

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 24 June 2010

**Public Authority:** Ealing Council

**Address:** Perceval House  
14/16 Uxbridge Road  
London  
W5 2HL

### Summary

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The complainant requested the names, job titles, departments and telephone numbers of all the council's employees excluding school and manual staff. The council supplied some of the information but refused disclosure of the remainder under s36(2)(c), s31(1)(g) and s40(2) of the Act.

The Commissioner decided that the public interest in maintaining the exemption at s36(2)(c) outweighed the public interest in disclosure. As the Commissioner's decision is that the information is exempt from disclosure he has not gone on to consider the application of the exemptions at s31 and s40.

The Commissioner found the council to have breached s17(1), s17(1)(b) and s17(3)(b) of the Act.

### 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.

### The Request

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2. On 5 December 2006 the complainant requested the following information from the council:

*"Borough of Ealing list of all employees, their job titles and business telephone numbers"*

3. On 12 December 2006 the council provided the complainant with a directory of its senior staff down to service manager level containing their names, job titles and contact details. The complainant wrote to the council on 2 January 2007 saying that there was an omission in its response and that he wanted:

*"...information (Directory) about all of the employees in the London Borough of Ealing; names, job titles and contact detail... My first choice is printed Directory of all the employees in the London Borough of Ealing; names, job titles, contact detail. My second choice is a disc (an exact copy from the London Borough of Ealing internal computer); if the printing expenses exceed the free copy allowance. Please let me know what expenses would incur for the disc which would accompany the printed Directory of all of employees in the London Borough of Ealing".*

4. On 8 January 2007 the council informed the complainant that it did not have a staff directory and that the requested information was contained within several databases including the authority's intranet and telephone system. The council advised the complainant that it employed high numbers of staff including contract and temporary employees who are with the council for a limited time. It explained that together with school staff deployed throughout the borough the number of employees was 7,665 and asked the complainant to confirm whether he wanted details of school employees. The council also asked the complainant to indicate the type of contact detail he was seeking such as address, email or telephone number. It explained that due to the size and complexity of the request there might be a cost limit as the authority would need to take into account the extraction of information from databases, the removal of extraneous detail such as data concerning ex staff and reformatting the information for printing. The council advised that personal information was covered by the Data Protection Act and that under the first data protection principle of fair and lawful processing, staff would need to be consulted as to whether they consented to their details being released. It advised the complainant that many staff contact details were available via the management directory, the internet and publications such as the council's A-Z of Services.
5. On 14 January 2007 the complainant restated his request to the council as follows:

*"My request for information (Directory) of all employees in the London Borough of Ealing"*

*relates only to those employees who perform their duties on the premises of the Borough (Perceval House etc) and who are permanently or through contract employed by the London Borough of Ealing, namely the Directory of all the Officials in the Borough including all of their staff. This would exclude any school employees or manual workers. This information (Directory) should include the name, job title, department and business telephone number; email optional."*

6. On 22 January 2007 the council informed the complainant that because the information was not held within a single database the time required to produce it would exceed 18 hours and therefore the appropriate limit of £450 as prescribed in the Freedom of Information and Data Protection (appropriate limit and fees) Regulations 2004. The council consequently refused the information request under s12 (appropriate limit) of the Act.
7. The refusal notice of 22 January 2007 also informed the complainant that the requested information constituted personal data and that the authority was required to comply with the first data protection principle in ensuring that personal data was processed fairly. The council stated that it considered that details of its senior staff should be made available but that there was not the same expectation for details of junior staff to be made public.
8. The complainant appealed on 5 February 2007 and on 12 February 2007 the council's internal review maintained the decision to exempt the information via s12 of the Act. The authority advised the complainant to write to its Interim Head of Human Resources if he was still dissatisfied. The complainant did so on 23 February 2007. On 28 June 2007 the council's Head of HR Business Services informed the complainant that the information would not be disclosed as it fell within the exemptions at s40(2) and s40(3) (personal information) of the Act.
9. The authority next advised the complainant to write to its Executive Director of Finance and Business Support (later named as the Executive Director of Corporate Resources) if he wished to appeal further. The complainant did so and on 17 September 2007 he was informed that the information was exempt from disclosure via s31 (law enforcement), s36 (effective conduct of personal affairs) and s40 (personal information) of the Act.

## The Investigation

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### Scope and chronology of the case

10. On 18 November 2007 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant referred to an earlier decision notice, reference FS50097435, which he maintained had not been taken into account by the council in its decision to withhold all of the requested information.
11. On 15 January 2009 the Commissioner asked the council for a copy of the management directory that had been provided to the complainant in order to assess the extent of disclosure that had already taken place. He asked the authority to clarify its reliance on the exemption at s31. It appeared to the Commissioner that the authority was seeking to rely on the subsections at s31(1)(a) and s31(1)(g) for the purpose at s31(2)(i) but the council had not specified this. He asked the council to clarify its reliance on the exemption at s36 and requested an explanation of the public interest test in respect of that exemption. He also asked the council to confirm whether or not it remained reliant on the s12 exemption as this had not been addressed in its final review.
12. In his letter, the Commissioner advised the council that it had not moved correctly through the process required by a public authority on receipt of a request for information. The council's appeals process had entailed three consecutive reviews of its refusal to disclose the information. The Commissioner pointed the council to his published guidance on the appropriate procedure.
13. On 4 February 2009 the council acknowledged that its appeals procedure should not have involved three stages and said that it has since instituted a single stage process. The authority supplied the Commissioner with a copy of the management directory that had been provided to the complainant. It confirmed that it was no longer reliant on s12 of the Act in order to withhold the requested information. It informed the Commissioner that it was no longer reliant on s31(1)(a) to withhold the information but that it was reliant on s31(1)(g) and the purpose at s31(2)(i) (securing the health, safety and welfare of persons at work) to withhold staff names and telephone numbers. The council informed the Commissioner that it was also reliant on s36(2)(c) to withhold the information and it supplied its consideration of the public interest test as required by the exemption. The council further informed the Commissioner that its reliance on s40 did not apply to "public facing" staff whose names and telephone numbers already entered the public domain during the normal course of their work.

14. With reference to the complainant's submission that an earlier decision notice (FS50097435) concerning similar information may have set a precedent in relation to the complaint, the Commissioner advised the complainant why this was not the case. The Commissioner explained that his decision in the previous instance was that the public authority concerned had incorrectly refused the information on grounds of cost. His decision notice on that occasion had advised the authority that if it believed the information should be withheld by virtue of an exemption it should issue an appropriate refusal notice. The Commissioner informed the complainant that the public authority had then gone on to provide the relevant refusal notice.

## Analysis

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### Exemptions

#### Section 36

15. The council relied on s36(2)(c) in order to withhold the names of employees, their job titles and contact details other than those already disclosed to the complainant. The council informed the Commissioner that in the opinion of the authority's monitoring officer, release of the requested information would be likely to prejudice the council's ability to offer an effective service to the public. The council confirmed to the Commissioner that its monitoring officer is the qualified person whose opinion is required by the s36 exemption.
16. The Commissioner has read the qualified person's opinion and considers it to be consistent with the Information Tribunal's determination in *Guardian & Brooke v The Information Commissioner (EA/2006/0011 and EA/2006/0013)* that 'a reasonable opinion' for purposes of the exemption is one that is 'reasonable in substance and reasonably arrived at'.
17. The council was concerned that the details of 3512 employees would be placed into the public domain by the requested disclosure. The authority submitted that it already discloses names, job titles and contact details for departmental heads and senior staff on a routine basis in response to general requests from the public. It maintained that it also discloses the contact details of most staff below this level in response to specific requests from members of the public who wish to deal with a particular department. The council submitted that its website provides generic email addresses and telephone numbers to enable contact by the public with each department as well as specific contact details for various named individuals. The council declared that

it was confident that its published contact details ensured sufficient public access to all of its services.

18. The council stated its concern that whilst the request was ostensibly for names, job titles and telephone numbers, it would be easy to work out email addresses from the names of individuals. It believed that instances of email bombardment would increase if a full list of names was made available to the public and that subsequent disruption to the everyday work of staff would place undue pressure on its network.
19. The council expressed concern that the mass release of employees' details would prejudice its ability to provide services effectively to the public. This was due in part to the tendency of some members of the public to copy in emails indiscriminately to council employees regardless of the extent of their involvement. The council informed the Commissioner that it was not unusual for the "cc" field in such emails to already extend to 25 or 30 named council officers.
20. Also, in the council's experience, council staff frequently received calls from members of the public who wished to air grievances on subjects unrelated to the council officers' work. According to the council this occurred regardless of whether a designated contact name had been provided. The authority believed that the increased availability of telephone numbers resulting from disclosure would seriously exacerbate the problem.
21. The council maintained that if a mass disclosure of employee details was allowed, any member of the public, not only vexatious individuals, would have the propensity to compromise council efficiency. In the council's view, anyone would be able to select any council employee they thought appropriate from the list and its officers would consequently need to spend more time in redirecting people to the correct member of staff in the relevant department.
22. The Commissioner recognises the ease with which a council officer's individual email address can be ascertained from a basic knowledge of the authority's email address structure. He acknowledges that it would be possible for anyone to work out the email address of every officer employed by the council from the names alone.
23. In the Commissioner's view, access to over 3500 employees' email addresses in the public domain could lead to a rise in the random direction of emails to all members of staff. This could result in council officers having to deal with a substantial expansion in irrelevant enquiries. He also recognises the potential exponential rise in the copying in of numerous officers into emails that this would assist and

the consequent increase in disruption to the council that would accompany this.

24. In relation to the refusal to disclose the details of all employees, the Commissioner is satisfied that the opinion of the council's qualified person is reasonable in substance and reasonably arrived at. The Commissioner considers that the prejudice claimed by the council as a result of such disclosure is real and of substance. He accepts the qualified person's opinion that disclosure would be likely to prejudice the effective conduct of public affairs and that the exemption at s36(2)(c) of the Act is engaged.
25. When considering a prejudice based exemption the Commissioner usually considers the accuracy of whether disclosure '*would*' or '*would be likely to*' result in prejudice. The reason for the specification is that the first limb engages a higher threshold of prejudice than the latter. However, with the s36 exemption it is not for the Commissioner to form a view as to the likelihood of prejudice as the exemption requires this to be formed in 'the reasonable opinion' of the qualified person.
26. As the exception is engaged in relation to the names and job titles of all employees and their contact details, the Commissioner has proceeded to consider whether in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosure of the information.

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

27. There is a clear public interest in public authorities being transparent and members of the public being able to contact their local authority and access its services. However, as the council already has an adequate system in place to carry out this task, the Commissioner has been unable to ascertain any public interest arguments in favour of the mass disclosure of all its employees' names, job titles and contact details.

*Public interest arguments in favour of maintaining the exemption*

28. The council already has an adequate system in place for fielding incoming telephone calls and correspondence and for ensuring that these are directed to the most appropriate member of staff. Lines of contact outside that system are superfluous.
29. The increase in random contacts resulting from a mass disclosure of employees' details would be likely to entail the diversion of public resources in order to manage the disruption caused. This is not a cost effective use of public money.

30. The Commissioner is mindful of the Information Tribunal's decision in *Ministry of Defence v Information Commissioner (EA/2006/0027)* which concerned a similar request for employees' contact details. The Tribunal in that instance ruled that contact details of staff other than those already in the public domain should not be disclosed. In promulgating its decision the Tribunal declared that, "*risks such as the speed of disruption, the fact that there is likely to be continuous interruption ... constitute in the Tribunal's view substantial factors militating against disclosure of such details.*" It stated that: "*If there is a public interest inherent in the public's ability to contact anyone... the same is outweighed first by the risk of increasing, if not undue, interference in carrying out of those individuals' responsibilities*".
31. The mass release of employees' details into the public domain is likely to attract blanket targeting of those employees by commercial organisations for marketing purposes. The cumulative distraction caused to council staff would have a detrimental impact on efficiency and service levels to the public.
32. The wholesale release of employees' details into the public domain is likely to increase the exposure of the council technological systems to IT viruses. This threat and that posed by the greater expansion in email bombardment resulting from such disclosure could seriously disrupt the authority's IT systems.
33. There is a strong public interest in restricting access to staff contact details on a need to know basis in order to mitigate all the above risks and their impact on service levels.

#### *Balance of the public interest arguments*

34. The Commissioner has weighed the competing public interest arguments and has concluded that in all the circumstances of the case, the public interest in maintaining the exemption in relation to the release of all employees' details outweighs the public interest in disclosure.

### **Section 31**

35. As the Commissioner considers the information to be exempt from disclosure by virtue of s36(2)(c) of the Act he has not gone on to consider the exemption at s31(1)(g).



## Section 40

36. As the Commissioner considers the information to be exempt from disclosure by virtue of s36(2)(c) of the Act he has not gone on to consider the exemption at s40.

## Procedural Breaches

37. The council failed to specify to the complainant the exemptions at s31(1)(a), s31(1)(g) for the purpose at s31(2)(i), s36(2)(c) and s40(2). By failing to do so the council breached s17(1)(b) of the Act.
38. The council failed to cite s36(2)(c) within 20 working days of receiving the request. By failing to do so the council breached s17(1) of the Act.
39. The council failed to explain to the complainant the reasons why it considered the public interest favoured maintaining the exemption at s36(2)(c). By failing to do so the council breached s17(3)(b) of the Act.

## The Decision

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40. The Commissioner's decision is that the public authority was entitled to withhold the information under the Act.
41. The Commissioner found the council to have breached s17(1), s17(1)(b) and s17(3)(b) of the Act.

## Steps Required

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42. The Commissioner requires no steps to be taken.

## Other matters

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43. Although it does not form part of this Decision Notice the Commissioner wishes to highlight the following matter of concern:
44. The council's internal review of its refusal to disclose the information comprised three stages. The Code of Practice issued under s45 of the Act requires that a public authority's complaints procedure should encourage prompt determination of a complaint. Accordingly, the

Commissioner does not expect internal reviews to have more than one stage. He notes the authority's undertaking to adhere to this expectation in the future.

## Right of Appeal

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

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

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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

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 24<sup>th</sup> day of June 2010**

**Signed .....**

**Gerrard Tracey  
Principal Policy Adviser**

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

## Legal Annex

### Freedom of Information Act 2000

**Section 12** states that:

(1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.

(2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.

(3) In subsections (1) and (2) "the appropriate limit" means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.

(4) The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority—

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.

(5) The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are to be estimated

**Section 17** states that:

(1) 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.

(2) Where—

(a) in relation to any request for information, a public authority is, as respects any information, relying on a claim—

(i) that any provision of Part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or

(ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and

(b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.

(3) A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming—

(a) that, 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 authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

(4) A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

(5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

(6) Subsection (5) does not apply where—

(a) the public authority is relying on a claim that section 14 applies,

(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and

(c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.

(7) A notice under subsection (1), (3) or (5) must—

(a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and

(b) contain particulars of the right conferred by section 50.

**Section 31** states that:

(1) 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—

(a) the prevention or detection of crime,

(b) the apprehension or prosecution of offenders,

(c) the administration of justice,

(d) the assessment or collection of any tax or duty or of any imposition of a similar nature,

(e) the operation of the immigration controls,

(f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,

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

(h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or

(i) any inquiry held under the [1976 c. 14.] Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.

(2) The purposes referred to in subsection (1)(g) to (i) are—

(a) the purpose of ascertaining whether any person has failed to comply with the law,

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

(c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,

(d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on,

(e) the purpose of ascertaining the cause of an accident,

(f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration,

- (g) the purpose of protecting the property of charities from loss or misapplication,
- (h) the purpose of recovering the property of charities,
- (i) the purpose of securing the health, safety and welfare of persons at work, and
- (j) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work.

**Section 36** states that:

(1) 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.

(2) 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.

(3) 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).

(4) 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”.

(5) 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 [1999 c. 29.] 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.

(6) 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.

(7) 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.

**Section 40** states that:

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

(2) Any information to which a request for information relates is also exempt information if—

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

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

(3) The first condition is—

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the [1998 c. 29.] Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene—

(i) any of the data protection principles, or

(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the [1998 c. 29.] Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

(4) The second condition is that by virtue of any provision of Part IV of the [1998 c. 29.] Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).

(5) The duty to confirm or deny—

(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and

(b) does not arise in relation to other information if or to the extent that either—

(i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the [1998 c. 29.] Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or

(ii) by virtue of any provision of Part IV of the [1998 c. 29.] Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).

(6) In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the [1998 c. 29.] Data Protection Act 1998 shall be disregarded.

(7) In this section—

“the data protection principles” means the principles set out in Part I of Schedule 1 to the [1998 c. 29.] Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;

“data subject” has the same meaning as in section 1(1) of that Act;

“personal data” has the same meaning as in section 1(1) of that Act.