

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 13 December 2010

Public Authority: The Home Office
Address: 2 Marsham Street
London
SW1P 4DF

Summary

The complainant requested disclosure of a number of documents acknowledged to have been leaked to Damian Green MP. The Home Office confirmed it held the requested information but refused to provide it on the basis that it was exempt from disclosure by virtue of sections 31 (investigations and proceedings), 36 (prejudice to effective conduct of public affairs) and 40 (personal information) of the Act.

The Commissioner has investigated and found that the exemptions provided by sections 31 and 36, as applied by the Home Office, are not engaged. He therefore orders release of the information withheld under these exemptions, disclosure regarding section 40 to be in accordance with his guidance on the disclosure of the personal information of public authority staffs. The Commissioner has also identified a series of procedural shortcomings on the part of the public authority.

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.

Background

2. A series of articles in the national press between October 2007 and November 2008 referred to the contents of restricted and confidential documents that appeared to have been leaked from the Home Office.
3. The six documents requested by the complainant in this case were acknowledged by the Director of Public Prosecutions to have been leaked to Damian Green MP by a named Home Office civil servant. They formed part of the criminal investigation into the actions of the civil servant and Mr Green following their arrests in November 2008.
4. Following a Metropolitan Police Service investigation, the Director of Public Prosecutions concluded in April 2009 that there was no realistic prospect of a conviction against either the civil servant or Mr Green for the offences alleged against them. Accordingly, he decided that no charges should be brought against either Mr Green or the civil servant.

The Request

5. The complainant wrote to the Home Office on 31 July 2009 with the following request:

"In the response to an earlier FOI request I was directed to a note published by the CPS [Crown Prosecution Service] which lists a number of documents acknowledged to have been leaked to Damian Green MP.

Please will you disclose to me the documents identified in that memo which were leaked to Mr Damian Green MP;

Leak One: "Asylum and Immigration High Level Monthly Performance Report July 2007" (found in Mr Green's possession, marked '[name redacted]').

Leak Two: "high level submissions to Home Office Ministers in August 2007, updating them about various issues relating to Security Industry Authority (SIA) licences". ([Name redacted] admitted sending this document to Mr Green).

Leak Three: "a report to Home Office Ministers dated 31 January 2008 about an investigation into an allegedly illegal worker at the Houses of Parliament". ([Name redacted] admitted posting this document to Mr Green).

Leak Four A: "Briefing on the Counter-Terrorism Bill" prepared for the Home Secretary.

Leak Four B: "a Whips' list of the names of MPs who were undecided about their votes in respect of the Counter-Terrorism Bill". ([Name redacted] told the Police that he had access to this document which was kept in a safe belonging to the Special Advisers: he admitted photocopying the list and handing it to Mr Green).

Leak Five: "a "Draft letter to No 10" dated August 2008, predicting that the credit crunch would lead to a rise in crime. It was not marked "Restricted"". ([Name redacted] admitted passing this document to Mr Green).

Leak Six: "a Briefing Pack for incoming Ministers at the Home Office". ([Name redacted] denied leaking this document. Mr Green made no comment in interview)".

6. The Home Office advised the complainant on 21 August 2009 that, in accordance with section 10(3) of the Act, it was extending the time for responding in order to consider the public interest test with respect to its citing of section 35 (formulation and development of government policy). It ultimately responded on 23 September 2009. In its response, the Home Office confirmed that it held the requested information but withheld it, citing the exemptions in sections 31(1)(g) with reference to section 31(2)(b) (law enforcement), and 36(2)(c) (prejudice to effective conduct of public affairs). No reference was made to section 35.
7. The complainant requested an internal review on 23 September 2009.
8. Following intervention from the Commissioner's office, the Home Office finally responded on 2 March 2010. In this internal review correspondence, the Home Office upheld its decision not to disclose the requested information. Additionally, it cited section 40(2) (personal data) in relation to the non-disclosure of the names of junior officials referred to in the withheld information.

The Investigation

Scope of the case

9. The complainant contacted the Commissioner on 5 March 2010 to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:

"The reasons for rejecting my request focussed on concerns about the manner in which these documents were originally leaked (rather than the content of the documents themselves).

I consider that the manner in which those documents may, or have become, public knowledge is irrelevant to the content of the documents themselves".

10. The complainant also drew the Commissioner's attention to the fact that, in the view of Sir Ian Johnston who conducted an official inquiry into the conduct of the arrests, the leaked information is unlikely to undermine government's effectiveness.
11. It is not the remit of the Commissioner to condone or condemn the leaking of information. Rather, it is his role in this case to determine whether the Home Office dealt with the complainant's request in accordance with the Act.
12. Accordingly, the focus of the Commissioner's investigation has been to determine whether the Home Office was correct in applying sections 31, 36 and 40 in relation to the requested information.

Chronology

13. The Commissioner wrote to the Home Office on 17 June 2010 asking it for further explanation of its reasons for citing sections 31 and 36 in relation to the request, including its reasons for concluding that the public interest in maintaining the exemptions outweighs the public interest in disclosure of the information requested.
14. The Home Office provided a comprehensive response on 23 July 2010. In this correspondence, the Home Office confirmed that it was continuing to rely on the exemptions in sections 31(1)(g) (in relation to 31(2)(b)), 36(2)(c) and 40(2).

Analysis

Exemptions

15. The Home Office has cited multiple exemptions in this case. The Commissioner has first considered the exemption in section 36.

Section 36 Prejudice to effective conduct of public affairs

16. Section 36(2) states that:

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

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

17. In this case, the Home Office is arguing that section 36(2)(c) applies.

18. While section 36(2)(a) and (b) provide for exemption on specific grounds, paragraph (c) takes a more general form, referring to prejudice to “the effective conduct of public affairs”. The Act does not define “effective conduct” or ‘public affairs’.

19. In *McIntyre v The Information Commissioner & the Ministry of Defence* (EA/2007/0068) the Tribunal expressed its view about the intention behind the section 36(2)(c) exemption:

“this category of exemption is intended to apply to those cases where it would be necessary in the interest of good government to withhold information, but which are not covered by another exemption, and where disclosure would prejudice the public authority’s ability to offer an effective public service or to meet its wider objectives or purposes

due to the disruption caused by the disclosure or the diversion of resources in managing the impact of the disclosure”.

20. With regard to the nature of the prejudice in this case, the Home Office told the complainant:

“The illicit leaking of information affects the smooth operation of the Department and its ability to fulfil its objectives”.

21. As well as claiming prejudice in relation to the effective operation of the Home Office, the Home Office has corresponded with the Commissioner on the basis of other prejudices. It wrote to him in relation to the prejudice that the leaking of sensitive information may be encouraged and of prejudice to the security of Government information.
22. In relation to the likelihood of prejudice in this case, the Home Office confirmed to the Commissioner that it is relying on the higher threshold of “would prejudice”.
23. In other words, the Home Office is claiming that, in the reasonable opinion of a qualified person, disclosure in this case would otherwise prejudice the effective conduct of public affairs.

The opinion of the qualified person

24. The first condition for the application of the exemption at section 36 is the qualified person’s reasonable opinion. When assessing the qualified person’s opinion the Commissioner will consider the following:
- whether an opinion was given;
 - whether the person who gave that opinion is the qualified person for the public authority in question;
 - when the opinion was given; and
 - whether the opinion is reasonable.
25. In this case, the Home Office has advised that a submission, dated 10 September 2009, was sent to the then Home Office Duty Minister, Lord Brett. A response was received on 22 September 2009.
26. Section 36(5)(a) provides that the qualified person for a government department will be any Minister of the Crown. It has been established, therefore, that an opinion was given, that this opinion was given by a

qualified person for the Home Office and that this opinion was given on 22 September 2009.

27. With respect to the internal review, the Home Office advised the Commissioner that the decision to invoke section 36(2)(c) was re-confirmed at the internal review stage. On that occasion, a submission, dated 10 February 2010, was sent to the then Home Office Minister responsible for freedom of information matters. A response was received on 2 March 2010.

Is the opinion reasonable?

28. The next step is to consider whether the opinion is reasonable. In determining whether or not the opinion is reasonable, the Commissioner will consider the extent to which the opinion is both reasonable in substance and reasonably arrived at.
29. The Commissioner will generally take into account two main factors here: what the qualified person took into account when forming his opinion and the content of the withheld information itself.
30. During the course of his investigation, the Commissioner asked the Home Office to confirm whether the qualified person was provided with any submissions supporting a recommendation that the exemption was engaged. Equally, he asked whether the qualified person was provided with any contrary arguments supporting the position that the exemption was not engaged.
31. The Home Office provided the Commissioner with copies of the two submissions in this case. The Commissioner accepts that the qualified person was provided with a submission at the time the initial response to the complainant's request was being prepared and at the time of the internal review.
32. It also advised the Commissioner that the qualified person had "*actual copies of the six documents which were withheld*" in front of them.
33. In answer to the Commissioner's questions as to whether the qualified person was provided with contrary arguments, the Home Office stated that the two submissions set out the case for using the exemption "*because that was our firm recommendation*".

Is the exemption engaged?

34. As previously stated, in this case the Home Office is claiming prejudice in relation to the smooth operation of the Department. It also

- confirmed to the Commissioner that it considers section 36(2)(c) applies "*because the information is leaked information*". The Commissioner understands this to mean that the Home Office is claiming prejudice on the basis of the status of the information rather than its content.
35. In support of its arguments about leaked information, the Home Office referred the Commissioner to one of his recent Decision Notices (FS50226603). The request in that case partly concerned a letter from the Home Secretary to the Chancellor of the Exchequer which was allegedly 'leaked' to the press and partly concerned the number of documents leaked to the press from the Home Office during 2007.
36. The Commissioner's investigation in that case concerned the confirmation or denial of whether the public authority held the requested information. In that case, he concluded that the public authority was correct neither to confirm nor deny that the requested information was held. However, in this case, the Home Office has confirmed that it holds the requested information. The Commissioner therefore does not consider the issues under consideration in this case to be sufficiently similar to those considered in his Decision Notice FS50226603 for parallels to be drawn.
37. The Home Office told the complainant:
- "the illicit leaking of information affects the smooth operation of the Department and its ability to fulfil its objectives..... The release of this information would serve to partly legitimise the actions of those involved in the leaking of information.....The release of the six documents you have requested would have the clear effect of legitimising the actions of those who leaked the information".*
38. The Home Office also argued that the leaked documents were prepared by officials for Ministers and contained a free and frank appraisal of a variety of areas related to the remit of the Home Office. It argued that it was vital for the proper functioning of government that Ministers are able to seek free, frank and candid advice from officials and that this can be provided in an environment in which proper debate and discussion can be had. It told the complainant:
- "This series of leaks adversely affected the operation of the space in which such a debate could take place and thereby impeded the proper functioning of the Home Office".*
39. It is the Commissioner's role to determine whether the Home Office dealt with the complainant's request in accordance with the Act. In

light of the Information Tribunal's considerations, the Commissioner takes the view that section 36(2)(c) is only available in cases where disclosure would prejudice a public authority's ability to offer an effective public service, or to meet its wider objectives or purpose, due to the disruption caused by the disclosure or the diversion of resources in managing the impact of disclosure. Further, he considers that, in order to engage section 36(2)(c) – **otherwise** prejudice the effective conduct of public affairs - some prejudice other than that protected by another limb of section 36 must be shown.

40. The Commissioner has considered the Home Office's arguments with respect to the need for ministers and officials to have private thinking space. In his view, these arguments may not be unreasonable. However, with due regard to the wording of the exemption in section 36 and of subsection (c) in particular, he does not consider these arguments to be relevant to any "otherwise" prejudice.
41. With respect to the other arguments put forward by the Home Office, the Commissioner is not persuaded that it is reasonable to think disclosure in this case would have an impact so wide-ranging that it would prejudice the public authority's ability to deliver an effective public service or meet its wider purpose.
42. Therefore, in this case, having due regard to the withheld information and to the arguments put forward by the Home Office, the Commissioner does not find that the opinion of the qualified person was reasonable in substance and he therefore does not find the exemption engaged.
43. As the Commissioner's conclusion is that this exemption is not engaged, it has not been necessary to go on to consider the balance of the public interest.
44. In this case, the Home Office is also citing section 31 in relation to the information it considered exempt by virtue of section 36(2)(c). The Commissioner has therefore gone on to consider its application of the exemption in section 31.

Section 31 Law enforcement

45. In this case, the Home Office is citing section 31(1)(g) in relation to the purpose at section 31(2)(b). The Home Office has emphasised that its use of the exemption in section 31(1)(g) is on the basis of the information as leaked information.

46. Section 31(1)(g) exempts information which would, or would be likely to, prejudice the exercise by any public authority of its functions for any of the purposes specified in subsection (2). This subsection essentially protects the conduct of investigations and proceedings which may lead to prosecutions.

47. The relevant purpose in this case is:

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

48. The Commissioner acknowledges the Ministry of Justice guidance on section 31(2) which states:

"Section 31(2) is a list of law enforcement "purposes". Some of these are quite general, some focused on very specific sectors of law enforcement. The list does not stand on its own. The exemption does not work by applying the prejudice test directly to these purposes. The test is applied indirectly through section 31(1)(g), (h) or (i). That means that one or more of the "purposes" has to be engaged by one or more of those provisions before a disclosure falls within the terms of this exemption".

The applicable interests

49. The Home Office told the Commissioner that it was citing section 31(1)(g) in relation to the purpose at section 31(2)(b) on the basis that disclosure would be likely to prejudice the purpose of ascertaining whether or not a person was guilty of improper conduct, namely the leaking of information by an official in a Government department.

The nature of the prejudice

50. The Information Tribunal in *Hogan* (EA/2005/2006 and EA/2005/0030) commented:

"An evidential burden rests with the decision maker to be able to show that some causal relationship exists between the potential disclosure and the prejudice and the prejudice is, as Lord Falconer of Thoroton has stated 'real, actual or of substance' (Hansard HL (VOL. 162, April 20, 2000, col. 827)".

51. The Commissioner's view is that the use of the term 'prejudice' is important to consider in the context of the exemption at section 31. It implies not just that the disclosure of information must have some

effect on the applicable interest, but that this effect must be detrimental or damaging in some way.

52. In support of its reason for withholding the information under section 31, the Home Office argued that the leaking of information is a serious matter, requiring investigation and identification of the culprit(s).

53. When requesting an internal review, the complainant argued:

"The information requested was not secret, and supposedly was already known to many people in the security industry, the Labour Party and Parliament.

I understand the extraordinary 'disciplinary' measures taken by the Home Office against [the civil servant] to have concluded".

54. In respect of his argument about the investigation having been concluded, the Home Office told the complainant:

"Irrespective of this, the exemption applies given the likelihood of harm being caused to any future investigations of a similar nature".

55. Similarly, the Home Office told the Commissioner that it considers the exemption applies *"regardless of the fact that our investigations into this particular leak have been concluded"*.

The likelihood of the prejudice

56. To engage the section 31(1)(g) exemption it is necessary for the public authority to demonstrate that disclosure of the requested information would, or would be likely to, cause some relevant prejudice. In this case, the Home Office has confirmed it is relying on the "would be likely to prejudice" limb of the exemption.

57. The Commissioner's interpretation of "likely to prejudice" is that there should be evidence of a significant risk of prejudice to the subject of the exemption. The degree of risk must be such that there "may very well" be prejudice to those interests. Whether prejudice exists is to be decided on a case-by-case basis.

58. The Home Office told the Commissioner that disclosure in this case would be likely to have a negative impact upon future investigations.

"Government departments would likely to be less willing to conduct leak investigations, and less willing to engage with the police and CPS

in such investigations, if they felt that a decision not to prosecute could lead to the disclosure of information that they would want to protect".

59. Similarly, it told the complainant that "*public authorities could be deterred from enlisting the assistance of the police and the CPS*".
60. The Commissioner notes that the requested information in this case does not relate to the investigation that was conducted into the leaks, nor to any investigative techniques used in the course of the investigation. Rather the request is for the leaked information itself.

Is the exemption engaged?

61. The Act does not define "public authority function". However, in the Commissioner's view, a public authority function can be identified as the performance of any statutory duty which that public authority has the power and responsibility to carry out, by virtue of an enactment or subordinate legislation or, in the case of a government department, authorised by the Crown.
62. The Commissioner asked the Home Office to explain on what basis it has the authority to undertake the function which sub-section 31(2)(b) is designed to protect, citing statute where possible.
63. The Home Office responded, saying that it, like any other employer:

"has a right and a duty to investigate conduct on the part of any of its staff which is contrary to their terms of employment and serves to undermine the Department's business and to report possible criminal offences to the police".
64. The Commissioner recognises that leaks can be viewed as a betrayal of trust. He also acknowledges the need to investigate potential misconduct. However, in this case, he is not persuaded that, for the purposes of the exemption in section 31, the Home Office has demonstrated sufficiently that this is a function specifically designated to them. It follows that he is not persuaded that the Home Office has sufficient legal basis for the specified purpose cited in this case. Neither is he satisfied that, although the Home Office made general references to the police and Crown Prosecution Service, this amounts to evidence about prejudice to the functions of either of these third parties. He has therefore concluded that the exemption is not engaged.

Section 40 Personal data

65. The Home Office told the complainant that it was withholding the names of junior officials referred to in the requested documents under section 40(2) of the Act, on the basis that disclosure would constitute a breach of the Data Protection Act (DPA).
66. In correspondence with the Commissioner, the Home Office clarified that it regards the names of, and any other personal information relating to, Home Office officials below Senior Civil Service level in the six documents to be exempt from disclosure.
67. The Commissioner is fully committed to public openness and in this respect recognises that a distinction based on grade will not always be appropriate.
68. The Commissioner has issued guidance on the question of when the names of staff, officials, elected representatives or third parties acting in a professional capacity should be released in response to an access request.

http://www.ico.gov.uk/~//media/documents/library/Freedom_of_Information/Practical_application/WHENSHOULDNAMESBEDISCLOSED.ashx

69. In his view, the main consideration is whether it would be fair in all the circumstances to identify an individual. When considering whether an individual would expect their role to be subject to public scrutiny, the Commissioner considers it appropriate to take account of the following factors:
 - how senior they are;
 - whether they have a public profile; and
 - whether their role requires a significant level of personal judgement and individual responsibility.
70. With respect to the personal information of junior officials being withheld by the Home Office in this case, the Commissioner has decided, in line with his guidance, that it would be fair for the personal information of those individuals acting in a junior capacity, whose role requires a significant level of personal judgement and individual responsibility or who have a public profile, to be disclosed.

Procedural Requirements

71. Section 1(1) of the Act 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."

72. Section 10(1) provides that –

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

73. As the Commissioner considers that the withheld information to which section 40(2) does not apply should have been disclosed, he finds the Home Office in breach of section 1(1)(b) of the Act in that it failed to provide this information. He also finds the Home Office in breach of section 10(1) by failing to provide the requested information within 20 working days.

74. Section 17(1) provides that –

"A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies."

75. The Commissioner acknowledges that the Home Office provided the complainant with public interest test arguments in its refusal correspondence. However, in the Commissioner's view, its explanation of the effect of disclosure in this case, and therefore why the exemption applied, was wholly inadequate.

The Decision

76. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- it correctly cited the exemption in section 40 with respect to those individuals acting in a junior capacity whose role does not require a significant level of personal judgement and individual responsibility or who do not have a public profile.
77. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- it incorrectly relied on section 31(1)(g);
 - it incorrectly relied on section 36(2)(c);
 - it breached section 1(1)(b) by not providing the complainant with the requested information by the time of the completion of the internal review;
 - it breached section 10(1) by not providing the complainant with the requested information within 20 working days of the request;
 - it breached section 17(1) by failing to cite the exemptions it later relied on within 20 working days; and
 - it breached section 17(1)(c) by failing to explain adequately why the exemptions applied.

Steps Required

78. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- the Home Office should disclose the requested information to which section 40(2) does not apply to the complainant.
79. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

80. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court

(or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Other matters

81. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his *'Good Practice Guidance No 5'*, published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner is concerned that in this case, it took over five months for an internal review to be conducted, despite the publication of his guidance on the matter.

Right of Appeal

82. 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.

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.

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 13th day of December 2010

Signed

**Graham Smith
Deputy Commissioner**

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

Legal Annex

Section 31 Law enforcement

Section 31(1) provides that –

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

- (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 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.”

Section 31(2) provides that –

“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 Prejudice to effective conduct of public affairs

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 40 Personal information

Section 40(1) provides that –

"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."

Section 40(2) provides that –

"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."