

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 28 January 2010

Public Authority: HM Revenue and Customs
Address: 100 Parliament Street
London
SW1A 2BG

Summary

The complainant requested information that would explain the reasoning of the government for abolishing the professional trustee residence rule formerly provided by section 69(2) of the Taxation of Chargeable Gains Act 1992. The public authority divided the request into two parts. In response to the first part of the request, the public authority stated that it held no relevant information. In response to the second part of the request, the public authority confirmed that it held relevant information, but refused to disclose this, citing the exemption provided by section 35(1)(a) (formulation and development of government policy). The Commissioner finds that the public authority stated incorrectly that it held no information falling within the first part of the request, but that the information that it holds that falls within the scope of this part of the request is exempt by virtue of section 42(1) (legal professional privilege) and that the public interest in the maintenance of this exemption outweighs the public interest in disclosure. In relation to the second part of the request, the Commissioner finds that the exemption provided by section 35(1)(a) is engaged and that the public interest in the maintenance of the exemption outweighs the public interest in disclosure. The Commissioner further finds that the public authority failed to comply with the procedural requirements of sections 1(1)(a) and 17(1) in its handling of the request.

The Commissioner's Role

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

The Request

2. On 28 February 2008 the complainant made the following information request:

“Would you please treat this e mail as a formal request under the Freedom of Information Act that HMRC provide the information [relating to abolition of the rule formerly in section 69(2) of the Taxation of Chargeable Gains Act 1992] which the Tribunal urged them to provide in paragraph 81 of the decision [EA/2007/0043]”

3. The public authority responded to this initially on 1 April 2008 and informed the complainant that it believed that the request was, based on the wording of the Information Tribunal in the decision referred to in the request, twofold as follows:
- a) a prepared statement of reasons for reaching a conclusion on state aid drawing on the original [legal] advice.
 - b) a clear statement of current thinking in light of further consideration of the issue.
4. The public authority went on to state that it held no information falling within the scope of request (a). In response to request (b) the public authority confirmed that it did hold relevant information, but stated that the exemptions provided by sections 35(1)(a) (formulation or development of government policy) and 42(1) (legal professional privilege) were engaged in relation to this information. The public authority also stated that it required a further 20 working days to form a conclusion on the balance of the public interest in relation to these exemptions.
5. The complainant responded on 7 April 2008 and requested an internal review in respect to request (a). The complainant argued that, as the public authority had reached a conclusion on the state aid point to which the request relates, it would hold a record of its reasoning for reaching this conclusion. The complainant also noted at this point that he agreed to the dividing of his request into two parts.
6. The public authority responded with the public interest conclusion in relation to request (b) by letter dated 28 April 2008. In relation to both sections 35(1)(a) and 42(1), the public authority concluded that the public interest in the maintenance of the exemption outweighed the public interest in disclosure.
7. The public authority responded with the internal review conclusion in relation to request (a) on 11 June 2008. The public authority acknowledged and accepted that the complainant had effectively expanded the scope of his request beyond a prepared statement of reasons to being for any information recorded by the public authority that explained its reasoning for its conclusion on the state aid point. It maintained, however, that it held no information falling within the scope of this request.
8. The complainant contacted the public authority on 27 June 2008 and requested an internal review in relation to request (b). The complainant suggested that the

public authority had failed to take into account the public interest in disclosure recognised by the Information Tribunal.

9. The public authority responded with the outcome of the review on 4 September 2008. The refusal was maintained. In response to the issue raised by the complainant about the public interest recognised by the Information Tribunal, the public authority suggested that the comments made by the Tribunal were only relevant to the information in question in that case and to section 42(1), rather than section 35(1)(a), as that had been the exemption considered by the Information Tribunal in that case.

The Investigation

Scope of the case

10. The complainant contacted the Commissioner in connection with request (a) on 24 July 2008 and stated that he accepted that the public authority did not hold any information falling within the scope of request (a), apart from legal advice the public authority had received from the Department of Trade and Industry (the DTI) that had been the subject of the aforementioned Information Tribunal case. The complainant now made the case that information could be extracted from within this legal advice that would fall within the scope of request (a) in that it would explain the reasons as to why the public authority reached the conclusion it did on the state aid point.
11. The complainant contacted the Commissioner on 15 September 2008 in connection with request (b). The complainant argued that the public authority had not given sufficient weight to the public interest recognised by the Information Tribunal.
12. As noted above, the public authority cited section 42(1) when refusing request (b). During the Commissioner's investigation the public authority amended its position and stated that it no longer believed the information in connection with which it had cited section 42(1) to be within the scope of request (b). However, having viewed this information, the Commissioner does not agree with the public authority on this point and considers that this information is within the scope of request (b). This information is covered in the analysis below.

Chronology

13. The Commissioner contacted the public authority on 26 August 2009. The public authority was asked to respond with further reasoning for the refusal of the complainant's request and to supply to the Commissioner's office a copy of the information withheld from the complainant.
14. The public authority responded on 28 October 2009. The public authority included some further explanation of the refusal of the request and provided the information it held that it believed fell within the scope of request (b), which was in

the form of a draft submission prepared by officials for submission to the Financial Secretary to the Treasury. The public authority believed that the fact that this document was in draft form at the time of the request strengthened the case that this information should not be disclosed.

Background

15. The information requested relates to the abolishing of the rule in section 69(2) of the Taxation of Chargeable Gains Act 1992. In his cover letter to his earlier complaint to the Information Commissioner (FS50126996), the complainant provided the following description of this rule:

“United Kingdom resident trustees are subject to capital gains tax but non resident trustees are not subject to capital gains tax. Residence is therefore fundamental to capital gains tax.

Until now, the rule has been that professional trustees of trusts created by foreign settlors are treated as non resident. I refer to this as the ‘professional trustee residence rule’. This rule is very important to the United Kingdom trust industry because foreign settlors would never appoint United Kingdom trustees if they had to pay capital gains tax, they would appoint foreign trustees who would not pay capital gains tax.”

16. The complainant went on to describe how the public authority published a proposal in January 2006 to make “*minor and irrelevant*” changes to this rule. The public authority referred at that time to the necessity of it seeking legal advice from the DTI as it was possible that some of its proposals may fall foul of European law.

17. The complainant quoted the following statement made by the public authority on 22 March 2006:

“What has happened to the professional trustee measure in the residence test?”

As we explained when we published the draft legislation earlier in the year, there was a risk that the professional trustee measure would fall foul of the EU state aid rules. We have now consulted with the Department of Trade and Industry which has confirmed that it would indeed constitute a state aid. In view of this we have had to withdraw the measure.”

The complainant stated that the professional trustee residence rule was repealed by the Finance Act 2006.

18. This request stems from the Information Tribunal case *Mr J Kessler QC v Information Commissioner and HM Commissioners for Revenue and Customs* (EA/2007/0043). In that case the Tribunal upheld the Commissioner’s decision that legal advice provided from the DTI to the public authority was exempt by

virtue of section 42(1) and that the public interest in the maintenance of this exemption outweighed the public interest in disclosure. However, at paragraph 81 of this decision, the Tribunal stated the following:

“The Tribunal considered that a substantial public interest would be served by disclosure of fuller reasoning on why the Government reached the conclusion in relation to State aid. It does not follow that the medium for such disclosure can only be disclosure of the Advice from the DTI. An alternative would be a prepared statement of reasons drawing on that advice and taking the analysis forward to show current conclusions in the light of any further consideration of the issue. A clear statement of current thinking (if conclusions have been reached) would perhaps be more useful than release of the historic document. We urge the Additional Party to produce an updated and fuller public statement of reasoning and conclusions on the State aid point. Among other things this might clarify whether the fundamental concern is fair competition between professional trustees in different member states, or fair competition between professional and non-professional trustees within the UK tax jurisdiction, or a matter of consistent treatment of trusts within the logic of that tax system.”

Analysis

Substantive Procedural Matters

Section 1

19. In response to request (a) the stance of the public authority was that it did not hold any relevant information. The complainant referenced the Information Tribunal decision in his request and, as a result, the public authority focussed initially on the wording used by the Tribunal, which referred to a ‘prepared statement’. The public authority stated that it held no such statement, but at internal review stage the complainant broadened the scope of this request and effectively stated that he wished to access any information that described the reasoning of the public authority for the rule change. The public authority accepted this extension to the scope of the request, but maintained that it held no relevant information.
20. In his complaint to the Commissioner the complainant was specific as to what his case was in relation to request (a); that information that could satisfy this request could be extracted from the legal advice that the public authority had received from the DTI and that he had requested in his earlier case. The complainant believed that extracting information from the legal advice would mean that this information would not be subject to section 42(1) and that this meant that this request could not be considered a repeat of his earlier request. The complainant was specific that he accepted that no other relevant information was held by the public authority.

21. The task for the Commissioner here is to consider if information contained within the legal advice received by the public authority from the DTI could be said to be within the scope of the complainant's information request of 28 February 2008. If the conclusion is that this information, which the public authority has previously acknowledged it does hold, is within the scope of the complainant's request, the finding on this point will be that the public authority failed to comply with section 1(1)(a) in not confirming that this information was held. Section 1(1)(a) is set out in full in the attached legal annex, as are all other sections of the Act referred to in this Notice.
22. The complainant has suggested that the legal advice includes content other than that relating strictly to the professional trustee residence rule, indicating that the information he has now requested could be extracted from the whole and would, therefore, differ from the information that the Tribunal had concluded should be withheld. This does not, however, impact on the issue in question here, which is whether content within the legal advice that relates to the professional trustee residence rule was within the scope of request (a).
23. Requests are for recorded information and not just for documents. The fact that information is not held in the form of a 'prepared statement' does not mean that the information is not held. If the information which would be contained in the 'prepared statement' envisioned by the Tribunal is also contained in other documents held by the public authority, that information is held.
24. The Commissioner believes that the information which would be contained in a 'prepared statement' does exist in the form of the original legal advice. The conclusion of the Commissioner is, therefore, that this legal advice is within the scope of the request and that the public authority failed to comply with the requirement of section 1(1)(a) in relation to request (a) in that it stated that it held no information falling within the scope of this request. The Commissioner does not, however, accept that this means that the information becomes different information than that considered in the earlier case. The Commissioner has considered below whether it continues to be the case that this legal advice is subject to the exemption provided by section 42(1) and whether the public interest in the maintenance of that exemption continues to outweigh the public interest in disclosure.

Exemptions

Section 35

25. In relation to request (b), the public authority has cited the exemption provided by section 35(1)(a). Consideration of this exemption is a twofold process. First, for the exemption to be engaged the information must relate to the formulation or development of government policy. Secondly, this exemption is subject to the public interest, meaning that the information should be disclosed if the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure, however clear it is that the exemption is engaged.

26. In reaching a decision as to whether the exemption is engaged, the Commissioner has considered first whether the abolition of the professional trustee residence rule constitutes policy. On this point the Commissioner has taken into account the following dictionary definition of policy:

“a definite course of action selected from among alternatives to guide and determine present and future decisions.”

The Commissioner believes that the abolition of the professional trustee residence rule conforms to this definition and so accepts that this does constitute policy.

27. The second point that the Commissioner has considered is whether this constitutes government policy. As noted above at paragraph 17, the complainant has stated that this rule was repealed in the Finance Act 2006. As the current policy on this rule is enshrined in legislation, the Commissioner accepts that policy in this area does constitute government policy.

28. Turning to whether the information in question relates to the formulation or development of government policy, the Commissioner's approach to the term 'relates to' as it is used in this exemption is that this can safely be interpreted broadly. This is in line with the approach taken by the Information Tribunal in *DfES v the Information Commissioner & the Evening Standard (EA/2006/0006)*, in which it stated:

“If the meeting or discussion of a particular topic within it, was, as a whole, concerned with s35(1)(a) activities, then everything that was said and done is covered. Minute dissection of each sentence for signs of deviation from its main purpose is not required nor desirable.” (paragraph 58)

29. The public authority identified a draft submission being prepared by officials for the Financial Secretary to the Treasury as the information that it held that fell within the scope of the request. This submission comments on the impact of abolition of the professional trustee residence rule, discusses options to be pursued in this area and makes a recommendation to the Minister as to the option to follow. Whilst this submission was not part of a process leading to legislation, government policy can be expressed in forms other than legislation, such as, for example, where a decision is made not to legislate on an issue. The Commissioner would expect the provision of advice from officials to Ministers to be a standard and central part of the policy formulation and development process.
30. As noted above, the public authority also cited section 42(1) in relation to information falling within the scope of request (b), but later stated that it had amended its position and no longer considered this information to be within the scope of the request. The Commissioner has viewed this information and believes that it does fall within the scope of the request. The public authority cited both sections 35(1)(a) and 42(1) in relation to this information. The Commissioner has considered first whether this information is exempt by virtue of section 35(1)(a).

31. This information consists of exchanges of e mails between officials within the public authority and of papers in which legal issues relating to the abolition of the professional trustee residence rule are discussed. The Commissioner accepts that discussions between officials within the public authority about legal issues in relation to policy options would be likely to form a standard part of the policy formulation and development process. The Commissioner concludes that the e mail exchanges and papers in question here formed part of the policy making process relating to re-consideration of the abolition of the professional trustee residence rule.
32. The conclusion of the Commissioner is that all of the information falling within the scope of this request does relate to the formulation and development of government policy and, therefore, the exemption provided by section 35(1)(a) is engaged in relation to this information. The basis for this conclusion is that policy on the professional trustee residence rule does constitute government policy, the content of the information relates to this area of policy and that this information records what the Commissioner would expect to be a standard part of the policy-making process.

The Public Interest

33. In reaching a conclusion on the balance of the public interest, the Commissioner has taken into account those factors that relate to the specific information in question here, including what harm may result through disclosure of the information in question and whether disclosure of information relating to the formulation and development of policy on the professional trustee residence rule would serve the public interest. This is in addition to the general public interest in transparency and openness in relation to the government policy formulation and development process.
34. That the information is within the class specified in the exemption is not, however, of relevance to the balance of the public interest. This is in line with the approach taken by the Information Tribunal in *DfES v the Commissioner & the Evening Standard* (EA/2006/0006), where it stated in connection with section 35(1)(a):

“The weighing [of the public interest] exercise begins with both pans empty and therefore level.” (paragraph 65)

35. Covering first those factors that favour maintenance of the exemption, the public authority has argued that disclosure would result in harm to the policy-making process in that the participants in this process would be inhibited if they were aware that the record of their contributions may later be subject to disclosure via the Act. In *DfES v the Commissioner and the Evening Standard* (EA/2006/0006) the Information Tribunal provided a number of guiding principles for consideration of the balance of the public interest in connection with section 35(1)(a). The arguments of the public authority about disclosure resulting in inhibition to participants in the policy making process are relevant to two factors highlighted by the Tribunal: ‘safe space’ and ‘chilling effect’.

36. The term 'chilling effect' refers to an adverse effect on the frankness and candour of participants in the policy making process. Arguments about 'safe space' are related to chilling effect arguments but distinct, as the need for a safe space within which to debate policy exists regardless of any chilling effect that may result through disclosure. The basis of safe space arguments is that an erosion of the safe space for policy making would have a detrimental impact on the quality of the policy making process.
37. The weight that the Commissioner affords to chilling effect and safe space arguments will depend on how closely they relate to the information in question. For example, an argument that disclosure would result in a chilling effect to policy making in general would usually carry less weight than an argument that a chilling effect would result to the specific policy area to which the information relates. Also key is the stage reached in the policy-making process at the time of the request. Where a public authority argues that harm would result to a specific and ongoing policy-making process, this will generally carry more weight than an argument suggesting that harm would result to future policy-making in general through disclosure of information relating to policy that was complete at the time of the request.
38. In this case, the argument advanced by the public authority is closely related to the information in that it has argued that disclosure would have resulted in harm to the policy-making process recorded in the information in question, which was ongoing at the time of the request. Amongst the information in question is a draft document; the argument of the public authority is that it was necessary to preserve the safe space in which the drafting of this document and the further development of the policy in this area could take place. The argument of the public authority is also that a chilling effect would result to policy in this area were participants concerned that their contributions to documents in draft form and other contributions to an area of policy-making that was at an early stage at the time of the request could later be disclosed.
39. The policy making process in question here was the process of considering the objections to the abolition of the professional trustee residence rule and whether this issue should be legislated upon. This policy making process was ongoing at the time of the request and is distinct from the process that led to the legislation that abolished the professional trustee residence rule. Given that part of the information in question here is in draft form and that the policy-making process to which this information relates was ongoing at the time of the request, the Commissioner accepts that the need to preserve the safe space in which to develop this policy is a valid factor in favour of maintenance of the exemption.
40. As to what the content of the information suggests about the likelihood of a chilling effect, the Commissioner notes that this does include descriptions of different policy options, discusses the merits of these options and provides advice to ministers about which of these options to follow. As this information records contributions from officials given with frankness and candour, and the policy making process in question was ongoing as at the date of the request, the Commissioner has given some weight to the chilling effect argument in this case.

41. Turning to those factors that favour disclosure, the subject of the policy-making process to which the information relates is of relevance here. The Commissioner considers there to be a particular public interest in any information that relates to the formulation and development of government policy about tax, given the universal impact that policy in this area has. The Commissioner believes that disclosure of the information in question here is in the public interest in order to advance transparency and public understanding on the subject of government policy-making on tax in general. However, given the limited scope of this information; the tax policy it discusses would impact directly upon only a relatively small number of people, the Commissioner affords this factor less weight than would have been the case had the tax policy to which the information relates had a wider impact.
42. The Commissioner considers that as well as the public interest in transparency in relation to policy making on tax in general there is also a public interest in the disclosure of information that would explain the Government's policy position in relation to this particular tax issue. The complainant has suggested that the decision taken by the public authority on the professional trustee residence rule has been a disservice to the public interest. Whilst the Commissioner does not comment upon the validity of the complainant's position, he accepts that there is considerable public interest in allowing an informed public to take its own view on this point and to allow an informed public debate based upon as full a picture as possible. In reaching this view he has taken particular account of the Tribunal's conclusion at paragraph 70 of its decision:
- "We conclude that the general public interest in accountability and transparency has been poorly served in relation to the decision taken regarding the "professional trustee residence rule" amounting to state aid."*
43. Whilst acknowledging that the Tribunal's comments above were made when considering release of different information, the Commissioner believes that the content of the information in question here, would also add to the public understanding of the reasoning of the government on this issue. The Commissioner therefore considers that this is a public interest factor in favour of disclosure of substantial weight.
44. The conclusion of the Commissioner is that the public interest in the maintenance of the exemption outweighs the public interest in disclosure. Whilst the Commissioner has recognised a significant public interest in disclosure he believes that this public interest is outweighed by the public interest in avoiding the harm that the public authority has predicted as a result of disclosure.
45. The key factor here is that the policy making process in question was ongoing at the time of the request. Had it been the case that this process had been complete by the time of the request, the factors in favour of maintenance of the exemption relating to 'chilling effect' and 'safe space' would have carried less weight. As this policy making process was ongoing at the time of this request, these factors outweigh the public interest in disclosure.

Section 42

46. As covered above, the Commissioner has found that the legal advice that was the subject of the Information Tribunal case would fall within the scope of request (a). In relation to this information the Commissioner has considered whether it is still subject to legal professional privilege and, therefore, the exemption provided by section 42(1) is still engaged in relation to this information. If this exemption is engaged, the Commissioner will also consider whether the public interest in the maintenance of this exemption continues to outweigh the public interest in disclosure.
47. As to whether the information in question satisfies the normal requirements for it to be subject to legal professional privilege (LPP), the Commissioner relies here on the analysis in his previous Decision Notice and the conclusion of the Tribunal. Both the Commissioner and the Tribunal concluded that these requirements were satisfied.
48. The significance of the passage of time since that Notice and Tribunal decision upon the question of whether this exemption is engaged is whether the public authority has waived legal professional privilege in the interim. Part of the case made by the complainant at the Tribunal was that LPP had been waived. The Tribunal did not agree with the complainant on this point. The Commissioner is not aware of any suggestion that the public authority has waived LPP since that time.
49. The conclusion of the Commissioner is that the information in question is subject to a claim of legal professional privilege and, therefore, the exemption provided by section 42(1) is engaged. As this conclusion has been reached the Commissioner has gone on to consider the balance of the public interest.
50. The public authority also cited section 42(1) in relation to some of the information falling within the scope of request (b). As this information is covered by the section 35(1)(a) conclusion above, the Commissioner has not also considered section 42(1) in relation to this information.

The public interest

51. Again, the Commissioner will not repeat the analysis contained in his Decision Notice and in the Tribunal decision. The task here is to consider what difference, if any, the passage of time has made to those factors and to consider what other factors may have applied at the time of this request that did not at the time of the earlier request.
52. In both the Commissioner's Decision Notice and the Tribunal decision reference is made to the following comment made in an earlier Tribunal hearing (*Bellamy v the Information Commissioner and the DTI* (EA/2005/0023)):

"...there is a strong element of public interest inbuilt into the privilege itself. At least equally strong countervailing considerations would need to be adduced to override that inbuilt interest...it is important that public

authorities be allowed to conduct a free exchange of views as to their legal rights and obligations with those advising them without fear of intrusion, save in the most clear case..."

53. The Commissioner does not believe that the significance of the factor outlined in *Bellamy* has been reduced due to the passage of time.
54. The Tribunal also noted that the legal advice was still relevant to ongoing issues at the time of the request in that case. As noted above at paragraph 39, the policy development process in question in this case was ongoing at the time of the request, meaning that the legal advice was also relevant to an ongoing issue at the time of the request in this case. The Commissioner believes that this indicates that, despite the passage of time since the earlier case, disclosure of the legal advice at the time of the request may have prejudiced the Government's ability to defend its position against legal challenge.
55. The conclusion of the Commissioner is that the public interest in the maintenance of the exemption provided by section 42(1) outweighs the public interest in disclosure. The reasoning for this is that the inbuilt public interest in the maintenance of legal professional privilege in this case had not reduced through the passage of time, as neither had the service to the public interest provided by the disclosure of the source and conclusion of this legal advice.
56. The complainant argues that the comments made by the Tribunal and quoted above at paragraph 18 indicate that the Tribunal had concluded that the public interest would favour the disclosure of the information now requested under both request a) and b) in this case. The Commissioner firstly notes that Tribunal decisions are not binding upon him. In the particular circumstances of this case he further considers that the Tribunal's comments at paragraph 81 were 'obiter dicta' and therefore only of incidental bearing to its decision, relating as they did to the possibility of providing at least some information beyond that which had formed the subject of the appeal before it. In light of this the Commissioner has not given any weight to the complainant's argument on this point. Rather he considered the information in question in this case, with reference to the exemptions claimed and the balancing of public interest factors, as at the date of this request.

Procedural Requirements

Section 1 and 17

57. In failing to confirm that it held information falling within the scope of request (a), the public authority did not comply with the requirement of section 1(1)(a). In failing to cite section 42(1) in connection with this information, the public authority failed to comply with the requirements of section 17(1).

The Decision

58. The Commissioner's decision is that the public authority did not deal with the request in accordance with the Act in that it concluded incorrectly that it held no information falling within the scope of request (a) and in so doing breached section 1(1)(a). However, the Commissioner also concludes that the legal advice that falls within the scope of request (a) is subject to the exemption provided by section 42(1) and that the public interest in the maintenance of this exemption outweighs the public interest in disclosure. In response to request (b), the Commissioner finds that the public authority complied with the Act in concluding correctly that the exemption provided by section 35(1)(a) was engaged, and that the balance of the public interest favoured the maintenance of this exemption. The Commissioner also finds that the public authority failed to comply with the requirements of section 17(1) in not citing section 42(1) in response to request (a).

Other matters

59. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

The Commissioner's published guidance on internal reviews states that a review should be conducted within 20 working days, unless there are exceptional circumstances, in which case the review period may be extended to 40 working days. In this case the Commissioner notes that there appeared to be no exceptional circumstances, but that, in relation to both of the internal reviews that the public authority carried out, it failed to provide the outcome within 20 working days. Neither did the public authority provide the outcome to these reviews within 40 working days. The public authority should ensure that internal reviews are carried out promptly in future.

Right of Appeal

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

First-tier Tribunal (Information Rights)
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

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

61. 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 28th day of January 2010

Signed

**Lisa Adshead
Senior FOI Policy Manager**

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

Legal Annex

Section 1

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
- (b) if that is the case, to have that information communicated to him.”

Section 35

Section 35(1) provides that –

“Information held by a government department or by the Welsh Assembly Government is exempt information if it relates to-

- (a) the formulation or development of government policy,
- (b) Ministerial communications,
- (c) the provision of advice by any of the Law Officers or any request or the provision of such advice, or
- (d) the operation of any Ministerial private office.”

Section 42

Section 42(1) provides that –

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