

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 27 July 2009

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

Summary

The complaint requested information which the Ministry of Justice (MoJ) held about the handling of a previous information request by another government department which had been referred to the MoJ for advice. The MoJ refused to disclose this information to the complainant under section 36 'prejudice to the effective conduct of public affairs'. The Commissioner has investigated and found that for the majority of the withheld information section 36(2) (b) is engaged and that the public interest in maintaining the exemption outweighs the public interest in disclosure of the information. However, he found that section 36(2)(b) was not engaged in relation to correspondence between DCMS and the complainant and the MoJ and 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. On 31 January 2006, the complainant wrote to the Department for Constitutional Affairs (now the Ministry of Justice), to request the following:

"Copies of all communications, documents and any other records in the possession of the Department of Constitutional Affairs relating to any of our requests to the Department for Culture, Media and Sport."

3. The Department for Constitutional Affairs (DCA) replied to the complainant on 28 February 2006. It confirmed that it held information falling within the scope of the request and that the information had related to interactions by its FOI clearing

house with the Department for Culture, Media and Sport (DCMS). However, it stated that the information was exempt from disclosure under the following provisions of the Act:

- Section 36(2)(b) (disclosure of the information would, in the reasonable opinion of a qualified person, inhibit the free and frank provision of advice or the free and frank exchange of views for the purposes of deliberation); and
- Section 36(2)(c) (disclosure of the information would, in the reasonable opinion of a qualified person, otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs).

4. The DCA explained to the complainant that a minister had formed the opinion that the requested information was exempt under section 36. It then provided the following reasons for the applicability of sections 36(2)(b) and (c):

- “The Clearing House exists in order to ensure that the FOI Act is applied consistently and appropriately to requests received by central government departments...In order for the Clearing House to function effectively, departments must feel confident that they can refer cases appropriately, and discuss candidly the application of the Act in relation to those cases, without fear that the information they supply will be disclosed.”
- “The request has the quite unintentional effect of bypassing the statutory enforcement mechanisms approved by Parliament. The Act provides for scrutiny of departments’ handling of FOI requests via a number of formal mechanisms, including requests for internal review, complaints to the Commissioner, and appeals to the Information Tribunal. These mechanisms...constitute the appropriate forum for investigations into how individual’s requests for information have been handled.”
- “If requests for information in relation to referred cases were routinely accepted by DCA, the burdens imposed on the Department by the Act would increase substantially. This would be likely to have a prejudicial effect on the ability of the Department to meet its obligations under the Act.”

5. In relation to its assessment of the public interest test under section 36, the DCA stated that the balance “falls clearly in favour of withholding the information requested”. It also explained that it used the following countervailing considerations in reaching its conclusion:

In favour of release

- “The accountability of public authorities for the quality of their decision making in relation to requests made under the Act. This includes ensuring that decisions have been made on the basis of good quality advice. Disclosure of the information might give some insight into internal deliberations in relation to the handling of the request. It could, in theory, go some way towards confirming whether the request has been handled appropriately and in compliance with the Act.”

- “The promotion of a greater understanding of how departments, including the DCA and the Clearing House, generally handle requests made under the FOI Act. Disclosure of the information sought might give some insight into this important area of Government business, and give a clearer understanding of what the Clearing House is and does.”

Against release

- “Ensuring that the ability of the Clearing House to function effectively is not undermined....Consistent and correct application of the Act is self-evidently in the public interest.”
 - “Ensuring that the statutory enforcement mechanisms put in place by Parliament are not inadvertently bypassed by such requests....There is minimal public interest in increasing taxpayers’ costs by providing applicants with information on the handling of FOI requests outside the established entitlements that they already enjoy under the terms of the Act. The public interest in confirming whether requests have been handled appropriately and in compliance with the Act is already met by the statutory enforcement mechanism in place.”
 - “In relation to the public interest in understanding what the Clearing House is and does, that information with regard to its operation and functions is publicly available at: <http://www.foi.gov.uk/clearing house.htm>.”
6. On 8 March 2006, the complainant contacted the DCA to request an internal review of its decision. He asked it to consider the following points:
- “The opinion given of the qualified person is too vague and imprecise to constitute a ‘reasonable opinion’.”
 - “Section 36 cannot be used to address the cost and resource implications of meeting requests.”
7. On 23 May 2006, the DCA informed the complainant of the outcome of its internal review, in which it upheld the original decision. It set out the following points:
- ”Section 36(2)(b) - The ability to engage in candid discussion and exchange information without fear of improper disclosure constitutes the type of vital interest that section 36(2)(b) was enacted by Parliament to protect. For this reason, the qualified person formed the opinion that the information was exempt from disclosure under that section.”
- “Section 36(2)(c) - Bypassing the statutory enforcement mechanisms approved by Parliament and the accompanying increased burdens that would thereby be imposed on government in seeking to meet its obligations under the Act would be prejudicial to the effective conduct of public affairs. As such, the qualified person formed the opinion that the information requested was exempt from disclosure under section 36(2)(c).”

The Investigation

Scope of the case

8. On 30 May 2006 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
- “The DCA’s reasoning is in general terms and no way relates to “the circumstances of the case” as required by section 2(2)(b) of the Act.”
 - “The opinions expressed appear to be those of a civil servant rather than a qualified person.”
9. The Commissioner notes that the complainant has made the request not as an individual but on behalf of the group to which he is chair. The Commissioner as therefore not considered if the complainant therefore had any personal data rights under the DPA.

The Commissioner also notes that this request stems from the complainant’s previous case reference FS50122058. In this case the Commissioner determined that the information requested fell within the definition of Environmental information as defined by the Environmental Information Regulations 2004 (EIR). The Commissioner has considered the content of the withheld information in this case but does not consider that the information is environmental and so does fall to be dealt with under the Act and not the EIR.

Chronology

10. On 6 September 2007 the Commissioner contacted the Ministry of Justice (MoJ), the successor body to the DCA, to request the following:
- i. Details of the process by which the qualified person’s opinion in relation to the application of section 36 was given, namely:
 1. The date the request was put to the qualified person,
 2. The nature of the request made to the qualified person, and
 3. Any evidence demonstrating the agreement of the qualified person.
 - ii. Any other representations the MoJ wishes to make in this case.
11. The MoJ replied to the Commissioner on 5 November 2007, in which it provided him with the following details (which are reproduced here as direct quotations):

Opinion of the qualified person

- The request was put to the qualified person on 12 May 2006. The qualified person at the time was Baroness Ashton. She gave her opinion under section 36 and this decision was communicated through her Private Secretary.
- The key issues which Baroness Ashton considered that formed the basis of her decision were:

- i. The prejudicial effect of disclosure on the frankness and candour of advice given by the Clearing House to Departments in relation to referred FOI requests.
- ii. The prejudicial effect that disclosure of this type of information would result in officials, in both the Clearing House and referring department being unwilling to engage in candid discussion as part of the deliberative process.

Other representations

- Referring departments are encouraged to share with the Clearing House information which forms the basis of what are often highly contentious and sensitive requests, with the assurance that views were being given in confidence and would not be put into the public domain. This is a particularly relevant consideration when disclosing the contents of such discussions, which formed the basis of the referring department's decision to refuse to disclose information.
 - The Act is not designed to be used as a means to challenge or to overturn disclosure decisions by disclosing information which would reveal the internal deliberative process which occurred in giving consideration to the request for information. This would undermine the ability of officials to determine whether it is in the public interest to disclose information. Furthermore, disclosure would circumvent a department's ability to effectively review its own handling of a request for information which in order to be effective should be free of intrusion.
12. The Commissioner wrote again to the MoJ on 6 February 2008 in which he asked for a copy of the withheld information.
 13. The MoJ responded on 11 March 2008 and provided the Commissioner with some of the withheld information requested but stated that it was not disclosing all of the withheld information as it contained free and frank exchanges. The MoJ relied upon section 51(5) of the Act. However the MoJ did provide a summary of this information to the Commissioner.
 14. The Commissioner wrote again on 12 April 2008 reiterating his request for a copy of the remaining withheld information.
 15. The MoJ responded on 21 May 2008 again refusing to provide the Commissioner with a copy of this information.
 16. The Commissioner wrote again on 4 September 2008 querying the date on which the qualified person's opinion was sought and given. In an earlier response MoJ indicated they had obtained the qualified person's opinion on 12 May 2006 although the refusal notice was issued on 28 February 2006.
 17. The MoJ responded on 10 October 2008 clarifying that the qualified person's opinion was originally sought on 23 February 2006 and then sought again on 12 May 2006 for the purpose of the internal review.

18. The Commissioner made a final request for the remaining withheld information on 20 October 2008. On 21 November 2008 he served an Information Notice on the MoJ to formally request a copy of the remaining withheld information, accepting that a small amount of the information described by MoJ in the 11 March 2008 letter could not be provided to the Commissioner by virtue of section 51(5) of the Act.
19. The MoJ supplied the Commissioner with a copy of the remaining withheld information on 8 January 2009.

Findings of fact

20. The Government established the Access to Information Central Clearing House in January 2005, located within the DCA (now the MoJ). The Clearing House's role is to ensure consistency across central government in the way the Data Protection Act, Freedom of Information Act, and Environmental Information Regulations are applied. It provides advice and assistance to Whitehall departments (including non-ministerial departments) in dealing with complex information requests, to ensure that government takes a consistent and appropriate approach.
21. The Ministry of Justice created on 9 May 2007 by merging the [Department for Constitutional Affairs](#) with parts of the [Home Office](#).
22. This request for information was made on 31 January 2006. The request relates to a separate request for information made to the DCMS on 19 September 2005. The internal complaints procedure in relation to this request was concluded by DCMS on 21 April 2006 and a complaint was made to the Commissioner about its handling of the request on 9 June 2006. A decision notice was issued in relation to this case on 9 July 2008, which was appealed to the Information Tribunal (EA/2008/0065), although this appeal had not occurred at the time the request was made.¹

Analysis

Exemption: Section 36 - 'Prejudice to the effective conduct of public affairs'

23. Section 36(2)(b) (i) and (ii) and 36(2) (c) provide that information is exempt if, in the reasonable opinion of a qualified person, disclosure of the information would or would be likely to inhibit the free and frank provision of advice or the free and frank exchange of views for the purposes of deliberation; or would otherwise prejudice, or be likely otherwise to prejudice, the effective conduct of public affairs. The MoJ have applied 36(2) (b) (i) and (ii) and 36(2) (c) to all of the withheld information.
24. The MoJ did not state which level of prejudice it believes would occur from release of the information – 'would' or 'would be likely to' prejudice. In *McIntyre v*

¹ http://www.ico.gov.uk/upload/documents/decisionnotices/2008/fs_50122058.pdf

The Information Commissioner and the Ministry of Defence the public authority had claimed s36(2) but had not specified whether the Qualified Person's opinion was that prejudice would occur or would be likely to occur. The Information Tribunal commented at paragraph 45 that:

"We consider that where the qualified person does not designate the level of prejudice, that Parliament still intended that the reasonableness of the opinion should be assessed by the Commissioner but in the absence of designation as to level of prejudice that the lower threshold of prejudice applies, unless there is other clear evidence that it should be at the higher level."

In this case, without any strong evidence, the Commissioner has therefore considered whether disclosure would be likely to have the effects listed above.

25. The Information Tribunal has decided (*Guardian & Brooke v The Information Commissioner & the BBC*) (EA/2006/0011 and EA 2006/0013) that a qualified person's opinion under section 36 is reasonable if it is both '*reasonable in substance and reasonably arrived at*'. It elaborated that the opinion must therefore be 'objectively reasonable' and based on good faith and the proper exercise of judgement, and not simply '*an opinion within a range of reasonable opinions*'. However, it also accepted that '*there may (depending on the facts) be room for conflicting opinions, both of which are reasonable*'. In considering whether an opinion was reasonably arrived at it proposed that the qualified person should only take into account relevant matters and that the process of reaching a reasonable opinion should be supported by evidence, although it also accepted that materials which may assist in the making of a judgement will vary from case to case and that conclusions about the future are necessarily hypothetical.
26. Therefore in relation to 'the reasonable opinion of a qualified person', in order to establish that the exemption has been applied correctly the Commissioner must:
 - Establish that an opinion was given;
 - Ascertain who was the qualified person or persons;
 - Ascertain when the opinion was given; and
 - Consider whether the opinion was objectively reasonable and reasonably arrived at.
27. The MoJ explained that at the time of the request the qualified person was Baroness Ashton and that her opinion was sought on 23 February 2006 and again on the 12 May 2006 following the request for an internal review. The MoJ explained that Officials advised Baroness Ashton that the complainant had made three requests for information to DCMS, which were referred to the MoJ, and a separate request for information to the former DCA for all information held which is in relation to his requests to DCMS. The MoJ stated that the key issues, which Baroness Ashton considered, which formed the basis of her decision, were:

- The prejudicial effect of disclosure on the frankness and candour of advice given by the Clearing House to Departments in relation to referred FOI requests; and
 - The prejudicial effect that disclosure of this type of information would result in officials, in both the Clearing House and referring department, being unwilling to engage in candid discussion as part of the deliberative process. It would certainly result in departments being less willing to refer cases and freely supplying Clearing House with information in relation to these referred cases.
28. The Commissioner notes that section 36(2) (c) can only be relied upon provided that the arguments for engaging it are different to those inherent in the other limbs, in this case 36(2) (b) (i) and (ii). The Commissioner considers that the arguments considered by the qualified person which refer to the disclosure interfering with the existing complaints and appeal mechanisms in place for dealing with request and the argument that complying with 'meta' requests would create an additional burden on the public authority are not to do with the free and frank provision of advice or exchange of views. These arguments can therefore be said to fall within the definition of 36(2) (c) 'would be likely to otherwise prejudice the effective conduct of public affairs.
29. The Commissioner did request that the MoJ provide some evidence demonstrating the opinion of the qualified person. However, the MoJ was unable to provide this to the Commissioner as no written record was made. Whilst the Commissioner recognises that this would have assisted him in reaching a conclusion as to whether the qualified person's opinion was reasonably arrived at, it does not, on its own, mean that the exemption is not engaged.
30. The Commissioner is satisfied that for the majority of the withheld information the qualified person's opinion in respect of both sections 36(2)(b) and (c) was objectively reasonable and reasonably arrived at. He has taken into account the content of information and the timing of the request. The factors considered by the qualified person were reasonable ones to consider and it is reasonable that they apply to the circumstances of the case.
31. However, the Commissioner does not consider that the qualified person's opinion was objectively reasonable in relation to the correspondence withheld which the complainant will have already had access to. Included within the withheld information is correspondence from DCMS to the complainant dated 13 January 2006; 6 February 2006; 22 February 2006; and the 21 April 2006. There is also a letter from MoJ to the complainant dated 28 February 2006. The Commissioner does not consider that it is an objectively reasonable opinion that disclosure of this information would be likely to have the prejudicial effects put forward. In relation to this information, the Commissioner therefore finds that section 36(2)(b) and (c) is not engaged. The Commissioner notes that MoJ did not apply section 21 'reasonably accessible to applicant' to this information.

Public Interest Test

32. Section 36 is a qualified exemption, meaning that the public interest must be considered in order for the exemption to be maintained. This test is set out in section 2(2)(b) of the Act and states that the obligation to disclose information under section 1(1)(b) does not apply if or to the extent that “in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.”
33. In considering the public interest test the Commissioner has taken into account the findings of the Tribunal in EA/2008/0062 (Home Office and MoJ v Information Commissioner). An appeal by the Home Office/MoJ of the Tribunal's decision on the section 36 aspect of the decision was dismissed by the High Court in June 2009².
34. In the Home Office/MoJ case the request was for ‘*internal communications with Government and Government departments relating to the use of [FOIA] by John Connor Press Associates*’. This type of request had been termed a ‘meta request’ by the Home Office and the MoJ. In this case the Tribunal upheld the Commissioner's decision that the public interest under section 36 favoured the disclosure of the information.
35. In the case of *Guardian & Brooke v The Information Commissioner & the BBC*, the Information Tribunal acknowledged that the application of the public interest test to the section 36 exemption, “involved a particular conundrum,” noting that although it is not for the Commissioner to form his own view on the likelihood of prejudice under this section (because this is given as a reasonable opinion by a qualified person), in considering the public interest, “it is impossible to make the required judgement without forming a view on the likelihood of inhibition or prejudice” (para 88).
36. In the Tribunal's view, the reasonable opinion is limited to the *degree of likelihood* that inhibition or prejudice would occur, on the balance of probabilities. It therefore argued that the reasonable opinion, “does not necessarily imply any particular view as to the *severity* or *extent* of such inhibition [or prejudice] or the *frequency* with which it will or may occur, save that it will not be so trivial, minor or occasional as to be insignificant” (para 91).
37. This means that whilst the Commissioner should give due weight to the reasonable opinion of the qualified person when assessing the public interest, he can and should consider the severity, extent and frequency of prejudice or inhibition to the subject of the effective conduct of public affairs etc.

Arguments in favour of maintaining section 36(2) (b) (i) and (ii)

38. The Commissioner has accepted the qualified person's opinion (in the circumstances of this case), that disclosure of the requested information 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. He considers that severity and extent and the likely effects under section 36(2)(b) carry significant weight in

² Home Office & Anor v The Information Commissioner [2009] EWHC 1611 (Admin) (06 July 2009)

this case due to the timing of the request and the content of the information. The request in this case was made before the completion of the internal review.

39. In the Home Office/MoJ decision the Tribunal also considered the 'chilling effect'. The public authority argued that if meta information was disclosed it would inhibit the duty of officials to discuss issues relating to FOIA requests and to provide advice in a free and frank manner. The Tribunal found that although there could be a chilling effect in particular cases this argument could not be maintained at a general level. In High Court appeal of the Tribunal's decision Keith J criticised the Tribunal's decision for stating that less weight should be given to generalised factors in the favour of maintaining the exemption. The Commissioner accepts that generalised factors can carry weight, but this will vary from case to case and also notes the comment the High Court makes that the Tribunal could have meant that general factors must be properly anchored to the facts of the case. It is important that generalised factors are carefully considered or the exemption in question could be elevated to near absolute status. The Commissioner maintains a general position that timing and the content are crucial factors and in many cases it will be reasonable to expect civil servants to provide advice FOI requests robustly and comprehensively in the face of disclosure. This was a premise that the High Court did not challenge.
40. In the circumstances of this case, the Commissioner considers that this argument had greater weight than in the Home Office case as at the time of the request the internal review of the DCMS case was still under review. He therefore considers that the chilling effect is more than a general argument in this case but could have directly impacted on the quality of responses provided in the DCMS case. The Commissioner also accepts that a wider chilling effect on other similar scenarios will be possible if information was to be disclosed before a formal decision had been made on the outcome of the internal review.
41. Further, in the circumstances of this case, the content of the information is particularly free and frank and that coupled with the timing of the request could have adversely affected the candour with which officials communicated during the continuation of that appeal process.

Arguments in favour of maintaining section 36(2) (c)

42. The Commissioner has given much less weight to the general arguments that disclosure would bypass statutory enforcement mechanisms and would be increase the burden on government. The Commissioner considers that both sections 12 and 14 are more the relevant mechanisms built into the Act in considering burden and disruption or distraction. The MoJ have not supplied any convincing evidence to support giving any significant weight to the public interest in maintaining this exemption. The Commissioner acknowledges that some weight must be given as he has accepted the qualified person's opinion as reasonable but this is very much at the lowest end of the scale.
43. In reaching this finding the Commissioner has taken into account the decision of the High Court on this aspect of bypassing the enforcement mechanisms in the Act:

“...the Tribunal presumably thought – in my view rightly – that there was a difference between a request intended to find out how a previous request for information had been handled, and a complaint that it had not been handled properly. The fact of the matter is that the enforcement mechanisms provided for by the Act are in addition to the core right in section 1(1), and should not be used in substitution for it.” (paragraph 32)

Factors in favour of disclosure.

44. In the Home Office/MoJ decision Tribunal disagreed that because the information may be anodyne, as claimed by the public authority, there is little public interest in its disclosure. Rather, the Tribunal stated that there was an important public interest in disclosing the information to demonstrate that the processes for dealing with information requests are working well. Disclosure of information in this case is not anodyne and would enable understand of the nature of advice given by the central government department (the MoJ FOI Clearing House) advising other departments on FOI request handling. The Commissioner therefore finds that there is a strong public interest in disclosure in terms of general reassurance around the process and also actual content of the information.
45. He also recognises that if the information had been disclosed at the time of the request it may have assisted the complainant in his appeal and that the complainant's request was of wider public interest.
46. The Commissioner also acknowledges that in this case the complainant's request was delayed by a considerable gap between the refusal notice and the internal review, far beyond the good practice of 20 working days the Commissioner recommends. He has therefore also accorded this factor some weight as disclosure would have provided some evidence of the deliberations that took place during this period. There is a wider public interest in understanding such delays in the FOI process.

Conclusion on public interest balance

47. The Commissioner finds that in the circumstances of this case the specific public interest factors in favour of maintaining the section 36(2)(b) exemption outweigh the public interest factors in favour of disclosure of the information. In reaching this decision the Commissioner placed particular weight on the timing of the request and the content of the information. He considers that the chilling effects of disclosure whilst the internal review was still under consideration and the effect on candour and quality of advice would be significant in this case. He finds that the balance under section 36(2)(b)(i) and (ii) favours non disclosure, but not under section 36(2)(c).

The Decision

48. The Commissioner's decision is that the public authority dealt with the following elements of the request for information in accordance with the Act:

i. The application of section 36(2) (b) (i) and (ii) to the requested information (other than the information detailed in paragraph 31).

49. However, the found that the public authority failed to deal with the following elements of the request for information in accordance with the Act:

i. Incorrectly applied the section 36(2) (b) (i) and (ii) and 36(2)(c) to the information detailed in paragraph 31.

Steps Required

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

- Disclose to the complainant the letters between DCMS and the complainant dated 13 January 2006; 6 February 2006; 22 February 2006; and the 21 April 2006.
- Disclose to the complaint the letter between the MoJ and the complainant dated 28 February 2006

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

Right of Appeal

52. 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@tribunals.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 July 2009

Signed

Steve Wood
Deputy Commissioner

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

Legal Annex

Prejudice to effective conduct of public affairs.

Section 36(1) provides that –

“This section applies to-

- (a) information which is held by a government department or by the National Assembly for Wales and is not exempt information by virtue of section 35, and
- (b) information which is held by any other public authority.

Section 36(2) provides that –

“Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act-

- (a) would, or would be likely to, prejudice-
 - (i) the maintenance of the convention of the collective responsibility of Ministers of the Crown, or
 - (ii) the work of the Executive Committee of the Northern Ireland Assembly, or
 - (iii) the work of the executive committee of the National Assembly for Wales,
- (b) would, or would be likely to, inhibit-
 - (i) the free and frank provision of advice, or
 - (ii) the free and frank exchange of views for the purposes of deliberation, or
- (c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

Section 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).”

Section 36(4) provides that –

“In relation to statistical information, subsections (2) and (3) shall have effect with the omission of the words "in the reasonable 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."

Section 36(6) provides that –

“Any authorisation for the purposes of this section-

- (a) may relate to a specified person or to persons falling within a specified class,
- (b) may be general or limited to particular classes of case, and
- (c) may be granted subject to conditions.”

Section 36(7) provides that –

A certificate signed by the qualified person referred to in subsection (5)(d) or (e) above certifying that in his reasonable opinion-

- (a) disclosure of information held by either House of Parliament, or
 - (b) compliance with section 1(1)(a) by either House,
- would, or would be likely to, have any of the effects mentioned in subsection (2) shall be conclusive evidence of that fact.