

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 29 November 2011

Public Authority: London Borough of Harrow
Address: Civic Centre
Station Road
Harrow
HA1 2XY

Summary

The complainant requested copies of any correspondence between council officers or between council officers and councillors that relate in any way to requests for information that he had made about "the Challenge Panel papers". The council relied on the exemption under section 36(2)(b)(i) and (ii). The Commissioner investigated and found that a small amount of the information was the complainant's own personal data and needed to be considered separately under the Data Protection Act 1998 ("the DPA"). He also found that some of the withheld information was actually exempt under section 42(1) and the public interest favoured maintaining that exemption. In relation to the remaining information, the Commissioner found that section 36(2)(b)(i) and (ii) was engaged but the public interest favoured disclosure of the information. The council is required to disclose this information within 35 days. The Commissioner found breaches of section 1(1)(b), section 10(1) and 17(1).

The Commissioner's Role

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

Background

2. The council explained to the Commissioner that it has used "Budgetary Challenge Panels" since July 2010. They are an important part of the budget-making process. Before publication of the council's draft or final budget, council officers present reports to the various panels. There is

then a process of discussion and debate involving officers and panel members, during which officers are “challenged” on their reports. Following this, the council prepares a draft budget, followed by a final budget. Both the draft and the final budgets are made public. However, the reports prepared for the Budgetary Challenge Panels, and the process of discussions, are not made public. The council’s draft budget was presented to the council’s Cabinet on 15 December 2010 and was made public at that time. The council’s final budget for 2011-12 was approved by Cabinet in February 2011 and full Council approved it in March 2011.

3. The complainant, who is a councillor, made two requests for information relating to the Budgetary Challenge Panels prior to the request that is the subject of this complaint as follows:
 - The first request was made on 14 December 2010 and focused on the complainant’s rights to access information as an elected member of the council. As a result of this request, all of the Budgetary Challenge Panel reports were made available apart from those items that did not make it into the draft budget.
 - The second request was made on 5 January 2011 for the same information to be released under the FOIA. The council refused, relying on the exception under section 36. A complaint about that refusal is being considered by the Commissioner under a separate reference FS50375840.

The Request

4. On 10 February 2011 the complainant requested information in the following terms:

“I would be most grateful if, under the Freedom of Information Act (and so far as it relates to my personal data, the Data Protection Act), I could be provided with copies of any emails or correspondence between officers, and between councillors and officers, that relate in any way to my various requests for the Challenge Panel papers – including but not limited to my letter to Myfanwy Barrett of 14th December.

If you are unable to disclose the content of said emails or correspondence, a log of times, dates, senders and recipients would be much appreciated”.

5. The council replied on 9 March 2011. It confirmed that it held the information but it said that it considered that it was exempt under

section 36(2)(b)(i) and (ii) of the FOIA. It also said that it considered that the public interest in maintaining the exemption outweighed the public interest in disclosing it. The council also added that it did not consider that any of the information contained the complainant's personal data. The council explained that it could not on this occasion offer an internal review because the qualified person was the only person qualified to apply the exemption.

The Investigation

Scope of the case

6. On 18 March 2011, 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 whether the council had correctly refused to provide him with the information he requested, except that he was happy for copies of correspondence sent to or from himself to be excluded from the scope of the investigation.
7. For clarity, during the Commissioner's investigation, the council accepted that it could disclose "*a log of times, dates, senders and recipients*" that was requested by the complainant. The analysis surrounding the application of the exemptions below therefore only relates to the remaining withheld information.
8. The Commissioner noted that the budget challenge papers that were the subject of the complainant's earlier requests were attached to some correspondence that fell within the scope of the present request. The Commissioner has not considered this information as part of this investigation since the council's decision to withhold that information is under separate consideration by the Commissioner and there is no reason to consider the matter twice.
9. The Commissioner found that some of the information should have been considered under the rights of subject access provided by section 7 of the DPA. This includes a number of draft items of correspondence to the complainant and references to him. The Commissioner will make a separate assessment regarding this matter under the DPA and this information has therefore been excluded from the scope of the Commissioner's investigation.

Chronology

10. Between 26 May 2011 and 22 July 2011, the Commissioner corresponded with the complainant and the council in order to further

his enquiries. During this time, he was provided with copies of the withheld information. The council also said it wished to argue that section 36(2)(c) applied although the Commissioner notes that this exemption was not applied in the council's initial response. The council also relied on section 42(1) in relation to some of the information and argued that the public interest favoured maintaining that exemption.

Analysis

Section 42(1)

11. This exemption 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.
12. The principle of legal professional privilege is based on the need to protect a client's confidence that any communication with his or her legal advisor will be treated in confidence. There are two limbs of legal professional privilege: advice privilege (where no litigation is contemplated or underway) and litigation privilege (where litigation is underway or anticipated). In this case, the council sought to rely on advice privilege.
13. Having inspected the withheld information to which the council had applied the exemption, the Commissioner was satisfied that the majority of it consisted of communications made by or to qualified solicitors for the dominant purpose of obtaining or giving legal advice. There were only a couple of exceptions, namely the email dated 17 January 2011 timed 8:57 numbered 27 in the bundle and a draft of a memo dated 6 January 2011 addressed to the Chairman of the Standards Committee (attached to an email numbered 11 in the bundle). Regarding the former email, although this email was sent to two of the qualified solicitors named by the council, the Commissioner considered that it could not fairly be characterised as a communication to seek or give legal advice as it merely told the solicitors what the council officer was going to do. In relation to the draft memo, the Commissioner did not consider that the memo attracted legal privilege merely because it had been sent to a solicitor. It had clearly been created for another purpose, that being to provide information to the Standards Committee.
14. In relation to the information that was privileged, the Commissioner was also satisfied that there was no evidence to indicate that the information had been shared to such an extent that it would no longer be considered to be confidential.

Public interest arguments in favour of disclosing the requested information

15. Some weight must always be attached to the general principles of achieving accountability and transparency. This in turn can help to increase public understanding, trust and participation in the decisions taken by public authorities.
16. In this case, the Commissioner appreciates that disclosure of the legal advice would help the public to understand more about the way in which the council took the decisions that it did in this particular case.

Public interest arguments in favour of maintaining the exemption

17. The Commissioner and the Information Tribunal have expressed in a number of previous decisions that disclosure of information that is subject to legal advice privilege would have an adverse effect on the course of justice through a weakening of the general principle behind legal professional privilege. In the case of *Bellamy v Information Commissioner and Secretary of State for Trade and Industry* (EA/2005/0023), the Information Tribunal described legal professional privilege as, "a fundamental condition on which the administration of justice as a whole rests".
18. It is very important that public authorities should be able to consult with their lawyers in confidence to obtain legal advice. Any fear of doing so resulting from a disclosure could affect the free and frank nature of future legal exchanges or it may deter them from seeking legal advice. The Commissioner's published guidance on legal professional privilege states the following:

"Legal professional privilege is intended to provide confidentiality between professional legal advisors and clients to ensure openness between them and safeguard access to fully informed, realistic and frank legal argument, including potential weaknesses and counter arguments. This in turn ensures the administration of justice".
19. It is also important that if an authority is faced with a legal challenge to its position, it can defend its position properly and fairly without the other side being put at an advantage by not having to disclose its own legal advice in advance.
20. In light of the above, there will always be a strong argument in favour of maintaining legal professional privilege because of its very nature and the importance attached to it as a long-standing common law concept. The Information Tribunal recognised this in the *Bellamy* case when it stated that:

"...there is a strong element of public interest inbuilt into privilege itself. At least equally strong countervailing considerations would need to be adduced to override that inbuilt interest...It is important that public authorities be allowed to conduct a free exchange of views as to their legal rights and obligations with those advising them without fear of intrusion, save in the most clear case..."

21. The above does not mean that the counter arguments favouring public disclosure need to be exceptional, but they must be at least as strong as the interest that privilege is designed to protect as described above.

Balance of the public interest arguments

22. The Commissioner appreciates that in general there is a public interest in public authorities being as accountable as possible in relation to their decisions. However, having regard to the circumstances of this case, it is not the Commissioner's view that the public interest in disclosure equals or outweighs the strong public interest in maintaining the authority's right to consult with its lawyers in confidence.
23. The Commissioner would observe that the public interest in maintaining this exemption is a particularly strong one and to equal or outweigh that inherently strong public interest usually involves factors such as circumstances where substantial amounts of money are involved, where a decision will affect a large amount of people or evidence of misrepresentation, unlawful activity or a significant lack of appropriate transparency. Following his inspection of the information, the Commissioner could see no obvious sign of unlawful activity, evidence that the council had misrepresented any legal advice it had received or evidence of a significant lack of transparency where it would have been appropriate. The Commissioner also notes that in this case, the complainant has the opportunity to have the relevant issues relating to the disclosure of the budget challenge papers fully considered by the Commissioner's office (an option which he has exercised) and then, if he remains unhappy, there is also the opportunity to have a further independent consideration of the matter before the First-Tier Tribunal (Information Rights).

Exemption - Section 36

The qualified person's opinion

24. In order to establish whether the exemption was engaged, the Commissioner must:
- Establish that an opinion was given
 - Ascertain who the qualified person was
 - Ascertain when the opinion was given

- Consider whether the opinion was objectively reasonable
25. The council has confirmed that its monitoring officer is its qualified person. The qualified person set out his opinion in the refusal notice to the complainant that was dated 10 June 2011. That response clearly demonstrated that the qualified person had been shown a copy of the actual request.
 26. Having considered the refusal notice, the Commissioner notes that it clearly cites section 36(2)(b)(i) and (ii). However, it does not cite section 36(2)(c) or contain any arguments that are clearly distinct from those being made in relation to section 36(2)(b)(i) and (ii). There is therefore no evidence that the qualified person gave his opinion that section 36(2)(c) was engaged at the time of the response. Therefore, the Commissioner is not prepared to accept the application of section 36(2)(c) to the information and will not now consider that application. The remainder of this notice therefore only concerns the application of section 36(2)(b)(i) and (ii).
 27. In *Guardian and Brooke v the Information Commissioner and the BBC* (EA/2006/0011 and EA2006/0013), the Information Tribunal decided that a qualified person's opinion under section 36 is reasonable if it is both "reasonable in substance and reasonably arrived at". It elaborated that the opinion must therefore be "objectively reasonable" and based on good faith and the proper exercise of judgement, and not simply "an opinion within a range of reasonable opinions". However, it also accepted that "there may depending on the facts" be room for conflicting opinions, both of which are reasonable".
 28. In considering whether an opinion was reasonably arrived at it proposed that the qualified person should only take into account relevant matters. The Commissioner accepts the Tribunal's view that an opinion does not have to be verified by evidence i.e. a qualified person could not be expected to prove that there would be an inhibition in the future, but the Commissioner would still expect the public authority to be able to provide some evidence of how the qualified person reached their opinion. It also accepted that materials which may assist in the making of a judgement will vary from case to case.

Was the opinion reasonably arrived at?

29. To help the Commissioner to consider whether the opinion was reasonably arrived at, he considered the information that the qualified person had been provided with or that was known to him that would have helped him to make the decision. When asked to explain whether any information was provided to the qualified person to help him to make the decision, the council explained that the qualified person was

very familiar with the budget challenge process. It said that the qualified person was able to take account of that personal knowledge when forming an opinion. He was also familiar with the handling of the complainant's requests. Indeed, he was the author or recipient of some of the most significant correspondence. The qualified person had detailed discussions and meetings with officers dealing with the legal issues.

30. It was not entirely clear from what the council had said that the qualified person had actually inspected copies of all the withheld information. The Commissioner considers that this would have been preferable and he would encourage the qualified person to inspect the actual information in the future. If the information had been inspected, it would have been apparent to the qualified person that some of it was legal advice and was therefore more appropriately withheld under section 42(1). Furthermore, involvement in a process does not mean that there is not some information that the qualified person may not be aware of that is more innocuous in nature that he may have anticipated. However, the Commissioner accepts that in the circumstances of this particular case, the qualified person had an unusual amount of knowledge of the transactions involved and the background issues. As a result, although the Commissioner considered that the process of arriving at the opinion was flawed, he did not conclude that the opinion had been arrived at in such a way that it was unreasonable.
31. From his inspection of the council's refusal notice, the Commissioner did not consider that there was evidence that any irrelevant arguments were considered by the qualified person.
32. The Commissioner was ultimately satisfied that there was no evidence that the opinion was arrived at in such a way that it should be considered to be unreasonable.

Was the opinion reasonable in substance?

33. As the Commissioner was satisfied that the opinion was reasonably arrived at, he went on to consider whether the opinion was "reasonable in substance". It is worth emphasising that this does not mean that the Commissioner has to agree that the inhibition described would have occurred or was likely to occur as this is for the qualified person to decide.
34. The qualified person argued that if the withheld information had been disclosed, this would have been likely to prejudice the effective conduct of public affairs by prejudicing the free and frank provision of advice and free and frank deliberations. For clarity, it has been established in

a number of decisions by the Information Tribunal that “likely” means that there must be a significant risk of prejudice although it need not be more probable than not.

35. The council said that it wished to make a distinction between two types of withheld information. It said that some of the information contained references to the content of the budget panel papers and that other information concerned its considerations when dealing with the complainant’s requests for information. In relation to the former type of information, the Commissioner notes that the budget challenge papers were actually attached to some of the emails which fell within the scope of the present request. As explained in the scoping section of this notice, the Commissioner has excluded this information from the scope of this particular investigation. This meant that the council’s arguments in relation to that sort of information remained relevant only in relation to one reference on page 1 of the bundle sent to the Commissioner which the council said refers to a budget proposal that was not taken forward.
36. In relation to both types of withheld information, the qualified person explained to the Commissioner that the request had raised considerations relating to the need for a “safe space” in which officers could receive advice and debate the issues free from outside interference. He also said that there were concerns about the potential “chilling effect” of the disclosure. The qualified person explained that he believed it was likely that future exchanges and advice would have been less free and frank if the information had been disclosed at the time of the complainant’s request.
37. In relation to the reference to the content of the budget challenge panel papers, the council said that although the draft budget had been published at the time of the request, it had yet to publish its final budget. At the time of the request, the council was still deliberating its final budget. In the course of these discussions, the council would refer back to the discussion at the budget challenge panels, and the reports presented to those panels. The qualified person also explained that the reports and panel discussions formed part of a three year budget-setting process, and the need for a safe space would continue at the very least until that three year period had ended.
38. In relation to the council’s discussions about how to handle the complainant’s requests, the council explained that it believed that by the time of the request, the request made on 14 December 2010 had been resolved. However, it said that there were still live issues relating to the request dated 5 January 2011 which concerned the disclosure of the same information under the FOIA, rather than as previously, to an elected member. Although the council had responded to the request, it

was still open to the complainant to complain about that response to the Commissioner. Indeed, that is what happened in this case (that complaint is under separate consideration by the Commissioner).

39. Having carefully considered the above, the Commissioner accepts that the qualified person's opinion in this case was a reasonable one and that section 36(2)(b)(i) and (ii) was engaged. The Commissioner can accept that if a safe space had not been maintained in this case, this may have resulted in the council facing challenges to its budget and the way it was handling the complainant's request for information. The Commissioner can also accept if the information had been disclosed, there was some possibility of a chilling effect in respect of the council's future discussions about budgets and other requests that may be made about the budget in the future.

The public interest test

40. Having concluded that section 36(2)(b)(i) and (ii) was engaged, the Commissioner went on to consider the public interest test. This exemption is qualified and the Commissioner must therefore consider whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighed the public interest in disclosing the information.
41. In *Guardian Newspaper Limited and Heather Brooke v the Information Commissioner and the BBC (EA/2006/001 and EA/2006/0013)*, the Information Tribunal provided some useful general principles about the application of the public interest test in section 36 cases as follows:
- The lower the likelihood is shown to be that the free and frank exchange of views or provision of advice would be inhibited, the lower the chance that the balance of the public interest will favour the exemption.
 - While the Commissioner cannot consider whether prejudice is likely (that is for the qualified person to decide), he is able to consider the severity, frequency or extent of any likely prejudice.
 - Since the public interest in maintaining the exemption must be assessed in the circumstances of the case, the public authority is not permitted to maintain a blanket refusal in relation to the type of information sought.
 - The passage of time since the creation of the information may have an important bearing on the balancing exercise. As a general rule, the public interest in maintaining the exemption will diminish over time.
 - In considering factors that militate against disclosure the focus should be on the particular interest that the exemption is designed to protect, in this case the effective conduct of public affairs through the free and frank exchange of views/provision of advice.

- While the public interest considerations in the exemption from disclosure are narrowly conceived, the public interest considerations in favour of disclosure are broad ranging and operate at different levels of abstraction from the subject matter of the exemption. Disclosure of information serves the general public interest in promotion of better government through transparency, accountability, public debate, better public understanding of decisions, and informed and meaningful participation of the public in the democratic process.

Public interest arguments in favour of disclosing the requested information

42. The “default setting” of the FOIA is in favour of disclosure. This is based on the underlying assumption that the disclosure of information held by public authorities is in itself of value because it promotes the interests described in the last bullet point above.
43. The Commissioner also notes that there was a particular public interest in the disclosure of information relating to budgets because it concerns the use of public money.
44. In relation to discussions connected to request handling, the Commissioner believes that there is a public interest in disclosure of these discussions because it would show how well the public authority deals with requests for information. Disclosure would allow the public to see that decisions taken are prompt and only taken after full consideration of all the relevant issues. Disclosure may also assist the public in gaining a better understanding of the reasoning behind the decisions taken.

Public interest arguments in favour of maintaining the exemption

45. The council argued that the public interest in maintaining the exemption outweighed the public interest in disclosing the information in the circumstances of this case. As already discussed, the Commissioner accepts that the qualified person’s opinion was reasonable that disclosure at the time of the request would have been likely to hinder the council’s ability to consider the budget and the complainant’s request for information in a safe space. The Commissioner also accepts the opinion that disclosure at the time of the request would have been likely to result in a chilling effect in respect of the council’s future discussions about budgets and other requests that may be made about the budget in the future.

Balance of the public interest arguments

46. Although the Commissioner must give weight to the qualified person's opinion once he has accepted its reasonableness, it is open to the Commissioner to consider the severity, frequency and extensiveness of any prejudice that would be likely to occur.
47. It is apparent that the timing of this request affected the council's decision. In relation to the reference relating to the council's considerations concerning the budget, the Commissioner notes that at the time of the request, the council had not finalised its budget. However, it had published its draft budget. It had also explained to the Commissioner that the reference contained in the email on page 1 of the bundle concerned a plan that was not taken forward to the December Cabinet. The council did not explain to the Commissioner whether there was any real likelihood of the option ever being reconsidered or whether it had been rejected out-right. Further, the Commissioner also notes that the information in itself discloses very little of the council's considerations relating to the budget. This meant that the Commissioner was unable to conclude, based on the evidence and information before him, that any prejudice resulting from the disclosure of this particular part of the email would have been severe enough to outweigh the public interest in the council being transparent about its considerations in respect of the budget.
48. In relation to the remaining information concerning the council's considerations surrounding the complainant's requests, the Commissioner was likewise not persuaded that any prejudice experienced by the council following the disclosure would be severe enough to outweigh the public interest in being transparent about its handling of requests for information about the budget. The Commissioner notes that much of the information concerned the council's handling of the request made by the complainant in his capacity as a councillor and according to the council, that request was resolved by the time of the request that is being considered in this notice. That reduces any public interest in withholding this particular part of the information. The Commissioner notes that at the time of this request, the complainant had also made a complaint to the Commissioner about the handling of his previous request made under the FOIA and he appreciates that this matter had not therefore been resolved. However, the Commissioner would observe that the FOIA is a fairly transparent process in any event and as part of that process, the public authority is expected to give a detailed account of the reasons why it reached the decision that it did. The council did not point to any specific aspects of the communications in question that could prejudice its position in any severe way.

49. In view of the above, the Commissioner concluded that the public interest in disclosing the information outweighed the public interest in maintaining the exemption in all the circumstances of the case.

Procedural Requirements

50. The Commissioner found that the council should have disclosed the requested information, apart from that which the Commissioner found had been correctly withheld using section 42(1). This was a breach of section 10(1) and 1(1)(b).
51. The council sought to rely on section 36(2)(c) and 42(1) during the Commissioner's investigation. This breached section 17(1).

The Decision

52. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the FOIA:

- It correctly applied section 42(1) (with the exception of an email dated 17 January 2011 timed 8:57 on page 27 of the bundle and a draft memo dated 6 January 2011 to the Chairman of the Standards Committee attached to an email numbered 11 in the bundle), and it correctly determined that the public interest in maintaining the exemption outweighed the public interest in disclosing the information.

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

- The council could have disclosed "*a log of times, dates, senders and recipients*" as requested by the complainant. That breached section 10(1) and 1(1)(b). The council agreed to disclose this information during the Commissioner's investigation.
- The council incorrectly withheld all of the information other than that which the Commissioner found was exempt under section 42(1). That was a breach of section 10(1) and 1(1)(b).
- The council failed to rely on section 36(2)(c) or 42(1) until during the Commissioner's investigation. That was a breach of section 17(1).

Steps Required

54. The Commissioner requires the public authority to take the following steps to ensure compliance with the FOIA:

- Disclose all of the withheld information other than the following:
 - (i) The information which the Commissioner has found was correctly withheld using the exemption under section 42(1).
 - (ii) Copies of draft/actual correspondence to the complainant and all references to the complainant's name and any other information from which he could be identified as this is the complainant's own personal data and cannot be disclosed under the FOIA as it is exempt in accordance with section 40(1).

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

Failure to comply

56. 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

57. 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,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

58. 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.
59. 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 29th day of November 2011

Signed

**Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

General Right of Access

Section 1(1) provides that –

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

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.”

Public interest test

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”

Time for Compliance

Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

Refusal of Request

Section 17(1) provides that –

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to

confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies."

Prejudice to effective conduct of public affairs

Section 36(2) provides that –

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

- (b) would, or would be likely to, inhibit-
 - (i) the free and frank provision of advice, or
 - (ii) the free and frank exchange of views for the purposes of deliberation, or
- (c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

Legal Professional Privilege

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."