

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 31 March 2010

Public Authority: The Ministry of Justice
Address: 102 Petty France
London
SW1H 9AJ

Summary

The complainant requested information relating to Lord Falconer's interpretation of the 1949 Marriage Act and the Human Rights Act at the time of the impending marriage of Prince Charles and Mrs Parker Bowles. The Ministry of Justice confirmed that it holds information relevant to the request but that it was exempt by virtue of section 42(1) (legal professional privilege). The public authority also neither confirmed nor denied whether it held any information relating to the provision of Law Officers' advice, citing section 35(3). The Commissioner is satisfied that the exemptions are engaged and that the public interest in maintaining the exemptions outweighs the public interest in disclosure. However, the Ministry of Justice breached a procedural requirement of the Act.

The Commissioner's Role

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

Background

2. An article in the Mail on Sunday on 20 February 2005 quoted Lord Falconer, the then Constitutional Affairs Secretary and Lord Chancellor,

on the subject of the 1949 Marriage Act and his interpretation of the law on civil weddings.

3. A written ministerial statement on the marriage between HRH The Prince of Wales and Mrs Parker Bowles was made to the House of Lords on 23 February 2005 by Lord Falconer. In his statement, Lord Falconer said:

'The Government is satisfied that it is lawful for the Prince of Wales and Mrs Parker Bowles, like anyone else, to marry by a civil ceremony in accordance with Part III of the Marriage Act 1949'.

4. Paragraph 22 of the Ministerial Code, July 2001, the version in force at the time of the statement to the House of Lords, states that:

'The Law Officers must be consulted in good time before the Government is committed to critical decisions involving legal considerations'.

5. Paragraph 24 of the Ministerial Code, July 2001, states that:

'The fact and content of opinions or advice given by the Law Officers, including the Scottish Law Officers, either individually or collectively, must not be disclosed outside Government without their authority'.

6. Paragraph 2.10 of the Ministerial code, July 2007, the version in force at the time of the request, states that:

'The Law Officers must be consulted in good time before the Government is committed to critical decisions involving legal considerations'.

7. Paragraph 2.13 of the Ministerial code, July 2007, states that:

'The fact that the Law Officers have advised or have not advised and the content of their advice must not be disclosed outside Government without their authority'.

The Request

8. The complainant wrote to the Ministry of Justice (MoJ) on 24 January 2008:

'I refer to Lord Falconer's interviews with the Mail on Sunday on Sunday 20 February 2005 and his statement to the House of Lords on

23 February 2005. Both concerned the Government's view of the legal position relating to the then impending marriage of Prince Charles and Mrs Camilla Parker Bowles.

I wish to see the relevant documents that led the former Lord Chancellor to interpret the 1949 Marriage Act and the Human Rights Act in the way he did... My request is solely concerned with Lord Falconer's explanation to the Press and Parliament about the legal background to the Government's interpretation of the two statutes he quoted'.

9. Having advised the complainant on 22 February 2008 that, although it held information relating to the request, it required additional time to consider the public interest test in relation to its citing of section 42, the MoJ responded on 28 April 2008. In its response, the MoJ confirmed that it held information relating to the request but that it was exempt from disclosure, citing the exemptions in sections 42 (legal professional privilege), 40(2)(a) (personal information) and 21 (information accessible to the applicant by other means). In addition, it neither confirmed nor denied whether any information was held under section 35 (formulation of government policy), citing section 35(3) (Law Officer's advice).
10. The complainant requested an internal review on 4 June 2008.
11. In its internal view response dated 20 October 2008, the MoJ advised that it had identified further information as falling within the scope of the request but that this information was also exempt under the terms of section 42. It also upheld its earlier decision that the requested information was exempt and continued neither to confirm nor deny whether the MoJ held any information relating to Law Officers' advice.

The Investigation

Scope of the case

12. On 2 December 2008, the Commissioner received the complainant's correspondence complaining about the way his request for information had been handled.
13. During the course of the Commissioner's investigation, the MoJ confirmed the information that it deemed to be in scope of the request. In its correspondence with the Commissioner of 9 November 2009, the MoJ confirmed that the additional information that, at the time of the internal review, was deemed to fall within the scope of the request, did

not in fact fall within the scope. It also confirmed that it had '*identified new documents that were not previously considered to fall within the scope of the request which are relevant to the request*'.

14. For clarity, the MoJ provided the Commissioner with a schedule of the information now, as well as previously, deemed to be in scope of the request and the reasons for including / excluding it. It also confirmed that only two exemptions apply in this case, namely sections 42 and 35. The Commissioner has therefore focussed his investigation on these exemptions and has not addressed the exemptions in sections 21 and 40 which the MoJ originally cited as they are not relevant to the withheld information.
15. The Commissioner is concerned that the scope has varied during the handling of this request. However, having seen the schedule of information deemed to be in scope of the request at the initial response and internal review stages, and having viewed the information ultimately withheld, he is satisfied with the MoJ's explanation for the variation in information considered to be in scope at each stage.

Chronology

16. Unfortunately, due to a backlog of complaints at the Commissioner's office about compliance with the Act, there was a delay of eight months before his investigation into this complaint got underway.
17. The Commissioner wrote to the MoJ on 7 August 2009 asking for clarification of its decision to exempt the requested information from disclosure. The MoJ was also asked to explain why the further information that was identified as falling within the scope of the request during the handling of the internal review was not identified at the time of the initial response.
18. The MoJ contacted the Commissioner on 8 September 2009 requesting an extension to the time for responding. On 22 September 2009, the MoJ confirmed both to the Commissioner and the complainant that it was revisiting the information that fell within the scope of the case.
19. The MoJ finally provided the Commissioner with its substantive response in this case on 9 November 2009. In this correspondence, the MoJ apologised for the '*considerable delay*' in the overall handling of the complainant's request. It also told the Commissioner the basis on which it was now refusing the request.
20. Despite the intervention of the Commissioner, it was not until 29 December 2009 that the MoJ wrote to the complainant providing him with an explanation of the outcome of its further consideration of his

request. In this correspondence, the MoJ confirmed that, having reconsidered the information it held that is relevant to his request, two exemptions apply, namely sections 42(1) and 35(3) by virtue of 35(1)(c).

Analysis

Exemptions

Section 42 Legal professional privilege

21. The MoJ has confirmed that, in its view, section 42(1) applies in this case. 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.'

22. This exemption applies to information that would be subject to legal professional privilege (LPP). In other words, section 42 sets out an exemption from the right to know for information protected by LPP. LPP covers communications between lawyers and their clients for the purpose of obtaining legal advice or documents created by or for lawyers for the dominant purpose of litigation. This exemption ensures that the confidential relationship between lawyer and client is protected.

Is the information privileged?

23. Legal professional privilege (LPP) is a common law concept shaped by the courts over time. It is intended to provide confidentiality between professional legal advisers and clients to ensure openness between them and safeguard access to fully informed, realistic and frank legal advice, including potential weaknesses and counter-arguments.
24. For the purposes of LPP, it makes no difference whether the legal adviser is an external lawyer or a professional in-house lawyer employed by the public authority itself.
25. There are two categories of LPP – litigation privilege and legal advice privilege. In this case, the MoJ is claiming legal advice privilege.
26. Legal advice privilege may apply whether or not there is any litigation in prospect. In the Commissioner's view, this form of LPP covers a narrow range of information, namely confidential communications

between the client and the lawyer made for the dominant purpose of seeking or giving legal advice. The advice itself must concern legal rights, liabilities, obligations or remedies or otherwise have a relevant legal context.

27. On the basis of the above, and having viewed the withheld information, the Commissioner is satisfied that it constitutes legal advice privilege.

Has LPP been waived?

28. The MoJ has argued that the Lord Chancellor's written ministerial statement did not amount to waiver of legal professional privilege. In support of this, it cited the case of *The Foreign and Commonwealth Office v the Information Commissioner* (EA/2007/0092) which addressed the question of waiver.

29. In considering this matter, the Commissioner has also taken account of the Tribunal in Kirkaldie (EA/2006/001) which indicated that:

'...the test for waiver is whether the contents of the document in question are being relied on. A mere reference to a privileged document is not enough, but if the contents are quoted or summarised, there is waiver' (Dunlop Slazenger International v Joe Bloggs Sports Ltd [2003] EWCA Civ 901) (para 26).

30. In the Commissioner's view, a mere reference to, or a brief summary of, the legal advice will not amount to a partial waiver. Further, if the disclosure does not reveal the reasoning behind the conclusion, or a considered examination of the relevant case-law, precedent and the way they apply to the case, then waiver will not have occurred.

31. In this case the Commissioner is satisfied that there is no reason to believe that LPP has been waived in relation to the contents of the withheld information.

Is the exemption engaged?

32. As the Commissioner is satisfied that the information withheld under section 42(1) constitutes legal advice privilege and that LPP has not been waived, he has concluded that the exemption is engaged in respect of this information. He has therefore gone on to consider the public interest.

Public interest arguments in favour of disclosing the requested information

33. The MoJ acknowledges that:

'Disclosing the content of legal advice to the public will contribute to an open and transparent relationship between the government and the public. This will, in addition, ensure that the government are accountable for the decisions that they make'.

34. Further, in favour of disclosure, it recognises that:

'It is in the public interest to know whether, once legal advice was obtained by the government, they chose to follow that advice. This again contributes to transparency between the government and the public, but also increases the public's knowledge of the decision-making process within government, expanding their knowledge of the role and workings of government'.

35. It also considers:

'The topic at hand is one of national interest and the public are likely to be particularly interested in the issues that the government considered before any decisions were made, and the basis upon which those decisions were taken'.

36. In support of his argument for disclosure, the complainant has said:

'My application involves wider issues than the protection of "full and frank exchanges between clients and their legal advisers"...My application concerns Lord Falconer's decision to overrule the long-accepted interpretation of the 1949 Marriage Act and apply the Human Rights Act to royal marriages without public or parliamentary debate or judicial scrutiny'.

Public interest arguments in favour of maintaining the exemption

37. In support of its argument in favour of maintaining the exemption, the MoJ has told the Commissioner:

'Government decisions should be made once all of the legal implications have been fully highlighted to the decision-maker. Legal advice is likely to comment on negative and positive implications of a situation so that the decision maker, Lord Falconer [in this case], had a balanced perspective. There is a strong public interest in withholding information that is protected by legal professional privilege; it is important that the government receives full, accurate and considered legal advice. It is not in the public interest to limit, and possibly reduce, reliance on detailed legal advice'.

38. Similarly, the MoJ has told the complainant:

'It is in the public interest that the decisions taken by government are made in a fully informed legal context. Government departments need high-quality, comprehensive legal advice for the effective conduct of their business. That advice needs to be given in context, and with a full appreciation of the relevant facts. We believe disclosure in this instance could undermine the effective government by discouraging this frankness and candour in internal communications.'

Legal advice often sets out the possible arguments both for and against a particular view, weighing up their relative merits. This means that legal advice obtained by a government department will often set out the perceived weaknesses of the department's position. The prospect of disclosure of legal advice or guidance could have a substantial impact on the nature of the discussions, because it has a significant potential to prejudice the government's ability to defend its legal interests by opening its legal position to challenge. It is not in the public interest for the government to waste resources in defending unnecessary legal challenges'.

39. The MoJ has also argued against disclosure, on the basis that:

'If legal advice is disclosed it may, in the future, reduce the quality of the advice given by lawyers. Without such comprehensive advice the quality of the government's decision-making would be much reduced since it would not be fully informed and this would be contrary to the public interest'.

40. In support of its arguments, the MoJ referred to the case of the *Department for Business Enterprise and Regulatory Reform v O'Brien*, arguing that in that case, *'the High Court held that there was an in-built public interest in not disclosing information subject to legal professional privilege'*.

Balance of the public interest arguments

41. The Commissioner understands that the general public interest inherent in the exemption will always be strong due to the importance of the principle behind legal professional privilege: safeguarding openness in all communications between client and lawyer to ensure access to full and frank legal advice. The Information Tribunal recognised this in *Bellamy v Information Commissioner* (EA/2005/0023).
42. However, the exemption is not absolute and the Act therefore requires consideration of whether the public interest in disclosure in a particular

case is strong enough to equal or exceed the public interest in maintaining legal professional privilege (LPP).

43. In summing up the case of *Bellamy v the Information Commissioner and the DTI*, the Information Tribunal stated (in paragraph 35) 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.*' In summary, legal professional privilege was referred to as being '*a fundamental condition*' of justice and '*a fundamental human right*', not limited in its application to the facts of particular cases.
44. In *Pugh v Information Commissioner and Ministry of Defence* (EA/2007/0055), the Tribunal suggested that the public interest in maintaining the exemption would be outweighed by the public interest in disclosing the information '*where the privilege holder no longer has a recognised interest to protect*'. The Tribunal also said that there may be an argument in favour of disclosure where the subject matter of the requested information would affect '*a significant group of people*'. In the case of *Shipton v Information Commissioner and the National Assembly for Wales* (EA/2006/0028), a differently constituted Tribunal suggested that the public interest in maintaining the exemption would be outweighed by the public interest in disclosing the information '*when the harm likely to be suffered by the party entitled to LPP is slight, or the requirement for disclosure is overwhelming*' (para 14b).
45. As a result of these Information Tribunal decisions on section 42, when balancing the public interest in cases involving LPP the Commissioner considers the following factors to favour the maintenance of the exemption:
 - the inbuilt weight of the LPP concept; and
 - the likelihood and severity of harm to be suffered by disclosure, which is affected by whether the advice is:
 - recent
 - live
 - protecting advice relating to the rights of individuals
 - other circumstances of the particular case.
46. Against the arguments for maintaining the exemption in this case, and in line with the decisions of the Information Tribunal, the Commissioner considers the following public interest arguments in favour of disclosure to be of relevance:
 - the presumption in favour of disclosure under the Act;
 - the amount of money involved;

- whether or not a significant group of people are affected by the advice or resulting decision;
 - transparency of the public authority's action; and
 - other circumstances of the particular case, which here include informing debate on a matter of constitutional importance.
47. The Commissioner recognises that the relevance of these factors will vary from case to case.
48. The Commissioner considers some of the arguments favouring disclosure, when applied to the content and context of the withheld information in this case, to carry weight. This is particularly the case in terms of informing the debate on the issue surrounding the marriage of the Heir to the Throne and the public understanding of the process involved in providing the government with advice in relation to its interpretation of the statutes and subsequent declarations.
49. However, in the circumstances of this particular case, the Commissioner's analysis of the content and context of the information to which section 42(1) applies has led him to reach the following conclusions:
- the sensitivity and significance of the advice provided is such that it adds to the inbuilt weight of LPP in relation to this information;
 - the issue relates to the rights of specific individuals; and
 - at the time of the complainant's request, the advice which was provided remained 'live' in terms of the issues and interests to which it related.
50. The Commissioner has therefore concluded that in this case, the public interest in maintaining the exemption outweighs the public interest in disclosure.

Section 35 Formulation of government policy

51. Section 35(1) states that:

'Information held by a government department or by the Welsh Assembly Government is exempt information if it relates to-

- (a) the formulation or development of government policy,*
- (b) Ministerial communications,*
- (c) the provision of advice by any of the Law Officers or any request for the provision of such advice, or*
- (d) the operation of any Ministerial private office'.*

52. The 'Law Officers' are defined in section 35(5) of the Act as the Attorney General, the Solicitor General, the Advocate General for Scotland, the Lord Advocate, the Solicitor General for Scotland, the Counsel General of the Welsh Assembly Government and the Attorney General for Northern Ireland.
53. The Law Officers can thus be regarded as the government's most senior legal advisers.
54. Section 35(3) provides that:
- 'The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1).'*
55. In this case, the MoJ is citing section 35(3) by virtue of section 35(1)(c). In other words, it is neither confirming nor denying that it holds information relating to the provision of advice by any of the Law Officers or any request for such advice.

Is the information already in the public domain?

56. A refusal to confirm or deny is not appropriate where the existence of the information is already in the public domain. In this case, the Commissioner is mindful of the fact that the then Lord Chancellor made a statement to the House of Lords regarding the marriage of the Prince of Wales. He is also mindful of the media interest at the time in relation to the legal issues surrounding a royal marriage. However, he is not aware of any public acknowledgement as to whether or not the Law Officers were consulted on this matter.
57. Therefore, the Commissioner is satisfied, in this case, that it is not the situation that the existence or non-existence of Law Officers' advice is, or was, in the public domain.

Is the exemption engaged?

58. As the MoJ is a government department and as the Commissioner is satisfied that the information, if it were held, would relate to advice requested from or provided by, the Law Officers, he finds the exemption engaged.

The public interest test

59. Section 2(1) of the Act 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.'

60. In this case, as the information requested is subject to a qualified exemption, the public interest test must be applied.

61. In other words, unless, 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 information is held, the MoJ must confirm or deny whether information is held.

Public interest arguments in favour of confirming or denying whether the information is held

62. The MoJ recognises that *'there is a public interest in citizens knowing that decisions of this nature have been taken with the benefit of sound legal advice'*. It also acknowledges the public interest argument that transparency *'makes Government more accountable to the electorate and increases trust'*.

63. In considering the arguments in favour of confirming or denying whether the information is held, the Commissioner notes the level of debate in academic circles as well as in the media, both at the time of the Prince of Wales' impending marriage and subsequently. He notes that the issue in this case could be considered to amount to a matter of significance in British constitutional history, given that it relates to the legality of the marriage of the Heir to the Throne. In this respect, he considers it likely that there would have been a widely-held assumption that the Government should, and would, have sought the advice of its most senior lawyers.

64. On the other hand, if the advice of the Law Officers had not been sought on an issue such as this, then there would be a strong public

interest in this being disclosed as it might raise important issues about the basis on which the Government satisfied itself that its interpretation of the relevant legislation was correct.

65. The disclosure that advice had been sought from the Law Officers, if it had been sought, would therefore provide reassurance to the public that the statement made by Lord Falconer was fully informed and made on the basis of legal advice from the most senior lawyers within government.

Public interest arguments against confirming or denying whether the information is held

66. The MoJ told the complainant:

'There is a strong public interest in ensuring that a government department is able to act free from external pressure in deciding what sort of legal advice it obtains, at what stage, from whom, and in particular whether it should seek advice from the Law Officers. This strong public interest is reflected in the long-standing convention, observed by successive Governments, that neither the advice of Law Officers, nor the fact that their advice has been sought, is disclosed outside government'.

67. In support of its argument that there is a strong public interest in maintaining the convention, it is the MoJ's view that *'it is important that the government is able to consult its most senior legal advisers without fear that either the advice itself, or the fact that the advice was requested, will be disclosed'.*

68. The MoJ has also argued that, given the Law Officers' position as principal legal advisers, *'routinely confirming the occasions on which the Law Officers had given advice could give rise to questions about why they had not advised in other cases'.*

69. Furthermore, it has argued that:

'disclosure of the occasions when advice has been sought from the Law Officers would have the effect of disclosing those matters which, in the judgment of the government, have a particularly high political priority or are assessed to be of particular legal difficulty'.

70. In this respect, the Commissioner accepts that disclosure of the fact that Law Officers have not advised on an issue may expose the Government to criticism for not consulting them and thus not giving sufficient consideration to a particular issue. This could increase the pressure to consult Law Officers in inappropriate cases, or in an

unmanageably large number of cases. This in turn might harm efficient government, which would not be in the public interest.

Balance of the public interest arguments

71. The Commissioner notes that, whilst there may be a long-standing convention not to disclose whether Law Officers' advice has been sought, the exemption in section 35 of the Act is not an absolute exemption: instead it is subject to a public interest test. In his view, therefore, Parliament clearly envisaged that it may be appropriate, in some circumstances, to disclose whether Law Officers' advice had been sought.
72. In considering the opposing public interest factors in this case, the Commissioner has the benefit of recent rulings by the High Court in the case of *HM Treasury vs ICO and Evan Owen* ([2009] EWHC 1811) and the Information Tribunal (EA/2007/0054) in the case of *Her Majesty's Treasury v Information Commissioner*, both of which address the issue of the public interest with respect to the application of section 35(3). In the latter case, the complainant had requested copies of any legal opinions and other communications held by Her Majesty's Treasury regarding the compatibility of the Financial Services and Markets Bill with the Human Rights Act.
73. Paragraph 27 of the Tribunal decision stated ...

'Since the public is not entitled to know what advice is given, save in exceptional circumstances, such as a decision to go to war, it would be odd if, in less momentous cases, it had the right to know whether advice was taken where such knowledge would or would probably reveal what the advice must have been'.
74. While the Commissioner accepts that the convention attracts significant weight, he does not accept that the convention can only be overturned in exceptional circumstances; he therefore rejects the concept of an 'exceptionality test'.
75. In his view, while sufficient weight must be given to the convention, the operation of the convention is a consideration, rather than a deciding factor, in the assessment of the public interest test. In the Commissioner's view, there will be cases where it is right neither to communicate, nor to confirm or deny, both in cases where information actually is and in cases where no information is held.
76. The Commissioner gives weight to the argument that it would be impossible for the Law Officers to advise on every aspect of government policy having legal implications given the range of legal

advice that government requires. As the government's most senior legal advisers, it can be argued that the Law Officers' advice has a particularly authoritative status within government. If the government routinely disclosed the occasions on which the Law Officers had given advice, that could give rise to questions as to why they had not advised in other cases, thus creating pressure for them to advise in cases where their involvement is not justified.

77. In this case, the Commissioner has also taken into account the nature and profile of the topic under consideration and the significance of the view taken by the Government on this matter.
78. The Commissioner gives weight to the fact that there is a legitimate public interest in knowing the legal basis for key government decisions and actions. In this case, however, the issue under consideration is what led to the Government's announcement with regard to the legality of the marriage in a civil ceremony by a member of the royal family, a constitutional matter not one of government policy.
79. In reaching his decision, the Commissioner is mindful that his duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the Act. Accordingly, his decision relates solely to the issue of whether the MoJ was correct neither to confirm nor deny whether it holds information relating to Law Officers' advice. His decision does not relate to the issue of whether any such advice, if it were held, should be disclosed to the complainant, nor of the accuracy or validity of such advice, if it were held.
80. In all the circumstances of the case, the Commissioner considers that the public interest in maintaining the exclusion of the duty to confirm or deny outweighs that in disclosing whether Law Officers' advice is held.

Procedural Requirements

Section 17 Refusal of request

81. Section 17(3) of the Act provides that a public authority which is relying on a claim that the public interest in maintaining the exemption outweighs the public interest in disclosing the information 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 –

.....
(b) that, in all the circumstances of the case, the public

82. In failing to provide an explanation of its assessment of the public interest test within a reasonable time limit, the Commissioner finds the MoJ in breach of section 17(3).

The Decision

83. 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:

- it properly applied the exemption at section 42; and
- it correctly relied on section 35(3) to refuse to confirm or deny whether Law Officers' advice had been provided or received.

84. However, the Commissioner has also decided that the following element of the request was not dealt with by the MoJ in accordance with the Act:

- it breached section 17(3) by not providing the complainant with a valid refusal notice within the statutory timescale.

Other matters

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

86. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his *'Good Practice Guidance No 5'*, published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner is concerned that in this case, it took over 90 working days for an internal

review to be completed, despite the publication of his guidance on the matter.

Right of Appeal

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

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

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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

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

Dated the 31st day of March 2010

Signed

**Graham Smith
Deputy Commissioner**

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

Legal Annex

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.”

Formulation of Government Policy

Section 35(1) provides that –
“Information held by a government department or by the National Assembly for Wales is exempt information if it relates to-

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

Section 35(2) provides that –
“Once a decision as to government policy has been taken, any statistical information used to provide an informed background to the taking of the decision is not to be regarded-

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

Section 35(3) provides that –
“The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1).”