Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 10 December 2009

Public Authority: Home Office
Address: Seacole Building
2 Marsham Street
London
SW1P 4DF

Summary

The complainant made two requests for information related to section 12 of the Asylum and Immigration (Treatment of Claimants) Act 2004, which abolishes the entitlement of refugees to back payment of benefits. The first request was refused under section 12(1) as the public authority believed that the cost of compliance with the request would exceed the appropriate limit of £600. The second request was refused as the information was believed to be exempt by virtue of section 35(1)(a) (formulation or development of government policy). The Commissioner finds that the public authority estimated the cost of compliance with the first request accurately and so upholds the refusal under section 12(1). In relation to the second request the Commissioner finds that the exemption provided by section 35(1)(a) is engaged, but concludes that the public interest in maintaining the exemption does not outweigh the public interest in disclosure. The public authority is required to disclose the information it holds that falls within the scope of the second request. The Commissioner also finds that the public authority failed to comply with the procedural requirements of sections 1(1)(b), 10(1), 17(1) and 17(5) in its handling of the request.

The Commissioner's Role

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

The Request

2. The complainant requested the following information on 29 July 2008:

> *"1. The release of all evidence which the UK Border Agency relied upon when section 12 of the Asylum and Immigration (Treatment of Claimants) Act 2004 was presented to Parliament;*
>
> *and*
>
> *2. The mentioned document which justified the decision to introduce section 12 of the 2004 Act."*

3. The public authority responded to this initially on 22 August 2008, stating that it would not be able to respond within 20 working days of the request as it required longer to consider the balance of the public interest in connection with section 35(1)(a) (formulation or development of government policy). This response did not, however, confirm that this exemption was engaged, or provide any reasoning as to why this exemption was considered relevant.

4. The public authority responded further on 8 September 2008. In response to request 1 the public authority confirmed that it held the information requested, but that compliance with the requirement of section 1(1)(b) would exceed the cost limit of £600, rather than that this information was considered exempt under section 35(1)(a). The public authority stated that there were 800 electronic files and 14 paper files within which the information requested was held and that it would be necessary to search all 800 electronic files in order to extract from these information relevant to the request. The public authority estimated that this would take *"at least four days"*. The request was, therefore, refused under section 12(1).

5. In response to request 2, the public authority again confirmed that it held the information requested, but refused to disclose this information on the basis that it was exempt by virtue of section 35(1)(a) (formulation and development of government policy). The public authority stated that it considered it clear that the information falling within this request did fall within the class specified in the exemption as it consists of a document that provides advice to Ministers. The reasoning given by the public authority as to why it believed that the public interest favoured the maintenance of this exemption focussed on the importance it considered there to be in maintaining a safe space within which to consider policy options.

6. The complainant responded to this on 9 September 2008 and requested that the public authority carry out an internal review. The complainant suggested that the information should be disclosed in order to reveal whether refugees had been unfairly discriminated against or had their human rights breached through the policy enshrined in section 12 of the Asylum and Immigration (Treatment of Claimants) Act 2004.

7. The public authority responded with the outcome of the review on 5 December 2008. The refusals under sections 12(1) and 35(1)(a) were upheld.

The Investigation

Scope of the case

8. The complainant contacted the Commissioner on 7 January 2009 to complain about the refusal of his information request. The complainant specified that he did not agree with the decision by the public authority to refuse to disclose the information requested.

9. The second request made by the complainant is, without background, somewhat unclear. The public authority has identified the *"mentioned document"* that the complainant refers to in the request as a submission prepared by the Head of the Social Policy Unit at the Immigration and Nationality Directorate for the Immigration Minister and other ministers. The Commissioner accepts that the public authority has correctly identified this as the document that the complainant is referring to in his request and the section 35(1)(a) analysis below relates to this document.

Chronology

10. The Commissioner contacted the public authority on 11 August 2009. The background to the complaint was set out and the public authority was asked to respond with further explanations of its reasoning for the refusal of the request.

11. The public authority responded to this on 11 September 2009. In connection with the citing of section 12(1), the public authority estimated that it would take an average of 1 ½ minutes to search each of the 800 electronic files, giving a total time estimate for these files of 20 hours.

12. In connection with section 35(1)(a), the public authority stated that it believed the submission described above at paragraph 9 to fall within the class specified in section 35(1)(a) *"almost by definition"*. On the balance of the public interest, the public authority believed that the public interest favoured maintenance of the exemption in order to preserve a space within which to formulate and develop policy.

13. The Commissioner contacted the public authority again on 18 September 2009 in connection with the citing of section 12(1). It was noted that the public authority had explained that the reason it would be necessary to review the content of the 800 electronic files was that not all the information within these files was within the scope of the request and so it would be necessary to identify the information within these that was relevant to the request and extract this. The public authority had not, however, explained why it would be necessary to search the 14 paper files referred to in the refusal notice.

14. The public authority responded to this on 21 September 2009 and clarified that it would be necessary to review the content of the paper files for the same reason as the electronic files. The public authority estimated that this would take 45 minutes per paper file, giving a total time estimate for the paper files of 10 ½ hours.

Background

15. The explanatory notes to the Asylum and Immigration (Treatment of Claimants) Act 2004 state the following about section 12 of that Act:

> *"This section abolishes the entitlement to backpayments of income support, housing benefit and council tax benefit for those who are recorded as refugees."*

Analysis

Substantive Procedural Matters

Section 12

16. Section 12(1) provides that a public authority is not obliged to comply with a request where it estimates that the cost of doing so would exceed the appropriate limit. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "fees regulations") provide that the appropriate limit for central government public authorities is £600 and that this should be calculated at a rate of £25 per hour. This gives an effective time limit of 24 hours.

17. Only those tasks listed in the fees regulations can be taken into account when formulating an estimate. These tasks are:

- determining whether the information is held,
- locating the information,
- retrieving the information, and
- extracting the information.

18. In this case the public authority has confirmed that the information identified in the complainant's first request is held, but estimated that it would take 30 ½ hours to comply with its obligation under section 1(1)(b) to disclose this information. The task for the Commissioner is to consider whether this estimate is reasonable. This is in line with the following point made by the Information Tribunal in *Urmenyi and the London Borough of Sutton* (EA/2006/0093):

> *"…the public authority's expectation of the time it would take to carry out the activities set out in regulation 4(3) a-d must be reasonable"* (paragraph 16)

19. The basis for the cost estimate is that, whilst the public authority is aware that the information requested is held and that it is located within the 800 electronic files and 14 paper files it has referred to, not all of the information within these files falls within the scope of the request. Therefore, it would be necessary to review the entirety of the content of these files in order to retrieve the relevant information. The Commissioner accepts that this task does fall within those set out in the fees regulations, which specify that the retrieving of information can be taken into account.

20. As to whether the cost estimate is reasonable, the Commissioner notes first that the public authority has been consistent throughout the correspondence relating to this request, with both the complainant and the Commissioner, about the number of files it would be necessary to search and the reason why this search would be necessary. Secondly, the wording of the request is broad in scope in requesting *all* evidence relating to section 12 of the Asylum and Immigration (Treatment of Claimants) Act 2004. Thirdly, it is reasonable to accept that the public authority may have amassed a considerable volume of information during the policy formulation and development process. The Commissioner therefore accepts the representations from the public authority as to the number of files it would be necessary to search and that it would be necessary to search these in order to retrieve the information requested.

21. Turning finally to the issue of the estimate made by the public authority of the time that would be taken in reviewing the content of each file, the Commissioner accepts that an estimate of 1 ½ minutes is reasonable for an electronic file which contains a minimal volume of information. Turning to the estimate of 45 minutes per paper file, the Commissioner accepts that this is a reasonable estimate of the time that would be taken in manually reviewing the contents of a paper file in a sufficiently thorough way as to identify whether it contains information relevant to the request.

22. The Commissioner accepts that the time estimate of 30 ½ hours is reasonable. At the rate of £25 per hour this gives a cost estimate of £762.50, which exceeds the appropriate limit for a central government public authority of £600. Section 12(1) therefore provides that the public authority is not obliged to comply with section 1(1)(b) in relation to the complainant's first request.

23. The Commissioner notes that at refusal notice stage the public authority provided some information about how its cost estimate had been formed. Also, at internal review stage the public authority provided advice to the complainant as to how his request could be refined to bring it within the cost limit. In so doing the public authority met its obligations under section 16(1) of the Act to provide advice and assistance.

Exemptions

Section 35

24. The public authority cited section 35(1)(a), which is set out in full in the attached legal annex as are all other sections of the Act referred to in this notice, as the basis for the refusal of the complainant's second request. This provides an exemption for information which relates to the formulation or development of government policy. This exemption is qualified by the public interest, which means that the information in question should be disclosed if the public interest favours this, even if the information in question falls within the class specified in the exemption.

25. The first step, therefore, is for the Commissioner to reach a conclusion as to whether the information that falls within the scope of the complainant's second request relates to the formulation and development of government policy. The Commissioner will take into account both the overall purpose of the information in question as well as its content. He considers that it is in line with the following point made by the Information Tribunal in *DfES v the Information Commissioner & the Evening Standard* (EA/2006/0006) to interpret broadly the term 'relates to' as it is used in the wording of this exemption:

> *"If the meeting or discussion of a particular topic within it, was, as a whole, concerned with s35(1)(a) activities, then everything that was said and done is covered. Minute dissection of each sentence for signs of deviation from its main purpose is not required nor desirable"* (paragraph 58)

26. The document that constitutes the information held by the public authority that falls within the scope of the complainant's second request is, as described above at paragraph 9, a submission prepared by officials for ministers that sets out policy options on the subject of back payments of benefits to refugees. This submission makes recommendations as to which policy option to follow, sets out alternatives and advises on risks.

27. The public authority believes that this information very clearly relates to the formulation and development of government policy. The Commissioner notes that the process that this submission forms part of ended in legislation in the form of section 12 of the Asylum and Immigration (Treatment of Claimants) Act 2004. The Commissioner would also expect the provision of advice from officials to ministers to be a standard part of the policy formulation and development process. For these reasons the Commissioner concurs with the public authority that the information in question clearly relates to the formulation and development of government policy.

The public interest

28. Having reached the conclusion that the exemption provided by section 35(1)(a) is engaged, it is necessary for the Commissioner to go on to reach a conclusion on the balance of the public interest. In forming a conclusion on this issue the Commissioner has taken into account what public interest there is in the specific

information in question and what harm may result through disclosure of this, as well as the general public interest in openness and transparency in the formulation and development of government policy.

29. Of no weight here, however, is any argument that the mere fact that the information in question relates to the formulation and development of government policy and, therefore, the exemption is engaged is an indication that there is a public interest in non disclosure of this information. This is in line with the point made by the Information Tribunal in *DfES v the Commissioner & the Evening Standard* (EA/2006/0006) when it stated the following in connection with section 35(1)(a):

> *"The weighing [of the public interest] exercise begins with both pans empty and therefore level."* (paragraph 65)

30. Covering factors in favour of disclosure first, the central issue here is the public interest in the specific information in question. Whilst the Commissioner has found no evidence of a public interest in information relating to the specific issue of back payment of benefits to refugees, he does believe that there is a significant public interest in information relating to the issue of immigration in general. Although it is important to distinguish between information that it would be in the public interest to disclose and information that would merely be of interest to the public, the Commissioner believes that the legitimate public interest in disclosure of the information in question here is reflected in and evidenced by the perpetually prominent position the issue of immigration has on both the political and media agendas. The Commissioner therefore believes there is a significant public interest in full disclosure of information relating to the formulation and development of government policy about the issue of immigration. Whilst this factor is not as significant as it would be were there evidence of public interest in the specific issue of back payment of benefits to refugees, this remains a factor to which the Commissioner affords significant weight.

31. The arguments of the public authority in favour of maintenance of the exemption focus on the harm it believes would result to the policy formulation and development process through disclosure. The basis for this argument is that disclosure would reduce the quality of advice provided from officials to ministers.

32. The Commissioner notes that the information in question does include advice provided from officials to ministers and so this argument is relevant to the content of this information. As to the weight that this argument carries as a public interest factor in favour of maintenance of the exemption, the Commissioner has considered what risk disclosure could pose to the role and integrity of the civil service, whether disclosure would result in a 'chilling effect' upon the advice provided from officials to ministers and whether disclosure would result in an erosion of a 'safe space' within which officials and ministers can discuss policy.

33. Covering first the role and integrity of the civil service, in *Scotland Office v The Information Commissioner* (EA/2007/0070), the Information Tribunal identified the following as a factor to be taken into account when considering the balance of the public interest in connection with section 35(1)(a):

> *"the risk to the role and integrity of the civil service by,* inter alia*, identifying Officials with policies which were no longer in favour thus alienating them from future political masters."* (paragraph 64)

34. The argument here is that if information were to be released that identified individual civil servants with policies then this would undermine the impartiality and neutrality of the civil service. Co-operation and engagement between civil servants and ministers would be lost and the integrity of the civil service would thus be compromised, leading to poorer quality advice and decision making.

35. As already noted, the information in question does record advice provided by officials to ministers. It also records recommendations made by officials. However, in response to the argument about officials being identified by ministers with policies that are no longer in favour, the Tribunal in *DfES v the Commissioner and the Evening Standard* (EA/2006/0006) stated the following:

> *"we are entitled to expects of our politicians…. a substantial measure of political sophistication and, of course, fair-mindedness. To reject or remove a senior official because he or she is identified …..with a policy which has now lost favour…. would plainly betray a serious misunderstanding of the way the executive should work. It would, moreover, be wholly unjust. We should therefore proceed on the assumption that ministers will behave reasonably and fairly towards officials…"* (paragraph 75)

36. The Commissioner would anticipate that risk to the role and integrity of the civil service could result through a wider audience than solely politicians associating officials with particular policies. However, in response to this the Commissioner would note that, whilst the information does include recommendations made by officials, it is also clear from the content of this information that the decision as to which policy option to follow lies with ministers rather than officials. The Commissioner would not accept that any reasonable reading of this information would lead to responsibility for the policy being ascribed to officials rather than to ministers.

37. Turning secondly to the issue of 'chilling effect', this refers to the argued loss of frankness and candour in advice which, it is said, would lead to poorer quality advice and less well formulated policy and decisions, and would result through disclosure of information via the Act. They are described in *Scotland Office v the Information Commissioner* (EA/2007/0070) as arguments about:

> *"the risk to candour and boldness in the giving of advice which the threat of future disclosure would cause"* (paragraph 64)

38. The Commissioner accepts the basic premise of this argument and that it appears to be relevant here given the content of the information in question. However, the strength of this argument will vary in each case according to how closely it relates to the policy formulation and development process that is the subject of the information in question in each case.

39. A chilling effect argument will be strongest where the information relates to a subject in connection with which the policy formulation and development process is ongoing. For example, if at the time of the request the policy on back payment of benefits to refugees had not been finalised and enshrined in legislation, the public authority could have advanced the argument that disclosure would result in a chilling effect specifically to the formulation and development of policy about back payment of benefits to refugees.

40. This is not the case here, however. Instead, the policy formulation and development process to which the information relates was complete at the point that the Asylum and Immigration (Treatment of Claimants) Act 2004 was passed, several years prior to the date of the request. The chilling effect argument in this case is, therefore, more general; that disclosure of information recording advice given by officials would result in a general chilling effect. The Commissioner gives this argument significantly less credence given it is general and relates to an area of policy which was not the subject of live policy formulation or development at the time of the request.

41. The Commissioner also considers this argument weakened by the passage of time between the recording of the information and the date of the request. The information was over four years old at the time of the request and the Commissioner believes that any concern held by the public authority about a chilling effect could have been resolved by it making clear that the information in this case was over four years old and related to an area of policy formulation and development that had been finalised several years prior to the request.

42. Arguments have been made that far from producing a 'chilling effect' leading to poorer quality advice and decision making, knowing that advice might be subject to future disclosure under the Act could actually lead to better quality advice being provided. This argument was put forward by counsel for the Commissioner in the Information Tribunal case *Secretary of State for Work and Pensions v The Information Commissioner* (EA/2006/0040):

> *"He suggested that the new law would have concentrated the mind of civil servants in a beneficial way to ensure a more rigorous approach to any analysis or predictions……..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… the prospect of public disclosure is actually capable of importing a greater degree of rigour into the process."* (paragraph 90)

The Commissioner has taken this argument into account here and considers the weight carried by the 'chilling effect' argument to be further lessened as a result.

43. Reaching thirdly the issue of a 'safe space' within which to conduct policy formulation and development, in *DfES v the information Commissioner and The Evening Standard* (EA/2006/0006) the Information Tribunal recognised the importance of this argument, stating:

> *"Ministers and officials are entitled to time and space, in some instances considerable time and space, to hammer out policy by exploring safe and radical options alike, without the threat of lurid headlines depicting that which has been merely broached as agreed policy"* (paragraph 75).

44. This argument recognises that the need for a safe space whilst formulating policy exists separately to, and regardless of any potential chilling effect. Even if there was no suggestion that those involved in policy formulation might be less frank and candid in putting forward their views, there would still be a need for a safe space for them to debate policy and reach decisions without being hindered by external comment.

45. The Commissioner does not accept, however, that this is a factor that will automatically hold significant weight in any case where the exemption provided by section 35(1)(a) is engaged. Instead, the weight that the Commissioner affords to this factor will vary according to the circumstances of the case. In particular the Commissioner will take into account whether the preservation of a safe space was necessary in relation to the specific policy to which the information in question relates. This is in line with the point made the Information Tribunal in *DBERR v the Information Commissioner and Friends of the Earth* (EA/2007/0072):

> *"This public interest is strongest at the early stages of policy formulation and development. The weight of this interest will diminish over time as policy becomes more certain and a decision as to policy is made public."* (paragraph 114)

46. In this case the need for a safe space in relation to the formulation and development of government policy on the subject of back payment of benefits to refugees had ceased at the point that the Asylum and Immigration (Treatment of Claimants) Act 2004 was passed, several years prior to the date of the request. The Commissioner does not, therefore, believe that the safe space argument carries any significant weight in this case.

47. Overall, the Commissioner believes that the argument advanced by the public authority that disclosure would result in detriment to the policy formulation and development process carries little weight as a factor in favour of maintenance of the exemption. Whilst the argument of the public authority relates in general to the disclosure of information recording advice provided from officials to ministers, the Commissioner does not believe that disclosure of the content of the specific information in question here would result in any such detriment.

48. Turning to the conclusion of the Commissioner on the balance of the public interest, he finds that the information in question should be disclosed. In the absence of detailed or specific arguments from the public authority as to why the public interest favours maintenance of the exemption in relation to the information in question, the Commissioner finds that the significant public interest in full disclosure of information relating to government policy relating to immigration and immigrants, as well as the general public interest in openness and transparency in the area of formulation and development of government policy, means that the

public interest in maintaining the exemption does not outweigh the public interest in disclosure.

Procedural Requirements

Section 1

49. In failing to disclose the information requested in the second request on the basis of an exemption that the Commissioner does not uphold, the public authority did not comply with the requirement of section 1(1)(b).

Section 10

50. In failing to disclose the information requested within 20 working days of receipt of the request on the basis of an exemption that the Commissioner does not uphold, the public authority did not comply with the requirement of section 10(1).

Section 17

51. The public authority responded to the request initially on 22 August 2008 and stated that it required further time to consider the request and cited section 35(1)(a). However, the public authority did not conclude at that stage that section 35(1)(a) was engaged, or provide any explanation for this. Also, when providing a substantive response to the request on 8 September 2008, the public authority did not cite section 35(1)(a) in connection with the first request.

52. Section 17(2) provides that a response setting out the balance of the public interest may be delayed. This provision provides that it is *only* a conclusion on the balance of the public interest that can be extended beyond 20 working days; a refusal notice fulfilling all other requirements of section 17 must be provided within 20 working days of receipt of the request. The Commissioner's guidance on this issue is that a public interest response should be delayed for a maximum of a further 20 working days.

53. In relation to the first request, the public authority failed to comply with section 17(5) in that it did not issue a response stating that section 12(1) applied within 20 working days of receipt of the request. In relation to the second request, the public authority failed to comply with section 17(1) in that it failed to confirm that section 35(1)(a) was engaged or state the reasons for this within twenty working days of receipt of the request.

The Decision

54. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act in relation to the first request in that it concluded correctly that the cost limit would be exceeded through complying with this request and, therefore, section 12(1) applied.

55. However, the Commissioner also finds that the public authority failed to comply with the requirements of sections 1(1)(b) and 10(1) in that it refused to disclose the information on the basis of the exemption provided by section 35(1)(a), in relation to which the Commissioner now concludes that the balance of the public interest does not favour the maintenance of the exemption. The Commissioner also finds that the public authority failed to comply with the procedural requirements of sections 17(1) and 17(5) in failing to provide a substantive response to the request within 20 working days of receipt.

Steps Required

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

- disclose to the complainant the information falling within the scope of the second request, which was previously withheld under section 35(1)(a).

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

Failure to comply

58. 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

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

60. As referred to above at paragraph 4, when giving the outcome to the internal review, the public authority gave no explanation for concluding that the refusal of the request should be upheld. Paragraph 39 of the section 45 Code of Practice states the following:

> *"The complaints procedure should provide a fair and thorough review of handling issues and of decisions taken pursuant to the Act, including decisions taken about where the public interest lies in respect of exempt information. It should enable a fresh decision to be taken on a reconsideration of all the factors relevant to the issue."*

61. The internal review response from the public authority in relation to section 35(1)(a) did not reflect that a reconsideration of the request conforming to the description above took place. The Commissioner would advise the public authority that a response giving the outcome to an internal review should state the reasoning for why the initial refusal was upheld and should reflect that there has been a genuine reconsideration of the request.

62. The Commissioner's published guidance on internal reviews states that a review should be conducted within 20 working days, unless there are exceptional circumstances, in which case the review period may be extended to 40 working days. In this case the Commissioner notes that there appeared to be no exceptional circumstances, but that the public authority failed to provide the outcome to the review within 20 working days. Neither did the public authority provide the outcome to the review within 40 working days. The public authority should ensure that internal reviews are carried out promptly in future.

Right of Appeal

63. 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.

64. 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 10th day of December 2009

Signed ……

Anne Jones
Assistant Commissioner

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

Legal Annex

Section 1

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 10

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 12

Section 12(1) provides that –

> "Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."

Section 17

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(5) provides that –

> "A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with

section 1(1), give the applicant a notice stating that fact."

Section 35

Section 35(1) provides that –

"Information held by a government department or by the Welsh Assembly Government 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."