

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 5 July 2007

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

### Summary

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The complainant requested a report and supporting information regarding Equitable Life as mentioned on the FSA's website. The FSA disclosed an edited version of the report but withheld the remainder of the information under sections 41, 42, 44 and 43 of the Act. The Commissioner investigated the application of all four exemptions and found that they had all been applied correctly and in relation to sections 42 and 43 that in all circumstances of the case the public interest favoured maintaining the exemption.

### The Commissioner's Role

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

### The Request

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2. The complainant requested that the FSA disclose the following information:

*"the work mentioned on the FSA website that led to the FSA concluding that, 'generic claims against Equitable Life regarding its basis for allocating bonuses during the 1990's are unlikely to succeed'".*

3. On the 7 March 2005 the FSA responded to the request enclosing an edited version of the report as parts of the report were subject to exemptions. The FSA explained that the information held consisted of: a report drafted by the FSA; a report by external consultants; legal advice and two further documents. The FSA stated section 42 'legal professional privilege' applied as parts of the report contained legal advice from external counsel and that as the principal conclusion

of the report had been made public the public interest lay in maintaining the exemption. The FSA also stated that some of the information in the report was subject to section 41 'information provided in confidence' as the report included advice from actuarial consultants provided on the basis of contractual confidentiality.

4. The FSA also considered that section 44 'prohibitions on disclosure' applied to sections of the report as under section 348 of the Financial Service and Markets Act (FSMA) disclosure of confidential information obtained by the FSA for the purpose of discharging any of its functions is prohibited from disclosure. As regulator for the financial services industry the FSA monitors the compliance of firms with the requirements of the FSMA and the information requested was obtained as part of discharging its functions as regulator.
5. Section 43 was also considered to apply to certain sections. The FSA stated that any information published concerning Equitable Life Assurance Society (ELAS) has been carefully considered so that its financial position and the position of policyholders is not harmed unnecessarily.
6. On the 9 March 2005 the FSA additionally supplied the complainant with an index outlining the sections redacted and where each exemption had been applied. Additionally the FSA made the point that section 43 applies to most of the editing overlapping the other exemptions.
7. The complainant requested an internal review of the FSA decision to redact information from the report under section 42 and 43 on the 21 April 2005.
8. The FSA conducted its internal review of the application of the exemptions of 42 and 43 and communicated its findings to the complainant on the 23 June 2005. The review upheld the decision to redact certain sections of the report.
9. On the 18 July 2005 the complainant contacted the FSA and asked for another internal review, this time into the application of sections 41 and 44 of the Act.
10. The FSA contacted the complainant on the 29 July 2005 upholding the original decision to redact sections of the report under sections 41 and 44.

## **The Investigation**

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### **Scope of the case**

11. On 25 October 2005 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the strong public interest in disclosure of the full unedited report.
12. The Commissioner's investigation focused on whether the FSA was justified in relying on the exemptions of 41, 42, 43 and 44 of the Act to redact the report.

## Chronology

13. On the 17 January 2007 the Commissioner began his investigation by contacting both parties. The Commissioner clarified the scope of his investigation with the complainant.
14. In his letter to the FSA the Commissioner asked for further information regarding the application of the exemptions cited and for a copy of the full unedited report.
15. On the 7 February 2007 the Commissioner wrote again to the FSA to ask for a copy of the confidentiality clause between the FSA and the actuarial consultants, referred to in the refusal notice and internal review.
16. The FSA responded on the 14 February 2007 enclosing a copy of the unedited report, the contractual clause with the actuarial consultants and further justifications for the application of the exemptions.
17. In a phone call of the 16 February the Commissioner asked the FSA to provide an index of where each exemption had been applied to the unedited report. The Commissioner provided the FSA with the index previously provided to the complainant and asked the FSA to confirm if this was still applicable.
18. The FSA responded on the 21 February stating that the index sent to the complainant was still accurate apart from two points and that section 43 had now been specifically applied to sections of the report rather than as generically applied in the refusal notice.
19. On the 23 February 2006 the Commissioner wrote again to the FSA to clarify how section 41 had been applied to certain sections and not 43 and also further clarification about the application of section 44 of the Act and section 348 of the FSMA.
20. On the 16 March 2007 the FSA responded again. The FSA stated that section 41 applied to information contained in the report received from the actuarial consultants whereas section 43 had only been applied where information could constitute the consultants' 'know-how' and disclosure could prejudice the consultants commercial interests as third parties might use the information to bring litigation against the consultants. The FSA stated that some of the information fell under both 41 and 43.
21. The FSA also stated that in reviewing its application of the exemptions it had reconsidered where each exemption applied and attached new pages from the report showing where the exemptions were now being applied. Additionally the FSA stated it now considered some further information from the report could be released.
22. The FSA disclosed this information to the complainant following the Commissioner's request.

## Findings of fact

22. The Information withheld from disclosure consists of:
- A report by the FSA entitled 'Assessment of Potential Claims against Equitable Life';
  - A report by consultants Mercer Oliver Wyman (MOW);
  - Legal advice provided to the FSA
  - Document entitled Assessments for Loss; and
  - A number of tables.
23. The report in question is a report commissioned by the FSA to investigate the allegations relating to activities of the ELAS and whether the members of ELAS have been treated unfairly. An initial report into the matter has already been prepared by Lord Penrose and the second report was commissioned to 'investigate the allegations' further in order to reach a view as to the potential exposure of the ELAS to further claims. This review would inform future regulatory decisions.
24. The exemptions have been applied individually to different sections of the withheld information but there is also some overlap of exemptions. Section 41 has been applied to the report by MOW and any references within the report by the FSA to it. Section 42 to the legal advice and references to it in the FSA report; section 44 has been applied to specific sentences and paragraphs within the report by the FSA, the MOW report, the document entitled Assessments for Loss and the tables and section 43 has also been applied to specific sections within the withheld information in conjunction with sections 41, 42 and 44 but also on its own.
25. Under section 44 the prohibition being cited is section 348 of the Financial Services and Markets Act (FSMA)

## Analysis

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### Exemption – Section 41 - 'Information Provided in Confidence'

25. Section 41 provides that information is exempt if it was obtained by the public authority from any other person and the disclosure of the information to the public would constitute a breach of confidence actionable by the other person. In order for the Commissioner to be satisfied that the exemption applies to the information he must establish that the information has the necessary quality of confidence.
26. The FSA has explained that the report focused on an area of considerable commercial sensitivity as to whether the Society would need to make additional provisions for the mis-selling claims as a result of the Penrose report. MOW, the actuarial consultants, asked for and obtained an express term of confidentiality in their terms of engagement which states that the FSA, if it wishes to publish or

refer to all or part of the material, must first obtain written consent from MOW. The FSA provided a copy of this confidentiality agreement to the Commissioner.

27. The FSA went on to state that MOW indicated in their terms of agreement that disclosure would harm their commercial interests, because its analysis, techniques and opinions constitute their propriety know-how, which they would not want made available to competitors. Disclosure could expose the consultants themselves to legal action as third parties might claim they had relied on the report as the basis for their decisions which they later consider caused them loss.
28. The FSA also stressed that it would not have a good public interest defence for a beach of confidence claim by MOW. Public disclosure of the information supporting an already published conclusion is not in the interests of the Society or its policy holders and would be in breach of the express terms of the confidentiality agreement.
29. In deciding whether section 41 is engaged in respect of the information the Commissioner considered all the circumstances in which the information was obtained. The review undertaken by MOW agreed a confidentiality clause with the FSA which provided that the report was for internal FSA purposes only and none of the report should be published without MOW's prior written consent. The clause is an express agreement that the information should be kept confidential. The report amounts to information which considered the extent to which ELAS may be subject to legal action by its members and former members. As such the Commissioner finds that the content of the report is highly sensitive information which clearly has the appropriate quality of confidentiality and it is subject to an express duty of confidentiality.
30. The Commissioner finds that section 41 is engaged, where applied, in respect of the information. Section 41 is an absolute exemption and there is no need to consider the statutory public interest test.

#### **Exemption - Section 42 'Legal Professional Privilege'**

31. Section 42 of the Act provides that information is exempt from disclosure if a claim to legal professional privilege could be maintained in legal proceedings. There are two types of privilege, legal advice privilege and litigation privilege. Legal professional privilege protects confidential communications between professional legal advisers (including an in-house legal adviser) and clients from being disclosed.
32. The FSA have argued that the information is legal advice obtained from solicitors in confidence for the sole purpose of obtaining advice and therefore the exemption at section 42 of the Act is engaged.
33. The Commissioner is satisfied that the information withheld in response to the complainant's request under section 42 is confidential legal advice obtained by FSA by internal and external council.

34. The Commissioner has also considered if the publication of the conclusion on page 8 of the 'ELAS 5/7/04 Information for Policy Holders of Equitable Life' operates as a waiver in relation to the legal privilege. The conclusion does not appear to make any reference to any legal advice obtained and consequently it does not operate as a waiver.
35. The Commissioner is therefore satisfied that a claim to legal professional privilege could be maintained so that the exemption at section 42 of the Act is engaged.

### **Public Interest Test**

36. Section 42 is a qualified exemption and is therefore subject to the public interest test. The FSA have argued that the public interest lies in maintaining the exemption for the following reasons:
  - The principal conclusion of the report is already in the public domain
  - The report was prepared by a group including external legal counsel and if legal advice of this type was routinely disclosed, public sector clients and their legal advisors could be likely to change their stance to that potential legal risk in future may either not be raised at all or not accurately recorded.
  - There is a public interest in public bodies being able to communicate fully and frankly with legal advisors.
  - The information recorded is not historic as the Society's financial condition remains closely supervised by the FSA.
  - The legal advice was obtained by the FSA for its own purposes and it is open to individuals to seek their own legal advice into the Penrose report
37. In favour of disclosure the following public interest arguments were put forward by the FSA and the complainant:
  - There is a public interest in being able to view the legal advice taken by the FSA in order to assess the validity of the conclusions
  - There is a public interest in current and former members of ELAS to know as much as possible about its potential exposure to future claims; the former because of potential exposure of their own investments, and the latter because of their actual or potential claims against ELAS for their loss of their investments.
  - The principal conclusion of the report has been used by the Financial Ombudsman Service (FOS) in his decision not to consider 'Penrose-related complaints'. The FOS in its decision noted that they had only read the parts of the report disclosed under the Freedom of Information Act. There is a public interest in the independence and integrity of the FOS and therefore in knowing if a different conclusion would have been reached had it read the whole FSA report.
  - It is in the public interest to know clearly and precisely on what basis future regulatory decisions are informed.



- In general terms it is in the public interest that information about firms is available so that customers can make informed decisions.
- A number of important decisions concerning ELAS have been made in recent years by the FSA and other public bodies and there is a public interest in understanding why those decisions were made.

38. The Commissioner recognises that there are strong public interest arguments for disclosing the information as disclosure would allow the public to understand the basis for FSA's decision making and outline any legal justification it has for certain decisions. However, The Commissioner is mindful that there is a strong element of public interest inherent in legal professional privilege which must be taken into account when considering the application of section 42. The Commissioner notes the tribunal case of *'Bellamy vs. the Information Commissioner and the DTI'* in which the Tribunal concluded that:

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

39. The Commissioner has considered the arguments put forward by the FSA and considers these reasons demonstrate a strong argument for maintaining the exemption. These reinforce the strong public interest inherent in the notion of legal professional privilege. Whilst the Commissioner is mindful of the strong public interest in greater public understanding of how the FSA reaches decisions, there is a risk that disclosing confidential legal advice could undermine FSA's ability to obtain this advice in a timely fashion and have confidence that the advice given is done so freely without the consideration of its wider disclosure.
40. For these reasons, the Commissioner has concluded that the public interest in maintaining the section 42 exemption outweighs the public interest in disclosure. Accordingly, the information requested covered by section 42 is exempt from disclosure.

### **Exemption – Section 43 'Commercial Interests'**

41. Section 43 provides that information is exempt if the information constitutes a trade secret or disclosure of the information would or would be likely to prejudice the commercial interests of any person.
42. The FSA have argued that disclosure of the information would lead to speculation and uncertainty surrounding ELAS. This would disrupt its progress towards long term stability. As ELAS has now closed to new business and has no external shareholders, its members are vulnerable to the consequences of instability or uncertainty. The FSA state that it has already published more information about its decisions regarding ELAS than would normally be the case and it has taken the view that disclosing the underlying details behind its published conclusion

would risk re-awakening the interest of policy holders, particularly those who had not previously considered pursuing complaints.

43. Any additional claims made against ELAS would have to be met by money taken from the with profits funds. This would accordingly reduce the amounts payable to the remaining with profits holders. The FSA states this would harm the commercial interests of the Society which could harm its with-profits holders.
44. The Commissioner is persuaded by these arguments that there is a risk of prejudice to the Society and its remaining members' commercial interests if the information is released. The Commissioner recognises that whilst disclosure of the information could prejudice those still with the Society, those who left following the near-collapse could benefit from disclosure as the information may reveal an avenue for complaint or financial redress. The Commissioner therefore accepts that section 43(2) exemption is engaged as disclosure would, or would be likely to prejudice the commercial interests of any party, in this case the Society and its members.

### **Public Interest Test**

45. Section 43 is a qualified exemption and is therefore subject to the public interest test. The FSA have argued that the public interest lies in maintaining the exemption for the following reasons:
  - The FSA has published more information than would normally be published, and the FSA's website already has a section devoted to ELAS. Included in this is an explanation of the Ombudsman's decision not to investigate Penrose related complaints. Therefore the public interest in disclosing information related to this matter has already been satisfied.
  - It is in the public interest to ensure the Society is not left open to the possibility of new claims to the extent that this would affect the commercial interests of the Society's members.
46. In favour of disclosure the FSA and the complainant put forward the following arguments:
  - There is importance in the public understanding how the FSA came to its conclusions
  - Disclosure could provide information to those members who were unable to bring claims being able to see the reasoning behind this
  - There is a public interest in information about financial services being generally available so customers can make informed decisions
  - The FSA has already published large amounts of information about ELAS and further disclosure would 'complete the picture'
  - It is of importance to the members and former members to be aware of the potential exposure for further claims
  - It is in the public interest to understand if the conclusions reached by the Financial Ombudsman Service would have been different had the whole report been available



47. In reaching his decision the Commissioner has considered these arguments, but is not convinced that all are relevant to the fundamental question of whether the public interest in disclosure outweighed by the public interest in maintaining the section 43 exemption. There are competing private interests. Disclosure of the information would not be in the private interests of remaining ELAS members as new claims - if they were successful - would be funded from their with-profits funds. At the same time however, disclosure would potentially benefit the former members if they could now make claims of which they were previously unaware. There is little, if any, public interest in these competing interests. It is the commercial interests of the Society which are relevant.
48. In terms of the wider public interest, a large amount of information is already in the public domain and there may be some public interest in seeing any further information which would give the public a fuller understanding to the situation. The Commissioner also notes that the conclusion of the report has already been made public and that the information withheld constitutes the documentation taken into account in coming to that conclusion. There is a public interest in seeing the degree to which the FSA considered all points when drawing its conclusion, in order to assess the effectiveness of the regulator.
49. Against these points, however, the arguments for maintaining the exemption are powerful. The Act is concerned with disclosure of information held by public authorities, most of which has been generated by or for such authorities. Considerable caution is required where commercial interests would be prejudiced by disclosure. There is a clear public interest in maintaining the exemption. The Commissioner has concluded in this case that that interest prevails over the public interest arguments for disclosure which are not compelling.
50. The Commissioner finds therefore that section 43(2) is engaged and that the public interest in disclosure does not outweigh the public interest in maintaining the exemption. Accordingly the information requested covered by section 43 is exempt from disclosure.

#### **Exemption – Section 44 ‘Prohibitions on disclosure’**

51. Section 44 provides that information is exempt if its disclosure by the public authority is prohibited under any enactment. Section 44 has been applied to specific sentences and paragraphs within the report by the FSA, the MOW report, the document entitled assessments for loss and the tables
52. Section 348 of the Financial Services and Markets Act (FSMA) provides that confidential information must not be disclosed by the FSA without consent. In order to establish if the information is covered by the statutory bar the Commissioner must consider the following questions: is the information confidential under the terms of the FSMA; has consent been given; has the information already been disclosed to the public and could the information be provided in the form of an anonymised summary.
53. The Commissioner first considered whether, for the purposes of section 348 of the FSMA, the information is confidential information. Confidential information as

defined by section 348 must have been obtained by the FSA as part of its functions as the regulatory body overseeing the financial services industry and be information which relates to the business or other affairs of any person. The legal definition of 'person' includes corporations and limited companies.

54. The FSA explained that it regulates firms to ensure they are complying with the requirements of the FSMA, included in this are 'threshold conditions' under section 6 of the FSMA. One of these conditions states that:

*"The resources of the person (or firm) concerned must, in the opinion of the (FSA), be adequate in relation to the regulated activities that he (or it) seeks to carry on, or carries on."*

55. In monitoring the compliance of firms within this condition the FSA has set out further guidelines, it requires a company to ensure it holds sufficient assets to cover its liabilities. In addition, the FSA also requires companies to hold excess assets above their liabilities in order to allow for adverse deviations and events. It is a firm's responsibility to carry out these calculations but the FSA may challenge the calculation and request an external analysis or carry out its own analysis if it is not confident that the calculations have been adequately performed. In this case the FSA were concerned that the firm might not have calculated its resources adequately, and had thus not adhered to the requirements of the Act, therefore there might have been additional liabilities for which the firm had not reserved; namely the costs of compensating various policyholders for prior unfair treatment as a result of the information made public in the Penrose report. The FSA therefore took steps which culminated in preparing the report for which this request is concerned.
56. The Commissioner is therefore satisfied that the information in question was confidential information obtained by the FSA for the purpose of discharging its functions as the regulator of the financial services industry.
57. Section 348 (1) states that confidential information must not be disclosed without the consent of the person from whom the information was obtained from or if different to whom the information relates. In this case information exempt under section 44 relates to information obtained from MOW, who have not given their consent to disclose, and information relating to ELAS who have also not consented to disclosure. The FSA did consult with MOW to ask for their consent, but MOW specifically asked that the information remain confidential. Section 348 does not require consent to be sought but where it has not been given that the FSA consider the likelihood that it would be, it is clear from the nature of the information requested that consent from ELAS would not be given.
58. Section 348 (4) recognises that information is not confidential if it has already been disclosed to the public or is in the form of a summary or collection of information framed so that it is not possible to ascertain information relating to a particular person. The information requested has not already been disclosed to the public and where section 44 has been applied it is possible to identify the person to whom the information relates.

59. Section 349 of the FSMA states that section 348 does not prevent disclosure of confidential information which is made for the purpose of the carrying out of a public function and permitted by regulations made by the Treasury under this section. In the recent Information Tribunal decision EA/2005/0019 '*Slann vs. Financial Services Authority*' the tribunal found that the term public functions related to powers conferred on the FSA by legislation and not legislation such as FOIA, to which it was subject. Therefore making a disclosure under FOI was not carrying out a public function.
60. The Commissioner therefore finds that the information is covered by section 348 of the FSMA and that section 44 of the Act is engaged where applied. Section 44 is an absolute exemption and there is no requirement to consider the public interest test.

## The Decision

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61. The Commissioner's decision is that the public authority dealt with the request in accordance with the Act.

## Steps Required

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63. The Commissioner does not require the public authority to take any steps to ensure compliance with the Act;

## Right of Appeal

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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](mailto: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 5<sup>th</sup> day of July 2007**

**Signed .....**

**Richard Thomas  
Information Commissioner**

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

## Legal Annex

### General Right of Access

**Section 1(1)** provides that -

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

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

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

**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”.”

### **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”

**Section 2(3)** provides that –

“For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption –

- (a) section 21
- (b) section 23
- (c) section 32
- (d) section 34
- (e) section 36 so far as relating to information held by the House of Commons or the House of Lords
- (f) in section 40 –
  - (i) subsection (1), and
  - (ii) subsection (2) so far as relating to cases where the first condition referred to in that subsection is satisfied by virtue of subsection (3)(a)(i) or (b) of that section,
- (g) section 41, and
- (h) section 44”



### **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.”

**Section 41(2)** provides that –  
“The duty to confirm or deny does not arise if, or to the extent that, the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) constitute an actionable breach of confidence.”

### **Legal Professional Privilege**

**Section 42(1)** provides that –  
“Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.”

**Section 42(2)** provides that –  
“The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) in respect of which such a claim could be maintained in legal proceedings.”

### **Commercial interests.**

**Section 43(1)** provides that –  
“Information is exempt information if it constitutes a trade secret.”

**Section 43(2)** provides that –  
“Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).”

**Section 43(3)** provides that –  
“The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the interests mentioned in subsection (2).”

### **Prohibitions on disclosure.**

**Section 44(1)** provides that –  
“Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it-

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

**Section 44(2)** provides that –

“The duty to confirm or deny does not arise if the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) fall within any of paragraphs (a) to (c) of subsection (1).”