

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 29 April 2008

Public Authority: Department for Children, Schools and Families
Address: Sanctuary Buildings
Great Smith Street
London
SW1P 3BT

Summary

The complainant asked DCSF for a copy of information that it held relating to the academy of which he is a proprietor, including a letter which brought the existence of the academy to DCSF's notice. The Commissioner found that DCSF had correctly applied the exemptions in sections 31, and 42 and that, in all the circumstances of the case, the public interest in maintaining the exemptions outweighed the public interest in disclosing the information. He also found that the information contained in the letter was personal information relating to the complainant and was therefore exempt from disclosure under this legislation through the operation of section 40(1) and that the name of an official could be withheld under the exemption in section 40(2). The Commissioner also concluded that DCSF had breached sections 10(1) and 17(1) of the Act by late disclosure of the requested information, by failing to issue a refusal notice within 20 working days of receiving the request and by failing to cite all of the exemptions on which it was relying within that period.

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 statutory provisions relevant to this case are set out in full in the Legal Annex to this Notice. This complaint is linked to that which is being considered under case reference FS50155503.

The Request

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2. The complainant has a dispute with what was then the Department for Education and Skills (DfES) (now the Department for Children, Schools and Families (DCSF), which term is used throughout this Notice for ease of reference) as to whether or not Tyndale Academy, of which he is the proprietor, provides full time

education and thus should be registered in accordance with the law. In relation to that matter, on 8 February 2005 he asked DCSF for:

- a. a copy of the report of a visit to the academy by HM Schools Inspectorate on 17 November 2004;
 - b. legal advice DCSF had received;
 - c. correspondence and notes of discussions relating to the academy; and
 - d. any relevant correspondence between DCSF and the relevant local authority, London Borough of Newham.
3. DCSF replied on 3 March 2005 and provided the copy of the Inspector's report but refused to provide the legal advice, citing the exemption in section 42 of the Act relating to legal professional privilege. DCSF said that it would write further on the other matters.
4. On 15 March 2005 the complainant emailed DCSF, saying that if it was able to provide a thorough explanation of the legal basis on which it adjudged the academy to be providing full-time education, he would not feel it necessary to appeal against DCSF's refusal to disclose the legal advice that it had received.
5. On 21 March 2005 DCSF provided the complainant with the correspondence and notes of discussion relating to the academy and said that it would reply to the remainder of his request as soon as possible.
6. On 31 March 2005 the complainant raised some queries about DCSF's response and asked for:
 - a. any notes/correspondence/material/ relating to web pages that DCSF had sent him;
 - b. any documents/material relating to the discovery and initiation of investigations into Tyndale Academy/Tyndale Tuition group;
 - c. a summary of the legal advice given to DCSF;
 - d. any material recording discussions about that legal advice within and outside DCSF;
 - e. a list of materials and documents "relating to Tyndale which we have not specifically asked for, or which (DCSF) has decided not to disclose (listed by subject matter and author/recipient)" and the reasons for refusal to disclose;
 - f. any other materials relating to the academy which had come to DCSF since his request of 8/2/05.
7. DCSF replied on 17 May 2005, saying that it was providing the complainant with copies of correspondence and notes of discussions relating to the academy and relevant correspondence between DCSF and the local authority. DCSF also said that it was providing some communications between DCSF and Ofsted but was withholding others under section 31(1)(g) of the Act relating to law enforcement (the documents were actually provided on 18 May 2005). DCSF said that that exemption rendered information exempt if its disclosure would, or would be likely to, prejudice the exercise by any public authority of its functions for any of the purposes specified in subsection 2; in its view subsection 2(c) was applicable as the disclosure was likely to prejudice its functions for the purposes of ascertaining

whether circumstances which would justify regulatory action in pursuance of any enactment existed or might arise. DCSF said that in applying that exemption it had had to balance the public interest in withholding the information against the public interest in disclosing the information. DCSF did, however, provide the complainant with copies of correspondence received since 8 February 2005. DCSF again declined to provide a copy of the legal advice and any summary, saying that, in its view, in order not to undermine the quality of the Government's decision-making process, there was an accepted public interest in protecting the legal advice it received. DCSF said that, while there were limited circumstances in which the public interest in disclosing that advice would prevail, it did not consider that those circumstances applied here.

8. On 24 May 2005 the complainant asked DCSF to undertake an internal review of its decision. He disputed DCSF's refusal to provide him with copies of the legal advice, or a summary of it; the letter which had informed DCSF of the academy's existence (in respect of which he said that the Data Protection Act (DPA) would apply because it would contain personal information about him); the redacted text from emails that DCSF had provided; notes of certain telephone conversations and discussions; the name of the recipient of an email and the anonymised version of material mentioned in the email (it should be noted that DCSF has told the Commissioner's staff that the material in question comprised one minute, which had been included in the correspondence sent to the complainant on 18 May 2005). He also asked, under DPA, for the results of a 'digging exercise' by one of DCSF's officials, in which information had been found out about the complainant.
9. On 2 June 2005, during correspondence with DCSF about the Academy's status, the complainant asked DCSF for details of its review panel: specifically, who would be on the panel, what were their positions within DCSF, and who was the independent member and what was his or her position. On 17 June 2005 DCSF asked the complainant how he would like to proceed with regard to his review request.
10. On 30 June 2005 the complainant confirmed that he wished his complaint to be referred to DCSF's internal review panel. He also asked DCSF that the request he made for information be extended 'to cover all materials up to the present' (this is a fresh information request, and is not part of the current investigation – see paragraph 13 below).
11. On 26 and 29 July 2005 DCSF's internal review panel considered the complainant's case and, in its decision letter of 15 August 2005, DCSF reiterated that it was withholding the legal advice under section 42, and the redacted text from the emails under section 31(1)(g) (but released more text from one of the emails). As to the letter informing DCSF of the academy's existence, DCSF said that this had correctly been withheld, under the exemption in section 41 which applies where disclosure of information would constitute a breach of confidence actionable by the person from whom it was obtained. DCSF said that this was an absolute exemption, with no public interest test being required. As to the other elements of the information request, DCSF said that there were no notes of the telephone conversations/discussions that the complainant had sought, and that it

was not DCSF's policy to name junior officials, or the members of the review panel (although it did provide the titles and grades of the panel members). As regards the complainant's final point relating to a 'digging exercise', DCSF said that the information in question had been taken from the internet and had already been sent to him.

The Investigation

Scope of the case

12. On 13 December 2005 the complainant asked the Information Commissioner to investigate DCSF's refusal to provide him with all of the information that he had sought on 8 February 2005, 31 March 2005 and in his review request of 24 May 2005. He also complained about the way in which DCSF had handled his information requests, in particular DCSF's delay in responding to them, and DCSF's failure to automatically consider under the DPA his unsuccessful requests for information under the Act as (he contended) it was legally required to do. He also questioned what he saw as DCSF's 'fishing expedition' through his personal files, and disputed that one section of DCSF was entitled to ask another section within that department for personal information about him. He suggested that DCSF might have involved legal officers in all the discussions about his case in order to designate the views expressed as legal advice, which could then be withheld from him.
13. For the avoidance of doubt, the Commissioner should make it clear that the present case does not concern any request for information made after 24 May 2005, whereas the linked complaint under reference FS50155503 concerns an information request made on 21 September 2006 and covers information relating to the period from November 2005 to the date of that request.

Chronology

14. On 7 March 2007 the Commissioner contacted DCSF to ask for its relevant papers and comments. DCSF replied on 5 April 2007. In relation to the letter which informed DCSF of the existence of the academy DCSF recognised that, although the letter had not been disclosed to the complainant, no specific exemption was cited as grounds for withholding it until DCSF undertook its internal review, at which stage it had cited the exemption in section 41 relating to information provided in confidence. DCSF said that, as part of its action to consider a subsequent subject access request from the complainant under the DPA, it had written to the author of the letter seeking consent to its release, but the author had refused permission. DCSF said that, while the complainant had subsequently expressed himself as willing to receive a version of the letter with all identifying particulars removed, the author still had concerns about the redacted version and DCSF declined to release it.

15. DCSF also maintained that the exemption in section 42 applied to the legal advice it had received; that it would seriously undermine the quality of government-decision-making if were it not able to maintain the confidentiality of the legal advice it received, and it was thus not in the public interest to disclose such advice. DCSF said that this was recognised by the Information Tribunal in its decision in *Bellamy v the Information Commissioner and the Department of Trade and Industry* (Tribunal ref: EA/2005/0023) in which the Tribunal said that the inherent public interest in the maintaining of legal professional privilege was very strong and that there was a need for equally strong countervailing arguments in order to justify release. DCSF considered that the arguments for release were not equally strong in this case. DCSF said that it had withheld some of its correspondence with Ofsted under section 31(1)(g) since it referred to concerns about the care of children. DCSF considered that, for it to carry out its regulatory function, such discussions “must take place out of the public eye” and that “the release of such information may affect openness of future discussions. It cannot therefore be in the public interest to disclose such information”. DCSF said that it felt that, while the public interest in favour of disclosing the documents in full would lead to greater transparency in its processes, the public interest served through protecting children’s welfare was stronger.
16. On 16 October 2007 the Commissioner asked DCSF for clarification as to the information that it maintained should remain withheld. DCSF provided that clarification on 23 November 2007. The information in question is:
- the letter notifying DCSF of the academy's existence;
 - legal advice provided by DCSF’s departmental lawyers;
 - correspondence between DCSF and Ofsted, namely:
 - an email dated 15 July 2004 (and its attachments) from Ofsted to DCSF;
 - the last two paragraphs of an email dated 10 November 2004 from Ofsted to DCSF;
 - the last paragraph of an email dated 19 November 2004 from Ofsted to DCSF;
 - the name of the recipient of an email of 17 March 2005.

As regards the email of 15 July 2004, DCSF said that it had been wrongly described as having been dated 14 July 2004 in the letter of 15 August 2005 notifying the complainant of the review panel’s decision, although DCSF confirmed that the panel did consider the correct email.

17. It should be noted at this point that, although DCSF cited the exemption in section 41 as its basis for withholding the information in the letter which brought the existence of the academy to the notice of DCSF, the Commissioner believes that the information requested would constitute personal data relating to the complainant and considers the relevant exemption in connection with this

information to be section 40(1). This is covered in more detail in the 'Analysis' section of this Notice.

Analysis

Procedural matters

18. The complainant has complained that DCSF delayed unduly in replying to his information requests under the Act. Under section 17(1) of the Act, a public authority that is to any extent relying on a claim that any information is exempt information must, within the time limit for so doing, give the applicant a notice that states that fact, specifies the exemption in question, and states (if not otherwise apparent) why the exemption applies. The time limit, under section 10(1) of the Act, is twenty working days.
19. The complainant initially sought information on 8 February 2005, and requested more information on 31 March 2005. Although DCSF provided a partial response to the 8 February request on 3 March 2005 it did not provide him with a complete reply to both requests until 17 May 2005. As to the 24 May 2005 request, the initial consideration was made by the internal review panel on 29 July 2005 and the complainant did not receive a substantive response until the panel's decision was notified to him on 15 August 2005. The Commissioner accepts that DCSF's ability to respond to the complainant's information requests more promptly was hampered by his tendency to make overlapping requests for further information before the original request had received a full reply. Nevertheless, DCSF has exceeded the time limit set out in section 10(1) of the Act for providing the full substantive responses outlined above, and it has therefore acted in breach of the requirements of sections 10(1) and 17(1)(b) and (c) of the Act.
20. Moreover, in connection with the complainant's request for the name of the official to whom the email of 17 March 2005 was addressed, the Commissioner considers that DCSF also breached section 17(1)(b) and (c) in failing to give the complainant details of the exemption on which it was relying as the basis for its refusal to provide that information. DCSF had told the complainant that the name had been redacted in accordance with guidance from the (then) Department for Constitutional Affairs that the names of junior officials which are not already in the public domain should not be disclosed. This explanation would not, however, satisfy the requirements of section 17(1)(b) and (c).

Exemptions

Section 31(1)(g) – law enforcement

21. DCSF has cited the exemption in section 31 as its grounds for withholding the information in its correspondence with Ofsted (the emails mentioned in paragraph

16 above). So far as is relevant to this complaint, sections 31(1)(g) and 31(2)(c) allow for information to be withheld if its disclosure would be likely to prejudice the exercise of functions of a public body in ascertaining whether there are circumstances which would justify regulatory action (in the present case, pursuant to section 159 of the Education Act 2002, relating to the requirement that independent schools, as defined under the Education Act 1996 and amended by the Education Act 2002, be registered). Since section 31 is subject to a test of prejudice, the exemption is not engaged unless prejudice would, or would be likely to, occur. DCSF has said that the withheld information refers to concerns about the care of children and that in order to carry out its regulatory function such discussions must take place out of the public eye, and that the release of such information may affect the openness of future discussions. Having considered the withheld information, the Commissioner believes that DCSF has sufficiently demonstrated that prejudice to its regulatory function, with regard to determining what action should be taken when an independent school declines to register, would be likely to occur if the withheld information were to be released, and that the exemption in section 31(1)(g) is therefore engaged.

Public interest test

22. Section 31 is a qualified exemption and is subject to the public interest test. In this respect, section 2(2)(b) of the Act states that the duty to disclose information under section 1(1)(b) of the Act does not apply if, or to the extent that, 'in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information'.
23. When assessing where the balance of the public interest lies, factors in favour of allowing access to the withheld information, such as the need to encourage accountability and transparency by increasing public understanding of DCSF's processes, should be weighed against the detrimental effect that the release of the information would be likely to have on the frankness of future discussions about the welfare and care of children. DCSF has, in effect, argued that to release the information in question would affect its ability to accurately assess whether or not an establishment is putting children's welfare at risk, since future opinions would be likely to be expressed less frankly if it were known that they were likely to be released into the public domain. The Commissioner finds DCSF's arguments to be persuasive and that, in all the circumstances of this case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information in question.

Section 40 – Personal Information

Section 40(1)

24. DCSF relied on the exemption in section 41 relating to information provided in confidence as its basis for withholding the information in the letter notifying DCSF

of the academy's existence. However, much of the information contained in that letter is personal information relating to the complainant. Under section 40(1) of the Act 'any information to which a request for personal information relates is exempt information if it constitutes personal data of which the applicant is the data subject', and the personal information in the letter would clearly fall within that category.

25. While the remaining information in the letter could be said to constitute the personal data of the author of the letter, that does not necessarily mean that this information is not also personal data relating to the complainant. For the purposes of section 40(1), it is not relevant if this information is also personal data relating to any third party: if it is personal data relating to the complainant, section 40(1) applies and the information is exempt. The Commissioner finds that the complainant could be identified from the information in the letter and that, as it is a description of the alleged activities of the complainant, it is of biographical significance to the complainant. The Commissioner therefore considers that the information contained in the letter is personal data relating to the complainant. In reaching this decision the Commissioner has taken account of his guidance about what is personal data. This can be viewed on his website at the following link: http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/personal_data_flowchart_v1_with_preface001.pdf. Since the Commissioner is satisfied that the information is the complainant's personal data, the exemption provided by section 40(1) is engaged. Section 40(1) is an absolute exemption and is not subject to the public interest test.
26. As the Commissioner has concluded that all of the information in the letter can be withheld under the exemption in section 40(1) he does not consider that any useful purpose would be served in him deciding whether or not the exemption in section 41 of the Act would likewise apply to that information.

Section 40(2)

27. Section 40(2) provides an exemption for information which is the personal data of an individual other than the applicant, and where one of the conditions listed in section 40(3) is satisfied. Although DCSF has not specifically cited this exemption in relation to its decision to withhold the name of the official to whom the email of 17 March 2005 was addressed, the Commissioner considers that name to be the personal data of that individual, since the individual in question can clearly be identified by disclosure of that information. One of the conditions listed in section 40(3)(a)(i) is where the disclosure of the information to any member of the public would contravene any of the data protection principles under the DPA, the first of which is the requirement that the processing of personal data is fair and lawful.
28. In the Commissioner's view, among the factors to be taken into account when assessing whether disclosure of information would be fair are:
- the official's reasonable expectations of what would happen to his or her information;
 - the seniority of the official;
 - the legitimate interests in the public knowing the requested information weighed against the effect of disclosure.

29. The Commissioner has confirmed that the official in question held a junior position. As has been recognised by the Information Tribunal (for example, in *DfES v the Information Commissioner and the Evening Standard (EA/2006/0006)*; *Secretary of State for Work and Pensions v the Information Commissioner (EA/2006/0040)* and *Ministry of Defence v the Information Commissioner and Rob Evans (EA/2006/0027)*), in considering whether or not the names of government officials should be released, a distinction may be drawn between junior and senior officials, and that the names of the former are more likely to be withheld than the latter. In the *DfES* case the Tribunal has, however, also made it clear that each decision will depend on the facts of the individual case. In this particular case, the junior official in question would have had no expectation that his identity would be revealed, and the Commissioner considers that there is no public interest, as opposed to the interest of the complainant as a member of the public, in learning his name. He therefore concludes that to release the name of the addressee of the email of 17 March 2005 would constitute unfair processing of the addressee's personal data and would be in breach of the first principle of the DPA, and that the name should therefore remain withheld.

Section 42 – Legal professional privilege

30. DCSF has argued that the legal advice (including any summary thereof) that it holds relating to the academy and its status is covered by legal professional privilege, which is intended to protect the confidentiality of communications between lawyer and client: the exemption in section 42 therefore applies to that information. (It should be said at this point that the Commissioner has seen no evidence to suggest that DCSF has unnecessarily involved its lawyers in order to avoid releasing information as contended by the complainant.)
31. Legal professional privilege has been described by the Information Tribunal in paragraph 9 of its decision in the *Bellamy* case (*EA/2005/0023* - see paragraph 15 above) as “a set of rules or principles which are designed to protect the confidentiality of legal or legally related communications and exchanges between the client and his, her or its lawyers...”. There are two types of privilege – legal advice privilege and litigation privilege. Advice privilege will apply where no litigation is in progress or being contemplated. The communications in question must be confidential, made between a client and a professional legal adviser acting in a professional capacity and made for the sole or dominant purpose of obtaining legal advice.
32. Having examined the withheld information the Commissioner is satisfied that the information in the documents in question falls within the terms of legal advice privilege, in that the relevant communications fall within the categories outlined in paragraph 31 above. The Commissioner therefore considers that the exemption in section 42 is engaged. Section 42 is, however, a qualified exemption and is therefore subject to the public interest test.

Public interest test

33. The Commissioner accepts that there is a public interest in disclosing information which will help determine whether or not a public authority is acting appropriately. However, the Commissioner also recognises the strong inherent public interest in protecting confidential communications between client and legal adviser. It is certainly in the public interest for authorities to have the ability to consult openly with their legal representatives so that forthright views can be expressed without fear of that advice subsequently being made public.
34. In making his assessment of where the balance of the public interest lies the Commissioner is mindful of the Tribunal's decision in the *Bellamy* case, which concerned the specific exemption relating to legal professional privilege in section 42 of the Act. In paragraph 8 of the decision the Tribunal observed that *"there is no doubt that under English law the privilege is equated with, if not elevated to, a fundamental right at least insofar as the administration of justice is concerned."*
35. As quoted by DCSF (paragraph 15 above), in summing up 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"*. It concluded, at paragraph 35, that *"it is important that public authorities be allowed to conduct a free exchange of views as to their legal rights and obligations with those advising them without fear of intrusion, save in the most clear cut case..."*.
36. In *Dr John Pugh MP v the Information Commissioner and the Ministry of Defence* (ref: EA/2007/0055) (which was cited with approval in *Mersey Tunnel Users Association v the Information Commissioner and Merseytravel* (ref: EA/2007/0052)) the Tribunal discussed the conclusion reached in the *Bellamy* case and in other Tribunal cases in which information covered by legal professional privilege had been considered. The Tribunal said at, paragraph 55, that, *"Unlike other exemptions, because of the body of judicial opinion from higher courts in relation to the importance of maintaining legal profession privilege, we accept that there is a strong element of public interest inbuilt into the exemption itself, but that this does not, in effect, convert the exemption into an absolute exemption. It makes no difference that legal professional privilege is a class exemption. For the Commissioner or the Tribunal to find that the public interest favours disclosure there will need to be equally weighty public interest factors in favour of disclosure in the circumstances of the particular case. This does not necessarily mean that it needs to be an exceptional case."*
37. Notwithstanding the arguments of the complainant and the factors in favour of release referred to above, the Commissioner is of the view that those factors are not sufficiently strong in this case to override the public interest served by protecting confidential communications between client and legal adviser. The advice in question was given between January 2004 and July 2005 and related to an issue that was still live when DSCF was considering the complainant's information request, namely at the time of its internal review in July 2005. While it will sometimes be appropriate to overturn legal professional privilege where weighty public interest factors favour disclosure it is the Commissioner's judgement that, in all of the circumstances of this case, having regard in particular to the timing of the consideration of the request for the legal advice, the public

interest in maintaining the exemption in section 42 outweighs the public interest in disclosure. DCSF was therefore entitled to withhold the legal advice contained in the documents in question.

The Decision

38. The Commissioner's decision is that DCSF:

- breached sections 10(1) and 17(1)(b) and (c) of the Act by late disclosure of the requested information, by failing to issue a refusal notice within 20 working days of receiving the request and by failing to cite all of the exemptions on which it was relying within that period;
- correctly withheld the information in the emails it had exchanged with Ofsted under the exemption in section 31(1)(g);
- was entitled to withhold the information in the letter notifying DCSF of the academy's existence under the exemption in section 40(1) and to withhold the name of an official in an email under section 40(2); and
- correctly withheld the legal advice that it holds relating to the academy and its status under the exemption in section 42.

Steps Required

39. The Commissioner requires no steps to be taken.

Other Matters

40. Although not part of this Decision Notice, the Commissioner wishes to highlight the following matter of concern.

41. Section 7 of the DPA gives an individual the right to request copies of personal data held about him or her – this is referred to as the right of Subject Access. At the request of the complainant, the Commissioner has made an assessment under section 42 of the DPA as to whether the information in the letter bringing the academy to the notice of DCSF should be disclosed to the complainant under this access right. That assessment, which is being reviewed at the request of the complainant, is a separate matter and does 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 Act.

42. It should be noted at this point that public authorities are not legally required automatically to consider under the DPA information requests that were unsuccessful under the Act, unless the reason for refusal under the Act was that the information sought was personal information about the requestor. In the present case the Commissioner notes that the request for the information in the

letter bringing the academy to the notice of DCSF should have been dealt with as a subject access request under section 7 of the DPA from the outset. The Commissioner also notes that, even when the complainant specifically asked for information under both Acts in his correspondence of 24 May 2005, DCSF did not recognise the existence of a subject access request, and did not act until the complainant repeated his request on 17 August 2005. The Commissioner would stress to public authorities the importance of considering requests under the correct access regime from the outset.

Right of Appeal

43. 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 29th day of April 2008

Signed

**Anne Jones
Assistant 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.”

Effect of Exemptions

Section 2(1) provides that –

“Where any provision of Part II states that the duty to confirm or deny does not arise in relation to any information, the effect of the provision is that either –

(a) the provision confers absolute exemption, or

(b) 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 public authority holds the information

section 1(1)(a) does not apply.”

Section 2(2) provides that –

“In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that –

(a) the information is exempt information by virtue of a provision conferring absolute exemption, or

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

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) – (f).....

(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),

(h) – (i).....

Section 31(2) provides that –

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

(a)-(b).....

(c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,

(d)-(j).....

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.”

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.”

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.”