

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 4 July 2007

Public Authority: Home Office
Address: 4th Floor
Seacole Building
2 Marsham Street
London
SW1P 4DF

Summary

The complainant requested anonymised information relating to two infringements of the Animal (Scientific Procedures) Act 1986 and a letter sent from the Home Office to the Crown Prosecution Service. The Home Office refused to disclose the information under sections 30, 36, 38 and 44 of the Act. The Commissioner investigated and found that section 30 and 36 were engaged but that the public interest in maintaining the exemption did not outweigh the public interest in disclosure; that section 38 was engaged but that the public interest lay in maintaining the exemption and that section 44 was engaged. The Commissioner requires the Home Office to disclose the information withheld under sections 30 and 36 to the complainant within 35 calendar days from date of this notice.

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. The complainant had advised that on 1 June 2005 he requesting the following information from the Home Office:

"1. The minutes for the meeting on 23 June 2004 refer, in paragraph 11, to a self reported infringement involving 'two mice thought to have been deprived of water for up to five days'

2. The minutes for the meeting 13 October 2004 record, in paragraph 13, that an establishment had had its 'licence' (presumably certificate of designation) revoked because of concerns about husbandry standards for rabbits. I believe that this is the case coded C49 in Annex B to the minutes.

Would you please let us have the information you hold relating to these two infringements and the Home Office's investigation of them? We are content that disclosure can be in anonymised form if you believe section 38(1) applies to the identifying of the establishments or individuals concerned.

In addition, paragraph 11 of the June minutes also refer to 'the paper on prosecution policy'. Please disclose the paper."

3. On 4 July 2005 the Home Office responded to the complainant enclosing a copy of the Animal Procedures Committee paper on prosecution policy. The Home Office also stated it was applying the public interest test in relation to the exemptions at section 30 'investigations and proceedings by public authorities, 31 'law enforcement', 38 'health and safety' and the application of absolute exemptions at section 40 'personal information', 41 'information provided in confidence' and 44 'prohibitions on disclosure'. The Home Office explained to the complainant that as it was applying the public interest test they were unable to respond substantively within the 20 working day deadline.
4. On 21 July 2005 the complainant responded thanking the Home Office for the APC paper and letter from the Crown Prosecution Service, and asked for another letter referred to in the CPS letter.
5. The Home Office provided the complainant with a substantive response to his request of 27 October 2005. The Home Office reaffirmed its original decision and confirmed it held information relevant to his request but concluded that the information is exempt from disclosure by virtue of sections 30(1)(b) 'investigations which may lead to criminal proceedings by the authority', 38 'health and safety', 41 'information provided in confidence' and 44 'prohibitions on disclosure'.
6. On 8 November 2005 the complainant requested an internal review of the decision to withhold the information from his original request.
7. The Home Office completed its internal review and communicated the outcome to the complainant on 31 January 2006. The internal review upheld the decision to withhold the information under section 38, 41 and 44. However the review found that section 30 had been applied incorrectly and that the information was exempt by virtue of section 31.
8. On 14 February 2006 the Home Office contacted the complainant again regarding the complainant's request dated 21 July 2005 for the letter to the CPS, refusing to disclose the information under section 40 and 31.

The Investigation

Scope of the case

9. On 1 March 2006 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
10. The complainant did not contest the application of section 40 and so this has not been investigated by the Commissioner. Additionally the complainant did not seek to challenge the use of section 38 to the extent that it has been applied to names and addresses
11. The exemptions under section 30 and 36 are being applied to the information as requested as a whole. Sections 41 and 44 are applicable only to specific information provided in confidence by individuals at the relevant designated establishments. Where section 41 has been applied it is in conjunction with section 44. Section 38 is being applied to those details in the recorded information which would enable the relevant individuals and / or establishments to be identified. This includes the nature of the work being undertaken which may be specific to the licensee or establishment.
12. The Commissioner focused his investigation on the justification by the Home Office in relying on sections 30, 44, 41 and 38 in withholding the requested information. The Commissioner did not investigate the application of section 40 as the complainant confirmed they were not challenging the application of this exemption.

Chronology

13. The Commissioner began his investigation by contacting the Home Office on 21 December 2006 to ask for further explanation regarding the application of all the exemptions and for a copy of the information being withheld.
14. The Home Office responded on 21 February 2007, in the letter the Home Office explained that it now felt section 30 applies rather than section 31 and that it now also sought to rely on section 36. As regards the letter to the CPS the Home Office also now sought to rely on section 30 and section 36 in addition to section 40.
15. The Commissioner wrote to the Home Office on 26 February 2007 requested copies of the information and informing the Home Office of the relevant powers the Commissioner was exercising in requesting this information. The Commissioner also requested further clarification regarding the extent to which each exemption was being applied and for information regarding the opinion of the qualified person for the purposes of section 36.
16. The Home Office responded on 12 March 2007 confirming that sections 36 and 30 apply to all the information withheld, 41 and 44 only apply to certain sections and 38 only to those details in the information which would enable the relevant

individuals or establishments to be identified. The Home Office explained that this goes beyond the names of individuals and also includes the nature of the work conducted. The Home Office acknowledged that it would be technically possible to redact this from the information but that other exemptions would still apply.

17. On 19 March 2007 the Commissioner wrote again asking to have a copy of the requested information sent through annotated to indicate where each exemption applies.

Findings of fact

18. The information requested in relation to both infringements comprises reports, advice, discussion and correspondence relating to the infringement and its outcome.
19. The two infringements were reported in the minutes of the Animal Procedures Committee meetings held in June 2004. One infringement relates to a case where two mice were thought to have been deprived of water for up to five days. The second involved the revocation of a certificate of designation because of concerns about husbandry standards for rabbits. No further information has been published beyond that appearing in the APC minutes.
20. The Animal (Scientific Procedures) Act 1986 (ASPA) provides that any persons wishing to apply a 'regulated procedure' to an animal must hold a personal licence qualifying them to apply a regulated procedure of that description to an animal of that description. The procedure must be applied as part of a programme of work specified in a project licence authorising the applicant, as part of a regulated procedure. Both personal and project licences are granted by the Secretary of State.
21. A 'regulated procedure' means any experimental or other scientific procedure applied to a protected animal which may have the effect of causing that animal pain, suffering, distress or lasting harm.
22. A 'designated establishment' is a place designated by a certificate issued by the Secretary of State as a scientific procedure establishment.

Analysis

Exemption: Section 38 'Health and Safety'

23. Under section 38, information is exempt if its disclosure would, or would be likely to endanger the safety of any individual.
24. The Home Office have applied section 38 to any instances identifying individuals' or information from which individuals or establishments' identities could be deduced. This information, it states, goes beyond the names of individuals and places and includes information such as the nature of the work being undertaken

(which may be specific to the place rather than being something which takes place in large number of designated places.)

25. The complainant has not challenged the application of section 38 to the names or addresses of individuals or establishments but to the wider application of section 38 to the technical references. The Commissioner's investigation is into the application of section 38 to this information.
26. The Home Office argue that the activities of a small number of animal rights extremists make it necessary to protect establishments and individuals licensed under the ASPA, their staff and others associated with them from potential harassment and harm. Individuals and places associated with Animal Scientific Procedures are regularly threatened and harassed by extremists and disclosure of information which could identify those who were party to infringements poses a significant risk of abuse and possible physical harm to themselves and their property.
27. The Home Office state that the Animal Scientific Procedures Directorate are in a highly informed position and understand the potential danger in disclosing information relating to people / places involved in the undertaking of animal procedures. They have extensive up to date operational information with respect to Animal Rights Extremists and through their own inspection system and regular contact with research establishments and licensees they generate relevant intelligence and insights.
28. The complainant has stated to the Home Office and the Commissioner that he is happy to have the information in an anonymised form so it is not possible to identify the researchers to establishments concerned. The complainant maintains that it is still possible to disclose further information relating to the infringements without identifying the establishments. The complainant has also argued that whilst there may be some risk of the personal safety of researchers in general at the hands of a small minority of activists this does not demonstrate the link between disclosure of the information and any risk to personal safety.
29. In deciding if the exemption is engaged in respect of the information requested the Commissioner is mindful that a risk, no matter how small, is significant. The information requested is sensitive in that it relates to infringements of the ASPA and therefore is not simply identifying that an establishment or individual conducts regulated procedures but that conditions of licences have been breached.
30. The Home Office has been quite clear that the section 38 is not only applied to the names of individuals or establishments (which the complaint accepts is necessary) but also to some technical references within the information requested which could lead to the identification of the individual or establishment. The Commissioner has reviewed the information and considered the numbers of establishments concerned. The Home Office have clarified that although many establishments use mice, details within the infringement reports could allow the establishment to be identified and in the other infringement only a very small number of establishments involve rabbit husbandry and the disclosure of any further information relating to the establishment could allow for its identification.

31. The Commissioner is satisfied that there is a risk that disclosure of the names of the establishments would, or would be likely to endanger the safety of individuals. The Commissioner is also satisfied that there is a risk that disclosure of further information relating to the work undertaken by the establishment or individual could result in the identification of them and therefore pose a risk to their health and safety.
32. The Commissioner therefore finds that section 38 is engaged in respect of the names and other identifiers of individual and or establishments as referenced in the requested information.

Public Interest Test

33. Section 38 is a qualified exemption and is therefore subject to the public interest test.

The Commissioner has considered the following arguments for maintaining the exemption:

- There is no public interest in disclosing information which could jeopardise anyone's health and safety.
- Places such as those identifiable in the information are regularly harassed by extremists
- Public reassurance that Home Office officials are carrying out their regulatory functions robustly is met by the disclosure of the anonymised summaries.
- The public interest is served in publishing information related to the infringement but not information which identifies individuals or establishments.

The arguments considered for disclosing the information are as follows:

- Desirability of greater transparency about work carried out under the ASPA.
- Public reassurance that the regulatory system is effective.

34. The BUAV in its submission did not seek to argue that, if section 38 is engaged, that the public interest lay in disclosing the information.
35. The Commissioner has considered the arguments put forward by the Home Office and has concluded that whilst he agrees there is a public interest in the public being able to ensure the Home Office is effectively carrying out its regulatory functions under the ASPA, this is not served by disclosing the identities of those investigated for infringements. The Commissioner considers that the public interest must lie in protecting the health and safety of individuals.
36. The Commissioner therefore finds that section 38 is engaged and that the public interest lies in maintaining the exemption.

Exemption: Section 44 'Prohibitions on Disclosure'

37. Section 44 of the Act provides that information is exempt information if its disclosure by the public authority holding it is prohibited under any enactment.
38. Section 24 of the ASPA provides that a person is guilty of an offence, if otherwise than for the purposes of discharging his functions under this Act, he discloses any information obtained by him in the exercise of his functions and which he knows or has reasonable grounds for believing to have been given in confidence.
39. In the course of the investigation the Commissioner has established that the information relating to the infringements was gathered under section 18(2)(c) and section 18(2)(d) of the ASPA; which place a duty on inspectors to 'visit places where regulated procedures are carried out for the purpose of determining whether those procedures are authorised by the requisite licences'. Advice on the action to take in connection with the infringements was provided under section 18(2)(e) which places a duty on inspectors 'to report to the Secretary of State any case in which any provision of or any condition of a licence certificate under the ASPA has not been or is not being complied with and to advise him on the action to be taken.'
40. The Commissioner also established that disclosure under the Freedom of Information Act does not constitute a disclosure under a function of the ASPA.
41. In deciding whether the information was provided with the reasonable expectation of confidentiality, the Commissioner has considered the previous publication of such information and the circumstances the information was provided in.
42. The Home Office have explained that licensees would have assumed that the details of the infringements reported would only be used for the purposes of dealing with non-compliance. Home Office policy is to disclose anonymised, summary details of infringements in an annual report to the Animal Procedures Committee (APC). The report is usually annexed to the minutes of the relevant APC meeting and published on the APC website; more information is also available annually in the 'Statistics of Scientific Procedures on Living Animals. The information disclosed includes:
 - The category of establishment involved
 - A summary of the infringement
 - Which sections of the ASPA, or licence conditions were breached
 - How the infringement came to light
 - Whether the infringement involved adverse welfare effects on the animals concerned
 - The action taken.
43. Historically, therefore, those providing information to the inspectorate would be aware that the above information would be published and would expect that any more detailed information provided during an investigation would be kept confidential.

44. The test under section 24 of the ASPA, as regards reasonable expectation of confidentiality is different to the exemption at section 41 of FOIA in that all the public authority needs to satisfy in order to engage this exemption, is that they have reasonable grounds for believing the information to be have been provided in confidence.
45. In light of this the Commissioner finds the Home Office would have had reasonable grounds for believing the information given by individuals to the inspectorate would have been given in confidence.
46. The Commissioner's decision is that the information withheld by virtue of section 44 is exempt from disclosure. As section 44 is an absolute exemption there is no need to consider the public interest test.
47. The Commissioner has not investigated the application of section 41 'Information provided in confidence' as this exemption has only been applied along with section 44. As the Commissioner has found that section 44 is engaged there is no need to investigate section 41.

Exemption: Section 30 'Investigations and proceedings conducted by public authorities.'

48. Section 30 provides that information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of any investigation which the public authority has a duty to conduct with a view to it being ascertained (i) whether a person should be charged with an offence or (ii) whether a person charged with an offence is guilty of it.
49. The Home Office have explained that Sections 18(2)(c) and 18 (2)(d) of the Animal (Scientific Procedures) Act 1986, place a duty on Home Office inspectors to 'visit places where regulated procedures are carried out for the purposes of determining whether those procedures are authorised by the requisite licences and whether the conditions of those licences are being complied with' and to 'visit designated establishments for the purpose of determining whether conditions of certificates in respect of those establishments are being complied with'. It also places a duty on inspectors to report to the Secretary of State any case in which any provision of the ASPA has not been complied with and to advise him on the action to be taken.
50. The information requested involves investigations into self-reported infringement of a project licence and a revocation of a certificate of designation. In both cases Home Office inspectors visited the establishments to investigate the incidents and decide on courses of action. Whilst they were ultimately dealt with as breaches of conditions of the relevant certificates of designation rather than criminal offences both involved animal suffering potentially covered by section 22 of ASPA.
51. The Commissioner therefore agreed that the information requested was held for the purposes of any investigation with a view to ascertaining whether a person should be charged with an offence. The phrase 'at any time' means that the fact that the investigations have concluded does not mean the information requested is not covered by the exemption.

52. The Commissioner finds that in respect of the information requested the exemption at section 30 is engaged.

Public Interest Test

53. Section 30 is a qualified exemption and is therefore subject to the public interest test. In order to engage the exemption the public authority must demonstrate that in respect of the information covered by the exemption, the public interest in maintaining the exemption outweighs the public interest in disclosing it.
54. The arguments considered for maintaining the exemption are as follows:
- Disclosure would jeopardise the integrity of the regulatory system under ASPA by disclosing information provided in confidence.
 - The willingness of establishments, licensees, and other individuals to co-operate fully with inspectors is dependent on a necessary level of trust that information will not be divulged and therefore disclosure would significantly damage the trust between establishments and the Home Office that is essential to enable inspectors to discharge their duties.
 - Public interest is already served by the publication of anonymised, summary details of infringements.
 - Disclosure of the detailed information relating to the infringements and the investigation would prejudice the future ability of Home Office inspectors to discharge their functions under the ASPA.
55. The arguments considered for disclosure of the information are detailed below:
- The public has a clear interest in knowing the precise details of infringements under the 1986 Act, so they can judge if animal research is being properly regulated.
 - Public interest in ensuring the Inspectorate is carrying out its functions effectively and ensuring the Home Office takes infringements seriously and are transparent and accountable for their decisions.
 - There is a desire for greater transparency about work carried out under the 1986 Act.
 - The public assurance that might be provided that the regulatory system is effective.
 - The encouragement of better informed public discussion of animal experimentation.
56. In reaching his decision the Commissioner has considered all the arguments for and against maintaining the exemption. The Commissioner appreciates that in one of the two cases the infringement was self reported and recognises the importance of establishments being open and co-operating voluntarily with the Home Office inspectors. Under the ASPA there is no requirement for licence or certificate holders to report non-compliance and the practice of self-reporting has developed as it is in everyone's best interest that instances of non compliance are dealt with promptly in order to prevent re-occurrence; and as such licensees have

had confidence that details of infringements would only be used for the purposes of dealing with non-compliance.

57. However, the Commissioner notes from the wording of section 18 of the ASPA that it is the 'duty' of an inspector to visit places where regulated procedures are carried out and to visit designated establishments. Therefore, regardless of self-reporting, the Home Office must regularly inspect establishments to ascertain their compliance with the ASPA. Additionally the revocation of the certificate designation in question was as a result of a routine inspection, this suggests that the provisions provided by section 18 can, and do, serve the purposes of the regulatory system.
58. The complainant also argued that, to his knowledge, only one prosecution has ever been brought relating to animal experiments since the 1986 Act came into force. He states that in 'Statistics of Scientific Procedures on Living Animals – Great Britain 2004, it reveals that the Home Office was aware of 9 infringements that year compromising animal welfare where administrative sanctions were imposed only. He therefore argues that the public interest in judging if the approach taken is appropriate in cases such as these is only served by disclosing the information requested.
59. The Commissioner considers that the public interest lies in disclosing the information withheld under section 30. In reaching this decision the Commissioner has considered the importance placed by the Home Office on self-reporting but is not convinced that this is a strong enough countervailing argument for maintaining the exemption. As the Home Office have stated, self-reporting is in everyone's best interests. The Commissioner also notes that as section 38 is engaged the information will be anonymised so the establishment or licensee will not be identifiable. Additionally, the requirements of section 18 of the ASPA place a duty on the inspectorate to routinely inspect licensees and designated establishments. The Commissioner also finds that the arguments put forward for disclosure by the complainant are very compelling as disclosure would enable the public to robustly debate the appropriateness of decisions made by the Home Office and judge the ASPA as a regulatory tool.
60. For these reasons the Commissioner finds that section 30 is engaged in respect of the information requested but that the public interest in maintaining the exemption does not outweigh the public interest in disclosure.

Exemption: Section 36 'Prejudice to the Effective Conduct of Public Affairs'

61. Section 36(2)(b) and (c) provides that information is exempt if disclosure would, or would be likely to inhibit the free and frank provision of advice; or the free and frank exchange of views for the purposes of deliberation or would otherwise prejudice, or would be likely to prejudice the effective conduct of public affairs
62. Information can only be exempt by virtue of section 36 if 'in the reasonable opinion of a qualified person' disclosure would be likely to lead to the above adverse consequences. In order to establish that the exemption has been applied correctly the Commissioner must:

- Establish that an opinion was given;
 - Ascertain who was the qualified person or persons;
 - Ascertain when the opinion was given;
 - Consider whether the opinion was objectively reasonable and reasonably arrived at.
63. The Commissioner established that the qualified person was Joan Ryan, Home Office Parliamentary under Secretary of State responsible for the implementation of the ASPA. Her opinion was sought on 14 February 2007 and given on 20 February 2007. The Home Office have explained that in forming her opinion she was aware of the nature of the information held and the circumstances in which it was created. The qualified person took advice from policy officials about the likely effect of disclosure and agreed that disclosure of the information would be likely to inhibit inspectors reporting on future cases and would also be likely to inhibit discussions between inspectors and officials, and between officials and prosecuting authorities, when reaching decisions on such cases.
64. The qualified person also found that disclosure would prejudice the relationship of trust and cooperation that exists between licensed establishments and Home Office inspectors and harm inspectors' ability to carry out their compliance-monitoring functions under ASPA and that establishments and individuals would be less likely to provide the inspectorate with relevant information in the open and transparent way that they do at present if they believed the details were made publicly available.
65. The Commissioner is of the view that in this case the opinion of the qualified person was objectively reasonable and reasonable arrived at and therefore the exemption of section 36 was applied correctly.

Public Interest Test

66. Section 36 is a qualified exemption and is therefore subject to the public interest test. In balancing the public interest arguments the Commissioner must determine if the public interest lies in maintaining the exemption or in disclosing the information.
67. The Home Office has stated that in taking into account the public interest test in this case it considered the need to ensure the public has confidence in the decision making process followed when handling infringements and that decisions taken are robust; that inspectors are not inhibited in reporting the circumstances of infringements and on any relevant mitigating or aggravating factors such as the motivation and attitude of the individuals involved; and that inspectors and officials can discuss such cases freely and frankly before reaching final decisions on the action to be taken. The Home Office concluded that in balancing these factors it decided the public interest lies in maintaining the exemption.
68. The Commissioner has considered the public interest arguments that disclosing information which creates greater accountability, openness and transparency

within the regulatory process of the ASPA and would further public debate on the appropriateness of animal testing. The information requested relates to infringements of licence conditions which highlight where licensed establishments have not been acting in accordance with this licence and therefore animal suffering has occurred. The Commissioner appreciates that this is a highly sensitive area of information and disclosure of information which provides further detail into the regulatory system (and the actions taken against establishments breaching conditions) presents a very strong public interest argument for disclosure.

69. The complainant has stressed that he believes that the regulation of establishments under the Act should not be a private matter and that the general public should be able to see information which they can use to make informed decisions into the robustness of the decisions taken against those breaching their licence conditions.
70. The Commissioner has considered these arguments and agrees allowing the public to see how the Home Office deals with transgressions of licence conditions is in the public interest as it would promote accountability, transparency, allow more informed public debate into the issue of animal testing and create a more open culture within the licensed community. The Commissioner also recognises that in upholding the application of sections 38 and 44 the information to be disclosed will be anonymised so the establishments will not be identified.
71. The Commissioner therefore finds that section 36 is engaged but that the public interest in disclosing the information outweighs the public interest in maintaining the exemption.

The Decision

72. 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:
- i. The application of section 38
 - ii. The application of section 44
73. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- i. The Application of section 30
 - ii. The Application of section 36

Steps Required

74. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- i. Disclosure the information withheld solely under sections 30 and 36
 - ii. In line with the complainants request the information to be disclosed should be anonymised.
75. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

76. 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

77. 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 4th 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”

Investigations and proceedings conducted by public authorities.

Section 30(1) provides that –

“Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of-

- (a) any investigation which the public authority has a duty to conduct with a view to it being ascertained-
 - (i) whether a person should be charged with an offence, or
 - (ii) whether a person charged with an offence is guilty of it,
- (b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or
- (c) any criminal proceedings which the authority has power to conduct.”

Section 30(2) provides that –

“Information held by a public authority is exempt information if-

- (a) it was obtained or recorded by the authority for the purposes of its functions relating to-
 - (i) investigations falling within subsection (1)(a) or (b),
 - (ii) criminal proceedings which the authority has power to conduct,
 - (iii) investigations (other than investigations falling within subsection (1)(a) or (b)) which are conducted by the authority for any of the purposes specified in section 31(2) and either by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under any enactment, or
 - (iv) civil proceedings which are brought by or on behalf of the authority and arise out of such investigations, and
- (b) it relates to the obtaining of information from confidential sources.”

Section 30(3) provides that –

“The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1) or (2).”

Section 30(4) provides that –

“In relation to the institution or conduct of criminal proceedings or the power to conduct them, references in subsection (1)(b) or (c) and subsection (2)(a) to the public authority include references-

- (a) to any officer of the authority,

- (b) in the case of a government department other than a Northern Ireland department, to the Minister of the Crown in charge of the department, and
- (c) in the case of a Northern Ireland department, to the Northern Ireland Minister in charge of the department.”

Section 30(5) provides that –
“In this section-

"criminal proceedings" includes-

- (a) proceedings before a court-martial constituted under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 or a disciplinary court constituted under section 52G of the Act of 1957,
- (b) proceedings on dealing summarily with a charge under the Army Act 1955 or the Air Force Act 1955 or on summary trial under the Naval Discipline Act 1957,
- (c) proceedings before a court established by section 83ZA of the Army Act 1955, section 83ZA of the Air Force Act 1955 or section 52FF of the Naval Discipline Act 1957 (summary appeal courts),
- (d) proceedings before the Courts-Martial Appeal Court, and
- (e) proceedings before a Standing Civilian Court;

"offence" includes any offence under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957.”

Section 30(6) provides that –
“In the application of this section to Scotland-

- (a) in subsection (1)(b), for the words from "a decision" to the end there is substituted "a decision by the authority to make a report to the procurator fiscal for the purpose of enabling him to determine whether criminal proceedings should be instituted",
- (b) in subsections (1)(c) and (2)(a)(ii) for "which the authority has power to conduct" there is substituted "which have been instituted in consequence of a report made by the authority to the procurator fiscal", and
- (c) for any reference to a person being charged with an offence there is substituted a reference to the person being prosecuted for the offence.”

Prejudice to effective conduct of public affairs.

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.

Health and safety.

Section 38(1) provides that –

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

- (a) endanger the physical or mental health of any individual, or
- (b) endanger the safety of any individual.”

Section 38(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, or would be likely to, have either of the effects mentioned in subsection (1).”

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).”