

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 24 November 2009

Public Authority: House of Lords Appointments Commission
Address: 35 Great Smith Street
London
SW1P 3BQ

Summary

The complainant requested information held by the House Lords Appointments Commission (HLAC) relating to the appointment of Lord Hameed to the peerage. The HLAC provided a small amount of information in response to this request but withheld further information on the basis of the exemptions contained at sections 37(1)(b) – conferring of a honour by the Crown; 40(2) – personal data; and 41(1) – information provided in confidence. The Commissioner is satisfied that the majority of the information is exempt from disclosure on the basis of section 37(1)(b) and the public interest favours maintaining the exemption. The Commissioner is also satisfied that a small amount of information is exempt from disclosure on the basis of section 23(1) – information supplied by or relating to security bodies. However, the Commissioner has also concluded that the public interest under section 37(1)(b) favours disclosing a small amount of information.

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 House of Lords Appointments Commission (HLAC) was established by the Prime Minister in May 2000 as an independent, advisory, non-departmental public body. The remit of the HLAC is to recommend to Her Majesty The Queen people for appointment as non-party-political peers and to vet all nominations for membership of the House – including those put forward by the political parties - to

ensure the highest standards of propriety. The HLAC considers self-nomination for the peerage and nomination by another person or organisation.

3. The individual who is the focus of this request, Lord Khalid Hameed, was awarded a life peerage in February 2007.

The Request

4. The complainant submitted the following request on 2 January 2008:

‘Please would you let me know in writing if you hold information of the following description:

Information concerning the appointment of Lord Hameed to the peerage.

I would like a copy of that information’.

5. The HLAC responded to the complainant on 25 January 2008 and confirmed that it held information falling within the scope of his request. However, the HLAC explained that it had concluded that some of the information was exempt by virtue of one or more of the following exemptions: 37(1)(b) – information relating to the conferring by the Crown of any honour or dignity; section 40(2) – personal information; and section 41(1)(b) – information provided in confidence.
6. The HLAC did however provide the complainant with the following brief description of process by which Lord Hameed’s nomination was considered:

‘I can confirm that his nomination was assessed according to the published procedures. The nomination was initially assessed by trained sifters from the Commission’s secretariat. A sub-committee of the Commission then considered the nomination to ensure that the secretariat’s assessment was consistent with the selection criteria and to agree the recommendation that it should go forward for further consideration. Lord Hameed was subsequently interviewed on two occasions and his references were taken up.

Following the interviews, the Commission decided to recommend Lord Hameed for appointment.’

7. The complainant was also provided with an extract from the minutes of a HLAC meeting of 4 December 2006 which read: ‘Subject to the views of Lord Hurd and Ms Sarkis, it was agreed that the Commission would recommend Kahlid [sic] Hameed, Paul Bew, John Krebs, Andrew Mawson and Jane Campbell’. The complainant was also provided with a copy of the information which was cited in the HLAC recommendation which consisted of brief biographical details about Lord Hameed.

8. Furthermore, the complainant was provided with the following information in relation to Lord Dholakia's declaration of knowledge concerning Lord Hameed. The HLAC explained that this was officially recorded in 2005 as 'It was noted that Lord Dholakia was acquainted with Dr Hameed'. Furthermore, in a full written declaration in February 2007 Lord Dholakia stated that 'I have attended a number of his [Lord Hameed's] lectures (mainly on faith issues). He has also invited me to speak at an inter-faith service at St Margaret's in Westminster'.
9. The complainant requested an internal review of the decision to withhold the remainder of the information on 25 January 2008.
10. The HLAC provided the complainant with the outcome of the internal review on 20 February 2008. The review upheld the decision to withhold the remaining information on the basis of sections 37(1)(b), 40(2) and 41(1).

The Investigation

Scope of the case

11. The complainant contacted the Commissioner on 28 February 2008 in order to complain about the decision to withhold the information that he had not been provided with.

Chronology

12. Upon receipt of this complaint, the Commissioner contacted the HLAC on 19 March 2008 and asked to be provided with copies of the exempt information along with an explanation as to why it considered this information to be exempt from disclosure.
13. The HLAC provided the Commissioner with a response on 10 April 2008 in which it enclosed a copy of the withheld information along with an explanation as to why it considered the three exemptions in question to apply.
14. Due to a backlog of complaints received under the Act, the Commissioner was unable to begin his detailed investigation of this case immediately. Therefore it was not until 28 January 2009 that the Commissioner contacted the HLAC again in relation to this complaint and sought clarification on a number of issues including which exemptions it was relying on to withhold particular pieces of information.
15. The HLAC provided the Commissioner with this clarification in a letter dated 3 April 2009. In this letter the HLAC confirmed that it was also seeking to rely on section 23(1) to withhold some of the information falling within the scope of the request.
16. Having reviewed this response the Commissioner contacted the HLAC again on 24 April 2009 and asked it to clarify a number of further issues including asking to

be provided with copies of some information falling within the scope of the request that had not been provided in March 2008.

17. The HLAC provided the Commissioner with a response to this letter on 15 May 2009.
18. The Commissioner contacted the HLAC again on 20 July 2009 and asked for clarification on a number of outstanding issues.
19. This clarification was provided by the HLAC on 31 July 2009.

Findings of fact

20. There is a variety of information held by the HLAC falling within the scope of the complainant's request to which the HLAC has applied a number of exemptions. In order to aid his analysis the Commissioner has compiled a schedule which lists the documents the HLAC holds which fall within the scope of this request; the exemptions the HLAC has applied to each document and the Commissioner's conclusions on the application of each exemption to each document.
21. In the circumstances of this case the Commissioner is of the opinion that he cannot describe the withheld information in any great detail in the body of this notice without potentially revealing the content of the information. Nor can he include in the version of the decision notice which is provided to the complainant a copy of the schedule described in the preceding paragraph as to do so would again reveal details about the content of the withheld information.
22. However, the Commissioner has agreed with the HLAC that he is able to provide the following description of the various categories of withheld information which fall within the scope of the request:
 1. Internal discussions of the HLAC in relation to Lord Hameed's application.
 2. Standard vetting letters sent by the HLAC in relation to Lord Hameed's application to various organisations.
 3. Responses received by the HLAC in relation to these vetting letters.
 4. Submissions received in support of Lord Hameed's nomination.
 5. Miscellaneous pieces of information.
 6. Information exempt by virtue of section 23(1).
23. The HLAC has argued that **all** of the information falling within these 6 categories is exempt from disclosure on the basis of section 37(1)(b); some of the information is exempt from disclosure on the basis of section 40(2); some of the information is exempt from disclosure by virtue of section 41(1); and obviously the information falling within category 6 is exempt by virtue of section 23(1).

Analysis

Exemptions

Section 23

24. Section 23(1) of the Act provides an exemption for information which is held by a public authority if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies in sub-section 23(3). The full list of the bodies in sub-section 23(3) is included in the legal annex which is attached to this notice and includes the Security Service. Section 23(1) is an absolute exemption and thus not subject to the public interest test.
25. The Commissioner has established that information falling within the scope of this request (i.e. that described at category 6) includes correspondence that was sent by the HLAC to the Security Service and also correspondence sent by the Security Service to the HLAC. (This is correspondence which also falls within category 2.) The Commissioner is satisfied that this correspondence is exempt from disclosure by virtue of section 23(1), because it either constitutes information supplied directly to the HLAC by a body listed in 23(1) or relates to one of the bodies listed in 23(1).

Section 37

26. Section 37(1) states that:

‘Information is exempt information if it relates to -

 - (a) communications with Her Majesty, with other members of the Royal Family or with the Royal Household, or
 - (b) the conferring by the Crown of any honour or dignity’.
27. Section 37 is a class based exemption and thus in order for it to be engaged no particular prejudice or harm needs to be demonstrated; rather a public authority simply needs to demonstrate that information falls within the description of the exemption.
28. The HLAC has argued that the remainder of the information falling within the scope of this request, i.e. that listed at points 1 to 5, is exempt from disclosure by virtue of section 37(1)(b). (In fact the HLAC also argued that the information the Commissioner has concluded is exempt on the basis of section 23(1) is also exempt from disclosure on the basis 37(1)(b) but the Commissioner has determined that as this is already exempt he has not gone on to consider whether this information is also exempt on the basis of section 37.)
29. The Commissioner accepts that all of the information falling within categories 1 to 5 falls within the scope of the request contained at 37(1)(b) because it clearly relates to the HLAC’s consideration of Lord Hameed’s nomination for a peerage.

The Commissioner understands that a peerage constitutes a dignity which is conferred by the Crown.

30. However, section 37(1)(b) is a qualified exemption and therefore the Commissioner must consider the public interest test set out in section 2(2) of the Act and whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Public interest arguments in favour of disclosing the withheld information

31. The HLAC identified the following public interest argument in favour of disclosure:
32. If the appointments made by the HLAC are to be valued, then the public will wish to know that the processes behind them are objective, accountable and transparent.
33. The complainant also identified a number of similar, though more specific, arguments in favour of disclosure, namely:
34. To reassure the public that the HLAC is aware of any potential conflicts of interest when candidates are nominated for the peerage.
35. To provide assurance that no one Commissioner has undue influence over the process.
36. To ensure that public funds are spent correctly when choosing new members of the House of Lords.

Public interest arguments in favour of maintaining the exemption

37. The HLAC argued that there was a strong public interest in maintaining the confidentiality of the process so that those who assess nominations can carry on their work without pressure of inhibition that would result if information detailing their deliberations was disclosed. The process would be less effective because it would result in officials being less free and frank.
38. The HLAC also argued that the process of awarding peerages depended upon nominees and those supporting nominations to also be open with their views and opinions on nominations. Again, the HLAC argued that if this confidentiality was compromised by disclosure of the exempt information, in future individuals would be less willing to become involved in the process.

Balance of the public interest arguments

39. With regard to the arguments advanced by the HLAC in support of the importance of confidentiality in the appointments system, the Commissioner believes that their arguments are similar to a concept used in relation to the application of the public interest test under section 35(1)(a), namely the chilling effect.

40. The concept of the chilling effect, in the context of section 35(1)(a), is directly concerned with the potential loss of frankness and candour in debate and advice which may lead to poorer quality of advice and less well formulated policy and decision making if information was disclosed under the Act.
41. In the context of this case the HLAC is arguing that those officials involved in the consideration of nominees for a peerage, as well as those who are actually nominate or make supporting statements, will be inhibited in their considerations or submissions and this would affect the effectiveness of the appointments system.
42. The Commissioner is conscious that although the Information Tribunal has indicated that such arguments should not be dismissed out of hand, in general, public authorities have found it difficult to substantiate chilling effect claims with significant evidence.
43. Indeed in the *Foreign and Commonwealth Office v The Information Commissioner*, the Tribunal commented that:

‘we adopt two points of general principle which were expressed in the decision in *HM Treasury v the Information Commissioner EA/2007/0001*. These were first, that it was the passing into the law of the FOIA that generated any chilling effect, no Civil Servant could thereafter expect that all information affecting government decision making would necessarily remain confidential...Secondly, the Tribunal could place some reliance in the courage and independence of Civil Servants, especially senior ones, in continuing to give robust and independent advice even in the face of a risk of publicity.’ (paragraph 26).
44. The Commissioner notes that the Tribunal has also acknowledged that the chilling effect arguments have to be considered on a case by case basis and in particular with reference to the specific information that has been withheld. Furthermore the Commissioner does not consider that a direct parallel can be drawn between the concept of the chilling effect in relation to policy formulation and the decision making process surrounding the awarding of a peerage.
45. The Commissioner believes that a key distinction is the nature of the issues discussed in the information which falls within section 35(1)(a) of the Act and that which falls within section 37(1)(b). The nature of the discussions by those involved in the appointments system, and recorded in information which falls within the scope of section 37(1)(b), obviously involves the discussion as to whether particular individuals are deserving of a peerage.. Such discussions inevitably involve making candid and frank assessments of an individual's suitability for a peerage including, in some circumstances, why an individual's achievements, while notable, are not sufficient to merit the award of such a dignity.
46. Consequently, the Commissioner believes that it is logical to argue that an effect, similar in nature to the chilling effect though not identical, is likely to be created if

- information used by the HLAC to assess the awarding of peerages is routinely disclosed.
47. Moreover, the Commissioner accepts the logic behind the HLAC's fundamental argument that for the appointments system to operate efficiently and effectively there needs to be a level of confidentiality which allows those involved in the system to discuss nominations freely and frankly. The Commissioner accepts that disclosure of information that would erode this confidentiality, and which would be contrary to the public interest.
48. In reaching this conclusion, the Commissioner wishes to emphasise the fact that he is not suggesting that there is an inherent public interest in non-disclosure of information which falls within the scope of section 37(1)(b). Indeed as the Tribunal has indicated there is no inherent public interest in withholding information simply because it falls within the scope of a class based exemption. This approach was supported by the High Court's consideration of the case *OGC v The Information Commissioner*.¹ However, a significant amount of information which falls within the scope of section 37(1)(b) is likely to contain details of candid discussions about nominations for the appointments system and for the reasons outlined above in the vast majority of cases there is likely to be a public interest in the confidentiality of such discussions being preserved.
49. In relation to this particular case, in the Commissioner's view the exact weight that should be attributed to this public interest argument in withholding the information depends, crudely put, upon how candid the information falling within the scope of the request is and/or how disclosure would impinge upon the systems and processes used by the HLAC. That is to say, would disclosure of the information falling within the scope of section 37(1)(b) actually erode the confidentiality and thus damage the HLAC's ability to function either by eroding the private space needed for deliberations by HLAC officials or by inhibiting those who nominate or support nominees? In other words, as the Tribunal has clearly indicated, when considering the public interest, the content of the information has to be given particular regard.
50. Having considered the withheld information very carefully, the Commissioner has concluded that disclosure of certain pieces of information falling within the scope of the request would not undermine the confidentiality of this particular nomination, i.e. they would not reveal the content of submissions received by the HLAC about Lord Hameed nor would they reveal details of HLAC's assessment of these submissions. Furthermore, disclosure would not reveal details of the HLAC's general processes and procedures such that the HLAC's assessment of future nominations could be in anyway prejudiced. Therefore as disclosure of this information would cause either very little or no harm to the HLAC, the Commissioner believes that the balance of public interest favours disclosing this information even if only minimal weight is attributed to the public interest in disclosing this information. The Commissioner has set out in the confidential annex which will be sent to the HLAC which particular sections of the withheld

¹ See *Office of Government Commerce v Information Commissioner & the Attorney General* [2008] EWHC 737 (Admin) (11 April 2008), in particular paragraph 79.

information he believes should be disclosed and set out in further detail his basis for reaching this conclusion. However, the Commissioner believes that he can confirm in this decision notice that such information includes some of the content of the documents falling within the second and fifth categories described at paragraph 22.

51. With regard to the remainder of the information falling within the scope of section 37(1)(b), i.e. the parts of the information which the Commissioner believes does contain relatively candid discussions of Lord Hameed's nomination and/or how the processes and procedures used by the HLAC were followed in relation to this nomination, the Commissioner has considered how much weight should be attributed to the public interest arguments advanced in favour of disclosing the information.
52. In the Commissioner's opinion the public interest arguments in favour of disclosure of information that would reveal the processes behind the appointment system to be objective, accountable and transparent should be given some degree of weight. This is to ensure, as the HLAC has noted, that the public value the appointments which they recommend. Furthermore, in the Commissioner's opinion the public interest in a transparent and accountable appointments system should be given further weight because those who receive a life peerage are entitled to take a seat in the House of Lords and thus have an influence on the passage of legislation in Parliament and may be eligible to join the Government of the day. This is in contrast, for example, to individuals who receive another form of honour or dignity conferred by the Crown, such as a knighthood, who may well receive some kudos from the receipt of such an award but do not become members of the UK's legislature.
53. With regard to the more specific arguments advanced by the complainant in terms of potential conflicts of interest and undue influence, the Commissioner does not feel that he can comment in great detail as to what weight should be attributed to these arguments, but in his opinion there does not appear to be anything within the remaining information that would indicate that these two arguments should be given particular weight in this case. In terms of a public interest in disclosing information in order to demonstrate that public funds are spent correctly when choosing new members of the House of Lords the Commissioner does not believe that disclosure of the withheld information would address this in any particular way.
54. In conclusion, the Commissioner believes that the public interest in maintaining the exemption with regard to the majority of the remainder of the information falling within the scope of the exemption contained at s37(1)(b) outweighs the public interest in disclosing this information. In reaching this conclusion the Commissioner does recognise that disclosure of this information, particularly that which details the internal discussions of the HLAC in relation to Lord Hameed's application (category 1), could contribute significantly to improving the transparency and accountability surrounding the process of awarding peerages and thus increase the public's confidence in the system. Given the respect and recognition in which society places on those who are awarded life peerages by HM Queen such a public interest should not be summarily dismissed. Moreover,

the conferring of a peerage actually allows a recipient to take a place in the House of Lords and thus have some influence on the passage of legislation.

55. However, the Commissioner believes that disclosure of this information would significantly erode the confidentiality of the appointments system, particularly that relied upon by those who provide the HLAC with submissions, and he believes that for the system to operate efficiently and effectively some level of confidentiality is necessary. The Commissioner has placed significant weight on the fact that those involved in the appointments system, and in particular those who provide the HLAC with submissions to support nominations, need to be able to make candid and frank comments about nominees in the future. Ultimately, while the Commissioner would strongly resist any suggestion of elevating the exemption contained at section 37(1)(b) to one that is almost absolute in nature, he believes that strong counter-veiling arguments would need to be made for such information to be disclosed. Having looked at the information that is the subject of this particular case, he does not believe that such arguments can be made, or at least not sufficiently strongly that the balance of the public interest tips in favour of disclosing the majority of the remainder of the requested information.
56. The exception to this conclusion is the further pieces of information contained within the documents falling within categories 2 and 5. Although the Commissioner accepts that disclosure of this type of information would reveal something about how the HLAC's processes and procedures were followed in relation to Lord Hameed's nomination, and it is possible that such a disclosure could have some very minor prejudicial impact, in the ways that the HLAC has argued before the Commissioner, ultimately the Commissioner has concluded that for those pieces of the withheld information the public interest favours disclosure. The confidential annex explains why the Commissioner has reached this conclusion in more detail.

Sections 40(2) and section 41(1)

57. The HLAC has also argued that a significant amount of the information which falls within the scope of this request is also exempt on the basis of sections 40(2) and 41(1) of the Act. However, this does not include information for which the Commissioner has decided the public interest under section 37(1)(b) favours disclosure.
58. The Commissioner is ordering disclosure of a document which, as currently held, includes Lord Hameed's home contact details. The Commissioner believes that this information constitutes Lord Hameed's personal data and he would have a reasonable expectation that such information would not be disclosed. Disclosure of his home contact details in response to this request this would be unfair and constitute a breach of the first data protection principle which requires that information must be processed fairly and lawfully. Disclosure of these contact details is therefore exempt by virtue of section 40(2) of the Act. Therefore in the documents that the Commissioner has ordered to be disclosed he believes that the Lord Hammed's contact details should be redacted.

Procedural matters

59. Section 1(1) of the Act states 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.”

60. 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.’]

61. As the Commissioner has decided that the public interest in disclosing some of the information withheld by the HLAC under section 37(1)(b) of the Act is not outweighed by the public interest in maintaining the exemption, the Commissioner believes that this information should have been provided in line with the duty at section 1(1)(b) of the Act. The HLAC’s failure to do so therefore constitutes a breach of section 1(1)(b). Furthermore, by failing to provide this information within 20 working days of the request the HLAC also breached section 10(1) of the Act.

The Decision

62. 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 HLAC was correct to withhold the majority of documents falling within the scope of the request on the basis of section 37(1)(b) of the Act on the basis that for these documents the public interest favoured maintaining the exemption. Such documents are clearly identified on the schedule that has been provided to the HLAC.
- A small number of documents are exempt from disclosure on the basis of section 23(1) of the Act. Such documents are clearly identified on the schedule that has been provided to the HLAC.

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

- Although the HLAC was correct to identify further documents as falling within the scope of the exemption contained at section 37(1)(b), in respect of these documents the Commissioner believes that the public interest in

disclosure outweighs the public interest in maintaining the exemption. Again, such documents are clearly identified on the schedule that has been provided to the HLAC.

- By failing to provide this information in response to the request the Commissioner has found that the HLAC breached sections (1)(1)(b) and 10(1) of the Act.

Steps Required

64. The Commissioner requires the public authority to provide the complainant with the documents he has identified in the confidential annex in order to ensure compliance with the Act. In disclosing these documents the HLAC should redact information which identifies other nominees. The HLAC should also redact Lord Hameed's contact details, i.e. home address and telephone number.
65. The public authority must take these steps within 35 calendar days of the date of this notice.

Failure to comply

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

Right of Appeal

67. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 24th day of November 2009

Signed

**Graham Smith
Deputy Commissioner**

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

Legal Annex

Freedom of Information Act 2000

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(2) provides that –

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

- (a) the information is exempt information by virtue of a provision conferring absolute exemption, or
- (b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information”

Section 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.”

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(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.”

“Information is exempt information if it relates to-

- (a) communications with Her Majesty, with other members of the Royal Family or with the Royal Household, or
- (b) the conferring by the Crown of any honour or dignity.”

Section 37(1) provides that –

“Information is exempt information if it relates to-

- (a) communications with Her Majesty, with other members of the Royal Family or with the Royal Household, or
- (b) the conferring by the Crown of any honour or dignity.”

Section 37(2) provides that –

“The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1).”

Section 40(2) provides that –

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

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

Section 41(1) provides that –

“Information is exempt information if-

- (a) it was obtained by the public authority from any other person (including another public authority), and

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