly and lawfully, and in particular, shall not be processed unless at least one of the conditions in Schedule 2 of the DPA is met.
53. When considering compliance with the first data protection principle it is necessary to consider what the reasonable expectations of a person would be in relation to how their information would be used and to whom it may be disclosed.

## **The application of the exemption to the information**

54. The Commissioner has taken each document in turn and reviewed the information exempted under section 40 and determined whether the exemption is engaged in respect of each individual redaction. He accepts that the name of an individual taken together with their place of employment is sufficient to identify

them and therefore consists of their personal information. As regards document 5, the Commissioner notes that whilst the entire document has been withheld the only exemption applied is section 40, however it is the Commissioner's view that only the names within the document are personal data

55. The Commissioner does not believe it would be unfair to release the personal information at redaction from document 1 (1.1), document 2, document 4, document 5 (up to text a-j) and document 7. The Commissioner recognises that ultimately, all public sector employees are accountable to the public. It is the Commissioner's view the individuals mentioned by name within the information are senior employees within their respective organisations or departments. There is therefore no reason why the public should not be aware of their presence as it is a matter of accountability and it must be within the individual's expectations that such information may be disclosed to the public. Consequently, releasing the information would not be unfair or unlawful, the exemption is not engaged and the information should be disclosed.
- 56 The information redacted from document 3 is the name, work address and work telephone number of the author. The Commissioner does not believe it would be unfair to release most of this information as outlined above. However the Commissioner does consider that the second line of the address which reveals the individuals exact location should not be disclosed as the individual would have a reasonable expectation that this would be kept private.

#### **Section 41**

57. Section 41 is a class based exemption which potentially exempts information provided in confidence from disclosure. Section 41 of the Act is set out in full in the Legal Annex of this Notice.
58. The Commissioner has considered whether an obligation of confidence has arisen. To assess this, he has taken into account the circumstances under which the information was created and the nature of it. Under section 41, information is exempt if 'it was obtained by the public authority from any other person'. The exemption under section 41 only applies to information that is held by a public authority by virtue of the fact that it was obtained from another person or public authority, and does not apply to information held by the public authority of its own accord. The withheld information was created by the DTI. Consequently, in relying on section 41 the DTI incorrectly applied the exemption as the information was not obtained by it from another party – it holds the information in its own right.
- 59 Therefore, the Commissioner does not accept that section 41 can apply to the information. This is consistent with the Information Tribunal's decision in *Derry City Council v the Information Commissioner, Appeal Number: EA/2006/0014*. Therefore, section 41 is not engaged in respect of any of the withheld information.

## The Decision

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60. The Commissioner's decision is that the public authority partially dealt with the request for information in accordance with the Act.

## Steps Required

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

**The DTI shall disclose to the complainant** the following information from the 10 withheld documents:

1. Document 1 – Redactions 1.1, 1.2, 1.4, 1.5, 1.6, 1.7, 1.8 to be disclosed.
  2. Document 2 - Whole document to be disclosed.
  3. Document 3 - The address of the author of the document except the bay area as defined in the 2<sup>nd</sup> line and the redactions at the final sentence of 3.2, the first sentence of 3.4, and the whole redactions at 3.5, 3.6, 3.7, 3.8 to be disclosed.
  4. Document 4 – The redactions at 4.1, 4.2 (except the first paragraph) and the first sentence and second paragraph of 4.3 to be disclosed together with the whole redactions at 4.4, 4.5, 4.6, 4.7, 4.8 and 4.9
  5. Document 5- Whole document to be disclosed (except all text a – j which may be withheld).
  6. Document 6- Whole document to be disclosed.
  7. Document 7- Whole document to be disclosed.
  8. Document 8- Whole document to be disclosed.
  9. Document 9- Whole document to be disclosed.
  10. Document 10- Whole document to be disclosed.
62. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

## Failure to comply

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63. 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

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64. 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](mailto: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 4<sup>th</sup> day of July 2007**

**Signed .....**

**Richard Thomas  
Information Commissioner**

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

## Legal Annex

**Section 35(1)(a)** 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,

**Section 36** provides that –

(1) 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.

(2) 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.

(3) 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).

(4) 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".

(5) 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.

(6) 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.

- (7) 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.

**Section 40** provides that -

“(1) 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.

(2) 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 second condition below is satisfied.

(3) 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.

(4) 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).”

**The first data protection principle provides:**

1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless-
  - (a) at least one of the conditions in Schedule 2 is met, and
  - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

**Schedule 2 of the DPA provides:**

CONDITIONS RELEVANT FOR PURPOSES OF THE FIRST PRINCIPLE: PROCESSING OF ANY PERSONAL DATA

1. The data subject has given his consent to the processing.
2. The processing is necessary-
  - (a) for the performance of a contract to which the data subject is a party, or
  - (b) for the taking of steps at the request of the data subject with a view to entering into a contract.

3. The processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract.
4. The processing is necessary in order to protect the vital interests of the data subject.
5. The processing is necessary-
  - (a) for the administration of justice,
  - (b) for the exercise of any functions conferred on any person by or under any enactment,
  - (c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department, or
  - (d) for the exercise of any other functions of a public nature exercised in the public interest by any person.
6. -
  - (1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.
  - (2) The Secretary of State may by order specify particular circumstances in which this condition is, or is not, to be taken to be satisfied.

**Section 41** provides that –

- “(1) 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.