

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 30 August 2007

Public Authority: Home Office- Immigration and Nationality Directorate
Address: Apollo House,
36 Wellesley Road,
Croydon, CR9 3RR

Summary

The complainant sought access to legal and other advice obtained by the public authority to assist it in responding to a grievance proceeding. The public authority relied on the exemption contained in Section 42 of the Freedom of Information Act to refuse disclosure of the legal advice, and said that it did not hold other advice. It submitted that the public interest in maintaining the exemption in relation to the information that it did hold outweighed the public interest in disclosure.

The Commissioner has decided that the Home Office appropriately relied upon the exemption in section 42 in relation to some of the material for which it has been claimed and that the public interest in maintaining the exemption overrides the public interest in disclosure over that material. However, the Commissioner is not satisfied that the exemption has been correctly applied to all of the information and therefore he has ordered that some of the material be released to the complainant. In failing to supply the sections of the requested information which the Commissioner considers were not subject to legal professional privilege, he has concluded that the Home Office breached section 1(1)(b) of the Act. The Commissioner has also found that the public authority complied with the requirements of section 1(1)(a) in notifying the complainant that it did not hold the other advice.

The Commissioner also identified a limited amount of information which he considered constituted the complainant's personal data. This information is exempt under section 40 (1) of the Act. He has considered whether or not this information should have been supplied to the complainant under section 7 of the Data Protection Act 1998 separately.

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. The complainant is an employee of the Immigration and Nationality Directorate (IND) of the Home Office (this is now known as the Borders and Immigration Authority (BIA)). In 2005 he lodged a formal internal grievance procedure with the IND, which related to the reduction in overtime hours available to staff within the IND.
3. Various pieces of correspondence went between the complainant and the IND's Human Resources Directorate (HRD) and the United Kingdom Immigration Service (UKIS) senior management during the period leading up to the grievance being filed and afterwards. During this correspondence the HRD and IND/UKIS management referred to certain pieces of information which were not provided to the complainant. The pieces of information are those referred to in Paragraph 4 of this Decision Notice. The complainant then made a written request for this information. The Home Office treated this request as a request for information under the Freedom of Information Act (FOIA).
4. The complainant requested certain information from the Home Office on 20 May 2005. In his request he asked for:
 1. A full and complete copy of the HRD and Treasury Solicitor advice referred to in the UKIS Assistant Director's (Paul Howcroft) 26 March 2004 letter at Paragraph 4.
 2. A copy of the actual advice received from HRD and the Treasury Solicitor referred to in Deputy Director Regions South (Steve Harvey) letter of 14 June 2004 under the paragraph entitled 'the legal position'.
 3. A copy of the advice of the Human Resources Business Partner (Tracey McGee) referred to in Steve Harvey's letter of 14 June 2004.
 4. Full disclosure of the legal opinion from the Treasury Solicitor referred to in Senior Director of UKIS HRD (Steve Barnett) letter dated 18 November 2004.
5. A refusal notice was issued by the Home Office on 20 June 2005. In its refusal notice the Home Office clarified that the legal advice was from the Home Office Legal Adviser's Branch (HOLAB) and not from the Treasury Solicitor as it had previously indicated. The legal professional privilege exemption found in Section 42 of the FOIA was relied on to refuse disclosure of the bulk of the first, second and fourth items of information sought. It was claimed that information was not held in relation to item three because the meeting referred to was an oral briefing and no record of it was made. Limited information in response to item one was provided to the complainant.
6. Public interest arguments were provided by the Home Office to support the use of the Section 42 exemption. In summary these arguments were that whilst there was a public interest in HRD and HOLAB being held accountable for the quality of its decision making, the public interest in enabling the HRD to make decisions in

a fully informed legal context meant that it needed to be able to obtain legal advice without the fear of subsequent disclosure. If legal advice was disclosed HRD may not be willing to seek legal advice in the future and may then make legally flawed decisions.

7. The complainant asked for an internal review of this decision on 6 July 2005. In his request the complainant put forward a public interest argument in favour of disclosure that, 'if the advice given was legally sound, then there is no case for withholding it'. He also felt that HOLAB should be accountable for the advice they gave and that this was a strong public interest argument in favour of disclosure. Regarding Item 3, the complainant did not accept that there would be no written record of the advice provided by the Human Resources Business Partner and he asked for any notes made regarding the meeting.
8. The Home Office performed an internal review on the basis of this request on 6 September 2005. This review upheld the refusal notice and the Section 42 exemption claimed and reiterated the public interest arguments outlined in the refusal notice. The internal review confirmed that no written record of the meeting with the Human Resources Business Partner was held.

The Investigation

Scope of the case

9. On 31 October 2005 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
 - Whether the public interest was served by withholding the requested information for the reasons outlined in his letter requesting internal review.
 - For the decision of the Home Office to be reviewed by the Commissioner.
10. In the course of the investigation the Commissioner has considered the following issues:
 - Whether some of the information would be more suitably dealt with as a subject access request under the Data Protection Act 1998?
 - Whether legal professional privilege can be claimed over all of the withheld information?
 - Whether legal advice privilege or litigation privilege is more suitable to be claimed over the information in question?
 - Whether the public authority has waived legal professional privilege in this matter?

- The public interest arguments cited by both the complainant and the public authority and whether the Home Office has appropriately refused to supply the information it does hold to the complainant in this case.

Chronology

11. Once the matter was referred to the Commissioner, a case officer was assigned to the matter and an investigation was undertaken.
12. A case officer of the Information Commissioner's Office (ICO) wrote to the complainant on 13 November 2006. In that letter the complainant was advised that the investigation would be limited to investigating whether all of the legal advice supplied by the Home Office Legal Adviser's Branch (which had been relied on in the complainant's grievance procedure with the UKIS) should be disclosed to the complainant; and whether there was any record of the advice given by the Human Resources Business Partner to the Deputy Director Regions South.
13. On 25 November 2006 the complainant wrote to the case officer, confirming that the information he sought was outlined in the 13 November 2006 letter.
14. The case worker then wrote to the Home Office on 5 December 2006 seeking access to the disputed information for assessment within 20 working days. The Home Office was asked for submissions about whether it felt that legal professional privilege had been waived in this matter. The Home Office was also asked about its practices when requesting advice from Human Resource Business Partners and whether there were any guidelines or protocols for requesting such information.
15. The Home Office did not comply with the case worker's request for a response within 20 working days. A response was sent on 16 February 2007. The Home Office provided all of the legal advice which had been not been disclosed to the complainant. It consisted of two email chains between various Home Office employees. Having reviewed the disputed information the case officer reverted to the Home Office for further information. In particular, the case officer noted that the Home Office had elected to treat the request for information as a Freedom of Information request rather than a data protection matter. Having had the benefit of reviewing the withheld information, it appeared to the case officer that some of the material was likely to constitute the complainant's personal data within the meaning of the Data Protection Act 1998 (the DPA). Therefore, the Home Office was asked for submissions about why these elements of the request were not dealt with under the DPA in a letter dated 23 February 2007.
16. The first chain had seven emails and the second chain had three emails. Some of the emails were between HOLAB and non HOLAB Home Office staff; whilst others were solely between non HOLAB Home Office staff. Some of the non HOLAB staff emails referred to the legal advice provided and others did not. A number of the emails were sent to multiple recipients, some of whom were HOLAB staff and others who were not. The Home Office confirmed that it was applying legal advice privilege over all the emails and that it did not believe that

- privilege had been waived. Regarding the advice given by the Human Resources Business Partner, it confirmed that there was no Home Office requirement for advice to be given in writing and that in this instance the advice was given over the phone with no written record of it having been kept.
17. Part of the second chain of emails appeared to contain information which specifically referred to the complainant and the contents of his grievance.
 18. On 23 February 2007 the Home Office wrote to the ICO. It indicated that it did not believe that the emails that referred to the complainant constituted his personal data as they were not about him specifically. Further the emails did not include any factual information about him, nor any intentions towards him or any opinions about him. One line of one email could fall within the realm of a Subject Access Request, but would be withheld if this were the case under paragraph 10 of Schedule 7 of the DPA as it was generated within the context of seeking legal advice. This section of the DPA provides an exemption from the Subject Access provisions where the data consists of information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
 19. The case worker wrote again to the Home Office on 26 February 2007. In that letter the case worker asked whether the Home Office would consider releasing three emails contained in the chains which were not to or from a HOLAB adviser and which did not refer to the advice given. It was asked to consider releasing two emails in their entirety and one on a redacted basis. The Home Office was also asked to consider providing copies of attached documents which were referred to in the email chains but which had not been provided to the ICO. The case worker also asked for any written evidence of the meeting with the Human Resources Business Partner to be provided to the ICO. The Home Office was asked to make submissions about the dominant purpose test for material covered by legal advice privilege.
 20. The Home Office responded to this letter on 24 April 2007. In that response it agreed that one of the emails contained in the chain could be released. It confirmed again that it was claiming legal advice privilege over all the other emails in the chains in their entireties, and that it did not think it was possible to redact the requested email to extract non legal advice from it. The attachments referred to by the case officer in the letter of 26 February 2007 were provided to the ICO, along with the explanation that they had already been provided to the complainant previously. The Commissioner has not given further consideration to the attachments previously given to the complainant and has focussed the investigation on the remainder of the withheld information.

Analysis

Information regarding the meeting between the Human Resources Business Partner and Deputy Director Regions South

21. In the course of the investigation the case officer requested information from the Home Office about its standard procedures and protocols for recording advice provided by staff including the Human Resources Business Partner. The Home Office advised that there was no specific requirement for advice of this nature to be recorded. In this case it explained that the meeting referred to was an oral briefing and that no note was kept.
22. The Commissioner has not been provided with any evidence or arguments which demonstrate that this information was or should have been recorded. Whilst the complainant may expect that a record would be maintained, in this instance it appears that this is not in fact the case. On the basis of the evidence available the Commissioner is satisfied that no record of this advice exists.

Exemptions

Section 42 – Legal Professional Privilege

Does Section 42 (1) of the Act apply to all of the requested information?

23. **Section 42(1) of the Freedom of Information Act 2000** 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.”
24. The withheld information in this matter related to legal advice about contractual matters for Home Office employees. The advice was requested by non HOLAB Home Office staff and was provided by HOLAB solicitors. The advice was requested in response to the investigation of a grievance lodged by the complainant about changes to his work conditions. Some of this legal advice was shared between non HOLAB Home Office staff who were dealing with the issue. Litigation was not contemplated. Therefore the privilege that can be claimed falls into the category of advice privilege, rather than litigation privilege.
25. For legal advice privilege to be successfully claimed the information in question must be communicated to a client by a legally qualified person acting in a professional capacity; and it needs to be for the dominant purpose of seeking or giving legal advice.
26. The Commissioner's Freedom of Information Act Awareness Guidance Number 4 on Legal Professional Privilege states that, 'information does not attract privilege simply by being handed to a professional legal adviser amongst other communications'. The Commissioner's position is that legal advice privilege cannot be claimed over each email purely on the basis that they form part of an email chain; nor that all of an email can be privileged solely on the basis that

some of the information in that email consists of a request for or is a record of legal advice given by a legal adviser.

27. The Commissioner has therefore gone through each of the email chains with a view to establishing whether privilege can be claimed over each email. He has concluded that some of the emails attract legal professional privilege in their entirety, others contain certain information to which privilege applies and a limited number do not attract privilege at all. His conclusions in relation to each email are set out below. It is impractical to specify which elements of the combined emails should be disclosed in this notice without potentially revealing the withheld information. Therefore, the Commissioner has set out in Annex B to this Decision Notice those elements of the emails he considers do not attract legal professional privilege and therefore where section 42 has been incorrectly applied. Annex B will therefore only be included in the Decision Notice served on the public authority.

Emails to which legal professional privilege does not apply

First chain:

28. The first chain contains seven emails. The Commissioner has concluded that section 42 has been incorrectly applied to emails one, two and seven in this chain. This is because he is not satisfied that the emails constitute communications between a client and a legally qualified person.
29. As mentioned previously in this notice the Home Office indicated in the course of the investigation that it was prepared to release email seven to the complainant. The Commissioner has not received confirmation that this email has been disclosed to the complainant and therefore he has included it as part of the information which he has ordered be disclosed to the complainant in the step later in this decision notice.

Second chain:

30. The Commissioner does not consider that legal professional privilege applies to the second email within this chain as it is not a communication between a client and a legally qualified person.

Emails to which legal professional privilege applies

First chain:

Emails Four and Five:

31. These emails are from an in house client to an in house legal adviser and are following up on the earlier request for advice. The emails are therefore covered by legal professional privilege.

Emails which contain both privileged and non privileged information

First chain:

Email Three:

32. The Commissioner is satisfied that the contents of this email are covered by legal professional privilege. This communication is made between a client and a legally qualified person acting in their professional capacity and it has been made for the dominant purpose of seeking legal advice.
33. However, the email contained an attachment, which was a pre-existing document not created for the dominant purpose of obtaining legal advice. A document which would not otherwise attract privilege cannot attract privilege simply by being enclosed with, attached to or forwarded with a privileged document. Therefore, the Commissioner does not consider that section 42 applies to the attachment. However, in the course of the investigation the Home Office confirmed that the attachment has been disclosed to the complainant already. Therefore he has not made any further comment about the attachment in this notice.

Email Six:

34. This email is from a Home Office non legal adviser and contains a mix of privileged and non-privileged information. The privileged part of the email comprises the parts of the email addressed to a legal adviser with the dominant purpose of seeking legal advice. The non privileged information comprises the parts of the email which are directed to non legal advisers for other purposes. Details of which elements of the email are not considered to attract legal professional privilege are contained in the Annex B.

Second chain

35. The Commissioner is satisfied that some information within the first and third emails in this chain attracts legal professional privilege. The privileged parts of the emails are the parts of the emails addressed to a legal adviser for the dominant purpose of seeking legal advice. The non privileged information comprises the parts of the emails which are directed to non legal advisers for other purposes. As above, details of those parts of the email which are not subject to legal professional privilege are contained in the Annex.

Has the public authority waived legal professional privilege over the information in this matter?

36. Where the Commissioner is satisfied that the requested information is subject to legal professional privilege, he has considered whether or not privilege may have been waived.
37. There is no evidence which indicates that the advice has been circulated widely to the world at large, nor to indicate that it has been published. Many of the

emails were marked confidential, although none of them were marked as being 'legal advice' or subject to legal professional privilege. The Home office's position is that all senders and recipients of this advice expected that the information would be confidential. The Commissioner is therefore of the opinion that privilege has not been waived by the Home Office in this matter.

38. Having established that legal advice privilege can be claimed over some of the withheld information, the Commissioner then moved on to consider whether, in respect of that material, the Home Office had appropriately claimed that the public interest favoured maintaining the exemption. In doing so he considered the public interest arguments submitted by the complainant and the Home Office.
39. As the exemption contained in Section 42 is a qualified exemption, information can only be withheld from an applicant if the public interest in maintaining the exemption outweighs the public interest in releasing the information.

The Home Office's public interest arguments:

40. The Home Office's position is that the potential harm to the public good if this information was released outweighs any public gain. It agreed that there is a public interest in disclosing information about decisions taken in respect of staffing issues and the legal advice on which these decisions are based. It also agreed that there is a public interest in HRD and HOLAB being accountable overall for the quality of the decisions they make.
41. However it felt that the public interests arguments in favour of maintaining the exemption had greater weight in this case. It felt that any decision taken by HRD must be taken in a fully informed legal context and that the legal advice in question needed to be able to present a full picture to HRD without the fear of subsequent disclosure. Disclosure may lead to future decisions being made without full legal advice for fear of its subsequent disclosure.

Complainant's public interest arguments:

42. The complainant's position is that if the advice given was legally sound then there is no case for withholding it, as there can be no conflict of public interest in divulging information which is both accurate and lawful. His argument is that the Home Office's position seeks to make HOLAB unaccountable for the advice they give and he feels that the enactment of the FOIA is to make government actions more transparent. The complainant also stated that release of this information would assist him in understanding why his terms and conditions were allowed to be varied without negotiation.

The Commissioner's consideration of the public interest:

43. In reaching a view about the public interest, the Commissioner has taken into account a number of other cases that have already been heard by the Information Tribunal (IT) in which the issue of legal professional privilege and the public interest test have been considered.

44. In the case EA/2005/2003 *Bellamy v the Information Commissioner and the DTI* (the Bellamy Case) the IT decided that, 'with regard to legal professional privilege, there is no doubt that under English law the privilege is equated with, if not elevated to, a fundamental right insofar as the administration of justice is concerned' (paragraph 8).
45. Paragraph 10 of the Bellamy decision cites the case of *In Re L (a minor) (Police Investigation: Privilege)* [1997] AC 16 at page 32E, where Lord Nicholls of Birkenhead stated that, 'the public interest in a party being able to obtain informed legal advice in confidence prevails over the public interest in all relevant material being available to courts when deciding cases'.
46. The Tribunal found at Paragraph 35 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'.
47. The Commissioner also considered the Information Tribunal's decision EA/2006/0044 of *Kitchener v the Information Commissioner and Derby City Council* ('the Kitchener decision') and in particular their findings regarding public interest and legal professional privilege.
48. Paragraph 16 of the Kitchener decision states, regarding legal professional privilege, 'if either the lawyer or the client could be forced to disclose what either said to the other (whether orally or in writing) as part of that process it would undermine the very point of the process. The client could not speak frankly to the lawyer if there was a possibility that disclosure might later be ordered'.
49. Paragraph 12 of the Kitchener decision states, 'It is clear that, in law, each request for disclosure of information must be considered by the Commissioner on its merits, against the framework. '
50. Whilst those cases are not binding upon the Commissioner's decision, they provide the Commissioner with guidance in determining what weight should be given to the public interest arguments in this matter.
51. A public authority such as the Home Office must be able to seek legal guidance when making decisions. This advice should be free from the threat of interference except in exceptional circumstances, where the arguments in favour of disclosure are particularly compelling.
52. To assess whether there are strong counter-vailing public interest considerations in this matter, the Commissioner has approached his analysis of the public interest in this case by considering a number of questions. These are addressed in turn below.

What is the age of the information in question?

53. In the Bellamy Case the Information Tribunal stated at Paragraph 35 that, 'where the legal advice was stale, issues might arise as to whether or not the public interest favouring disclosure should be given particular weight'. The

Commissioner therefore considered whether the legal advice in this matter could be considered stale.

54. The information is from 2004 and relates to the working conditions of UKIS Staff, including the complainant. The complainant is still employed by UKIS. The Commissioner recognises that similar issues may arise in future in relation working patterns and that the advice may be pertinent to any changes and/or subsequent challenges. In the event of further alterations to working patterns it is important that the Home Office is able to obtain full and frank legal advice and to release the requested information could undermine that possibility. Therefore the Commissioner is not satisfied that in this matter the information in question can be seen to be stale, or of such an age that the public interest arguments connected to the maintenance of the exemption should be diluted for this reason.

Would the information help the public to understand the decisions made by the public authority and to challenge those decisions?

55. The Commissioner agrees that as a general principle there is a public interest in ensuring that the Home Office is accountable for its decisions and accepts that if the legal advice was released it would increase transparency about the decision that was made. He notes that a decision to alter overtime working patterns reflects a change in the way that funds from the public purse are spent by the Home Office, in terms of the allocation of funds for staff costs and to the way in which staff carry out its functions. Greater transparency is likely to contribute to a greater public confidence that such decisions have been made appropriately and on a sound legal basis.
56. In this case disclosing the information would assist the public in understanding the legal basis for decisions that the Home Office has made when altering its overtime working patterns and why they have been made. To some extent it would also inform the public about the general process followed by the Home Office when making such decisions.
57. The Commissioner notes the comments made in Paragraph 14 of the Information Tribunal's decision EA/2006/0044 of *Kitchener v the Information Commissioner and Derby City Council* which stated, 'there is a public interest in ensuring that the activities of public authorities are known, and can be called to account if appropriate'
58. The Commissioner also recognises that the requested information may also help the complainant and other Home Office staff members affected by the decision to change working patterns to understand and to challenge that decision. He therefore considers this to be a public interest argument with some weight.

Is there any widespread concern that the public authority has failed to comply with its procedures or to seek appropriate advice, such that public confidence in the decisions it has made is being undermined?

59. Where information reflects that a public authority has not followed its own practices or procedures the public interest in disclosure may be stronger. In

addition where there is a widespread concern that a public authority may or may not have sought advice where appropriate or that it may not have provided the legal adviser with all the relevant facts, it is arguable that the public interest in disclosing the instructions and legal advice will be greater.

60. In this matter the Home Office, as part of the process of investigating a grievance lodged by the complainant did obtain legal advice about the contractual position of the affected staff and also obtained advice from the HRD. Their position was communicated to the staff, including the complainant, however they have declined to provide the legal advice obtained. There is nothing in the matter before the Commissioner which indicates the Home Office has not obtained suitable advice or that that its decision or process was contrary to its own practices and procedures. Information about the decision has been communicated to the affected staff members and the Home Office's grievance procedure has been enacted and followed.
61. The decision has therefore been subjected to internal scrutiny at senior levels and the Commissioner is satisfied that the matter has been dealt with by the Home Office in accordance with its standard processes. Therefore he does not consider this argument has weight in this case.
62. The Commissioner is not satisfied that the counter-voicing arguments outlined above are sufficiently strong to outweigh the significant and established arguments in favour of maintaining the exemption in section 42.

Section 40 (1) – Personal data

63. The Commissioner has also given further consideration to whether any of the information requested by the complainant constitutes his personal data and therefore is exempt under section 40(1) of the Act. He is satisfied that a limited amount of information within all three of the emails in the second chain constitutes the complainant's personal data. This information has also been identified in Annex B which will be provided to the Home Office.
64. The Commissioner considers that where the information constitutes the complainant's personal data it is exempt from the right of access in section 1 of the Act by virtue of section 40(1). Access to this information should have been considered by the Home Office under section 7 of the DPA.
65. Section 7 of the DPA gives an individual the right to request copies of personal data held about them – this is referred to as the right of Subject Access. Therefore, the Commissioner will go on to make an assessment under section 42 of the DPA as to whether the information in question in this case should be disclosed to the complainant under this access right. However, this assessment will be dealt with separately and will not form part of this Decision Notice, because an assessment under section 42 of the DPA is a separate legal process from the consideration of a complaint under section 50 of the FOI Act. The outcome of the DPA assessment will be communicated to the complainant separately.

The Decision

66. The Commissioner's decision is that the public authority partly dealt with the complainant's request in accordance with the requirements of the Act in refusing to supply some of the requested information by virtue of section 42(1). Where the Commissioner is satisfied that the information is subject to legal professional privilege he has decided that the Home Office complied with section 1(1)(b) in refusing to supply that information.
67. However, some of the material requested is not, in the Commissioner's view, subject to legal professional privilege. This is because the communications were not made between a client and a legally qualified professional acting in their professional capacity, for the dominant purpose of seeking or providing legal advice. In relation to this information the Commissioner considers that the Home Office breached section 1(1)(b) in refusing to supply that material to the complainant.
68. The Commissioner has also identified a limited amount of information which he considers constitutes the complainant's personal data. This information is exempt under section 40(1) of the Act. He has considered whether or not this information should be provided to the complainant under section 7 of the DPA as a separate matter and will communicate his decision in this regard to the complainant shortly.

Steps Required

69. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- *disclose all information in Annex B to this notice which is not highlighted as being subject to section 42(1) or section 40(1) to the complainant.*
70. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

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

Right of Appeal

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

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

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

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

Dated the 30th day of August 2007

Signed

**Jane Durkin
Assistant Commissioner**

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

Annex A – Legal Annex

Section 42 – Legal Professional Privilege

“(1) 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 40 – Personal Data

“(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”.