

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 19 November 2009

Public Authority: Department of Health
Address: Richmond House
79 Whitehall
London
SW1A 2NS

Summary

The complainant requested copies of correspondence between the public authority and the National Audit Office regarding £20 million in savings that the National Audit Office had identified could be made in stroke care in a report published in 2005. The public authority refused the request under section 36.

The Commissioner has concluded that a significant amount of information held by the public authority fell outside the scope of the request. In relation to the information that was within the scope of the request, he decided that, whilst section 36 was engaged, the public interest in maintaining the exemption did not outweigh the public interest in disclosure. He has consequently ordered the disclosure of the withheld information that fell within the scope of the request.

The Commissioner also identified some procedural breaches of the Act by the public authority including a failure to identify the part of section 36 that it was relying on to exempt the information from disclosure.

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.

Background

2. The role of the National Audit Office ("NAO") is to audit the accounts of government departments and other public bodies and to report to Parliament on

the economy, efficiency and effectiveness with which these bodies use public money. Its second function is fulfilled by the production and submission to Parliament of value for money reports in relation to how these bodies have used their resources.

3. In preparing its value for money reports the NAO checks the facts contained in the reports with the public body being audited prior to the report being submitted to the Parliament's Committee of Public Account. The complainant's request relates to communications between the NAO and the Department of Health in relation to a value for money report published by the NAO in November 2005 regarding the Department's strategy for delivering stroke care. The report, entitled "Reducing Brain Damage; Faster access to better stroke care", examined the effectiveness and the quality of the stroke care provided by the NHS and made recommendations as to how improvements might be made.
4. The recommendations in the NAO's report included that more widespread use of thrombolytic (clot busting) drugs could generate net savings of over £16 million a year and that faster access to carotid surgery could yield around £4 million a year in savings for the NHS. These figures were reproduced in the report on stroke care published by the Committee of Public Accounts in July 2006.

The Request

5. On 5 October 2007 the complainant made the following request to the public authority regarding the National Audit Office's report in relation to stroke care published in 2005

"Please can I see documents exchanged between the NAO and the Department of Health relating to the estimated savings in the NAO's report including the formal document that must have stated that the £20 million was not agreed by the Department. The Department of Health has told the Committee of Public Accounts at the end of March 2006 in a memorandum that is in the public domain that although £20 million may be saved based on the Department's preliminary calculations that was from early supported discharge, thrombolysis and carotid surgery not just the thrombolysis and carotid surgery recommendations as made by the NAO in its November 2005 stroke report. That suggested that even then the Department did not agree the NAO's calculations and savings estimates from the thrombolysis and carotid intervention recommendations."
6. On 22 October 2007 the public authority emailed the complainant and informed him that the information that he had requested was exempt from disclosure under section 36 as disclosure would, or would be likely, to inhibit the free and frank provision of advice.

7. On 26 October 2007 the complainant requested that the public authority carry out an internal review of its decision to refuse to disclose the information he had requested.
8. On 2 December 2007 the public authority informed the complainant of the outcome of the internal review which upheld the decision to withhold the requested information.

The Investigation

Scope of the case

9. On 10 December 2007 the complainant contacted the Commissioner to complain about the public authority's refusal to disclose the information he had requested.
10. Following discussions with the Commissioner, the complainant agreed that draft copies of the NAO's report which were held by the public authority could be excluded from the scope of his complaint.
11. In a letter dated 16 September 2009 the public authority stated that it believed that three separate exercises were undertaken as part of the NAO's stroke study:-
 - i. estimates of how much strokes costs the economy (also referred to as "the burden of illness calculation");
 - ii. a comparison of stroke treatment with coronary heart disease; and
 - iii. estimates of savings which might be achieved if changes were made to the way that stroke services are delivered.
12. In the public authority's view the complainant's request only related to (iii). Consequently, it argued that any information relating to the burden of illness calculation or a comparison between stroke and coronary heart disease was outside the scope of the request and, therefore, this was not information on which the Commissioner should make any determination.
13. The Commissioner agrees that the complainant's request clearly does not encompass (ii) above. In relation to (i), the Commissioner accepts that it might be possible, as the public authority has done, to argue for a narrow interpretation of the complainant's request which does not include any information which does not directly reference the savings that are referred to in the request.
14. However, the Commissioner notes that the request was for documents exchanged between the NAO and the public authority "relating to" the £20 million savings in the NAO's report and that it queries whether the public

authority agreed with “the NAO’s calculations”. He also notes that the request of 5 October 2007 makes specific reference to, and quotes from, a linked request that the complainant made to the public authority. This was made on 21 September 2007, just prior to the request under consideration. The request of 21 September makes it clear that the complainant was seeking to access information about the NAO’s assumptions and modelling work underpinning the estimated savings related to thrombolysis.

15. In light of the above, the Commissioner believes that a broader reading should be taken of the request than that advocated by the public authority. He is of the view that it encompasses all the information that is relevant to the issue of how the £20 million savings were calculated, not just the information that directly references the savings. This includes information concerning the burden of illness analysis as this provided an estimate of the annual costs of stroke care which was then fed into the model assessing the potential benefits or savings that might be made from various interventions, such as the use of thrombolysis and carotid surgery.
16. There is some information that was provided by the public authority which the Commissioner has determined still falls outside the scope of this broader reading of the request as it does not “relate to” the £20 million savings identified in the NAO’s report. This information is identified in Annex 1 attached to this decision and forms no further part of the Commissioner’s decision in this case.

Chronology

17. There were a substantial number of communications between the Commissioner, the public authority and the complainant. The most significant are outlined below.
18. On 23 March 2009 the Commissioner sought confirmation from the complainant as to the period to which his complaint related. The complainant explained that he intended his request to encompass communications between the public authority and the NAO from not only prior to the publication of the NAO’s report in November 2005, but also to those that occurred subsequent to its publication.
19. On 9 April 2009 the Commissioner informed the public authority that he believed that it was reasonable for the complainant to view his request, as not only for communications from 2005, but also any from 2006. The public authority did not subsequently seek to contest the Commissioner’s view of the scope of the request.
20. In addition to the withheld information that it had already provided to him for 2005, the Commissioner asked the public authority to provide him with any communications from 2006 that potentially fell within the scope of the complainant’s request.
21. On 15 April 2009 the Commissioner wrote to the public authority requesting more detailed arguments regarding its application of section 36.

22. On 15 May 2009 the public authority provided the Commissioner with more detailed information and arguments with regard to its application of section 36 and also some further communications from 2006 which could fall within the scope of the original request.
23. Between May and July 2009 there was a significant amount of correspondence between the Commissioner, the public authority and the complainant over other FOI requests made by the complainant that were linked to his original request.
24. On 18 August 2009, following discussions with the Commissioner, the public authority indicated that it needed to consult the NAO before it was able to make its final submissions.
25. On 1 September 2009 the Commissioner requested further information from the public authority regarding its application of section 36.
26. On 16 September 2009 the public authority provided the Commissioner with more information about the application of section 36, including details of the submissions made to the qualified person. It also provided some additional arguments regarding the scope of the complainant's request.
27. On 1 October 2009, following discussions with the complainant, the Commissioner confirmed to the public authority that draft copies of the NAO's report which were held by the public authority would be excluded from the scope of the investigation.
28. On 1 October 2009 the Commissioner provided the public authority with a draft schedule that he intended to attach to the decision notice detailing all the documents that it had provided to him. He asked the public authority to inform him if it believed that there were any inaccuracies in the schedule.
29. On 2 October 2009 the public authority disclosed to the complainant some information which it believed fell within the scope of his request.
30. On 12 October 2009 the public authority indicated to the Commissioner that it held some documents that might fall within the scope of the request that did not appear on the schedule that he had prepared.
31. On 13 October 2009 the Commissioner raised a number of queries with regard to the public authority's last communication. He expressed his concern that the public authority had identified documents that potentially fell with the scope of the request that had not previously been provided to him.
32. On 23 October 2009 the public authority provided the Commissioner with copies of a small number of emails which had been omitted from the documents which had previously been provided to him.
33. On 3 November 2009 the public authority provided the Commissioner with a comprehensive schedule in chronological order identifying all the documents that it held that fell within the scope of the request.

Analysis

Exemption

Section 36 – Prejudice to the effective conduct of public affairs

34. The public authority claimed that the withheld information was exempt from disclosure under section 36 of the Act.
35. In order to determine whether the exemption was applicable to this information the Commissioner considered:-
- (i) the opinion of the qualified person; and
 - (ii) as the exemption is a qualified exemption, whether the public interest in maintaining the exemption outweighed the public interest in disclosing the information.

Opinion of the qualified person

36. The public authority confirmed to the Commissioner that an opinion was given by the Parliamentary Under Secretary of State for Health on 19 October 2007. The Commissioner is satisfied that she was a qualified person for the purposes of section 36 at the time that the opinion was given. The public authority confirmed that she recommended that all of the documents should be withheld under section 36(2)(c).

37. Section 36(2)(c) provides that:-

“36(2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act-

....

(c) would, otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs”

38. The Commissioner notes that the public authority's arguments contained in its refusal notice, internal review and its correspondence with him, concerned the potential impact that disclosure of the information might have on the full and frank exchanges of views between itself and the NAO in relation to future NAO reports. He has assumed that the public authority has made an error in citing section 36(2)(c) when, given the substance of its arguments, it intended to rely on section 36(2)(b)(ii) which relates to the inhibition of the free and frank exchange of views.

39. Section 36(2)(b)(ii) provides that:-

“36(2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act-

....

(b) would, or would be likely otherwise to, inhibit-

...

(ii) the free and frank exchange of views for the purposes of deliberation”

40. In the case of *Guardian & Brooke v Information Commissioner & the BBC (EA/2006/0011 and 0013)*, the Information Tribunal stated that “in order to satisfy the subsection the opinion must be both reasonable in substance and reasonably arrived at.” (para 64). In relation to the issue of reasonable in substance, the Tribunal indicated that “the opinion must be objectively reasonable” (para 60). In determining whether an opinion had been reasonably arrived at, it suggested that the qualified person should only take into account relevant matters and that the process of reaching a reasonable opinion should be supported by evidence, although it also accepted that materials which may assist in the making of a judgement will vary from case to case and that conclusions about the future are necessarily hypothetical.

41. In relation to whether the qualified person’s opinion was reasonably arrived at, the public authority provided the Commissioner with details of what was contained in the submission to the qualified person prior to her giving her opinion. From the details provided it would appear that the qualified person took into account relevant considerations and did not appear to have been influenced by irrelevant ones.

42. The Commissioner is also satisfied that it was objectively reasonable for the qualified person to conclude that the disclosure of the withheld information would have been likely to inhibit the free and frank exchange of views for the purposes of deliberation.

43. In addition, the Commissioner notes that the qualified person had reached her opinion on the basis that she considered that disclosure would have been likely to inhibit the free and frank exchange of views, which is the lower level of prejudice. In line with a number of previous Tribunal decisions, he has interpreted this to mean that there is a real and significant risk of prejudice to the interest in the exemption.

44. The Commissioner also notes the Tribunal’s view from the *McIntyre v Information Commissioner & The Ministry of Defence (EA/2007/0068)* case, when commenting on the application of section 36(2)(c) that where the reasonable opinion of the qualified person is based on the higher threshold,

“...this will give greater weight to the public interest inherent ... in the... exemption in favour of maintaining the exemption than if the reasonable opinion was based on the lower threshold. That in turn will affect the public interest balance.” (para 43)

45. He considers this further when applying the public interest test in relation to this exemption.
46. The Commissioner is of the view that section 36(2)(b)(ii) was therefore engaged in relation the information that was withheld. He then went on to consider whether the public interest in maintaining the exemption outweighed the public interest in disclosure.

Public interest test

47. The Commissioner notes the comments of the Information Tribunal in the *Guardian & Brooke* case that due weight should be given to the reasonable opinion of the qualified person when considering the public interest test in relation to section 36. However, the Tribunal's view was that the qualified person's opinion was limited to the degree of likelihood that inhibition or prejudice would occur and that the opinion "does not necessarily imply any particular view as to the severity or extent of such inhibition (or prejudice) or the frequency with which it will or may occur, save that it will not be so trivial, minor or occasional as to be insignificant" (para 91).
48. The Commissioner therefore, in assessing the public interest arguments, particularly those related to withholding the information, considered the relevance of factors such as the severity, extent and frequency with which the inhibition of the free and frank exchange of views might have occurred if the information had been disclosed.

Public interest arguments in favour of disclosing the requested information

49. The Commissioner recognises that there is a significant public interest in furthering the public's understanding and participation in debates on issues of the day. In this regard the expenditure of public money by the NHS, and how its limited resources might be more effectively utilised, is clearly a very important matter of great public concern.
50. The Commissioner also recognises the public interest in promoting accountability and transparency by public authorities for decisions that they have taken and recommendations that they have made, particularly a public authority as influential as the NAO. Disclosure of the information would have allowed the public to ascertain whether the analysis and recommendations provided by the NAO were being taken on a sound, rational basis and that public money was being appropriately spent. It would have allowed an objective assessment to be made of the basis on which it had calculated the savings which were the subject of the complainant's request.
51. The NAO's report to which this request relates identifies ways in which it was believed many millions of pounds could be saved in NHS expenditure through alternative treatments being offered to some of those who suffer strokes. Its recommendations in this area were also included in a report on stroke care prepared by Parliament's Committee of Public Accounts.

52. The information that has been withheld relates to discussions between the Department of Health and the NAO as to how savings identified by the NAO had been calculated and the assumptions on which those calculations were based. It is about assumptions, sources of information, explanations for the basis for particular calculations and particular economic/financial models being used. There is obviously a significant public interest in the disclosure of such information to allow a rigorous and thorough testing by a wide variety of people of the basis on which the potential savings that had been identified. This would help to ensure that any potential incorrect assumptions or errors are identified.
53. This public interest in disclosure is reinforced where concerns have been raised by people who have expertise in the area suggesting that the benefits and cost savings to be gained from particular treatments may have been overemphasised. In this case, for example, the complainant, who is a consultant in the NHS specialising in stroke care, and others have raised very detailed concerns about the potential reliability of the figures that were contained in the report.
54. In addition, the Commissioner notes that a review of the report was carried out by Oxford University Consulting on behalf of the NAO in the early part of 2006. Oxford University Consulting provides external organisations and businesses with access to the expertise of Oxford University's academic staff. It has a contract to review value for money reports produced by the NAO in order to check the coherence and internal consistency of those reports. A copy of the review was provided to the complainant under the Act.
55. The Commissioner views Oxford University Consulting as providing objective, impartial and expert analysis of the strengths and weaknesses of the report produced by the NAO. Its review highlights as one of the potential weaknesses of the NAO report that "insufficient details are given about the economic analysis and any limitations that it may have". It goes on to state that
- "This report is based on an impressively wide range of appropriate methodologies. However, the report does not go into detail about the methodology of the crucial economic analysis of the costs of stroke care, which were carried out by a team from King's College London and the LSE. There is a clear but brief appendix on the methodology used and a reference to the website on which the full report can be viewed. It might have been desirable to go into somewhat more depth about the economic analysis, the nature of the assumptions being made and any caveats that should be set against the economic analysis. Given the highly controversial estimates obtained by the LSE in relation to the cost of identity cards, one is naturally led to wonder whether these estimates on the costs of stroke might also be challenged. The full Kings/LSE report does, for example, acknowledge that "one shortcoming of the study ...is that the effects of the intervention is not additive which might have led to an overestimation of the absolute effects" (paragraph 62). Where economic analysis is based on strong but unverified assumptions, as in this case, it would be better to give a range of estimates of the likely cost, in order to give some indication of the uncertainty involved."

56. It goes on to recommend that “more detail should have been given in Appendix 4 about the economic analysis and in particular about any possible limitations of that analysis”.
57. Given some of the concerns raised about the limited nature of the information in the report about the economic analysis and the assumptions contained within it, there is a significant public interest in the disclosure of information which would shed light on the basis on which the potential savings which were identified were based.
58. The public authority argued that there was no public interest in the disclosure of the withheld information as its stance on the impact of thrombolysis was already in the public domain through its publications following the NAO’s report. This included its new national stroke strategy document which had been developed following work with a wide range of stakeholders and which had considered a full range of opinions on appropriate treatments and key priorities.
59. It went on to state that the assumptions and modelling within the NAO’s work had provided a useful starting point for its own analytical work on stroke care but that it had been superseded by more sophisticated modelling which was in the public domain. It therefore could not see the public interest in disclosing documents that were now obsolete and irrelevant to the priorities that had been identified through extensive, open and collaborative work on the new stroke strategy.
60. The Commissioner notes that the NAO is a very influential and highly regarded public body. Its report has the potential to impact on stroke strategies adopted by bodies, both regionally and nationally. The potential savings that it identified were reproduced in the report on stroke care published by the Committee of Public Accounts. It is important therefore that the basis on which the potential savings were determined is subject to the widest possible scrutiny to identify any possible weaknesses or erroneous assumptions. The disclosure of the withheld information would be of assistance in testing the robustness of the assumptions on which those calculations were made.
61. The public authority also questioned the public interest in the disclosure of the withheld information on the basis that its analytical team and officials working on stroke care probed the NAO’s work in considerable detail at the time. However, the Commissioner notes that there is a need for public to satisfy itself that the assumptions had been rigorously tested. There is always a possibility that people with expertise in this area, outside the public authority and the NAO, might identify issues that had not previously been raised. In the Commissioner’s view it seems reasonable to assume that increased exposure of the assumptions on which the savings figures were based could lead to a more rigorous testing of those assumptions which is clearly in the public interest.
62. The NAO is the main body tasked with auditing the effective use of resources by public authorities. There is therefore a strong public interest in ensuring a free

flow of information about the basis on which it reaches any conclusions contained in reports which are placed before Parliament.

Public interest arguments in favour of maintaining the exemption

63. The Commissioner notes the point, made earlier in this notice, that the lower threshold of prejudice was being applied by the public authority in this case. This would give lesser weight to the public interest inherent in the exemption than if the higher threshold were being applied.
64. The public authority argued that section 36 recognised the critical role in effective government of free and frank discussion. Disclosure of the requested documents could have prejudiced the public authority's future workings with the NAO, where it was vital to be able to have full and frank exchanges about the detail of reports and supporting analysis ahead of their publication. It was convinced that exposing the detailed discussions between the NAO and itself to public scrutiny could make officials less likely to be candid in such discussions in the future, thus prejudicing this critical facet of public affairs. It was vital that it was able to have full and frank exchanges in complete confidence about the detail of reports and supporting analysis ahead of publication, especially when tackling economic modelling in a robust way. If this communication was even partially revealed, the information could be deleterious to future work and, used out of context, damaging to public interest.
65. In relation to this argument, the Commissioner notes the comments of the Information Tribunal in the *Department for Education and Skills v The Information Commissioner (EA/2006/0006)* 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)
66. In this particular case, the Commissioner has considered the timing of the request and the actual content of the information that has been withheld. He notes that most of the information was two years old at the time that the request was made. In addition the report, to which the communications which were the subject of the request relate, was published nearly two years prior to the request. Given the passage of time prior to the request and the nature of the information, he is of the view that any inhibiting effect that might have resulted from the disclosure of this particular information would have likely to have been limited in terms of its severity and extensiveness..
67. The Commissioner also notes the comments of the Information Tribunal in *The Secretary of State for Work and Pensions v The Information Commissioner (EA/2006/0040)*, that
- “....the safest thing for the prudent civil servant, faced with the prospect of disclosure, is to make sure that he/she does the best job and puts forward

figures that can be defended, not just to the Home Office, but, if necessary, in the course of public debate...”

There is therefore a strong argument that, rather than having an inhibiting effect, disclosure of this type of information could help to ensure a more rigorous approach to analysis or predictions in future.

Balance of the public interest arguments

68. In coming to his decision, the Commissioner has placed particular emphasis on the public interest in ensuring that the assumptions, and any reservations about those assumptions, on which the NAO had determined that £20 million could be saved by the NHS should be available to the public. He believes that any inhibiting effect that might have resulted from disclosure would have been limited given the age of the information and that the report to which it related had already been published a considerable time before the request. He has therefore determined that the public interest in maintaining the exemption in relation to this information does not outweigh the public interest in disclosure and that the information that falls within the scope of the complainant's request should be disclosed to him.

69. In Annex 1, attached to this notice, the Commissioner has identified the correspondence that he is satisfied should be released. He has also identified some correspondence which was provided to him by the public authority but which he views as outside the scope of the complainant's request.

Procedural requirements

70. By not providing the requested information to the complainant within 20 working days of the request, the public authority breached sections 10(1). By not providing it to the complainant by the time of the completion of the internal review, it breached section 1(1)(b).

71. Section 17(1) of the Act requires that, where a public authority is relying on a claim that an exemption in Part II of the Act is applicable to the information requested, it should in its refusal notice:-

- (a) state that fact,
- (b) specify the exemption in question,
- (c) state why the exemption applies.

72. In this case, by failing to inform the complainant within 20 working days of the date of the request that it was relying on section 36(2)(b)(ii), nor explain why it applied, the public authority breached section 17(1). By failing to state that it was relying on section 36(2)(b)(ii), nor explain why it applied, by the time of the completion of the internal review, it breached section 17(1)(b) and (c).

The Decision

73. The Commissioner's decision is that the public authority did not deal with the following elements of the request in accordance with the requirements of the Act:

- it incorrectly applied section 36 to the withheld information that fell within the scope of the request;
- it breached section 1(1)(b) by not providing the complainant with the withheld information that fell within the scope of the request by the time of the completion of the internal review and section 10(1) by not providing it within 20 working days of the request;
- it breached section 17(1) by failing to state within 20 working days of the date of the request that it was relying on section 36(2)(b)(ii) and explain why it applied; and
- it breached section 17(1)(b) and (c) by failing to state, by the time of the completion of the internal review, that it was relying on section 36(2)(b)(ii) and explain why it applied.

Steps Required

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

- to disclose to the complainant the information identified in Annex 1 as not exempt under section 36 of the Act.

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

Failure to comply

76. 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.

Other matters

77. Although it does not form part of this Decision Notice the Commissioner wishes to highlight his concern that the public authority only provided him with a number of documents that potentially fell within the scope of the request at the very end of his investigation. Whilst there was a relatively small number of these documents and, in the Commissioner's view, they were not particularly significant, it resulted in unnecessary delays to the conclusion of his investigation.
78. In addition, the failure of the public authority to provide the Commissioner with a comprehensive schedule of the documents that may have fallen within the scope of the request arranged in chronological order created problems which further delayed the conclusion of his investigation.
79. The Commissioner would hope that in future the public authority will provide him with all the documents that may fall within the scope of a request at the outset of his investigation and include with the documents a comprehensive schedule arranged in chronological order. This should avoid some of the problems encountered with this case arising again.

Right of Appeal

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

80. 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.

81. 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 19th day of November 2009

Signed

**Lisa Adshead
Senior Policy Manager**

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

Annex 1 – Schedule of documents

Commissioner's decision in relation to correspondence from 2005

Number given to documents by DoH	Date of email	Description of documents	Commissioner's decision
1	28/06/05	Email sent at 14.54	Outside the scope of the request.
2	28/06/05	Email sent at 15.27	Outside the scope of the request.
3	04/07/05	(i) Email sent at 16.36 (ii) Attachment – Preliminary findings - Dinner party discussion 04.07.05	Outside the scope of the request.
4	06/07/05	Email sent at 06/07/05	Outside the scope of the request.
5	11/07/05	(i) Email sent at 15.17 (ii) Attachment - Outline structure for report	Outside the scope of the request.
6	22/07/05	(i) Email sent at 11.12 (ii) Attachment – NAO meeting 1 (iii) Attachment – Tobacco campaigns	Outside the scope of the request.
7	22/07/05	Email sent at 15.14	Outside the scope of the request.
8	15/08/05	(i) Email sent at 17.23 on 15/08/05 (ii) Attachment - Draft report - Provisional Audit Findings for PFO Review	Outside the scope of the request.
9	18/08/05	Email sent at 13.11	Outside the scope of the request.
10	18/08/05	Email sent at 16.47	Outside the scope of the request.
11	18/08/05	Email sent at 19.02	Outside the scope of the request.
12	07/09/05	(i) Email sent at 16.37 (ii) Attachment - Appendix on Burden of Stroke Calculations	Not exempt under section 36 – disclose.
13	07/09/05	(i) Email sent at 17.07 on 07/09/05 (ii) Attachment – Spreadsheet for the burden of illness work	Not exempt under section 36 –disclose.

14	07/09/05 and 08/09/05	(i) Email sent at 19.01 on 07/09/05 (ii) Email sent at 11.12 on 08/09/05	Outside the scope of the request.
15	08/09/05	Email sent at 11.37	Outside the scope of the request.
16	08/09/05	Email sent at 12.35	Outside the scope of the request.
17	08/09/05	Email sent at 13.01	Outside the scope of the request.
18	08/09/05	(i) Email sent at 20.44 on 08/09/05 (ii) Attachment – letter re NAO stroke study (iii) Attachment – DoH comments on first full draft	The following are outside the scope of the request:- (i) the first eight words of the second line and the final sentence of the email. (ii) the final sentence of the letter. (iii) sections 1,3,4,6,7 and 8. The remainder of the information is within the scope of the request and is not exempt under section 36 – disclose.
19	13/09/05	Email sent at 15.41	Outside the scope of the request.
20	13/09/05	Email sent at 15.51	Outside the scope of the request.
21	13/09/05	Email sent at 17.23	Outside the scope of the request.
22	13/09/05	Email sent at 18.00	Outside the scope of the request.
23	15/09/05	(i) Email sent at 17.25 on 15/09/05 (ii) Attachment - Draft report - Provisional Audit Findings for PFO Review	Outside the scope of the request.
24	19/09/05	(i) Email sent at 16.37 on 19/09/05 (ii) Attachment – Questions regarding impact of interventions (iii) Attachment – Initial questions on the NAO model of the burden of stroke in England	Not exempt under section 36 – disclose.
25	20/09/05	(i) Email sent at 19.24 (ii) Attachment - Draft report - Provisional Audit Findings for PFO Review	Outside the scope of the request except for the second paragraph of (i) which is within the scope of the request and not exempt under section 36 – disclose.
26	26/09/05	(i) Email sent at 10.42 on 26/09/05	(i) Not exempt under section

		(ii) Attachment - Draft report - Provisional Audit Findings for PFO Review	36 – disclose. (ii) Outside the scope of the request.
27	26/09/05	(i) Email sent at 12.16 (ii) Attachment – Questions on NAO calculations (iii) Attachment – Editorial comment	(i), (ii) and (iii) - Not exempt under section 36 – disclose.
28	26/09/05	Email sent at 14.59	Not exempt under section 36 – disclose.
29	26/09/05	Email sent at 18.05	Not exempt under section 36 – disclose.
30	27/09/05	Email sent at 09.55	Not exempt under section 36 – disclose.
31	27/09/05	Email sent at 14.48	Not exempt under section 36 – disclose.
32	28/09/05	Email sent at 18.47	Not exempt under section 36 – disclose.
33	02/10/05	(i) Email sent at 20.15 (ii) Attachment - Draft report - Provisional Audit Findings for PFO Review	(i) and (ii) Outside the scope of the request.
34	04/10/05	Email sent at 08.00	Outside the scope of the request.
35	04/10/05	Email sent at 08.12	Outside the scope of the request.
36	06/10/05	(i) Email sent at 09.40 on 06/10/05 (ii) Attachment - Draft report - Provisional Audit Findings for PFO Review	(i) Not exempt under section 36 – disclose. (ii) Draft report - outside the scope of the request.
37	06/10/05	Email sent at 17.49	First bullet point is outside the scope of the request. The remainder of the information is within the scope of the request and is not exempt under section 36 – disclose.
38	07/10/05	Email sent at 09.53	Not exempt under section 36 – disclose.
39	07/10/09	Email sent at 12.28	Not exempt under section 36 – disclose.
40	07/10/09	Email sent at 13.57	Not exempt under section 36 – disclose.
41	07/10/05	(i) Email sent at 14.43 (ii) Attachment - Draft report - Provisional Audit Findings for PFO Review	(i) Not exempt under section 36 – disclose. (ii) Draft report – outside scope of request.

42	07/10/09	Email sent at 16.52	Not exempt under section 36 – disclose.
43	11/10/05	(i) Email sent at 10.31 (ii) Attachment - Burden of stroke final update	(i) and (ii) - Not exempt under section 36 – disclose.
44	11/10/05	Email sent at 20.33	Not exempt under section 36 – disclose.
45	17/10/05	Email sent at 15.02	Outside the scope of the request.
46	17/10/05	Email sent at 18.19	Not exempt under section 36 – disclose.
47	19/10/05	(i) Email sent at 12.06 (ii) Attachment – Final comments to NAO	(i) and (ii) Outside the scope of the request.
48	19/10/05	Email sent at 16.34	Outside the scope of the request except paragraphs related to paragraphs 1.15 and 2.16. These two paragraphs are not exempt under section 36 – disclose.
49	19/10/05	Email sent at 16.35	Outside the scope of the request.
50	19/10/05	(i) Email sent at 17.26 (ii) Attachment – table of changes (4 column table)	(i) Not exempt under section 36 – disclose. (ii) Outside the scope of the request except for all of two rows of the table which relate to paragraph 1.15 and paragraph 2.16. These two rows are not exempt under section 36 – disclose.
51	19/10/05	Email sent at 17.39	Outside the scope of the request.
52	19/10/05	(i) Email sent at 17.58 (ii) Attachment – table of changes (4 column table)	(i) Not exempt under section 36 – disclose. (ii) Outside the scope of the request except for all of two rows of the table which relate to paragraph 1.15 and paragraph 2.16. These two rows are not exempt under section 36 – disclose.
53	19/10/05	Email sent at 18.05	Not exempt under section 36 – disclose.
54	25/10/05	Email sent at 11.23	Not exempt under section 36 – disclose.

55	25/10/05	Email sent at 11.43	Not exempt under section 36 – disclose.
56	25/10/05	(i) Email sent at 12.12 (ii) Attachment - Draft report - Provisional Audit Findings for PFO Review	(i) Not exempt under section 36 – disclose. (ii) Draft report – outside scope of request
57	16/09/08	Email sent at 15.12	Outside the scope of the request
Number not assigned by DoH	Sept 2005	Three attachments but the emails to which they were attached were not identified:- (i) Attachment - Initial questions on the NAO model of the burden of stroke in England (ii) Attachment - Questions regarding impact of interventions (iii) Attachment - Summary of current status	(i), (ii) and (iii) - Not exempt under section 36 – disclose.

Commissioner's decision in relation to correspondence from 2006

Number of document	Date of emails	Description of document	Commissioner's decision
1	06//04/06	Email sent at 10.45 on 06/04/06	Not exempt under section 36 – disclose.
2	04/04/06	Email sent at 14.46 on 04/04/06	Not exempt under section 36 – disclose.
3	04/04/06	Email sent at 14.05 on 0/04/06	Not exempt under section 36 – disclose.
4	04/04/06	Email sent at 13.51 on 04/04/06	Not exempt under section 36 – disclose.
5	03/04/06	Email sent at 15.58 on 03/04/06	Not exempt under section 36 – disclose.
6	03/04/06 08.08	Email sent at 08.08 on 03/04/06	From the complainant - outside the scope of the request.

Legal Annex

General Right of Access

Section 1(1) provides that -

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

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

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

Time for Compliance

Section 10(1) provides 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.”

Refusal of Request

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.”

Prejudice to effective conduct of public affairs.

Section 36(1) provides that –

“This section applies to-

(a) information which is held by a government department or by the National Assembly for Wales and is not exempt information by virtue of section 35, and

(b) information which is held by any other public authority.

Section 36(2) provides that –

“Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act-

- (a) would, or would be likely to, prejudice-
 - (i) the maintenance of the convention of the collective responsibility of Ministers of the Crown, or
 - (ii) the work of the Executive Committee of the Northern Ireland Assembly, or
 - (iii) the work of the executive committee of the National Assembly for Wales,
- (b) would, or would be likely to, inhibit-
 - (i) the free and frank provision of advice, or
 - (ii) the free and frank exchange of views for the purposes of deliberation, or
- (c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.