

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 3 March 2009

**Public Authority:** Cabinet Office  
**Address:** Propriety and Ethics Team  
Room 118  
70 Whitehall  
London  
SW1A 2AS

### Summary

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The complainant requested information that the Cabinet Office holds about the sinking of the Belgrano during the Falklands War. The complaint also asked for a schedule of the information that had been withheld. The Cabinet Office provided him with some information but withheld the majority of the information on the basis of the exemptions contained at sections 23(1), 27(1)(a), 27(2), 35(1)(a) and 35(1)(b). The Cabinet Office also explained that it did not hold a schedule of the information that had been withheld. The Commissioner has concluded that the Cabinet Office was correct to rely on section 23(1) to withhold some of the information falling within the scope of the request and furthermore, was also correct to withhold a number of further documents on the basis of sections 27 and 35. However, the Commissioner has also concluded that a number of documents are not exempt on the basis of sections 27 or 35 and the Commissioner has therefore ordered the Cabinet Office to disclose this information. The Commissioner has also concluded that the Cabinet Office does hold a schedule of the withheld information and has ordered the Cabinet Office to disclose a schedule detailing the information withheld on the basis of sections 27 and 35.

### The Commissioner's Role

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

### The Request

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2. The complainant submitted the following request to the Cabinet Office on 4 July 2005:

'Under the act, I would like to request complete copies of documents held by the Cabinet Office/Prime Minister's Office relating to the sinking of the Belgrano which are dated between April 2 1982 and December 31 1982...

...I would also like to ask the Cabinet Office/Prime Minister's Office, on answering this request, to provide a schedule of documents which are relevant to this request. I believe that there should be a brief description of each relevant document including the nature of the document, the date of the document, and whether the document is being released or not'.

3. The Cabinet Office acknowledged receipt of this request on 5 July 2005.
4. On 3 August 2005 the Cabinet Office contacted the complainant again and informed him that it did hold information falling within the scope of his request but it considered some of this information to be exempt from disclosure on the basis of section 27 of the Act. However, the Cabinet Office explained that it needed to extend the time taken to consider the public interest test in this case by approximately six weeks.
5. On 19 May 2006 the Cabinet Office provided the complainant with a substantive response to his request. The Cabinet Office provided the complainant with some information falling within the scope of his case but withheld a number of documents on the basis of sections 23, 27(1)(a), 27(2), 35(1)(a) and 35(1)(b).
6. On 6 October 2006 the complainant asked the Cabinet Office to conduct an internal review of its decision to withhold information in response to his request.
7. On 8 November 2006 the Cabinet Office contacted the complainant and informed him that as the response relating to this request was sent in May 2006 and almost five months had passed since he asked for an internal review to be conducted into this case, it did not consider it appropriate to 're-open it' and conduct an internal review. However, the Cabinet Office did inform the complainant that he could complain to the Commissioner if he was unhappy with its handling of his request.

## **The Investigation**

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### **Scope of the case**

8. The complainant contacted the Commissioner on 2 January 2007 to complain about the Cabinet Office's decision to withhold some of the information that he had requested.

### **Chronology**

9. On 17 December 2007 the Commissioner wrote to the Cabinet Office and asked to be provided with a copy of the information that had been withheld along with a detailed explanation as to why it considered the various exemptions to apply.

10. On 4 February 2008 the Cabinet Office wrote to the Commissioner and explained that as the withheld information in this case is both sensitive and in some cases highly classified, it was inappropriate to send copies of these papers to the Commissioner directly. The Cabinet Office also provided the Commissioner with a detailed explanation as to why it considered exemptions contained at sections 27 and 35 of the Act to apply to the information. With regard to the information that was exempt on the basis of section 23 the Cabinet Office explained that as with previous cases, it was providing the Commissioner with a letter from the Cabinet Office's Director Security and Intelligence which confirmed that the information withheld on the basis of section 23 was informed by information supplied by or related to one or more of the bodies listed in section 23.
11. In August 2008 a representative of the Commissioner's office visited the Cabinet Office in order to review the information that had been withheld on the basis of the exemptions contained in section 27 and section 35.

## Analysis

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### Exemptions

12. As noted above, the Commissioner viewed the documents that the Cabinet Office withheld on the basis of sections 27 and 35. In total there were 45 documents and the Commissioner has listed these documents, along with the exemptions the Cabinet Office applied to them, in an annex attached to this notice (n.b. the documents in question are in fact numbered 2-46, rather than 1-45).

### Information already provided

13. Having reviewed the information withheld, the Commissioner has established that complete copies of a number of the documents have in fact been provided to the complainant as part of the Cabinet Office's disclosure to the complainant of 19 May 2006. These documents are those numbered 6, 9, 11, 19, 23, 25, 34, 35 and 42.
14. The Commissioner has also established that the complainant has been provided with parts of documents numbers 15, 20, 26 and 39 which fall within the scope of his request (i.e. information relating to the Belgrano) and any further information contained in these documents which has not been provided falls outside the scope of the request.
15. On the basis the complainant has been provided with the relevant information contained within the documents listed in the above two paragraphs, the Commissioner has not gone on to consider whether the exemptions cited by the Cabinet Office are applicable to these documents.
16. However, the Commissioner has also established that one document (number 15) has been disclosed but certain sections have been redacted and that the redacted information relates to information about the Belgrano incident and

therefore falls within the scope of the request. The Commissioner has therefore considered whether the redacted section has been correctly withheld.

17. The Cabinet Office has argued that a number of exemptions apply to the information falling within the scope of the request. The Commissioner has considered the application of these exemptions in the following order: section 23, section 35(1)(b), section 27(2) and section 27(1)(a).

### Section 23

18. The Cabinet Office has argued that a number of pieces of information falling within the scope the request are exempt on the basis of section 23.

19. The parts of section 23 relevant to this request state that:

23(1) Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).

(3) The bodies referred to in subsection (1) and (2) are –

- (a) the Security Service
- (b) the Secret Intelligence Service
- (c) the Government Communications Headquarters
- (d) the special forces
- (e) the Tribunal established under section 65 of the Regulation of Investigatory Powers Act 2000
- (f) the Tribunal established under section 7 of the Interception of Communications Act 1985
- (g) the Tribunal established under section 5 of the Security Service Act 1989
- (h) the Tribunal established under section 9 of the Intelligence services Act 1994
- (i) the Security Vetting Appeals Panel
- (j) the Security Commission
- (k) the National Criminal Intelligence Service
- (l) the Service Authority for the National Criminal Intelligence Service'.

20. The Cabinet Office has argued that a number of pieces of information are exempt by virtue of the fact they were either received from one of the bodies listed in section 23(3) or were directly related to such bodies. In the particular circumstances of this case the Commissioner is prepared to accept the assurance given in the letter mentioned in paragraph 10 that the information falling within the scope of this request in respect of which the absolute exemption under section 23(1) has been claimed is indeed exempt from disclosure by virtue of section 23(1) for the reasons given.

## Section 35

21. The documents which the Cabinet Office has argued are exempt on the basis of section 35(1)(b) are those numbered 2-5 and document 43 (in fact document 43 is the same as document 2).
22. Section 35(1)(b) states that  
  
'35(1) Information held by a government department or by the National Assembly for Wales is exempt information if it relates to –  
  
(b) Ministerial communications'
23. Section 35(5) notes that "Ministerial communications" includes 'proceedings of the Cabinet or any committee of the Cabinet'.
24. The four documents which the Cabinet Office has withheld on the basis of section 35(1)(b) are all minutes of Cabinet sub-committees and therefore the Commissioner is satisfied that these documents fall within the scope of the exemption contained at section 35(1)(b).
25. However, section 35 is a qualified exemption and therefore the Commissioner must consider the public interest test set out in section 2 of the Act and whether in all of the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

### Public interest test

#### *Public interest arguments in favour of withholding the information*

26. The Cabinet Office has identified a number of arguments which it believes support its position that the public interest favours withholding this information, namely:
27. Ministers must be able to discuss policy considerations and related points freely and frankly when part of Cabinet or Cabinet committee meetings so that they are able to exchange views on options and understand possible implications of various approaches. If minutes of such meetings were disclosed the necessary candour would be undermined if such information was disclosed prematurely.
28. The Cabinet Office has also highlighted the significance of the convention of collective responsibility which allows Ministers to be able to express and argue their points of view in private whilst maintaining a united front. Premature disclosure of Cabinet minutes would undermine this convention by reducing the candour by which Ministers would discuss issues which would result in the quality of ministerial debates and ultimately the decision making process being undermined.
29. The Cabinet Office argued that these points were of particular significance when the matters being discussed were those such as armed conflict. As the lives of

both British and Argentine soldiers were dependent on decisions being made at Cabinet meetings it is essential that Ministers are able to speak freely and openly without fears that their views would be prematurely disclosed.

*Public interest arguments in favour of disclosing the information*

30. The Cabinet Office has acknowledged that there is a public interest in general transparency about how Government operates and disclosure of this information would inform the public as to how Cabinet sub-committees operate and take difficult decisions in times of armed conflict.
31. The Cabinet Office has also highlighted the fact that there is a public interest in the public being able to assess the quality of debate between Ministers and strength of the subsequent decision making process.
32. The complainant has questioned the level of harm to the decision making process that would occur following the disclosure of these documents given, not only because of the age of the information, but also the fact that many of those involved have disclosed their own versions of the events in question. In particular the complainant has highlighted the 63 pages of Margaret Thatcher's memoirs '*The Downing Street Years*' which discuss the Falklands conflict, including references to the Belgrano incident. In the complainant's opinion given the fact that many of the participants have aired their views of conflict either through memoirs, interviews or television programmes it is unrealistic to assume that those involved would expect their role at the time to be kept secret. Furthermore the complainant has noted the publication in 2005 of the book the '*Official History of the Falklands War*' by Professor Sir Lawrence Freedman who was appointed by the Government to be the Official Historian of the Falklands Campaign. The complainant has highlighted the fact that Sir Lawrence had access to the documents which are the focus of this request and the '*Official History*' discusses the contents of many of these documents.
33. The complainant has also argued that it is not in the public interest that it is only the author of the '*Official History*' who should access to these documents. Rather, there is a public interest in members of the public, as well as other historians, being able to view the documents in order for a robust debate to take place about a key event and that such debate is vital in a democracy

*Balance of public interest arguments*

34. In the Commissioner's opinion it would appear that the Cabinet Office's arguments as to why this information should not be disclosed are somewhat generic and rest heavily on the protection of the convention of collective responsibility. However, as section 35 is a qualified exemption collective cabinet responsibility cannot be used to prevent the withholding of Cabinet minutes in all circumstances where disclosure would impinge on this convention. To do so would elevate this exemption to be absolute rather than qualified. Consequently, although the Commissioner recognises the weight that such arguments have in principle, they should not be used on their own to provide a decisive public interest balance. Such an approach accords with the Tribunal's comments in case

of *The Scotland Office v Information Commissioner (EA/2007/0070)*. In this case the Tribunal noted that the Scotland Office appeared to be suggesting that the convention of collective responsibility elevated section 35(1)(b) to be an absolute exemption. The Tribunal commented that 'There is nothing in the wordings of section 35, or in the case law, to support such an interpretation... The maintenance of the convention of collective Cabinet responsibility is a public interest like any other, in the sense that the weight to be accorded to it must depend on the particular circumstances of the case' (Tribunal at paragraphs 84 and 86).

35. With regard to the 'particular circumstances of the case', the Commissioner has believes that a key factor is the content of the information itself. Such an approach is line with one of the key principles outlined in the Information Tribunal's decision in the case *DFES v Information Commissioner & the Evening Standard (EA/2006/0006)* which commented that:

'The central question in every case is the content of the particular information in question. Every decision is specific to the particular facts and circumstances under consideration. Whether there may be significant indirect and wider consequences from the particular disclosure must be considered case by case.' (Para 75(i)).

36. Such an approach was specifically approved by Mr Justice Mitting in the *Export Credits Guarantee* judgement.<sup>1</sup> Although these judgments related to the application by the public authority of the exemption contained at section 35(1)(a), the Commissioner considers them to be equally applicable to the consideration of the public interest test under section 35(1)(b).
37. When focusing on the nature of the information itself, the Commissioner has some sympathy with the complainant's argument that given that a number of the key participants in government at the time, most notably Margaret Thatcher, have discussed publicly issues relating to the Belgrano incident, the potential harm based upon these individuals' presumption that such information will be not disclosed is weakened. Moreover, to some extent such publications have also placed some of the contemporary information from the events surrounding the Belgrano incident in the public domain.
38. However, the Commissioner believes that simply because many participants have published their accounts of the events surrounding the sinking of the Belgrano this does not necessarily mean that all of the information contained within the four Cabinet meetings is in the public domain. For example, although Margaret Thatcher's memoirs contain a substantial discussion on the Falklands War, the amount of information focussing on the Belgrano incident is relatively small. Whilst the Commissioner accepts that such publications do undermine the argument that the participants would not expect that information of the nature requested would be placed in the public domain, the Commissioner does not think that this can be equated with disclosure of the Cabinet minutes themselves.

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<sup>1</sup> *Export Credit Guarantee Department v Friends of the Earth* [2008] EWHC 638 (Admin) (17 March 2008) <http://www.bailii.org/ew/cases/EWHC/Admin/2008/638.html>

The Commissioner considers that there is a very significant difference between the publication of a personal account of events in a memoir or diary and the disclosure of the official record of proceedings at the highest level of government.

39. Moreover, when focusing on the nature of the information itself, the Commissioner believes that this reinforces the significance of the convention of collective responsibility because of the very nature of the issues that are being discussed, namely the Government's decision making process during a period of armed conflict. The Commissioner agrees that in times of armed conflict when events move very quickly and decisions being taken by Cabinet literally involve issues of life and death, Ministers need to be confident that they are able to speak candidly and if necessary argue over different approaches without the fear that such discussions will be prematurely disclosed. In other words, in the Commissioner's opinion given the nature of the information being discussed at these Cabinet meetings, the convention of collective responsibility deserves particular protection. This is to ensure that in similar circumstances those involved in War Cabinet discussions are not inhibited in their deliberations as this might adversely affect the decision making process on critical issues. Such an adverse consequence would clearly not be in the public interest.
40. Nevertheless, the Commissioner agrees that there is a public interest in disclosure of the information because it will inform the public debate surrounding an incident which at the time was seen as a controversial and significant event in the Falklands War. As the complainant suggests, disclosure will ensure that the public's perception or knowledge of this particular incident is not one that is simply provided by accounts of contemporaries or the Government chosen historian. The Commissioner accepts that it is in the public interest that an informed public debate can take place about recent key events in history.
41. On balance, however, the Commissioner has concluded that the public interest narrowly favours withholding the four Cabinet minutes. The Commissioner wishes to emphasise that he has not reached this conclusion simply on the basis that disclosure may harm the convention of collective responsibility. Instead, given the nature of the issues being discussed in these minutes, namely a decisive action in the course of armed conflict, the Commissioner accepts that disclosure of the minutes would have a significant and detrimental impact on the nature of the decision making process during future Cabinet discussions involving issues of armed conflict. Clearly, the Commissioner does not consider that such a consequence is in the public interest. Furthermore, although the Falklands War occurred twenty five years ago, the sovereignty of the Falkland Islands remains a live political issue. Therefore, whilst the politicians whose views feature in the withheld information no longer need a private space in which to share confidential information in relation to these issues, it is clear that the UK government may well continue to require a private space in order to discuss issues relating to the Falkland Islands. Whilst the Commissioner acknowledges the fact that there is a public interest in disclosure of the information not only to inform the public as to how Government operates, but also to inform the public debate around a key event in the UK's recent history, the Commissioner believes that these factors are



outweighed by the harmful potential effects that disclosure might have on the convention of collective responsibility in similar scenarios in the future.<sup>2</sup>

## Section 27

42. Section 27 states that:

'27 - (1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) relations between the United Kingdom and any other State,
- (b) relations between the United Kingdom and any international organisation or international court,
- (c) the interests of the United Kingdom abroad, or
- (d) the promotion or protection by the United Kingdom of its interests abroad.

(2) Information is also exempt information if it is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court.

(3) For the purposes of this section, any information obtained from a State, organisation or court is confidential at any time while the terms on which it was obtained require it to be held in confidence or while the circumstances in which it was obtained make it reasonable for the State, organisation or court to expect that it will be so held'.

## Section 27(2)

43. The Cabinet Office has argued that the following documents are all exempt from disclosure on the basis of section 27(2): 7, 10, 13, 14, 16, 18, 24, 30, 31, 37, 44 and 46.

44. When assessing whether information obtained from another state is in fact confidential, the Commissioner's approach has been to follow the guidance provided by section 27(3) and assess whether there is any explicit evidence to demonstrate how the third party would expect the information to be held by the UK and also if no expectation is explicit, to assess the circumstances in which the information was provided in order to assess whether there is any implicit duty of confidence.<sup>3</sup>

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<sup>2</sup> As the Commissioner has concluded that documents 2 to 5 are exempt from disclosure on the basis of section 35(1)(b) and the public interest favours withholding these documents, he has not gone on to consider whether these documents are also exempt on the basis of the other exemptions that the Cabinet Office has argued apply to documents 2 to 5. (The Cabinet Office has argued that all four documents are exempt on the basis of 27(1)(a) and documents 3 and 5 are also exempt on the basis of section 27(2)). However, in relation to the Commissioner's findings on the applicability of section 27 later in this notice, he recognises that the section 27 exemptions cited by the Cabinet Office may well provide a further basis upon which to withhold documents 2 to 5.

<sup>3</sup> This approach was specifically adopted by the Information Tribunal in its decision *Campaign Against Arms Trade v Information Commissioner & MOD* (EA/2006/0040) – (see paragraphs 66).

45. Having reviewed the documents which the Cabinet Office has argued fall within the scope of section 27(2) the Commissioner has identified a commonality between a number of them; namely they comprise telegrams from British Ambassadors abroad to the FCO in London and detail views and opinions of various foreign governments, and representatives or officials of these governments, on the Belgrano incident. The documents which fall within this description are as follows: 7, 13, 14, 16, 18, 30, 31, 37 and 44.
46. In the case of some documents, for example document 44, it is stated explicitly that the contents of the information provided to the British Ambassador in question was provided in confidence. However, even without an explicit statement that the information in the various telegrams had been provided to the UK in confidence, having reviewed the contents of the various telegrams (which in some cases are candid and direct) and considered the circumstances of each (during a period of armed conflict between two nations), the Commissioner is satisfied that the representatives of the foreign governments provided the information in the expectation that it would be held confidentially. That is to say, although they obviously understood that their comments would be fed back to London, they would not have expected, in many cases, that their comments would be shared with other foreign governments, least of all placed in the public domain. In reaching this conclusion the Commissioner has taken into account the fact that the information provided to the UK came from relatively senior officials within foreign governments. Consequently, in the circumstances of this case, as with the circumstances in the case *Foreign and Commonwealth Office v Information Commissioner* (EA/2006/0065), the content of the information and the high level at which the exchanges took place are indicative of the expectations of confidentially held by the parties concerned.<sup>4</sup>
47. The Commissioner is therefore satisfied that the documents listed at paragraph 43 above are exempt from disclosure on the basis of section 27(2).
48. With regard to the remaining documents that the Cabinet Office has argued fall within section 27(2), i.e. numbers 10, 24 and 46, the Commissioner has outlined below his opinion on the application of 27(2) in turn.
49. Document 10 is a FCO 'sitrep' (i.e. a situation report). Having reviewed this document the Commissioner has noted that the first paragraph contains information which was provided to the UK by the US. The Commissioner is satisfied that on the basis of the reasoning outlined above in relation to the telegrams, is exempt on the basis of section 27(2). However, the remainder of the document does not contain information that was provided to the UK by a third party, rather it was created by it and therefore the remainder of this document does not fall within the scope of section 27(2). (The Commissioner has considered whether the remainder of document 10 is exempt from disclosure on the basis of section 27(1)(a) below).

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<sup>4</sup> See paragraph 39, sub-section (4) of this Tribunal decision.

50. Document 24 is also a FCO 'sitrep' on the Falklands War the day after the sinking of the Belgrano. The majority of this report details the views of two foreign governments in relation to this incident and the wider situation. The Commissioner is satisfied that on the basis of the reasoning outlined above in relation to the telegrams, is exempt on the basis of section 27(2). However, the Commissioner also notes that the first paragraph of this document does not comprise information which was provided to the UK from a State and therefore cannot fall within the scope of the section 27(2). (The Commissioner has considered whether this section is exempt from disclosure on the basis of section 27(1)(a) below).
51. Document 46 consists of a review of US policy during the Falklands War including an analysis of US and UK relations during the period. Having reviewed this document that Commissioner is satisfied that some of the information contained in this document was clearly provided by the US to the UK. Having considered the contents of this information, along with the circumstances that it was provided in, i.e. during a time of armed conflict and ongoing diplomatic discussions, the Commissioner is satisfied that this information was provided to the UK in the expectation that the information would not be widely disseminated and thus can correctly be classed as confidential information for the purposes of section 27(2). However, not all of the information contained in document 46 was provided to the UK by the US, rather some of the information was in fact created by the UK itself and therefore cannot fall within the scope of section 27(2). (Again, as with document 24, the Commissioner has considered below whether the remaining part of document 44 is exempt from disclosure on the basis of section 27(1)(a)).

*Public interest test*

52. Section 27 is a qualified exemption and therefore the Commissioner must consider the public interest test.

*Public interest arguments in favour of disclosure*

53. There is a general public interest in disclosure of information which would inform the public about how the government reaches decisions and discharges its functions which regard to the operation of foreign policy. In particular disclosure of this information would aid the public's understanding of a significant incident in the recent history of the UK and allow a more informed debate on the issues surrounding the sinking the Belgrano incident.
54. Given the age of the information, the individuals identified in these documents are no longer in public office and therefore the need to provide a confidential space for these particular parties to discuss issues in the future does not exist.

*Public interest arguments in favour of withholding the information*

55. There is a clear public interest in maintaining strong relationships with key international allies, based upon amongst other things, mutual trust and respect for the confidentiality of exchanges because such relationships are key to effective

foreign policy. This is particularly true when the confidential discussions relate to issues of armed conflict.

56. Disclosure of the information falling within the scope of section 27(2) has the potential to not only harm relationships with those directly involved, e.g. for document 7 the Irish government, but also for future discussions with other governments because disclosure may discourage them to willingly provide the UK with information in confidence.
57. The Cabinet Office has explained that despite the fact the Falklands War occurred twenty five years ago, the sovereignty of the Falklands War remains a live political issue. Therefore, whilst the individual participants of the exchanges may not need a private space in which to share confidential information in relation to these issues, their respective Governments still need a private space in order to discuss issues relating to the Falkland Islands.

#### *Balance of public interest factors*

58. The Commissioner acknowledges that this information is relatively old and accepts that the participants in the events themselves no longer need a private space in which to discuss confidential issues. Moreover, the contents of some of the documents falling within the scope of section 27(2) have been alluded to the various publications on the Falklands War. Furthermore, Commissioner is not wholly convinced that the argument advanced by the Cabinet Office in the previous paragraph is inherent to the public interest considerations under section 27(2) because this argument focuses on the need for a private space to discuss issues rather than flouting international confidences. However, as suggested above, the Commissioner does not believe that simply because a number of books have been published this equates to the material contained in the various telegrams being placed in the public domain. The Commissioner believes that in the context of section 27(2), the grounds for breaching confidentiality must be strong because the preservation of such a confidence is in itself a desirable goal; the Commissioner considers that such an approach is consistent with the Tribunal's approach in the case *FCO v Information Commissioner* cited above. Given the importance of such confidential communications to UK foreign policy, particularly in times of armed conflict, and sensitive and candid nature of the information itself, the Commissioner has concluded that for all of the documents falling within the scope of section 27(2), the public interest in maintaining the exemption outweighs the public interest in disclosing this information.

#### Section 27(1)(a)

59. The Cabinet Office actually argued that all of the documents that it had withheld are exempt by virtue of section 27(1)(a) of the Act. However, as the Commissioner has already concluded that a number of these documents are in fact exempt on the basis of either section 35(1)(b) or section 27(2), the only documents which the Commissioner has to assess are exempt on the basis of section 27(1)(a) are:

- 8, part of 10, 12, 17, 21, 22, part of 24, 27, 28, 29, 32, 33, 36 (which is in fact the same document as number 27), 40, 41, 45 and part of 46.
60. The Cabinet Office has provided the Commissioner with the following explanation to support its position that disclosure of the above documents would be likely to prejudice in relations which another State: the issue of the sovereignty of the Falklands Islands remains a sensitive issue in the UK's bilateral relations with Argentina and disclosure of information would be perceived as insensitive by Argentina and would be likely to prejudice relations between the UK and Argentina. In support of this position the Cabinet Office has highlighted the fact that the content and timing of the 2005 publication of the 'Official History' had to be carefully considered and despite this publication allegedly drew negative comments from the Argentine government. The Cabinet Office has also highlighted the fact that the documents also refer to countries other than Argentina, in particular the US and also South American and European partners and as a consequence disclosure of this information may also affect the UK relations with these states.
61. The Commissioner has been guided on the interpretation of the phrase 'would, or would be likely to' be a number of Information Tribunal decisions. With regard to likely to prejudice, the Tribunal in *John Connor Press Associates Limited v The Information Commissioner* (EA/2005/0005) confirmed that 'the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk' (Tribunal at paragraph 15). With regard to the alternative limb of 'would prejudice', the Tribunal in *Hogan v Oxford City Council & The Information Commissioner* (EA/2005/0026 & 0030) commented that 'clearly this second limb of the test places a stronger evidential burden on the public authority to discharge' (Tribunal at paragraph 36).
62. With regard to the particular threshold of engaging the exemption contained at section 27(1)(a) the Commissioner has been guided by the comments in the Information Tribunal decision *Campaign Against Arms Trade v Information Commissioner & MOD* (EA/2006/0040), At paragraph 81 the Tribunal noted that:
- '...we would make clear that in our judgment prejudice can be real and of substance if it makes relations more difficult or calls for particular diplomatic response to contain or limit damage which would not otherwise have been necessary'*
63. The Commissioner understands that the Cabinet Office's view is that disclosure of virtually any documentation related to the Falklands War would be likely to prejudice its relations with Argentina. This is demonstrated by the fact that the Cabinet Office has argued in its submissions to the Commissioner in 2008 that all of the documents numbered 2 to 46 are exempt on the basis of section 27(1)(a). However, the Commissioner notes that a number of these documents were in fact provided to the complainant when the Cabinet Office first replied to his request in 2006. Therefore, given these previous disclosures the Commissioner does not accept that disclosure of any information would be likely to prejudice the UK's relations with Argentina is a sustainable argument. Moreover, the Commissioner is reluctant to accept an argument that a prejudiced based exemption is engaged

simply because of the status or type of a range of different types of information; to accept such an approach would essentially result in creating a class based exemption for certain types of information, such as that falling within the scope of this request. Instead, the Commissioner believes that the content of each document has to be considered in order to determine whether its disclosure would be likely to prejudice the UK's relations with any other State.

64. Nevertheless the Commissioner does acknowledge that whilst the applicability of the section 27(1)(a) has to be considered on a document by document basis, he does accept that some general assessment has to be made as to the context in which the documents would be disclosed; that is to say, the state of UK relations with Argentina, particularly with regard to the issue of the Falklands Islands around the time of the request.
65. On that point, the Commissioner accepts that it is clear that despite the fact that the Falklands War ended more than 20 years previously, and that relations have improved over in recent years, the sovereignty of the Falklands Islands remains a live issue with regard to Anglo-Argentine relations with Argentina maintaining its claims to sovereignty.<sup>5</sup> In particular, in recent years relations have been strained over the issues of fishing rights and oil exploration by the two countries in the waters surrounding the Falkland Islands.<sup>6</sup> Therefore the Commissioner accepts that the argument that the context for any disclosure around the time of the request would be one where the relations between the UK and Argentina could be correctly described as sensitive and therefore, depending on the nature of the information concerned, disclosure may harm this relationship and thus make relations more difficult (see the test set out by the Tribunal quoted above at paragraph 62).
66. The Commissioner has considered the application of section 27(1)(a) to each of these documents in turn below. Obviously for some of the documents the Commissioner cannot explain in great detail why he considers the exemption to apply (or not apply) as to do so would reveal the nature of the withheld information.
  - (i) Document 8: although this document is relatively factual, the Commissioner accepts that it contains candid and direct comments about the UK's position with regard to the Belgrano and the UK's views on the reaction of other countries following the incident. Given the content of these candid comments the Commissioner accepts that in the context of current Anglo-Argentine relations concerning the Falkland Islands, disclosure may be likely to prejudice the UK's internal national relations. Moreover, given the fact that comments made in this document are directed at countries other than Argentina the Commissioner is of the opinion that disclosure of this document may prejudice the UK's relations not only with Argentina but also with other states.

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<sup>5</sup> 'Argentina vows to pursue Falklands sovereignty' <http://www.guardian.co.uk/uk/2007/apr/02/falklands.world>

<sup>6</sup> 'Argentina scraps Falklands oil deal' <http://www.guardian.co.uk/world/2007/mar/28/argentina.oil>

- (ii) Document 10: again the remainder of the document that does not fall within the exemption provided by section 27(2) in the Commissioner's opinion is of a relatively factual nature. However, as with document 8, in the context of current Anglo-Argentine relations in relation to the Falklands Islands, the Commissioner accepts that disclosure of this information would be likely to prejudice the UK's relations with another state.
- (iii) Document 12: the Commissioner considers this document to contain a detailed assessment of the military situation at the date of the document and whilst the some of the information may now be considered to be factual and in the public domain, some is not and the Commissioner accepts that given the nature of this information in light of the circumstances discussed above, section 27(1)(a) is engaged. (In addition the Commissioner notes that the document also includes discussions about a number of other states, which supports the argument that section 27(1)(a) is engaged).
- (iv) Document 17: comprises a letter detailing the Prime Minister's discussions with the leaders of opposition parties and whilst elements of the reported discussion could be said to be in the public domain, the document also details candid and frank discussions including the views of various participants in the meetings towards Argentina's position and views. In the context of the current Anglo-Argentine relations the Commissioner accepts that disclosure of this information would be likely to prejudice the UK's relations with Argentina.
- (v) Document 21: in the Commissioner's view this appears to be a statement which was prepared for public disclosure in order to explain a particular incident; in the Commissioner's opinion given that it appears to be a draft press release it is unclear how disclosure of this information would result in real and significant harm occurring to the UK's relations particularly the information contained in the statement is brief and of a very general nature.
- (vi) Document 22: although the amount of information redacted is quite brief, the Commissioner is satisfied that given the content of the redacted information and the context of the current Anglo-Argentine relations with regard to the Falklands Islands disclosure of the information would be likely to prejudice these relations and thus section 27(1)(a) is engaged.
- (vii) Document 24: the Commissioner notes that the content of first paragraph of this document which begins 'Attack of...' is essentially in public domain and is basically the same in content as the information contained in the press statement attached to document 24. On this basis the Commissioner does not accept that disclosure the likelihood of prejudice following disclosure of this information is one that could be described as real and significant and therefore section 27(1)(a) is not engaged.
- (viii) Documents 27 and 28 (as noted above document 36 is the same as document 27): these documents relate to issues concerning the treatment

of prisoners of war and given the sensitive nature of such a subject, and the content of the document's detailing the UK's position on this issue, the Commissioner is satisfied that in the current climate disclosure of these documents would be likely to prejudice the UK's relations with Argentina.

- (ix) Document 29: consists of a briefing paper for the Prime Minister prior to her contact with the Peruvian government. In light of the content of this document, and the current situation regarding Anglo-Argentine relations with regard to the Falkland Islands, the Commissioner accepts that disclosure would be likely to prejudice the UK's relations with Argentina. Moreover, given the nature of some of the comments contained in the document the Commissioner accepts that disclosure of the information may also prejudice the UK's relations with Peru.
- (x) Document 32: the Commissioner is satisfied that the candid and frank nature of this document means that in the context of current Anglo-Argentine relations, disclosure would be likely to likely to prejudice the UK's relations with Argentina.
- (xi) Document 33: the Commissioner notes that this document consists of a transcript of an interview originally broadcast on a television show, Weekend World. On the basis that the information contained within this document was broadcast to the public at the time of the Falklands War, in the Commissioner's opinion disclosure of this transcript under the Act would not result in real or significant prejudice to the UK's international relations. Consequently, section 27(1)(a) is not engaged.
- (xii) Documents 40 and 41: consists of a draft article which later appeared in the Chatham House journal 'International Affairs' and a brief letter between government departments in relation to the pending publication of this article. Given the relatively bland nature of the content of the letter and the fact that the article was subsequently published and is still available online, albeit for the payment of a fee, the Commissioner does not accept that disclosure of this information would result in real or significant prejudice to the UK's international relations.
- (xiii) Document 45: consists of an excerpt from Hansard and therefore this information is already in the public domain. Moreover, as the Cabinet Office has already disclosed two earlier excerpts from Hansard from these files, the Commissioner does not accept that it can be prejudicial to the UK's position to disclose the fact, and thus the content of a Hansard excerpt.
- (xiv) Document 46: having reviewed the parts of this document which are not exempt on the basis of section 27(2), the Commissioner is satisfied that given the candid and detailed analysis it contains of UK's views of its relations with the US, and by implication of those with Argentina, the Commissioner is satisfied that in the context the current state of Anglo-Argentine relations, disclosure would be likely to result in the UK's relations with Argentina and with the US being harmed.



67. In summary then, the Commissioner accepts that the following documents are exempt on the basis of section 27(1)(a):

- 8, 10, 12, 17, 22, 27, 28, 29, 32 and 46

68. However, the following documents are not exempt on the basis of section 27(1)(a):

- 21, the first paragraph of 24, 33, 40, 41 and 45

#### *Public interest test*

69. Broadly speaking, the Commissioner believes that the public interest arguments relevant to section 27(1)(a) are very similar to those outlined above in relation to the public interest debate test for the application of section 27(2). In addition to the factors considered above, the Commissioner believes that the danger of prejudicing the sensitive nature of current Anglo-Argentine relations provides a persuasive public interest argument in withholding this information. Consequently, on the basis of the Commissioner's conclusion above at paragraph 58, the Commissioner has concluded that the public interest in maintaining the exemption in section 27(1)(a) outweighs the public interest in disclosing the information in respect of which the exemption is engaged.

#### **Disclosure of schedule**

70. As the Commissioner has explained in the chronology above, the Cabinet Office's position is that it does not hold a schedule of the withheld documents and the compiling of such a schedule would equate to creating new information, something which the Cabinet Office is not required to do under the Act. Indeed, the Cabinet Office suggested that it would have required 'significant effort' to create such a schedule, albeit that the Cabinet Office did not anticipate that the cost of compiling such a schedule would have exceeded the cost limit under section 12 of the Act.

71. The Commissioner's position is that where a request is made for a schedule or list of documents, even if no schedule has been compiled, if the information which would be in the schedule is held, the request can and should be complied with unless the contents of the schedule, once compiled, would also be exempt. (The Commissioner originally outlined this view in decision notice FS50070854 involving a request to the Foreign and Commonwealth Office). As the Cabinet Office itself acknowledges, there is nothing to suggest in this case that the extraction of this information from all the information covered by the request would involve so much work that the appropriate cost limit under section 12 would be exceeded. Furthermore, in its submissions to the Commissioner, the Cabinet Office suggested that its preliminary view was that no information contained in a potential schedule would attract any exemption.

72. However, in the Commissioner's opinion, some of the information that would form part of a schedule **would** in fact attract an exemption:
73. Firstly, any information contained in a schedule about the documents falling within the scope of section 35(1)(b) – i.e. documents 2 to 5 - would be exempt because the information contained in such a schedule would be drawn directly from the documents 2 to 5 and the Commissioner accepts that the information contained in these documents falls within the scope of the exemption contained as section 35(1)(b).
74. Nevertheless, the Commissioner believes that disclosure of simply the information needed to form a schedule from documents 2 to 5, e.g. the title and date of each document, would not result in the harmful consequences discussed in paragraphs 26 to 29, and thus such a schedule could be disclosed without undermining the convention of collective responsibility. Therefore, the balance of the public interest favours disclosing a schedule of documents 2 to 5.
75. Secondly, and on a similar basis, information included in a schedule which lists the information which is exempt by virtue of section 23 of the Act, would also be exempt from disclosure. As the section 23 is absolute exemption there is obviously no public interest test to consider and therefore the Commissioner's position is that disclosure of a schedule of the documents which are exempt on the basis of section 23(1) would in itself also be exempt from disclosure on the basis of section 23(1).
76. However, the Commissioner agrees with the Cabinet Office that disclosure of the parts of a schedule detailing the remaining documents would **not** attract any exemption; that is to say, disclosure of the basic information included in a schedule about the remaining documents would not engage section 27(1)(a) or fall within the remit of section 27(2).
77. On the basis of the above the Commissioner believes that the Cabinet Office should provide the complainant with a schedule of the documents that have been withheld on the basis of the exemptions contained at 27 and 35 to include:
- The title of the document and if not obvious, a brief indication as to the nature of the document; and
  - The date of each document;
78. In ordering disclosure of this information the Commissioner has considered whether the second part of the complainant's request quoted in paragraph 2 is actually a request for information held by the Cabinet Office or a request for a creation of a summary of information in line with section 11(c) of the Act. In the Commissioner's disclosure of information contained within the withheld documents would fulfil the complainant's request for a schedule and 'a brief description of each relevant document including the nature of the document' and consequently the Cabinet Office would not be required to create a summary of the withheld information.

## Procedural matters

79. Section 1 of the Act states that:

‘1(1) 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.’

80. Section 10(1) of the Act states that:

‘Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt’

81. The Commissioner believes that by incorrectly informing the complainant that it did not hold a schedule of the information falling within the scope his request the Cabinet Office breached section 1(1)(a) of the Act. Furthermore by failing to provide the complainant with a schedule for the documents falling within the scope of the exemptions contained at sections 27 and 35 the Cabinet Office also breached 1(1)(b). Both of these failing also constitute a breach of section 10(1) of the Act.

82. Furthermore, as the Commissioner has concluded that the Cabinet Office was incorrect to withhold documents 21, the first paragraph of document 24, 33, 40, 41 and 45, he believes that the Cabinet Office breached section 1(1)(b) by failing to provide these documents to the complainant. Again, this constitutes a breach of section 10(1) of the Act.

## The Decision

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83. The Commissioner’s decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

- The Cabinet Office was correct to withhold the documents which fall within the scope of the exemption contained at section 23(1).
- The Cabinet Office was also correct to withhold a number of documents on the basis of sections 27(1)(a), 27(2) and 35(1)(b) as listed in the table below.

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

- The Cabinet Office breached 1(1)(a) by incorrectly informing the complaint that it did not hold a schedule of the information he requested and furthermore breached section 1(1)(b) by failing to provide the complainant with a schedule

of the documents withheld on the basis of sections 27(1)(a) and 35(1)(b) of the Act. This also constitutes a breach of section 10(1) of the Act.

- The Cabinet Office was incorrect to withhold the documents numbered 21, the first paragraph of document 24, 33, 40, 41 and 45. By failing to provide these documents to the complainant the Cabinet Office breached section 1(1)(b) and section 10(1).

## Steps Required

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

- Provide the complainant with a schedule of the documents which have been withheld on the basis of section 27(1)(a), 27(2) and 35(1)(b) of the Act. This schedule should include the title of each document, and if not obvious a brief indication as to the nature of each document, and the date of each document.
- Disclose to the complainant the following numbered documents: 21, the first paragraph of document 24 which begins 'Attack of...', 33, 40, 41 and 45.

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

## Other matters

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87. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

88. The complainant submitted his request on 4 July 2005 and the Cabinet Office provided him with a refusal notice on 3 August 2005 explaining that it considered the information he requested to be covered by a number of qualified exemptions and it believed it necessary to extend the time taken to consider the public interest test given the complexity of the issues related to this request. The Cabinet Office contacted the complainant on 19 May 2006 and informed him that it had completed its consideration of the public interest.

89. In February 2007, the Commissioner issued guidance on the time public authorities should take when extending the public interest test.<sup>7</sup> This guidance notes that whilst the Act and the section 45 Code of Practice do not specify how long a public authority can extend the public interest for, even in exceptional cases, the time taken should not exceed 40 working days. Clearly, in dealing with

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<sup>7</sup> Freedom of Information Good Practice Guidance No. 4  
[http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/detailed\\_specialist\\_guides/foi\\_good\\_practice\\_guidance\\_4.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/foi_good_practice_guidance_4.pdf)

this request the Cabinet Office took substantially longer than 40 working days to conclude its consideration of the public interest test. Although the delay preceded the guidance, the Commissioner expects the Cabinet Office to ensure that when it extends its consideration of the public interest test when dealing with future requests that it adheres to the time guidelines set out in the guidance paper reference above.

## **Failure to comply**

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

## Right of Appeal

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91. 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 3<sup>rd</sup> day of March 2009**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

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

<b>Document Number</b>	<b>Exemptions applied by the Cabinet Office</b>	<b>Commissioner's position on application of exemptions / outcome</b>
2	S27(1)(a) & s35(1)(b)	Withhold under s35(1)(b)
3	s27(1)(a), s27(2) & s35(1)(b)	Withhold under s35(1)(b)
4	S27(1)(a) & s35(1)(b)	Withhold under s35(1)(b)
5	s27(1)(a), s27(2) & s35(1)(b)	Withhold under s35(1)(b)
6	S27(1)(a)	Disclosed to complainant already
7	S27(1)(a) & s27(2)	Withhold under s27(2)
8	S27(1)(a)	Withhold under s27(1)(a)
9	S27(1)(a)	Disclosed to complainant already
10	S27(1)(a) & s27(2)	Withhold under s27(1)(a) and withhold under s27(2)
11	S27(1)(a)	Disclosed to complainant already
12	S27(1)(a)	Withhold under s27(1)(a)
13	S27(1)(a) & s27(2)	Withhold under s27(2)
14	S27(1)(a) & s27(2)	Withhold under s27(2)
15	S27(1)(a)	Relevant parts of document disclosed already
16	S27(1)(a) & s27(2)	Withhold under s27(2)
17	S27(1)(a)	Withhold under s27(1)(a)
18	S27(1)(a) & s27(2)	Withhold under s27(2)
19	S27(1)(a)	Disclosed to complainant already
20	S27(1)(a) & s27(2)	Relevant parts of document disclosed already
21	S27(1)(a)	Section 27(1)(a) not engaged – disclose
22	S27(1)(a)	Majority of document disclosed to complaint already; redacted section is exempt on the basis of s27(1)(a).
23	S27(1)(a)	Disclosed to complainant already
24	S27(1)(a) & s27(2)	All of document, except the first paragraph, withhold on the basis of s27(2). Section 27(1)(a) is not engaged for this first paragraph and therefore this must be disclosed.
25	S27(1)(a)	Disclosed to complainant already
26	S27(1)(a)	Relevant parts of document disclosed already
27	S27(1)(a)	Withhold under s27(1)(a)
28	S27(1)(a)	Withhold under s27(1)(a)
29	S27(1)(a)	Withhold under s27(1)(a)
30	S27(1)(a) & s27(2)	Withhold under s27(2)
31	S27(1)(a) & s27(2)	Withhold under s27(2)
32	S27(1)(a)	Withhold under s27(1)(a)
33	S27(1)(a)	Section 27(1)(a) not engaged – disclose
34	S27(1)(a)	Disclosed to complainant already
35	S27(1)(a)	Disclosed to complainant already
36	S27(1)(a)	See doc 27

37	S27(1)(a) & s27(2)	Withhold under s27(2)
38	See doc 31	See doc 31
39	S27(1)(a) & s35(1)(a)	Relevant parts of document disclosed already
40	S27(1)(a)	Section 27(1)(a) not engaged – disclose
41	S27(1)(a)	Section 27(1)(a) not engaged – disclose
42	S27(1)(a)	Disclosed to complainant already
43	See doc 2	See doc 2
44	S27(1)(a) & s27(2)	Withhold under s27(2)
45	S27(1)(a)	Section 27(1)(a) not engaged – disclose
46	S27(1)(a) & s27(2)	Withhold under s27(1)(a) and withhold under s27(2)



## Legal Annex

### 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 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 17(1) provides that -

“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.”

### Section 17(3) provides that -

“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.”

**Section 23(1)** provides that –

“Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).”

**Section 23(2)** provides that –

“A certificate signed by a Minister of the Crown certifying that the information to which it applies was directly or indirectly supplied by, or relates to, any of the bodies specified in subsection (3) shall, subject to section 60, be conclusive evidence of that fact.”

**Section 23(3)** provides that –

“The bodies referred to in subsections (1) and (2) are-

- (a) the Security Service,
- (b) the Secret Intelligence Service,
- (c) the Government Communications Headquarters,
- (d) the special forces,
- (e) the Tribunal established under section 65 of the Regulation of Investigatory Powers Act 2000,
- (f) the Tribunal established under section 7 of the Interception of Communications Act 1985,
- (g) the Tribunal established under section 5 of the Security Service Act 1989,
- (h) the Tribunal established under section 9 of the Intelligence Services Act 1994,
- (i) the Security Vetting Appeals Panel,
- (j) the Security Commission,
- (k) the National Criminal Intelligence Service, and
- (l) the Service Authority for the National Criminal Intelligence Service.”

**Section 27(1)** provides that –

“Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) relations between the United Kingdom and any other State,
- (b) relations between the United Kingdom and any international organisation or international court,
- (c) the interests of the United Kingdom abroad, or
- (d) the promotion or protection by the United Kingdom of its interests abroad.”

**Section 27(2)** provides that –

“Information is also exempt information if it is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court.”

**Section 27(3)** provides that –

“For the purposes of this section, any information obtained from a State, organisation or court is confidential at any time while the terms on which it was obtained require it to be held in confidence or while the circumstances in which it was obtained make it reasonable for the State, organisation or court to expect that it will be so held.”

**Section 35(1)** provides that –

“Information held by a government department or by the National Assembly for Wales is exempt information if it relates to-

- (a) the formulation or development of government policy,
- (b) Ministerial communications,
- (c) the provision of advice by any of the Law Officers or any request or the provision of such advice, or
- (d) the operation of any Ministerial private office.

**Section 35(5)** provides that –

“In this section-

“Ministerial communications” means any communications-

- (a) between Ministers of the Crown,
- (b) between Northern Ireland Ministers, including Northern Ireland junior Ministers, or
- (c) between Assembly Secretaries, including the Assembly First Secretary, and includes, in particular, proceedings of the Cabinet or of any committee of the Cabinet, proceedings of the Executive Committee of the Northern Ireland Assembly, and proceedings of the executive committee of the National Assembly for Wales;”