

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 23 December 2009

Public Authority: The Charity Commission
Address: PO Box 1227
Liverpool
L69 3UG

Summary

The complainant requested information from the Charity Commission relating to an investigation carried out by a Receiver and Manager appointed by the Charity Commission into the financial affairs of two registered charities. The Charity Commission did not hold some of the requested information, provided the complainant with some, and refused to disclose the remainder ("the withheld information") on the grounds that it considered it to be exempt under sections 31, 40, 41 and 43 of the Freedom of Information Act 2000 (the Act). It later made representations to the Commissioner that it considered the withheld information to be exempt under sections 32(2)(a) and 32(2)(b) of the Act. The Commissioner concluded that all of the withheld information was exempt under sections 32(2)(a) and (b). However, in handling this request the Commissioner has also concluded that the public authority failed to provide a refusal notice compliant with sections 17(1)(b), 17(1)(c) and 17(3) of the Act.

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 Background

2. Under the Charities Act 1993 (the 1993 Act) the Charity Commission has a duty to regulate charities and to investigate complaints it receives concerning the conduct of charities.
3. Under the 1993 Act, the Charity Commission investigates allegations reported to it concerning the conduct of the trustees or the performance

of a charity. If that investigation reveals any concerns, under sections 18 and 19 of the 1993 Act, it can put in place a Receiver and Manager (RM) who acts in place of the existing trustees.

4. Under the Charities [Receivers and Managers] Regulations 1993 (the Regulations) the RM must report to the Charity Commission on a regular basis and must do so after three months.
5. The RMs are appointed by an order made by the Charity Commission which contains its instructions to them. The RMs are drawn from an expert panel. At the conclusion of his or her appointment the RM will report to the Charity Commission which will then decide the appropriate statutory action to take to resolve any identified problems.
6. Fees for their services are paid to the RMs by the Charity Commission and these are recorded and published on its website and are accessible to the public.
7. At the conclusion of its investigations the Charity Commission will prepare and publish a statement which will set out any action taken. The statement of the results of inquiry (SORI) is published on the Charity Commission's website and is accessible to the public.
8. Whilst the SORI may include references to the RM's final report, it does not reproduce in detail the final report nor of any of the interim reports made by the RM during the course of his or her appointment.

The Charity Commission's investigation

9. In the instant case, the Charity Commission received an anonymous report concerning the management and conduct of two charities, The Knights Institute of Sports (KIS) and the Knights Millennium Foyer Limited (KMF).
10. The objects of KIS were to provide, or assist in providing, recreational facilities to young people.
11. The objects of KMF were the relief of poverty and other charitable purposes with particular regard to young people. To this end KMF acquired a former police hostel with the aid of a grant from the Millennium Commission in the region of £2,000,000 to provide short-term housing for young people.
12. Having considered the complaints made to it, the Charity Commission appointed Mr Martin Woodward (the RM) to evaluate KIS and KMF. This protective and temporary statutory appointment was made under the terms of section 18 of the 1993 Act.

13. The RM was appointed in March 2004 and concluded his evaluation in July 2004. At the conclusion of his appointment the RM produced a final report for the Charity Commission.
14. As a consequence of this investigation a number of the existing directors of the charities were removed by order of the Charity Commission on the 12 May 2005 and replaced by South London YMCA as a sole director by order dated 9 July 2005.

The Request

15. On 7 June 2006 the complainant wrote to the Charity Commission and made the following request:

*“The methods of investigation used by Martin Woodward that contributed to his findings?
What consultation did he make to Croydon Council with respect to the tenancy of residents?
His terms of reference in accomplishing his duty?
Did he investigate past activities of the charities with respect to the objectives of the charity?
His final report?” (“the requested information”).*

16. The Charity Commission replied on the 23 June 2006 and advised the complainant that:
 - (i) it did not hold any information in relation to the methods of investigation used by the RM, or the consultations with Croydon Council with respect to the tenancy of residents or any investigations into the past activities of the charities.
 - (ii) the terms of reference for the RM were contained in the order made by the Charity Commission appointing the RM and that this was available on the website but provided the complainant with a copy.
 - (iii) it did hold a copy of the RM's final report but this had been provided in confidence to the Charity Commission and it was exempt under section “40(b)” (*sic*) of the Act.
17. The complainant wrote to the Charity Commission on the 24 June 2006 and asked it to review its decision to refuse to release the information.
18. The complainant concluded his letter by asserting that the information he sought was about an organisation that had received public funding, that there had allegedly been mismanagement allegations of misconduct in the affairs of the charity and as the final report of the RM did not concern

a matter of national security it was in the public interest that the information requested should be released.

19. On the 21 July 2006 the Charity Commission informed the complainant that it had carried out a review and pointed out that its initial decision contained an error.
20. In its original decision the Charity Commission had advised the complainant that it considered the withheld information to be exempt under section 40(b) of the Act. It now acknowledged that section 40(b) of the Act did not exist but indicated that it did consider that the withheld information was exempt under section 41(1) of the Act.
21. In addition, the Charity Commission pointed out that it considered that the withheld information was exempt under a number of other sections of the Act.
22. The Charity Commission considered that the withheld information was exempt under section 31 of the Act. This is because the information was obtained in the course of an investigation which the Charity Commission had carried out.
23. The Charity Commission advised that if the withheld information were to be disclosed into the public domain that such a disclosure may have an adverse affect on its ability to carry out its statutory duties in protecting charities from mismanagement and misconduct and in safeguarding the charities' assets.
24. The Charity Commission further argued that the withheld information contained personal data about third parties and therefore it was exempt under section 40(2) of the Act. The Charity Commission further argued that disclosure of the information would result in a breach of the data protection principles.
25. The Charity Commission advised that it considered that the withheld information was exempted from disclosure under section 41 of the Act as the withheld information was obtained in circumstances giving rise to a duty of confidentiality and that disclosure would amount to a breach of confidence.
26. The Charity Commission considered that the withheld information was exempt from disclosure under section 43 of the Act as it contained commercial data relating to the affairs of the third parties which it had investigated.

Scope of the request

27. The Commissioner has considered the complainant's request as set out at paragraph 15 above, the response of the Charity Commission, as set out at paragraph 16, above and the withheld information, a copy of which was provided to the Commissioner by the Charity Commission.
28. The Commissioner is satisfied that the withheld information is comprised of the interim reports and the final report of the RM to the Charity Commission.
29. The Commissioner is satisfied that the interim reports of the RM contain information on the "*methods of investigation used by Martin Woodward that contributed to his findings?*" (see paragraph 15 above).

The Investigation

30. On 24 July 2006 the complainant requested that the Commissioner consider the manner in which the Charity Commission had dealt with his request for information.
31. The Commissioner contacted the Charity Commission on the 15 May 2007 and requested a copy of the withheld information. This was provided by the Charity Commission on the 29 May 2007.
32. The Commissioner then wrote to the Charity Commission on the 27 June 2007 and asked it to clarify a number of points which it had made in its replies to the complainant. In relation to the application of the exemption under section 31 of the Act the Commissioner asked the Charity Commission to set out:
 - (a) the detriment which it anticipated would occur if the withheld information was released and,
 - (b) the likelihood of that harm occurring.
33. In relation to the application of the exemption under section 41 of the Act the Commissioner asked the Charity Commission to provide details of the relationship which existed between it and the RM.
The Commissioner also asked the Charity Commission for the following:
 - (a) details of any discussions which it had with the RM or any other third party concerning the disclosure of the information.
 - (b) had any of the parties indicated that it regarded the information as confidential?
 - (c) was any of the withheld information in the public domain?
 - (d) how would the disclosure of the withheld information give rise to an action for breach of confidence?

- (e) what specific information within the withheld information would give rise to an obligation of confidence?
34. In relation to the application of the exemption under section 43 of the Act the Commissioner asked the Charity Commission to set out:
- (a) details of which commercial interests might be harmed by the disclosure of the withheld information.
 - (b) the harm which might be caused to those interests by disclosure of the withheld information.
 - (c) the likelihood of that harm occurring.
 - (d) any public interest factors which might be considered in making a decision to disclose the withheld information.
35. By letter dated the 26 July 2007 the Charity Commission provided its substantive responses to the Commissioner's queries. The Commissioner proceeded to consider the Charity Commission's responses and to draft a Decision Notice on the basis of these. The Commissioner was also assisted in his investigations by the detailed and considered submissions provided to him by the complainant.
36. On 15 December 2009 the Charity Commission contacted the Commissioner to make further representations. These were in relation to a further exemption that the Charity Commission felt should be considered – namely the exemption set out in section 32(2) of the Act (information held for the purposes of an inquiry).
37. The Charity Commission had previously raised with the Commissioner the possibility of applying that exemption to the withheld information, however, it was now making strong representations in the light of a decision made by the Information Tribunal on 15 June 2009 in relation to the section 32(2) exemption.
38. The Commissioner accepted the Charity Commission's late claim that section 32(2) applied following the approach endorsed by the Tribunal in the case of the *Department for Business, Enterprise and Regulatory Reform v Information Commissioner and Friends of the Earth (EA/2007/0072)*. The Tribunal questioned whether a new exemption can be claimed for the first time before the Commissioner, concluding that the Tribunal (and presumably the Commissioner) "may decide on a case by case basis whether an exemption can be claimed outside the time limits set by [sections] 10 and 17 depending on the circumstances of the particular case".

Analysis

39. The Commissioner is satisfied that the only remaining withheld information is the reports produced by the RM and the note of a telephone call between the RM and the Charity Commission.
40. The Charity Commission obtained a report from the RM, an independent expert who is selected from a panel of experts. In his report the RM has considered the facts at his disposal, analysed them and presented his opinion and recommendations to the Charity Commission. The RM's terms of reference are contained in the order made by the Charity Commission under its statutory duty. The RM's methods of research are determined by the terms of the regulations contained in the Charities [Receivers and Managers] Regulations 1993.
41. The RM is paid a fee by the Charity Commission on a case by case basis and considers that his work is governed by an obligation of confidentiality.

Exemptions

Section 32

42. Section 32(2) of the Act states that:

"Information held by a public authority is exempt information if it is held only by virtue of being contained in:-

- (a) any document placed in the custody of a person conducting an inquiry or arbitration, for the purposes of the inquiry or arbitration, or
- (b) any document created by a person conducting an inquiry or arbitration, for the purposes of the inquiry or arbitration."

The Charity Commission's position

43. The Charity Commission has argued that all of the withheld information is exempt by virtue of the sections 32(2)(a) or 32(2)(b).

Section 32(4)(c) of the Act states that:

"inquiry" means any inquiry or hearing held under any provision contained in, or made under, an enactment."

44. The Charity Commission has explained that the inquiry it conducted into the management and conduct of KIS and KMF was conducted on the basis of its powers under section 8 of the 1993 Act and it believes that this inquiry falls within the scope of the definition of an 'inquiry' as defined at section 32(4)(c) of the Act.

45. Section 32(2) requires that information is exempt if it is held 'only by virtue of being contained in' a document relating to the inquiry. The Charity Commission has explained that it is satisfied that all of the withheld information is only held by virtue of being contained in documents acquired or created for the purposes of this particular inquiry.
46. The public authority's position is that all of the withheld information is exempt from disclosure on the basis of section 32(2). This is supported by the fact that the documents relate specifically to the RM appointment, and such appointment can only take place during a statutory inquiry.

The Commissioner's position

47. The Commissioner agrees with the Charity Commission that its inquiry into the management and conduct of KIS and KMF was held under a provision contained in an enactment, namely section 8(1) of the Charities Act 1993, which states that:
48. 'The Commissioners may from time to time institute inquiries with regard to charities or a particular charity or class of charities, either generally or for particular purposes, but no such inquiry shall extend to any exempt charity.'
49. The Commissioner notes that both KIS and KMF were registered charities during the period in which the inquiry took place and therefore he is satisfied that the inquiry was carried out in line with the powers conferred on the Charity Commission by section 8(1) of the 1993 Act.

Does the information fall within section 32(2)?

50. The documents within which the withheld information is contained are interim and final reports by the RM to the Charity Commission and a note of a telephone call between the RM and the Charity Commission. The reports were specifically prepared by the RM for the purposes of the inquiry, as required by section 19 of the Charities Act 1993. These were then placed by the RM in the custody of the Charity Commission for the purposes of the said inquiry. Therefore the information contained within those reports is entitled to exemption from disclosure under section 32(2)(a) of the Act. The note of the telephone call was taken by a member of staff in the Charity Commission with responsibility for the conduct of the inquiry and was clearly created for the purposes of the inquiry. Therefore its content is exempt from disclosure under section 32(2)(b) of the Act.
51. The Commissioner is satisfied that the information withheld by the Charity Commission in relation to the inquiry was either provided to it by a third party and therefore falls within the scope of section 32(2)(a), or was created by it for the purposes of the inquiry and therefore falls within the scope of section 32(2)(b). In the Commissioner's opinion the information

held by the public authority in relation to the inquiry could not fall outside the scope of either of these two sub-sections of the Act.

Is the information 'only held by virtue of being contained in' the inquiry documents?

52. The Commissioner is satisfied that the withheld information is only held by virtue of being contained in the inquiry documents. That is to say, the information is not held by the Charity Commission for any of other purpose. The Commissioner's reason for reaching this conclusion is that withheld information consists of reports into the management and conduct of KIS and KMF. These were created by the RM and provided by the RM to the Charity Commission specifically for the purposes of the inquiry. Therefore the information could not have been held prior to the commencement of the inquiry.

The scope of section 32(2)

53. The SORI in relation to the inquiry into both charities was published in June 2006. The publication of a SORI effectively marks the conclusion of an inquiry in accordance with the wording of section 8(6) of the Charities Act 1993 which states that:

"Where an inquiry has been held ... a statement of the results of the inquiry... may be published".

54. This suggests that a SORI can form the conclusion of an inquiry and that an inquiry conducted under section 8 closes upon the publication of the SORI.
55. The Tribunal in the case of Kennedy v the Information Commissioner and the Charity Commission (EA/2008/0083) agreed with the view expressed by the Charity Commission that section 32(2) is not limited in time to the period in which the inquiry is ongoing, but also applies to documents that continue to be held by the public authority after the inquiry has ceased, if that is the only purpose for which they are held.
56. The primary reason for the Tribunal's conclusion was the use of the word "placed" in section 32(2)(a). It reasoned that subsequent events could not alter the purpose for which a document was originally placed in someone's custody. It would follow logically then, in the Commissioner's view, that subsequent events could also not alter the purpose for which a document was "created" as set out in section 32(2)(b), namely for an inquiry.
57. Therefore, following the above reasoning, if the withheld information is held by the Charity Commission, after the conclusion of the inquiry, solely by virtue of being contained within the documents which were created for the purposes of the inquiry, it continues to be caught by section 32(2) and is still exempt from disclosure under that subsection

despite the fact that the inquiry had concluded at the time of the request.

58. The Commissioner is therefore satisfied that all of the information falling within the scope of the request is exempt on the basis of sections 32(2)(a) and 32(2)(b). As section 32 provides an absolute exemption, there is no need for the Commissioner to consider the public interest test set out at section 2 of the Act.
59. Furthermore, on the basis of this conclusion the Commissioner does not consider it necessary to reach a decision as to the applicability or otherwise of the other exemptions that the public authority also relied upon to withhold the information.

Procedural requirements

60. In its refusal notice the Charity Commission provided the complainant with some of the requested information, informed the complainant that it did not hold some of the requested information, and stated that it was relying on “section 40(b)” of the Act to withhold the remainder of the information. In its internal review letter it cited a number of sections of the Act to refuse to disclose the withheld information, i.e. sections 31, 40, 41 and 43. It also pointed out that it had made an error in its original refusal notice as “section 40(b)” of the Act did not exist. It later made representations to the Commissioner as to why the information should be withheld under section 32(2).
61. In order to comply with the requirements of section 17(1)(b) the Charity Commission should have in fact specified in its refusal notice the various exemptions it was seeking to rely on, together with their relevant subsections. By failing to cite these exemptions and their subsections in its refusal notice the Commissioner considers that the Charity Commission breached 17(1)(b) of the Act. Furthermore, the Charity Commission’s refusal notice did not explain why it considered the exemptions to be applicable. By failing to provide this explanation the Charity Commission also breached section 17(1)(c). Finally by failing to explain why it considered the public interest test favoured withholding the information under the relevant qualified exemptions, the Charity Commission also breached section 17(3).

The Decision

62. The Commissioner’s decision is that the Charity Commission dealt with the following elements of the request for information in accordance with the Act:
 - The public authority was correct to withhold the information requested on the basis that it was exempt from disclosure by virtue of section 32(2)(a)

and 32(2)(b).

63. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- The public authority breached sections 17(1)(b), 17(1)(c) and 17(3) for the reasons outlined in paragraph 61.

Steps Required

64. The Commissioner requires no steps to be taken.

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.
Website: 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 23rd day of December 2009

Signed

**Gerrard Tracey
Assistant Commissioner**

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

Legal Annex

Freedom of Information Act 2000

General Right of Access

Section 1(1) provides that -

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

Section 1(2) provides that -

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

Section 1(3) provides that –

“Where a public authority –

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”

Section 1(4) provides that –

“The information –

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”

Section 1(5) provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

Section 1(6) provides that –
“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.”

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”

Section 17 – refusal of request

1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which—

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.

(2) Where—

(a) in relation to any request for information, a public authority is, as respects any information, relying on a claim—

(i) that any provision of Part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or

(ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and

(b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.

(3) A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming—

(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

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

(4) A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

(5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

(6) Subsection (5) does not apply where—

(a) the public authority is relying on a claim that section 14 applies,

(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and

(c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.

(7) A notice under subsection (1), (3) or (5) must—

(a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and

(b) contain particulars of the right conferred by section 50.

Exemptions

Law enforcement

Section 31(1) provides that –

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

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

Section 31(2) provides that –

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

- (a) the purpose of ascertaining whether any person has failed to comply with the law,
- (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,
- (c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,
- (d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on,
- (e) the purpose of ascertaining the cause of an accident,

- (f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration,
- (g) the purpose of protecting the property of charities from loss or misapplication,
- (h) the purpose of recovering the property of charities,
- (i) the purpose of securing the health, safety and welfare of persons at work, and
- (j) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work.”

Section 31(3) provides that –

“The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).”

Personal information.

Section 40(1) provides that –

“Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.”

Section 40(2) provides that –

“Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.”

Section 40(3) provides that –

“The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection

Act 1998 (which relate to manual data held by public authorities) were disregarded.”

Section 40(4) provides that –

“The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).”

Section 40(5) provides that –

“The duty to confirm or deny-

- (a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and
- (b) does not arise in relation to other information if or to the extent that either-
 - (i) he giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or
 - (ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).”

Section 40(6) provides that –

“In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.”

Section 40(7) provides that –

In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;
"data subject" has the same meaning as in section 1(1) of that Act;
"personal data" has the same meaning as in section 1(1) of that Act

Data Protection Act 1998

Section 1(1) provides that:

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

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

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

Section 32 – Court records

(1) Information held by a public authority is exempt information if it is held only by virtue of being contained in—

(a) any document filed with, or otherwise placed in the custody of, a court for the purposes of proceedings in a particular cause or matter,

(b) any document served upon, or by, a public authority for the purposes of proceedings in a particular cause or matter, or

(c) any document created by—

(i) a court, or

(ii) a member of the administrative staff of a court,

for the purposes of proceedings in a particular cause or matter.

(2) Information held by a public authority is exempt information if it is held only by virtue of being contained in—

(a) any document placed in the custody of a person conducting an inquiry or arbitration, for the purposes of the inquiry or arbitration, or

(b) any document created by a person conducting an inquiry or arbitration, for the purposes of the inquiry or arbitration.

(3) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of this section.

(4) In this section—

(a) “court” includes any tribunal or body exercising the judicial power of the State,

(b) “proceedings in a particular cause or matter” includes any inquest or post-mortem examination,

(c) “inquiry” means any inquiry or hearing held under any provision contained in, or made under, an enactment, and

(d) except in relation to Scotland, “arbitration” means any arbitration to which Part I of the [1996 c. 23.] Arbitration Act 1996 applies.

Information provided in confidence.

Section 41(1) provides that –
“Information is exempt information if-

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

Section 41(2) provides that –
“The duty to confirm or deny does not arise if, or to the extent that, the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) constitute an actionable breach of confidence.”

Commercial interests.

Section 43(1) provides that –
“Information is exempt information if it constitutes a trade secret.”

Section 43(2) provides that –
“Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).”

Section 43(3) provides that –
“The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the interests mentioned in subsection (2).”