

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 29 October 2007

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

Summary

The complainant asked the public authority for information relating to freedom of information requests which had been referred to it by the Clearing House at the Department for Constitutional Affairs (now the Ministry of Justice): the name of its case management system, and specific details about all requests referred since 1 January 2005. He expressed a preference for the information in digital form. The public authority provided information relating to the first part of the request. In relation to the second, it confirmed that it had some of the information but was withholding it by virtue of the exemption contained in section 36(2)(c) of the Freedom of Information Act 2000 ('the Act'). It reiterated this decision at internal review. The complainant complained to the Commissioner about the public authority's decision and delay. The Commissioner decided that most of the withheld information did not engage section 36 and that the balance of the public interest test favoured disclosure of the remainder. He also decided that the public authority had breached section 17(1) by exceeding the statutory time limit for responding to the request. The Commissioner requires the public authority to disclose the information.

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 17 March 2005 the complainant sent a request to the Cabinet Office by email. He asked for the following information.

'1. The name of the case management system used by HORU for processing of FOIA referrals from the DCA [Department for Constitutional Affairs] Clearing House.

2. For all FOIA cases referred to the HORU by the DCA Clearing House since January 1, 2005, under the procedure described in Paragraph 26 and Annex E of the Access to Information Central Clearing House Toolkit, the following details:

- Name of originating department*
- Originating department's file number*
- DCA Clearing House file number*
- HORU file number*
- Date received by HORU*
- Date closed by HORU*
- Summary or description of request*
- Priority or sensitivity classification*
- Category or type of requester*

If possible, I wish to receive the information requested under item (2) in digital form, whether as a tab-delimited text file or an Excel spreadsheet'.

3. The Cabinet Office provided a response to the request on 29 September 2005. In relation to the first part, it stated that it did not use a proprietary case management system, but did use *Correspondence for Windows v 3.4.19* as a correspondence tracking system. Regarding the second part of the request it confirmed that it did hold some of the information:

- DCA Clearing House file number.
- HORU file number.
- Date received by HORU.
- Date closed by HORU.
- Summary or description of request.

However, it stated that this information was being withheld as falling under the exemption in section 36(2)(c) of the Act. The Cabinet Office informed the complainant of its internal review procedure.

4. The complainant requested an internal review on 30 September 2005 on the grounds that the decision was incorrect. He also complained that the Cabinet Office had *'made no effort to consider partial release of data'*, and about its delay in concluding the matter.
5. On 2 December 2005 the Cabinet Office sent the complainant its internal review decision to uphold its original finding. It apologised for the *'long delay in this case'*, and advised the complainant of his right to apply to the Information Commissioner.

The Investigation

Scope of the case

6. The complainant had already complained to the Commissioner on 29 June 2005 about the failure of the Cabinet Office to respond to his request. On 2 December 2005 he contacted the Commissioner again to complain about its decision and its *'failure to reply to queries and to provide a timeline for response'*. On 26 June 2006 he further complained that the Cabinet Office had *'failed to undertake a proper redaction of non-sensitive information'*.
7. The complainant's original request included *'The name of the case management system used by HORU for processing of FOIA referrals from the DCA Clearing House'*. The Cabinet Office addressed this and the complainant has made no complaint about that response, and the Commissioner therefore does not intend to comment further on this aspect of the request.

Chronology

8. The Commissioner wrote to the Cabinet Office for clarification on 18 October 2006, and also to the complainant. He sent a reminder to the Cabinet Office on 21 November, and issued reminders on several further occasions.
9. On 1 February 2007 the Cabinet Office provided its substantive response to the Commissioner's request for clarification. Amongst other things, it admitted that having revisited the information it now recognised that it could easily surmise the information requested in the complainant's first bullet point – 'name of originating department' – since the case numbers included abbreviations of the relevant bodies. However, it took the view that this information too was subject to the exemption under section 36.
10. On 21 February 2007 the Commissioner asked the Cabinet Office to provide further clarification of this response. He subsequently sent reminders.
11. The Cabinet Office eventually provided its further comments on 7 August 2007.

Findings of fact

12. The government established the Access to Information Central Clearing House in January 2005, located within the Department for Constitutional Affairs (now the Ministry of Justice). The Clearing House's stated role is to ensure consistency across central government in the way that the Data Protection Act, the Freedom of Information (FOI) Act, and the Environmental Information Regulations are applied. Cases are referred to the Clearing House when a request meets one of the criteria on a 'trigger list'. The Clearing House will offer advice and assistance to the referring Department and/or determine the response to the request. The clearing house works closely with the Cabinet Office, which takes the lead on those cases intrinsic to the operation of collective responsibility, Cabinet, the role of Ministers, or where the prime minister takes a personal interest.

Analysis

Procedural matters

13. The complainant objected to the Cabinet Office's *'failure to reply to queries and to provide a timeline for response'* prior to its original decision on 29 September 2005. He had made the initial request on 17 March 2005, which was acknowledged by the Cabinet Office on 13 April. After a further query from the complainant on 8 June it had told him that a response would be issued shortly. In the event the complainant sent further queries on 20 and 24 June, but received no response. The Commissioner notes that the Cabinet Office did not even seek to obtain the qualified person's opinion until August 2005, and eventually issued its decision on 29 September 2005. The Cabinet Office subsequently apologised – on 2 December 2005 – for the *'long delay in this case'*. The Commissioner notes that some of the delay at the outset seems to have resulted from a reorganisation of the system for dealing with freedom of information requests within the Cabinet Office, with referrals which had been made via the Histories, Openness and Records Unit (HORU) being redirected through the Ministerial Support Team (MST). The Cabinet Office's email of 13 April 2005 reported that the individual dealing with the matter had had to request the information from the MST so that it could be forwarded to the complainant. At the same time, the email suggests that that individual did not consider that a formal information request had been made, since it contains the statement: *'if you were to make a FOI request for this information'*. However, at some point the Cabinet Office must have recognised that the request was a formal one, because the refusal notice of 29 September 2005 referred to the complainant's request *'received on 17 March 2005'*.
14. The statutory timescale for responding to a freedom of information request is laid down in section 10(1) of the Act:

'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.'

Since the request was made on 17 March 2005 and the Cabinet Office did not provide any substantive response until 29 September 2005, 133 working days later, the Commissioner has decided that the Cabinet Office failed to comply with the request within the statutory timescale, in breach of section 17(1) of the Act.

Exemption – section 36(2)(c)

15. The complainant also requested nine categories of details for *'all FOIA cases referred to the HORU by the DCA Clearing House since January 1, 2005'*. The Cabinet Office initially confirmed that it held five of those categories, but on 1 February 2007 it indicated that it could easily *'surmise'* one of the remaining categories. The Commissioner considers that the name of the originating department is indeed information which is held by the Cabinet Office, since all that is required is for it to provide a key as to which departments are signified by

the various abbreviations in the individual case references. Accordingly, the following information requested by the complainant is held by the Cabinet Office:

- Name of originating department
- DCA Clearing House file number
- HORU file number
- Date received by HORU
- Date closed by HORU
- Summary or description of request.

Qualified person

16. Section 36(2)(c) provides that information:

'is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act-

...(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.'

The section therefore requires that disclosure of the information at issue be certified by a qualified person to be prejudicial. In its comments to the Commissioner the Cabinet Office explained that:

'Officials advised...the then Minister for the Cabinet Office, on the case in August 2005 and the Minister formed an opinion and reached a decision. He agreed to the use of section 36 in the circumstances.'

The Commissioner is satisfied that the person making the decision was the appropriate 'qualified person'.

Prejudice

17. For information to engage the section 36(2)(c) exemption the qualified person must form the reasonable opinion that disclosure would be likely to prejudice the effective conduct of public affairs. The Commissioner has considered whether the qualified person's opinion regarding this 'prejudice test' was indeed reasonable in respect of each element of the withheld information.

18. The Cabinet Office did not explicitly address the issue of prejudice. However, it identified three public interest factors in favour of maintaining the exemption which might bear on prejudice. First was the claim that it might be possible to 'reconstruct' sensitive information from any information which was disclosed:

'although the trigger list is in the public domain, it might not always be immediately obvious to the requester, or the public more generally, why a particular request was referred to the Clearing House, as they might not be fully aware of the nature of the relevant information which the public authority in question holds. Disclosure of the fact that the case had been referred to the Clearing House might reveal the nature of information

relevant to requests and therefore undermine the decision-making process with respect to disclosure, or in some circumstances reveal otherwise exempt information. This is particularly relevant where intelligence or other security material is involved.'

In other words, the Cabinet Office claimed that it might be possible to use the requested information in conjunction with the categories in the 'trigger list' to infer why information requests had been sent to the Clearing House or even to infer the information itself. The Cabinet Office put forward a hypothetical example to illustrate its point: where *'some of the information covered is exempt under section 23, and there could be no other reason for this request to be referred, simply disclosing that the case had been referred could expose exempt information'*. The Commissioner finds it hard to accept that such a scenario could actually ever actually transpire, since the 'trigger list' contains so many general categories related to the circumstances of the request rather than the content of the information requested – such as the request being potentially vexatious, a 'round robin', giving rise to media interest, or involving complex issues – that there will always be competing explanations for any particular referral. Further, the Commissioner considers that the only element of the information which could conceivably give rise to a possibility of inference is the 'Summary or description of request'.

19. The second public interest factor was the Cabinet Office's suggestion that disclosure might discourage compliance with the Clearing House procedure:

'The possible exposure of such sensitivities could result in departments becoming reluctant to use the procedures set up to refer particular classes of case to the DCA Clearing House or may make such referrals convoluted or discourage proper audit trails so as to try and avoid risk of future disclosure'.

The complainant commented on this point directly, noting that the claim that transparency would either discourage referral of cases to the Clearing House or encourage surreptitious referral methods was in contradiction with the purported commitment to a 'culture of openness' in central government. The Commissioner considers that to be an important point. Furthermore, he does not find the argument that government departments might otherwise be tempted to act in breach of their responsibilities under official procedures to be an attractive justification for withholding information. In the case of *'Lord Baker v the Commissioner and the Dept for Communities and Local Government'* (EA/2006/0043) the Information Tribunal indicated that arguments that disclosure will lead to poorer record keeping should be given little weight, with the issue capable of being addressed by staff management. The Commissioner takes that view that the claim that the prospect of disclosure might tempt officials to breach procedures has similarities with this 'poorer record keeping' argument. If sensitive information can be inferred from disclosure in any particular case then the appropriate remedy is redaction; if there is no reasonable prospect of inference then it is the responsibility of public authorities to comply with their obligations under the Clearing House procedures. Again, it does not appear to the

Commissioner that this concern can in any event apply to any of the elements of the information other than the 'Summary or description of request'.

20. Thirdly, the Cabinet Office claimed that disclosure of the information would encroach on the space necessary for the development and evolution of freedom of information policy:

'disclosure of the types of cases being referred at any point in time and comparison with future or past snapshots, would expose developments in, or changes to, Freedom of Information policy. This policy is in general iterative and needs space in which to evolve but particularly now is nascent and thus more susceptible to change and would not be benefited by such change being subject to public speculation before there has been time for it to reach a settled position.'

This point too seems only to apply to the 'Summary or description of request'. However, the Commissioner does not accept that changes to the types of cases being referred to the Clearing House would amount to, or reflect, changes in freedom of information 'policy'. Such changes would actually amount – for central government departments only – to refinements in the application of freedom of information policy, not to its development or formulation. The Commissioner is not convinced that any inferences which might conceivably be drawn from such changes would prejudice the ability of the public authorities involved to make such refinements to the operation of the policy. He considers the fact that the 'trigger list' identifying the categories of cases to be referred to the Clearing House, which is the most obvious indicator of any changes to central government's operation of freedom of information policy, is already in the public domain further erodes the argument.

21. The Commissioner has considered these areas of potential prejudice which were suggested by the Cabinet Office and applied them to each of the elements of the information which was withheld. He has concluded that no evidence has been provided to demonstrate that prejudice would arise from disclosure of any of the elements except the 'Summary or description of request'. In the case of *Guardian & Brooke v The Information Commissioner & the BBC* (EA/2006/0011 and EA 2006/0013), the Information Tribunal decided that the opinion of the qualified person *'must be both reasonable in substance and reasonably arrived at'*. In relation to 'reasonable substance' the Tribunal stated that *'the opinion must be objectively reasonable'*, and not simply *'an opinion within a range of reasonable opinions'*, albeit that *'there may (depending on the facts) be room for conflicting opinions, both of which are reasonable'*. In considering whether an opinion was reasonably arrived at it proposed that the qualified person should only take into account relevant matters and that the process of reaching a reasonable opinion should be supported by evidence, although it also accepted that materials which may assist in the making of a judgement will vary from case to case and that conclusions about the future are necessarily hypothetical. In light of the Commissioner's conclusions above, he has decided that it was not objectively reasonable for the qualified person to have reached the opinion that disclosure of these elements of the requested information would cause prejudice to the effective conduct of public affairs. Accordingly, the section 36 exemption does not

apply to the following information held by the Cabinet Office, which should therefore be disclosed:

- Name of originating department
- DCA Clearing House file number
- HORU file number
- Date received by HORU
- Date closed by HORU.

22. Regarding the remaining element – ‘Summary or description of request’ – the Commissioner accepts that disclosure might conceivably allow for the ‘reconstruction’ of sensitive information, or discourage compliance with the Clearing House procedure. Accordingly, there is at least the potential for prejudice to the effective conduct of public affairs. The Commissioner is therefore satisfied that the opinion given by the qualified person was a reasonable one, and that the section 36(2)(c) exemption is engaged in respect of the information described as ‘Summary or description of request’.

Public interest test

23. The exemption under section 36(2)(c) is a qualified exemption and therefore 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 Commissioner has therefore gone on to consider the balance of the public interest test in relation to the information described as ‘Summary or description of request’.

24. The complainant made some specific points about the merits of disclosure. He considered that the Cabinet Office’s decision was *‘wholly inconsistent with the spirit of the law and also with settled practice in other countries.’* He noted that the DCA did not have any objections to releasing similar information from its own Case Management System, and that the Canadian government routinely released similar information which had been referred to the Privy Council Office for review. He also complained that the Cabinet Office had *‘made no effort to consider partial release of data’* in breach of its obligation to provide advice and assistance:

‘The arguments presented do not hold force if some, but not all, of the data is released. For example, some fields of data could be released without any risk of the purported harms described in Cabinet Office’s decision.’

25. In its refusal notice and comments to the Commissioner the Cabinet Office explained its application of the test. The factors identified by the Cabinet Office in favour of maintaining the exemption have already been described. First, the Cabinet Office claimed that it might be possible to ‘reconstruct’ sensitive information. Having had sight of the withheld information the Commissioner notes that this section of the Cabinet Office’s case management system is extremely limited – typically only one line. He considers that that makes it less likely that any meaningful inference could be drawn. In addition, he takes the view that the

referral triggers are so broadly defined that it would be extremely difficult to draw a meaningful inference from the fact that a request had been referred to the Clearing House. The second public interest factor was the Cabinet Office's suggestion that disclosure might discourage compliance with the Clearing House procedure. The complainant commented on this point directly, noting that the claim that transparency would either discourage referral of cases to the Clearing House or encourage surreptitious referral methods was in contradiction with the purported commitment to a 'culture of openness' in central government. The Commissioner agrees. Furthermore, the argument that government departments might otherwise be tempted to act in breach of their responsibilities under official procedures is not one which he considers should be accorded much weight as a justification for withholding information. Thirdly, the Cabinet Office claimed that disclosure of the information would encroach on the space necessary for the development and evolution of freedom of information policy. As the Commissioner explained in the 'Prejudice' section above, he does not believe that disclosure of the types of cases being referred to the Clearing House would in fact expose changes to policy, rather than merely refinements to the application of freedom of information policy. The Commissioner does not believe that it is very likely that the possibility of disclosure will have an adverse effect on government departments' ability to make refinements to its application of policy relating to freedom of information policy.

26. Furthermore, the Commissioner believes that there are a number of strong factors in favour of disclosure. When policy is not merely being formulated but has actually been implemented, as in this case, there are strong public interest arguments in favour of transparency and accountability. First, there is the public interest in promoting transparency of the Clearing House procedure and the decisions taken as a result of it. Secondly, there is the public interest in promoting accountability of government departments in their exercise of the Clearing House policy. Both of these factors will tend to improve the quality of decisions and administration. Thirdly, the public interest is served by allowing public understanding of government departments' individual freedom of information decisions.
27. Finally, the Commissioner also has regard to the particular nature of the element of section 36(2) cited by the Cabinet Office, ie paragraph (c). Paragraphs (a) and (b) of section 36(2) provide for the exemption of information in specific circumstances, including where its disclosure would inhibit the free and frank provision of advice or exchange of views. Paragraph (c) takes a more general form, referring to prejudice to *'the effective conduct of public affairs'*. As explained in the Commissioner's *'Awareness Guidance No 25 – Section 36: Effective Conduct of Public Affairs'*, paragraph (c) is not intended to be a 'catch-all', but instead to cover rare situations which could not be foreseen and which cannot be covered by another exemption, where it would be necessary to withhold information in the interests of good government. Section 36(2)(c) places the harm outside of the individual public authority and in the realm of 'public affairs'. The Commissioner considers that section 36(2)(c) is only available in cases where the disclosure would prejudice the public authority's ability to offer an effective public service, or to meet its wider objectives or purpose (rather than simply to function) due to the disruption caused by the disclosure and the diversion of resources in

managing the impact of disclosure. In this case, the Commissioner does not consider that divulging the requested information would have an impact so wide-ranging as to prejudice the public authority's ability to deliver an effective public service or meet its wider purpose.

28. Having considered these factors, the Commissioner takes the view that 'exposure' of refinements to the operation of policy has, on balance, a far more beneficial than detrimental effect, particularly in light of what seem to be serious weaknesses in the factors submitted in favour of maintaining the exemption. Accordingly, he has decided that the balance of the public interest test favours disclosure of the information withheld by the Cabinet Office in this case.

The Decision

29. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act. First, in exceeding the statutory time limit for responding to the request, the Cabinet Office failed to comply with the requirements of section 10(1) of the Act, which constitutes a breach of section 17(1). Secondly, the Cabinet Office did not comply with its obligations under section 1(1) in that it failed to communicate to the complainant information to which he was entitled, on the mistaken basis that it was exempt from disclosure under section 36(2)(c).

Steps Required

30. 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 which it claimed was exempt under section 36(2)(c) of the Act, being the following details for all FOIA cases referred to the HORU by the DCA Clearing House since 1 January 2005 up to the date of the complainant's request on 17 March 2005:

- Name of originating department
- DCA Clearing House file number
- HORU file number
- Date received by HORU
- Date closed by HORU
- Summary or description of request.

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

Failure to comply

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

Right of Appeal

33. 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

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 29th day October of 2007

Signed

**Richard Thomas
Information 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 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.