ICO
Information Commissioner's Office

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 11 March 2010

Public Authority: Medicines and Healthcare Products Regulatory Agency
Address: Market Towers
1 Nine Elms Lane
London
SW8 5NQ

Summary

The complainant sought correspondence exchanged between the public authority and The Prince of Wales (and those who represent him) concerning the regulation of homeopathic or herbal medicines. The public authority refused to disclose the majority of this information on the basis that it was exempt from disclosure on the basis of sections 37(1)(a) and 41(1) of the Act. The Commissioner has concluded that the public authority were entitled to withhold this information on the basis of section 37(1)(a) of the Act.

The complainant also sought correspondence exchanged between the public authority and His Royal Highness' Foundation for Integrated Health, again concerning the regulation of homeopathic or herbal medicines. The public authority provided some documents in response to this request but made a number of redactions on the basis of section 40(2) of the Act. The Commissioner has decided that in relation to the personal data of the employees of the public authorities this exemption was incorrectly relied upon.

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.

Background

2. The Prince's Foundation for Integrated Health ('FIH') is a charity founded in 1993 by The Prince of Wales with the aim of promoting integrated healthcare for all. Integrated healthcare is defined as bringing together mainstream medical science

with the complementary alternatives such as homeopathy, acupuncture and herbal medicine.

The Request

3. On 25 September 2006 the complainant submitted the following requests to the Medicines and Healthcare Products Regulatory Agency ('MHRA'):

   '1. All correspondence between HRH The Prince of Wales, or anyone in his household or acting for him, and MHRA, concerning the regulation of homeopathic or herbal medicines, dated from 1st January 2003 to today's date.

   2. All correspondence between The Prince's Foundation for Integrated Health, and MHRA, concerning the regulation of homeopathic or herbal medicines, dated from 1st January 2003 to today's date.'

4. The MHRA contacted the complainant on 19 October 2006 and explained that it believed that section 43 was likely to apply to at least some of the information falling within the scope of his requests. However, the MHRA explained that it needed, in line with section 17(2), to extend the time it needed to consider the public interest test. (The sub-section of section 43 which the MHRA was referring to was section 43(2) which provides an exemption for information whose disclosure would, or would be likely to, prejudice a party's commercial interests.)

5. The MHRA contacted the complainant again on 24 October 2006 and explicitly confirmed that it held information falling within the scope of his requests but as previously stated it needed longer to consider the public interest test. In this response the MHRA also noted that it believed that section 37 of the Act was likely to be applicable in addition to section 43. (The sub-section of section 37 which the MHRA was referring to was section 37(1)(a) which provides an exemption for information which relates to communications with the Royal Family or Royal Household.)

6. On 26 October 2006 the MHRA provided the complainant with 14 pieces of information which it considered to fall within the scope of his requests. The MHRA explained that it had redacted certain parts of these documents on the basis of sections 37, 40(2) and 43 of the Act. The MHRA also explained that it was considering whether the remaining information falling within the scope of his requests was exempt from disclosure on the basis of sections 37 and 43. The MHRA confirmed that this comprised seven documents exempt under section 37 and two documents exempt under section 43. However, the MHRA explained that it had yet to reach a decision with regard to where the balance of the public interest lay in respect of these documents.

7. The MHRA informed the complainant on 30 November 2006 that it had concluded that in respect of the remaining nine documents the balance of the public interest favoured maintaining the exemptions contained at section 37 and 43.

8. On 12 December 2006 the complainant asked the MHRA to conduct an internal review of its handling of his requests. In particular the complainant asked the MHRA to consider the fact that so far it had failed to distinguish between the two separate requests he had submitted, i.e. one seeking correspondence with The Prince of Wales and one seeking correspondence with the FIH.

9. The MHRA informed the complainant of the outcome of its internal review on 22 January 2007. This review upheld the decision to redact the documents that had been disclosed and also the decision to withhold the remaining documents on the basis of the exemptions cited. The internal review did not mention the two different requests.

The Investigation

Scope of the case

10. The complainant contacted the Commissioner on 14 February 2007 in order to complain about the MHRA's handing of his request. The complainant asked the Commissioner to consider the following points:

    - The MHRA's failure to provide a complete response within 20 working days;
    - The MHRA's failure to provide non-exempt information within 20 working days;
    - That the MHRA had incorrectly relied on exemptions both to redact parts of the documents that had been disclosed and to withhold entire documents; and
    - Certain attachments to the documents which had been provided to him had not been disclosed, i.e. they were not exempt but had simply not been supplied.

11. As the Chronology below explains, subsequent to the complainant contacting the Commissioner, the MHRA explained that it now considered that some of the correspondence which it had initially treated as falling within the scope of the complainant's requests, i.e. that relating to the Highgrove Group, in fact did not.

12. Therefore before considering the above points of complaint, the Commissioner has had to consider initially what information actually falls within the scope of the requests.

Chronology

13. The Commissioner contacted the MHRA on 20 April 2007 in relation to this complaint. The Commissioner asked the MHRA to provide him with a copy of the information disclosed to the complainant; a description of the information that had been withheld; clarification as to which exemptions the MHRA was relying on to withhold the information that had not been disclosed; and to explain whether it

had distinguished between the two different requests submitted by the complainant.

14. The MHRA provided the Commissioner with a substantive response on 18 May 2007. The MHRA explained that the information that had been disclosed to the complainant fell within the scope of the second of the requests, i.e. the request seeking correspondence with the FIH as opposed to the request seeking correspondence with The Prince of Wales.

15. The MHRA contacted the Commissioner again on 19 December 2007 in order to clarify how it had handled the complainant's requests. The MHRA noted that when it originally considered these requests it had believed that some of the information fell within the scope of the requests because it came from the Highgrove Group which the MHRA understood to represent The Prince of Wales. However, the MHRA informed the Commissioner that it was now of the opinion that the Highgrove Group did not represent The Prince of Wales and therefore it believed that some of the information which it originally considered to fall within the scope of the requests, in fact fell outside the scope of the requests. This included some information which had previously been disclosed to the complainant. The MHRA also noted that it believed that some of the documents that had been withheld in their entirety were exempt from disclosure on the basis of section 41(1) in addition to section 37(1)(a).

16. On 9 April 2008 the Commissioner contacted the MHRA and asked to be provided with copies of **all** of the information falling within the scope of the complainant's requests.

17. The MHRA responded to the Commissioner on 22 May 2008. With this response the MHRA provided the Commissioner with four sets of information entitled:

- Information that was considered, but not released;
- Information that was released, with redactions;
- The same information that was released, but without the redactions; and
- Correspondence with the Highgrove Group which the MHRA no longer believed fell within the scope of either request.

18. Meanwhile, in March 2008 representatives of The Royal Household, the Cabinet Office and the Commissioner's office met to discuss the issues raised by the various complaints the Commissioner had received involving requests for The Prince of Wales' correspondence with government departments, including this present case.

19. On 7 July 2008 the Commissioner wrote to The Royal Household in order to seek further views on the application of the exemptions in these cases.

20. The Commissioner received a response from The Royal Household in November 2008.

21. In December 2008 representatives of The Royal Household, the Cabinet Office and the Commissioner's office met again in order to further discuss the issues raised by these complaints.

22. The Commissioner contacted the MHRA again on 8 December 2009 in order to clarify a number of outstanding issues in relation to this complaint, in particular the fact that certain attachments to documents which had been disclosed to the complainant had not been provided to him.

23. The MHRA provided the Commissioner with clarification on these issues in January and February 2010.

Findings of fact

24. As the Chronology section above suggests there was some initial confusion with regard to the information that the MHRA considered to fall within the scope of the complainant's requests. This led the MHRA to disclose information which it now believes does not fall within the scope either request.

25. In order to attempt to clarify this issue, the Commissioner has set out in the attached annex a list of all the documents which have been provided to him by the MHRA. There are 24 documents in total and the Commissioner has indicated in the list the MHRA's current position on each document (i.e. are they in scope of either request and if so are they exempt from disclosure) along with his view as to whether the documents fall within the scope of either request and if so his position on the application of the exemptions cited by the MHRA.

26. In most cases involving correspondence of a sensitive nature such as this – i.e. communications with the Royal Family and/or Royal Household – the Commissioner would not include a list in the Notice. However, as noted above the MHRA has already confirmed that it holds information falling within the scope of both requests, indicated how many documents it holds and indeed disclosed significant portions of this information. Nevertheless, the list which is attached to this Notice does not include details of the information that has not been disclosed (e.g. date, recipient, sender). The Commissioner will send the MHRA a more detailed version of the list in order to ensure that there is no confusion as to his findings in relation to particular documents.

Analysis

Substantive Procedural Matters

Status of the 'Highgrove Group' and clarification as to what information falls in the scope of the requests

27. In submissions to the Commissioner the MHRA explained that it now believed that some of the documents it had originally considered to fall within the scope of

the complainant's first request, including documents that it had disclosed, did not fall within the scope of either request.

28. This confusion arose as the MHRA originally considered correspondence from the Highgrove Group to fall within the scope of the first request because it believed that this group acted for The Prince of Wales. The MHRA explained to the Commissioner that since responding to the requests it had consulted with The Prince of Wales' Household who confirmed that the Highgrove Group does not act for His Royal Highness. The MHRA informed that Commissioner that:

> 'Clarence House has confirmed that the name "Highgrove Group" was a self-appointed title for a group of experts in the herbal medicine field that was never formally constituted and was not intended to represent His Royal Highness, his views, or his Household in any way. The Highgrove Group's correspondence is therefore not relevant to this request.'

29. The Commissioner understands that the group became known as the Highgrove Group following a meeting with The Prince of Wales at Highgrove House and that the purpose of the group is to discuss the implementation of the Traditional Herbal Medicines Directive.

30. The Commissioner has viewed the correspondence between the MHRA and representatives of the Highgrove Group very carefully and considers that the content of this correspondence does demonstrate some level of relationship between the group and The Prince of Wales: as noted the Highgrove Group is named after a meeting at one of His Royal Highness' residences and the remit and interests of the Group are clearly ones that are of interest to His Royal Highness.

31. However, the Commissioner does not believe that this relationship equates to the Highgrove Group 'acting on behalf' of The Prince of Wales. In the Commissioner's opinion when one party acts on behalf of another there has to be direct relationship between the two; one party will give the other party instructions, be it explicitly or implicitly, as to the actions it wishes the other party to take on its behalf. In the Commissioner's opinion there is no evidence of such a direct relationship between the Highgrove Group and The Prince of Wales. Moreover, the Commissioner notes that The Prince of Wales' Household has specifically confirmed that it does not consider the Highgrove Group to act for, or represent, His Royal Highness in any way.

32. Therefore the Commissioner is satisfied that the Highgrove Group does not act for The Prince of Wales (and nor does it form part of His Royal Highness' Household). Consequently, any correspondence between the MHRA and the Highgrove Group cannot be said to fall within the scope of the first request. Nor, for the sake of clarity, does the Commissioner believe that such correspondence falls within the scope of the second request. This is because the second request sought correspondence between the MHRA and the FIH and the Commissioner is satisfied that the Group does not form part of, or represent, the FIH.

33. In light of this conclusion the Commissioner believes that documents which constitute correspondence between the MHRA and the Highgrove Group do not fall within the scope of either request.

34. The MHRA suggested that such documents are those numbered 1, 4 and 18 to 24 in the annex. The Commissioner has examined these documents and agrees that for reasoning set out above the majority of these documents do not fall within the scope of either request. The exceptions to this are the documents numbered 18 and 20 because the Commissioner believes that these two documents do not consist of correspondence between the MHRA and the Highgrove Group, rather they consist of correspondence between the MHRA and The Prince of Wales' Household. Therefore these two documents fall within the scope of the first request.

35. Furthermore, with regard to the information that falls outside the scope of the requests the Commissioner does not believe that document 3 falls within the scope of either request. This is because although it is a letter sent by the MHRA it is not sent to The Prince of Wales or someone acting on his behalf nor is it sent to the FIH.

36. In summary, the Commissioner believes that the following documents fall within the scope of the first request: 2, 15 to 18 and 20.[1]

37. The following documents fall within the scope of the second request: 5 to 14.

38. In the Commissioner's opinion, for reasons set out above, the remaining documents listed in the annex fall outside the scope of both requests.

Missing attachments

39. When the complainant initially contacted the Commissioner he argued that, although the MHRA had disclosed some documents to him, the attachments to some of these documents had not been provided. In light of the analysis above the only documents which have been disclosed to the complainant **and** in the Commissioner's opinion fall within the scope of either request are those numbered 2 and 5 to 14. The Commissioner has established that of these documents the ones which had attachments which the MHRA failed initially to provide to the complainant are those numbered 6, 8, 12 and 13.

40. Following the Commissioner's discussions with the MHRA in early 2010, the complainant was provided with the attachments to documents 6, 8 and 12.

41. The attachments to document 13 consisted of a 'final programme' and 'speaker confirmation letter' for a conference which took place in April 2004. In its submissions to the Commissioner the MHRA explained that it could not provide the complainant with these two attachments because they were not retained after the event. Given that the complainant submitted his requests in September 2006,

[1] Document 2 has in fact been disclosed to the complainant albeit that redactions have been applied on the basis of section 40(2). The Commissioner has considered whether these redactions have been correctly applied later in this Notice.

over two years after the event in question, the Commissioner is satisfied that at the time of the requests this information was not held and therefore could not have been provided.

Exemptions

Section 40 – personal data

42. Although the MHRA has disclosed a number of documents to the complainant it has redacted parts of these documents on the basis of section 40(2) of the Act. These documents are those numbered 2 and 5 to 14 (with the exception of 9 to which no redactions were made).[2]

43. Section 40(2) of the Act provides an exemption for information which is the personal data of any third party where disclosure would breach one of the conditions set out in section 40(3) of the Act.

44. In order to rely on the exemption the information being requested must therefore constitute personal data as defined by the Data Protection Act 1998 (DPA).

45. Section 1 of the DPA defines personal data as:

> '…data which relate to a living individual who can be identified
> a) from those data, or
> b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,
>
> and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual.'

46. The Commissioner has established that information that has been redacted from the various documents can be summarised as:

- Names of officials at the MHRA, FIH, the Prince's Charities Office and the Royal Household;
- Work telephone numbers and email addresses of MHRA, FIH and Prince's Charities Office officials;
- A personal email address and mobile number of an individual working for FIH;
- References to individuals from these various third parties contained within the body of correspondence.

47. The Commissioner has also established that for some of the documents that have been disclosed the redactions have not been applied consistently; the MHRA

[2] Although the Request section of the Notice notes that redactions were also made to some documents on the basis of sections 37 and 43 the Commissioner has determined that such documents do not fall within the scope of either request.

explained that it had inadvertently omitted to redact the names and positions of some individuals.

48. The Commissioner is satisfied that all of the information which has been redacted from these documents constitutes personal data: the various individuals can clearly be identified from the information that has been redacted.

49. The MHRA has not provided the Commissioner (or the complainant) with any detailed reasoning to support its decision to redact this information on the basis of section 40(2).

50. However the Commissioner understands that the MHRA is seeking to rely on the interaction of sections 40(2) and 40(3)(a)(i) of the Act. Section 40(3)(a)(i) states that personal data is exempt if its disclosure would breach any of the data protection principles. The Commissioner understands that the MHRA believes that disclosure of the redacted information would breach the first data protection principle which states that:

    1. Personal data must be processed fairly and lawfully; and
    2. Personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met.

51. In deciding whether disclosure of personal data would be unfair the Commissioner takes into account a range of factors including:

    - The consequences of disclosing the information, i.e. what damage or distress would the individual suffer if the information was disclosed? In consideration of this factor the Commissioner may take into account:
        - whether information of the nature requested is already in the public domain;
        - if so the source of such a disclosure; and
        - even if the information has previously been in the public domain does the passage of time mean that disclosure now could still cause damage or distress?

    - The reasonable expectations of the individual in terms of what would happen to their personal data. Such expectations could be shaped by:
        - what the public authority may have told them about what would happen to their personal data;
        - their general expectations of privacy, including the effect of Article 8 ECHR;
        - the nature or content of the information itself;
        - the circumstances in which the personal data was obtained;
        - particular circumstances of the case, e.g. established custom or practice within the public authority; and
        - whether the individual consented to their personal data being disclosed or conversely whether they explicitly refused.

52. Furthermore, notwithstanding a data subject's reasonable expectations or any damage or distress caused to them by disclosure, the Commissioner believes

that it may still be fair to disclose information if it can be argued that there is a compelling public interest in disclosure of that information. Therefore when assessing fairness under the first data protection condition, the Commissioner will balance the rights and freedoms of the data subject with the legitimate interests in disclosing the information.

53. In the circumstances of this case the Commissioner has also taken into account the approach set out in his guidance note 'When should names be disclosed?'[3] This note provides guidance to public authorities on when names of staff, officials and elected representatives or third parties acting in a professional capacity should be released in response to an information request. The guidance emphasises that key to any assessment includes consideration of whether:

- The information is about the person's public role?
- Would they expect their role to be subject to public scrutiny?
- Is there a likelihood of unwarranted damage or distress to the individual?

Personal data of the MHRA officials

54. Clearly, the nature of the personal data that has been redacted varies somewhat and therefore the Commissioner has firstly considered whether the disclosure of personal data relating to the employees of the MHRA would be fair.

55. The Commissioner is satisfied that the personal data of the MHRA employees relates to these individuals' public roles; i.e. their names and contact details have been redacted from documents which evidence decisions in relation to policy positions of the MHRA which were subsequently put into the public domain. The information has not been redacted from documents which relate solely to internal processes at the MHRA, for example an internal disciplinary decision.

56. In the Commissioner's opinion employees of public authorities should be aware of the fact that their employer may receive requests for information under the Act which includes their personal data. The Commissioner notes that although some of these documents pre-date January 2005 when the full right of access came into force, all of the documents were created a number of years after the Act was passed in 2000. Therefore in the Commissioner's opinion, the employees of MHRA should have had some expectation that their personal data, when allied to the decisions that they took at the MHRA, may be disclosed.

57. Furthermore the Commissioner understands that the names of the MHRA staff that have been redacted are those who held relatively senior positions and thus could expect to be more accountable for decisions that they had taken or were associated with than more junior staff.

58. With regard to the consequences of disclosing this information the Commissioner does not believe that disclosure of would result in any significant damage or distress to the individuals named; the information relates very much to decisions taken, or opinions proffered, in a professional capacity rather than a private one.

[3] Practical guidance: When should names be disclosed?

59. With regard to the public interest in disclosure, the Commissioner recognises that the extent to which disclosure simply of names and contact details would inform the public about the matters discussed in the documents that have been disclosed is limited. Nevertheless, the Commissioner believes that there is always an underlying, and strongly weighted, public interest in disclosing information to ensure that public authorities are accountable and transparent. Moreover, in light of low level of harm that might occur to the data subjects if the personal data was disclosed, allied with their reasonable expectations, the Commissioner believes that the legitimate public interest in disclosing this information outweighs any arguments that disclosure of the information would be unfair.

60. On this basis the Commissioner is satisfied that disclosure of the names and contact details of the employees of the MHRA employees would be fair. The Commissioner is also satisfied that disclosure of the information would lawful.

61. In relation to whether disclosure of this information meets one of the conditions in Schedule 2 of the DPA, the Commissioner considers the most appropriate condition to be the sixth which reads:

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

62. The Commissioner has followed the approach taken by the Information Tribunal in another case involving the House of Commons: *House of Commons v ICO & Leapman, Brooke, Thomas (EA/2007/0060 etc)*, in which the Tribunal interpreted the sixth condition as setting out a three part test which must be satisfied, namely

- there must be **legitimate interests** in disclosing the information,
- the disclosure must be **necessary** for a legitimate interest of the public, and
- even where the disclosure is necessary it nevertheless must not cause **unwarranted interference** (or prejudice) to the rights, freedoms & legitimate interests of the data subject.

63. The Commissioner believes that the first and third limbs of this test have effectively already been considered in relation to the assessment of fairness above: the legitimate interests having been considered as part of the balancing exercise and whether there would be any unwarranted intrusion has been essentially been considered in relation to the consequences of the disclosing the information. Therefore the Commissioner only needs to consider whether it is necessary to disclose the requested information in order to meet the identified legitimate interests.

64. The Commissioner believes that the public interest in disclosure of information in order to ensure that public authorities are accountable for, and transparent about, their decisions is one that underpins the entire Act. The Commissioner does not

think that it is acceptable that a public authority should routinely redact the names of its employees (or other identifiable individuals) from documents disclosed in response to requests. Furthermore, the Commissioner also believes that this public interest extends to disclosure of the workplace contact details of the individuals if they appear in the requested information as the public may have a legitimate interest to contact them in relation to their work in this area. Disclosure of the information regarding the MHRA's employees is necessary in this case in order to ensure full transparency of the processes and the roles of the individuals involved. The Commissioner therefore believes that disclosure of this information is necessary and thus the sixth condition at schedule 2 is met.

Names and contact details of individuals who are not MHRA officials

65. The Commissioner recognises that the consideration of fairness, lawfulness and the sixth condition will differ for these individuals. With regard to their reasonable expectations, they are not employees of a public authority. Therefore the organisations which these individuals work for or represent, in contrast to the MHRA, are not subject to the Act. Similarly, such organisations, unlike the MHRA are not directly funded from the public purse. Consequently, in the Commissioner's opinion it would be incorrect to conclude that these individuals should have had a reasonable expectation that their names, when allied to decisions that they took, be disclosed in response to an information request that is submitted to a public authority.

66. Therefore, even though the personal data about non-MHRA officials is actually held by the MHRA and relates to decisions taken, or opinions offered, in a professional capacity rather than a strictly private one, the Commissioner accepts that the consequences of such a disclosure would be unfair because it would, in effect, expose non-public authority employees to a degree of scrutiny that they did not reasonably expect. Consequently the personal data of non-MHRA employees is exempt from disclosure on the basis of section 40(2) of the Act.

Section 37(1)(a) – communications with the Royal Family and Royal Household

67. The MHRA has withheld documents 15 to 18 and 20 in their entirety on the basis that they are exempt from disclosure on under section 37(1)(a).

68. This section states that:

> '37 – (1) Information is exempt information if it relates to –
>
> (a) communications with Her Majesty, with other members of the Royal Family or with the Royal Household'.

69. In line with his approach to the term 'relates to' when it appears in other sections of the Act (for example section 35), the Commissioner interprets this term broadly and thus the exemption contained at section 37(1)(a) provides an exemption for information which 'relates to' communications with the Royal Family or with the Royal Household rather than simply communications with such parties.

70. Therefore, this exemption has the potential to cover draft letters, memoranda or references to meetings with the Royal Family or Royal Household irrespective of whether such communications have in fact been sent or received or indeed whether such meetings have in fact occurred.

71. However, information must still constitute, or relate to, a communication to fall within the exemption. So, for example an internal note held by a government department that simply references the Royal Family or Royal Household will not necessarily fall within this definition. It must be evident that the information is intended for, or has been communicated, or that it references some other communication falling within the definition.

72. Furthermore, the Commissioner is aware that many members of the Royal Family act as patrons for a wide range of charities. If correspondence withheld by a public authority relates to those charities **and** is either from a member of the Royal Family or the Royal Household then it will fall within the scope of section 37(1)(a). However correspondence simply between one of the Royal charities and a public authority will not fall within the exemption, for example letters between Companies House and the charity offices regarding the accounts because it does not relate to a communication with a member of the Royal Family or the Royal Household.

73. The Commissioner has reviewed documents 15 to 18 and 20 and he is satisfied that they fall within the broad ambit of section 37(1)(a) and thus are exempt from disclosure.

Public interest test

74. Section 37 is a qualified exemption and is therefore subject to the public interest test set out in section 2(2)(b) of the Act, i.e. whether in all of the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Under the public interest test under section 2 of the Act the presumption is in favour of disclosure so if the arguments on both sides are equally weighted the Act requires disclosure of the information.

75. The MHRA has provided the Commissioner with detailed arguments to support its position that the public interest in relation section 37(1)(a) favours maintaining the exemption. Furthermore, during the course of the Commissioner's investigation of this complaint he has exchanged correspondence with the Cabinet Office in relation to a number of complaints (including this one) he has received about information requests submitted to a range of central government public authorities for correspondence with The Prince of Wales. In some instances the Cabinet Office has provided the Commissioner with submissions on the application of section 37(1)(a) and asked Commissioner to consider these submissions when reaching his decision in all cases involving requests for correspondence with The Prince of Wales. The Commissioner has agreed to do so. Therefore although for consistency and ease of reference the remainder of this Notice suggests that information or a particular submission has been provided by the MHRA it may be the case that it was in fact provided by the Cabinet Office on its behalf.

76. The complainant has also provided the Commissioner with detailed arguments to support his view that the public interest favours disclosing the information.

77. The Commissioner has summarised these various submissions under two headings, arguments in favour of disclosing the information and arguments in favour of maintaining the exemption. The Commissioner has then gone on to set out his position on where the balance of the public interest lies in respect of the information in this case

Public interest arguments in favour of disclosing the information

78. In submissions to the Commissioner the MHRA explained that it accepted that there was an argument that openness helps to increase trust in government. Furthermore, it noted that there was also a general public interest in the role of the Heir to the Throne and perhaps some interest to know how frequently he communicates with government and on what topics.

79. The complainant argued that The Prince of Wales has regularly placed in the public domain his views on herbal and homeopathic or herbal medicines, and continues to do so. The complainant suggested that since 1982 The Prince of Wales had given some 34 speeches and articles on healthcare topics, the vast majority promoting complementary and alternative medicine. As a result the complainant argued that The Prince of Wales has himself created a very high level of public interest in his views on these matters and as a consequence cannot reasonably expect his views to be kept secret.

80. The complainant noted that The Prince of Wales' comments even extended to making recommendations for public health policy. The complainant quoted the following extract from The Prince of Wales' speech to the World Health Organisation on 23 May 2006 to support his point:

> 'I can only urge all health ministers, politicians and Government representatives in this room today to abandon the conventional mindset that sees health solely the remit of a health department. In ancient China, the doctor was only paid when the patient was well. In modern health systems, perhaps your visible success should depend on health outcomes and the degree to which health has become the responsibility of every single department in your country's Government. Only through collaborative thinking can we paint a complete picture of world healing.'

81. The complainant also noted that The Prince of Wales had personally commissioned the 'Smallwood Report' which was published in 2005. The complainant argued that leading scientists had doubted the report's conclusion that greater use of alternative medicine by the NHS would lead to substantial cost savings.

82. In light of The Prince of Wales' comments on this issue, the complainant argued that the public were entitled to know whether the His Royal Highness' views were being used to steer the direction of public health care.

83. To these arguments the Commissioner would add the following: he would agree there is a public interest in disclosure of information to ensure that the government is accountable for, and transparent about, its decision making processes.

84. Moreover, he would agree that there is a specific public interest in disclosure of information that would increase the public's understanding of how the Government engages with the Royal Family and the Royal Household, and in particular in the circumstances of this case, the Heir to the Throne. This is because the Monarchy has a central role in the British constitution and the public is entitled to know how the various elements of the constitution operate. This includes, in the Commissioner's opinion, how the Heir to the Throne is educated in the ways of government in preparation for his role as Sovereign.

85. Disclosure of the information may allow the public to understand the influence (if any) exerted by The Prince of Wales on matters of public policy. If the withheld information demonstrated that the MHRA or government in general had placed undue weight on the preferences of The Prince of Wales then there would be a public interest in disclosing the information.

86. Conversely, if the withheld information actually revealed that The Prince of Wales did not have undue influence on the direction of public policy, then there would be a public interest in disclosing the information in order to reassure the public that no inappropriate weight had been placed on the views and preferences of The Heir to Throne. In essence disclosure could ensure public confidence in respect of how the government engages with The Prince of Wales.

87. These two arguments could be seen as particularly relevant in the light of media stories which focus on the Prince of Wales' alleged inappropriate interference in matters of government and political lobbying.

88. Linked to this argument, is the fact that disclosure of the withheld information could further public debate regarding the role of the Monarchy and particularly the Heir to the Throne. Similarly, disclosure of the information could inform the broader debate surrounding constitutional reform.

Public interest arguments in favour of maintaining the exemption

89. The MHRA argued that the prime reason why the exemption should be maintained is in order to ensure that the confidentiality essential to two constitutional conventions is not undermined.

90. The first convention is that The Prince of Wales should be educated in, and about, the business of government in order to prepare him for the time when he will be the Sovereign, without that process putting at risk the political neutrality which is essential to the role and functions of the Sovereign. The MHRA argued that it is essential to the operation of the convention that His Royal Highness should be able to express views to Ministers on important issues of government and moreover should receive their views in response. This also ensures that The Prince of Wales can carry out his role as Privy Councillor, as a Counsellor of

State and as next in line to the throne, whereby he also has a statutory duty under the Regency Act 1937 to act for The Queen during her absence or incapacitation. The MHRA argued that the convention that The Prince of Wales will be informed about the business of government in order to prepare for being Sovereign can only be maintained if both His Royal Highness and government Ministers who advise and inform him about the business of government can be assured that their communications with each other remain confidential.

91. The MHRA explained that this convention is inextricably tied to the role of the Sovereign in the British constitution and the separate constitutional right of the Sovereign by convention to counsel, encourage and warn the government and thus to have opinions on government policy and to express those opinions to her Ministers. However, whatever personal opinions the Sovereign may hold she is bound to accept and act on the advice of her Ministers and is obliged to treat her communications with them as absolutely confidential. Such confidentiality is necessary in order to ensure that the Sovereign's political neutrality is not compromised in case Her Majesty has to exercise her executive powers, e.g. initiating discussions with political parties in the scenario of a hung Parliament in order to ensure that a government can be formed. Consequently, The Prince of Wales must not be in a position where his position of political neutrality is compromised (or appear to be compromised) because it cannot be restored on accession to the throne. The MHRA argued that if correspondence between The Prince of Wales and government Ministers were routinely disclosed His Royal Highness' political neutrality would be put at risk.

92. The MHRA explained that it was strongly in the public interest that these conventions were not undermined as this would result in The Prince of Wales, who in due course would become Monarch, losing his political neutrality. Preserving the political neutrality of the Royal Family was essential to ensuring the stability of the constitutional monarchy, an outcome which was clearly in the public interest.

93. Furthermore the MHRA argued that disclosure of the information could lead to a chilling effect in respect of The Prince of Wales, and those he corresponds with, altering the manner in which they communicate, for example by comments no longer being recorded or the nature in the which the comments are recorded being of a less free and frank nature. Such an effect would not be in the public interest because it would result in The Prince of Wales being less prepared in the business of government when he is Monarch and furthermore may undermine His Royal Highness' ability to carry out his role as a Privy Councillor, or as a Counsellor of State and to fulfil any duties he may be called upon to undertake in line with the Regency Act 1937.

94. The MHRA also argued that given the broad scope of section 37(1)(a), the public interest extended to protecting the privacy and the dignity of the Royal Family. It would not be in the public interest if disclosure of the withheld information infringed this privacy.

Balance of the public interest arguments

95. In the Commissioner's opinion given the broad reading of the term 'relates to' the subject matter of information which can fall within the scope of section 37(1)(a) can be very broad because communications, and information relating to such communications, could potentially cover a huge variety of different issues. Therefore establishing what the inherent public interest is in maintaining the exemption contained at section 37(1)(a) is more difficult than identifying the public interest inherent in a more narrowly defined exemption, for example section 42, which clearly provides a protection for legally privileged information.

96. Nevertheless, the Commissioner believes that the following four public interest factors can be said to be inherent in the maintaining the exemption and relevant in this case:

- Protecting the ability of the Sovereign to exercise her right to consult, to encourage and to warn her government and to preserve her position of political neutrality;
- Protecting the ability of the Heir to the Throne to be instructed in the business of government in preparation for when he is King and in connection with existing constitutional duties, whilst preserving his own position of political neutrality and that of the Sovereign;
- Preserving the political neutrality of the Royal Family and particularly the Sovereign and the Heir to the Throne to ensure the stability of the constitutional Monarchy; and
- Protecting the privacy and dignity of the Royal Family.

97. The Commissioner believes that the scope of the constitutional convention provided to the Heir to the Throne is relatively narrow. That is to say it will only apply to correspondence in which The Prince of Wales is in fact being educated in the ways and workings of government; it cannot be interpreted so widely as to encompass **all** of The Prince of Wales' communications with the government, i.e. it does not cover correspondence in which His Royal Highness may be discussing his charitable work or indeed information of a particularly personal nature (this is not to say of course that the withheld information in this case includes examples of either class of information).

98. However, where the information does fall within the Commissioner's definition of this convention, he accepts that there is a significant and weighty public interest in preserving the operation of this convention, i.e. it would not be in the public interest for the operation of the established confidential convention to be undermined. This is particularly so given that the convention is designed to protect communications at the heart of government, i.e. between the Heir to the Throne and government Ministers. The significant weight which protecting the convention attracts can be seen as akin to the strong weight applied to maintaining the exemption in contained at section 42 as it will always be strongly in the public interest to protect legal professional privilege.

99. The Commissioner also accepts that disclosure of the information covered by the convention could undermine The Prince of Wales' political neutrality for the

reasons advanced by the MHRA. The Commissioner believes that significant weight should be attributed to the argument that disclosure would undermine The Prince of Wales' political neutrality: in a constitutional democracy it is clearly in the public interest that The Prince of Wales, either as Heir to the Throne or when Monarch, is not perceived to be politically biased.

100. Vitally, the Commissioner believes that arguments concerning political neutrality remain relevant, and indeed attract similar weight, when the information being withheld does not fall within the scope of the Heir to the Throne's convention. In other words disclosure of correspondence not strictly on issues related to the business of government could still lead to The Prince of Wales being perceived as having particular political views or preferences and thus it could undermine his political neutrality. As noted above, the Commissioner accepts that it is inherent in the exemption contained at section 37(1)(a) that it is in the public interest for the political neutrality of all members of the Royal Family to be preserved.

101. Turning to the chilling effect arguments, as the MHRA correctly suggests such arguments are directly concerned with the loss of frankness and candour in debate and advice which would flow from the disclosure of information. Such arguments can encompass a number of related scenarios:

- Disclosing information about a given policy or decision making process, whilst that particular process is ongoing, will be likely to affect the frankness and candour with which relevant parties will make future contributions to that policy/decision making;
- The idea that disclosing information about a given policy or decision making process, whilst that process is ongoing, will be likely to affect the frankness and candour with which relevant parties will contribute to other future, different, policy debates and decision making processes; and
- Finally an even broader scenario where disclosing information relating to the formulation and development of a given policy or decision making process (even after the process is complete), will be likely to affect the frankness and candour with which relevant parties will contribute to other future, different, policy debates and decision making processes.

102. In the Commissioner's opinion all three scenarios are potentially relevant here. Some of the withheld information can be seen to relate to discussions on issues where the policy debate or decision making can still be seen as 'live', e.g. where a government position has yet to finalised. Some of the information can be said to relate to decisions which have already been taken.

103. With regard to attributing weight to the argument that disclosure of the withheld information would have a chilling effect on the way in which The Prince of Wales and/or government Ministers would correspond, the Commissioner believes that it is difficult to make an assessment of such an argument given the unique nature of this relationship and thus the lack of any clear precedents, e.g. previous disclosures under the Act of similar information.

104. However, the Commissioner is aware of the authorised biography of The Prince of Wales by Jonathan Dimbleby which was published in 1994.[4] In his introduction to this publication, Dimbleby explains that The Prince of Wales provided him with access to His Royal Highness' archives at St James's Place and Windsor Castle. Dimbleby therefore had access to The Prince of Wales' journals, papers and correspondence with Whitehall. In relation to the inclusion of such information in his book Dimbleby explains that:

> 'I have been persuaded that the verbatim publication of the material might have a deleterious effect either on the conduct of British diplomacy or on the confidential nature of communications between the monarchy and Whitehall or Westminster; in these cases I have either withheld information or paraphrased the relevant documents or correspondence. However, when it was obvious that only the culture of secrecy which pervades Whitehall was under threat and not the conduct of good governance, I have not complied with requests to delete pertinent material'.

105. Therefore, it would clearly be incorrect to argue that details of Prince of Wales' communications with government have **never** been placed in the public domain. To take but two examples from *The Prince of Wales: A Biography,* at page 582 Dimbleby quotes from a letter sent by His Royal Highness in 1985 to the then Prime Minister Margaret Thatcher, in addition to quoting from a draft section of the letter which did not make the final version. At page 809 Dimbleby notes that The Prince of Wales wrote to the then Secretary of State for Defence, Malcolm Rifkind, about the implications of cutting the Army's manpower and quotes from this letter. Although the quote is not particularly lengthy in nature it clearly shows The Prince of Wales' strong views on this issue. The Commissioner has not been provided with any evidence by the MHRA that the inclusion of details of The Prince of Wales' correspondence in this book has resulted in any sort of chilling effect.

106. However, the Commissioner accepts that a direct parallel cannot be drawn between the disclosure of the withheld information which is the focus of this case and the previous disclosures such as the Dimbleby biography. To some extent, as Dimbleby himself acknowledges, his book was 'self-censored': extracts have not been included that would undermine the confidential nature of communications between the Monarchy and government. In contrast, disclosure of the withheld information in this case would be without the consent of The Prince of Wales and would result in complete copies, as opposed to extracts or paraphrased sections, of correspondence being revealed.

107. Furthermore the Commissioner believes that an inherent part of the convention is the ability of both the Heir to the Throne and government Ministers to be free and frank when discussing matters of government business. This is to ensure that the Heir to the Throne is instructed in the business of government in the most effective and efficient way possible. In the Commissioner's opinion, disclosure of information falling within the scope of convention would lead The Prince of Wales, and possibly the government Minister with whom he corresponds, to feel

[4] J Dimbleby, *The Prince of Wales: A Biography,* (Bath: Chivers Press, 1994)

constrained or more reluctant to take part in the process of being educated about the business of government. Therefore, given the protection which the Commissioner believes should be provided to the convention itself, it follows that notable weight should be given to the argument that disclosure of information which falls within the scope of the convention would result in a chilling effect.

108. In reaching this conclusion the Commissioner wishes to note that he believes that in the context of section 37(1)(a) the protection afforded to communications **from** government Ministers only extends to their contribution to educating the Heir to the Throne; it would be incorrect to argue that section 37(1)(a) provides a protection for government Ministers to discuss more widely matters of policy formulation or development – protection for such information is offered by, and inherent in, the exemption contained at section 35(1)(a) of the Act not in section 37(1)(a).

109. With regard to attributing weight to the chilling effect arguments for correspondence which does not fall within the scope of the convention, the Commissioner does not believe that such arguments automatically attract weight in the same way as they do in relation to correspondence falling within the convention. Rather, the assessment as to whether a chilling effect will occur will be based upon factors considered in other cases involving an assessment of the chilling effect, most notably the content of the information itself. In the Commissioner's opinion, for a chilling effect argument to be convincing the information which is disclosed has to be more than anodyne in nature. In the circumstances of this case the Commissioner accepts that the correspondence which is not covered by the convention is not anodyne but is of a relatively frank and candid nature and thus some weight should be attributed to the argument that disclosure of this information would have a chilling effect on the way in which The Prince of Wales might draft future correspondence.

110. Again, as with the concept of political neutrality, the Commissioner accepts that a chilling effect on the nature of correspondence falling within the convention could occur even if the withheld information does not fall within the scope of the convention. That is to say, disclosure of information on topics not associated with the business of government, would still be likely to affect future correspondence not simply on similar topics but also on topics falling within the scope of the convention.

111. With regard to the final argument, i.e. the privacy considerations contained within section 37, the Commissioner believes that these should not be dismissed lightly. There is a clear public interest in protecting the dignity of the Royal Family so as to preserve their position and ability to fulfil their constitutional role as a unifying symbol for the nation. To the extent that disclosure of the withheld information would undermine His Royal Highness' dignity by invasion of his privacy, the Commissioner accepts that this adds further weight to maintaining the exemption.

112. Given the number of public interest arguments in favour of disclosure that the Commissioner has identified, he considers that the benefit of disclosing this information should not be summarily dismissed in the fashion implied by the MHRA. Rather the arguments identified by both the Commissioner and

complainant touch directly on many, if not all, of the central public interest arguments underpinning the Act, namely ensuring that public authorities are accountable for and transparent about their actions; furthering public debate; and improving confidence in decisions taken by public authorities. Furthermore, the specific arguments relevant to this case in relation to The Prince of Wales' relationship with government Ministers and any influence he may have exerted over the direction of public policy need to be given particular weight.

113. Nevertheless, the Commissioner would dispute the reasoning behind some of the complainant's submissions. Although The Prince of Wales has spoken and written widely on the subject matter which is at the heart of this request, and such communications have left the public in no doubt as to His Royal Highness' views on alternative medicine, the Commissioner does not accept that this equates to placing the contents of the withheld communications into the public domain. Nor does it mean, in the Commissioner's opinion, that The Prince of Wales would not have a reasonable expectation that such communications would be kept confidential. As noted above the operation of the convention and established practice in relation to communications between senior members of The Royal Family and government have ensured that this is the case.

114. In reaching a conclusion as to where the balance of the public interest lies the Commissioner has to focus on the content of the information. In this case for the information which falls within the scope of the convention, the Commissioner believes that the public interest in maintaining the exemption is very strong. This is because of the weight that should be attributed to maintaining the convention, i.e. a confidential space in which the Heir to the Throne and Ministers can communicate, the concepts which underpin it, i.e. political neutrality and confidentiality, and the weight that should be given to the chilling effect arguments in respect of future correspondence. The Commissioner does not consider that the public interest arguments in favour of disclosing the withheld information which falls within the scope of this request, even when taken together, match this weighty public interest in maintaining the exemption.

115. In relation to any of the information which **may** fall outside the Commissioner's definition of the convention, the Commissioner believes that the public interest is more finely balanced because the argument in favour of maintaining a constitutional convention does not apply to the same extent. (It should not be inferred that such information is indeed contained within the scope of this request.) Therefore, it would certainly be possible (and easier) to envisage a scenario where disclosure of the correspondence between The Prince of Wales and government Ministers would be in the public interest. However, as noted above, just because information does not fall within the scope of the convention this does not mean that its disclosure would not undermine two key concepts inherent to it: political neutrality and the potential to have a chilling effect on future correspondence. Moreover, having once again considered the content of the withheld information in this case the Commissioner believes that the public interest favours maintaining the exemption.

116. As the Commissioner has decided that documents 15 to 18 and 20 are exempt from disclosure on the basis of section 37(1)(a) he has not gone on to consider whether they are also exempt on the basis of section 41(1).

Procedural Requirements

117. Part I of the Act includes a number of procedural requirements with which public authorities must comply.

118. These include section 1(1) which states 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.'

119. Section 10(1) requires a public authority to respond to a request within 20 working days following the date of receipt. Section 10(3) states that a public authority can reasonably extend the time it needs to consider the public interest but it must still comply with the requirements of section 17(1) within 20 working days.

120. Section 17(1) states 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.'

121. In the Commissioner's opinion, in responding to the two requests the MHRA did not provide the complainant with a clear and explicit confirmation as to whether it held information falling within the scope of each request. This constitutes a breach of section 1(1)(a) and 10(1).

122. By failing to provide the attachments to documents 6, 8 and 12 within 20 working days of the requests the MHRA breached sections 1(1)(b) and 10(1).

123. As the Commissioner has decided that section 40(2) has been incorrectly relied upon to withhold some information, in failing to provide this information to complainant within 20 working days of his requests the MHRA committed further breaches of sections 1(1)(b) and 10(1).

124. By failing to specify the specific sub-sections of the exemptions contained at section 37 and 43, namely 37(1)(b) and 43(2), the MHRA breached section 17(1)(b).

The Decision

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

- The documents numbered 15 to 18 and 20 are exempt from disclosure on the basis of section 37(1)(a) of the Act.
- The personal data of non-MHRA officials is exempt from disclosure on the basis of section 40(2) of the Act.

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

- The redaction of the personal data of MHRA officials in documents 2, 5, 6, 7, 8, 10, 11, 12, 13 and 14 is not permitted by section 40(2) of the Act.
- The MHRA failed to provide the complainant with the attachments to documents 6, 8 and 12 when responding to these requests.
- The MHRA committed a number of breaches of section 1(1)(a), 1(1)(b) and 10(1) of the Act.
- The MHRA breached section 17(1)(b) by failing to specify the exact sub-sections of the exemptions contained at section 37(1)(a) and 43(2) in its refusal notice.

Steps Required

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

- To provide the complainant with copies of the documents numbered 2, 5, 6, 7, 8, 10, 11, 12, 13 and 14. In providing these documents the only information which should be redacted on the basis of section 40(2) is the personal data of non-MHRA officials.

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

Other matters

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

130. The complainant submitted his request on 25 September 2006 and the MHRA provided him with a refusal notice on 19 October 2006 explaining that it considered the information he requested to be covered by a number of qualified exemptions and it believed it necessary to extend the time taken to consider the public interest test given the complexity of the issues related to this request. The MHRA contacted the complainant again on 30 November 2006 and informed him of its decision in respect of the public interest test.

131. In February 2007, the Commissioner issued guidance on the time public authorities should take when extending the public interest test.[5] This guidance notes that whilst the Act and the section 45 Code of Practice do not specify how long a public authority can extend the public interest for, even in exceptional cases, the time taken should not exceed 40 working days. In dealing with this request the MHRA took longer than 40 working days to conclude its consideration of the public interest test. Although the delay preceded the guidance, the Commissioner expects the MHRA to ensure that when it extends its consideration of the public interest test when dealing with future requests that it adheres to the time guidelines set out in the guidance paper reference above.

Failure to comply

132. 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.

[5] Freedom of Information Good Practice Guidance No. 4 http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/foi_good_practice_guidance_4.pdf

Information Commissioner's Office

Right of Appeal

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

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

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
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 11th day of March 2010

Signed ………………………………………………..

Graham Smith
Deputy Commissioner and Director of Freedom of Information

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

Information Commissioner's Office

List of documents considered by MHRA

Document Number	Disclosed to complainant?	Exemptions cited by MHRA	Do MHRA still believe that document is in scope of requests?	In the ICO's opinion is document in scope of 1st request?	In the ICO's opinion is the document in scope of 2nd request?	Outcome
1	Yes	s40(2)	No	No	No	Out of scope
2	Yes	s40(2)	Yes	Yes	No	The personal data of non-MHRA officials is exempt on basis of section 40(2). The personal data of MHRA officials is not.
3	Yes	s40(2)	Yes	No	No	Out of scope
4	Yes	s40(2), s43, s37(1)(a)	No	No	No	Out of scope
5	Yes	s40(2)	Yes	No	Yes	The personal data of non-MHRA officials is exempt on basis of section 40(2). The personal data of MHRA officials is not.
6	Yes	s40(2)	Yes	No	Yes	The personal data of non-MHRA officials is exempt on basis of section 40(2). The personal data of MHRA officials is not.
7	Yes	s40(2)	Yes	No	Yes	The personal data of non-MHRA officials is exempt on basis of section 40(2). The personal data of MHRA officials is not.
8	Yes	s40(2)	Yes	No	Yes	The personal data of non-MHRA officials is exempt on basis of section 40(2). The personal data of MHRA officials is not.

9	Yes	Provided unredacted	Yes	No	Yes	Complete version of document already been disclosed
10	Yes	s40(2)	Yes	No	Yes	The personal data of non-MHRA officials is exempt on basis of section 40(2). The personal data of MHRA officials is not.
11	Yes	s40(2)	Yes	No	Yes	The personal data of non-MHRA officials is exempt on basis of section 40(2). The personal data of MHRA officials is not.
12	Yes	s40(2)	Yes	No	Yes	The personal data of non-MHRA officials is exempt on basis of section 40(2). The personal data of MHRA officials is not.
13	Yes	s40(2)	Yes	No	Yes	The personal data of non-MHRA officials is exempt on basis of section 40(2). The personal data of MHRA officials is not.
14	Yes	s40(2)	Yes	No	Yes	The personal data of non-MHRA officials is exempt on basis of section 40(2). The personal data of MHRA officials is not.
15	No	s37(1)(a)	Yes	Yes	No	Document exempt under s37(1)(a)
16	No	s37(1)(a)	Yes	Yes	No	Document exempt under s37(1)(a)
17	No	s37(1)(a)	Yes	Yes	No	Document exempt under s37(1)(a)
18	No	s37(1)(a)	No	Yes	No	Document exempt under s37(1)(a)

19	No	s37(1)(a)	No	No	No	Out of scope
20	No	s37(1)(a)	No	Yes	No	Document exempt under s37(1)(a)
21	No	s37(1)(a)	No	No	No	Out of scope
22	No	s37(1)(a)	No	No	No	Out of scope
23	No	s37(1)(a)	No	No	No	Out of scope
24	No	s37(1)(a)	No	No	No	Out of scope

Legal Annex

Freedom of Information Act 2000

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."

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."

Effect of Exemptions

Section 2(1) provides that –

"Where any provision of Part II states that the duty to confirm or deny does not arise in relation to any information, the effect of the provision is that either –

(a) the provision confers absolute exemption, or

(b) 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 public authority holds the information

section 1(1)(a) does not apply."

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."

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."

Communications with Her Majesty.

Section 37(1) provides that –

"Information is exempt information if it relates to-

(a) communications with Her Majesty, with other members of the Royal Family or with the Royal Household, or
(b) the conferring by the Crown of any honour or dignity."

Section 37(2) 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)."

Personal information.

Section 40(1) provides that –

> "Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject."

Section 40(2) provides that –

> "Any information to which a request for information relates is also exempt information if-
>
> (a) it constitutes personal data which do not fall within subsection (1), and
> (b) either the first or the second condition below is satisfied."

Section 40(3) provides that –

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

Information provided in confidence.

Section 41(1) provides that –

> "Information is exempt information if-
>
> (a) it was obtained by the public authority from any other person (including another public authority), and
> (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person."

Data Protection Act 1998

Part I

1) In this Act, unless the context otherwise requires—

"personal data" means data which relate to a living individual who can be identified—

(a)
from those data, or

(b)
from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

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

Schedule 1

The first principle states that:

Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

(a) at least one of the conditions in Schedule 2 is met, and
(b) in the case of sensitive personal data, at least one of the conditions is Schedule 3 is also met.

Schedule 2

Conditions relevant for purposes of the first principle: processing of any personal data

1. The data subject has given his consent to the processing.

2. The processing is necessary— (a) for the performance of a contract to which the data subject is a party, or (b) for the taking of steps at the request of the data subject with a view to entering into a contract.

3. The processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract.

4. The processing is necessary in order to protect the vital interests of the data subject.

5. The processing is necessary—

(a) for the administration of justice
(b) for the exercise of any functions conferred on any person by or under any enactment

(c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department
(d) for the exercise of any other functions of a public nature exercised in the public interest by any person.

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

(2) The Secretary of State may by order specify particular circumstances in which this condition is, or is not, to be taken to be satisfied.