

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 27 March 2007

Public Authority: Department for Constitutional Affairs
Address: Selborne House
54 Victoria Street
London
SW1E 6QW

Summary

The complainant requested information on the number and rank of judges and magistrates who had been disciplined for misuse of departmental computer systems, including those who had been found to use the internet to view pornography. The public authority initially admitted that it held the information but refused to provide it citing the exemption in section 36. In a later development, the public authority informed the complainant that it would 'neither confirm nor deny' that it held the information requested and applied the exemptions in sections 31 and 36 of the Act. The Commissioner's decision is that the public authority breached section 17 of the Act, and that it has also incorrectly applied sections 31 and 36 of the Act. Consequently and in the particular circumstances of this complaint, the DCA should confirm whether or not it holds the information requested by the complainant.

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 has advised that on 22 March 2005, he made a request to the Department for Constitutional Affairs ("DCA") for *"information about the number and rank of judges and magistrates who had been disciplined for misuse of Departmental computer systems, including those who had been found to have used the internet to view pornography"* (the requested information).
3. After an exchange of emails between 21 April 2005 and 3 May 2005, the Department responded to the complainant's request on 3 May 2005. In its letter, the DCA confirmed that it held the requested information but applied the

- exemption in Section 36 of the Act to refuse to disclose the information (“the May refusal”). In addition, the DCA informed the complainant that by virtue of section 10(3) of the Act, it required a further 20 working days to reach a decision on the public interest test.
4. On 3 June 2005, the DCA informed the complainant that after consideration of the public interest test, it was now unable to confirm or deny that it held the requested information (“the June refusal”). To support this decision, the DCA cited sections 2(1)(b), 31(1)(g) and section 36 (2)(c). In addition, the complainant was informed that under section 36, the qualified person had reached the decision that it was in the public interest for the DCA to refuse to confirm or deny possession of the requested information.
 5. The complainant then made an immediate request for an internal review of the June refusal on 3 June 2005.
 6. On 19 July 2005 the DCA confirmed the internal review had taken place and that the June refusal had been upheld on the same grounds.
 7. The Complainant was dissatisfied with the result of the internal review and asked the Commissioner to investigate the validity of the public authority’s decision not to confirm or deny its possession of the requested information.

The Investigation

Scope of the case

8. On 5 May 2005, the complainant contacted the Commissioner to complain about the way the DCA had originally handled his request. In his email he stated that it *“seems that the DCA now seek extra time in order to determine where the balance of the public interest lies...I would ask the Commissioner to form a view whether the disclosure of information about the number and rank of judges who had been disciplined for using DCA computers to view pornography could possibly prejudice the effective conduct of public affairs as claimed in the DCA’s letter.”*
9. Following his receipt of the June refusal, the complainant wrote to the Commissioner on 13 June 2005 and revised his complaint by requesting that the Commissioner determine whether:
 - The DCA has properly refused to confirm or deny that it holds the requested information *“bearing in mind the glaring inconsistency in the letters of 3rd May and 3rd June”*.
 - The extension of time applied by the DCA to consider the public interest test was valid under the Act.

10. This Decision Notice will strictly deal with the two issues contained in paragraph 9 above. Except where specifically stated, the Commissioner's use of the term 'judge' in this Decision Notice includes both judges and magistrates.

Chronology

11. On 13 September 2005, the Commissioner wrote to the DCA and requested further explanation and justification for its application of the exemptions contained in sections 31(1)(g) and 36(2) of the Act. In addition, the Commissioner asked to be provided with further evidence relating to the identity and reasonable opinion of the qualified person under section 36(2).
12. On 28 November 2005, the DCA provided the Commissioner with further submissions to justify the applied exemptions. However, it failed to provide satisfactory evidence to the Commissioner relating to the qualified person.
13. On 3 March 2006, the Commissioner wrote to the DCA requesting further information relating to the qualified person issue; and its application of sections 31(1) (g) and 36(2).
14. On 4 August 2006, following an exchange of correspondence, the DCA clarified its full position on the application of sections 31(1) (g) and 36(2)(b). In addition it provided satisfactory evidence relating to the qualified person.

Findings of fact

15. Between 1998 and 2006, the Judicial Correspondent Unit (JCU) supported the Lord Chancellor in his responsibility for the system of judicial complaints and discipline. The JCU's functions were taken over by the Office for Judicial Complaints on 3 April 2006.
16. Between April 2003 and April 2006, complaints against judges were investigated in accordance with the Judicial Complaints Protocol (described in this Decision Notice as the Protocol). Complaints about magistrates are initially referred to the local Advisory Committee of the Magistrate district. The Advisory Committee will refer complaints to the Lord Chancellor if a case for formal disciplinary action has been established.

Analysis

Procedural matters

17. To establish initially whether the DCA has correctly handled the complainant's request, the Commissioner has to determine whether the DCA has fulfilled its procedural obligations under the Act. In reaching his determination the Commissioner will consider the issue of the contradiction between the May and June refusals.

- A full text of the statutory provisions referred to is contained in the legal annex.
18. In his letter to the DCA on 13 September 2005, the Commissioner had noted the contradiction between the May refusal and the June refusal; and requested an explanation of the circumstances surrounding the provision of these two contradictory refusal notices to *[complainant]*. In addition, the DCA was invited to provide comments on reconciling these contradictory refusal notices.
 19. The DCA responded on 28 November 2006. In explaining the circumstances surrounding the contradictory notices, it stated that: *"When we wrote to [the complainant] informing him that the DCA required further time to consider the balance of the public interest, that letter purported to confirm that the Department held the requested information. That was an administrative error. Some of the letter that [complainant] was sent was composed of standard text which case workers often use when explaining to requesters that further time is required in order to take a decision on the balance of the public interest. The Department neglected to note that the text confirming that the information was held should not have been included in this case"*.
 20. On the issue of reconciling the contradictory decisions, the DCA stated that it did *"...not consider that this administrative error [was] capable of being regarded as having produced a factual admission, nor that it in any way prevents a proper reliance on applicable exemptions from the duty to confirm or deny whether information was held."*
 21. In the absence of any direct and compelling evidence to the contrary the Commissioner accepts the explanation proffered by the DCA. The Commissioner is also especially aware that mistakes and errors occur even within the best-regulated work environments.

Consequently, the Commissioner will not deal with *[complainant]* original complaint relating to the validity of the May refusal (see paragraph 8 above) because it had been overtaken by the subsequent decision taken by the DCA in June 2005 to 'neither confirm nor deny' its possession of the requested information.

22. Section 1(1) (a) of the Act provides a duty on a public authority to confirm to the applicant whether or not it holds the information that has been requested (hereinafter described in this Decision Notice as either: "compliance with section 1", or the "duty to confirm or deny").
23. Section 17(1) provides that where the authority is relying on an exemption relating to the duty to confirm or deny and relevant to the applicant's request, it must issue a Refusal Notice within 20 working days, specifying the exemption and how it applies.
24. Having accepted the DCA's explanation (see paragraph 21 above), it is the Commissioner's view that the May refusal (as conveyed to the complainant) had been effectively overtaken by the June refusal because as the DCA has claimed the '*purported disclosure*' was based on a mistake caused by an administrative error.

25. The practical consequence of the above mistake by the DCA is that its obligations under section 17 were only fulfilled in its letter of 3 June 2005. However as this was more than twenty working days after the original request was made this breached the time limit provided by section 17(1).
26. With regard to complainant's request to examine the extension of time to consider the public interest test applied by the DCA, the Commissioner confirms that section 10(3) of the Act permits the DCA to extend for a reasonable period, the 20 working day time limit for considering the public interest test. The Commissioner also notes that the DCA had provided in the May refusal, an estimate of the date by which it expected to make the public interest decision.
27. However due to the Commissioner's view on the effectiveness of the May decision expressed in paragraph 21 (above) and his finding that the June decision breached section 17 of the Act, the Commissioner has not considered the issue of whether the extension applied by the DCA in May 2005 was reasonable in the circumstances of the complainant's request.

Exemption

28. The DCA has applied sections 31(1) (2) and (3); 36(2) (c) and (3); and 2(1)(b) of the Act to the complainant's request for information. The DCA asserts that it is excluded from compliance with the duty to confirm or deny because such compliance will prejudice the exercise of the Lord Chancellor's disciplinary functions; and the effective conduct of public affairs. The DCA also assert that the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the DCA holds the requested information.
29. The Commissioner will now deal with this case by considering the public authority's application of these exemptions. A full text of the relevant sections of the Act referred to are contained in the legal annex.

Section 31(1) exemption

30. In order to establish the validity of the DCA's position there are two issues to be determined by the Commissioner. The first is whether the utilised exemption in section 31 has been validly applied. The second question – which only arises if the first question is answered in the affirmative – is whether the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the DCA holds the information.
31. The DCA has provided public confidence arguments concerning the prejudicial impact that compliance with section 1 would have on the Lord Chancellor's disciplinary powers. The DCA has submitted that: *"Public confidence in the judiciary is a constitutional cornerstone. Its foundations lie in the maintenance of the highest standards of probity, integrity and competence within the judiciary, together with an extremely precise response to any cases in which*

those standards are found by a proper process not to have been met...Public confidence in the judiciary (and consequently legal certainty, and confidence in the administration of justice and the rule of law) requires that the public be satisfied of the independence, integrity and competence of members of the judiciary who are called to sit in judgement on a very wide range of issues including credibility and moral and social questions. The functions of the Lord Chancellor and of the Lord Chief Justice in this respect must be able to be exercised in a way calculated to guarantee that independence, integrity and competence.”

32. The DCA therefore contends that compliance with section 1 would cut across the judgement as to the manner in which disciplinary cases should be dealt with, and thereby not only prejudice the Lord Chancellor's disciplinary functions but also disproportionately undermine public confidence in the judiciary.
33. To facilitate his consideration of this complaint, the Commissioner has reviewed the Protocol. Based on this review, he has separated the disciplinary procedure and functions of the Lord Chancellor into two categories. These are:
- Investigative functions and procedure (“investigative function”). The investigative function consists of the preliminary and formal investigation of complaints of improper conduct against a judge in order to consider, ascertain and establish whether or not a complaint of improper conduct is substantiated; and whether disciplinary action should be taken; and if so whether formal or informal disciplinary action should be taken. These investigations are performed on behalf of the Lord Chancellor by the Advisory Committee of a magisterial district (“Advisory Committee”) or, the JCU, or by an independent judge appointed by the Lord Chancellor on the nomination of the Lord Chief Justice (“Nominated Judge”).
 - Disciplinary Powers: This is the stage when informal or formal sanctions are applied after the complaint of improper conduct has been substantiated and ascertained.

The ultimate sanction for improper conduct is to initiate steps leading to the removal from office of the Judge.

34. The Commissioner is satisfied that sections 31(1) (g) as defined by section 31(2) (b) applies to the Lord Chancellor's investigative functions only and that in order to rely on this exemption it is necessary for the DCA to initially show that compliance with section 1 would, or would be likely to prejudice these functions.
35. In dealing with issue of prejudice to the investigative functions of the Lord Chancellor, the Commissioner has applied the test of ‘likely to prejudice’ as enunciated by Mr Justice Mundy in the case of *R (on the application of Lord) v Secretary of State for the Home Office [2003] EWHC 2073*, and followed by the Information Tribunal in the case of *John Connor Press Associates Limited and The Information Commissioner (Appeal No. EA /2005/0005)*, where the Information Tribunal interpreted the expression ‘likely to prejudice’ within the

context of the section 43 exemption as meaning that the chance of prejudice being suffered should be more than hypothetical or a remote possibility, there must have been a real and significant risk. The Tribunal in that case indicated that the degree of risk must be such as there *'may very well'* be prejudice.

36. In *Hogan and Oxford City Council -v- The Information Commissioner (Appeal Numbers: EA/2005/006, EA/2005/00300)*, the Information Tribunal also applied Justice Mundy's test to section 31(1) of the Act. In the above appeals, the Information Tribunal stated that *"...there are two possible limbs on which a prejudice based exemption might be engaged. Firstly, the occurrence of prejudice to the specified interest is more probable than not, and secondly there is a real and significant risk of prejudice, even if it cannot be said that the occurrence of prejudice is more probable than not...The s31(1) prejudice 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."*
37. Having applied the above tests, the Commissioner is not satisfied that the DCA has demonstrated that prejudice for the purpose of the Lord Chancellor's investigative functions would, or would be likely to result from compliance with the duty to confirm or deny.
38. In taking this view, the Commissioner recognises that there are exceptional cases where it would be right to neither confirm nor deny that information requested was held because of the potential adverse inference(s) that could be drawn from compliance with section 1. For example, if during wartime, a request were made to a government department for information regarding a particular battle plan or specific weapon carried by British troops, merely confirming or denying that this information is held would be likely to prejudice the capability, effectiveness or security of the relevant forces, and the public interest would rightly weigh against doing so.
39. However with regard to the requested information, the Commissioner does not believe that compliance with section 1 would have the prejudicial effects that the DCA suggest because:
- a confirmation that it holds the requested information under section 1, would lead to the inference that complaints of computer misuse have been investigated and appropriately disciplined, or
 - a denial that it holds the requested information under section 1 would lead to the inference that no judge has been disciplined for computer misuse.
40. Either way, the Commissioner does not accept that any of the above conclusions would have a prejudicial impact on the investigative functions of the Lord Chancellor; or undermine the effectiveness of the investigation process by preventing complaints from being made by potential complainants; or detrimentally affect the JCU, Advisory Committee or Nominated Judge from performing their respective duties under the Protocol. He especially notes that the Protocol contain a rigorous and stringent investigative process which theoretically

conforms to the highest principles of natural justice. This process has some built-in checks and balances such as the requirement for the Lord Chancellor and the Lord Chief Justice to be in agreement before certain investigative issues can be progressed.

41. In the Commissioner's view, compliance with section 1 would lead to greater transparency due to the public's right to know that serious complaints against judges (such as complaints about computer misuse) are thoroughly investigated and appropriately punished. This knowledge of transparency would reinforce public confidence in the Lord Chancellor's ability to effectively supervise the judiciary.
42. On the other hand, a greater loss of confidence in the Lord Chancellor would arise from the public being '*left in the dark*' on the true state of affairs with regard to allegations of computer misuse against judges. Non-compliance with section 1 may suggest to the public that the requested information is either not available or that the Lord Chancellor is unaware of the true state of affairs with regard to such issues.
43. Finally, the Commissioner has noted that in the Guardian newspaper of 30 June 2005, the Lord Chancellor disclosed that 250 complaints of misconduct against judges and tribunal chairmen had been investigated by the DCA in 2004, 68 of which were upheld and resulted in disciplinary action. He is also aware that on 13 February 2006, Rt. Hon. Ms Harman, MP, Minister of State at the DCA, informed Parliament that between 2004 and 2005, disciplinary action was undertaken against 5 judges out of the 551 complaints investigated.¹
44. The Commissioner does not believe that public confidence in the judiciary has been disproportionately undermined by these public disclosures from the Minister of State and the Lord Chancellor. The Commissioner also considers that these disclosures support his view that the process for investigating complaints of improper conduct against judges is strong enough to withstand the prejudice arguments submitted by the DCA.
45. Accordingly, the Commissioner is not satisfied that there is a real and significant risk of prejudice to the specific purpose set out in section 31(2) (b) of the Act (that of ascertaining whether any person is responsible for any conduct which is improper). Therefore the Commissioner finds that the section 31 exemption is not engaged.
46. Consequently, the Commissioner does not need to consider the public interest test in this context.

Section 36

47. The DCA has provided satisfactory evidence to the Commissioner that it is the reasonable opinion of the Minister, as the qualified person, that compliance with

¹ (www.publications.parliament.uk/pa/cm200506). The disciplinary matters disclosed above do not necessarily relate to allegations of computer misuse; additionally, the figures disclosed by Ms Harman do not include tribunal members or lay magistrates.

the duty to confirm would or would be likely to be prejudicial to the effective conduct of public affairs under section 36(2)(c) and (3) of the Act. The DCA has provided a number of arguments to support the opinion that compliance with the duty to confirm or deny would prejudice the effective conduct of public of the quailed person.

48. The Commissioner is satisfied that the opinion of the qualified person is reasonable in all the circumstances of this case, and that the exemption under section 36 is therefore engaged in relation to the requested information. It then falls to the Commissioner to consider the public interest test arguments in either maintaining the exclusion of the duty to confirm or deny, or in disclosing whether the DCA holds the requested information.

The public interest test

49. In his approach to the competing public interest arguments in this case, the Commissioner has drawn heavily from the Information Tribunal's Decision in *Guardian Newspapers Limited and Heather Brooke vs. Information Commissioner and BBC*², where the Tribunal considered the law relating to the balance of public interest in cases where the section 36 exemption applied. Adapting the Tribunal's language to section 1(1) (a) and to the detrimental effects covered by section 36(2) (c), as well as section 36(2) (b), the Commissioner notes and adopts in particular its conclusions that:

- Unless there is any relevant exemption under the Act then the section 1 duties will operate. The “default setting” in the Act is in favour of compliance – requested information (or information about whether it is held) held by a public authority must be disclosed except where the Act provides otherwise.
- The public interest in maintaining an exclusion or exemption must outweigh the public interest in disclosure.
- The “presumption” in the Act will only operate in cases where the respective public interests are equally balanced.
- There is an assumption built in to the Act that the disclosure of information by public authorities on request is in itself of value and in the public interest, in order to promote transparency and accountability in relation to the activities of public authorities. The strength of that interest, and the strength of the competing interest in maintaining any relevant exclusion or exemption, must be assessed on a case by case basis.
- When it comes to weighing the balance of public interest, it is impossible to make the required judgement without forming a view on the likelihood, nature and extent of any prejudice.
- It is important to note the limits of the reasonable person's opinion required by section 36(2). The opinion is that disclosure of the information would have (or would be likely to have) the stated detrimental effect. That means that the

² Appeals Numbers: EA/2006/0011 and EA 2006/0013, paragraphs 81 – 92.

qualified person has made a judgement about the degree of *likelihood* that the detrimental effect would occur. It does not necessarily imply any particular view as to the *severity or extent* of such effect or the *frequency* with which it will or may occur.

- The right approach, consistent with the language and scheme of the Act, is that the Commissioner, having accepted the reasonableness of the qualified person's opinion that disclosure of the information would, or would be likely to, have the stated detrimental effect, must give weight to that opinion as an important piece of evidence in his assessment of the balance of public interest. However, in order to form the balancing judgment required by s 2(2) (b), the Commissioner is entitled, and will need, to form his own view on the severity, extent and frequency with which detrimental effect will or may occur.
50. Applying this approach to the present case, the Commissioner recognises that there are public interest arguments which pull in competing directions. He gives full weight to the qualified person's reasonable opinion that there would, or would be likely to be, some prejudice to the effective conduct of public affairs. He notes that the DCA has primarily relied on the position that compliance with the section 1 would be prejudicial to public confidence.
51. According to the DCA *"the nature and extent of that prejudice, the vital constitutional importance of the issues at stake, and the integrity of the statutory framework within which the relevant functions of the Lord Chancellor are required to be exercised raise a very substantial case for the public interest in maintaining the exemptions... Such public interest as there may be in [compliance] as a public good in itself is outweighed in this case by these considerations..."*.
52. The Commissioner fully accepts that there is a public interest in ensuring the maintenance of public confidence in the judiciary especially as it is a constitutional cornerstone, which plays an integral part in the separation of powers with the executive and legislative arms of government. The Commissioner also recognises that there is a public interest in ensuring that the Lord Chancellor should be able to fully exercise his constitutional functions without any constraints.
53. In the particular circumstances of this case, however, the Commissioner has doubts about the likelihood, severity or extent of the detrimental effects. The issues set out at paragraphs 39 to 46 above indicate that it is difficult to see any substantial harm to the public interest arising from the likely implications of the DCA complying with section 1(1)(a). Indeed, the consequence of non-compliance on the issue of transparency and public confidence in the judiciary could cause greater harm. It would be undesirable to convey any impression that allegations of improper computer use by a judge or magistrate are ignored, not taken seriously or otherwise "swept under the carpet."
54. More generally – echoing the words of the Tribunal - the Commissioner is mindful of the strong public interest in openness and transparency. The Commissioner also recognises that in all the circumstances of this case, there is a strong public interest in knowing that complaints relating to the personal conduct of judges and magistrates are investigated thoroughly and impartially. This public interest factor

is strengthened by the fact that the judiciary plays a very fundamental role in public, private and commercial life.

55. As the head of the judiciary³ - in charge of the administration of the courts and the legal system, it is important for the public to know and be assured that the Lord Chancellor (now the Office for Judicial Complaints) thoroughly investigates each and every allegation of computer misuse by judges. A strong argument for the DCA to comply with the requirements of section 1 is that it is in the greater public interest to promote a culture of openness and transparency in the manner that the Lord Chancellor exercises his investigative functions; and enhance public confidence in the judiciary.
56. The Commissioner has considered the competing public interest arguments, as set out above. He is not satisfied that the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in the DCA disclosing whether or not it holds the requested information. The Commissioner has reached this conclusion emphatically, but even if the arguments were thought to be equally balanced, the duty to confirm or deny would not be excluded.
57. For the avoidance of doubt, the Commissioner wishes to add that this conclusion should not be taken to mean that the requested information should be released if it is held by the DCA, because other considerations may be relevant if actual release of the requested information were being considered.

The Decision

58. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act:

Section 17(1) – in that the refusal notice issued to the complainant on 3 June 2005 was not provided within 20 working days of the request.

section 31(1)(g), (2)(b) and (3) – in that it did not establish that there is a real and significant risk of prejudice to the specific purpose set out in the exemption.

Section 36 (2)(c) – in that the public interest in maintaining the exclusion of the duty to confirm or deny does not outweigh the public interest in disclosing whether the DCA holds the requested information.

Steps Required

³ The Lord Chancellor was head of the judiciary on the date of the complainant's request. This role has now been changed by the Constitution Reform Act 2005 which commenced on 3 April 2006. This Act transferred the Lord Chancellor's judicial functions to the President of the Courts of England and Wales – a new title for the Lord Chief Justice.

59. The Commissioner requires that the DCA confirm to the complainant whether or not it holds the requested information; and if it does hold the information to release it or issue a refusal notice under section 17 of the Act within 30 days of the date of this Notice.

Failure to comply

60. Failure to comply with the step described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

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

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

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

Dated the 27th day of March 2007

Signed

**Richard Thomas
Information Commissioner**

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

Legal Annex

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

Section 2(1) provides that –

“Where any provision of Part II states that the duty to confirm or deny does not arise in relation to any information, the effect of the provision is that either –

- (a) the provision confers absolute exemption, or
- (b) in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the public authority holds the information

section 1(1)(a) does not apply.”

Section 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 31(1) provides that –

“Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),

Section 31(2) provides that –

“The purposes referred to in subsection (1)(g) to (i) are-

- (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,

Section 31(3) provides that –

“The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).”

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-

- (c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

Section 36(3) provides that –

“The duty to confirm or deny does not arise in relation to information to which this section applies (or would apply if held by the public authority) if, or to the extent that, in the reasonable opinion of a qualified person, compliance with section 1(1)(a) would, or would be likely to, have any of the effects mentioned in subsection (2).”

opinion of a qualified person”.

Section 36(5) provides that –

“In subsections (2) and (3) “qualified person”-

- (a) in relation to information held by a government department in the charge of a Minister of the Crown, means any Minister of the Crown,
- (b) in relation to information held by a Northern Ireland department, means the Northern Ireland Minister in charge of the department,
- (c) in relation to information held by any other government department, means the commissioners or other person in charge of that department,
- (d) in relation to information held by the House of Commons, means the Speaker of that House,
- (e) in relation to information held by the House of Lords, means the Clerk of the Parliaments,
- (f) in relation to information held by the Northern Ireland Assembly, means the Presiding Officer,
- (g) in relation to information held by the National Assembly for Wales, means the Assembly First Secretary,
- (h) in relation to information held by any Welsh public authority other than the Auditor General for Wales, means-
 - (i) the public authority, or
 - (ii) any officer or employee of the authority authorised by the Assembly First Secretary,
- (i) in relation to information held by the National Audit Office, means the Comptroller and Auditor General,
- (j) in relation to information held by the Northern Ireland Audit Office, means the Comptroller and Auditor General for Northern Ireland,
- (k) in relation to information held by the Auditor General for Wales, means the Auditor General for Wales,

- (l) in relation to information held by any Northern Ireland public authority other than the Northern Ireland Audit Office, means-
 - (i) the public authority, or
 - (ii) any officer or employee of the authority authorised by the First Minister and deputy First Minister in Northern Ireland acting jointly,
- (m) in relation to information held by the Greater London Authority, means the Mayor of London,
- (n) in relation to information held by a functional body within the meaning of the Greater London Authority Act 1999, means the chairman of that functional body, and
- (o) in relation to information held by any public authority not falling within any of paragraphs (a) to (n), means-
 - (i) a Minister of the Crown,
 - (ii) the public authority, if authorised for the purposes of this section by a Minister of the Crown, or
 - (iii) any officer or employee of the public authority who is authorised for the purposes of this section by a Minister of the Crown.”