

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 10 March 2011

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

Summary

The complainant requested information relating to Scientology. The public authority refused the request, citing the exemptions provided by sections 27(1)(a) (prejudice to international relations), 32(1)(a) (court records), 35(1)(a) (formulation or development of government policy), 36(2)(b)(i) and (ii) (inhibition to the free and frank provision of advice and to the free and frank exchange of views) and 42(1) (legal professional privilege). The public authority also introduced sections 40(2) (personal information) and 41(1) (information provided in confidence) during the Commissioner's investigation. The Commissioner finds that the exemptions provided by sections 27(1)(a), 35(1)(a), 36(2)(b)(i) and (ii) in part, 40(2) in part, 42(1) in part and 41(1) were applied incorrectly, but that sections 32(1)(a), 36(2)(b)(i) and (ii) in part, 40(2) in part and 42(1) in part did apply. The Commissioner also finds that the public authority breached the procedural requirements of sections 1(1)(b), 10(1) and 17(1) in its handling of the request. The public authority is required to disclose the information that the Commissioner has concluded was not exempt.

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 made the following information request on 3 July 2009:

"Please provide a copy of your papers held on Scientology, including but not limited to:

1) Judicial review

2) Immigration and Nationality including passport issues

3) Charitable status".

3. This request followed an earlier request recorded on the public authority's disclosure log for all information held by the public authority relating to Scientology dating from 1 January 1993.
4. The public authority responded to this on 17 July 2009. Some information was disclosed, with the remainder withheld under the exemptions provided by sections 27(1)(a) (prejudice to international relations), 32(1)(a) (court records), 36(2)(b) (inhibition to the free and frank provision of advice and to the free and frank exchange of views) and 42(1) (legal professional privilege).
5. The complainant responded on 17 July 2009 and asked the public authority to carry out an internal review. After a delay and following the intervention of the Commissioner, the public authority responded with the outcome of the review on 18 November 2009. The outcome of this was that the exemptions cited previously were upheld.

The Investigation

Scope of the case

6. The complainant contacted the Commissioner initially on 27 August 2009 and raised at that stage the issue of the failure by the public authority to complete the internal review. As noted above, the Commissioner intervened at that stage and ensured that the internal review was completed. Following this, the complainant contacted the Commissioner again on 30 November 2009 and asked that the refusal to disclose the information requested be considered.

7. As noted above, the complainant's request followed an earlier similar request made by a third party and recorded on the public authority's disclosure log. When refusing this request, the public authority effectively reaffirmed the exemptions it had cited in response to the earlier request. When making his request, the complainant made reference to the earlier request and the public authority appears to have taken this as an indication that the complainant was limiting his request to information that post dated 1 January 1993, as the earlier request had done. The Commissioner accepts that, in the circumstances, an objective reading of this request is that the complainant wished to access the same information specified in the earlier request and so agrees that it was appropriate for the public authority to consider this request to have been limited to information from 1 January 1993 onwards.

Chronology

8. The Commissioner contacted the public authority in connection with this case on 4 February 2010. The public authority was asked to respond with further explanation for the exemptions cited and with a copy of the withheld information.
9. After a delay, the public authority responded with the information and explanations requested by the Commissioner on 5 May 2010. As well as confirming that it believed the exemptions cited previously to be engaged, the public authority also now indicated that it wished to cite the exemption provided by section 41(1) (information provided in confidence) in relation to part of the information falling within the scope of the request.

Analysis

Exemptions

Section 27

10. Section 27(1)(a) provides an exemption for information the disclosure of which would, or would be likely to, prejudice the relations between the UK and any other state. Consideration of this exemption is a two stage process. First, the exemption must be engaged as a result of prejudice being at least likely to result. Secondly, this exemption is qualified by the public interest, which means that the information must be disclosed unless the public interest in the maintenance of the exemptions outweighs the public interest in disclosure. This section is

set out in full in the attached legal annex, as are all other sections of the Act referred to in this Notice.

11. The public authority has specified that it believes that prejudice would be likely to result. The test that the Commissioner applies when considering whether prejudice would be likely to result is that the possibility of this must be real and significant and certainly more than hypothetical or remote. This is in line with the approach taken by the Information Tribunal in the case *John Connor Press Associates Limited v the Information Commissioner* (EA/2005/0005) in which it stated:

"the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk." (paragraph 15)

12. The Commissioner has taken a two stage approach to considering whether this exemption is engaged. First he has considered whether the arguments advanced by the public authority are relevant to section 27(1)(a). Second, he has considered whether the likelihood of this prejudice meets the test of real and significant.
13. The public authority has cited this exemption when withholding telegrams and emails that relate to the approach taken to Scientology by the authorities in France and Germany. The argument of the public authority is that disclosure would be likely to prejudice relations between the UK, and France and Germany. The Commissioner accepts that this argument is relevant to the prejudice referred to in section 27(1)(a).
14. Turning to the likelihood of this prejudice occurring, the Information Tribunal commented on this exemption in the case *Campaign Against the Arms Trade v The Information Commissioner and Ministry of Defence* (EA/2006/0040) when stating:

"prejudice can be real and of substance if it makes relations more difficult or calls for a particular damage limitation response to contain or limit damage which would not have otherwise have been necessary". (paragraph 81)

15. In line with this the Commissioner has considered whether there is a real and significant likelihood of disclosure making relations between the UK and France or Germany more difficult, or whether disclosure would be likely to necessitate a diplomatic damage limitation exercise concerning the relationship between the UK and those countries.

16. The argument of the public authority is that France and Germany would not wish this information to be disclosed as it would worsen the already difficult relationship between the authorities in those countries and Scientology. The public authority has also stated that Scientology has been an area of diplomatic difficulty between France and the United States and that disclosure may worsen these difficulties. The public authority believes that a decision to disclose this information would concern the French and German authorities to the extent that this would be likely to harm the relationship between those countries and the UK.
17. The Commissioner considers that the relationship between the UK and France and Germany is strong, given their shared interests and membership of the European Union. It is not the case that, for example, the relationship between the UK and these countries has of late been strained such that if disclosure of the information in question here would have even a minimal impact, this would be sufficient to damage those relationships. Given the strength of these relationships, the Commissioner considers it all the more necessary for the public authority to make a convincing case for the engagement of this exemption.
18. The public authority has relied primarily on the content of the information to make the case that this exemption is engaged. In the context of the strength of the relationships referred to above, the view of the Commissioner is that it will be necessary for the content of this information to be very strongly suggestive that prejudice would be likely to result for the exemption to be engaged.
19. The content of the information in question here provides no such suggestion. This information records the facts of the approach taken by the French and German authorities to Scientology. The suggestion of the public authority appears to be that the irritation that it predicts would be felt by the French and German authorities towards disclosure would result because those countries would be concerned that this disclosure could worsen their relations with Scientology further. The content of the information largely consists of descriptions of the approach taken by the French and German authorities towards Scientology. To the extent that the descriptions are accurate, this content consists of recitation of fact.
20. Given the nature of this content, the Commissioner does not consider that it is clear from this that the French and German authorities would object to disclosure so strongly that there would be a risk of prejudice to the relationship between those countries and the UK.

21. The conclusion of the Commissioner is, therefore, that he does not accept that the likelihood of prejudice to the relationships between the UK and France or Germany as a result of disclosure of this information meets the test of "real and significant risk". The exemption provided by section 27(1)(a) is not, therefore, engaged.

Section 32

22. The public authority has cited section 32(1)(a) in relation to one document. This provides an exemption for information that is only held by the public authority by virtue of being contained in a document that was filed with, or otherwise placed in the custody of, a court for the purposes of proceedings in a particular cause or matter. This is a class based exemption, which means that if the information in question conforms to the description in the exemption, it is exempt.
23. The document to which this exemption has been applied is a skeleton argument submitted by the public authority to the High Court in relation to an application for a Judicial Review in respect to whether Scientology should be recognised as a religion by the public authority. The Commissioner considers it clear that this information does fall within the scope of section 32(1)(a); it is a document created specifically for a court proceeding and would not be held by the public authority had it not been created for this purpose. The exemption provided by section 32(1)(a) is, therefore, engaged in relation to this information. This is an absolute exemption so the public interest test does not apply.

Section 35

24. The public authority has cited the exemption provided by section 35(1)(a). This provides an exemption for information that relates to the formulation or development of government policy. This is a class based exemption meaning that if the information in question conforms to the description in this section, it is exempt. This exemption is qualified by the public interest test, meaning that, if the exemption is engaged, the information must be disclosed if the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure.
25. Turning first to whether the exemption is engaged, the Commissioner's approach to the term 'relates to' as it is used in this exemption is that this should be interpreted broadly. The Commissioner considers this to be in line with the approach taken by the Information Tribunal in the case *DfES v the Information Commissioner & the Evening Standard* (EA/2006/0006) in which it stated:

“If the meeting or discussion of a particular topic within it, was, as a whole, concerned with s35(1)(a) activities, then everything that was said and done is covered. Minute dissection of each sentence for signs of deviation from its main purpose is not required nor desirable.” (paragraph 58)

26. This exemption has been cited in respect to excerpts from three documents, the first of which is titled *“Note on the Government’s approach to Scientology”*. The two sentences from this that have been withheld record the approach taken by the public authority in relation to Scientology in a particular area. These sentences refer specifically to Ministers having decided on this policy, and reference is also made to Ministers having made a decision to widen this policy, which supports the position of the public authority that this information relates to the formulation and development of government policy. On the basis of the content of this information, the Commissioner accepts that the exemption provided by section 35(1)(a) is engaged in relation to this information.
27. The second of these documents is an email dated 6 October 2000 between several different areas of the public authority. This email discusses how to reply to a letter received from legal representatives of Scientology that suggested that the approach of refusing to recognise leaders of Scientology as ministers of religion for immigration purposes was in breach of the Human Rights Act. The reasoning of the public authority for citing section 35(1)(a) appears to be that this refers to policy lines. Reference is also made to the Solicitor General seeking the advice of the Home Secretary about a judicial challenge, possibly the Scientology related Judicial Review referred to elsewhere within the withheld information.
28. The Commissioner does not agree that this information relates to the formulation or development of government policy in the way intended by section 35(1)(a). Whilst the content of this email briefly refers to policy lines, it appears that the purpose of this email was to agree how to respond to the correspondence from the legal representatives of Scientology referred to above. It does not appear from the content of this email that it was recorded as part of a policy formulation or development process and neither does it appear to relate to such a process sufficiently closely in any other way for the Commissioner to conclude that section 35(1)(a) is engaged. The conclusion of the Commissioner is, therefore, that the exemption provided by section 35(1)(a) is not engaged in relation to the email dated 6 October 2000.

29. The third document here is a note from one area of the public authority to another titled *"Scientists: The Next Steps"*. This touches on the issue of prison visits by Scientists and the reasoning of the public authority for the citing of this exemption in relation to this information appears to be due to this reference. Accepting for this part of the analysis that this reference does mean that the redacted part of this document relates to the formulation and development of the policy on prison visits by Scientists, the next step is to consider whether this constitutes government policy.
30. The policy on prison visits by Scientists, at least at the time of the recording of this information, was that, where a prisoner cites Scientology as his religion, that prisoner may receive visits from a minister of Scientology, although HM Prison Service maintains the position of not recognising Scientology as a religion. The Commissioner accepts that the overall approach of not recognising Scientology as a religion is a government policy, and that this approach to prison visits is the development of that policy. His conclusion is, therefore, that the exemption provided by section 35(1)(a) is engaged in relation to the redacted part of the document titled *"Scientists: The Next Steps"*.

The public interest

31. For the information in relation to which the Commissioner has accepted that the exemption provided by section 35(1)(a) is engaged, it is necessary to go on to consider the balance of the public interest in relation to this information. In reaching a conclusion on the balance of the public interest, the Commissioner has taken into account those factors that relate to the specific information in question here, including what harm may result through disclosure of the information in question, and whether disclosure of information relating to the formulation and development of policy in relation to Scientology would serve the public interest. This is in addition to the general public interest in transparency and openness in relation to the government policy formulation and development process.
32. That the information is within the class specified in the exemption is not, however, of relevance to the balance of the public interest. This is in line with the approach taken by the Information Tribunal in *DfES v the Commissioner & the Evening Standard* (EA/2006/0006), where it stated in connection with section 35(1)(a):

"The weighing [of the public interest] exercise begins with both pans empty and therefore level." (paragraph 65)

33. Covering first those factors that favour maintenance of the exemption, the public authority has argued that disclosure would result in harm to the policy-making process in that the participants in this process would be inhibited if they were aware that the record of their contributions may later be subject to disclosure via the Act. In *DfES v the Commissioner and the Evening Standard* (EA/2006/0006) the Information Tribunal provided a number of guiding principles for consideration of the balance of the public interest in connection with section 35(1)(a). The arguments of the public authority about disclosure resulting in inhibition to participants in the policy making process are relevant to two factors highlighted by the Tribunal: 'safe space' and 'chilling effect'.
34. The term 'chilling effect' refers to an adverse effect on the frankness and candour of participants in the policy making process. Arguments about 'safe space' are related to chilling effect arguments but distinct, as the need for a safe space within which to debate policy exists regardless of any chilling effect that may result through disclosure. The basis of safe space arguments is that an erosion of the safe space for policy making would have a detrimental impact on the quality of the policy making process.
35. The weight that the Commissioner affords to chilling effect and safe space arguments will depend on how closely they relate to the information in question. For example, an argument that disclosure would result in a chilling effect to policy making in general would usually carry less weight than an argument that a chilling effect would result to the specific policy area to which the information relates. Also key is the stage reached in the policy-making process at the time of the request. Where a public authority argues that harm would result to a specific and ongoing policy-making process, this will generally carry more weight than an argument suggesting that harm would result to future policy-making in general through disclosure of information relating to policy that was complete at the time of the request.
36. In this case, the public authority set out its arguments relevant to chilling effect and safe space in the refusal notice. This made no reference to the specific process of policy formulation and development in relation to Scientology so the Commissioner assumes that the argument of the public authority was about general inhibition to the policy making process, rather than specifically to this process in relation to Scientology. As to the stage that this policy making process had reached by the time of the request, the wording within the withheld information, which refers to Ministers having 'confirmed' and 'decided' on policy, suggests that this process was complete by the time of the recording of that information. Whilst the document within which

this information is contained is not dated, clearly this was recorded prior to the date of the request, meaning that this policy development process was apparently complete by that time.

37. As to what the content of the information suggests about the likelihood of a chilling effect in terms of the level of detail this contains, as noted above the Commissioner has accepted that this exemption is engaged only in relation to redactions from two documents. The level of detail about the policy making process recorded in these redactions is not significant.
38. As the chilling effect and safe space argument made by the public authority is general rather than specific to the content of the information and the policy making process that this records, and given that this policy making process was complete by the time of the request, the Commissioner considers that this reduces the likelihood of harm to the policy formulation process as a result of disclosure to the point that it is not a significant factor to the balance of the public interest here. The lack of detail within the information in question also means that this content is not suggestive that harm would occur, despite the generality of the public authority's argument and the stage which this policy making process had reached by the time of the request. The Commissioner does not, therefore, consider that the chilling effect and safe space arguments carry significant weight as a public interest factor in favour of maintenance of the exemption.
39. Turning to those factors that favour disclosure, the subject of the policy-making process to which the information relates is of relevance here. The Commissioner can find little evidence that the status of Scientology is the subject of very widespread public debate, but would accept that it has been the subject of at least limited public debate. Also, the Information Tribunal has noted that Scientology has attracted controversy (*Thackeray v the Information Commissioner* (EA/2009/0095) paragraph 38). Disclosure would be in the public interest to serve this at least limited public debate, particularly given that, as recognised by the Tribunal, Scientology has been the subject of controversy.
40. The conclusion of the Commissioner is that the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure. The basis for this conclusion is that, having found that there is no significant risk of harm to the policy making process through a chilling effect or through the erosion of the safe space as a result of disclosure of this information, the public interest in serving the limited public debate on Scientology, as well as the general public interest in

improving the openness and transparency of the government policy making process, outweighs this factor.

Section 36

41. The public authority has cited the exemptions provided by sections 36(2)(b)(i) and (ii), which provide an exemption in relation to information the disclosure of which would, or would be likely to, cause inhibition to the free and frank exchange of views for the purposes of deliberation and to the free and frank provision of advice. The public authority has cited this exemption in relation to redactions from a large number of documents. This exemption has been cited in relation to different information from that in relation to which section 35(1)(a) was applied.
42. These exemptions can only be cited where the reasonable opinion of a specified qualified person (QP) is that these exemptions are engaged. Consideration of these exemptions is a two stage process; first they must be engaged, for which the Commissioner must conclude that the opinion of the QP is objectively reasonable. Secondly, these exemptions are qualified by the public interest, which means that the information must be disclosed if the public interest in the maintenance of the exemptions does not outweigh the public interest in disclosure.
43. In reaching a conclusion as to whether these exemptions are engaged, the Commissioner will address the following:
 - who the QP is for the public authority;
 - whether the QP gave an opinion in respect to the information in question;
 - when the opinion was given;
 - whether the opinion was reasonably arrived at and reasonable in substance.
44. The public authority in this case is a central government department. Section 36(5)(a) provides that the QP for a government department will be any Minister of the Crown. The public authority has stated that the opinion on the citing of this exemption was given by Meg Hillier, who was Parliamentary Under-Secretary of State at the public authority at the time of the request.
45. The public authority has provided evidence that an opinion was given by the QP, this evidence taking the form of a submission provided to the QP in which issues related to this request were set out, and emails recording that the QP had provided an opinion. On the basis of this evidence, the Commissioner accepts that the QP did give an opinion.

46. As to when this opinion was given, as noted above at paragraph 3, the complainant's request followed an earlier, similar request. Section 36 was also cited when refusing this earlier request and, when refusing the complainant's request, the public authority relied upon the opinion that had been given by a different Minister at the time of the refusal of that earlier request. A new opinion on the complainant's request was not sought until the internal review stage and was given on 18 November 2009, well outside twenty working days from the date of the request.
47. The general approach of the Commissioner is that he will allow flaws in the application of section 36 at the time of the refusal notice to be corrected by the internal review stage. This is in order to preserve the internal review as an opportunity for the public authority to genuinely reconsider the handling of the request and make any appropriate changes to its response. This approach is in line with that taken by the Information Tribunal in the case *McIntyre v the Information Commissioner* (EA/2007/0068) in which it stated specifically in relation to flaws in the application of section 36:

"even if there are flaws in the process these can be subsequently corrected, provided this is within a reasonable time period which would usually be no later than the internal review". (paragraph 31)

It also stated:

"...the Act...requires that an internal review must be requested before the Commissioner investigates a complaint under s.50. Parliament clearly intended that a public authority should have an opportunity to review its refusal notice and if it got it wrong to be able to correct that decision before a complaint is made."

48. In line with this approach, the Commissioner accepts that the public authority corrected the flaws in the application of section 36 and that this was done by the internal review stage.
49. Turning to whether the opinion was reasonably arrived at, as noted above, the QP was provided with a submission to assist in the formation of their opinion. This submission records that copies of the information in question were also provided to the QP. That the QP was provided with a submission and at least had the opportunity to view the content of the information in question suggests that the process undertaken in reaching an opinion was reasonable. The Commissioner has also considered the content of the submission with a view to

ascertaining the quality of the arguments within and particularly whether these are relevant to the inhibition described in sections 36(2)(b)(i) and (ii).

50. The first main factor that the submission sets out is that disclosure would inhibit officials from providing free and frank advice and from engaging in free and frank exchanges of views. This factor is clearly relevant to sections 36(2)(b)(i) and (ii) and the Commissioner concludes that the opinion was reasonably arrived at in relation to the factor about inhibition to officials. The submission to the QP goes on to refer, particularly in relation to documents concerned with the Judicial Review, to the requirement for a safe space to ensure that the public authority is able to make the best case in its defence. It also states that a safe space is necessary to ensure that funds spent on this defence are used with efficiency. The Commissioner accepts that this factor is also relevant to sections 36(2)(b)(i) and (ii) and, therefore, the opinion was reasonably arrived at in relation to this factor. However, he has also concluded that the opinion was not reasonably arrived at in relation to other information and has reached a separate conclusion on this information below.
51. As to whether the opinion of the QP was objectively reasonable in substance in relation to the remainder of the information, for the majority of the documents containing the withheld information, the public authority has specified whether it is citing sections 36(2)(b)(i) or (ii). For those documents where it has not specified which of these subsections it is citing, the Commissioner has applied whichever appears to be the most relevant based on the content of the information.
52. The public authority has specified that the opinion of the QP was that disclosure *would* result, rather than *would be likely* to result. When considering whether the threshold for *would* result has been met in relation to exemptions that do not require the opinion of a qualified person, the Commissioner applies the test that the possibility of prejudice occurring must be at least more probable than not. The Commissioner considers this to be in line with the approach taken by the Information Tribunal in the case *Hogan v Oxford City Council & The Information Commissioner* (EA/2005/0026 and EA/2005/0030) in which it stated:

“prejudice test is not restricted to ‘would be likely to prejudice’. It provides an alternative limb of ‘would prejudice’. Clearly this second limb of the test places a much stronger evidential burden on the public authority to discharge.” (paragraph 36)

53. Applying this test here, the task for the Commissioner is to reach a conclusion as to whether it was objectively reasonable for the QP to hold the opinion that inhibition would be at least more probable than not to result through disclosure of the information in question. The Commissioner accepts that, given the sensitivity of the subject discussed within this information, it was reasonable for the QP to be of the opinion that disclosure of this would result in inhibition relevant to these exemptions in future. Sections 36(2)(b)(i) in relation to those documents that record the provision of advice, and (ii) in relation to those documents that record an exchange of views are, therefore, engaged in relation to this information.
54. The Commissioner has reached a separate conclusion as to whether the QP's opinion was reasonably arrived at in relation to some of the arguments advanced by the public authority and some of the information falling within the scope of the request. During its correspondence with the Commissioner about this case, the public authority stated that information relating to a specific named individual was withheld as it was believed that this individual would be inhibited through disclosure. The Commissioner notes that the submission to the QP makes no reference to this individual and so does not accept that concern about releasing information that identifies this individual was part of the reasoning for the QP's opinion. On the basis that the QP does not appear to have taken into account any issue relating to the identification of this individual when forming their opinion, the Commissioner does not accept that these exemptions are engaged in relation to information that names this individual. The public authority should note that, where its concern relates to information that identifies an individual aside from the requester, the relevant exemption is section 40(2). The Commissioner comments further on this point at paragraph 77 below.
55. The public authority also raised in its correspondence with the Commissioner that information recording "*discussions with representatives from...Scientology*" had been withheld under these exemptions. This was because it believed that disclosure would "*remove any working relationship*" between Scientology and the public authority. The Commissioner assumes that the public authority is referring to correspondence received from the legal representatives of Scientology here and again finds that the QP's opinion was not reasonably arrived at in relation to this information because this concern was not mentioned in the submission to the QP.
56. The Commissioner finds that the opinion of the QP was not reasonably arrived at in relation to the information identifying a specified individual and the correspondence received from the legal representatives of

Scientology. In relation to the information identifying a specified individual and the correspondence received from the legal representatives of Scientology, the Commissioner has gone on to consider whether the content of that information suggests that the opinion of the QP that inhibition relevant to sections 36(2)(b)(i) and (ii) would result was overridingly reasonable in substance in relation to that information.

57. On the basis of the evidence available to the Commissioner here, his conclusion is that this opinion was not overridingly reasonable in substance. The public authority has given no indication of why the named individual would be inhibited by their contributions being disclosed and it is not sufficiently clear from the content of the information itself that such inhibition would result. In relation to the correspondence received from the legal representatives of Scientology, it is also not sufficiently clear from the content of the information in question how inhibition would result. The exemptions provided by sections 36(2)(b)(i) and (ii) are not, therefore, engaged in relation to this information.

The Public Interest

58. In relation to the information in connection with which the Commissioner has concluded that sections 36(2)(b)(i) and (ii) are engaged, it is necessary for the Commissioner to go on to consider the balance of the public interest. It was the opinion of the QP that disclosure in this case would inhibit the free and frank provision of advice. In accepting that the opinion of the QP is reasonable, the Commissioner has accepted that disclosure here would inhibit the provision of free and frank advice and the free and frank exchange of views in future. The role of the Commissioner here is to consider whether the public interest in disclosure is at least equal to this concern.
59. In the case of *Guardian & Brooke v The Information Commissioner & the BBC* (EA/2006/0011 & EA/2006/0013), the Information Tribunal acknowledged that the application of the public interest test to the section 36 exemption "*involved a particular conundrum*", noting that although it is not for the Commissioner to form his own view on the likelihood of prejudice under this section (because this is given as a reasonable opinion by a qualified person), in considering the public interest, "*it is impossible to make the required judgement without forming a view on the likelihood of inhibition or prejudice*" (paragraph 88).

60. In the Tribunal's view, the reasonable opinion is limited to reaching a conclusion as to the degree of likelihood that inhibition or prejudice would occur, on the balance of probabilities. It therefore argued that the reasonable opinion:

"does not necessarily imply any particular view as to the severity or extent of such inhibition [or prejudice] or the frequency with which it will or may occur, save that it will not be so trivial, minor or occasional as to be insignificant" (paragraph 91).

61. This means that, whilst the Commissioner should give due weight to the reasonable opinion of the qualified person when assessing the public interest, he can and should consider the severity, extent and frequency of prejudice or inhibition to the subject of the effective conduct of public affairs.
62. On the issue of the severity and extent of the inhibition resulting from disclosure here, the Commissioner accepts the importance to the ability of the public authority to function effectively of Ministers receiving free and frank advice from officials and of the willingness of officials to engage in a free and frank exchange of views when formulating this advice. Having accepted the QP's opinion that the free and frank provision of advice would be inhibited as a result of disclosure, the Commissioner recognises that the impact of this inhibition could be severe given the importance of the provision of advice to the functioning of the public authority.
63. As to the frequency of inhibition, having accepted that the provision of advice from officials to Ministers plays an important role in the functioning of the public authority, it follows that such advice is provided frequently. The opinion of the QP here did not appear to be that disclosure would inhibit the free and frank provision of advice and exchange of views on the specific issue of the status of Scientology, but that inhibition would result generally to the process of officials providing advice to Ministers and engaging in exchanges of views. The Commissioner would not, however, accept that the frequency of the inhibition here would be as high as in every case where advice is provided by officials to Ministers or in every case where officials engage in a free and frank exchange of views. Instead, this inhibition would occur only as frequently as where issues of similarly high sensitivity as the status of Scientology are discussed.
64. Having accepted the opinion of the QP as reasonable, the Commissioner recognises that this inhibition would result with some frequency; potentially in any situation where an official provides advice to a Minister or engages in a free and frank exchange of views on an

issue of similarly high sensitivity as that which is the subject of the information in question here.

65. It is in the public interest for the public authority to be capable of functioning effectively. Where the severity, extent and frequency of inhibition resulting from disclosure results in prejudice to the ability of the public authority to conduct itself effectively, this contributes to the argument that maintaining the exemption is in the public interest.
66. Turning to public interest arguments in favour of disclosure, civil service officials are under a duty to provide appropriate advice to Ministers. This duty extends to ensuring that it is as free and frank as necessary. Whilst the Commissioner accepts that, notwithstanding this duty, inhibition is made more likely as a result of disclosure than in a case where there is no possibility of disclosure, the argument in favour of maintenance of the exemption due to the severity of the inhibition is reduced as a result of the existence of this duty.
67. The content of the withheld information is a central consideration to the balance of the public interest. If there were evidence that the status of Scientology had been the subject of significant public debate, to the extent that disclosure here would contribute to this debate, this would be in the public interest. As it is, as noted above at paragraph 39, the Commissioner can find little evidence that the status of Scientology is the subject of very widespread public debate, but would accept that it has been the subject of at least limited public debate. As also noted above, the Information Tribunal has noted that Scientology has been the subject of controversy. Disclosure would be in the public interest in that it would serve this at least limited public debate, particularly given the controversy recognised by the Tribunal.
68. The content of the information is also significant in that this would improve the transparency and public understanding of the decision making process of the public authority. Disclosure would be in the public interest where this would help to explain decisions about the status of Scientology and allow for an objective assessment of the explanations for this status given previously.
69. The Commissioner has recognised valid arguments here that the public interest would favour disclosure of this information. Amongst these, the argument that carries most weight is that related to the contents of the withheld information.
70. However, the Commissioner, having accepted that the opinion of the QP that disclosure would inhibit the free and frank provision of advice and the free and frank exchange of views is objectively reasonable, has

also recognised that, given the central role that the provision of advice from officials to Ministers has to the work of the public authority, this inhibition would be somewhat extensive, albeit that the severity and extent of this inhibition would be reduced given the duty that applies to civil service officials that is referred to above, and of some frequency. For the public interest to favour disclosure where this would result in somewhat extensive and frequent harm to the ability of the public authority to function effectively, it would be necessary for the arguments favouring this to be appropriately compelling.

71. The Commissioner concludes that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Whilst the Commissioner has recognised valid public interest arguments in favour of disclosure, the arguments in favour of maintenance of the exemption are compelling given the extent and frequency of the inhibitory impact on the public authority. The arguments in favour of disclosure, whilst valid, are not sufficient to outweigh this factor in favour of maintenance of the exemption.

Section 40

72. The public authority has cited the exemption provided by section 40(2) in relation to small redactions from the majority of the documents in question here. This section provides an exemption for information that constitutes the personal data of any individual other than the requester and where the disclosure of that personal data would breach any of the data protection principles.
73. The approach of the public authority appears to have been to cite this exemption in relation to any content within the information that names an individual. The public authority has provided no explanation for the citing of this exemption, but the Commissioner assumes that the position of the public authority is that disclosure of this information would be in breach of the first data protection principle.
74. Consideration of this exemption is a two stage process; first, the information must constitute the personal data of an individual aside from the requester and, secondly, the disclosure of this personal data must be in breach of at least one of the data protection principles. Covering first whether the information in question here constitutes the personal data of individuals aside from the requester, as noted, the public authority has cited this exemption where individuals are named within the information. The Commissioner agrees that content that names an individual is the personal data of that individual according to the definition of personal data given in section 1(1) of the Data Protection Act 1998.

75. Turning to whether the disclosure of this information would be in breach of the first data protection principle, it is frequently the case that where personal data relates to the subject solely in their professional capacity, the disclosure of this would be significantly less likely to be counter to the first data protection principle than would disclosure of information that relates to an individual in their private capacity. Although, as noted previously, the public authority has provided no explanation in connection with the citing of this exemption, it appears that either the majority, or all, of the names redacted here are of individuals acting in their professional capacity. The public authority does not, therefore, appear to have followed this approach to personal data that relates to an individual in their professional capacity. Instead, the public authority appears to have cited section 40(2) in relation to any information that identifies an individual. The Commissioner does not agree with this approach and would stress to the public authority that it must consider not only whether information constitutes personal data when citing section 40(2), but also whether the disclosure of this would breach any of the data protection principles.
76. The conclusion of the Commissioner here is that section 40(2) is engaged for personal data that relates to junior officials, or to any individual in their private capacity, as disclosure of this would be unfair and in breach of the first data protection principle. However, the Commissioner does not accept that this exemption is engaged for personal data that relates to non-junior officials. At paragraph 114 below, the Commissioner has required the public authority to disclose all the information previously redacted under section 40(2) in relation to which that exemption is not engaged. The public authority should ensure that this includes all personal data relating to non-junior officials in their professional capacity.
77. As noted above at paragraph 54, the public authority cited section 36 in relation to information that identifies a specified individual. The Commissioner found that section 36 was not engaged in relation to that information and also commented that section 40(2) would be the relevant exemption where the concern of the public authority is that disclosure would identify specific individuals. In relation to information that identifies this individual, the Commissioner will accept that this is exempt by virtue of section 40(2) if the public authority has addressed how disclosure of this information would be in breach of any of the data protection principles. When considering whether it believes this information to be exempt under section 40(2), the public authority should keep in mind the comments above on the application of this

exemption to information that relates to individuals in a solely professional capacity.

Section 41

78. The public authority has cited the exemption provided by section 41(1) in relation to a letter received by it from the legal representatives of Scientology. The public authority also cited section 36(2)(b)(ii) in relation to this letter, but as the Commissioner has found that exemption is not engaged in respect to this information he has gone on to also consider this exemption.
79. Section 41(1) provides that information provided to the public authority in confidence is exempt. For this exemption to be engaged there are two conditions that must be fulfilled. First, the information must have been provided to the public authority by a third party; this exemption cannot be engaged in relation to information created by the public authority itself. This is referred to here as an "A to B transfer".
80. Secondly, the disclosure of this information must constitute an actionable breach of confidence. The Commissioner's approach in this case is that for the purposes of section 41(1) a breach of confidence will be actionable if:
- the information has the necessary quality of confidence;
 - the information was imparted in circumstances importing an obligation of confidence; and
 - there was an unauthorised use of the information to the detriment of the confider (the element of detriment is not always necessary).
81. This is in line with the direction provided by the High Court in the case *Coco v A N Clark (Engineers) Limited [1968] FSR 415*:
- "In my judgment, three elements are normally required if, apart from contract, a case of breach of confidence is to succeed. First, the information itself [...] must 'have the necessary quality of confidence about it.' Secondly, that information must have been imparted in circumstances importing an obligation of confidence. Thirdly, there must be an unauthorised use of that information to the detriment of the party communicating it..."*
82. The Commissioner recognises that *Coco v Clark* does not represent the only test of confidentiality, but he considers it an appropriate test to use in the present context. However, as stated in the Ministry of Justice guidance on section 41, a breach of confidence will no longer be

actionable if there is a defence that this breach was in the public interest.

A – B transfer?

83. The public authority has not provided any reasoning to either the complainant or the Commissioner as to why it believes that this exemption is engaged. The Commissioner has, therefore, based his reasoning on this point, and on all the other tests considered in relation to this exemption, on the content of the information in question.
84. This exemption has been cited in relation to a letter from the legal representatives of Scientology to a then Minister at the public authority. The Commissioner considers it clear that this information was provided to the public authority in an A – B transfer and, therefore, this condition of section 41(1) is satisfied.

Quality of confidence?

85. The approach of the Commissioner is that information will have the necessary quality of confidence if it is not otherwise accessible and if it is more than trivial. On the issue of whether the information in question is otherwise accessible, as noted above this information is a letter sent to a Minister at the public authority. The Commissioner considers it reasonable to assume that a letter would only normally be available to the sender and addressee and, on the basis of the nature of this information and in the absence of evidence that the information in question is otherwise accessible, the Commissioner concludes that it is not.
86. Turning to the issue of whether the information is more than trivial, the Commissioner's view is that where the opinion of the confider is that information is worthy of protection, it cannot be fairly characterised as trivial. The contents of this letter concern immigration issues as they relate to members of Scientology. The Commissioner believes that it is likely the confider would consider the content of this letter to be more than trivial and worthy of protection given that this letter concerns an issue that was clearly of importance to Scientologists at that time and accepts, therefore, that this information is more than trivial.
87. As the Commissioner has accepted both that the information is not otherwise accessible and that it is not trivial, his conclusion is that this information does have the necessary quality of confidence.

Obligation of confidence?

88. An obligation of confidence will most obviously exist where this has been expressed explicitly, through a written agreement at the time of the imparting of the information for example. However, an implicit obligation of confidence can also exist, where the nature of the information imparted makes it sufficiently clear that the confider would expect it to be held in confidence, for example.
89. The public authority has not stated that the confiders were given any undertaking that the content of this letter would be held in confidence. Neither has it provided any other reasoning as to why an expectation of confidence in relation to this letter was held by the confiders. Solely on the basis of the content of this letter then, the Commissioner notes again that this raises issues that the confiders clearly believed were of importance at that time and considers it reasonable to conclude that the confiders would have expected to carry out correspondence on this issue with the public authority in confidence. For this reason, the Commissioner accepts that the information was the subject of an obligation of confidence at the time that it was imparted.

Detriment to the confider?

90. Detriment is not always necessary for section 41(1) to be engaged and particularly in cases where the information is personal information, the Commissioner will not require detriment to the confider as a prerequisite, recognising that the invasion of privacy resulting through disclosure could itself be described as a detriment. In this case, however, the case of the public authority does not appear to be that the information in question is the personal information of any individual. The content of this information, apart from incidental content where individuals are named, such as the addressee for example, also does not appear to be the personal information of any individual. As the bulk of the content of this information does not appear to be the personal information of any individual and so it could not be said that personal privacy would be invaded through disclosure, the Commissioner has adopted the approach that detriment to the confider as a result of disclosure is necessary for the exemption to be engaged here.
91. Turning to whether any detriment would occur, the Commissioner has taken into account two factors; the passage of time since this information was recorded and the content of the information. Covering the passage of time first, the Commissioner considers it significant that approximately nine years had elapsed between the sending of this letter and the date of the request and believes that the likelihood of

detriment will have reduced through this passage of time. For example, if it were argued that disclosure of this letter would cause detriment by prejudicing ongoing talks between the public authority and Scientology, it is far less likely that this letter related to talks ongoing at the time of the request than would have been the case had this request been made closer to the date of this letter.

92. As to the content of the information, this briefly sets out the position of Scientology in relation to the immigration issue and covers administrative arrangements for talks with the public authority about this issue. The Commissioner does not believe that it is clear from this content that the confiders would suffer any detriment through disclosure. The position in relation to the immigration issue is set out, as noted above, briefly and it does not appear likely that any negotiations or talks on this issue could be prejudiced through disclosure of this brief précis. As for the remaining content, there appear to be no grounds for suggesting that the confiders would suffer detriment through the disclosure of content relating to the administrative arrangements of meetings dating from approximately nine years prior to the request.

Conclusion

93. The Commissioner concludes that the exemption provided by section 41(1) is not engaged in relation to the information in question. Whilst the Commissioner has found that the information was supplied to the public authority from a third party and that the information held the necessary obligation and quality of confidence, having taken the approach that it would be necessary for the confider to suffer detriment through disclosure for this exemption to be engaged, he has found that no such detriment would result and so this condition for the engagement of the exemption is not met.

Section 42

94. The public authority has cited section 42(1) in relation to a number of documents within the withheld information. This section provides an exemption for information that is subject to legal professional privilege. This exemption is also subject to the public interest, meaning that the information should be disclosed if the public interest favours this, however clear it is that the information is subject to legal professional privilege.
95. The Commissioner has reached differing conclusions in relation to the various documents that the public authority has withheld under this exemption. The broad analysis and conclusions are set out here and an

annex is provided with the copy of the Notice sent to the public authority in which the conclusion in relation to each document is set out.

96. There are two types of legal professional privilege; litigation privilege and advice privilege. Litigation privilege is available in connection with confidential communications made for the purpose of providing or obtaining legal advice in relation to proposed or contemplated litigation. Advice privilege will apply where no litigation is in progress or being contemplated. In these cases, the communications must be confidential, made between a client and professional legal adviser acting in their professional capacity and made for the sole or dominant purpose of obtaining legal advice.
97. The public authority has specified those documents to which it believes litigation privilege applies. The Commissioner has considered advice privilege in relation to the remaining documents in connection with which section 42(1) has been cited.
98. Covering first those documents which the public authority believes would be subject to litigation privilege, the litigation in question was a proposed Judicial Review relating to the status of Scientology. The definition of litigation privilege is given above. The Commissioner accepts that litigation privilege applies to some of the information in relation to which this exemption has been cited. As noted, the litigation in question was the Judicial Review, which, although it was subsequently withdrawn, was a genuine prospect at the time that the information was recorded. The information in connection with which the Commissioner accepts that litigation privilege applies consists of communications covering various aspects of the handling of the Judicial Review by the public authority and witness statements. The Commissioner accepts that the dominant purpose for which these were created was for lawyers to use in the preparation of the public authority's case in the Judicial Review. The exemption provided by section 42(1) is, therefore, engaged in relation to this information.
99. A copy of the original application for Judicial Review is included amongst the information for which litigation privilege has been claimed. It appears that this document was prepared by the legal representatives of Scientology and received by the public authority and that this was lodged with the court. This document was not, therefore, confidential, which is a requirement for information to attract litigation privilege. The exemption provided by section 42(1) is not, therefore, engaged in relation to this information.

100. Finally, whilst the Commissioner has accepted that litigation privilege does apply to the majority of the communications in connection with which it has been claimed, in relation to some he does not. These are communications where it is not clear that the dominant purpose of these was to obtain advice about the Judicial Review, or to assist lawyers in the preparation of their case. In relation to the original Judicial Review application and the communications where it is not clear that these were for a relevant dominant purpose, the Commissioner concludes that these are not subject to litigation privilege and so the exemption provided by section 42(1) is not engaged.
101. As the Act does not differentiate between advice and litigation privilege, the Commissioner has also briefly considered whether the information in relation to which he does not accept that litigation privilege applies may be subject to advice privilege. The conclusion of the Commissioner on this point is that this information is not subject to advice privilege and so section 42(1) is not engaged via this route.
102. Moving to the information in connection with which advice privilege has been claimed, the definition of advice privilege is given above at paragraph 96. This information consists of communications relating to various legal issues concerning Scientology. Some of this information directly records the provision of legal advice from legal adviser to client and so the Commissioner considers it clear that this information is subject to advice privilege.
103. Other information does not directly record the provision of legal advice, but does summarise legal advice given elsewhere on the issue that the communication concerns. The Commissioner accepts, however, that advice privilege extends to these communications. He considers this to be in line with the approach taken by the Information Tribunal in the case *Shipton v Information Commissioner and the National Assembly for Wales* (EA/2006/0028). In that case the Tribunal accepted that a submission from an official to a Minister that summarised legal advice was subject to legal professional privilege when stating:

"It is conceded that the second of the Memoranda, dated 27th May 2004, is not a direct communication from a lawyer; it is a submission to a minister from a civil servant...It is stated to be a memorandum on the delivery of the policy in question, but it is based on, and summarises, the legal advice and is in a form such that, if all the elements of legal advice were to be redacted it would in our view be rendered meaningless. In these circumstances we conclude that this document too is one in

respect of which a claim to legal professional privilege could be maintained in legal proceedings.” (paragraph 13(e) and (f))

104. This conclusion was based on the following from the case *USP Strategies v London General Holdings Ltd* ([2004] EWHC 373):

“The proper analysis, consistent with Three Rivers, is to continue to afford privilege to material which evidences or reveals the substance of legal advice.”

105. The conclusion of the Commissioner is, therefore, that the exemption provided by section 42(1) is engaged in relation to the information that either directly records the provision of legal advice, or that summarises legal advice provided elsewhere.
106. The information to which the Commissioner has not accepted advice privilege applies neither records nor summarises the provision of legal advice between lawyer and client. The exemption provided by section 42(1) is not engaged in relation to this information.

The Public Interest

107. In relation to the information in connection with which the Commissioner has concluded that section 42(1) is engaged, it is necessary to go on to consider the balance of the public interest. The Commissioner's approach to considering the balance of the public interest where section 42(1) is engaged is that the strong public interest in the maintenance of legal professional privilege should be taken into account. This is in line with the approach taken by the Information Tribunal in the case *Bellamy v the Information Commissioner and the DTI* (EA/2005/0023) in which it stated:

“...there is a strong element of public interest inbuilt into the privilege itself. At least equally strong countervailing considerations would need to be adduced to override that inbuilt 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 case...”

108. It is not, however, an absolute exemption and where there are equal or weightier countervailing factors, then the public interest in maintaining the exemption does not outweigh the public interest in disclosing the information.

109. As well as the general public interest in improving the openness of the public authority, the public interest factor related to the specific information in question here is that identified above at paragraph 67 when considering the balance of the public interest in connection with section 36; that disclosure of the information in question would contribute to the public debate about the status of Scientology. However, as also noted above, the Commissioner has not found evidence that suggests that debate about the status of Scientology is particularly widespread, despite the controversy noted by the Information Tribunal, reducing the weight of this factor.
110. The conclusion of the Commissioner is that the public interest in the maintenance of the exemption provided by section 42(1) outweighs the public interest in disclosure. Whilst the Commissioner has recognised a valid factor in favour of disclosure on the basis of the contribution that the content of the information would make to public debate, he has found that this is outweighed by the inbuilt public interest in the preservation of legal professional privilege.

Procedural Requirements

Sections 1 and 10

111. In failing to disclose the information that the Commissioner now concludes was not exempt within twenty working days of receipt of the request, the public authority breached the requirements of sections 1(1)(b) and 10(1).

Section 17

112. In failing to cite the exemptions provided by sections 40(2) and 41(1) within twenty working days of receipt of the request, the public authority did not comply with the requirements of section 17(1).

The Decision

113. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act in that the exemptions provided by sections 32(1)(a), and, in part, 36(2)(b)(i) and (ii) 40(2) and 42(1) were applied correctly. However, the Commissioner also finds that the public authority applied the exemptions provided by sections 27(1)(a), 35(1)(a), 36(2)(b)(i) and (ii) in part, 40(2) in part, 42(1) in part, and 41(1) incorrectly and in so doing the public authority breached sections 1(1)(b) and 10(1). The

public authority also breached section 17(1) by failing to cite sections 40(2) and 41(1) prior to the Commissioner's investigation.

Steps Required

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

- Disclose all information which the Commissioner has concluded is not exempt. For section 42(1), this should be done with reference to the annex provided to the public authority with this Notice. For section 40(2), this should be done on the basis of the Commissioner's conclusion at paragraphs 76 and 77 above and, for sections 36(2)(b)(i) and (ii), the information specified at paragraph 57 above should be disclosed. All the information in relation to which sections 35(1)(a) and 41(1) were cited should be disclosed.

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

Failure to comply

116. 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.

Other matters

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

The Commissioner's published guidance on internal reviews states that a review should be conducted within 20 working days, unless there are exceptional circumstances, in which case the review period may be extended to 40 working days. In this case the Commissioner notes that there appeared to be no exceptional circumstances, but that the public authority failed to respond with the outcome of the review within twenty working days. Neither did the public authority respond within 40 working days. The public authority should ensure that internal reviews are carried out promptly in future.

Right of Appeal

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

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

Tel: 0845 600 0877

Fax: 0116 249 4253

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

Website: www.informationtribunal.gov.uk

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

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

Dated the 10th day of March 2011

Signed

**Graham Smith
Deputy Commissioner**

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

Legal Annex

Section 1

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 10

Section 10(1) provides that –

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

Section 17

Section 17(1) provides that -

"A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies."

Section 27

Section 27(1) provides that –

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

- (a) relations between the United Kingdom and any other State,
- (b) relations between the United Kingdom and any international organisation or international court,
- (c) the interests of the United Kingdom abroad, or
- (d) the promotion or protection by the United Kingdom of its interests abroad.”

Section 32

Section 32(1) provides that –

“Information held by a public authority is exempt information if it is held only by virtue of being contained in-

- (a) any document filed with, or otherwise placed in the custody of, a court for the purposes of proceedings in a particular cause or matter,
- (b) any document served upon, or by, a public authority for the purposes of proceedings in a particular cause or matter, or
- (c) any document created by-
 - (i) a court, or
 - (ii) a member of the administrative staff of a court, for the purposes of proceedings in a particular cause or matter.”

Section 35

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 36

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 40

Section 40(2) provides that –

“Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.”

Section 41

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 42

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.”