

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 15 December 2009

**Public Authority:** HM Treasury  
**Address:** 1 Horse Guards Road  
London  
SW1A 2HQ

### Summary

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The complainant requested copies of all submissions to ministers in relation to the taxation of non-domiciled residents for the period 1 January 2003 to 27 June 2007. The public authority disclosed some information, but withheld the remainder under the exemptions provided by sections 29(1)(a) (prejudice to the economy), 29(1)(b) (prejudice to the financial interests of any UK administration), 35(1)(a) (information relating to the formulation or development of government policy) and 42(1) (legal professional privilege). In relation to the majority of the information requested, the Commissioner finds that the exemption provided by section 35(1)(a) is engaged and that the balance of the public interest favours the maintenance of this exemption. In relation to the majority of the content of one part of this information, the Commissioner finds that none of the exemptions cited are engaged and that the public authority breached sections 1(1)(b) and 10(1) in refusing to disclose this information. The public authority is now required to disclose this information to the complainant. The Commissioner also finds that the public authority breached section 17(1)(c) of the Act in failing to provide an adequate explanation as to why the exemptions cited were believed to be engaged.

### The Commissioner's Role

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

### The Request

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2. The complainant made the following information request on 25 June 2008:

*“Please send me copies of all the submissions to ministers relating to the taxation of non-domiciles which were submitted in the period 1 January 2003 - 27 June 2007.”*

3. The public authority responded to this on 24 July 2008. The request was refused, with the exemptions provided by sections 29(1)(a) (prejudice to the economy), 29(1)(b) (prejudice to the financial interests of any UK administration) and 35(1)(a) (information relating to the formulation or development of government policy) cited. No reasoning as to why these exemptions were believed to be engaged was given and the public interest was covered in a generalised fashion, rather than individually in relation to each exemption cited.
4. The complainant responded to this on 29 August 2008 and asked that the public authority carry out an internal review. The complainant stated that he did not agree that any harm would result through disclosure and also referred to a comment made by the Prime Minister in a press conference which suggested that information relating to the taxation of non-domiciled residents should be made available.
5. After a lengthy delay, the public authority responded with the outcome of the internal review on 20 April 2009. Some information falling within the scope of the request was now disclosed. The public authority also now recognised that a December 2007 consultation document was relevant to the request. In relation to this the stance of the public authority was that the exemption provided by section 21(1) (information accessible to the requester by other means) was engaged as this information was publicly available. The complainant was directed to where this information could be accessed.
6. The public authority maintained that the remainder of the information falling within the scope of the request was exempt. As well as sections 29(1)(a), 29(1)(b) and 35(1)(a), the public authority now also cited the exemptions provided by sections 27(1)(a) (prejudice to international relations) and 42(1) (legal professional privilege). In response to the complainant's point about the comment made by the Prime Minister, the public authority stated that it believed that the public interest in information about taxation and residence had been satisfied through information on this issue that had been made available.

## **The Investigation**

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### **Scope of the case**

7. The complainant contacted the Commissioner on 28 April 2009 and specified as issues of complaint both the delay to the internal review and the refusal to disclose the information requested. On the issue of the refusal to disclose, the complainant confirmed that his complaint covered both those documents withheld in their entirety and the information redacted from documents that had been partially disclosed. The complainant believed that the balance of the public

interest favoured disclosure and again referred to the comment made by the Prime Minister that information relating to this subject should be made available.

8. As noted above, at internal review stage the public authority stated that a December 2007 consultation document was within the scope of the request, but withheld this under section 21(1). As also noted, the public authority directed the complainant to where this information could be accessed. As this information is available and the complainant has been directed to it, the Commissioner has not covered the citing of section 21(1) in this notice.

## Chronology

9. The Commissioner contacted the public authority on 4 June 2009. It was asked to respond with detailed reasoning about the exemptions cited and a copy of the information held that falls within the scope of the complainant's request.
10. The public authority responded to this on 7 July 2009 and provided background about the subject of the information requested by the complainant. The public authority stressed that it believed that the issue of taxation of non-domiciled residents was "*a highly sensitive policy area*" given the importance of the contribution that this group makes to the economy. The public authority stated that "*a core principle*" of taxation policy in relation to this group was to strike a balance between fairness and the need to retain this contribution.
11. On the issue of the exemptions cited the position of the public authority was that the exemption provided by section 35(1)(a) was engaged in relation to the entirety of the withheld information. The other exemptions cited were believed to apply in relation to specified parts of this information. The public authority emphasised that the policy formulation process was ongoing at the time of the request.
12. The Commissioner contacted the public authority specifically in connection with the citing of section 42(1) on 2 December 2009. This exemption had been cited in relation to part of the content of one of the submissions falling within the scope of the request and, whilst it was not a first hand recording of legal advice, the public authority argued that it was a summary of legal advice and so would be subject to legal professional privilege. In order that the Commissioner could assess whether this was an accurate summary of legal advice, the public authority was asked to provide a copy of the original legal advice.
13. The public authority responded on 9 December 2009 and stated that it was unable to provide a copy of the legal advice to the Commissioner as it did not hold this. Instead this information was held by HM Revenue and Customs. The public authority went on to state that it is often the case that legal advice is summarised in submissions to ministers and that it believed that, in such cases, it "*should be taken as read*" that the summary accurately reflected the original advice.

## Background

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14. The Commissioner has located the following definition of non-domiciled residents:

*"[individuals] living in the UK [who] don't pay income tax or capital gains tax on earnings abroad"*

15. The situation as regards taxation of these individuals was described by the public authority in December 2007 in the document *"Paying a fairer share: a consultation on residence and domicile"* as follows:

*"Residence plays a key role in determining whether or not an individual will be liable to pay UK income tax or capital gains tax on income and gains arising outside the UK. An individual who is resident in the UK will normally be liable for tax on income and gains regardless of where they arise, whereas an individual who is not resident here will not be liable for tax on income and gain arising outside the UK."*

## Analysis

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### Exemptions

#### Section 35(1)(a)

16. Consideration of this exemption, which is set out in full in the attached legal annex, as are all other sections of the Act referred in this Notice, is a twofold process. First, for the exemption to be engaged the information must relate to the formulation or development of government policy. Secondly, this exemption is qualified by the public interest, which means that the information in question must be disclosed if the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure, even though the exemption is engaged.
17. The public authority identified 15 ministerial submissions and provided these to the Commissioner in sequentially numbered form according to chronology. The conclusion below relates to all of these submissions, apart from number 11 aside from the content of the fourth paragraph of this document (the section 35(1)(a) analysis below relates to this part of the content of submission 11). Whilst this submission relates to the taxation of non-domiciled residents, the Commissioner considers that the majority of its content does not relate to the formulation or development of government policy on this issue and so does not engage the exemption provided by section 35(1)(a). This submission is covered further in the section 29(1)(a) and (b) and section 42(1) analyses below.
18. In reaching a decision on whether the exemption is engaged, the Commissioner has considered first whether policy on the taxation of non domiciled residents constitutes government policy so that information recording the formulation and development of this policy would fall within the class specified in section 35(1)(a).

On this point the Commissioner notes that the public authority has stated that reforms on the taxation of non-domiciled residents were enacted in the Finance Act 2008. On the basis that policy on the taxation of non-domiciled residents is enshrined in legislation, the Commissioner concludes that this is government policy.

19. Turning to whether the information in question relates to the formulation or development of this government policy, the Commissioner's approach to the term 'relates to' as it is used in this exemption is that this can safely be interpreted broadly. This is in line with the approach taken by the Information Tribunal in *DfES v the Information Commissioner & the Evening Standard* (EA/2006/0006) where it stated:

*"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)

20. As the wording of the request suggests, the information in question consists of submissions prepared by officials for ministers. These submissions cover various aspects of the issue of taxation of non-domiciled residents and include updates on the progress made in the policy formulation and development process and advice for ministers on the policy options available.
21. The Commissioner would expect the provision of advice from officials to ministers to be a standard and central part of the policy formulation and development process. Given this and that the content of the information does concern taxation of non-domiciled residents, the Commissioner accepts that the information in question does relate to the formulation and development of policy on taxation of non-domiciled residents, which the Commissioner has concluded constitutes government policy. The overall conclusion of the Commissioner is that the information relates to the formulation and development of government policy and that the exemption provided by section 35(1)(a) is, therefore, engaged.

### **The public interest**

22. In reaching a conclusion on the balance of the public interest, the Commissioner has taken into account those factors that relate to the specific information in question here, including what harm to policy making may result through disclosure of the information in question and whether disclosure of information relating to the formulation and development of policy on taxation, both in general and specifically in relation to non-domiciled residents, would serve the public interest. This is in addition to the general public interest in transparency and openness in relation to the process of government policy formulation and development.
23. That the information is within the class specified in the exemption is not, however, of relevance to the balance of the public interest. This is in line with the approach taken by the Information Tribunal in *DfES v the Commissioner & the Evening Standard* (EA/2006/0006), where it stated in connection with section 35(1)(a):

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

24. Covering first those factors in favour of maintenance of the exemption, the public authority has argued that disclosure would result in harm to the policy formulation and development process.
25. On the issue of the harm that the public authority believes may result through disclosure, it has stated that the content of the information in question may assist in attempts at tax avoidance. Whilst the Commissioner agrees with the public authority that disclosure that could assist in tax avoidance would be counter to the public interest he does not consider this to be a public interest factor relevant to section 35(1)(a) which in his view is provided to protect the policy making process in the interests of good government. This is in line with the approach taken by the Information Tribunal in *Bellamy v the Information Commissioner and the DTI* (EA/2005/0023), where it stated:

*“As section 2(2)(b) makes clear, the relevant exercise is to weigh the public interest in maintaining the exemption which is manifested by the relevant provisions against the public interest in disclosing the information. If the weighing process is in favour of the maintenance of the exemption, then any duty to communicate or disclose is disapplied. It necessarily follows that not all public interest considerations which might otherwise appear to be relevant to the subject matter should be taken into account. What has to be concentrated upon is the particular public interest necessarily inherent in the exemption or exemptions relied upon.” (para. 5)*

26. The public authority has also argued that disclosure could result in harm to the policy formulation and development process, both in connection with policy on the issue of taxation of non-domiciled residents and, more widely, in connection with the budget process, through participants in this process being inhibited in their contributions. In *DfES v the Commissioner and the Evening Standard* (EA/2006/0006) the Information Tribunal provided a number of guiding principles for consideration of the balance of the public interest in connection with section 35(1)(a). The arguments of the public authority about disclosure resulting in inhibition to participants in the policy making process are relevant to the factor of an envisaged ‘chilling effect’ as highlighted by the Tribunal. In the Commissioner’s view the ‘safe space’ argument considered in a number of Tribunal cases is also relevant in this case.
27. The term ‘chilling effect’ refers to an adverse effect on the frankness and candour of participants in the policy development process. The term ‘safe space’ refers to the need for a protected space in which to formulate policy, debate live issues, and reach decisions without being hindered by external comment and/or media involvement. Arguments about ‘safe space’ are related to chilling effect arguments, but are distinct, as the need for a safe space within which to debate policy away from external involvement exists regardless of any chilling effect that may or may not result through disclosure. The basis of safe space arguments is



that an erosion of the safe space for policy making would have a detrimental impact on the quality of the policy making process.

28. The weight that the Commissioner affords to chilling effect and safe space arguments will depend on how closely they relate to the information and policy making process in question. For example, an argument that disclosure would result in a chilling effect to policy making in general would usually carry less weight than an argument that a chilling effect would affect the specific policy area to which the information relates. Also key is the stage reached in the policy making process at the time of the request. Where a public authority argues that harm would result to a specific and ongoing policy making process, this will generally carry more weight than an argument suggesting that harm would result to future policy making in general through disclosure of information relating to policy that was complete at the time of the request.
29. In this case, the argument advanced by the public authority is closely related to the information and policy making process in question in that it relates to the taxation of non-domiciled residents and, more widely but still related to the content of the information, the budget process. In terms of the stage reached in the policy making process to which the information relates, the public authority has stated that this was ongoing at the time of the request. The timeline provided by the public authority is that the policy making process began in April 2003 with the publication of a background paper and was completed with the Finance Act 2008, which received Royal Assent in July 2008. The policy making process was, therefore, ongoing at the time of the request, albeit in its final stage.
30. As to what the content of the information suggests about the likelihood of a chilling effect, the Commissioner notes that this does include descriptions of different policy options, discusses the merits of these options and provides advice to ministers about which of these options to follow. As this information records contributions from officials given with frankness and candour, the chilling effect argument is relevant to the content of this information.
31. The Commissioner accepts that harm resulting to the policy making process in the area of taxation of non-domiciled residents through a chilling effect and through the erosion of a safe space in which to develop policy are valid arguments in favour of maintenance of the exemption. Although the policy making process was at a very late stage at the time of the request, it was ongoing at that time. Given this fact the Commissioner considers that a safe space was still required at the date of the request in this case and thus affords this factor some weight. However, in accordance with the Information Tribunal decision in *DBERR v the Information Commissioner and Friends of the Earth (EA/2007/0072)* the Commissioner gives less weight to this factor than he would in a case where a request is received whilst the formulation and development of a policy is in its earliest stages. The Tribunal in *DBERR* commented in relation to the need for a private thinking space that:

*“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.”* (para 114)

- In relation to the chilling effect, given that the policy making process was ongoing at the date of the request the Commissioner accepts that a chilling effect is a real possibility and therefore, this is a public interest factor in favour of maintenance of the exemption to which the Commissioner affords significant weight.
32. As noted above, the public authority has also argued that disclosure could harm the budget process through inhibition to officials involved in this process. This argument is wider than that made specifically in connection with policy relating to taxation of non-domiciled residents, but the public authority has linked this with the information in question by arguing that this information includes options that had not been taken by the time of the request, but could form part of future budgets. The Commissioner accepts the validity of this argument as the information does make reference to alternative options, but affords this less weight as a public interest factor than the previous argument given that it relates less closely to the information in question and to the policy making process recorded in the information.
33. Turning to those factors that favour disclosure, the Commissioner has taken into account arguments advanced by the complainant, as well as what the content of the information suggests about the balance of the public interest. The complainant has criticised the refusal of the public authority, stating that the harm it has predicted would not result through disclosure and suggesting that the arguments it has advanced have been applied in a blanket fashion, rather than relating to the specific information requested.
34. On the issue of the harm that the public authority predicted, the Commissioner's analysis of these arguments is given above. In terms of whether the public authority applied exemptions in a blanket fashion, the complainant is correct that this would not be good practice on the part of the public authority and that blanket arguments would not be as convincing as arguments that relate to the specific information in question. However, in its correspondence with the Commissioner the public authority has related its arguments to the information in question.
35. The complainant argued that disclosure would be in the public interest to promote understanding and debate about the issue covered in the information. This factor is linked to what public interest there is in the content of the information. On this point, the Commissioner notes that the issue of taxation of non-domiciled residents had been the focus of public debate around the time of the request. This issue was particularly high on the political agenda following a policy announcement by the opposition about the taxation of non-domiciled residents during the 2007 party conference season. The Commissioner also considers there to be a particular public interest in any information that relates to the formulation and development of government policy about tax, given the universal impact that policy in this area has.
36. The Commissioner believes that the content of this information supports the argument that disclosure would be in the public interest in order to promote understanding of and debate about the taxation of non-domiciled residents and, more widely, about government policy making in the area of tax in general. This is a valid public interest factor in favour of disclosure to which the Commissioner affords significant weight.



37. The public authority has argued that any public interest in disclosure of information relating to policy on taxation of non-domiciled residents has been satisfied through previous disclosures. On this issue it has cited the consultation document referred to above at paragraph 5. The Commissioner notes that this information was available at the time of the request and that this relates to the taxation of non-domiciled residents. However, the approach of the Commissioner is that, where there is a public interest in disclosure of information about a particular topic, there will be a public interest argument in favour of full disclosure of information relating to that topic if full disclosure would add to the information that is already in the public domain. In this case the Commissioner does believe that disclosure of the information in question would add to the information already in the public domain about this subject. The Commissioner does not, therefore, accept that any public interest factors in favour of disclosure that he recognises as valid are notably reduced as a result of related information having already been made available.
38. The complainant has also referred to a statement made by the Prime Minister suggesting that information about policy on taxation of non-domiciled residents should be made available. The statement in question was made by the Prime Minister during a press conference on 8 October 2007. In response to a question about a policy of the opposition on this subject, the Prime Minister referred to reviews carried out into taxation of non-domiciled residents and stated that:
- “I think all the information should be made available to people.”*  
(<http://www.number10.gov.uk/Page13457>)
39. Given the wording of this, which suggests that the Prime Minister was offering a personal opinion, and the circumstances, which were a response to a question from a journalist rather than a more considered expression of policy, the Commissioner does not believe that this is a factor of weight in the balance of the public interest here.
40. The conclusion of the Commissioner is that the public interest in the maintenance of the exemption outweighs the public interest in disclosure. Whilst the Commissioner has recognised a significant public interest in disclosure of the information given the area of policy formulation to which it relates, he believes that this public interest is outweighed by the public interest in avoiding the harm that the public authority has predicted as a result of disclosure.
41. The key factor here is that the policy making process in question was ongoing at the time of the request. Had it been the case that this process had been complete by the time of the request, the factors in favour of maintenance of the exemption relating to ‘chilling effect’ and ‘safe space’ would have carried less weight. As this policy making process was ongoing at the time of this request, these factors outweigh the public interest in disclosure.

**Sections 29(1)(a) and (b)**

42. As noted above, the Commissioner does not accept that the exemption provided by section 35(1)(a) is engaged in relation to the majority of the content of one of the submissions held by the public authority that falls within the scope of the request (“submission 11”). In relation to submission 11 the public authority has also cited the exemptions provided by sections 29(1)(a) and (b) and 42(1).
43. Consideration of the exemptions provided by sections 29(1)(a) and (b) is a twofold process. First, it must be the case that disclosure of the information requested would, or would be likely to, prejudice the economic interests of the UK (29(1)(a)), or the financial interests of any of the UK administrations (29(1)(b)). Secondly, these exemptions are qualified by the public interest, which means that the information must be disclosed if the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure.
44. In relation to section 29(1)(a), the public authority has argued that disclosure could discourage potential non-domiciled residents from choosing to live and work in the UK and may encourage existing non-domiciled residents to leave the UK. The public authority has gone on to argue that losing the contribution made by non-domiciled residents would be likely to result in prejudice to the economic interests of the UK. In connection with section 29(1)(b), the public authority has argued that disclosure would be likely to encourage tax avoidance on the part of non-domiciled residents and this would be likely to result in prejudice to the financial interests of the UK government. The Commissioner accepts the basic premise of these arguments and recognises that they are relevant to the prejudices referred to in sections 29(1)(a) and (b).
45. The next step is to consider whether these prejudices would be likely to occur as a result of disclosure. For the Commissioner to conclude that prejudice would be likely to result, the probability of this prejudice must be at least real and significant. This is in line with the approach taken by the Information Tribunal in *John Connor Press Associates Limited v The Information Commissioner* (EA/2005/0005) in which it stated:
- “the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk.”* (paragraph 15)
46. The key factor taken into account by the Commissioner when considering whether the prejudices identified by the public authority would be likely to occur is the content of the information in question. Having considered the content of submission 11, the Commissioner does not accept that disclosure of this would be likely to result in either of the prejudices predicted by the public authority. This submission informs the Paymaster General of an issue related to the taxation of non-domiciled residents. It does not include any content about proposed changes to government policy in this area so the argument that disclosure would discourage non domiciled residents from living in the UK as they were concerned about potential changes to their tax status is not relevant. Whilst it also includes information about the taxation of non-domiciled residents, the Commissioner does not accept that there is a real and significant risk of this encouraging attempts at tax avoidance.

47. The Commissioner does not accept that there is a real and significant risk of prejudice to either the economic interests of the UK, or to the financial interests of the UK government, through the disclosure of submission 11, and so concludes that the exemptions provided by sections 29(1)(a) and 29(1)(b) are not engaged. As this conclusion has been reached, it has not been necessary for the Commissioner to go on to consider the balance of the public interest.

### Section 42(1)

48. The public authority has cited the exemption provided by section 42(1) in relation to one paragraph of submission 11. Section 42(1) provides an exemption for information that is subject to legal professional privilege. This exemption is also subject to the public interest, meaning that the information should be disclosed if the public interest favours this, however clear it is that the information is subject to legal professional privilege.
49. The public authority has claimed advice privilege. For the Commissioner to accept that advice privilege can legitimately be claimed, the communications must be confidential, made between a client and professional legal adviser acting in their professional capacity and made for the sole or dominant purpose of obtaining legal advice.
50. The information in question is not a first hand recording of legal advice, instead the public authority argues that it is a summary of legal advice. The public authority has referred to the Information Tribunal case *Shipton v Information Commissioner and the National Assembly for Wales* (EA/2006/0028). In that case the Tribunal accepted that a submission from an official to a minister that summarised legal advice was subject to legal professional privilege when stating:

*"It is conceded that the second of the Memoranda, dated 27th May 2004, is not a direct communication from a lawyer; it is a submission to a minister from a civil servant...It is stated to be a memorandum on the delivery of the policy in question, but it is based on, and summarises, the legal advice and is in a form such that, if all the elements of legal advice were to be redacted it would in our view be rendered meaningless. In these circumstances we conclude that this document too is one in respect of which a claim to legal professional privilege could be maintained in legal proceedings."* (paragraph 13(e) and (f))

51. This conclusion was based on the following from the case *USP Strategies v London General Holdings Ltd* ([2004] EWHC 373):

*"The proper analysis, consistent with Three Rivers, is to continue to afford privilege to material which evidences or reveals the substance of legal advice."*

52. As noted above at paragraph 13, the public authority did not provide to the Commissioner a copy of the legal advice it states is summarised in submission

11. This has meant that the Commissioner has been unable to verify if the information in question accurately summarises this legal advice.
53. Neither has the public authority provided any detail about who provided the advice, when this advice was provided or in what context this advice was provided. This means that the Commissioner has been unable to establish that this information summarises either confidential communications made for the purpose of providing or obtaining legal advice in relation to proposed or contemplated litigation, or confidential communications made between a client and professional legal adviser acting in their professional capacity and made for the sole or dominant purpose of obtaining legal advice.
54. In the absence of the necessary clarification from the public authority, the conclusion of the Commissioner on section 42(1) is that the paragraph in question has not been demonstrated to engage this exemption. As this conclusion has been reached at this stage, it has not been necessary to go on to consider the balance of the public interest.

## **Procedural Requirements**

### **Sections 1 and 10**

55. In refusing to disclose submission 11 (apart from the content of the fourth paragraph of this document) on the basis of exemptions that the Commissioner now concludes were not engaged, the public authority failed to comply with the requirements of sections 1(1)(b) and 10(1) to disclose the information requested within 20 working days of receipt of the request.

### **Section 17**

56. Although the public authority addressed the balance of the public interest adequately at internal review stage and in so doing gave some indication as to why it believed that the exemptions were engaged, at neither the refusal notice nor internal review stage did the public authority provide a separate explanation as to why the exemptions provided by sections 29(1)(a), 29(1)(b) and 35(1)(a) were engaged. In so doing the public authority failed to comply with the requirement of section 17(1)(c).

## **The Decision**

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57. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act in that it concluded correctly that the exemption provided by section 35(1)(a) was engaged and that the balance of the public interest favoured the maintenance of this exemption in relation to all of the information falling within the scope of the request, with the exception of submission 11. In relation to submission 11, the Commissioner finds that the public authority breached sections 1(1)(b) and 10(1) in refusing to disclose the majority of the content of this submission on the basis of exemptions that were

not engaged. The Commissioner also finds that the public authority failed to comply with section 17(1)(c) in not providing an adequate explanation for why the exemptions provided by sections 29(1)(a), 29(1)(b) and 35(1)(a) were engaged.

## Steps Required

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

- disclose to the complainant submission 11, aside from the content of the fourth paragraph of this document .

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

## Failure to comply

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59. 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

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

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

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

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

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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

62. 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 15<sup>th</sup> day of December 2009**

**Signed .....**

**Lisa Adshead  
Senior FOI Policy Manager**

**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 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 29**

Section 29(1) provides that –

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

- (a) the economic interests of the United Kingdom or of any part of the United Kingdom, or
- (b) the financial interests of any administration in the United Kingdom, as defined by section 28(2).”

## **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.”

## **Section 42**

Section 42(1) provides that –

“Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.”