

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 18 March 2008**

**Public Authority:** Cumbria County Council  
**Address:** The Courts  
English Street  
Carlisle  
CA3 8NA

### Summary

---

The complainant requested details surrounding the council's decision to close a literacy centre in Carlisle. The council clarified that it held the information requested but that it was exempt from disclosure under the exemption in section 36 of the Act (prejudice to the effective conduct of public affairs). The Commissioner's decision is that it was unreasonable for the council to apply the exemption to some information, and that the exemption is applicable to other information, but that the public interest in maintaining the exemption does not outweigh that in disclosing the information in this instance.

### The Commissioner's Role

---

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

### The Request

---

2. On 20 February 2006 the complainant, a Member of Parliament, wrote to the Cumbria County Council (the council) about the council's proposal to close a local literacy centre. In that letter he requested

"any documents pertaining to the centre from 2004 to the present day".

The complainant followed up that request with a telephone call to the council on 7 April 2006. In that call he asked for copies of any documents relating to the closure of literacy centres that he had not previously mentioned in his previous request. The Commissioner understands that in this telephone call the

complainant expanded his initial request about the closure of one literacy centre to ask for information on the council's policy of closing all of the literacy centres in the county in order to provide additional reading resources directly through schools.

3. The council responded on 12 May 2006. In that letter it refused to disclose the information on the grounds that section 40(3) (personal data) and section 36 (prejudice to the effective conduct of public affairs) applied. The information was identified by the council as correspondence in the form of letters and emails between officers and councillors, between different officers of the council, and also one letter received by the council from another Member of Parliament.
4. On 16 May 2006, the complainant wrote back to the council asking it to review its decision not to disclose the information to him.
5. The council responded on 5 June 2006. The information, which had been withheld from disclosure under section 40, was disclosed and is not therefore considered further in this Decision Notice. However the council refused to disclose the information which had been exempted under section 36 for the same reasons it applied in the initial refusal notice.

## The Investigation

---

### Scope of the case

6. On 14 June 2006, 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 whether the information that was withheld under section 36 of the Act should have been disclosed to him.

### Chronology

7. The Commissioner contacted the authority on 23 June 2006 stating that a complaint had been made and was to be investigated. He also asked it to send a copy of the information to him.
8. The council responded on 3 July 2006 providing a copy of the information together with further arguments in support of its claim that the information was exempt under section 36 of the Act.
9. On 15 August 2007, an officer of the Commissioner telephoned the public authority and stated that the case had now been allocated. In that discussion, the officer discussed the application of the exemption to the letter held from the other MP, which was sent to the council on 27 February 2006. He asked if the council had asked him whether he would consent to the disclosure of this letter. The council clarified that his consent had not been sought.

10. On 16 August 2007, the Commissioner wrote to the council reiterating the contents of the conversation. He stated that the council should, in the first instance, contact the MP and ask if he would consent to the disclosure of the letter. The Commissioner also asked if the council still wished the information to be withheld given that the policy of closing the centres had now been implemented. He also asked for further information about the application of the exemption in section 36 of the Act to the information.
11. On 3 September 2007, the council telephoned the Commissioner's office and stated that it had received consent from the MP to disclose his letter. The council asked if it should therefore disclose it to the complainant. The Commissioner stated that consent was only one issue relevant to disclosure and that the council should now reconsider the arguments for the application of section 36 to the letter, and decide whether it should still be withheld in spite of the MP's consent.
12. The council wrote to the Commissioner on 21 September 2007 stating that it had now reviewed its reliance on section 36 for the MP's letter and that it was now happy to disclose it to the complainant. It did so on 24 September 2007. The council therefore complied with this aspect of the request by disclosing it, albeit that it did not do so when the request was originally made. The council however reiterated its view that section 36 applied to the rest of the information, and it provided further reasons why it believed this to be the case.
13. The Commissioner has therefore limited his decision to the remaining undisclosed information, namely correspondence between council officers and elected councillors or correspondence between two or more council officers.

## Analysis

---

### Exemption

#### Section 36

14. Section 36 allows information to be exempt from disclosure where, in the reasonable opinion of the qualified person, disclosure would prejudice the effective conduct of public affairs. Section 36 is reproduced in the legal annex to this Decision Notice.

The central reason why section 36 would apply to the information in question is highlighted in section 36(2)(b) and (c): that, in the reasonable opinion of a qualified person, a disclosure of the information would, or would be likely to inhibit-

- b)
  - 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.
15. When considering the application of the exemption the Commissioner is mindful of the Information Tribunal's decision in EA/2006/0011 and EA/2006/0013 of *Guardian/Brooke v the Information Commissioner* issued on 8 January 2007. In its decision, the Tribunal concluded that in order to satisfy the statutory wording in s36 - '*in the reasonable opinion of a qualified person*' - the opinion must be both reasonable in substance and reasonably arrived at. If the qualified person's opinion meets these criteria then the exemption in section 36 is engaged.
  16. The arguments put forward by the qualified person at the council make it clear that the central reason for it applying the exemption is that disclosure would, or would be likely to inhibit free and frank discussion between councillors and officers for the purposes of providing advice or for the purposes of deliberation.
  17. The information includes communications between the councillors and officers relating to the then proposed policy of closing literacy centres in Cumbria and providing additional learning facilities directly through schools.
  18. The council's argument is that there must necessarily be a special relationship between it and local MP's, and also between councillors and officers of the council that allows discussions to take place in private. It states that a disclosure of this information would undermine these relationships to the detriment of the democratic process and the effective and efficient running of public affairs. Disclosure would damage the level of trust and confidence between councillors, MP's and the public authority and lessen the council's ability to test the political waters with relevant politicians first.
  19. The council states that council officers, councillors and MPs need room to have free and frank discussions, and to provide and receive frank advice outside the formal decision making process before making a final decision on a policy proposal. It states that, in the case of councillors, the final decision will then be made in public and that at that point, they would express their views openly. However, the council recognises that in order to formulate their views and "take sides" on a particular issue it is necessary for councillors to be able to have full knowledge of the relevant facts and to have thought through and 'tested' the issues surrounding the implementation of a policy out of the public eye.
  20. It further argues that on many occasions, communications between elected members and council officers may have a political element to them. A disclosure of correspondence which, when written, was not intended for the public eye, could allow members of opposing political parties to gain a political advantage over their competitors through its disclosure. A fear of creating such an advantage might mean that politicians and councillors become more cautious in the advice they seek or provide and may avoid asking some important questions if disclosure could be damaging to either their personal or their party's position.
  21. The Commissioner considers that this argument generally provides a strong reason for the application of section 36 to the information. The intended closure of

the literacy centres was controversial and was an important policy change in the way additional teaching resources were provided to children in the area with reading difficulties. There was potential for job losses among staff employed at the literacy centres and there was a suggestion that the closures were in fact being made as a means of cutting council costs rather than being in the best interests of the children who used the centres. It was therefore an area where political gain could be made if unpopular arguments or statements which could be associated with particular individuals or parties were disclosed, albeit that these may have been put forward simply as a means of clarifying the overall impact of the policy change or fully exploring the options available.

22. The Commissioner therefore accepts that section 36 could be engaged by the information. However, he has reservations in that the council's arguments ultimately suggest a blanket exemption is applicable to any information of this type, which is clearly not what is intended in the Act. In relation to the particular information in this case the arguments are relevant. However section 36 requires a more specific application rather than a blanket application to all information of a particular type. In effect, the question is not "what would happen if this sort of information was disclosed", but the narrower question, "what would happen if 'this particular' information was disclosed". The distinction can often lead to a different outcome as the question requires a much more specific consideration of the relevant factors in the particular case. The Commissioner has therefore applied the exemption specifically to the information withheld in this case.
23. The Commissioner notes that not all of the correspondence is actually between councillors and council officers or other politicians and council officers. Some emails are between different council officers seeking clarification or further direction on matters relating to the proposal. These emails are between non-elected employees of the council and therefore do not have a political element to them. They are merely clarification emails between council officers in the normal course of their employment.
24. The arguments put forward by the council in paragraphs 18 to 20 above refer to information containing communications between councillors and/or MPs and officers of the council. The arguments put forward by the council in those paragraphs do not apply to information held in correspondence between council officers. Given that no alternative arguments have been put forward to support the application of section 36 to these particular emails the Commissioner considers that the decision to consider this correspondence as exempt must be considered unreasonable. The Commissioner's decision is therefore that section 36 would not be applicable to these particular emails and that they should therefore be disclosed to the requestor.
25. The remaining correspondence does contain correspondence between councillors and council officers. It contains emails and letters from councillors clarifying what was intended by the policy, why it was intended and the likely repercussions that would occur through implementing the policy. The proposed policy of closing the literacy centres had been put forward, and was being questioned and analysed by councillors.

26. The Commissioner also notes that at the time the request was received by the council the policy had already been voted for by councillors and was in the process of being implemented. The Commissioner is therefore satisfied that a disclosure of this information at the time of the request would not have directly impinged upon the policy development process itself. It would have clarified some of the concerns relating to how the proposal came about and some of the issues that relevant parties felt were unclear at the time.
27. The Act recognises that there is a possibility that if certain deliberations of public officials are to be opened up to public scrutiny, there could be a resulting deterioration in the quality of future decision-making. The addition of a political element to the information in this instance provides an added reason why the information may be considered exempt under section 36 in this instance. The Commissioner recognises that the suggestion that councillors may be sufficiently worried about the disclosure of the information to inhibit discussion or the provision of advice could cause a deterioration in decision-making at the council.
28. Given the above arguments, the Commissioner is satisfied that when considering the information in the correspondence between councillors and council officials, the qualified person's opinion is reasonable in substance and that it was reasonably arrived at. The Commissioner's decision is therefore section 36 was engaged by this information.
29. Section 36 is a qualified exemption. The Commissioner therefore needs also to decide whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information. If it does not then the information should be disclosed.

#### The public interest test

30. In *Guardian & Heather Brooke v the Information Commissioner EA/2006/0011 and 0013*, the Information Tribunal considered and refined an earlier judgement where they provided some principles about the application of the public interest test in section 36 cases. The tribunal provided the following factors for consideration:
  - a) The lower the likelihood is shown to be that the free and frank exchange of views would be inhibited, the lower the chance that the balance of the public interest will favour maintaining the exemption.
  - b) Since the public interest in maintaining the exemption must be assessed in all the circumstances of the case, the public authority is not permitted to maintain a blanket refusal in relation to the type of information sought. The authority may have a general policy that the public interest is likely to be in favour of maintaining the exemption in respect of a specific type of information, but any such policy must be flexibly applied, with genuine consideration being given to the circumstances of the particular request.

- c) The passage of time since the creation of the information may have an important bearing on the balancing exercise. As a general rule, the public interest in maintaining the exemption will diminish over time.
- d) In considering factors that militate against disclosure, the focus should be on the particular interest that the exemption is designed to protect, in this case the effective conduct of public affairs through the free and frank provision of advice and the free and frank exchange of views by public officials for the purposes of deliberation.
- e) While the public interest considerations in the exemption from disclosure are narrowly conceived, the public interest considerations in favour of disclosure are broad ranging and operate at different levels of abstraction from the subject matter of the exemption. Disclosure of information serves the general public interest in the promotion of better government through transparency, accountability, public debate, better public understanding of decisions, and informed and meaningful participation by the public in the democratic process.

The Tribunal qualified the first of these tests, (a), by stating that it was for the qualified person to decide whether prejudice was likely, and thereby whether the exemption was engaged. However in making a decision on the balance of the public interest, the Tribunal, (and therefore the Commissioner) would need to make a decision as to the severity, frequency or extent of any prejudice which was likely.

32. The Commissioner has considered these principles against the information in this case. He has addressed these in the order provided above.

a) The severity, frequency or extent of the prejudice that is foreseen

33. In the Guardian/Brooke case the Tribunal considered that the likelihood of prejudice occurring was a decision for the qualified person. If his opinion was reasonable in substance and reasonably arrived at it was not for the Commissioner, (or the tribunal), to substitute their own opinions in place of the qualified person's. However the tribunal went on to say that the balance of the public interest would be affected by the likely severity, frequency or extent of that prejudice, and in order to make a properly balanced judgement on this it was necessary for the Commissioner to come to a conclusion on the extent of these factors.

34. The Commissioner is satisfied that a disclosure of this information would not have provided the opportunity for opponents of the councillors involved to make political capital out of the correspondence issued by councillors. The emails pose questions and are not, of themselves, voicing any particular personal or party opinions about the proposed policy. They amount to a thorough questioning of the reasons for the policy change and the justification for it. Such questions could have easily been asked by either prospective proponents or opponents of the proposed change. They are a clear example of the informal democratic process described above working properly – proposals put forward by the council are

thoroughly questioned by those who are about to vote on their implementation before they take their final decision on the matter.

35. The Commissioner also considers that the correspondence could not be construed as voicing controversial opinions. The questions directly relate to the policy of closing the centres, and no officer or councillor discusses matters that extend beyond the direct question of the policy or the reasons behind proposing the change. The responses from council officers follow the general arguments put forward by the council for implementing the policy, and have generally already been disclosed by the council. The arguments however appear to go into more technical detail than may previously have been provided.
36. Given that no opinions or views are voiced about whether the proposed policy is appropriate or not, the Commissioner is satisfied that councillors would not have amended the questions they asked had they known that their correspondence would be disclosed. He is satisfied that councillors would have been unlikely to have shrunk from asking the questions they did simply on the basis that the information might be disclosed in the future. In any event, to do so could in fact be construed as acting unwisely if it could be argued that they were prepared to take a vote on a proposal which they did not fully understand or did not have enough information to make up their minds. The Commissioner is also satisfied that there would be no real reason for the responses to those questions to have been amended by council officers, even if they had known that the information would subsequently be disclosed. They are a simple reiteration of the facts that the council relied upon publicly when introducing the policy.
37. Additionally, the Commissioner notes that council officers and elected members would have been aware that the council was subject to the Act at the time they were corresponding with each other. They would also have been aware that the introduction of the policy was controversial, and that it was very possible that an information request would be made given the political and press interest the proposal was likely to generate. The Commissioner is therefore satisfied that the correspondence contains information which amounts to little more than a straight questioning of the proposed policy which would be unlikely to have been approached differently had all parties to the correspondence known that the information would be disclosed at some point in the future. Although the Commissioner notes that in some places the language used is informal, and that this may have been amended had the parties anticipated that their emails would be disclosed, his view is that it would be unlikely that the substance, and the questions which were asked would have been amended.
38. The decision in any one case does not necessarily create a precedent for decisions in other cases. Each case is considered on its own merits and the decision in this case would not necessarily extend to other cases with different circumstances. Hence, a disclosure in this case should not be prejudicial to the effective future conduct of the council's affairs .
39. As such, the Commissioner considers that little damage to the informal process would directly result from the disclosure of this information in this particular instance. The Commissioner is therefore satisfied that any prejudice suffered as a

result of a disclosure of this information would not be severe and would not be wide spread.

40. The Commissioner also considered whether disclosure of this information would inhibit the exchange of views in the future. He notes that the correspondence does not contain the personal views of the correspondents and he is therefore satisfied that this argument is not applicable to this request.

41. The Commissioner is therefore satisfied that the public interest in maintaining the exemption is weakened by the fact that disclosure in this case not would inhibit free and frank discussion or the free and frank provision of advice to any great extent in the future. He is also satisfied that any prejudice which does occur would not be severe or frequent given the nature of the information in question.

b) Blanket refusal of requests

42. In paragraph 21 the Commissioner expressed the view that the qualified person's arguments were too general in nature and did not address the specific information the council held. Although the Commissioner accepts that the council was probably correct to start with a general policy that information of this type is more likely to be exempt under section 36, he does not consider that the qualified person adequately considered the effects of a disclosure of this particular information in this instance. In particular, not enough consideration was given to whether the prejudice that was perceived was in fact likely to be severe, frequent or the extent to which that prejudice would occur. The Commissioner has carried out such an analysis in paragraphs 33 to 41 above and decided that this was not the case.

c) The relevance of the timing of the request

43. The Commissioner understands that in many cases politically sensitive information may remain sensitive even after a policy has been introduced and embedded. In many cases, political capital could still be made of such information and its disclosure could still have the negative effects on the democratic process argued above. In such situations, it may therefore still be appropriate to apply section 36 to the information, as the above arguments will still be applicable. The Commissioner does not consider this to be the situation in this instance, however.

44. The Commissioner considers that a disclosure of this information at the time of the request would not have had the effect described above because of the nature of the information. He further notes that at the time of the request council members had already voted to accept the proposal, and hence its implementation was already under way. The council has admitted that the information is now unlikely to be sensitive given that the policy has been in place for some time. The Commissioner considers that, given the nature of the information, and that a vote had already been taken by the council at the time the request was received by the council, he does not consider the public interest in withholding the information at the time of the request was particularly strong.

d) Factors in favour of maintaining the exemption

45. In the Guardian/Brooke case, the Information Tribunal stated that the focus of the public interest arguments in favour of maintaining the exemption should be on the particular interest that the exemption is designed to protect, in this case, the effective conduct of public affairs through the free and frank exchange of views and the free and frank provision of advice by public officials for the purposes of deliberation. He has considered the severity, frequency and extent to which prejudice would occur in his arguments above and decided that, on balance, these would not be strong factors for maintaining the exemption. However he must also consider the position if prejudice were to occur, and the public interest factors in favour of maintaining the exemption should this be the case.
46. There is a very clear public interest in the council being able to ascertain and inform the views of local politicians and councillors who represent those who may be affected by a particular decision or who will have the opportunity to vote on the issue at a council meeting. There is also a clear public interest in allowing the council to approach elected representatives at as early a stage as possible in the policy development stage in order to be able to ascertain whether there is the political will to implement or support the council in such decisions. Clearly, when doing so, it is to be expected that some degree of questioning of the council's motives for introducing the policy may occur in order to understand more fully the reasons for the proposals.
47. As part of that process councillors and other local politicians may question the very core of the arguments which support the council's proposals, possibly playing 'devil's advocate' to tease out unforeseen problems or a lack of clear planning in the policy being put forward. They may also choose to be particularly harsh in their questioning in order to ascertain whether the policy has firm backing within the council, and whether the council would be able to defend its position in the face of strong, knowledgeable opposition to its proposal. There is a risk that the disclosure of that questioning approach may wrongly be taken to indicate an individual's particular stance or view. It could therefore be possible to gain a political advantage by implying that such questioning provides an indication of the actual viewpoint of the correspondent. Doing so however risks stultifying this informal but useful process of robust challenge.
48. If disclosure would risk putting elected representatives in a position where they cannot provide or receive clear and frank advice, it would be detrimental to the council's decision-making process, and to the democratic process itself. The ability of councillors to properly scrutinise proposals or to test their robustness prior to formally voting on a proposal would be diminished.
49. The Commissioner has already stated that in his view it would be unlikely that the prejudice would be severe if the information withheld in this case were disclosed. He has also considered the likelihood that its disclosure may result in general or widespread concerns among council officers and elected members that information of this sort might be disclosed in the future. This fear may in itself inhibit free and frank deliberations enough to prejudice the informal information gathering process and thereby the effective conduct of public affairs. The

Commissioner's view is that such an argument does not stand up to scrutiny. He has already stated that no precedent would be set by a disclosure of this information in this case. He also takes into account the fact that the Act has provided a general 'right to know', and that the exemption in section 36 is not absolute. Council officers and elected members must always take into account the possibility that information they are creating might be disclosed in the future and should act accordingly, particularly where a sensitive issue is under discussion. This should enhance the flow of accurate information and appropriately expressed questions and comments, rather than inhibiting discussion or re-enforcing any inhibition which may already exist.

e) Factors in favour of disclosing the information

50. The Commissioner has considered the public interest arguments in favour of disclosing this information. He considers that the factors highlighted by the Tribunal in paragraph e) above are applicable to the disclosure of this information.
51. There is a strong public interest in allowing the public access to the information in order to scrutinise and hold to account the council for the decisions it has made. As stated, the decision to close the centres was controversial and affected a number of people receiving help from the authority at the time. The public understood it to be a cost cutting measure rather than being instigated by the best interests of the children involved, albeit that the council could provide statistics and arguments which suggested that the service was best employed at schools themselves. The policy also involved the closure of a number of centres with a potential loss of jobs, with additional services needing to be offered directly on school premises as a result. These additional services created the possibility that school resources would be stretched to cope with the additional demands placed on them. This may have diverted resources away from other areas in schools thereby affecting all pupils at a given school.
52. Decisions, agreements and pre-discussions should also generally be made available in order that the public may better understand decisions and the reasons for policies proposed by the council. This information may, for instance, provoke further public debate on the issue of how additional services are best provided to children with reading difficulties in the area.
53. A disclosure of the information provided to elected representatives in response to their questions would also provide further understanding of the issues surrounding the policy, such as why it was proposed and accepted by council members at the time.
54. It would also highlight information relevant to these concerns and shed light on the process of scrutiny that took place prior to the policy being implemented, thus building public awareness of and confidence in the way the democratic process works.
55. The Commissioner is also satisfied that a disclosure of the information in this case would provide greater public confidence in the way elected representatives scrutinise policies before voting on whether to implement them. Greater

knowledge of this sort of activity would increase public awareness of and confidence in councillors properly scrutinising proposals before voting to implement them, and shed light on the democratic process that takes place when new policies are approved. Knowledge of the work carried out by elected representatives and a greater understanding of how they go about their duties once elected may also aid the public when electing or re-electing representatives in the future, thereby aiding and enhancing participation in the democratic process.

56. The Commissioner does recognise however that this is slightly reduced by the fact that in many cases, some information on those reasons will be provided by the council when the proposals are introduced, as in many cases will the statistics relied upon to produce those proposals. In this case, it is noted that the complainant has received a document that contains a series of questions and answers that, in many ways, demonstrate the reasoning behind, and the nature of the correspondence that has been exempted.
57. However, the Commissioner considers that there is a significant public interest in further demonstrating the processes the council has undertaken in proposing and agreeing a sensitive and contentious policy.
58. Having balanced all of the above factors, the Commissioner is satisfied that the council applied a weight to the public interest in maintaining the exemption which the information did not merit in this instance. He considers that a disclosure of this information would be unlikely to cause a severe or frequent detriment to the decision making process by inhibiting the ability of elected representatives and council officers to discuss matters freely. He considers that the information was not particularly sensitive at the time the request was made as the policy had already been voted upon by councillors. The Commissioner has also considered the public interest in the promotion of better government through transparency, accountability, public debate, better public understanding of decisions, and informed and meaningful participation by the public in the democratic process.
59. Given this, the Commissioner's decision is that although section 36 is engaged by this information the public interest in maintaining the exemption does not outweigh the public interest in disclosing the information.

## The Decision

---

60. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act.

In the case of emails between council officers and their colleagues the Commissioner's decision is that the qualified person's opinion was unreasonable. Section 36 (2) is not therefore applicable to the information. The information should therefore be disclosed.

In the case of emails between council officers and councillors, and vice versa, the Commissioner's decision is that section 36(2) is engaged, however the public interest in maintaining the exemption does not outweigh the public interest in disclosing the information. The information should therefore be disclosed.

## Steps Required

---

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

to disclose the information held in correspondence between council officers which falls within the scope of the request, and

to disclose all of the information held in correspondence between councillors and council officials which falls within the scope of the request.

62. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

## Other Matters

---

63. The Commissioner notes that the one of the central reasons provided for not disclosing the information in this instance was the fact that the requestor was a Member of Parliament from an opposing party to that of the MP whose correspondence was initially withheld by the council. The council put forward the view that given the requestors position, the potential for the information to be used to gain political advantage gained additional importance in responding to this request. Although this correspondence was subsequently disclosed, and hence this initial refusal is not considered further in this Decision Notice, the Commissioner points out that requests should in general, be dealt with without recourse to the identity and motive of the requestor. The council should not therefore have taken the identity of the requestor into consideration when deciding whether the information should be disclosed or not.

## Failure to comply

---

64. 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

---

65. 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](mailto:informationtribunal@tribunals.gsi.gov.uk)  
Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

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 18<sup>th</sup> day of March 2008**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

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

## Legal Annex

### Effective conduct of public affairs.

36. - (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.