

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 26 October 2011

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

### Summary

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The complainant requested information from the Office of Judicial Complaints (OJC), an associated office of the Ministry of Justice (MoJ), relating to a complaint made about Recorder Cherie Booth. The MoJ disclosed some information but withheld the remainder citing the exemptions in sections 21 (information accessible by other means), 31(1)(c) and (g) (law enforcement), 32 (court records), 36(2)(b)(i) and (ii) and 36(2)(c) (prejudice to effective conduct of public affairs), 40(2) (personal information), 42(1) (legal professional privilege) and 44(1)(a) (prohibitions on disclosure) of the Act.

The Commissioner finds that the public authority applied the exemptions provided by sections 44 and 36 correctly. However, the Commissioner also finds that the public authority breached section 17 of the Act (refusal of request). He requires no steps to be taken.

### The Commissioner's Role

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

### Background

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2. The Constitutional Reform Act 2005 (CRA) gives the Lord Chancellor and the Lord Chief Justice joint responsibility for the system for considering

and determining complaints about the personal conduct of all judicial office holders in England and Wales and some judicial office holders who sit in Tribunals in Scotland and Northern Ireland.

3. The Office for Judicial Complaints (OJC) handles these complaints and provides advice and assistance to the Lord Chancellor and Lord Chief Justice in their joint responsibility for the system of judicial complaints and discipline.
4. The request for information in this case arises from observations made by Cherie Booth in a court case in which she was sitting as Recorder. Recorder Booth is the wife of Tony Blair, who, at the time of the court case, had recently been Prime Minister of the United Kingdom.
5. A press statement was issued by the OJC on 4 February 2010:

*"The Office for Judicial Complaints has received a number of complaints in relation to the comments that Cherie Booth QC is reported to have made, in her capacity as a Recorder, in connection with the trial of Shamsa Miah. Those complaints will be considered under the Judicial Discipline Regulations in the usual way. It would not be appropriate to comment further at this stage."*

6. A further press statement was issued by the OJC on 10 June 2010:

*"After receiving a number of complaints about comments reportedly made by Cherie Booth QC in her capacity as a Recorder, in connection with the trial of Shamsa Miah, the Office for Judicial Complaints investigated the matter in accordance with the Judicial Discipline (Prescribed Procedures) Regulations 2006 (as amended). That investigation has concluded and found that Recorder Booth's observations did not constitute judicial misconduct."*

*The Lord Chancellor and Lord Chief Justice have considered the conclusions of the investigation and agree that no disciplinary action is necessary."*

## The Request

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7. The complainant corresponded with the Office of Judicial Complaints (OJC) about his request for information. The Ministry of Justice (MoJ) has informed the Commissioner that it regards the OJC as being within its remit when considering Freedom of Information Act matters. The Commissioner has therefore conducted his investigation into this case with the MoJ and served this Decision Notice on that public authority.

8. The complainant wrote to the Office for Judicial Complaints (OJC) on 19 June 2010 with the following request:

*"Please could you release all information you hold about the investigation and action taken regarding the recent complaint made about Cherie Booth?"*

*"I recognise that some of this information may well be exempt from disclosure but I would like you to release as much of it as you can."*

9. The OJC wrote to the complainant on 15 July 2010 confirming that it held information relevant to his request, but also advising that it was extending the time for responding on the basis that it required further time to consider the public interest test. It explained in this correspondence that some of the information within the scope of the request might be exempt under section 31. It wrote to him again on 12 August 2010 further extending the time for responding. On both occasions, the complainant was provided with an estimate of when he could expect to receive a response.
10. The OJC finally responded on 10 September 2010. It provided the complainant with some information but withheld the remainder citing the exemptions in sections 21 (information accessible by other means), 31(1)(c) and (g) (law enforcement), 32 (court records), 36(2)(b)(i) or (ii) or 36(2)(c) (prejudice to effective conduct of public affairs), 40(2) (personal information), 42(1) (legal professional privilege) and 44(1)(a) (prohibitions on disclosure) of the Act.
11. The OJC upheld its decision in its internal review correspondence which it sent to the complainant on 21 January 2011 (although the Commissioner notes that the correspondence was, inexplicably, dated 26 November 2010). It clarified that part of the information it held relates to its investigation into the complaints made against Recorder Booth and that this was exempt by virtue of the exemption in section 44 of the Act. In the alternative, it cited sections 31, 32, 36 and 40 with respect to that information.
12. With respect to the remaining information, in other words information within the scope of the request that did not relate to the OJC investigation into the complaints made against Recorder Booth, it cited the exemptions in sections 36, 40 and 42.
13. With respect to its citing of section 36, it clarified that it was relying on subsections (b) **and** (c) of section 36(2).

## The Investigation

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### Scope of the case

14. The complainant first contacted the Commissioner on 23 November 2010 to complain about the lack of response to his request for an internal review.
15. Having received the OJC's internal review correspondence, the complainant contacted the Commissioner again on 20 February 2011 to complain about the way his request for information had been handled.
16. He explained that he was prepared to accept that, given the circumstances, some of the information may have been correctly withheld. However, as he did not know what the withheld information comprised, he was not able to confirm this himself.
17. The complainant also brought to the Commissioner's attention that:

*"the current weight of decisions from the Tribunal is that the reasonable opinion must be provided within the 20 day limit. On the history of this case, I do not believe this happened".*
18. Following correspondence with the Commissioner, the complainant agreed the scope of the Commissioner's investigation: to consider whether the OJC was correct in applying sections 44, 32, 36, 40 and 42 of the Act and, if so, whether it correctly applied the public interest test when considering disclosure.
19. For the purposes of this Decision Notice, the Commissioner will refer to the withheld information as:
  - the information about the OJC investigation; and
  - the information about the action taken by the OJC.

### Chronology

20. The Commissioner wrote to the MoJ on 18 March 2011 asking it for further explanation of its reasons for citing sections 32, 36, 40, 42 and 44 in relation to the request, including its reasons for concluding that the public interest in maintaining the exemptions outweighs the public interest in disclosure of the information requested.
21. The MoJ responded on 21 April 2011. Further responses were received on 3 June 2011 and 11 July 2011.

## Analysis

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### Exemptions

#### ***INFORMATION ABOUT THE OJC INVESTIGATION INTO THE COMPLAINTS MADE ABOUT RECORDER BOOTH***

22. The MoJ is relying on a number of exemptions in this case. The Commissioner has first considered the exemptions it has cited in relation to the withheld information relating to the investigation into the complaints made about Recorder Booth. This represents the majority of the withheld information.

#### **Section 44 Prohibitions on disclosure**

23. The Commissioner has first considered the MoJ's citing of the exemption in section 44(1) of the Act. Section 44(1) of the Act provides that:

*"Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it—*

*(a) is prohibited by or under any enactment,*

*(b) is incompatible with any Community obligation, or*

*(c) would constitute or be punishable as a contempt of court".*

24. In this case, the MoJ is relying on section 44(1)(a). It has argued that the information withheld under this exemption is prohibited from disclosure by virtue of section 139 of the Constitutional Reform Act 2005 (CRA). It explained to the complainant that section 139 establishes a duty of confidentiality on those who have responsibilities in relation to conduct and discipline regarding judicial office holders.

25. Section 139(1) of the CRA provides that:

*"A person who obtains confidential information, or to whom confidential information is provided, under or for the purposes of a relevant provision must not disclose it except with lawful authority".*

26. The 'relevant provisions' are contained in section 139(2) of the CRA. The Commissioner understands that the relevant provision in this case is Part 4 of the CRA: Part 4 relates specifically to judicial appointments and discipline.

27. The CRA defines confidential information at section 139(3):

*"Information is confidential if it relates to an identified or identifiable individual (a 'subject')".*

28. The MoJ told the Commissioner that section 139 only permits disclosure of confidential information obtained for the purposes of judicial discipline in limited and specified circumstances. These circumstances are defined in section 139(4) of the CRA in what the Commissioner considers to be precise terms.
29. It follows that, in order for the MoJ to rely on the statutory prohibition in this case, it would need to demonstrate that:
  - it obtained, or was provided with, the information for the purposes of judicial discipline;
  - the information relates to an identified or identifiable individual (and is therefore confidential under the terms of the CRA); and that
  - none of the limited and specific circumstances prescribed in the CRA which enable confidential information to be lawfully disclosed are met.
30. Having considered the MoJ's submissions in this respect and viewed the withheld information about the OJC investigation the Commissioner accepts that the above criteria are satisfied.
31. Since section 44 is an absolute exemption no public interest test applies. The Commissioner has therefore concluded that it is appropriate for the MoJ to withhold the information to which this exemption has been applied.
32. As the Commissioner has found the exemption at section 44 engaged in respect of this information, he has not gone on to consider the application of the exemptions cited by the MoJ in the alternative with respect to the information about the investigation.

### ***INFORMATION ABOUT THE ACTION TAKEN***

33. The MoJ is relying on a number of exemptions with respect to the remaining withheld information. The Commissioner has first considered its citing of section 36.

### **Section 36 prejudice to effective conduct of public affairs**

34. Section 36 is the only exemption in the Act that requires a determination by a 'qualified person'. The exemption will only apply if the reasonable opinion of a qualified person is that one of the forms of adverse effect specified in paragraph 2 would follow from disclosing the information.

35. Section 36(2) states 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 Cabinet of the Welsh Assembly Government,*

*(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”.*

36. In correspondence with the Commissioner, the MoJ confirmed it is relying on sections 36(2)(b)(i) and (ii) and 36(2)(c) in relation to all the remaining withheld information.

37. The Commissioner has first considered the MoJ's citing of section 36(2)(b). He considers it acceptable to claim both section 36(2)(b)(i) and (ii) in relation to the same information as long as arguments can be made in support of the claim for each individual subsection. These subsections are not mutually exclusive.

38. In relation to the likelihood of prejudice in this case, the Commissioner considers it was unclear from the correspondence provided to the complainant which level of likelihood the MoJ was relying on. However, during the course of his investigation, the MoJ confirmed to the Commissioner that it is relying on the lower threshold of “would be likely to” inhibit. In other words, effectively what the MoJ is claiming is that, in the reasonable opinion of a qualified person, disclosure in this case would be likely to inhibit the free and frank provision of advice and the free and frank exchange of views for the purposes of deliberation.

39. The term ‘inhibit’ is not defined in the Act. The Commissioner's view is that, in the context of section 36, it means to restrain, decrease or suppress the freedom with which opinions or options are expressed.

*The opinion of the qualified person*

40. The first condition for the application of the exemption at section 36 is the qualified person's reasonable opinion. When assessing the qualified person's opinion the Commissioner will consider the following:
- (a) whether an opinion was given;
  - (b) whether the person who gave that opinion is the qualified person for the public authority in question;
  - (c) when the opinion was given; and
  - (d) whether the opinion is reasonable.

41. In this case, the MoJ has advised that a submission, dated 19 August 2010, was sent to Lord McNally, the Duty Minister at the time of the submission. The Minister's response was received on 23 August 2010.

42. Section 36(5)(a) provides that the qualified person for a government department will be any Minister of the Crown. It has been established, therefore, that an opinion was given, that this opinion was given by a qualified person for the MoJ and that this opinion was given on 23 August 2010.

*Is the opinion reasonable?*

43. The next step to consider is whether the opinion is reasonable. In determining whether or not the opinion is reasonable, the Commissioner will consider the extent to which the opinion is both reasonable in substance and reasonably arrived at. The Commissioner will generally take into account two main factors here: what the qualified person took into account when forming his opinion and the content of the withheld information itself.

44. In deciding whether the opinion is 'reasonable' the Commissioner has been assisted by the Tribunal's decision in the case *Guardian Newspapers & Brooke v Information Commissioner & BBC* [EA/2006/0011 & EA/2006/0013]. In that case, the Tribunal indicated that the reasonable opinion is limited to the degree of likelihood that inhibition or prejudice may occur, and thus:

*"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".*



45. Therefore, in the Commissioner's opinion this means that when assessing the reasonableness of an opinion he is restricted to focussing on the likelihood of that inhibition or harm occurring, rather than making an assessment as to the severity, extent and frequency of prejudice or inhibition of any disclosure.
46. During the course of his investigation, the Commissioner asked the MoJ to confirm whether the qualified person was provided with any submissions supporting a recommendation that the exemption was engaged. Equally, he asked whether the qualified person was provided with any contrary arguments supporting the position that the exemption was not engaged.
47. The MoJ provided the Commissioner with a copy of the submission provided to the qualified person in this case. The MoJ also advised that the qualified person was provided with a sample of the information at issue. From the evidence, the Commissioner accepts that this was a representative sample of the withheld information.
48. In answer to the Commissioner's questions as to whether the qualified person was provided with contrary arguments, the MoJ advised that:

*"The submission recommended the application of section 36(2)(b) and (c) in this instance and outlined the supporting arguments".*
49. The MoJ also confirmed that a further opinion was not sought from the qualified person at the internal review stage.
50. The Commissioner has considered the content of the submission and, based upon this, is satisfied that the qualified person took into account relevant factors and did not take into account irrelevant factors. He is also satisfied that arguments within the submission are relevant to the information in question in this case. The Commissioner therefore accepts that the opinion was reasonable. It follows that he finds the exemption engaged with respect to the MoJ's citing of the exemption in section 36(2)(b).

#### *The public interest*

51. The exemption at section 36(2)(b)(i) and (ii) allows for information to be withheld if its disclosure would, or would be likely to, inhibit the imparting or commissioning of advice or the offering or requesting of opinions or considerations, subject to the public interest test.
52. This means that even where the qualified person has concluded that the exemption applies, the public interest test must be applied to the decision whether or not to disclose the withheld information.

*Public interest arguments in favour of disclosing the requested information*

53. The MoJ accepts that disclosure:

*"could increase confidence in the OJC's decision-making processes for investigating matters relating to judicial discipline more widely, reassuring the general public that decisions relating to the question of judicial conduct are taken on the basis of the best available advice and information".*

54. It also recognised that there are important public interest considerations in ensuring that the public are aware of the evaluation and analysis of policy and investigations. In this respect, it told the complainant that:

*"disclosure would mean the public are able to understand why particular decisions were suggested, adopted or rejected. This in turn can lead to greater public trust and confidence in the decision making and evaluation process of such policies".*

55. It clarified this argument in correspondence with the Commissioner, saying more specifically that it considered disclosure would contribute to public understanding of decisions about the handling of high profile complaints and specific investigations, such as the one in this case relating to Recorder Booth.

56. In favour of disclosure (and contrary to the OJC's concern that disclosure could affect the position of judges in the courtroom), the complainant argued that the fact of the complaint is well known in this case. Accordingly, he argued that:

*"it is hard to know how disclosure of specific details of the investigation could worsen this position".*

*Public interest arguments in favour of maintaining the exemption*

57. In favour of maintaining the exemption, the MoJ argued the need for space to discuss complaints and the potential outcomes and solutions in an open and frank manner. In the context of judicial discipline, it argued the importance of officials being able to ensure that the Lord Chancellor and Lord Chief Justice are exercising their disciplinary powers on a carefully considered basis.

58. In this respect, it told the complainant:

*"Disclosure could render advice provided by officials or judges in relation to decisions relating to alleged or proven misconduct by judicial office holders less open, with the relevant options explored*

*in less detail. This would lead to poorer decision-making and ultimately undermine the integrity of the complaints process”.*

59. The complainant disagreed, telling the public authority:

*“You claim that officials and judges would be less likely to assist if they thought their advice were likely to be disclosed. The Commissioner and Tribunal have previously rejected this kind of argument with respect to advice provided by senior civil servants, and I would suggest that judges occupy a similar or even stronger position in terms of being expected to act independently”.*

*Balance of the public interest arguments*

60. As the MoJ is citing multiple limbs of the exemption, the Commissioner has considered separately, in the case of each limb of the exemption, whether the public interest in disclosing the information under consideration equals or outweighs the public interest in maintaining the exemption. In doing so, he notes that, in this case, the MoJ did not differentiate clearly between its arguments in relation to the sub-sections of section 36 it was relying on.
61. The Commissioner has considered firstly the public interest arguments in respect of the free and frank provision of advice.
62. The Commissioner notes that, having accepted the reasonableness of the qualified person’s opinion that disclosure of the information would be likely to have the stated detrimental effect, he must give weight to that opinion as an important piece of evidence in his assessment of the balance of the public interest.
63. The Commissioner appreciates that confidence in the judiciary, including in the way in which it deals with matters of judicial complaints and discipline, is a key issue for the public. Specifically with respect to the complaint at issue in this case, he notes that it was the subject of media interest and debate at the time.
64. He accepts that there is merit in the argument that disclosure in this case would provide greater transparency in the judicial complaints process: in this case by demonstrating the way in which the OJC handled the complaint against Recorder Booth.
65. However, the Commissioner considers that there is a stronger need for information to be shared in a free and frank way to enable officials and stakeholders to express their candid opinions and offer frank advice or recommendations in relation to matters of judicial complaint and discipline.

66. In balancing the opposing public interest factors in this case, the Commissioner has carefully considered the content of the withheld information as well as the arguments put forward by the MoJ and the complainant. He has also taken into account the extent to which further disclosure would be proportionate and the extent to which release of the requested information would further the public understanding of the investigation and its outcome.
67. Having accepted the qualified person's opinion that the free and frank provision of advice would be likely to 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 OJC.
68. Taking all the circumstances of the case into account, the Commissioner considers that the desirability for openness and transparency through disclosing the withheld information does not equal or outweigh the harm that disclosure would be likely to cause. The Commissioner therefore concludes that the public interest in maintaining the exemption at section 36(2)(b)(i) outweighs the public interest in disclosing the information.
69. As he has come to the conclusion that all of the information falling within the scope of the request has been correctly withheld under section 36 (2)(b)(i), the Commissioner has not gone on to consider the public interest arguments in relation to section 36(2)(b)(ii) or 36(2)(c).

### **Other exemptions**

70. As the Commissioner has concluded that the MoJ correctly applied sections 44 and 36, he has not gone on to consider the other exemptions cited by the public authority in this case.

### **Procedural Requirements**

#### *Section 17 refusal of request*

71. Section 17(3)(b) allows that the time within which a response detailing the balance of the public interest should be provided may be extended beyond 20 working days. However, there is no extension beyond 20 working days from receipt of the request to the time within which a response must be provided setting out, in accordance with section 17(1), why the exemptions cited are believed to be engaged.
72. Whilst the public authority did reply to the request initially within 20 working days of receipt (on 15 July 2010), this response did not confirm that the exemptions ultimately relied upon were engaged or the reasons why these exemptions were believed to be engaged. Therefore, in failing

to provide a valid refusal notice within 20 working days of receipt of the request, the public authority breached section 17(1).

73. In this case, the MoJ extended the time limit to address the public interest. As the Commissioner has explained in his *'Good Practice Guidance 4'*, public authorities should aim to conduct the public interest test within 20 working days. In cases where the public interest considerations are exceptionally complex it may be reasonable to take longer but in the Commissioner's view the total time taken should in no case exceed 40 working days.
74. When asked to explain the delay in this case, the MoJ told the Commissioner:

*"This was a complex case engaging a number of exemptions and time was required for officials to fully ascertain all of the information in scope of the request and examine all of the relevant information in line with the Act".*

75. In this case, the complainant made his request on 19 June 2010 but the MoJ did not communicate its final decision until 10 September 2010, nearly three months later. The Commissioner does not consider that there were exceptional reasons to justify this. He therefore concludes that this was an unreasonable timescale, which constitutes a breach of section 17(3) of the Act.

## **The Decision**

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76. 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 44(1) and 36(2)(b)(i) were applied correctly and that, in the case of the qualified exemption provided by section 36, the public interest favours the maintenance of the exemption. However, the Commissioner also finds that the public authority failed to comply with sections 17(1) and 17(3) in its handling of the request.

## **Steps Required**

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77. The Commissioner requires no steps to be taken.

## **Other matters**

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78. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.
79. The extension to the 20 working day period for response in order to consider the public interest cannot be correctly claimed until the qualified person has given her or his opinion that information is exempt.
80. In this case, the Commissioner accepts that the MoJ did not refer to section 36 when it first advised the complainant that it was extending the time for responding in order to consider the public interest test. However, he notes that the opinion of the qualified person was sought significantly after the date on which the MoJ first corresponded with the complainant about this request.

## Right of Appeal

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81. 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,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

82. 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.

83. 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 26<sup>th</sup> day of October 2011**

**Signed .....**

**Gerrard Tracey  
Principal Policy Adviser  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

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### General Right of Access

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

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

- (e) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (f) if that is the case, to have that information communicated to him."

#### **Section 2(3) provides that –**

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

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



## **The Constitutional Reform Act**

### 139 Confidentiality

(1) A person who obtains confidential information, or to whom confidential information is provided, under or for the purposes of a relevant provision must not disclose it except with lawful authority.

(2) These are the relevant provisions—

(a) sections 26 to 31;

(b) Part 4;

(c) regulations and rules under Part 4.

(3) Information is confidential if it relates to an identified or identifiable individual (a “subject”).

(4) Confidential information is disclosed with lawful authority only if and to the extent that any of the following applies—

(a) the disclosure is with the consent of each person who is a subject of the information (but this is subject to subsection (5));

(b) the disclosure is for (and is necessary for) the exercise by any person of functions under a relevant provision;

(c) the disclosure is for (and is necessary for) the exercise of functions under section 11(3A) of the Supreme Court Act 1981 (c. 54) or a decision whether to exercise them;

(d) the disclosure is for (and is necessary for) the exercise of powers to which section 108 applies, or a decision whether to exercise them;

(e) the disclosure is required, under rules of court or a court order, for the purposes of legal proceedings of any description.

(5) An opinion or other information given by one identified or identifiable individual (A) about another (B)—

(a) is information that relates to both;

(b) must not be disclosed to B without A's consent.

(6) This section does not prevent the disclosure with the agreement of the Lord Chancellor and the Lord Chief Justice of information as to disciplinary action taken in accordance with a relevant provision.

(7) This section does not prevent the disclosure of information which is already, or has previously been, available to the public from other sources.

(8) A contravention of this section in respect of any information is actionable, subject to the defences and other incidents applying to actions for breach of statutory duty.

(9) But it is actionable only at the suit of a person who is a subject of the information.