

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 7 March 2011

Public Authority: Department for Culture Media and Sport
Address: 2 – 4 Cockspur Street
London
SW1Y 5DH

Summary

The complainant requested copies of exchanges between the public authority, Local Government Association representatives, and Local Coordinators of Regulatory Services representatives in relation to the proposed licensing exemption for small scale live music. The public authority disclosed a substantial portion of the information held during the course of the Commissioner's investigation but withheld the remaining information on the basis of sections 35(1)(a) (formulation/development of government policy), 40(2) (personal data), and 42(1) (legal professional privilege). The Commissioner found that the exemptions were correctly engaged and also that in all the circumstances of the case, the public interest in maintaining the exemptions outweighed the public interest in disclosure. The Commissioner however found the public authority in breach of sections 10(1) (Time for compliance with request) and 17(1) (Refusal Notice) in respect of its handling of the request.

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. Under the Licensing Act 2003, any venue that wishes to host live music is required to obtain an appropriate licence. However, there were calls

mainly from musicians and venue owners for the Act to exempt premises like cafes, restaurants, and small pubs etc from having to obtain a licence to host small scale live music events. The Labour Government decided to carry out an evaluation of the impact of the Licensing Act to determine how well it had so far worked in practice especially in relation to the impact of the Licensing Act on the levels of crime and disorder. The report which was published on 4 March 2008¹ concluded that the picture was a mixed one. In order to understand the reasons for the government's conclusion, the House of Commons Select Committee on Culture, Media and Sport decided to undertake its own post-legislative scrutiny of the Licensing Act (via a public inquiry) and considered amongst other things, the impact of the Licensing Act on the performance of live music.

The Request

3. On 17 June 2009 the complainant requested;

'copies of all written correspondence, minutes of meeting, and notes of any other discussions, from 01 January 2008 to 17 June 2009, between DCMS and Local Government Association representatives or officials, and between DCMS and LACORS representatives or officials, on the subject of exemptions from the Licensing Act 2003 for performances of live music.'
4. On 27 August 2009, the public authority responded. It withheld the information requested on the basis of the exemption at section 35(1)(a) and decided that the public interest in maintaining the exemption outweighed the public interest in disclosure.
5. On 28 August 2009 the complainant requested a review of the public authority's decision.
6. On 17 February 2010, the public authority responded with details of the outcome of the review. It disclosed the response it had received from the Local Authorities Coordinators of Regulatory Services (LACORS)² regarding the proposed licensing exemption for live music. LACORS had on 15 October 2008 provided the public authority with a

¹ Department for Culture, Media, and Sport: 'Evaluation of the Impact of the Licensing Act 2003'

² The local government body responsible for overseeing local authority regulatory and related services

summary of the feedback it had received from local councils regarding the proposed exemption.

7. The public authority however upheld the application of the exemption at section 35(1)(a) in respect of the remainder of the information held.

The Investigation

Scope of the case

8. On 29 March 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant asked the Commissioner to specifically consider the following points:
 9. The fact that it was already well known that the only significant opposition to the entertainment licensing exemption was from local authorities.
 10. The issue was one of 'wide public interest and has often been reported in the national press'.
 11. The fact that part of the recommendation by the all party Culture, Media, and Sport Committee (i.e. House of Commons select Committee) following its public inquiry into the Licensing Act 2003 was that a new entertainments licensing exemption for live music events up to 200 capacity was necessary.³
 12. The fact that the government had announced on 21 October 2009 that it was willing to grant a licensing exemption to venues with a 100-person capacity or under following a public consultation from 31 December 2009 to 26 March 2010.⁴
 13. According to the complainant therefore, the fact that the government had accepted the principle of a licensing exemption for small scale live

³ Its report was published on 14 May 2009 and can be found at <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmcomeds/492/492.pdf>

⁴ The government's proposal was published in the Guardian Newspaper and can be found at; <http://www.guardian.co.uk/music/2009/oct/21/police-law>

music meant that there was no longer any need for the discussions with local authorities to be withheld.

14. As noted above, the public authority disclosed part of the requested information following the internal review. During the course of the investigation, the public authority decided to disclose additional information. It explained that given the passage of time since the request was made, the balance of the public interest was no longer in favour of maintaining the exemption. These additional disclosures were made on 3 February 2011.
15. In view of the disclosures made by the public authority, the Commissioner's investigation was restricted to the application of the exemptions at sections 35(1)(a), 40(2), and 42(1) to the remainder of the withheld information clearly described in the analysis section below.
16. For reasons clearly explained in the analysis section below, the Commissioner disagrees with the public authority that the information referred to in paragraph 39 below did not fall within the scope of the request.
17. Generally, the Commissioner considers that, he has the discretion to accept late exemptions (i.e. not relied on by the public authority at the time of the request). Therefore, in view of the strong public interest in protecting legally privileged information, he decided to accept the late introduction of the section 42(1) exemption. Furthermore, in view of his dual role as the regulator of the Data Protection Act 1998 (DPA), the Commissioner considers that he is under a positive obligation to ensure that any decision he takes under the Act does not breach the DPA. It is for that reason that he accepted the public authority's late introduction of section 40(2).

Chronology

18. On 5 May 2010 the Commissioner wrote to the public authority and requested copies of the withheld information.
19. On 25 May 2010 the public authority responded. It provided the Commissioner with copies of the withheld information and also sought to rely on the exemption at section 40(2) in respect of the names of junior officials mentioned in the documents.
20. On 24 August 2010 the Commissioner wrote to the complainant. He outlined the scope of the investigation as above and invited the

complainant to comment if necessary. The complainant did not express any disagreement with the scope of the investigation.

21. On 29 November 2010 the Commissioner wrote to the public authority and requested submissions on the application of the exemptions at sections 35(1)(a) and 40(2).
22. On 21 January 2011 the public authority responded. It made additional representations in support of the application of the exemptions and also sought to rely on the exemption at section 42(1) in respect of part of the withheld information. However, if the Commissioner did not consider the exemption applied either because it was introduced in the course of the investigation or because he did not find in its favour, it would seek to rely instead on the exemption at section 35(1)(a).
23. The public authority also sought to exclude part of the withheld information from the scope of the request but if the Commissioner did not find in its favour, it sought to rely on the section 35(1)(a) exemption to withhold the relevant information.

Analysis

Exemptions

Section 40(2)

24. The Commissioner first considered whether the exemption at section 40(2) of the Act was correctly engaged by the public authority.
25. The public authority provided the Commissioner with a list of the junior officials in question which included their grade, role, and/or input in the discussions about the licensing exemptions. Some of the officials on the list were representatives of LACORS and the Local Government Association (LGA), and one official represented a London Borough. However, the public authority informed the Commissioner these non-departmental officials were not in roles equivalent to senior civil servants.
26. Information is exempt on the basis of section 40(2):
 - If it constitutes the personal data of which the applicant (i.e. the individual requesting information under the Act) is not the data subject (commonly referred to as third party personal data), and
 - Either the first or second condition in sections 40 (3) and (4) is satisfied.

27. The first condition partly stipulates that the disclosure of third party personal data to a member of the public would contravene any of the data protection principles or section 10 of the Data Protection Act 1998 ('the DPA').

Is the disputed information personal data?

28. Section 1(1) of the Data Protection Act 1998 (DPA) defines personal data as;

'data which relate to a living individual who can be identified from those data, or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.'

29. The names of the junior officials clearly constitute their personal data within the meaning of section 1(1) of the DPA.

Would the disclosure of the disputed information also contravene any of the data protection principles?

30. The first data protection principle states that personal data shall be processed fairly and lawfully and in particular shall not be processed unless one of the conditions in schedule 2 is met and schedule 3 in the case of sensitive personal data. Sensitive personal data is defined in section 2 of the DPA. The Commissioner finds that the names of the junior officials do not constitute sensitive personal data.

31. The Commissioner therefore first considered whether the disclosure of the names of the junior officials in the context of the discussions about the licensing exemptions would have been unfair to them. In his consideration, the Commissioner took into account the reasonable expectations of the officials in terms of the circumstances under which their names could be in the public domain. On this point, the Commissioner found the Information Tribunal's (Tribunal) comments in the case of *The Corporate Officer of the House of Commons v The Information Commissioner & Norman Baker MP* (EA/2006/0015 & 0016) (the House of Common's case) useful. Commenting on the distinction between a data subject's private life and public life, the Tribunal noted that:

'.....where data subjects carry out public functions, hold elective office or spend public funds they must have the expectation that their public actions will be subject to greater scrutiny than would be the case in respect of their private lives....'(paragraph 78) and further that '.....the interests of data subjects.....are not necessarily the first

and paramount consideration where personal data being processed relate to their public lives' (paragraph 79)

32. The public authority strongly submitted that because senior officials and ministers are generally accountable for policy decisions, it would have been unfair to disclose the names of the junior officials in question.
33. The public authority also informed the Commissioner that the complainant maintains a blog which had on several occasions contained criticisms of a personal nature of individual civil servants, both junior and senior. The public authority provided the Commissioner with examples of articles from the blog in question.⁵ It specifically identified the articles of 9 July 2009, 14 July 2009, 7 August 2009, 9 September 2009 and 23 April 2010. According to the public authority, due to the targeted criticisms of its officials on the complainant's blog, policy staff were instructed not to speak directly to the complainant. The complainant's queries were/have been subsequently dealt with directly by the Head of the Press Office. The public authority therefore argued that, in view of the risk that the officials who were involved the discussions could be specifically targeted for criticisms, it would have been unfair to disclose their names given that they are not strictly accountable for the policy decision in question.
34. The Commissioner however notes that the articles in question were written after the request was made and he did not therefore take them into account in his assessment of the fairness element.
35. The public authority provided further examples⁶ to the Commissioner to illustrate how the public debate on the licensing exemption for live music became increasingly bitter and descended into personal attacks on civil servants who were perceived to be working against it. The Commissioner notes that the criticisms were directed at senior civil servants and Ministers and it would appear that the comments were made as far back as 2004 in some cases. They do however provide a flavour of the difficult climate under which officials had to deliberate the pros and cons of a licensing exemption for live music.
36. The Commissioner notes that a number of officials on the list were involved in the day to day policy development of the Licensing Act, and representatives of the local councils were also involved in direct

⁵ <http://www.livemusicforum.co.uk/hbulletins.htm>

⁶ <http://www.mudcat.org/thread.cfm?threadid=58910> & <http://www.freewebs.com/actionformusic/songs.pdf>

negotiations with the public authority in respect of the impact the Licensing Act (especially any exemptions for live music) would have on local authorities. For that reason, it is the Commissioner's opinion that although they were not directly accountable for the policy decisions, their input in the discussions which would have no doubt contributed to the decisions taken was not minimal either.

37. However, in view of the sometimes heated debate generated by the issue, the Commissioner is of the view that the officials on the list provided by the public authority would have had a reasonable expectation that their names would not be made publicly available in that regard. Given that senior officials and Ministers had been directly targeted for criticisms, the Commissioner agrees with the public authority that it would have been unfair to disclose the names of the officials on the list provided by the public authority.
38. The Commissioner therefore finds that disclosure would have contravened the fairness element of the first data protection principle and for that reason he finds that names on the list provided by the public authority were correctly withheld by virtue of the exemption at section 40(2) of the Act.

Information outside the scope of the request

39. The public authority argued that the email of 1 April 2009 (at 18:53) was outside the scope of the request because it was about practical arrangements for a meeting and not about exemptions from the Licensing Act as requested by the complainant.
40. Having carefully reviewed the relevant email, the Commissioner disagrees with the public authority that the email in question was not within the scope of the request. Part of the request was for all correspondence 'on the subject of exemptions from the Licensing Act 2003 for performances of live music.' In the Commissioner's opinion, the email was about the meetings scheduled to discuss the proposed licensing exemption and the email therefore clearly fell within the scope of the request.
41. Therefore as requested by the public authority, the Commissioner has gone on to consider whether the email was in any event exempt on the basis of section 35(1)(a).

Section 35(1)(a)

Disputed Information

42. The Commissioner has described below the information withheld (hereinafter referred to interchangeably as 'the disputed information') by the public authority on the basis of the above exemption:
 - Comments by Local Authorities regarding the proposed de-minimis exemption for live music. It was sent to the public authority by a representative of LACORS on 15 October 2008.
 - Email of 1 April 2009 (at 18:53) from a representative of the LGA to the public authority.
43. Information is exempt on the basis of section 35(1)(a) if it is held by a government department and relates to the formulation or development of government policy.
44. Although often used interchangeably, 'development' is suggestive of a stage beyond 'formulation' which would include a process of improving or altering existing policy by analysing, reviewing, or recording the effects of the existing policy.
45. Also, in the Commissioner's view, the term 'relates to' should be interpreted broadly to include any information which is concerned with the formulation or development of the policy in question and does not specifically need to be information on the formulation or development of that policy.
46. As noted above, at the heart of the request was the proposed amendment to the Licensing Act to include an exemption for small scale live music. There is no question therefore that the crux of the matter relates to the development of government policy.
47. However, the issue is whether the disputed information above relates to the development of government policy, in this case, in relation to the Licensing Act.
48. The public authority explained that the disputed information was provided in confidence by LACORS from feedback from its members. The contributors were assured that their comments would be held in confidence. According to the public authority, had such assurance not been given, LACORS would not have provided the feedback received or it would have provided less frank feedback. The public authority argued that a lack of feedback or indeed feedback which was lacking in candour would have significantly hindered officials (and consequently,

Ministers) from understanding all of the issues and concerns regarding the proposed licensing exemption.

49. The Commissioner understands this to mean that the feedback/comments from local authorities would have been used to inform the discussions and subsequent decisions in relation to the proposed introduction of an exemption for small scale live music under the Licensing Act.
50. Having carefully reviewed the disputed information, the Commissioner finds that it does relate to the development of government policy for the reasons above. He therefore finds that the disputed information was correctly withheld on the basis of the exemption at section 35(1)(a).
51. For the reasons he found that the email of 1 April 2009 was caught by the request, the Commissioner also finds that it relates to the development of government policy and was therefore also correctly withheld on the basis of the exemption at section 35(1)(a).

Public Interest Test

52. The exemptions at section 35 are qualified so that even if they are engaged, a public authority must also decide whether in all the circumstances of the case, the public interest in maintaining the exemption outweighed the public interest in disclosure.

Public interest arguments in favour of disclosing the requested information

53. The public authority recognised the public interest in the transparency of the policy development process in relation to the proposed exemption for small scale live music.

Public interest arguments in favour of maintaining the exemption

54. The public authority argued that there is a public interest in ensuring that policy is developed freely and frankly and that public participation in the debates does not affect the frankness of such discussions.
55. The public authority argued that effective policy development benefits from open and honest contributions from stakeholders and to disclose their views/comments would limit their openness and willingness to contribute in the future to the detriment of the policy development process.
56. In terms of the email of 1 April 2009, the public authority argued that it would not have added anything to the public interest in disclosure

and that its contents were likely to have been exploited and used to divert attention from the main issues.

Balance of the public interest arguments

57. The Commissioner notes that disclosure of information serves the general public interest in the promotion of better government through transparency, accountability, public debate, better public understanding of decisions, and the informed and meaningful participation by the public in the democratic process.
58. Specifically in this case, the Commissioner considers that disclosing the comments by LACORS would have enhanced the public debate about the pros and cons of the proposed small scale live music exemption by providing the opportunity for those with opposing views to feed into the policy discussions. Disclosing the candid opinions of the local councils would have further enhanced transparency especially in relation to whether the LACORS was exerting too much influence over the process.
59. In the Commissioner's opinion however, there was also a significant public interest in not disclosing the comments. He agrees with the public authority that they were frank and candid opinions regarding the proposed licensing exemption. They were nonetheless also summarised and provided to the public authority and the summarised version was disclosed to the complainant at the time of the request. The version disclosed primarily included the major talking points but were not necessarily conveyed in the form they were originally made (i.e. in a forthright manner).
60. The Commissioner notes that the comments were made nearly a year prior to the request and at the outcome of the internal review of February 2010 it was clear that the government was seriously considering introducing a licensing exemption for small scale live music. The Commissioner does not find the public authority's broad ranging argument that disclosure would have had a chilling effect on stakeholders such as LACORS persuasive. He is not persuaded that stakeholders would have been easily deterred from expressing their frank opinions on the matter. Given the effect that the introduction of the proposed licensing exemption could have on local authorities, the Commissioner finds that it is unlikely that stakeholders especially LACORS would become more reticent in expressing their views in the event of disclosure. Nevertheless, the Commissioner also recognises that the proposed exemption was being considered by officials in an atmosphere of intense debate which sometimes generated personal attacks directed against officials. For that reason, he accepts that stakeholders could have perhaps been less candid in the manner in

which they expressed their views regarding the effect of the proposed licensing exemption to the detriment of the policy consideration process.

61. More significantly, the Commissioner is of the opinion that premature disclosure of information would most likely result in constant public scrutiny of a matter under active consideration. This would in turn deny officials the space they need to consider the relevant issues without fear that their opinions could be subjected to ridicule in the process. It is therefore likely this would divert the attention of officials from the core policy discussions thereby hindering the policy development process. There is nothing to suggest that at the time the internal review was completed, a decision had been reached as to whether or not to amend the Licensing Act to include an exemption for small scale live music. The timing of the request was therefore significant under the circumstances and in the Commissioner's view, arguments in favour of the safe space required by officials to discuss policies under active consideration are powerfully persuasive.
62. In terms of the email of 1 April 2009, the Commissioner agrees with the public authority that at the time of the request, the contents of the email would not have added anything of significance to the debate but it could certainly have diverted attention from the core issue under consideration (i.e. the licensing exemption). The email is essentially a frank expression of an opinion in relation to the meetings scheduled to discuss the licensing exemption and in the Commissioner's opinion, the public interest was best served by withholding, rather than disclosing the contents of the email for the same reasons as set out in paragraph 60 above
63. The Commissioner also took into account the complainant's arguments above for disclosure. He accepts it was widely known that local authorities objected to the proposed exemptions. However, it is their frank and candid opinions in objections at the time of the request which deserve protection for the reasons above. Also, neither the fact that the all party Culture, media, and Sport Committee had recommended that the Licensing Act should be amended to include the exemption nor the fact it was reported that the government was going ahead to introduce the exemption was conclusive evidence that the Licensing Act was going to be amended to that effect. There was therefore a public interest in ensuring that while the matter was still being considered, the candid opinions expressed by the local authorities was not subject to constant public scrutiny and ridicule.
64. The Commissioner therefore finds that in all the circumstances of the case, the public interest in maintaining the exemption outweighed the public interest in disclosure.

Section 42(1)

Disputed Information

65. The information withheld by the public authority on the basis of the above exemption was redacted information from an email of 20 March 2009 (at 12:19) from the public authority to representatives of LACORS and LGA.
66. Information is exempt from disclosure on the basis of section 42(1) if it is information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
67. Having carefully reviewed the disputed information, the Commissioner is satisfied it is a summary of legal advice provided to the public authority in respect of the how the licensing exemption for small scale live music should operate. There is nothing to suggest the advice was obtained in contemplation of litigation. The Commissioner therefore finds that it constitutes advice privilege. Further, as far as the Commissioner can see, the advice provided was not publicly known at the time of the request and there is therefore no suggestion that privilege had been waived. The Commissioner is persuaded that the disputed information is legally privileged and therefore exempt on the basis of the exemption at section 42(1).
68. The exemption at section 42(1) is however also subject to a public interest test.

Public interest arguments in favour of disclosing the requested information

69. The public authority acknowledged there was a public interest in knowing what the legal advice on the Licensing Act was but did not specify reasoning for doing so.

Public interest arguments in favour of maintaining the exemption

70. The public authority however asked the Commissioner to consider the strong principle of legal professional privilege and the inherent public interest in maintaining it.

Balance of the public interest arguments

71. The Commissioner considers that the general public interest in disclosure identified above in relation to section 35 equally applies to the information withheld in this case under the section 42 exemption.

72. Specifically, he considers that the public debate surrounding the licensing exemption would have been better served by knowing the legal considerations taken into account by officials in their discussions on the proposed licensing exemption.
73. In the Commissioner's opinion, disclosure would have also made the public authority more accountable for any final decision taken in respect of the proposed licensing exemption.
74. Nevertheless, the Commissioner agrees with the public authority there is a strong public interest in withholding legally privileged communications. The principle of legal professional privilege is predicated upon the rationale that a lawyer and their client need to be able to have frank exchanges without fear that those exchanges could be made public in the absence of any compelling public interest reasons such as clear evidence of a lack of accountability and transparency in relation to a decision which is likely to affect a large number of people. It is widely recognised that ensuring the frankness of exchanges between a lawyer and their client serves the wider administration of justice.
75. While it is not clear exactly when the legal advice was obtained, given that it was summarised in an email of March 2009, it would be reasonable to assume that it was not provided earlier than 2009. Therefore, at the time of the complainant's request and subsequent conclusion of the internal review in February 2010, the matter had not, in the Commissioner's view, progressed to a stage where additional legal advice could have perhaps been ruled out. Therefore, the public interest in maintaining legal professional privilege in the circumstances was quite significant.
76. The Commissioner acknowledges that a lack of transparency by a public authority could provide equally strong public authority grounds for disclosure. He has however found no reasons to suggest that was the case in relation to the licensing exemption. Nothing in either the disclosed or withheld information suggests to the Commissioner that the public authority was not transparent to therefore arguably warrant the disclosure of the legal advice obtained.
77. On balance therefore, the Commissioner finds that in all the circumstances of the case, the public interest in maintaining the exemption at section 42(1) outweighed the public interest in disclosure.

Procedural Requirements

78. Under section 17(1), a public authority is required to issue a refusal notice within 20 working days of a request.

79. The Commissioner finds the public authority in breach of section 17(1) for issuing its refusal notice to the complainant outside of the statutory time limit. He additionally finds the public authority in breach of section 17(1) for the late reliance on section 42(1).
80. Under section 10(1) a public authority must comply with section 1(1) (i.e. the duty to confirm or deny whether information is held) within 20 working days.
81. The Commissioner finds the public authority in breach of section 10(1) for failing to inform the complainant within 20 working days that it held information pertinent to his request.

The Decision

82. 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 correctly withheld the disputed information on the basis of the exemptions at sections 35(1)(a), 40(2), and 42(1).
83. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
 - The public authority breached sections 10(1) and 17(1) of the Act.

Other matters

84. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
85. Part VI of the section 45 Code of Practice (the "section 45 code") 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 complainant. 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, despite the

publication of his guidance on this matter, it took the public authority approximately 122 working days to complete its internal review in this case.

Right of Appeal

86. 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

- 87 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.
- 88 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 7th day of March 2011

Signed

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

Legal Annex

Refusal of Request

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."

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-

- (d) the formulation or development of government policy,
- (e) Ministerial communications,
- (f) the provision of advice by any of the Law Officers or any request or the provision of such advice, or
- (g) the operation of any Ministerial private office."

Personal information.

Section 40(1) provides that –

"Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject."

Section 40(2) provides that –

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

(h) it constitutes personal data which do not fall within subsection (1), and

(i) either the first or the second condition below is satisfied."

Section 40(3) provides that –

"The first condition is-

(j) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-

1. any of the data protection principles, or
2. section 10 of that Act (right to prevent processing likely to cause damage or distress), and

(k) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded."

Legal Professional Privilege

Section 42(1) provides that –

"Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information."

Section 42(2) provides that –

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