

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 22 December 2009

Public Authority: Cabinet Office
Address: 70 Whitehall
London
SW1A 2AS

Summary

The complainant asked the public authority for a copy of the Cabinet Office's Manual of Protective Security. The public authority provided some sections of the Manual but withheld other parts, citing the exemptions contained in sections 21(1), 23(1), 24(1), 27(1)(a), 31 and 36(2)(c) of the Freedom of Information Act 2000 ('the Act'). After the Commissioner's intervention the public authority released some further information. The Commissioner decided that the public interest test under section 24(1) of the Act required that a small amount of the information which the public authority continued to withhold should be disclosed. He also decided that information for which section 21(1) had been claimed was not reasonably accessible to the applicant and should specifically be disclosed.

The Commissioner's Role

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

The Request

2. On 20 March 2005 the complainant requested by email a copy of the Cabinet Office's Manual of Protective Security ('the Manual'), which he wished to be sent by registered post or in a compressed file by email.
3. The Cabinet Office acknowledged the request on 21 March 2005. The complainant sent a chasing email on 18 April objecting to the '*unseemly delay*'.
4. The Cabinet Office wrote back on 19 April 2005. It stated that the request was subject to a number of exemptions: sections 21(1), 23(1), 24(1), 27(1)(a), 31 and

- 36(2)(c). It pointed out that it was obliged to consider the public interest in relation to all of these exemptions other than sections 21 and 23, and that it required an additional twenty working days in order to do so. It stated that it might be able to provide some of the information sooner if the complainant submitted a narrower request.
5. The Cabinet Office sent its decision to the complainant on 19 May 2005, apologising for the length of time taken. It enclosed a copy of the Manual from which information covered by the exemptions had been redacted or omitted. It pointed out that the document was protected by the Copyright, Designs and Patents Act 1988, which meant that it could be used for the complainant's own purposes but not, for example, for commercial publication. The complainant was notified of the Cabinet Office's internal review procedure.
 6. On 6 June 2005 the complainant requested that the Cabinet Office conduct an internal review. He complained about the application of the exemptions, the Cabinet Office's delay, and the fact that it had responded using the normal post rather than email or registered post as requested.
 7. The Cabinet Office acknowledged receipt of this request on the same day.
 8. On 19 June 2005 the complainant asked the Cabinet Office to advise him when he was likely to receive a reply.
 9. The Cabinet Office replied on 20 June 2005 that it hoped to issue a substantive reply by 8 July.
 10. On 10 July 2005 the complainant pointed out that he had yet to receive a response.
 11. The Cabinet Office replied on 11 July 2005. It stated that the review had taken slightly longer than hoped, and it had failed to notify the complainant of the delay because of an oversight caused by *'staff concentrating on responding to the terrorist attacks on 7 July'*.
 12. The Cabinet Office emailed its internal review decision to the complainant on 13 July 2005. The letter (dated 12 July 2005) upheld the original decision. It also pointed out that it had not been obliged to send the information by registered post. The Cabinet Office informed the complainant of his right to complain to the Information Commissioner.

The Investigation

Scope of the case

13. On 28 July 2005 the complainant contacted the Commissioner to complain about the Cabinet Office's application of the public interest test. He also objected to the Cabinet Office's delay and failure to respond within the additional twenty days by which it had extended the time limit, and he claimed that because it had used regular

mail arrangements the material which it had disclosed had been damaged in the post.

14. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

15. Due to the volume of complaints under the Act at the Commissioner's office there was a delay of more than a year before he began his investigation on the complaint.
16. The Commissioner wrote to the Cabinet Office on 18 October 2006 seeking clarification of its decision. He also wrote to the complainant on the same day.
17. He sought further information from the Cabinet Office on 27 October 2006.
18. The complainant raised further issues of complaint on 13 November 2006.
19. On 16 November 2006 the Cabinet Office provided the Commissioner with a copy of its refusal notice dated 19 May 2005 and the information which had been disclosed to the complainant. It also commented on the complaints.
20. The Commissioner asked the Cabinet Office on 27 November 2006 to provide the information which had been withheld.
21. A representative of the Commissioner met with representatives of the Intelligence and Security Secretariat in the Cabinet Office to discuss the case on 16 January 2007. As a result the Cabinet Office reviewed the withheld information.
22. On 5 February 2007 it advised the Commissioner that it had concluded that it was still justified in applying the section 23 exemption to some of the withheld information, and would need more time to review the application of the other exemptions.
23. A representative of the Commissioner viewed the requested information at the premises of the Cabinet Office on 6 March 2007. The Commissioner then wrote to the Cabinet Office on 15 March for clarification of a number of issues.
24. The Cabinet Office provided comments on 22 May 2007. It provided a schedule of information which it was now prepared to release to the complainant. A letter from the Director of Security and Intelligence in the Cabinet Office was also sent confirming that the information to which section 23 had been applied was directly or indirectly supplied by, or else related to, one of the security bodies cited in section 23(3) of the Act.
25. The Cabinet Office contacted the Commissioner again on 20 June 2007 with a further response to the Commissioner's queries.

Analysis

Procedural matters

Delay

26. The complainant made a number of complaints about delay by the Cabinet Office: that it had failed to issue its refusal notice within the twenty working day time limit stipulated in the Act; that having extended the time limit in order to consider the public interest test it had then failed to respond within that additional twenty days; that the delay had been unnecessary; and that he had only received a response on 19 April 2005 because of his chasing email.

27. In its letter to the Commissioner of 16 November 2006 the Cabinet Office explained what had happened:

'the complainant's request was e-mailed on Sunday 20 March and therefore received on the next working day, Monday 21 March. The twenty working days allowed in the Act ran to 19 April as 25 and 28 March were public holidays. We e-mailed our letter to the complainant on 19 April. The Cabinet Office therefore replied to the complainant within the 20 working days required by the Act and fulfilled the requirements in section 17 of the Act by informing him that some of the information was covered by absolute exemptions'.

28. The Commissioner accepts that the request was made to the Cabinet Office on Monday 21 March 2005 rather than 20 March, since that was not a working day. Furthermore, the Commissioner notes that section 10(1) of the Act stipulates that the twenty day time limit runs from the day following receipt of the request:

'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'.

29. The date on which the time limit started was therefore Tuesday 22 March and the last day for a response would have been Monday 18 April, were it not for the two intervening bank holidays. Accordingly, the last date on which the Cabinet Office could have responded was actually 20 April 2005, and it is therefore the case that the Cabinet Office sent its decision within the time limit.

30. In relation to the points made by the complainant that the Cabinet Office could and should have informed him much earlier that an extension to the deadline was necessary, the Commissioner has taken the view that, while an earlier reply might have been possible or desirable, the public authority was under no obligation to respond earlier. Regarding the complainant's belief that the response on 19 April 2005 was forthcoming only because he had sent a chasing email, whether or not that is the case the relevant factor is that the information was in fact provided by the Cabinet Office within the statutory time limit.

Mode of response

31. The complainant further complained that the Cabinet Office had failed to supply information in the form which he had requested, with the result that the material had been damaged in the post and had not therefore been 'disclosed' as required by the Act. He also indicated that he wanted the Cabinet Office to explain why it had refused to comply with his request for the material to be sent by registered post. In its letter to the Commissioner of 16 November 2006 the Cabinet Office expressed its view that the complainant's request went beyond its obligations under the Act, since there was no requirement to send the material by '*registered (not recorded) post with consequential loss insurance*', as that was specifying a '*method of delivering a hard copy not an alternative method of communication*'. It stated that, if the complainant had let it be known that some of the material had been damaged, then it would have replaced the damaged sections. Section 11 (1) of the Act states:

'Where, on making his request for information, the applicant expresses a preference for communication by any one or more of the following means, namely:

(a) the provision to the applicant of a copy of the information in permanent or another form acceptable to the applicant,

(b) the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and

(c) the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant,

the authority shall so far as is reasonably practicable give effect to that preference.'

32. Accordingly, the complainant was entitled to specify that the information be provided in hard copy form, but he had no right to specify any particular mode of delivery. The Commissioner therefore takes the view that the Cabinet Office was correct in its assessment that it had no obligation under the Act to send hard copies of information by registered post.

Exemptions

33. With its refusal notice of 19 May 2005 the Cabinet Office attached various parts of the Manual which it believed were not exempt. During the course of the Commissioner's investigation the Cabinet Office agreed to reassess the public interest test in respect of information withheld under a qualified exemption in order to ascertain whether the balance of the public interest had changed since the original response. As a consequence it decided to release some more information from the Manual:

- '*Glossary of Terms: THREAT TYPES*';

- *Glossary of abbreviations* (with a few references related to section 23 bodies redacted);
- *'Section 4.4: Interdepartmental Committee on Protective Security (ICPS)'*;
- *'Section 4.63: Elected representatives on local authorities'*;
- An extract from a letter sent by Sir Richard Wilson, head of the Home Civil Service, to all Heads of Departments on 9 November 1999, quoted in the Manual;
- *'Supplement 23: Printable Forms'*.

34. In addition, the Cabinet Office noted that, since the original request, *'Supplement 4: HMG Infosec Standard Number 2'* had been published as a best practice guide and was now publicly available under the title: *'Risk management and accreditation of information systems'*. It stated that it could be found on the website of the Centre for the Protection of National Infrastructure at: <http://www.cpni.gov.uk/docs/re-20050804-00653.pdf>. It pointed out that this was a discretionary release of material which had been authored by a section 23 exempt body and had not been prompted by the Act.

35. In relation to the remaining information the Cabinet Office continued to apply the exemptions specified in its refusal notice.

Exemption – section 21

36. Section 21 states:

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

(2) 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.'

37. In its letter of 19 April 2005 the Cabinet Office stated that section 21(1) was applicable to two published documents – *'a standard relating to information security management (BS 7799) which is published by the British Standards Institute (their website is www.bsi-global.com), and ... a business continuity assessment tool published by the Business Continuity Institute (their website is www.thebci.org)'*.

38. The Cabinet Office confirmed to the Commissioner that references to the British Standard in the Manual which had been exempted under section 21 were direct quotations used under licence and fell within section 21 because they were available from the British Standards Institute (<http://www.bsi-global.com/>) upon payment of a fee. The Commissioner is satisfied that the Cabinet Office has advised the complainant appropriately about where and how this information can be obtained. He notes that the Cabinet Office has agreed to provide the complainant with further advice about the availability of information contained in Supplement 4 of the Manual.

Exemption – section 23(1)

39. Section 23(1) states:

'Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).'

The bodies identified in subsection (3) include the Security Service and GCHQ, which the Cabinet Office have confirmed were the relevant bodies involved in this case.

40. The Cabinet Office claimed that the information withheld under section 23(1) of the Act was *'directly or indirectly supplied to the public authority by, or relates to'*, these security bodies. The Commissioner queried this, since the Cabinet Office had also indicated that the section 23(3) bodies were *'responsible for'* certain sections of the Manual for *'maintenance purposes'*. In particular, he noted that the division of responsibility between the security bodies and other responsible parties which had been identified by the Cabinet Office did not correspond to the division between information exempted under section 23(1) and information not exempted under that section (ie some of the disclosed information was the responsibility of security bodies to maintain). The Cabinet Office have confirmed that this discrepancy resulted from an error in the note defining the allocation of responsibilities. It has provided a corrected version and confirmed that in fact all of the sections which were listed as being the responsibility of the security bodies were managed and updated exclusively by them.

41. The Cabinet Office has also provided a letter dated 22 May 2007 from the Director for Security and Intelligence in the Cabinet Office, formally confirming that the material was directly or indirectly supplied by, or related to, exempt bodies. The letter states that, although the Manual was compiled and distributed by the Cabinet Office as the central coordinating body, the security bodies authored parts of the Manual and remained responsible for maintaining and updating them.

42. The Commissioner is prepared, in limited circumstances, to accept the assurance of a senior official that information withheld under section 23(1) has indeed been supplied by or is related to security bodies specified in section 23(3). He will only do so where the official occupies a position in relation to the security bodies which allows them genuinely to validate the provenance of the information, and where the official is independent of the public authority's process for dealing with freedom of information requests. The Commissioner is satisfied that the Director of Security and

Intelligence in the Cabinet Office occupied such a position in this case. Accordingly, he has concluded that the information to which the Cabinet Office originally applied section 23(1) was appropriately withheld. Since section 23(1) is an absolute exemption, there is no public interest test.

Exemption – section 24(1)

43. Section 24(1) states:

'Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security.'

In its refusal notice the Cabinet Office stated that information was exempt under this section *'to the extent that the information includes detailed guidance on security measures required to protect government buildings, staff and information'*. The Commissioner asked the Cabinet Office to provide a further explanation as to why this material was exempt. Having reconsidered the matter the Cabinet Office decided that subsections 4.63 and 4.1 of the Manual should be released.

44. The Commissioner has considered the remaining information withheld under section 24(1) of the Act. In the case of *Baker v the Information Commissioner and the Cabinet Office* (EA/2006/0045) the Information Tribunal noted that it was unable to find an exhaustive definition of 'national security' in either statute or judicial decisions, but it referred to a House of Lords decision (*Secretary of State for the Home Department v Rehman* [2001] UKHL 47; [2003] 1 AC 153) which made a number of observations on the issue. Amongst other things, these were that 'national security' means the security of the United Kingdom and its people; the interests of national security are not limited to action by an individual which can be said to be 'targeted at' the United Kingdom, its system of government or its people; and not only military defence, but the protection of democracy and the legal and constitutional systems of the state, are areas involving national security. The Commissioner is satisfied that the information to which the Cabinet Office applied section 24(1) in this case did indeed relate to national security.

45. For information to engage section 24(1) it must also be 'required to safeguard' national security. The Commissioner takes the view that to be 'required' the requested information must relate to national security, and there must be evidence that its disclosure would cause specific and real threats to national security. Having considered the close link between information rights and human rights, the Commissioner considers that it is appropriate to consider the case law on Article 8(2) of the European Convention on Human Rights, which states:

'There shall be no interference by a public authority with the exercise of this right except such as...is necessary in a democratic society in the interests of national security...'

46. The European Court of Human Rights has interpreted 'necessary' as 'not synonymous with 'indispensable', neither has it the flexibility of such expressions as 'admissible', 'ordinary', 'useful', 'reasonable' or 'desirable''. Accordingly, in the view of

the Commissioner necessity is less than absolutely essential but more than merely useful.

47. The Commissioner has considered the withheld information and the arguments put forward by the Cabinet Office. The Cabinet Office made the point that, although some information was already in the public domain in various formats, further release could still be damaging because of the detailed nature of the information and the fact that it represented the most up-to-date procedures currently being applied. It also pointed out that its decision had been made in light of advice from national specialist authorities in the relevant areas.

48. The Cabinet Office claimed that release of the information could damage national security in a number of ways. First, it made the general point that disclosure of details in the Manual:

'would provide those who wish to circumvent security procedures with information on what security procedures and measures are in place and, importantly, what are not. The aggregation of this information in the full Manual would not only provide sufficient information on security procedures to facilitate a compromise, but also the reassurance that there are no other measures in place that need to be defeated.'

49. Secondly, the Cabinet Office maintained that there was a potentially damaging 'jigsaw effect'. By this it referred to the possibility that an accumulation of seemingly innocuous disclosures, together with information already publicly available, could provide a complete picture of a security procedure (it gave the example of a foreign intelligence service being able to confirm its suspicions about the level of protection afforded to certain types of data).

50. Thirdly, it claimed that releasing details of security procedures would allow adversaries to gain familiarity with procedures, which could assist in attempts to bypass them by fraud, forgery, impersonation or deception.

51. Finally, it raised the 'insider threat', where the release of detailed information about security vetting could enable an adversary to circumvent the recruitment procedures, and thereby lead to a particularly serious threat. Where the information related to leak investigation procedures, the Cabinet Office claimed that disclosure could assist those with malicious intent to disguise their actions more effectively or to monitor or disrupt the progress of investigations.

52. Having considered the withheld information and the Cabinet Office's comments, the Commissioner is satisfied that retention of the information is 'required to safeguard' national security, since there is a specific and direct application to which such information might be put which could potentially be damaging to national security. The information therefore has the necessary quality to fall within the definition of section 24(1).

53. Since section 24 is a qualified exemption it is subject to a public interest test under section (2)(2)(b) of the Act. This favours disclosure unless, *'in all the circumstances*

of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure of the information'.

54. The Cabinet Office identified the following public interest factors in favour of disclosing the information:

- a general public interest in the openness and transparency of Government;
- providing an assurance that government assets are properly protected;
- promoting confidence that unofficial disclosures are effectively investigated.

55. On the other hand, the Cabinet Office pointed to factors that favoured maintaining the exemption:

- protecting the security arrangements that government departments are required to implement in order to protect key assets from a range of threats from terrorists, foreign intelligence services or criminals;
- denying gratuitous, easily accessible education in how and where to direct evasive and hostile operations, in particular for less sophisticated criminal, terrorist and intelligence personnel.

56. The Commissioner accepts that the factors favouring maintenance of the exemption in this case are very significant, because of the substantial potential prejudice that might eventuate should information be disclosed that proves of value to terrorists, foreign intelligence services or criminals. As the Cabinet Office pointed out, some parts of the Manual directly revealed the security procedures and measures which were in place, while other parts would contribute to a 'jigsaw effect' by which the accumulation of information could provide a complete picture of a security procedure. Once familiar with procedures and measures, adversaries would be assisted in any attempt they might make to bypass them. The Commissioner considers that, where the withheld information creates a very specific and serious potential detriment whose likelihood is more than merely notional, the public interest factors favouring maintenance of the section 24(1) exemption outweigh the more general factors in favour of disclosing the information.

57. The withheld information which the Commissioner has concluded did involve such specific potential detriments relates to: objectives, procedures and guidance for dealing with sensitive assets or for conducting security investigations; aspects of recruitment procedures; international security clearance requirements; references to certain agencies not stipulated in section 23(3) but with security functions; and identification of areas with deficient guidance. The Commissioner has concluded that it was appropriate for the Cabinet Office to have withheld this information under section 24(1) on the grounds that the public interest in maintaining the exemption outweighed that in disclosing the information.

58. There is some information, however, which the Commissioner does not believe involved specific and serious potential detriments. First, there is a list of

organisations to which the Manual itself applies. The Cabinet Office claimed that disclosure of this information would be prejudicial to national security because it would identify organisations required to apply official Government security advice, when that might not otherwise be obvious. In doing so it could assist '*hostile agents seeking to damage national security*' in identifying which organisations might be in receipt of sensitive information and so worth targeting. The Cabinet Office also stated that there was little obvious public interest in knowing which organisations the Manual applied to beyond the existing knowledge that it covered those handling government assets. The Commissioner does not agree that disclosure of this information would create anything above a nominal prejudice, since the list of organisations could be easily surmised, and the public interest factors in favour of maintaining the exemption are correspondingly weak. While he accepts that the public interest in disclosure of this information is also fairly weak (although not without some value, for example in informing the public about the range of bodies subject to the safeguards of the Manual), he believes that on balance the public interest in maintaining the exemption does not outweigh the public interest in disclosure.

59. Secondly, the Manual refers to a number of organisations subject to vetting provisions under section 2(3) of the Security Service Act 1989. The Cabinet Office applied similar public interest arguments as it had for the information addressed in the paragraph above: disclosure would suggest organisations worth targeting by those seeking to damage national security, the public interest in disclosure is served by the general information that there are other organisations covered, but there is no public interest in revealing what the specific organisations are. It pointed out that the list derived from a 'Restricted' document signed by the Home Secretary. However, for reasons similar to those applied to the information above, the Commissioner considers that the public interest in maintaining the exemption does not outweigh the public interest in disclosure, since he does not accept that there is a reasonable likelihood of any detriment to national security ensuing from disclosure of the information, while there is a public interest in informing and assuring the public about the range of bodies subject to the relevant security safeguards.

60. Thirdly, the Cabinet Office withheld an appendix which comprised a form for completion by private contractors. The Cabinet Office claimed that this form was not 'freely' available and that disclosure would contribute to the 'jigsaw effect' of revealing detailed information on security measures and procedures. It also stated that there was little public interest in detailed knowledge of the format of the form, or what personal and administrative information was requested from companies. The Commissioner notes that the rest of this section comprises information that is either publicly available (section 21 of the Act was applied by the Cabinet Office) or else is now being disclosed by the Cabinet Office following its reassessment during the course of the Commissioner's investigation. He considers that there is a weak public interest in disclosure in order to inform and assure the public about the measures in place to supervise private contractors, and little public interest in maintaining the section 24 exemption in respect of information which, while it may not be 'freely' available is, by its very nature, partially in the public domain (i.e. available to the private contractors required to complete it). On balance the Commissioner believes that the public interest favours disclosure of this information.

61. Fourthly, the Cabinet Office withheld one element of the vetting procedure relating to criminal records, on the grounds that it amounted to information on an aspect of the vetting process which was 'not generally known', and knowledge of it could assist individuals seeking to circumvent the vetting process. However, the Commissioner notes that the rest of the vetting procedure relating to criminal records was disclosed. He can conceive of no reason why this part of the procedure should be considered more sensitive than the rest – he does not accept that the possibility that it might be less widely known than other aspects of the procedure makes it more sensitive. Since the Cabinet Office has accepted in general that the vetting procedure relating to criminal records is disclosable, the Commissioner does not believe that it has identified any significant public interest factor favouring maintenance of the exemption.

62. In summary, the Commissioner considers that the public interest in maintaining the section 24(1) exemption in relation to these four elements of the Manual does not outweigh the public interest in disclosure of the information. He has therefore decided that this information should be disclosed. Details of the information are identified in a separate Schedule which is being provided to the Cabinet Office.

Exemption – section 27(1)(a)

63. The Cabinet Office claimed in its refusal notice of 19 May 2005 that, '*to the extent that information relates to matters of international co-operation on security matters, disclosure would prejudice relations between the United Kingdom and another State*'. After the Commissioner asked for further clarification, the Cabinet Office substituted section 23 in relation to some of the information to which it had originally applied section 27. The Commissioner accepts the Cabinet Office's argument that this information is exempt because it directly relates to functions undertaken by the Security Service and GCHQ, which are bodies cited in section 23(3) of the Act. For some of the remaining information to which it had originally applied section 27, the Cabinet Office identified section 23 as an additional exemption. The Cabinet Office claimed that the information '*directly relates to functions and information exchanges undertaken by*' exempt security bodies. The Commissioner is prepared to accept that section 23 is engaged on the basis of the assertion referred to in paragraph 41 (above) of this Notice, although the Cabinet Office's late identification of this information as exempt under section 23 is regrettable.

64. Section 27(1)(a) provides that:

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

(a) relations between the United Kingdom and any other State...'

65. To engage the exemption under section 27(1)(a) it is necessary for the Cabinet Office to demonstrate that disclosure of the information would cause that prejudice. The Information Commissioner's interpretation of 'likely to prejudice' is that there should be evidence of a significant risk of prejudice to the subject of the exemption. The degree of risk must be such that there 'may very well' be prejudice to those interests in the circumstances of the individual case.

66. All of the information at issue under section 27(1)(a) relates to special arrangements for particular foreign states. The Cabinet Office claimed that disclosing this information would, first, erode confidentiality and trust and therefore reduce the United Kingdom's ability to hold full and frank discussions with other states, with the result that its ability to protect and promote United Kingdom interests would be hampered. Secondly, it would allow potential adversaries to infer the strength and/or closeness of relations with particular countries or make judgments as to the evolution of partnerships. Thirdly, it might provoke countries that did not enjoy special arrangements to conclude that they were held by the United Kingdom government to be of less importance. Fourthly, information about the degree of threat ascribed to particular states could harm diplomatic relations with them, and states that were not identified as significant threats might be encouraged to think that they could increase hostile activity without fear of compromise. Having considered the information and the submissions made, the Commissioner accepts that prejudice would be likely to arise from disclosure of the information. He therefore considers that the exemption under section 27(1)(a) is engaged in respect of this information.
67. Since section 27 is a qualified exemption it is subject to a public interest test under section (2)(2)(b) of the Act. This favours disclosure unless, *'in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure of the information'*. The Cabinet Office claimed that the public interest test favoured withholding the information for the following reasons. First, disclosing *'the specific details of security agreements negotiated on a confidential basis between the United Kingdom and other States is likely to damage our relations with those States and may significantly impede critical information exchanges'*. Secondly, since *'negotiations are conducted on the basis of confidentiality and trust, unilateral disclosure could consequently damage the United Kingdom's ability to hold full and frank discussions with other States in the future'*. Thirdly, evidence of special arrangements with some states *'could cause damage to relations with other nations that have close relations with the UK but that are not listed'*.
68. In other words, there is a public interest in withholding the information in order to avoid the immediate damage to relations with states enjoying special arrangements; the immediate damage to states not benefiting from such arrangements; and future damage to the United Kingdom's ability to maintain good relations. The Commissioner also notes that the procedures embodied in the paragraphs to which section 27(1)(a) was applied are still active and affecting UK relations with other states. Furthermore he considers that the disclosure by the UK of information which would be likely to prejudice international relations is a matter which would itself be likely to cause disquiet among other nation states which have a constructive relationship with the UK, irrespective of whether they are party to the kind of arrangements which are the subject of the withheld information in this case.
69. On the other hand, the Commissioner considers that disclosure of the information would arguably facilitate public understanding of such special arrangements; promote accountability and transparency for the decisions involved in making specific arrangements; and increase public confidence in security arrangements.
70. Having considered these factors, the Commissioner considers that the public interest in maintaining good relations with other nation states with which it is allied is of a very

high order. There would need to be very strong public interest factors in favour of disclosing information to balance any significant degree of prejudice to international relations which would be likely to occur. Weighing up all the relevant factors in this case, the Commissioner does not consider that the public interest in disclosing the particular information withheld under section 27(1) (a) is of such great significance. Having considered all of the factors in favour of and against disclosure, the Commissioner takes the view that the public interest in withholding the information under section 27(1)(a) outweighs that in disclosing it.

Exemption – section 36(2)(c)

71. The Cabinet Office's refusal notice applied this section to a limited amount of the requested information. After the Commissioner asked for further clarification, the Cabinet Office stated that it was no longer seeking to withhold subsection 12.119 of the Manual on the basis of section 36 of the Act, and that information is therefore now being disclosed.

72. The remaining information to which the Cabinet Office applied section 36(2)(c) was Supplement 6, to which it also applied sections 23, 24 and 31. However, in providing its further comments to the Commissioner the Cabinet Office stated that, in light of the other exemptions which applied, it no longer considered it necessary to cite section 36(2)(c) in relation to Supplement 6.

Multiple exemptions

73. There are several parts of the Manual which are subject to more than one exemption: Supplements 6, 14, 20 and 23.

Supplement 6

74. The Cabinet Office applied sections 23, 24, 31 and 36 of the Act to Supplement 6, although it claimed that the information could not be broken down by reference to individual exemptions. Upon being invited to clarify the situation, it stated that parts contained information directly or indirectly supplied by or relating to security bodies cited in section 23(3), while the rest of the information would be damaging to national security and was therefore exempt under section 24. In addition, part of the Supplement comprised information which was exempt by virtue of section 31(1)(g), in conjunction with section 31(2)(b), since *'disclosure would prejudice the exercise by public authorities of their functions for the purpose of ascertaining whether any person is responsible for any conduct which is improper'*. This information amounted to *'the methodology of conducting investigations'*.

75. Section 31(1)(g) 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-
...*

(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2)...'

Section 31(2)(b) states:

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

(b) the purpose of ascertaining whether any person is responsible for any conduct which is improper...'

76. Sections 24 and 31 are qualified exemptions and therefore subject to the public interest test. The Cabinet Office applied the same factors to both sections. It stated that the section as a whole provided guidance on how to investigate a security breach, and disclosure of specific techniques or detailed information about the investigation process could prejudice such investigations in the following ways:

- enabling *'adversaries to gain familiarity with these procedures and thereby to circumvent key security controls'*, by committing *'fraud, forgery, impersonation or deception'*;
- assisting *'offenders to monitor or otherwise disrupt the progress of investigations'*;
- undermining the deterrent effect of *'the policies and procedures of investigations'*;
- revealing where possible lapses in security might exist;
- inhibiting officials in the freedom with which they can conduct future investigations.

77. As a result of undermining the effectiveness of investigations, the facilitation of criminal activity and prejudice to national security could ensue. The Cabinet Office recognised, on the other hand, that there was a general public interest in ensuring that there were *'effective systems in place to deal with any improper conduct and lapses in security'*. However, in comparing the public interest factors in favour and against disclosure, it concluded that the balance of the test fell on the side of maintaining the exemptions under sections 24 and 31.

78. Having viewed the information, and considering the prejudice that could ensue from disclosure of the requested information, the Commissioner agrees with the Cabinet Office that the balance of the public interest lay in maintaining the exemptions. In reaching that conclusion he acknowledges that there is a strong public interest in protecting procedures which exist for the purpose of preventing serious criminal activity or security breaches. He is also mindful of the potentially self-defeating nature of the public interest in disclosure – the fact that the public interest in scrutinising the security procedures is considerably weakened in circumstances where disclosure for that purpose would itself undermine those procedures. The Commissioner is satisfied that with regard to this information there is a strong public interest in maintaining the exemptions under sections 24 and 31 of the Act. In all the circumstances, he considers that the public interest in maintaining each of these exemptions outweighs the public interest in disclosure.

Supplement 14

79. In relation to Supplement 14, the information dealt with security procedures and agreements in an international context. The Cabinet Office claimed that some of it *'related to'* the security bodies and was therefore exempt under section 23, while sections 24 and 27 applied to the rest of the information. It deployed similar public interest tests, respectively, for section 24(1) and for section 27, as it had for Supplement 6 and in the section of this Decision Notice entitled 'Exemption – section 27(1)(a)'. The Commissioner accepts that there is a strong public interest in protecting procedures which exist to prevent security breaches. He also considers that the nature of the information in this Supplement is such that international relations with other states could be damaged, since – unlike the position with other information addressed in this Decision Notice – there was likely to have been a legitimate expectation that the information would be treated with a degree of confidentiality. The Commissioner considers that disclosure of the information would facilitate public understanding of security measures and potentially increase public confidence as a result, but he notes the Cabinet Office's point that this public confidence is provided by the information already released to the complainant in subsection 6.14 (outlining the requirement for appropriate security clearances) and Appendix 6.2 (the guide to levels of access). In all the circumstances, the Commissioner has concluded that the balance of the public interest lies in maintaining these exemptions in respect of Supplement 14.

Supplement 20

80. The Cabinet Office originally applied sections 23 and 27 to this Supplement, but after further queries from the Commissioner it stated that, as the material *'was authored solely by Section 23 bodies...we did not consider it necessary to undertake a further public interest balancing test with respect to s.27'*. The Commissioner accepts, for the same reasons as given in the section of this Decision Notice above entitled 'Exemption – section 23(1)', that section 23 applies to this Supplement and that it is therefore exempt.

Supplement 23

81. This part of the Manual comprised reproductions of forms provided throughout the Manual which had either been released as part of the relevant part of the Manual or else were exempt. The Commissioner believes that it was reasonable for the Cabinet Office to have decided not to provide duplicates of information which had already been disclosed. However, he did not consider that the title of the Supplement – *'Printable Forms'* – was exempt information. Having put that point to the Cabinet Office, it agreed that this information could be disclosed.

Titles and contents headings

82. The Cabinet Office redacted from the information provided to the complainant: some titles of Sections and Supplements (where the whole of those Sections/ Supplements was withheld, except where the exemption was section 21); some of the sub-headings from the contents at the beginning of each Section and Supplement; and

many of the corresponding sub-headings within the body of the text of each Section and Supplement. The Commissioner was not convinced that this was justified and asked the Cabinet Office to explain why the information was exempt. The Cabinet Office's response was that these titles were withheld under one or more of the exemptions under sections 21, 23, 24 and 27. However, it also agreed that a number of specified headings could in fact be released.

Section 21

83. In relation to section 21, the Cabinet Office claimed that the Manual was structured to conform with the standards set out in BS7799, the British Standard for Information Security Management Systems. Accordingly:

'much of the subject headers for general information are directly derived from BS7799. Where these headers precede content that is exclusively comprised of quotes from BS7799 they have been withheld under s.21 as they are reproduced under license and hence available to the applicant elsewhere'.

84. The Commissioner does not accept this argument. In the absence of any signifier (such as titles and contents headings) as to the nature of the information being exempted under section 21, he does not see how the complainant would be in a position to identify what it was that he could obtain from the British Standards Institute upon payment of a fee. Furthermore, the Commissioner also notes that the Cabinet Office has not expressly stated that the terms of its licence are such that it is barred from disclosing titles and contents headings which relate to British Standard material. For these reasons, the Commissioner takes the view that it was unreasonable for the Cabinet Office to refuse to disclose the Manual's titles and contents headings insofar as they related to section 21. In the circumstances he does not accept that this information was reasonably accessible to the applicant.

Section 23

85. Of the sections which were authored by security bodies cited in section 23(3), the Cabinet Office claimed that the titles and contents headings were *'in each instance the titles and content headers directly related to this [section 23-authored] content'*. However, the Commissioner notes that the letter dated 22 May 2007 from the Director for Security and Intelligence in the Cabinet Office (which confirmed that material was directly or indirectly supplied by, or related to, exempt bodies) made the point that the Manual was compiled and distributed by the Cabinet Office as the central coordinating body, although the security bodies authored parts of the Manual and remained responsible for maintaining and updating them. The Commissioner therefore considered whether the titles and contents headings were in fact created by the Cabinet Office as the body responsible for *'compiling'* the Manual, rather than by the security bodies. Accordingly, he asked the Cabinet Office to specify in the case of the titles and contents headings individually why they related to the security bodies. The Cabinet Office only responded to this request in general terms, claiming that information in titles and contents headings *'was either supplied by these bodies...or else directly relates to them'*.

86. Having considered the information and the Cabinet Office's explanation, the Commissioner has decided that titles and contents headings are exempt under section 23 for those Sections and Supplements where the totality of the substantive text is exempt under section 23. This applies to Sections 7-10, and Supplements 2, 3, 8-12, 16-19, 24 and 26. The Commissioner is also satisfied that where separate subsections of the Manual are completely exempt by virtue of section 23, the subsection headings are also exempt (this applies to the title and contents headings in Supplement 20, plus a few headings within Section 3).

Section 24

87. In addition, contents headings in some other Sections/Supplements were withheld by reference to a combination of sections 23, 24 and 27 of the Act: Sections 4-5 and 12, and Supplements 5-6, 14 and 23. With regard to section 24, the Cabinet Office stated that a number of headings:

'should continue to be withheld as it could be damaging to National Security to provide an indication as to specific subject areas for which detailed security advice is provided. This information could be combined with material available from open sources to form a detailed picture of the [government's] protective security framework and, importantly, to identify those measures which are not utilised. This could aid potential adversaries in circumventing or otherwise defeating security controls... We consider that these factors outweigh the competing public interest in favour of openness and transparency.'

88. The Commissioner has already considered these arguments in the section of this Decision Notice above entitled 'Exemption – section 24(1)'. In relation to the four elements of the Manual which he concluded should be disclosed, he considers that the headings should also be disclosed. He accepts that the remaining titles and contents headings to which the Cabinet Office applied section 24 are exempt and that the public interest in maintaining the exemption outweighs the public interest in disclosing this information.

Section 27

89. In relation to section 27, the Cabinet Office claimed that the public interest favoured withholding the information in the headings for the same reasons as it had identified for the substantive text. All of the information at issue under section 27(1)(a) relates to special arrangements for particular foreign states. The Commissioner has already concluded in respect of that information that the public interest test favours maintaining the exemption. He therefore considers that the headings relating to this information should also be withheld on the same basis.

The Decision

90. The Commissioner's decision is that the Cabinet Office did not deal with the request for information fully in accordance with the Act, in that it inappropriately withheld

some of the requested information by reference to sections 21(1) and 24(1) of the Act.

Steps Required

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

- The Cabinet Office should provide the complainant with the information identified in the separate Schedule which has been provided to it.

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

Failure to comply

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

Other matters

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

Exceeding estimated timescale to consider public interest

94. First, the complainant objected that the Cabinet Office had failed to respond within the additional twenty day period which it had decided that it needed in order to address the public interest test, and that he had only been made aware on 19 May 2005 that the deadline was going to be missed because he had taken the trouble to telephone the Cabinet Office. In its letter to the Commissioner of 16 November 2006 the Cabinet Office stated that twenty additional days was a '*challenging timetable given the nature and volume of the material to be considered*', and that it would have emailed the complainant on 19 May 2005 to inform him that the response was being posted then, but in the event he had telephoned earlier in the day. The Commissioner notes that, once a public authority has extended the time limit to consider the public interest test, there is no particular statutory timescale for it to report its conclusions. He considers that the timescale should be reasonable, and would expect a public authority to abide by any specific timeframe it had given or else provide an update. In this case the Cabinet Office had considered that it required twenty working days but in the event it exceeded that estimate by two days.

The Commissioner considers that it is regrettable that the Cabinet Office was not able to meet its own time estimate.

Internal review delay

95. Secondly, section VI of the Code of Practice (provided for by section 45 of the Act) makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information. As he has made clear in his *'Good Practice Guidance No 5'*, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review.
96. In exceptional circumstances it may be reasonable to take longer, but the total time taken should not exceed 40 working days, and as a matter of good practice the public authority should explain to the requester why more time is needed. Furthermore, in such cases the Commissioner expects a public authority to be able to demonstrate that it has commenced the review procedure promptly following receipt of the request for review and has actively worked on the review throughout that period.
97. The complainant's internal review request was made on 6 June 2005. The Cabinet Office sent its internal review decision to him on 13 July 2005. The Cabinet Office therefore took 26 working days to complete the review. The Commissioner notes the point made by the Cabinet Office regarding the additional time it required to address the original public interest test – that twenty additional working days was a *'challenging timetable given the nature and volume of the material to be considered'*. He accepts that the volume of information in this case and the relevance of specialist input goes some way to explaining the slight delay that occurred in completing the internal review. On the other hand, the Commissioner notes that the Cabinet Office failed to issue a substantive reply by 8 July 2005 as indicated, and that it sought to explain its failure to update the complainant by referring to an oversight which was due to *'staff concentrating on responding to the terrorist attacks on 7 July'*. The complainant was not impressed with this argument, and the Commissioner does not consider that it provides a valid explanation for the identified delay in the Cabinet Office's review response.

Right of Appeal

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

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

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

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

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

Dated the 22nd day of December 2009

Signed

**Graham Smith
Deputy Commissioner**

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

Legal Annex

Section 1(1) provides that –

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

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.’

Section 1(2) provides that –

‘Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.’

Section 1(3) provides that –

‘Where a public authority –

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.’

Section 1(4) provides that –

‘The information –

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.’

Section 1(5) provides that –

‘A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).’

Section 1(6) provides that –

‘In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as ‘the duty to confirm or deny’.’

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 10(2) provides that –

‘Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.’

Section 10(3) provides that –

‘If, and to the extent that –

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.’

Section 10(4) provides that –

‘The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.’

Section 10(5) provides that –

‘Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.’

Section 10(6) provides that –

‘In this section –
‘the date of receipt’ means –

- (a) the day on which the public authority receives the request for information, or
- (b) if later, the day on which it receives the information referred to in section 1(3);

‘working day’ means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.’

Section 17(1) provides that -

‘A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

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

Section 17(2) states –

‘Where–

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-
 - (i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
 - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and
- (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate

of the date by which the authority expects that such a decision will have been reached.'

Section 17(3) provides that -

'A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.'

Section 17(4) provides that -

'A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.'

Section 17(5) provides that -

'A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.'

Section 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 21(3) provides that –

‘For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.’

Section 23(1) provides that –

‘Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).’

Section 23(2) provides that –

‘A certificate signed by a Minister of the Crown certifying that the information to which it applies was directly or indirectly supplied by, or relates to, any of the bodies specified in subsection (3) shall, subject to section 60, be conclusive evidence of that fact.’

Section 23(3) provides that –

‘The bodies referred to in subsections (1) and (2) are-

- (a) the Security Service,
- (b) the Secret Intelligence Service,
- (c) the Government Communications Headquarters,
- (d) the special forces,
- (e) the Tribunal established under section 65 of the Regulation of Investigatory Powers Act 2000,
- (f) the Tribunal established under section 7 of the Interception of Communications Act 1985,
- (g) the Tribunal established under section 5 of the Security Service Act 1989,
- (h) the Tribunal established under section 9 of the Intelligence Services Act 1994,
- (i) the Security Vetting Appeals Panel,
- (j) the Security Commission,
- (k) the National Criminal Intelligence Service, and
- (l) the Service Authority for the National Criminal Intelligence Service.’

Section 23(4) provides that –

‘In subsection (3)(c) ‘the Government Communications Headquarters’ includes any unit or part of a unit of the armed forces of the Crown which is for the time being required by the Secretary of State to assist the Government Communications Headquarters in carrying out its functions.’

Section 23(5) provides that –

‘The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).’

Section 24(1) provides that –

‘Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security.’

Section 24(2) provides that –

‘The duty to confirm or deny does not arise if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of safeguarding national security.’

Section 24(3) provides that –

‘A certificate signed by a Minister of the Crown certifying that exemption from section 1(1)(b), or from section 1(1)(a) and (b), is, or at any time was, required for the purpose of safeguarding national security shall, subject to section 60, be conclusive evidence of that fact.’

Section 24(4) provides that –

‘A certificate under subsection (3) may identify the information to which it applies by means of a general description and may be expressed to have prospective effect.’

Section 27(1) provides that –

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

- (a) relations between the United Kingdom and any other State,
- (b) relations between the United Kingdom and any international organisation or international court,
- (c) the interests of the United Kingdom abroad, or
- (d) the promotion or protection by the United Kingdom of its interests abroad.’

Section 27(2) provides that –

‘Information is also exempt information if it is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court.’

Section 27(3) provides that –

‘For the purposes of this section, any information obtained from a State, organisation or court is confidential at any time while the terms on which it was obtained require it to be held in confidence or while the circumstances in which it was obtained make it reasonable for the State, organisation or court to expect that it will be so held.’

Section 27(4) provides that –

‘The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a)-

- (a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1), or
- (b) would involve the disclosure of any information (whether or not already recorded) which is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court.’

Section 27(5) provides that –

‘In this section-

“international court” means any international court which is not an international organisation and which is established-

- (a) by a resolution of an international organisation of which the United Kingdom is a member, or
- (b) by an international agreement to which the United Kingdom is a party;

“international organisation” means any international organisation whose members include any two or more States, or any organ of such an organisation;

“State” includes the government of any State and any organ of its government, and references to a State other than the United Kingdom include references to any territory outside the United Kingdom.’

Section 35(1) provides that –

‘Information held by a government department or by the National Assembly for Wales is exempt information if it relates to-

- (a) the formulation or development of government policy,
- (b) Ministerial communications,
- (c) the provision of advice by any of the Law Officers or any request or the provision of such advice, or

(d) the operation of any Ministerial private office.

Section 35(2) provides that –

‘Once a decision as to government policy has been taken, any statistical information used to provide an informed background to the taking of the decision is not to be regarded-

- (a) for the purposes of subsection (1)(a), as relating to the formulation or development of government policy, or
- (b) for the purposes of subsection (1)(b), as relating to Ministerial communications.’

Section 35(3) provides that –

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

Section 35(4) provides that –

‘In making any determination required by section 2(1)(b) or (2)(b) in relation to information which is exempt information by virtue of subsection (1)(a), regard shall be had to the particular public interest in the disclosure of factual information which has been used, or is intended to be used, to provide an informed background to decision-taking.’

Section 35(5) provides that –

‘In this section-

“government policy” includes the policy of the Executive Committee of the Northern Ireland Assembly and the policy of the National Assembly for Wales;

“the Law Officers” means the Attorney General, the Solicitor General, the Advocate General for Scotland, the Lord Advocate, the Solicitor General for Scotland and the Attorney General for Northern Ireland;

“Ministerial communications” means any communications-

- (a) between Ministers of the Crown,
- (b) between Northern Ireland Ministers, including Northern Ireland junior Ministers, or
- (c) between Assembly Secretaries, including the Assembly First Secretary, and includes, in particular, proceedings of the Cabinet or of any committee of the Cabinet, proceedings of the Executive Committee of the Northern Ireland Assembly, and proceedings of the executive committee of the National Assembly for Wales;

“Ministerial private office” means any part of a government department which provides personal administrative support to a Minister of the Crown, to a Northern

Ireland Minister or a Northern Ireland junior Minister or any part of the administration of the National Assembly for Wales providing personal administrative support to the Assembly First Secretary or an Assembly Secretary;

“Northern Ireland junior Minister” means a member of the Northern Ireland Assembly appointed as a junior Minister under section 19 of the Northern Ireland Act 1998.’

Section 36(1) provides that –

‘This section applies to-

- (a) information which is held by a government department or by the National Assembly for Wales and is not exempt information by virtue of section 35, and
- (b) information which is held by any other public authority.

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-

- (a) would, or would be likely to, prejudice-
 - (i) the maintenance of the convention of the collective responsibility of Ministers of the Crown, or
 - (ii) the work of the Executive Committee of the Northern Ireland Assembly, or
 - (iii) the work of the executive committee of the National Assembly for Wales,
- (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.

Section 36(3) provides that –

‘The duty to confirm or deny does not arise in relation to information to which this section applies (or would apply if held by the public authority) if, or to the extent that, in the reasonable opinion of a qualified person, compliance with section 1(1)(a) would, or would be likely to, have any of the effects mentioned in subsection (2).’

Section 36(4) provides that –

‘In relation to statistical information, subsections (2) and (3) shall have effect with the omission of the words ‘in the reasonable opinion of a qualified person’.

Section 36(5) provides that –

‘In subsections (2) and (3) “qualified person”-

- (a) in relation to information held by a government department in the charge of a Minister of the Crown, means any Minister of the Crown,
- (b) in relation to information held by a Northern Ireland department, means the Northern Ireland Minister in charge of the department,
- (c) in relation to information held by any other government department, means the commissioners or other person in charge of that department,
- (d) in relation to information held by the House of Commons, means the Speaker of that House,
- (e) in relation to information held by the House of Lords, means the Clerk of the Parliaments,
- (f) in relation to information held by the Northern Ireland Assembly, means the Presiding Officer,
- (g) in relation to information held by the National Assembly for Wales, means the Assembly First Secretary,
- (h) in relation to information held by any Welsh public authority other than the Auditor General for Wales, means-
 - (i) the public authority, or
 - (ii) any officer or employee of the authority authorised by the Assembly First Secretary,
- (i) in relation to information held by the National Audit Office, means the Comptroller and Auditor General,
- (j) in relation to information held by the Northern Ireland Audit Office, means the Comptroller and Auditor General for Northern Ireland,
- (k) in relation to information held by the Auditor General for Wales, means the Auditor General for Wales,
- (l) in relation to information held by any Northern Ireland public authority other than the Northern Ireland Audit Office, means-
 - (i) the public authority, or
 - (ii) any officer or employee of the authority authorised by the First Minister and deputy First Minister in Northern Ireland acting jointly,
- (m) in relation to information held by the Greater London Authority, means the Mayor of London,
- (n) in relation to information held by a functional body within the meaning of the Greater London Authority Act 1999, means the chairman of that functional body, and
- (o) in relation to information held by any public authority not falling within any of paragraphs (a) to (n), means-
 - (i) a Minister of the Crown,
 - (ii) the public authority, if authorised for the purposes of this section by a Minister of the Crown, or
 - (iii) any officer or employee of the public authority who is authorised for the purposes of this section by a Minister of the Crown.’

Section 36(6) provides that –

‘Any authorisation for the purposes of this section-

- (a) may relate to a specified person or to persons falling within a specified class,
- (b) may be general or limited to particular classes of case, and
- (c) may be granted subject to conditions.’

Section 36(7) provides that –

‘A certificate signed by the qualified person referred to in subsection (5)(d) or (e) above certifying that in his reasonable opinion-

- (a) disclosure of information held by either House of Parliament, or
 - (b) compliance with section 1(1)(a) by either House,
- would, or would be likely to, have any of the effects mentioned in subsection (2) shall be conclusive evidence of that fact.’