

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 13 September 2011

Public Authority: Foreign and Commonwealth Office

**Address: Old Admiralty Building
Whitehall London SW1A 2PA**

Summary

The complainant requested records of governmental discussions which took place between the United Kingdom and France and the United States following the television interview of President Chirac on 10 March 2003 (closely preceding the decision of the British Government to go to war with the United States against Iraq.) The Foreign and Commonwealth Office confirmed that it held five documents in total which came within scope of the request. A sixth document came to light during the course of the Commissioner's investigation. The Foreign and Commonwealth Office withheld five of the six documents under sections 27(1)(a) and 27(2). In addition to these exemptions, the remaining document (a note of a telephone discussion between Prime Minister Blair and President Bush) was also withheld under section 35(1)(a). During the course of the Commissioner's investigation, the FCO disclosed five of the six documents to the complainant. Latterly, the FCO confirmed that in addition to section 27, it was relying upon section 35(1)(b) (rather than 35(1)(a)) and, in the alternative, section 36 to withhold the note of the telephone conversation.

The Commissioner decided that the withheld information was exempt under section 27 and that the public interest in maintaining the exemption outweighed the public interest in disclosure of most of it. With regard to the remaining information (identified in the confidential annex to this Decision Notice) the Commissioner accepts that this information is exempt under both section 27 and section 35(1)(b), but considers that the balance of the public interest favours disclosure.

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. In early 2003, with Iraq not fully complying with its obligations under United Nations (UN) resolutions with regard to inspections of its weapons programme and facilities, the United Kingdom (along with its allies the United States and Spain) made strenuous diplomatic efforts to secure enough votes on the UN Security Council to enable the passing of a further resolution which would give Iraq a final deadline for compliance with earlier resolutions. This proposed resolution would authorise (in the event of non-compliance by Iraq) automatic military action against the Saddam Hussein regime without the need for a further decision by the Security Council.
3. On Monday 10 March 2003, the French President, Jacques Chirac gave a television interview, during the course of which he announced that France would not support any proposed resolution which gave automaticity for military action, whatever the circumstances.

The Request

4. On 11 February 2010 the complainant wrote to the Foreign and Commonwealth Office (FCO) requesting the following:
 - Records of the 'number of messages from France' (both oral and written), which had been received by the British Government on 11, 12 and 13 March 2003, regarding the alleged misinterpretation of President Chirac's words in his television interview of 10 March 2003. Including the record of the telephone call from Dominique de Villepin (French Foreign Minister) to Jack Straw (British Foreign Secretary) of 13 March 2003.
 - Records of any discussion which may have taken place between Mr Blair and President Chirac following the above telephone conversation between the two Foreign Ministers, including comments on the discussion made by FCO Ministers or officials.
 - Records of 'an agreement made with the White House' (and apparent discussion between Mr Blair and President Bush), to 'say that it was the French who prevented us from securing a

Resolution', and any comments made on this discussion by FCO Ministers or officials.

5. The FCO responded to the complainant on 12 April 2010. It confirmed that it held five documents which came within the scope of the request. Three of the documents held related to the first tier of the request and were withheld under section 27(1)(a) (prejudice to international relations) and section 27(2) (confidential information obtained from another state). Regarding the second tier of the request, the FCO confirmed that it held a record of the follow up discussion between Prime Minister Blair and President Chirac, but did not hold any records of further discussion and comments made by FCO Ministers or officials. This information was also withheld under section 27(1)(a) and 27(2). Finally, the FCO confirmed that it held a record of a telephone conversation between Prime Minister Blair and President Bush of Wednesday 12 March 2003. This information was withheld under section 27(1)(a), section 27(2) and section 35(1)(a) (formulation or development of government policy).
6. On 28 April 2010, the complainant wrote to the FCO to request an internal review of its decision. The complainant subsequently provided the FCO with a detailed critique of its decision to withhold the requested information.
7. The FCO notified the complainant of the outcome of its internal review on 6 July 2010. The FCO confirmed that it was content that the information requested should be withheld under the exemptions cited. Although the FCO acknowledged that, *'the balance of public interest has undoubtedly shifted as a significant amount of information has publicly during the Iraq Inquiry'*, and that, *'the releasing of papers would make government more accountable and increase trust'*, with a *'clear public interest in decision-making being transparent'*, it confirmed that there is a clear public interest in withholding the documents. *'Principally, that government requires a clear space, immune from the public view in which it can conduct the exchange of views internally and free from the pressures of public political debate. A further argument is that government must maintain the trust and confidence of other governments and international organisations'*. The FCO confirmed that it was of the view that both of these factors would be at risk if it were to release the documents requested.
8. The FCO also advised the complainant that, *'you will be pleased to know that the Iraq Inquiry Unit is working tirelessly, in concert with the Iraq Inquiry Secretariat, to release as many documents as possible, through declassification, into the public domain. This is an ongoing process which will lead up to the publication of the Inquiry's full report at some point early next year'*.

The Investigation

Scope of the case

9. On 6 August 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. In addition to the points made in his detailed critique to the FCO, the complainant specifically asked the Commissioner to consider the following points:
 - i. *'The reasons given for refusing disclosure are so general as almost to amount to the claim that the Fol Act should not apply to the FCO. No attempt was made to show that the disclosure of these particular documents would have the adverse effects described; undermining the trust between the UK and foreign states, especially France and the US, and between the UK and the UN; inhibiting candid discussion between ministers and officials or the way in which such discussions are reported'.*
 - ii. *'No one would deny that there could be occasions when documents held by the FCO should not be disclosed because to do so would inhibit the frank exchange of views or undermine the trust and confidence that foreign governments or international organisations have in the British government. But the FCO cannot rely on the fact that disclosure could sometimes have such undesirable consequences. It has to show that disclosing the particular documents that I asked for would be likely to have that result. The FCO has not attempted to show that, and the risk seems extremely small. If these documents cannot be released, what FCO documents can be?'*
10. During the course of the Commissioner's investigation the FCO, recognising that ongoing developments and evidence heard by the Iraq Inquiry meant that the balance of the public interest had shifted in favour of disclosure, decided to disclose four of the five originally withheld documents to the complainant in their entirety. In addition, the FCO disclosed an additional document to the complainant; an email dated Wednesday 12 March 2003 from Matthew Rycroft (Foreign Affairs Private Secretary to the Prime Minister) relaying French concerns that President Chirac's comments needed to be read and understood in the context of what he had said earlier in his television interview of 10 March 2003. This document had been overlooked when the FCO originally responded to the complainant's request, but was discovered when the FCO responded to the Commissioner's request for copies of the withheld information.

Chronology

11. On 19 November 2010 the Commissioner wrote to the FCO to ask for copies of the withheld information and further explanation as to the exemptions applied to the request. The FCO provided a response to the Commissioner on 10 January 2011 and supplied the Commissioner with copies of the withheld information on the 10, 12 and 19 January 2011.
12. The Commissioner wrote to the FCO on 26 January 2011 requesting further information and clarification on the representations made. On 14 February 2011, the FCO provided a response which expanded upon its rationale for withholding the information requested, particularly the note of the telephone conversation between Prime Minister Blair and President Bush (the Blair/Bush note).
13. On 3 March 2011 the FCO disclosed five of the six documents within scope of the request to the complainant in their entirety. These documents have also been placed in the public domain via publication on the Iraq Inquiry website. The FCO maintained that the remaining document (the Blair/Bush note) was withheld under the exemptions previously cited.
14. In a letter to the Commissioner of 11 March 2011, the complainant provided detailed representations in support of his contention that the public interest, *'manifestly favours'* disclosure of the Blair/Bush note.
15. On 27 June 2011, following further discussions with the Commissioner, the FCO provided final submissions and advised that in addition to section 27(1)(a) and (b) and 27(2), it wished to apply section 35(1)(b) and, in the alternative, section 36 to the information. That is to say, the FCO was no longer relying upon section 35(1)(a) and was relying instead upon section 35(1)(b) and, in the alternative, section 36. The Commissioner notes that the only previous reference in this case to section 35(1)(b) by the FCO was in its internal review decision to the complainant, where the exemption was cited but not explained or expanded upon. Section 36 had not been cited by the FCO prior to this point.

Analysis

Exemption – section 27(1)(a) (b) and 27(2)

16. Section 27(1)(a) (b) and 27(2) provide that:

'Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice –

- (a) relations between the United Kingdom and any other State'*
- (b) relations between the United Kingdom and any international organisation or international court.*

Section 27(2) states:

'Information is also exempt information if it is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court'.

17. The requested information has been considered by the Commissioner. Section 27(1)(a) and (b) will only be engaged if the requested information relates to international relations and disclosure of it would, or would be likely to, cause some prejudice to United Kingdom relations with another state(s) or international organisation or international court. In its original response to the complainant of 12 April 2010, the FCO stated that disclosure of the document *'would'* have a particularly adverse impact on relations between the United Kingdom and France, and relations between the United Kingdom and the United Nations (UN). This response was upheld in the FCO internal review decision of 6 July 2010 in which the FCO stated that government, *'must maintain the trust and confidence of other governments and international organisations'*, and that, *'both of these factors would be at risk if we chose to release the documents you have requested'*.
18. In its submissions to the Commissioner of 10 January 2011, the FCO advised that it considered that release of the document, *'may'* impact on international relations between the United Kingdom (UK) and the United States (US) and other specified countries, and that it *'may'* impact on relations with the UN (under section 27(1)(b) – relations between the United Kingdom and any international organisation or international court).
19. It is clear from their submissions to the Commissioner that the emphasis of the FCO concern was the prejudicial effect upon relations between the UK and the US since it is stated that disclosure *'would therefore damage relations with the US and impact directly on the nature of the relationship and information sharing between the UK and US'*. There was no mention of the UN and the section 27(1)(b) exemption.
20. The Commissioner notes that the FCO assessment of the degree of prejudice which disclosure of the document would cause has alternated

in this case. Originally, the FCO asserted that disclosure *'would'* lead to the prejudice, but then lessened the likelihood to *'may'* prejudice in its first substantive response to the Commissioner. In its response of 14 February 2011, the FCO made clear that it was asserting that prejudice *'will'* be caused by disclosure. By the time of its final submissions in June 2011, the FCO had reverted back to the *'would be likely'* assessment of prejudice. In cases where a public authority asserts that prejudice *would* be caused by disclosure of requested information, then there is a much stronger evidential burden for the public authority to discharge than in cases where it is claimed that prejudice *'would be likely'* (Hogan v Oxford City Council and The Information Commissioner – EA/2005/0026 and EA/2005/0030).

21. On the basis of the final FCO submissions, the Commissioner considers that the degree of risk asserted is the lesser *'would be likely to'* rather than the more definite *'would'*. However, the Commissioner would expect to see consistency in the degree of prejudice claimed throughout the FCO correspondence, particularly in a case such as this which concerns sensitive information. It is less than satisfactory that such consistency was not present in this case.
22. In submissions to the Commissioner, the complainant contended that the FCO, *'does not give any specific reasons for its belief that these relations (between the UK and the US) would be harmed by releasing the record of the telephone conversation between Mr Blair and President Bush. I think it is incumbent on it to do so; it cannot simply rely on the claim that conversations with heads of other states should never be revealed, since one document that has been released contains a detailed account of a telephone conversation between Mr Blair and President Chirac'*.
23. It is certainly the case, as the complainant maintained in his correspondence with the FCO and the Commissioner, that it is not sufficient for the FCO to simply cite an exemption such as section 27(1)(a), without providing some rationale or explanation as to why it considers that disclosure of the requested information would (or would be likely to) lead to the prejudice claimed. It would be neither appropriate nor tenable for a blanket approach to be taken by the FCO in all cases involving conversations between heads of state or government. Much will depend on the particular circumstances of any specific case. In this context, the FCO informed the Commissioner that it latterly decided to disclose the note of the telephone discussion between Prime Minister Blair and President Chirac because of the significant amount of evidence that had subsequently been given on the issue of the Chirac interview by witnesses to the Iraq Inquiry, particularly the former Foreign Secretary, Mr Jack Straw, and which was thus now in the public domain.

24. In submissions to the Commissioner, the FCO placed considerable weight upon the correspondence to the Iraq Inquiry of the Cabinet Secretary, Sir Gus O'Donnell. On 11 January 2011, the Cabinet Secretary wrote to the Iraq Inquiry, asserting that, *'exchanges between the UK Prime Minister and the US President represent particularly privileged channels of communication'*. Responding to this claim in his own submissions to the Commissioner, the complainant noted that, *'The words 'particularly privileged' may suggest that communications with the United States have a legal status different from, and somehow superior to, that which governs communications with other nations, but there seems to be no foundation for such a view. Nothing in the FOI Act supports the claim that communications between the Prime Minister and the US President are more privileged than those between the Prime Minister and the head of any other state'*.
25. Whilst the complainant is correct to state that there is no special exemption or 'privilege' afforded to communications with the US within the Act, the Commissioner would wish to make clear that the statement of the Cabinet Secretary is not inconsistent with the operation of section 27(1)(a). The degree and level of prejudice that might, or would, be caused to relations between the UK and another state, will necessarily differ in each case, depending on the content of the information, and, to some extent, the importance of the relations between the UK and the country in question. That is to say, the prejudice is variable and could be expected to be lesser or greater depending on the strength and importance of the particular international relations which risk being potentially prejudiced.
26. The UK has long-standing ties with the US, which remains one of the UK's closest allies on the international stage in such spheres as trade, diplomatic and military cooperation. History shows that most UK Prime Ministers (Mrs Thatcher and Mr Blair in particular) in recent times have enjoyed a degree of access to, and confidence in, US Presidents which, in comparison to most other world leaders, could be described as *'privileged'*. The importance of the so-called 'special relationship' between the US and the UK should not be underestimated (although the Commissioner is mindful that it can also be exaggerated) Integral to this relationship (as is the case with other states) is the need to maintain the trust and confidence referred to by the FCO.
27. The Commissioner also recognises, however, that it is that very close connection between the UK and the US (through the respective leaders of both nations at the time in question) which heavily influenced the UK's involvement in the Iraq War which forms the background to the current case. But in assessing the prejudice that would be caused to the UK's relations with another state, the Commissioner is required to

consider the wider context and the long-term consequences which disclosure of the requested information would cause.

28. Although it is correct to say that it would be wrong for the FCO to adopt a generalised or blanket approach to the use of section 27(1)(a) and (b), the Commissioner is also mindful that it is often difficult for the FCO to elaborate as to its reasons for asserting prejudice in cases involving information of this nature without revealing the very information which the exemption is designed and engaged to protect. It is a fine and often difficult balance in each case. In this case, the Commissioner considers that the FCO should have provided the complainant, in its responses to his request, with the slightly more expansive explanation which it later provided to the Commissioner, most notably the concern about disclosure impacting *'directly on the nature of the relationship and information sharing between the UK and US'*.
29. With regard to the other states cited by the FCO and to which it considers prejudice would likely be caused to the UK's relations, the Commissioner has noted and acknowledged that at the time of the complainant's request a considerable amount of information was already in the public domain about the positions which various countries took with regard to Iraq in the early months of 2003.
30. The Commissioner notes that the FCO has also maintained reliance upon section 27(2) in its submissions to the Commissioner concerning the Blair/Bush note. In its initial response to the complainant the FCO advised that, *'the information contained in this document was supplied and discussed confidentially. To release the information would undermine this confidence and potentially have an adverse influence on those who would usually provide the UK with confidential information'*.
31. Section 27(2) is not subject to a test of prejudice but applies only if the requested information is in fact confidential. No direct evidence was produced in this case to demonstrate that the US (as the other state party to the discussion) had expressly stated that the matters discussed should be treated as confidential. However, as the Commissioner confirmed in FS50077719 (Azores and Crawford case), information may also be confidential if there is an expectation placed on the information by a non-UK state that it will be held in confidence by the UK.
32. The argument that there was such an expectation in this case is supported by the document being marked 'Secret'. While the Commissioner does not consider that security classification/descriptor is sufficient by itself to justify non-disclosure, it is relevant to the extent that it reflects an expectation amongst the parties that the

content will be treated in confidence and that access will be strictly controlled. Secondary to this point is the significance of a note recording the Prime Minister's expectations about who would see the information, signalling a clear expectation of confidentiality and very limited circulation.

33. Under section 27(2), information is exempt information, *'if it is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court'*. As the wording makes clear, the information which the exemption is designed to protect is confidential information *'obtained from a State other than the United Kingdom'*. Since much of the information contained in the document in question consists of information imparted to Prime Minister Blair by President Bush (and thus obtained by the UK from the US), the Commissioner is satisfied that such information is confidential information within the meaning of section 27(2).
34. However, some of the information contained within the document, consists not of information provided to Prime Minister Blair by President Bush, but rather information imparted to President Bush by the Prime Minister about the issue of Iraq and its contemporary impact upon domestic UK politics. This information was not obtained by the UK from the US (as represented by President Bush). Section 27(2) therefore does not apply to it.
35. Due to the close correlation of the public interest considerations attached to both section 27 and section 35(1)(b), the Commissioner will address these together, rather than separately, following consideration of the section 35(1)(b) exemption.

Exemption – section 35(1)(b)

36. Section 35(1)(b) provides that information held by a government department is exempt information if it relates to *'Ministerial communications'*.
37. Ministerial communications are defined at section 35(5) of the Act, and the scope and application of the definition has been since further clarified by the case law. In the present case, the FCO advised the Commissioner that the document in question is from the Private Secretary of the Prime Minister to the Private Secretary to the Foreign Secretary, stating that, *'in effect, it is a conversation between their Political chiefs, and as such may be felt to fall within section 35(1)(b)'*.
38. The Commissioner would agree with this analysis, which is supported by two Scotland Office cases. In EA/2007/0070, the Tribunal held that information can come within the definition of Ministerial communications if it relates to such communications, such as where a

Private Secretary writes on behalf of his/her Minister to another Minister. Furthermore, in EA/2007/0128, the Tribunal confirmed the status to be accorded to letters written by one Private Secretary to another Private Secretary. The Tribunal stated that, *'such letters would contain the views of the relevant Ministers and so would, in our opinion, properly fall to be considered under section 35(1)(b)'*. The Commissioner considers that information of the type referred to in the above Scotland Office cases, would effectively be written on behalf of a Minister and so would directly qualify as Ministerial communications, rather than just 'relate to' such communications.

39. Having seen the withheld information in the present case, the Commissioner is satisfied that the document and its contents is effectively a Ministerial communication from the Prime Minister to the Foreign Secretary. This being the case, the Commissioner finds that the information does come within scope of the section 35(1)(b) exemption.
40. Although the FCO, in final submissions to the Commissioner, did not maintain its reliance on section 35(1)(a), had it done so, then the Commissioner would have also found this section to be engaged, since the information clearly relates to the formulation or development of policy, namely, the UK policy towards Iraq, which was close to being finalised at that point in time.
41. In this respect, the Commissioner acknowledges submissions made by the complainant, where he highlighted that the FCO, *'does not say just how the requested document did contribute to the formulation or development of policy. I appreciate that it might be difficult to provide much detail without giving away the very information which the FCO wants to keep secret, but I would have thought it was incumbent on it to say something, at least to the Commissioner, even if its arguments could not be passed on to a private inquirer such as me'*. The Commissioner agrees that it was incumbent upon the FCO, in its responses to the complainant, to specify (as far as possible) exactly what the policy was which had prompted the use of section 35(1)(a). The Commissioner's own summation of the policy in paragraph 40 above, would have provided this confirmation, without posing any of the risks which the section 35(1)(a) exemption (or the other exemptions) had been applied to avoid.
42. As previously indicated, because of the close overlap between the public interest considerations attaching to section 27 and section 35(1)(b), the Commissioner has decided to adopt a combined consideration of such considerations, distinguishing between the two exemptions where appropriate.

Section 36(2)(b)(i), (ii) and (c)

43. Having upheld the FCO's submissions that the withheld information is exempt by virtue of section 35(1), the Commissioner has not proceeded to consider the late, alternative submission that the information was exempt under section 36. Section 36(1)(a) clearly states that section 36 can only apply to information held by a government department if it is not exempt by virtue of section 35.

Public Interest Test

44. In approaching his consideration of the public interest factors in this case, the Commissioner has been mindful that, as the Tribunal noted (paragraph 6) in *Cabinet Office v Information Commissioner and Dr Christopher Lamb* (EA/2008/0024 & 0029), a case which also involved information (Cabinet minutes), the obligation of the FCO to disclose the information in question did not apply unless (pursuant to section 2(2)(b), *'in all the circumstances of the case, the public interest in maintaining the exemption outweigh the public interest in disclosing the information. The balancing exercise required by that sub-section should be carried out as at the date when the request for information was refused'* (12 April 2010 in this case).

Public interest arguments in favour of disclosing the requested information

45. Prior to the FCO decision to release all but one of the documents requested by the complainant (which occurred during the Commissioner's investigation), the complainant made a number of very detailed and evidence based arguments as to why he believed that the information requested should be disclosed. Following the FCO decision to voluntarily disclose five of the six documents which fell within scope of the request, the complainant helpfully provided the Commissioner with further public interest submissions which specifically focused on the remaining withheld document (the Blair/Bush note). The Commissioner has taken due account of these information specific arguments in his consideration of the public interest factors. This is so even though those arguments are not reproduced in full in this notice.
46. In his submissions to the Commissioner of 11 March 2011, the complainant contended that the FCO, *'cannot simply rely on the claim that conversations with heads of other states should never be revealed, since one document that has been released contains a detailed account of a telephone conversation between Mr Blair and President Chirac'*.
47. Regarding the FCO concern that disclosure of the Blair/Bush note might set an unwelcome precedent, the complainant responded as follows:

'To allay that reasonable concern, it could be made clear that the decision to release this particular record has been taken because of a number of exceptional circumstances, including the almost unprecedented gravity of the decisions discussed and taken, involving hundreds of thousands of deaths, a direct challenge to the status in international law of the provisions of the United Nations Charter, the implied undermining of the authority of the Security Council, and the setting of a precedent by two permanent members of the Security Council that could be exploited in future by aggressive or expansionist states'.

48. The complainant noted the, *'widespread suspicion that the decisions which Mr Blair and President Bush took in their telephone conversation were wrong, and indeed, dishonest. The refusal to release the record of this conversation can only fuel such suspicions, especially in view of the embarrassing nature of the information which the FCO has agreed to disclose'*. He went on to acknowledge that, *'such suspicions may be completely unfounded. If so, it must be in the public interest, and indeed in the interests of those at whom such grave suspicions are pointed, to lay them to rest by making the record available, and it is hard to see how relations with the US would be harmed by doing so. But if the suspicions are justified, then the fullest facts clearly ought to be made known'*.
49. In submissions to the Commissioner, the complainant noted a number of circumstances which he considered justified the disclosure of this specific record, these being:
- i) Neither participant in the conversation now holds any kind of national office;
 - ii) The governments of which both were heads have now been replaced by new governments of different political parties;
 - iii) The radical change in the regional and international situation and the lapse of time since the conversation took place.
50. The complainant argued that, *'all these special factors reduce to negligible proportions the risk of a precedent being set that might lead to a general practice of making public the records of conversations between political leaders such as to inhibit their frankness in future. (In any case, as already mentioned, a precedent has already been set, so it must be questionable whether a second could do any more harm than the first)'*.
51. The complainant also contended that, *'even in the extremely unlikely event that releasing the record of the telephone conversation could have some deleterious effect on the UK's relations with the US, that*

would be far outweighed by the right of the British people and future historians to know as much as possible about the lead-up to the invasion of Iraq and, in particular, when, how and by whom decisions were taken during that period which had such disastrous consequences'. The complainant opined that, 'it does seem to me, without denying that there is some substance in the FCO's position, that on balance the public interest manifestly favours disclosure'.

Public interest arguments in favour of maintaining the exemptions

52. In its original refusal notice of 12 April 2010, the FCO informed the complainant (with specific reference to the Blair/Bush note) that it, *'does consider that the release of this document would increase transparency of international relations and raise public awareness of how communication is conducted between heads of state. Nevertheless, the release of this document would impact on international relations between foreign states, relations between the UK and the UN, and other nations, particularly the US ...'*
53. In accordance with section 27(2), the FCO argued that, *'the information contained in this document was supplied and discussed confidentially. To release the information would undermine this confidence and potentially have an adverse influence on those who would usually provide the UK with confidential information'.*
54. In final submissions, having switched from reliance on section 35(1)(a) to section 35(1)(b), the FCO contended that, *'The possibility of Prime Ministers being less likely to express themselves as freely, or for their Private Secretaries to take a less comprehensive record is not in the public interest for two reasons; first, if the record is relatively recent then when it is consulted it will be of little use to decision makers. Secondly, the historical record will be of limited use'.* The FCO invited the Commissioner to consider the arguments which Professor Hennessy had raised in the aforementioned Cabinet Minutes case, *'specifically his point as regards the notebooks, and why he did not seek disclosure of them'.*
55. In paragraph 17 of his witness statement (dated 10 November 2008), in the Cabinet Minutes Tribunal case, Professor Hennessy stated that:

'Whilst I consider that the public interest in the disclosure of the Minutes is very strong, I do not believe that the public interest would be served by disclosure of the Notebooks. Although part of me would like to see it because it is bound to be a fuller record of the formal cabinet minute with views attributed. The other part of me which prevails, the historian part, is very reluctant to make that case because I am sure that if disclosure was ordered the Cabinet Secretary's

notebook from next week would be a meagre thing compared to all previous ones and history would be the undoubted and permanent loser'.

56. Having considered Professor Hennessy's comments in the full context of his evidence to the Tribunal as a whole, the Commissioner does not consider the analogy being drawn by the FCO to be an accurate or apposite one. The withheld information in the present case does not constitute the notes of a meeting, but rather records a key conversation between Mr Blair and President Bush with regard to a foreign policy decision of almost unparalleled magnitude.
57. In the Cabinet Minutes case, the Tribunal, having found by a majority that the formal Cabinet Minutes ought to be disclosed, unanimously decided that the informal notes (the notebooks) should not be disclosed, largely because the Tribunal concluded that the informal notes would not contribute materially to public knowledge or understanding on the point, and that any interest that did exist in furthering public information would be outweighed by the public interest in maintaining confidentiality over the additional material. Indeed, the Commissioner had been of the same view with regard to the informal notes.
58. As noted in paragraph 7 above, the FCO acknowledged, in its internal review decision of 6 July 2010, that the balance of the public interest had shifted more in favour of disclosure because of the airing and publishing of information from the Iraq Inquiry. However, the FCO maintained that there was, '*a clear public interest*' in withholding the documents for the reasons given. As previously noted, on 3 March 2011, eight months after this assessment of the public interest balance, the FCO chose to disclose five of the six documents within scope in their entirety, following ongoing developments at the Iraq Inquiry.
59. In submissions to the Commissioner, as detailed in paragraphs 18 and 19 above, the FCO maintained that the release of the Blair/Bush note would impact on international relations primarily between the UK and the US, but also with the other countries concerned.
60. The FCO drew the Commissioner's attention to an exchange of correspondence between the Cabinet Secretary, Sir Gus O'Donnell, and Sir John Chilcot (which post-dated the complainant's request and which has since been declassified and put into the public domain).
61. In a letter dated 11 January 2011, the Cabinet Secretary, responding to a request from Sir John Chilcot that the Iraq Inquiry be allowed to

refer to limited extracts from exchanges between Mr Blair and President Bush, advised that:

'Exchanges between the UK Prime Minister and the US President represent particularly privileged channels of communication, the preservation of which is strongly in the public interest. Even where immediate sensitivity may have passed, disclosure of the material could still prejudice relations by inhibiting future exchanges. A UK Prime Minister may be less likely to have these exchanges (or allow them to be recorded) if he is concerned that this information would be discussed at a later time against his wishes. Inhibiting this type of free and frank exchange would represent real prejudice to the UK's relations with the US'.

In the same letter, the Cabinet Secretary had recognised the, *'exceptional nature'* of the Iraq Inquiry, but had advised its Chairman that, *'it is clear to me that the public interest in publishing these particular exchanges is not outweighed by the harm to the UK's international relations that would likely be caused by the Cabinet Office authorising their disclosure'.*

62. Whilst it is important to make clear that the Commissioner is tasked only with considering the information within scope of the complainant's request – the record of one telephone discussion (albeit a crucial discussion) between Mr Blair and President Bush (as opposed to the exchanges/correspondence between the two as a whole concerning the issue of Iraq), it is clear that the view of the Cabinet Secretary has equal application and force to the information in this case. Indeed, considerable reliance has been placed upon the Cabinet Secretary's view by the FCO.
63. On the question posed by the Commissioner (and asked by the complainant) as to whether the FCO had sought the view of the current US administration with regard to the withheld information, the FCO advised that its general approach was that if a document is authored by a foreign government, then the FCO would always consult that foreign government for its views. However, if, as in this case, the document was authored by the UK, but related to a foreign government, then the FCO would usually (although there may be exceptions), make the judgement itself in consultation with policy desks and FCO overseas posts.
64. Therefore, in this specific case, the FCO had not sought the view of the US as to disclosure of the withheld information. The Commissioner does not consider that this lack of US consultation in any way invalidates the use of section 27 in this case, and he accepts that the

FCO is both entitled and well placed to reach its own judgement as to the view which the US would be likely to take as regards disclosure.

Balance of the public interest arguments

65. The Commissioner considers that the complainant has advanced a number of powerful and cogent public interest arguments in favour of disclosing the withheld information.
66. Most important of these, in the Commissioner's opinion, is the public interest in accountability for the decision to go to war in Iraq. It could be argued that whereas most previous wars in which UK forces were committed, including the Gulf War of 1990/1991, were based on a recognised policy of self-defence (either of the UK or its allies), the decision to launch a pre-emptive war against Iraq in 2003 represented an important departure from traditional UK foreign policy to which only the Suez Crisis of 1956 would be of comparable scope or controversy.
67. As the Tribunal recognised in the Cabinet Minutes case (EA/2008/0024 and 0029), *'the decision to commit military forces to Iraq was a grave and controversial one'*. The controversy surrounding the decision persists to this day (as evidenced by the much anticipated conclusions of the Iraq Inquiry and the recognition by Prime Minister Brown that the public interest was such that the Inquiry needed to be commissioned as soon as possible). In such circumstances, the Commissioner considers that accountability for the decision to take military action against another country is, as he previously stated in FS50165372, *'paramount'*.
68. There is a strong public interest in the transparency and openness of decision-making, particularly in cases such as this where the decisions taken had far-reaching consequences. However, the Commissioner considers that the decision of the Cabinet Secretary to refuse permission for the Iraq Inquiry to refer to limited extracts of the exchanges between Mr Blair and President Bush, and the potential inhibiting effect which this would have on transparency and accountability of the Inquiry's findings is a matter primarily for the Iraq Inquiry. The Commissioner has been tasked by Parliament with making decisions on complaints made to him under section 50 of the Act. He is independent of the Government.
69. The main public interest argument which the FCO have maintained against disclosure throughout this case and which cuts across all the exemptions claimed (although most notably section 27), is the damage which the FCO asserts would be likely to occur to international relations between the UK and the US. Although the FCO has also argued that disclosure would be likely to prejudice relations between the UK and a

number of other countries, it is relations between the UK and the US (often referred to as 'the special relationship') which is clearly of primary concern to the FCO, and which forms the central basis of their submissions in this matter.

70. As the Commissioner has fully acknowledged in paragraphs 26 and 27 above, the close relationship and levels of cooperation between the UK and the US is such that there is a strong public interest in ensuring that this relationship is not unnecessarily prejudiced or undermined in any way. Whilst nothing in the Act makes special exemption for information which specifically involves the US (section 27 being universal in its application to other countries), the strength of the public interest in protecting the UK's relations with any given country will inevitably depend upon how important and integral that relationship is with the UK.
71. For reasons noted above, the Commissioner entirely accepts, that, to quote the Cabinet Secretary, *'Exchanges between the UK Prime Minister and the US President represent particularly privileged channels of information, the preservation of which is strongly in the public interest'*. However, this is not to say that there could never be occasions where the public interest was so powerful as to require disclosure of such exchanges, or extracts of the same.
72. In submissions to the Commissioner dated 27 June 2011, the FCO argued that, *'Releasing any content from a record of this type would be damaging to international relations, regardless of whether the content itself is anodyne (although we do not conclude that much of the information would fall to qualify for that description), as the United States would see it as breaching the privileged and confidential nature of those exchanges'*. The FCO further advanced that, *'On both the section 27(1) and (2) fronts, breaching the confidence of such exchanges, even when that content is not necessarily controversial, could undermine the confidence of US Presidents that future exchanges of this type would remain private. That loss of confidence would be likely to undermine the ability of the Prime Minister to have a free and frank exchange of views on sensitive topics'*.
73. As the above submission shows, the FCO have adopted a blanket approach to the information in this case, that is to say, its position is not that this specific document should never be disclosed, but that no document *'from a record of this type'* should ever be disclosed. There is a clear danger, in making generic arguments of this type, rather than an individual context specific case for maintaining the exemptions applied, of elevating what are qualified exemptions (albeit very important ones) to the status of absolute exemptions.

74. The Cabinet Office accepted in the Cabinet Minutes Tribunal case cited above, that the section 35 exemption (and by extension the section 27 exemption) is qualified, not absolute. The Tribunal noted that the Cabinet Office, *'acknowledged that there might therefore be occasions when the public interest in disclosing particular information was at least equal to the public interest in maintaining confidentiality'*. In its submissions in the present case, the Commissioner has not observed a similar stated acknowledgement from the FCO with regard to the section 27 exemption.
75. However, the Commissioner notes that although in its original response to the complainant, the FCO withheld the record of the telephone conversation between Mr Blair and President Chirac, this document was subsequently disclosed to the complainant (and is now available on the Iraq Inquiry website) during the course of the Commissioner's investigation. Whilst the Commissioner (having had sight of the Blair/Bush record), accepts that this discussion (unlike the Blair/Chirac record) involved wider foreign policy issues than Iraq, it is clear that Iraq was central to and, as would be expected at that point in time, dominated the discussion between the two leaders.
76. Furthermore, the suggestion by the FCO that it mainly chose to disclose the Blair/Chirac telephone exchange because much of the French/UK exchanges which had taken place at that time had been discussed by Mr Straw in his evidence to the Iraq Inquiry, does not fit comfortably with the blanket based approach to section 27 which the FCO has adopted in this case. Even if the Commissioner were to accept that the confidentiality of such discussions between heads of state/government should always carry overriding importance in principle, then he would have expected the FCO to have adopted the same approach to the Blair/Chirac exchange (i.e. non-disclosure) as it has to the Blair/Bush exchange, regardless of any peripheral or related evidence given by the former Foreign Secretary or other witnesses to the Inquiry.
77. However, it is the case that the Commissioner recognises (as he stated in paragraph 21 of FS50077719 – records of meetings between Mr Blair and other world leaders at the Azores summit and Crawford, Texas in 2003), that *'since section 27(2) covers confidential information as a class, the expectation of confidence is particularly significant. The Commissioner recognises that the grounds for breaching confidentiality in a case must be strong because the preservation of confidentiality is a highly desirable end in itself'*.
78. As the complainant has correctly contended and as the FCO have to some extent acknowledged, disclosure of the information concerned would increase transparency of international relations and raise public

awareness of how communication is conducted between heads of state. In this respect, the Commissioner notes that the voluntary disclosure by the FCO of the Blair/Chirac exchange has gone some way towards increasing this public awareness.

79. More pertinently, and importantly, disclosure of the information would provide the public with a key piece of information as to what was discussed between Mr Blair and President Bush only days prior to the commencement of military action against Iraq.
80. Whilst the Commissioner considers that the grounds for making an exception to the confidentiality which section 27(2) is designed to protect are strong, the public interest in protecting that confidentiality as a principle in itself should not be underestimated. The Commissioner recognises the importance of the UK maintaining strong and reciprocal relations with other countries, particularly those countries, such as the US, with whose interests in a whole number of areas, the UK closely shares. If, as the FCO contends, the disclosure of the information *'would be likely to make the President of the US and others less willing to provide advice or engage in the free and frank exchange of views with the Prime Minister and other members of Her Majesty's Government'*, then the Commissioner accepts that this consequence could have considerably negative and detrimental effects to the UK's long-term interests.
81. The prejudice which an inhibiting or lessening of the confidences between the US President and the Prime Minister of the UK could cause might manifest itself in the UK having a less influential and advantageous role with regard to important and wide-ranging decisions of a global dimension and scale. Whilst the Commissioner is mindful that the political reality of the 'special relationship' and the power imbalance between the two countries means that the UK's ability to influence or effect decisions taken by the US (be they in the spheres of foreign policy, trade, intelligence etc) will always be limited in scope, it remains the case that in comparison to most other countries, the UK enjoys particularly close and mutually beneficial relations with the US.
82. Therefore, whatever public interest benefits (strong though they are) would flow from disclosure of the information in this specific case, the Commissioner believes that these need to be carefully balanced against the public interest detriment that would be likely to be caused to the UK's relations with the US in the long-term. In submissions to the Commissioner, the FCO cited the recent (2009) example of the Binyam Mohamed case and the concerns which the US administration had raised about the disclosure of information regarding Mr Mohamed's treatment when detained at Guantanamo Bay. It was widely reported in the media that the US had warned the then Foreign Secretary, David

Miliband, that it might reconsider its intelligence sharing arrangements with the UK if such information was placed in the public domain. Although the Commissioner notes that that case concerned information provided to the UK by the US in an intelligence capacity, he considers that the case does illustrate the importance of relations between the UK and the US with regard to information sharing more generally.

83. After careful consideration, and in circumstances where the respective public interest considerations are very finely balanced, the Commissioner is of the view that the public interest in maintaining the section 27 exemption to protect the confidentiality of the information provided by the US (in the form of information provided to Mr Blair by President Bush), outweighs, by a significant, but by no means overwhelming margin, the public interest arguments in favour of disclosure of this information, persuasive and weighty though they are.
84. The Commissioner emphasises that his decision with regard to the information contained in the document consisting of information obtained from a State (US) other than the United Kingdom, has been made because the Commissioner believes that the short-term and specific public interest benefits of releasing this particular information (important though they are) would be outweighed by the risk posed to the long-term integrity and maintenance of the relationship between the UK and the US, particularly that between Prime Minister and President.
85. However, the strength of the public interest attached to this specific information is such that the Commissioner considers that the public interest balance (assessed under either section 27 or section 35(1)(b)) must be determined differently with regard to the information contained in the document which is not information obtained from the US (i.e. information which does not disclose the confidences given by President Bush, or reveal, directly or otherwise, the confidential information provided to the UK in the telephone discussion.) Once that information (the majority of the information contained in the document) is protected via appropriate redactions, the public interest arguments for disclosure of the remaining information at least equalise (and in the Commissioner's view appreciably exceed) the public interest arguments in favour of maintaining the section 27 or section 35(1)(b) exemptions.
86. The Commissioner considers that such was the gravity and controversy of the decision by Prime Minister Blair to commit the country to the military action taken in Iraq, then any information which might provide the public with an insight or awareness of the Prime Minister's thinking during the critical period when the decision was finalised, and its implications for the UK carries with it a powerful and compelling public

interest in disclosure. It is for this reason that the Commissioner has decided to order partial disclosure of the information in this case, such disclosure being limited to select extracts of the information which concern the Iraq issue only from the UK perspective, and which do not reveal any confidences or information given by the US, nor prejudice UK relations with either the US, the UN or any other countries.

87. In reaching this decision, the Commissioner has taken due account of the factors which, to a significant extent, reduce the strength of the important public interests protected by section 27 and section 35(1)(b). These factors include the fact that, at the time of the request, neither Mr Blair or President Bush remained in office (indeed a different administration was in place in the US and a different Prime Minister was heading the UK Labour Government), and Mr Blair no longer held a key role in domestic politics. In addition, UK forces were no longer engaged in Iraq. Most importantly of all, particularly with regard to section 35(1)(b) there had been a passage of time of almost seven years since the decision which forms the background to this request was taken, and a decision taken by government to have the circumstances surrounding the Iraq War and lessons learned from the same, investigated by a major public inquiry.
88. All of these factors, in the Commissioner's view, mean that the public interest considerations both for and against disclosing the identified partial information, are at the very least equalised. As the Tribunal confirmed in the aforementioned Cabinet Minutes case, *'those arguing for disclosure therefore have a slight advantage in that they do not have to show that the factors in favour of disclosure exceed those in favour of maintaining the exemption. They only have to show that they are equal'*. In the present case, given the impetus for disclosure generated by the importance of the information concerned, the Commissioner is satisfied that at the time of the request, the complainant was entitled to the slight advantage referred.
89. Having carefully considered the document in question, the Commissioner does not accept arguments made by the FCO that partial disclosure along the lines set out in the attached confidential annexe, would either, *'clearly show exactly what the President of the United States said in a private conversation'*, nor make it, *'relatively easy for the reader to make assumptions'* as to the rest of the conversation. The Commissioner is satisfied that the redactions made would prevent either risk occurring. He would also note in passing, as the complainant has pointed out, that there are already pre-existing assumptions as to the nature of the discussions between Prime Minister Blair and President Bush during this period, due to the information and evidence which has since come to light.

90. In the Cabinet Minutes case, the Tribunal recognised, as does the Commissioner, that, *'there was a strong public interest in maintaining the confidentiality of information relating to the formulation of government policy or Ministerial communications. However, this is an exceptional case, the circumstances of which brought together a combination of factors that were so important that, in combination, they created very powerful public interest reasons why disclosure was in the public interest'*. The Tribunal adopted an approach which the Commissioner has mirrored in the present case, by deciding that, *'subject to certain redactions designed to avoid unnecessary risk to the UK's international relations, the minutes should be disclosed'*.
91. Once the above risk to the UK's international relations has been appropriately addressed (by means of the redactions set out in the confidential annex attached), the remaining information in the document has also been found to be exempt under section 35(1). However, with reference to FCO arguments that disclosure of the remaining information might inhibit or otherwise discourage a future UK Prime Minister from expressing him/herself, the Commissioner would echo the view expressed by the Tribunal in the Cabinet Minutes case, when it stated that, *'When considering how to behave in future, Cabinet Ministers will be aware that, as a result of the decision to make this type of information the subject of a qualified, not an absolute exemption, the risk of disclosure in appropriate circumstances has existed since January 2005'*.
92. Seven years after the events in question, and for the powerful public interest reasons set out above, the Commissioner considers that the circumstances are appropriate for partial disclosure in this case. The Commissioner considers that the public interest arguments in favour of disclosing the partial information are compelling and constitute the type of exceptional case whereby they are at least equal to (and in the Commissioner's view, significantly outweigh) the acknowledged and accepted public interest factors which section 27 and, to a lesser extent, section 35 always carry.
93. The Commissioner notes that the FCO has submitted that the public interest in the Iraq War is being comprehensively addressed by the Chilcot Inquiry. But this is not entirely correct. Sir John Chilcot has previously expressed his concern to the Cabinet Secretary (as widely reported in the press at the time – e.g. The Independent 19 January 2011 – 'Iraq: the last secret'), that without agreement to limited disclosure of the written records of exchanges between Mr Blair and President Bush, the basis for the Inquiry's conclusions will not always be apparent and would be, *'contrary to the Inquiry's declared undertaking to be as open and transparent as possible'*.

94. The enforced constraints within which the Iraq Inquiry have been forced to work with regard to such information, mean, in the view of the Commissioner, that the public interest in transparency, openness and accountability of the key exchange which forms the information in this case, is heightened, and not lessened, by the fact that a generic decision has been taken by the Cabinet Secretary with regard to such exchanges overall. Transparency and openness are requirements which the Commissioner (like the Inquiry) considers to be especially crucial in this case.
95. The Iraq Inquiry is on public record (letter of 6 January 2011 to the Cabinet Secretary) as having been, '*disappointed*' by the above decision. In the same correspondence, the Iraq Inquiry highlighted the fact that whereas the Government had previously decided to disclose the draft legal advice of the Attorney General to the Prime Minister concerning the legality of the Iraq War, having recognised the '*very exceptional nature of the Iraq Inquiry*' (letter of 25 June 2010 to Sir John Chilcot from the Cabinet Secretary), it had not taken a similar approach to the request for disclosure of limited extracts of the Blair/Bush exchanges. Referring to the draft legal advice, Sir John Chilcot wrote to the Cabinet Secretary that, '*You concluded that, given both the very exceptional nature of the Iraq Inquiry, and the fact that the legal basis for military action and the way in which this developed was a central part of the Inquiry's work, the right course of action was for the relevant documents to be disclosed. The Inquiry finds it difficult to understand why the same considerations do not apply in relation to the limited extracts between Mr Blair and President Bush that the Inquiry is seeking*'.
96. For the reasons detailed above, the Commissioner would concur with the Cabinet Secretary's view that the Iraq War and the circumstances in which it came about are very exceptional. It is for this reason that the Commissioner considers that the public interest case for disclosure of some of the information in the key document in this case carries compelling and conclusive force and is not outweighed by the public interest in maintaining either the section 27 or section 35(1)(b) exemptions.

Redacted information

97. As explained above, the Commissioner has concluded that in respect of much of the information contained in the telephone record, the public interest in maintaining the section 27 exemption does outweigh the public interest in disclosure. That is to say, the balance is tipped for the information provided by the US (President Bush) and the confidentiality attached to the same. The same applies for any comments of Prime Minister Blair which would reveal or indicate

information provided by the US. This information, which is identified in the confidential annex to this Decision Notice, can and should be redacted from the document to be disclosed.

The Decision

98. The Commissioner's decision is that whilst the FCO applied the correct exemptions to the complainant's request, in its assessment of the public interest balance, the FCO did not give sufficient weight to the public interest considerations attaching to some of the information requested by the complainant.

Steps Required

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

Disclose to the complainant the telephone record held in relation to the request, subject to the redactions specified in the confidential annex to this Decision Notice.

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

Failure to comply

101. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Other matters

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

- The Commissioner initially wrote to the FCO on 19 November 2010 requesting copies of the withheld information and more detailed explanation and rationale for the exemptions relied upon. Although the FCO was reasonably expeditious in providing the Commissioner with copies of the withheld information, and

the Commissioner would commend the FCO for subsequently voluntarily disclosing much of the information to the complainant during the course of the Commissioner's investigation (having re-considered the public interest balance in the light of developments post-dating the request), a period of seven months elapsed before the Commissioner was provided with the final submissions of the FCO in this matter. Given the importance of maintaining the exemptions cited in the responses to the complainant, as contended by the FCO, the Commissioner considers this lengthy delay to be disappointing and unsatisfactory.

- The application of section 36 (as an alternative to section 35) at a late stage in the Commissioner's investigation was similarly not in accordance with good practice. In the event, as noted, the engagement of section 35 by the information meant that the Commissioner was barred by the provisions of the Act from considering section 36. However, the Commissioner would wish to emphasise that in cases where reliance is placed on section 36, public authorities should ensure that the reasonable opinion of the qualified person (in this case the Attorney General) is obtained as promptly as possible, following receipt of the request.

Right of Appeal

103. 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,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

104. 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.

105. 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 September 2011

Signed

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

Legal Annex

General Right of Access

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 2(3) provides that –

"For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption –

- (a) section 21
- (b) section 23
- (c) section 32
- (d) section 34
- (e) section 36 so far as relating to information held by the House of Commons or the House of Lords
- (f) in section 40 –
 - (i) subsection (1), and
 - (ii) subsection (2) so far as relating to cases where the first condition referred to in that subsection is satisfied by virtue of subsection (3)(a)(i) or (b) of that section,
 - (iii) section 41, and
 - (iv) section 44"

Section 27 (1)(a) and (b) provide that –

- (1) 'Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice –
- (a) relations between the United Kingdom and any other State.
 - (b) relations between the United Kingdom and any international organisation or international court,

Section 27(2) provides that –

'Information is also exempt information if it is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court'.

Section 35(1)(b) provides that –

'Information held by a government department or by the National Assembly for Wales is exempt information if it relates to Ministerial communications'.

Section 36(2)(b) and (c) provide 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 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'.