

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 1 September 2010**

**Public Authority:** Financial Services Authority  
**Address:** 25 The North Colonnade  
Canary Wharf  
London  
E14 5HS

### Summary

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The complainant made a freedom of information request to the public authority for information it held in relation to concerns it had about the management of the Leeds City Credit Union. The public authority refused the request under section 31 (Law Enforcement); section 40 (Personal information); section 43 (Commercial Interests) and section 44 (Prohibitions on disclosure). The public authority had argued that section 44 applied to all of the requested information by virtue of the statutory bar on disclosure within section 348 of the Financial Services and Markets Act 2000. However, the Commissioner found that section 44 was only partially engaged and so went on to consider the other exemptions in respect of the remainder of the information. The Commissioner found that section 31 was not engaged; that section 43 was engaged for most of the information withheld under that exemption and that the public interest in maintaining the exemption outweighed the public interest in disclosure; and that section 40 was not engaged. Since the Commissioner decided that some of the information should have been disclosed he found the public authority in breach of section 1(1)(b) (General right of access) and section 10 (Time for compliance). The Commissioner now requires the public authority to make this information available to the complainant within 35 calendar days of this notice.

## 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 had previously made requests to the public authority for information it held in relation to its concerns about the management of the Leeds City Credit Union. The public authority had refused the requests under section 12(1) of the Act on the grounds that the cost of complying with the request would exceed the appropriate limit of £450. The complainant disagreed with the public authority's application of section 12 and later chose to raise this matter with the Commissioner. However the complainant also took the opportunity to make a separate refined request which is the subject of this decision notice.
3. The refined request was for information the public authority held in relation to its concerns about the management of the Leeds City Credit Union for the 12 month period preceding the date of the request (24 August 2009).
4. The public authority responded to the request on 22 September 2009. When responding to the earlier requests the public authority had asked the complainant to clarify what he meant by 'concerns about the management'. In response the complainant had offered the following clarification which the public authority also took into account when interpreting the complainant's refined request:

'...regarding "concerns", this would include any information relating to concerns that LCCU's management was not operating according to established and accepted rules.'

'Concerns about management covers how the management of LCCU was operating. You have to have individuals making up that management and in that sense the two are indivisible. Any individual manager can have a substantial impact on the overall management of any organisation. So, management refers to any actions or inactions either individually or corporately or a combination of the two which make up "management" and reflect upon the management of LCCU.'

In a practical sense, I would think this involves either actions or inactions, individually and/or corporately, of senior executives and the board of directors.'

5. The public authority now confirmed that it held information falling within the scope of the request but that the absolute exemptions in sections 21, 40 and 44 applied. Section 21 provides for an exemption for information accessible by other means and the public authority confirmed that details of how it supervises firms and the operating framework that is used to identify the main risks to its statutory objectives could be found on its website. The complainant was provided with internet addresses where this information could be found.
6. It also said that to the extent that it held any information that contains personal data about an individual, the exemption in section 40(2) of the Act would apply. The public authority explained that this exemption was being applied because disclosure of the personal data would breach the first data protection principle which requires that data be processed fairly and lawfully.
7. Section 44 provides for an exemption where information is exempt under any other law or enactment. The public authority explained that this exemption applied by virtue of the statutory prohibition in section 348 of the Financial Services and Markets Act 2000 ("the FSMA") which restricts the disclosure of confidential information it receives.
8. Finally, the public authority said that the qualified exemptions in sections 31 and 43 were also believed to apply to some of the requested information. It explained that section 31 applied because disclosure would, or would be likely to, prejudice the exercise of its functions for the purposes of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise. As regards section 43, it said that disclosure of the information would, or would be likely to, prejudice the commercial interests of a person. It went on to say that for section 31 and 43 it had not yet reached a decision on the balance of the public interest and, in accordance with section 10(3) of the Act, it needed to extend the deadline for responding to the request beyond 20 working days. The public authority advised the complainant that it would aim to respond to the request in full by 20 October 2009.
9. On 20 October 2009 the public authority contacted the complainant with details of the outcome of the public interest test. The public authority explained in more detail why the exemptions applied and outlined the factors it had considered (both in favour and against disclosure) when balancing the public interest test. It now said that it

had decided that for each exemption the public interest in maintaining that exemption outweighed the public interest in disclosure. In addition, it directed the complainant to its website for further information on guidance and rule requirements regarding credit unions.

10. On 21 October 2009 the complainant wrote to the public authority to ask that it carry out an internal review of its handling of his request. In doing so the complainant presented his arguments as to why the exemptions relied on by the public authority did not apply to the information he requested.
11. The public authority presented the findings of its internal review on 26 November 2009 at which point it upheld the decision to refuse the request. It now further explained why each exemption applied and elaborated on its reasons for concluding that the public interest in maintaining each qualified exemption outweighed the public interest in disclosure.

## **The Investigation**

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### **Scope of the case**

12. On 30 November 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the public authority's decision to refuse his request under the exemptions in sections 31, 40, 43 and 44. In particular the complainant argued that much of the requested information could no longer be considered confidential because management failings at the Leeds City Credit Union were well known and in the public domain.
13. The complainant did not refer to the public authority's application of section 21 in his request for internal review or in his submissions to the Commissioner. In any event, it appears that the information to which the public authority applied section 21 would not fall within the scope of the request since it appears to deal with how the public authority supervises firms in general and does not deal with the Credit Union specifically. Therefore the Commissioner has not considered the application of section 21 in this decision notice.

### **Chronology**

13. On 21 January 2010 the Commissioner wrote to the public authority with details of the complaint and asked it to provide him with copies of

the requested information, clearly marked to show where any exemptions were being applied. The Commissioner also asked a number of questions on the public authority's application of the exemptions, starting with section 44.

14. The statutory prohibition being relied on by the public authority is section 348 of the FSMA which prohibits the disclosure of confidential information received by the public authority. Confidential information is defined in that legislation as information that relates to the business affairs of any other person which was received for the purposes of, or in the discharge of, any functions of the public authority. The Commissioner now asked the public authority to confirm which function it was discharging in relation to the receipt of this information. The Commissioner noted that under the FSMA information could not be considered confidential if it had been made available to the public in circumstances which are not precluded by this statutory prohibition. The complainant had specifically referred the Commissioner to a report of Leeds City Council which referred to communications with the public authority on issues surrounding the Leeds City Credit Union and the Commissioner invited the public authority's comments on this point.
15. As regards section 31 the Commissioner said that it was his understanding that the specific exemption being relied on was section 31(1)(g) which, when read with section 31(2)(c), provides that information is exempt if its disclosure would or would be likely to prejudice the exercise of a public authority's functions for the purposes of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or arise. The Commissioner asked the public authority to confirm if it was currently undertaking, or anticipated undertaking, any regulatory action in respect of the Credit Union.
16. The public authority had applied section 43 on the grounds that disclosure would, or would be likely to, prejudice the commercial interests of the Credit Union. The Commissioner noted that a number of alleged problems regarding the management of the Credit Union had already entered the public domain and therefore it could be argued that any prejudice to the commercial interests of the Credit Union had already been caused. The Commissioner asked for the public authority's comments on this point.
17. The public authority responded to the Commissioner on 31 March 2010 enclosing copies of the requested information. It now said that it believed that section 44 could be applied to all of the requested information. However, in the event that the Commissioner decided that section 44 did not apply to any or all of the information, the public

authority provided details of where the other exemptions were believed to apply. It responded to the Commissioner's questions and provided further details on the application of the exemptions.

## Findings of fact

18. Credit Unions are financial co-operatives owned and controlled by their members. A Credit Union has a 'common bond' which determines who can join it. The common bond may be for people living or working in the same area, people working for the same employer or people who belong to the same association, such as a church or trade union.<sup>1</sup> The Commissioner understands that Credit Unions exist, in part, to provide credit for members of the community who may find it difficult to obtain credit from high street banks and other mainstream lenders.
19. The Credit Union started life in 1987 as the Leeds City Council Employees' Credit Union serving a common bond of current and retired employees. It changed its name to the Leeds City Credit Union Ltd in 1996 and in 2001 it expanded its common bond to include everyone who lives or works in the Leeds Metropolitan District.
20. The Credit Union is regulated by the public authority which is also responsible for monitoring its performance.
21. Since 2007 the Yorkshire Post newspaper has published a series of articles alleging serious mismanagement at the Credit Union.
22. In March 2009 it was alleged that the Credit Union was seeking £4 million in extra capital amid fears that it was about to collapse<sup>2</sup>.
23. In April 2009 Leeds City Council has produced a report relating to the Credit Union in which a proposal to grant a loan to the Credit Union was discussed. The report is in the public domain and details some of the Credit Union's problems and refers to communications with the FSA.<sup>3</sup>
24. Principle 11 (relations with regulators) of the Public authority's Principles for Businesses states:

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<sup>1</sup> Source: <http://www.abcul.org/page/about/intro.cfm>

<sup>2</sup> <http://www.timesonline.co.uk/tol/money/savings/article5887899.ece>

<sup>3</sup> [http://democracy.leeds.gov.uk/Published/IssueDocs/3/2/9/6/100036923/DE00035319/\\$Version2LeedsCreditUnionLMTReportTP.doc.pdf](http://democracy.leeds.gov.uk/Published/IssueDocs/3/2/9/6/100036923/DE00035319/$Version2LeedsCreditUnionLMTReportTP.doc.pdf)

'A firm must deal with its regulators in an open and co-operative way, and must tell the FSA promptly anything relating to the firm of which the FSA would reasonably expect prompt notice.'<sup>4</sup>

## Analysis

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25. A full text of the relevant statutory provisions referred to in this section is contained within the legal annex.

### Substantive procedural matters

#### Scope of the request

26. The public authority has provided the Commissioner with a bundle of documents which contain the information falling within the scope of the request. However, the public authority has indicated that a significant amount of information in the documents is not within scope. It explained that the complainant's request had asked for information relating to the FSA's concerns about the Board and senior management of the Credit Union – either collectively or individually. Therefore it had not, the public authority explained, considered relevant to the request information on other wider issues.
27. Whilst the public authority appears to have taken a very restrictive approach to what information is in the scope of the request this approach is largely in accordance with the Act. The public authority has the responsibility of overseeing and supervising the running of the Credit Union as a whole and therefore it is understandable that not all the information the public authority holds will relate to what it is a fairly specific issue. Having reviewed the information the Commissioner is satisfied that a certain amount of information contained within the documents does not fall within the scope of the request.
28. However, the public authority has also withheld the titles and sub-headings within certain documents. It is the Commissioner's view that where information contained within a document falls within the scope of the request then the title of that document and any other sub-headings should also correctly be seen as being intrinsically part of the information falling within the scope of the request. Without this extra detail an applicant is unable to fully understand the context in which the information is held. Elsewhere, the Commissioner has found that a

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<sup>4</sup> <http://www.fsa.gov.uk/pubs/policy/cp13rp.pdf>

small amount of information has been incorrectly judged to fall outside of the scope of the request. Specifically, this is where part of a sentence has been judged to fall within the scope of the request and another part of the sentence request has been judged to fall outside of the request. The Commissioner has provided the public authority with an annotated version of the withheld information to show where he considers information should be withheld and where information should be disclosed.

## Exemptions

### Section 44 – Prohibitions on disclosure

29. The public authority has provided the Commissioner with full copies of the information falling within the scope of the request which has been annotated to show where the different exemptions are believed to apply. The annotations made by the public authority indicate that it initially only applied the section 44 exemption to specific parts of the information. However, when the public authority provided its submission to the Commissioner, it said that it now believed that section 44 could be applied to all of the requested information and therefore the Commissioner has, in the first instance, gone on to consider the extent to which section 44 is engaged with respect to all of the requested information. Section 44(1)(a) provides that information is exempt if disclosure is prohibited under any other law or enactment. Section 44 confers absolute exemption from the Act.
30. In this case the public authority has said that the relevant statutory prohibition is section 348 of the FSMA which provides that:
  - (1) Confidential information must not be disclosed by a primary recipient, or by any person obtaining the information directly or indirectly from a primary recipient, without the consent of—
    - (a) the person from whom the primary recipient obtained the information; and
    - (b) if different, the person to whom it relates.
  - (2) In this Part “confidential information” means information which—
    - (a) relates to the business or other affairs of any person;
    - (b) was received by the primary recipient for the purposes of, or in the discharge of, any functions of the Authority, the competent authority for the purposes of Part VI or the Secretary of State under any provision made by or under this Act; and



(c) is not prevented from being confidential information by subsection (4).

31. First of all, the Commissioner would point out that the Credit Union has not consented to disclosure of the requested information. The public authority has explained that during the course of carrying out the internal review it approached the Credit Union to seek its consent but that no consent was received.
32. The Commissioner has gone on to consider whether the information is confidential within the meaning of section 348(2) of the FSMA. The first condition is that it relates to the business or other affairs of any person. 'Person' has the same meaning as in the Interpretation Act 1978 which states that this should be interpreted as 'a body of persons corporate or unincorporated'. The Commissioner has reviewed the withheld information and is satisfied that it all relates to the Credit Union and therefore this element of the test is met.
33. However, for the statutory prohibition to apply the information must also have been 'received' for the purposes of, or in the discharge of, the functions of the public authority. The Commissioner asked the public authority to confirm which functions it was discharging when it received the requested information. In response the public authority explained that it has a wide range of rule-making, investigatory and enforcement powers in order to meet its four statutory objectives. In this case it said that its authority to supervise Credit Unions was the relevant function that was being discharged.
34. The public authority has argued that section 44 has been applied to information it has received from the Credit Union but has also been applied to some information that is 'embedded' within documents generated by the public authority itself. The public authority has referred the Commissioner to a previous decision notice in which he had considered the extent to which information can be said to have been received by, or in that case 'furnished to', a public authority.<sup>5</sup> That case had involved a request to the Civil Aviation Authority for information relating to inspection audits it had carried out at an airport it regulated. The Civil Aviation Authority had refused to disclose the information by relying on section 44 of the Act by virtue of section 23(1) of the Civil Aviation Act 1982 and the Commissioner had accepted that the exemption was engaged. The public authority now suggested that there was a close similarity in the circumstances between the two cases and therefore invited the Commissioner to

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<sup>5</sup> [http://www.ico.gov.uk/upload/documents/decisionnotices/2009/fs\\_50205237.pdf](http://www.ico.gov.uk/upload/documents/decisionnotices/2009/fs_50205237.pdf)

adopt the approach taken in the Civil Aviation Authority case which it said was endorsed by the Information Tribunal.<sup>6</sup>

35. The Commissioner has considered his decision in the case referred to by the public authority and the comments of the Tribunal in the subsequent appeal. Whilst similar statutory prohibitions have been applied in both cases the Commissioner is of the opinion that the nature of the withheld information and the circumstances of the case are different and that therefore he is not bound by his decision in the previous case.

36. In deciding what information is covered by the statutory bar, the Commissioner believes that the withheld information can be separated into the following three categories:

- Information provided to the public authority from any other person, in documents or conversations;
- Factual observations; and
- The public authority's discussions, deductions, opinions, commentary, assessment or recommendations based on the information above.

37. The Commissioner's view is that the information in the third category will not necessarily be covered by the statutory prohibition. The Commissioner finds support for this approach in a decision of the High Court where it had considered the extent to which information is covered by section 348 of the FSMA.<sup>7</sup> It referred to an earlier decision in *Melton Medes Limited v SIB* [1995] Ch 137 and agreed with the decision in that case, that:

'Disclosure of what is a mere possible deduction from information is not as it seems to me, at least in this context, disclosure of the information itself'.

38. Therefore, the Commissioner's view is that the statutory prohibition only covers the disclosure of the actual information received. Opinions, deductions or extrapolations from it will not necessarily reflect the content of the actual information received. The disclosure must actually reveal that information, not just hint at it.

39. The Commissioner has reviewed the withheld information and has found that a certain amount of information was indeed information provided by the Credit Union and received by the public authority. This

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<sup>6</sup> *Civil Aviation Authority v Information Commissioner* [EA/2009/0033]

<sup>7</sup> *Financial Services Authority v The Information Commissioner* [2009] EWHC 1548 (Admin)

is in the form of information physically sent to the public authority such as letters and other documents but also includes information which has been generated by the public authority itself but which directly refers to information either physically received from the public authority or received in the course of conversations and meetings. The Commissioner would also stress at this point that he considers that the names of individuals within the Credit Union which are featured in the documents constitute 'information received'. This is because the public authority could have only discovered these details as a result of the public authority directly providing the information or through directly observing this whilst visiting the Credit Union.

40. However, the Commissioner has also found that a certain amount of information would fall within the third category of information. This includes the public authority's conclusions on the management problems at the public authority and its plans to address them, as well as internal discussions within the public authority on the progress of its supervision of the Credit Union. The Commissioner has decided that information of this kind was not received by the public authority and therefore is not covered by the statutory bar.
41. In the case of some of the redactions made by the public authority, the information fell within several of the categories described above, for example in notes of meetings in which both the public authority and the Credit Union contribute. That is to say that the public authority's conclusions, observations, opinions or recommendations could not have been disclosed without also disclosing the information it received or else trying to separate out the information would render any disclosable information meaningless by removing it from the wider context. Where the information is genuinely 'embedded' or 'inextricably linked' in this way the Commissioner has upheld the use of the statutory bar and the section 44 exemption.
42. Even if the information has been received by the public authority, the statutory prohibition will not apply if section 348(4) of the FSMA otherwise prevents the information from being confidential. Information will not be confidential if it has already been made available to the public in circumstances in which disclosure is not precluded by section 348, or if it is the form of a summary which would not reveal the identity of any person.
43. The Commissioner had asked the public authority to comment on the complainant's suggestion that the information was effectively already in the public domain due to reports in the local press on the Credit Union's alleged management problems and in light of the report produced by Leeds City Council. In response the public authority said

that it considered that none of the requested information had been made public. It argued that the fact that a 'high level' issue was in the public domain did not mean that all information underlying that issue was public or should as a result be disclosed. The Commissioner agrees with the public authority on this point and would add that whilst some of the issues regarding the Credit Union have featured in the press, it does not mean that all of the information held by the public authority is known more widely and so confidence will still apply to that information. Having reviewed the information the Commissioner is satisfied that none of the withheld information can be said to have already been placed in the public domain. The Commissioner would also make the point that it would not be possible to release the information in the form of a summary, in accordance with section 348(4), as it would already be known to which person the information relates, i.e. the Credit Union.

44. The Commissioner has highlighted where he considers information is not covered by the section 44 exemption on his annotated version of the documents. The Commissioner will provide this to the public authority only. For a significant amount of information section 44 is the only exemption that has been applied. Therefore in respect of the information not found to be exempt under section 44 and to which no other exemption was applied, the Commissioner requires this to be disclosed to the complainant. For other information section 31 and/or section 43 have also been applied and so the Commissioner will now go on to consider whether any of this information is covered by the other exemptions cited by the public authority.

### **Section 31 – Law enforcement**

45. First of all, the Commissioner wishes to make a brief observation about the manner in which the public authority has sought to apply the different exemptions to the information. In many instances the public authority has applied different exemptions within a single sentence or small paragraph, applying different exemptions to withhold individual words. Given that the public authority has sought to withhold all of the information falling within the scope of the request, the Commissioner considers that this approach, in the circumstances of this case, is too stringent. The effect of this is that when the information, be it a small paragraph, a sentence or even a couple of words, is viewed in isolation, it is very difficult for the Commissioner to assess what the effect of disclosure would be when the exemptions have been applied so narrowly. The Commissioner considers that it would have been more appropriate for the public authority to have applied the exemptions on a more coherent basis. When reviewing the withheld information the Commissioner has therefore taken a pragmatic approach and has not

always been guided by the public authority's annotations but has at times applied the exemptions where he considers they are engaged, based on the arguments advanced by the public authority, set out below. For example, where the public authority has applied section 31 or section 43 to part of a sentence or small paragraph, and the Commissioner is satisfied that it is not already exempt under section 44, he has gone on to consider whether the exemptions apply to any of the sentence or small paragraph even if the public authority has not explicitly sought to apply the exemption.

46. The public authority is applying section 31(1)(g) of the Act which, read with section 31(2)(c), provides that information is exempt if its disclosure would or would be likely to prejudice the exercise of a public authority's functions for the purposes of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or arise.
47. The public authority has informed the Commissioner that informal co-operation is an important part of the way it supervises firms. For the process of supervision to work effectively and efficiently there needs to be, it argues, ' an environment created in which firms feel able to provide information to the [public authority] and accept remedial action without the need for a full legal process to be followed'. It argues that the exemption is engaged because disclosure of discussions it has had with a regulated firm would be likely to make firms less likely to engage with it and provide it with information. It suggests that the result of this is that it would not receive information and co-operation on a voluntary basis and this would make it that much harder for it to carry out its functions effectively and could lead to it having to take formal action where this would not otherwise have been necessary.
48. The public authority has not explicitly said if disclosure would, OR would be likely to, prejudice the exercise of its functions. In light of this the Commissioner considers it appropriate to apply the lesser test, that is to say the exemption will be engaged where disclosure would be likely to prejudice the exercise of its functions. This approach has found support in the Information Tribunal when it stated:

"We consider that...in the absence of designation as to level of prejudice that the lower threshold of prejudice applies, unless there is other clear evidence that it should be at the higher level."<sup>8</sup>

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<sup>8</sup> Ian Edward McIntyre v Information Commissioner and The Ministry of Defence [EA/2007/0068], para. 45.

49. The Information Tribunal has also considered the meaning of 'would be likely to prejudice' and found that for this to apply:

"the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk."<sup>9</sup>

50. This in turn follows the judgement of Mr Justice Munby in the High Court in which the view was expressed that:

"Likely connotes a degree of probability that there is a very significant and weighty chance of prejudice to the identified public interests. The degree of risk must be such that there 'may very well' be prejudice to those interests, even if the risk falls short of being more probable than not."<sup>10</sup>

51. In considering the likelihood of prejudice occurring the Commissioner has first considered whether disclosure would be likely, as the public authority suggests, to impact on the voluntary supply of information from the Credit Union and other firms it regulates. In reaching a decision the Commissioner has considered the following factors:

- The content of the information,
- The timing of the request
- Incentives that encourage regulated firms to engage with the public authority, and
- The views of the credit union.

52. In this case, the public authority has explained that the need for confidentiality is especially important because it continues to closely supervise the Credit Union and that this process is a continuing one. Disclosure in these circumstances would, in the view of the Commissioner, be more likely to result in an adverse reaction from the Credit Union and a reluctance to volunteer information because the Credit Union would have a greater expectation that the information it provided would not be released whilst it was still the subject of such close supervision.

53. The Commissioner is also mindful of the fact that the information, for the most part, reveals detailed information about the corporate governance of the Credit Union and it is not unreasonable for the Credit Union to expect that sensitive information of this nature would remain confidential and that it would be reluctant to volunteer

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<sup>9</sup> John Connor Press Associates Ltd v Information Commissioner [EA/2005/0005], para. 15.

<sup>10</sup> R (on the application of Lord) v Secretary of State for the Home Office [2003] EWHC 2073 Admin

information of this kind in future if it was disclosed. Indeed the Commissioner notes that the Credit Union did not give its consent to disclosure when approached by the public authority in response to the complainant's request.

54. Having said this, the Commissioner is also aware that it is in the interests of the Credit Union, and other regulated firms, to engage with the public authority and to co-operate with its investigations. The Commissioner is mindful of the findings of the Information Tribunal in the case of *Financial Services Authority v Information Commissioner* in which it considered whether disclosing information about the public authority's investigations would affect the willingness of regulated firms to engage and co-operate with the public authority on a voluntary basis. It concluded that the risk of this occurring was slight and not sufficiently strong to engage the exemption. It highlighted the following reasons for reaching this view which the Commissioner also considers to be relevant in this case:

'The incentives on firms to supply information about themselves and generally to co-operate with the FSA, namely (a) principle 11 of the FSA's Principles for Business which requires them to do so and (b) their desire to mitigate any steps taken against them and avoid formal enforcement action, would have remained in place even if disclosure of the disputed material in this particular case would have led them to believe that the FSA's views based on such information might one day possibly have to be disclosed pursuant to the request under the Act.

'There is always a risk of firms (of which they must be aware) that, if they supply information about themselves voluntarily, not only the FSA's views but the information itself will ultimately come to be published pursuant to section 391(4) of the FSMA.'<sup>11</sup>

55. Having reviewed the information, the Commissioner would emphasise that the Credit Union itself benefits from the involvement of the public authority, its experience and guidance, and that, on the basis of this information, it would be in its own interests to ensure its future co-operation with its regulator. The Commissioner would also stress that because of the existence of the statutory bar under section 348 of the FSMA, regulated firms would be aware that any information which is genuinely provided to the public authority, as outlined above, will be exempt under section 44 of the Act and so this should provide reassurance that information voluntarily provided, and thus received by the public authority, will not be disclosed.

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<sup>11</sup> *Financial Services Authority v Information Commissioner* [EA/2008/0061], para. 24.

56. The Commissioner acknowledges that disclosure would not necessarily be welcomed by the Credit Union and indeed may lead to an unfavourable reaction on their part. However, given the incentives to the Credit Union in co-operating with the public authority, he is unconvinced that this unfavourable reaction would be likely to lead to an unwillingness on the part of the Credit Union to engage or share information with the public authority. The Commissioner is even less convinced that disclosure of information related to the Credit Union would be likely to have any wider impact on the willingness of other firms to engage with the public authority on a voluntary basis.
57. The public authority had also suggested in its refusal notice that the exemption may also be engaged because disclosure would be likely to disclose details of the way in which it 'approaches its supervision and risk assessment of a particular firm, and the specific issues and priorities that would have been discussed and considered prior to, and as part of, any risk mitigation programme'. It suggests that the likely effect of this would be to provide firms with 'an insight, or what they perceive to be an insight, into the FSA's regulatory and supervisory priorities'. The public authority argues that firms in the same sector as the Credit Union may then conclude what the public authority's priorities are or likewise, may conclude that their priorities lie elsewhere. This may lead firms to take steps designed to frustrate its regulatory and supervisory processes.
58. Having reviewed the information withheld under this exemption the Commissioner is not satisfied that disclosure would be likely to have this effect and notes that the public authority did not repeat this argument in its internal review or in its submissions to the Commissioner. In the Commissioner's view other firms in this sector would reasonably expect the public authority to take action in the circumstances of this case and it is difficult to see how they would be able to use the information specific to the Credit Union's case to frustrate any regulatory and supervisory work it may undertake in future.
59. The Commissioner also found that some of the information withheld under this exemption is very innocuous indeed and reveals little or nothing about the issues affecting the Credit Union or the public authority's response. The Commissioner does not accept that such information would be likely to prejudice the functions of the public authority if disclosed.
60. For the reasons given above the Commissioner has decided that section 31(1)(g) is not engaged.



**Section 43(2) – Commercial Interests**

61. Section 43(2) provides that information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person. In this case it is the Credit Union whose commercial interests would, in the opinion of the public authority, be likely to be prejudiced.
62. The Commissioner had asked the public authority for its comments on how disclosure would prejudice the Credit Union's commercial interests in light of the fact that many of its alleged problems were already in the public domain (specifically the claim that it had had to seek £4 million of extra funding amid near financial collapse) and that therefore it could be argued that any prejudice to its commercial interests had already been caused. In response the public authority argued that disclosure would prejudice the commercial interests of the Credit Union because it could generate further debate and comment which in turn would be likely to lead to unfair or unjustified speculation which could affect its reputation in the area in which it operates and so its commercial interests.
63. The public authority also suggested that disclosure of the requested information could be seen as a 'public censure' of the Credit Union by the public authority, presumably to the detriment of its commercial interests.
64. The Commissioner has considered the likelihood of the prejudice outlined by the public authority occurring, bearing in mind that the chance of prejudice should be, as noted at paragraph 47, 'real and significant' if the exemption is to be engaged. The Commissioner has first looked at the nature of the information withheld under the exemption and notes that it includes detailed information on the corporate governance of the public authority. The Commissioner accepts that for the most part information of this kind would be likely to fuel further speculation and adverse comment about the Credit Union which would serve to undermine confidence in the Credit Union and consequently harm its commercial interests.
65. On the other hand, the complainant has argued that the Credit Union's problems are already well known and that therefore any prejudice to the Credit Union's commercial interests has already occurred. The Commissioner considered this point but is of the view that just because some of the issues affecting the Credit Union may be in the public domain, in the broadest sense, it does not necessarily follow that no further prejudice can be caused to the commercial interests of the Credit Union. Indeed the Commissioner understands that the Credit Union was at the time of the request taking remedial action to address

some of the public authority's concerns and that therefore any further adverse speculation at that stage would have been likely to prejudice the Credit Union's attempts to improve at a sensitive time when it was trying to rebuild the confidence of its stakeholders. The Commissioner also notes that the public authority sought the opinion of the Credit Union when applying the exemption and its opinion was that disclosure would harm its commercial interests.

66. For these reasons the Commissioner has decided that for most of the information to which section 43(2) has been applied disclosure would be likely to prejudice the commercial interests of the Credit Union and therefore has accepted that the exemption is engaged. However, the Commissioner also found that a small amount of information did not raise the above concerns to the same extent. This is because the information was relatively innocuous when viewed in isolation or else focuses on the supervisory role of the public authority rather than information which is commercially sensitive to the Credit Union. The Commissioner is not convinced that this information would lead to any undue speculation or adverse comment about the position of the Credit Union.

### **Public interest test**

67. Section 43(2) is a qualified exemption and therefore is subject to a public interest test under section 2(2)(b) of the Act. Section 2(2)(b) provides that where a qualified exemption applies, information shall only be withheld if in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosure.

### **Public interest arguments in favour of disclosure**

68. The complainant had argued that there is a public interest in knowing how the public authority regulated the Credit Union. He alleges that as far back as 2003 there were known to be concerns about the management of the Credit Union and that therefore it is in the public interest to know why the public authority allowed the Credit Union to reach a position of near financial collapse. The complainant argues that the public interest in accountability and greater transparency is stronger because in all this time the public authority has not made any public comment to explain what it was doing and what action it took to prevent this situation arising. The complainant also contends that since the Credit Union received £4 million from public funds in order to 'stave off financial collapse' there is a greater public interest in disclosure.

69. The public authority has itself acknowledged that disclosure would serve the public interest to the extent that it would aid public understanding of any issues and risks that have been identified and how these may impact on the Credit Union's ability to carry out its commercial activities. This would, it suggests, 'further the understanding of the way negotiations are carried out on any aspects concerning the way a firm undertakes and runs its business, and the [Credit Union] in particular, and on the mitigation of any risks that are identified as being associated with this'.

### **Public interest arguments in favour of maintaining the exemption**

70. The public authority argues that disclosure of its 'free and frank record of commercially sensitive issues and risks that have been identified as part of its supervisory and regulatory responsibilities' would be covered by the statutory bar under section 348 of the FSMA. Any commercially sensitive information not covered by the statutory bar could, it argues, be misleading or likely to be misconstrued without a detailed explanation of the risks and issues and how these are being addressed and rectified, provided by the information covered by the statutory bar. It suggests that this could lead consumers and others to draw the wrong conclusions about the Credit Union which would in turn be likely to harm its reputation and thereby its products and services, so harming the commercial interests and financial position of the Credit Union and its stakeholders.

71. The public authority also argues that disclosure of the information without allowing the Credit Union the statutory protection provided by the FSMA could be construed as a public censure. It explained that if any regulatory action is taken against a firm the public are informed of the final outcome and 'Final Notices' are published. It referred to a decision of the Information Tribunal in which it had considered the effect this policy has in relation to the public interest considerations for section 43:

'It is apparent from these provisions that it is the policy of the legislation that the views of the FSA in relation to the conduct of those it regulates should remain private unless and until a final decision to take formal enforcement action and that even then it should not publish information if to do so would be unfair.'<sup>12</sup>

72. In favour of maintaining the exemption, the Commissioner would also stress the importance of Credit Unions in providing sections of the community with access to financial institutions who would otherwise

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<sup>12</sup> Financial Services Authority v Information Commissioner [EA/2008/0061], para. 11.

find it difficult to obtain credit from High Street banks. The Commissioner considers that there is a public interest in maintaining public confidence in this Credit Union which otherwise could risk denying access to financial institutions.

### **Balance of the public interest arguments**

73. The Commissioner accepts that there is a public interest in disclosure. Clearly the events surrounding the Credit Union have generated a lot of speculation and uncertainty. At the same time, there appears to have been little official explanation for what was going on and the role played by the public authority. Therefore the Commissioner has given the arguments in favour of greater transparency and accountability particular weight both in general and on the particular circumstances of the case. However, he would stress that in his opinion the main public interest lies in knowing how the public authority was involved in regulating the Credit Union and what steps it took to address any problems it encountered. The Credit Union is not a public authority and there is less public interest in knowing exactly what was going on within the Credit Union during the period covered by the requested information. Of course, it is not always possible to release information which focuses on actions taken by the public authority without also releasing details of any problems within the Credit Union. However, where possible, the Commissioner has been guided by this principle when balancing the public interest in each instance that section 43 has been applied.
74. As noted at paragraph 69, the public authority has referred the Commissioner to a decision of the Information Tribunal which had appeared to suggest that the statutory protection offered by the FSMA is evidence of the public interest in maintaining the section 43 exemption. The Commissioner rejects this argument. It is only the prejudice inherent in an exemption that can be considered when balancing the public interest test. Only public interest factors specifically associated with this particular exemption should be considered, i.e. why prejudice to the commercial interests of the public authority would not be in the public interest.
75. The public authority has also argued that disclosure of the information could be misconstrued by the public if it was disclosed without the wider context provided by the information covered by the statutory bar. The Commissioner has not given this argument much weight because it would be open to either the public authority or the Credit Union to make a statement or to take any other steps to put the information that was disclosed in context if it felt there was a risk of it being misconstrued.

76. Having said that, the Commissioner does accept that disclosure would be likely to prejudice the commercial interests of the Credit Union by fuelling speculation about previous problems within the Credit Union which both it and the public authority had subsequently taken steps to address. The Credit Union provides a valuable service to the community in which it operates and the Commissioner considers that the public interest in maintaining public confidence in the Credit Union is strong. This is especially important in this case given the timing of the complainant's request which was made at a time when the Credit Union was in the process of taking remedial action to address the public authority's concerns and to move towards a more stable financial footing. This was a critical point and any loss of confidence amongst its members would have been likely to have a more severe impact than would have been the case had the request been submitted at a later point.
77. The Commissioner therefore accepts that there is a public interest in disclosure but finds that the public interest in maintaining the exemption, and thereby preventing a loss of confidence in the Credit Union, is stronger. Thus the Commissioner has decided that in all the circumstances of the case the public interest in maintaining the section 43(2) exemption outweighs the public interest in disclosure.

#### **Section 40 – Personal information**

78. Section 40 has been used to withhold the names of individuals within both the public authority and the Credit Union. The Commissioner has already accepted that the names of individuals within the Credit Union constitute 'information received' and are therefore covered by the statutory prohibition and the section 44 exemption. It only remains for the Commissioner to consider if the names of the public authority's employees who feature in the information are exempt on the basis of section 40.
79. In places the public authority has annotated the information to indicate where section 40 is believed to apply. Elsewhere the public authority has not explicitly cited section 40 to withhold names, presumably because it is confident that the main body of information in which the name of an individual is contained, is exempt under another exemption. Whilst the Commissioner will not usually proactively apply an exemption, on this occasion, mindful of his duties under the Data Protection Act 1998 (DPA 1998), he has considered whether section 40 would apply to any of the names of individuals featured in the information.

80. The public authority has explained that it is relying on section 40(2) of the Act which provides that information shall not be disclosed if it constitutes the personal data of someone other than the applicant and if its disclosure would satisfy one of two conditions under the DPA 1998. In this case the relevant condition is the first condition which is that disclosure would contravene any of the data protection principles. The public authority has argued that disclosure would prejudice the first data protection principle which requires that data be processed fairly and lawfully.

#### Is the information personal data?

81. In deciding whether the exemption applies it is first necessary to consider whether the withheld information (the names of individuals at the public authority) constitutes personal data. Personal data is defined in the DPA 1998 as:

'...data which relate to a living individual who can be identified –  
(a) from those data, or  
(b) from those data and other information which is in the possession of, or is likely to come into the possession of the data controller,

And includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;'

82. The names of individuals will not always be personal data. A common name like 'John Smith' when viewed in isolation is unlikely to allow for that individual to be identified. Much depends on the context of the information. However, in this case the Commissioner is satisfied that the information is personal data. This is because the names of the individuals when combined with the other withheld information and the fact that it would be known that the individuals are staff within the public authority, would allow the individual to be identified.

#### The first data protection principle

83. Having satisfied himself that the information is personal data the Commissioner has gone on to consider whether disclosure would prejudice the first data protection principle. The first data protection principle states that:

'1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless-  
(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in schedule 3 is met.'

84. The public authority has argued that disclosure would prejudice the first data protection principle because it would not be fair to the individuals concerned. This is because the individuals had not given their consent for the information to be disclosed and 'taking into account the regulatory framework in which they operate or operated', would have a reasonable expectation that the information would not be disclosed, except in very limited circumstances. It also suggested that the release of the information may be detrimental to the individuals concerned, but did not explain why.
85. In considering the fairness of disclosure the Commissioner has taken into account the following factors:
- The expectations of the individuals
  - The possible consequences of disclosure
  - Nature and content of the information
86. The public authority has suggested that disclosure of the names of the individuals featured in the requested information would be unfair as they would have no expectation that their names would be disclosed. When considering the expectation of the public authority's employees the Commissioner has borne in mind the fact that the information relates to their professional life. The Commissioner considers that a distinction can be drawn between information that relates to an individual's professional life and information that relates to their private life. The Commissioner finds support for this approach in a case before the Information Tribunal where it found that:
- "...where data subjects carry out public functions, hold elective office or spend public funds they must have the expectation that their public actions will be subject to greater scrutiny than would be the case in respect of their private lives..."<sup>13</sup>
87. Therefore the Commissioner considers that disclosure is more likely to be fair when the information relates to someone's professional life. However, there are other factors to consider in respect of expectations regarding disclosure and in this case the Commissioner has also taken into account the seniority of the individuals.

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<sup>13</sup> The Corporate Officer of the House of Commons v The Information Commissioner and Norman Baker MP [EA/2006/0015 and 0016], para. 78.

88. The complainant was already aware that a certain employee of the public authority was involved in supervising the Credit Union. The complainant said that he was happy for the names of any employees below the level of this person to be withheld. The Commissioner has reviewed the information and has found that the individual referred to by the complainant is a relatively senior member of staff with management responsibility. The Commissioner is of the view that the public authority's employees at this level and above would not have an automatic expectation that information created in the course of their work would never be disclosed.
89. However, in order to ensure that disclosure would not be unfair in the case of the employees at the level of the named individual and above, the Commissioner has considered the possible consequences of disclosure. This is because even if an individual has no expectation that information will remain confidential and is a senior employee, disclosure could still be unfair if it would be likely to have damaging consequences, for instance by causing distress to the individual. The Commissioner has seen no evidence of this and therefore has decided that disclosure of these individuals' names would not be unfair.

#### A schedule 2 condition?

90. Even if disclosure of personal data would be fair and lawful, the first data protection principle also requires that a condition in schedule 2 of the DPA 1998 is met before the information is disclosed. In this case the Commissioner considers that the relevant condition is the 6<sup>th</sup> condition which states that:

'6.-(1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or third parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.'

91. The Commissioner's approach is to consider whether the 6<sup>th</sup> condition is met by way of the following 3 part test which must be satisfied:
- there must be legitimate interests in disclosing the information,
  - the disclosure must be necessary for a legitimate interest of the public and,
  - even where the disclosure is necessary it nevertheless must not cause unwarranted interference (or prejudice) to the rights, freedoms and legitimate interests of the data subject(s).



92. In this case the Commissioner would say that in terms of disclosing the information, the legitimate interests are ensuring accountability for actions taken by the public authority and transparency in how it undertakes its regulatory activities as well as a general public interest in the public authority being as open as possible. The Commissioner is of the view that disclosure of the names of the more senior individuals featured in the requested information is necessary to achieve this aim.
93. Having already established that the processing is indeed fair, the Commissioner is also satisfied that the release of the individuals' names would not cause any unnecessary interference with the rights, freedoms and legitimate interests of the data subjects. The Commissioner is satisfied that the information relates only to those individuals' professional lives and does not intrude on their private lives. Furthermore, there is no evidence to suggest that disclosure would compromise their personal safety or lead to harassment in their working lives.

#### Lawfulness

94. Finally, the Commissioner has considered whether disclosure would be lawful. It is likely that disclosure would not be lawful if it would contravene a statutory prohibition. In this case the obvious statutory prohibition is section 348 of the FSMA. However, the Commissioner has already determined what information is exempt under section 44 and any names featured in information covered by the statutory prohibition will not have to be disclosed. Any names featured in the remaining information are not covered by the statutory prohibition and therefore the Commissioner is satisfied that disclosure would not be unlawful. The Commissioner would also stress that he does not consider there to be any other relevant statutory prohibitions and, given his previous findings on the fairness of disclosure, the Commissioner is also satisfied that disclosure would not contravene any of the articles of the Human Rights Act 1998. Consequently, the Commissioner has decided that disclosure of these names would not breach the first data protection principle and so section 40(2) is not engaged.

#### **Procedural Requirements**

95. In light of his decision that section 31(1)(g) is not engaged and that section 40(2), section 43(2) and section 44 are only partially engaged the Commissioner must record procedural breaches of the Act.
96. By failing to disclose the information which the Commissioner has decided is not exempt the public authority breached section 1(1)(b) of the Act. By failing to disclose this information within 20 working days of

receiving the request the public authority breached section 10(1) of the Act.

## The Decision

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97. 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 public authority dealt with the request in accordance with the Act to the extent that it correctly applied section 44 to some of the requested information.
  - The public authority dealt with the request in accordance with the Act to the extent that it correctly applied section 43(2) to some of the requested information.
98. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- The public authority breached section 1(1)(b) of the Act by incorrectly applying section 44 to some of the requested information.
  - The public authority breached section 1(1)(b) of the Act by incorrectly applying section 31(1)(g) to some of the requested information.
  - The public authority breached section 1(1)(b) of the Act by incorrectly applying section 40(2) to some of the requested information.
  - The public authority breached section 1(1)(b) of the Act by incorrectly applying section 43(2) to some of the requested information.
  - The public authority breached section 10(1) of the Act by failing to disclose some of the requested information within 20 working days of receiving the request.

## **Steps Required**

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99. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- The Commissioner has provided the public authority with annotated copies of the requested information to show what information he considers should be disclosed. The Commissioner requires the public authority to make this information available to the complainant.
  - As noted at paragraph 28, the Commissioner considers that where information within a document falls within the scope of the request, the title of that document should also be seen as falling within the scope of the request. Therefore, where the Commissioner has decided that information within a particular document should be disclosed, he also requires the public authority to release the title of that document and any sub-headings relevant to the withheld information.
100. 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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101. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Right of Appeal

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102. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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

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

**Dated the 1st day of September 2010**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

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

## Legal Annex

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**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 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 21(1)** provides that –

"Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information."

**Section 21(2)** provides that –

"For the purposes of subsection (1)-

(a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and

- (b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment."

**Section 31(1)** provides that –

"Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders,
- (c) the administration of justice,
- (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,
- (e) the operation of the immigration controls,
- (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,
- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),
- (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
- (i) any inquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment."

**Section 31(2)** provides that –

"The purposes referred to in subsection (1)(g) to (i) are-

- (a) the purpose of ascertaining whether any person has failed to comply with the law,
- (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,

- (c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,
- (d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on,
- (e) the purpose of ascertaining the cause of an accident,
- (f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration,
- (g) the purpose of protecting the property of charities from loss or misapplication,
- (h) the purpose of recovering the property of charities,
- (i) the purpose of securing the health, safety and welfare of persons at work, and

**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 40(3)** provides that –

“The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
  - (i) any of the data protection principles, or
  - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.”

- (j) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work."

**Section 43(2)** provides that –

"Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it)."

**Section 44(1)** provides that –

"Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it-

- (a) is prohibited by or under any enactment,
- (b) is incompatible with any Community obligation, or
- (c) would constitute or be punishable as a contempt of court."