

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 19 November 2007

Public Authority: Cabinet Office
Address: Admiralty Arch
North Entrance
The Mall, London
SW1A 2WH

Summary

The complainant asked the public authority for minutes of a meeting between the Prime Minister and Wal-Mart representative(s) around February/March 1999. The public authority claimed the information was exempt from disclosure, alternating between sections 36 and 35. Following the Commissioner's intervention the public authority sent the complainant what it claimed was a summary of the points discussed at the meeting. The complainant complained that this did not satisfy his request. The Commissioner agreed that the summary was not comprehensive and concluded that neither the section 35 or 36 exemptions were engaged. He decided that the public authority's misleading summary breached section 1(1)(b); in failing to provide details of its own internal review procedures and the Information Commissioner's Office it had breached its obligations under section 17(7) of the Act; in delaying issuing its refusal notice and internal review decision it had breached section 17(1) of the Act; in failing to provide an adequate assessment of the public interest test it had again breached section 17(1); and it had breached section 36 by inappropriately withholding the requested information as being exempt under that section. The Commissioner required the public authority to provide the complainant with a full copy of the requested information.

The Commissioner's Role

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

The Request

2. On 3 January 2005 the complainant requested:

'the minutes of the meeting that took place between the Prime Minister and Bob Martin of Wal-Mart (and others) towards the end of February 1999/ beginning of March 1999'.

3. The Cabinet Office acknowledged the request on 13 January 2005. On 7 February it confirmed that it held the requested information but stated that it fell within section 36 of the Act. It informed the complainant that it needed to extend the time limit until 25 February in order to consider the public interest test.
4. In a subsequent letter of refusal dated 1 March 2005 the Cabinet Office stated that it was not in the public interest to release the information, though it now indicated that it was being withheld by reference to section 35(1)(a). It failed to advise the complainant of his right to request an internal review or make a complaint to the Information Commissioner.
5. The complainant requested an internal review of the decision on 6 March 2005. He expressed his dissatisfaction with both the decision and the level of service provided by the Cabinet Office. In particular, he claimed that the Cabinet Office had failed to comply with the statutory deadline of 20 working days to process a request, and had failed to meet its own extended deadline. In addition, it had made an erroneous assumption about his gender and had changed the spelling of his surname.
6. The Cabinet Office acknowledged the review request on 8 March 2005. On 26 May it provided a substantive response, and apologised for the delay in dealing with the internal review, the original delay in considering the public interest, and the errors made in respect of the complainant's name and title. It maintained its view that the requested information was exempt by virtue of section 35(1)(a), but added that to the extent that that section did not apply then the information was exempt under section 36(2)(b)(i) and (ii). It gave further consideration to the public interest test.

The Investigation

Scope of the case

7. On 3 June 2005 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant claimed that the mistakes with his name suggested that the Cabinet Office had not treated his request with due care; he objected to the delays in dealing with the matter; and he expressed his view that the public interest favoured disclosure, and it was unclear that the meeting had had anything to do with the formulation or development of government policy.

Chronology

8. The Commissioner asked the Cabinet Office on 26 September 2006 to respond to a number of queries, and also to provide the information which had been

- withheld. The Cabinet Office subsequently indicated that it was considering release of the information which had been withheld. It requested a number of extensions between October 2006 and January 2007 while it gave the matter further consideration.
9. The Cabinet Office subsequently copied to the Commissioner a letter which it had sent to the complainant on 23 February 2007. In that letter it explained that, as a result of the Commissioner's intervention, it had reviewed its handling of the request and had concluded that it should provide him with '*a summary of the points discussed*', which it attached.
 10. The Commissioner asked the complainant to confirm whether he was satisfied with the information which had been provided. The complainant replied on 19 March 2007 that he was not confident that the Cabinet Office had provided all of the available information conforming to his request.
 11. The Commissioner asked the Cabinet Office on 20 March 2007 to address the outstanding queries, and to send him the information which had been withheld. He sent a reminder on 19 June.
 12. The Cabinet Office again requested successive extensions. Finally, having guaranteed to provide a response no later than 25 July 2007, the Cabinet Office asked on 26 July 2007 for a further extension. The Commissioner indicated that an Information Notice was being prepared to require the Cabinet Office to provide of the information which the Commissioner had been seeking.
 13. On 27 July 2007 the Cabinet Office sent the Commissioner the withheld information and its comments regarding the Commissioner's queries. It stated that, having reviewed the case, it was relying on section 36(2)(b)(ii).

Analysis

Procedural matters

Delay

14. The complainant made his request on 3 January 2005. The Cabinet Office confirmed on 7 February that it held the requested information, but stated that it required an extension until 25 February in order to consider the public interest test. Section 10(1) of the Act 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.'

As the Commissioner has explained in his '*Good Practice Guidance 4*', in cases where the public interest considerations are exceptionally complex it may be reasonable to take longer but in the Commissioner's view the total time taken to

deal with an internal review should in no case exceed 40 working days. Furthermore, where any additional time beyond the initial 20 working days is required to consider the public interest, the public authority must still serve a 'refusal notice' within 20 working days of a request. In this case, by delaying its initial response until 7 February 2005 the Cabinet Office took 24 working days to respond to the request.

15. The Commissioner therefore finds that the Cabinet Office failed to comply with its duty to issue the refusal notice within the time limit set out in section 10(1), which constitutes a breach of section 17(1) of the Act. Having had sight of the requested information, the Commissioner does not accept that the Cabinet Office should have needed an extension of time to consider the public interest, since the information in issue was not voluminous and the application of the exemption(s) was not exceptionally complex. The Commissioner is mindful that there must be good reasons for a public authority to extend its consideration of the public interest test beyond the normal timescale of 20 working days laid down in the Act.
16. Despite indicating that it would provide the complainant with its assessment of the public interest test by Friday 25 February 2005, the Cabinet Office did not in fact send it until Tuesday 1 March 2005. It therefore exceeded its own extended deadline by 2 working days.
17. The Commissioner takes the view that these small delays were minor inadequacies in the Cabinet Office's handling of the request. However, he notes that after the complainant had requested an internal review of the decision on 6 March 2005, the Cabinet Office failed to provide a substantive response until 26 May (although it did acknowledge the review request on 8 March). The Commissioner considers this to be a more significant delay.

Notification of right to review/complain

18. Section 17(7) of the Act states that a refusal notice must:

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

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

In other words, the refusal notice must give the requester details of the public authority's internal review procedures and contact details of the Commissioner. In this case neither the Cabinet Office's initial refusal notice on 7 February 2005 nor its subsequent letter dated 1 March 2005 provided those details. The Commissioner has therefore concluded that the Cabinet Office breached section 17(7) of the Act in this regard.

Summary of requested information

19. In this case the Cabinet Office supplied the complainant with what it claimed was 'a summary of the points discussed' at the meeting. The complainant was not

satisfied that the Cabinet Office had provided all of the available information conforming to his request. Having compared the summary with the withheld information, the Commissioner does not consider that the summary accurately reflects the entirety of the note of the meeting. In its letter of 27 July 2007 the Cabinet Office claimed that the information which was excluded from the summary was *'essentially the names of those attending the meeting'*. The Commissioner considers that that is not the case. If a public authority chooses to create a summary rather than disclose the substantive information which has been requested then the Commissioner will expect that summary to be accurate and comprehensive. 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.'

In seeming but failing to provide a comprehensive summary of the information the Commissioner takes the view that the Cabinet Office acted in breach of section 1(1)(b).

Inadequate public interest test

20. The Commissioner notes that the Cabinet Office's application of the public interest test in its refusal notice stated that it was:

'not in the public interest to release this information as advice should be broadly based and there may be a deterrent effect on external experts or stakeholders who might be reluctant to provide advice in the future because it might be disclosed'.

Section 17(1) of the Act provides that in refusing to disclose information a public authority must provide 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.'

The Commissioner takes the view that the Cabinet Office's refusal notice did not constitute an adequate identification or weighing-up of the public interests in favour of maintaining the exemption and against disclosure, and that this represented a breach of section 17(1).

Exemptions – section 35(1)(a), and section 36(2)(b)(i) and (ii)

21. In its initial refusal notice on 7 February 2005 the Cabinet Office stated that the requested information fell within section 36 of the Act. However, in its subsequent letter of 1 March 2005 which addressed the public interest test, it indicated that the relevant exemption was section 35(1)(a). In its response to the complainant's internal review request, the Cabinet Office maintained its application of section 35(1)(a), but added that to the extent that that section did not apply then the information was exempt under section 36(2)(b)(i) and (ii). Finally, in responding to the Commissioner's queries, it stated that the relevant exemption was in fact section 36(2)(b)(ii).
22. Section 36 is only applicable to information which *'is not exempt information by virtue of section 35'*. The Commissioner accepts that the division between sections 35 and 36 can sometimes be difficult. However, in any particular case the application of the public interest test is likely to be similar in respect of both exemptions, so often it may effectively be academic which exemption is applied. In this case the Cabinet Office vacillated between the sections. The Commissioner is concerned that it did so even though there did not appear to be any change in circumstances or new evidence to justify a change, and notes that it varied the cited exemption between its initial refusal notice on 7 February 2005 and the further notice on 1 March which was supposed to address the balance of the public interest in relation to that exemption.
23. In light of the Cabinet Office's uncertainty, the Commissioner has considered which exemption is appropriate to apply in this case. The complainant himself expressed doubt that the meeting had had anything to do with the formulation or development of government policy. The Commissioner notes that the requested information is the record of a discussion between the Prime Minister and a representative of the retail multinational Walmart, dealing essentially with general topics regarding the commercial situation in Europe relevant to Walmart's operations. Having considered the withheld information and the comments of the Cabinet Office the Commissioner is satisfied that there is no evidence that the discussion did, or was intended to, relate to policy formulation that was ongoing at the time. Indeed, explanations provided by official sources after the meeting (of which further details are given later in this Decision Notice) claimed that the meeting was merely a social visit. Accordingly, the Commissioner has taken the view that it was reasonable for the Cabinet Office to have concluded that the information did not engage section 35 of the Act.
24. The Cabinet Office eventually settled on section 36(2)(b) as the relevant exemption. Section 36(2)(b) 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 - ...

...(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...'

The Cabinet Office initially claimed that both sub-paragraphs – (i) and (ii) – applied, but subsequently confined the exemption to section 36(2)(b)(ii). Having considered the requested information, the Commissioner is satisfied that section 36(2)(b)(i) is not engaged, since there is no evidence that the meeting involved anything other than the exchange of views, rather than the provision of 'advice'.

25. Since section 35 and section 36(2)(b)(i) are not engaged, the Commissioner has considered the Cabinet Office's application of section 36(2)(b)(ii). For that exemption to apply, the *'reasonable opinion of a qualified person'* must be obtained to attest to the specified detriment. The Cabinet Office explained in its letter to the Commissioner of 27 July 2007 that a submission relating to the matter had been put to a Minister of the Cabinet Office on 31 March 2005; following the General Election in May 2005 the submission had been resubmitted on 25 May to a new Minister, who had agreed to the use of section 36. In light of this explanation the Commissioner is satisfied that an 'opinion' was obtained and that the person making the decision was the appropriate 'qualified person'. However, he notes that at the time when the Cabinet Office first claimed section 36, in its letter of 7 February 2005, it had not put the matter to a qualified person, so that section 36 could not have applied at that stage.
26. The Information Tribunal has decided (*Guardian & Brooke v The Information Commissioner & the BBC*) that a qualified person's opinion under section 36 is reasonable if it is both *'reasonable in substance and reasonably arrived at'*. It elaborated that the opinion must therefore be 'objectively reasonable', and based on good faith and the proper exercise of judgement.
27. Section 36(2)(b)(ii) refers to *'the free and frank exchange of views for the purposes of deliberation'*. In the Commissioner's view, 'deliberation' refers to the evaluation of competing arguments or considerations that may have an influence on a public authority's course of action. It will include expressions of opinion and recommendations but will not include purely factual or background information. The information will usually reveal the 'thinking process' or reflection that has gone into a decision. The Commissioner does not believe that every exchange of information or opinion involving politicians or the officials of public authorities can be said to be for the *'purposes of deliberation'*, since to interpret the exemption in that way would imply that every meeting has the potential to engage section 36. In this case, having considered the requested information the Commissioner does not believe that the discussion at the meeting was held for the purposes of any such 'deliberation', since there is no evidence that the meeting discussed issues bearing on any active process of decision-making.
28. The Commissioner is reinforced in this conclusion by official statements, which the complainant referred to in letters both to the Commissioner and to the Cabinet Office. In an attachment to a letter which he wrote to the Cabinet Office on 3 June 2005, following receipt of its internal review decision, the complainant referred to

a briefing by a Number 10 spokesperson when news of the meeting emerged, who was quoted as saying:

“He (Bob Martin) was coming through Europe at the time and requested a short courtesy call with the Prime Minister. My understanding is that it was a brief exchange of views on the economic situation, both here and wider, and no concrete business was discussed” (complainant’s emphasis).

The complainant noted that:

‘At other times the meeting was described as a ‘social visit’ or ‘an exchange of pleasantries’. The Prime Minister described it as “a short courtesy call at his (ie. Walmart’s) request” in a Parliamentary Question answer in May 1999.’

29. The Cabinet Office acknowledged this point in its internal review decision, in which it stated:

‘Your letter [of 6 March 2005] also referred to various references to the meeting as a “courtesy call or social visit”. I have considered your comments as part of this review but they have not altered my conclusions...’.

The Commissioner notes that the Cabinet Office made no attempt to address the substance of the point. However, he considers that the official explanation of the purpose of the meeting offers strong support to the view that the meeting was informal and not intended to contribute to ‘deliberations’.

30. Having considered the information in light of the provisions of section 36(2)(b)(ii), the Commissioner has concluded that the opinion of the qualified person to whom the matter was referred was not reasonable to the extent that the requested information was not for the ‘purposes of deliberation’, that it did not therefore fall within the terms of section 36(2)(b)(ii), and so did not engage the exemption. Since neither sections 35 or 36 are engaged in this case, the Commissioner has decided that the information requested by the complainant should be disclosed in its entirety.
31. For the avoidance of doubt, the Commissioner notes that the information mentions the names of several individuals attending the meeting, as well as recording the names of other individuals to whom the note was copied. It is clear that these were relatively senior personnel. The Commissioner accepts that there may be grounds for withholding the names of junior officials who would never expect their roles to be exposed to the public gaze. In the case of *DfES v the Commissioner and the Evening Standard* (EA/2006/0006) the Information Tribunal stated that there should be no blanket policy of withholding such names and whether such information should be disclosed had to be decided on the particular facts: *‘A blanket policy on refusing to disclose the names of civil servants wherever they appear in departmental records cannot be justified’* and *‘There must, however be a specific reason for omitting the name of an official where the document is otherwise disclosable’*. Since those named in this case

were relatively senior officials, and could therefore expect to have their role in decision-making put under public scrutiny, the Commissioner does not consider that their names should be redacted when the information is disclosed.

The Decision

32. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act. The Commissioner has concluded that, in seeming but failing to provide a comprehensive summary of the information, the Cabinet Office acted in breach of section 1(1)(b). In failing to provide, in its refusal notices, details of either its own internal review procedures or of the Information Commissioner's Office the Cabinet Office breached its obligations under section 17(7) of the Act. In delaying providing its initial response and internal review decision the Cabinet Office failed to comply with the requirements of section 10(1) of the Act, which constitutes a breach of section 17(1). In failing, in its refusal notice, to identify factors in favour of disclosure of the information, or to provide an adequate assessment of the public interest test, the Cabinet Office again breached section 17(1). Finally, the Cabinet Office breached section 36 by inappropriately withholding the requested information as being exempt under that section.

Steps Required

33. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- the Cabinet Office should provide the complainant with an unredacted copy of the note dated 26 February 1999.

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

Other matters

34. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern. Section VI of the Code of Practice (provided for by section 45 of the Act) 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. As he has made clear in his *'Good Practice Guidance No 5'*, 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 up to 40 working days.

The Commissioner does not consider that the Cabinet Office has provided any evidence to show that there were exceptional circumstances in this case, and he notes in any event that the Cabinet Office did not seek to explain to the complainant the length of time that the review had taken, albeit that it apologised for the delay. The complainant's internal review request was made on 6 March 2005 but he was not sent the decision until 26 May, 55 working days later. The Commissioner does not consider that any factors have been demonstrated which would justify this length of time to deal with what was a relatively straightforward freedom of information request.

Failure to comply

35. 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.

Right of Appeal

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

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

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

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 19th day of November 2007

Signed

**Richard Thomas
Information Commissioner**

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

Legal Annex

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 1(2) provides that -

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

Section 1(3) provides that –

“Where a public authority –

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”

Section 1(4) provides that –

“The information –

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”

Section 1(5) provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

Section 1(6) provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.”

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.”

Section 10(2) provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.”

Section 10(3) provides that –

“If, and to the extent that –

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

Section 10(4) provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

Section 10(5) provides that –

“Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.”

Section 10(6) provides that –

“In this section –

“the date of receipt” means –

- (a) the day on which the public authority receives the request for information, or
- (b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”

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.”

Section 17(3) provides that -

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

- (a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or
- (b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.”

Section 17(7) provides that –

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

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (b) contain particulars of the right conferred by section 50.”

Section 35(1) provides that –

“Information held by a government department or by the National Assembly for Wales is exempt information if it relates to-

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

Section 35(2) provides that –

“Once a decision as to government policy has been taken, any statistical information used to provide an informed background to the taking of the decision is not to be regarded-

- (a) for the purposes of subsection (1)(a), as relating to the formulation or development of government policy, or
- (b) for the purposes of subsection (1)(b), as relating to Ministerial communications.”

Section 35(3) provides that –

“The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1).”

Section 35(4) provides that –

“In making any determination required by section 2(1)(b) or (2)(b) in relation to information which is exempt information by virtue of subsection (1)(a), regard shall be had to the particular public interest in the disclosure of factual information which has been used, or is intended to be used, to provide an informed background to decision-taking.”

Section 35(5) provides that –

“In this section-

"government policy" includes the policy of the Executive Committee of the Northern Ireland Assembly and the policy of the National Assembly for Wales;

"the Law Officers" means the Attorney General, the Solicitor General, the Advocate General for Scotland, the Lord Advocate, the Solicitor General for Scotland and the Attorney General for Northern Ireland;

"Ministerial communications" means any communications-

- (a) between Ministers of the Crown,
- (b) between Northern Ireland Ministers, including Northern Ireland junior Ministers, or
- (c) between Assembly Secretaries, including the Assembly First Secretary, and includes, in particular, proceedings of the Cabinet or of any committee of the Cabinet, proceedings of the Executive Committee of the Northern Ireland Assembly, and proceedings of the executive committee of the National Assembly for Wales;

"Ministerial private office" means any part of a government department which provides personal administrative support to a Minister of the Crown, to a Northern Ireland Minister or a Northern Ireland junior Minister or any part of the administration of the National Assembly for Wales providing personal administrative support to the Assembly First Secretary or an Assembly Secretary;

"Northern Ireland junior Minister" means a member of the Northern Ireland Assembly appointed as a junior Minister under section 19 of the Northern Ireland Act 1998."

Section 36(1) provides that –

"This section applies to-

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

Section 36(2) provides that –

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

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

Section 36(3) provides that –

"The duty to confirm or deny does not arise in relation to information to which this section applies (or would apply if held by the public authority) if, or to the extent that, in the reasonable opinion of a qualified person, compliance with section 1(1)(a) would, or would be likely to, have any of the effects mentioned in subsection (2)."

Section 36(4) provides that –

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

Section 36(5) provides that –

"In subsections (2) and (3) "qualified person"-

- (a) in relation to information held by a government department in the charge of a Minister of the Crown, means any Minister of the Crown,
- (b) in relation to information held by a Northern Ireland department, means the Northern Ireland Minister in charge of the department,

- (c) in relation to information held by any other government department, means the commissioners or other person in charge of that department,
- (d) in relation to information held by the House of Commons, means the Speaker of that House,
- (e) in relation to information held by the House of Lords, means the Clerk of the Parliaments,
- (f) in relation to information held by the Northern Ireland Assembly, means the Presiding Officer,
- (g) in relation to information held by the National Assembly for Wales, means the Assembly First Secretary,
- (h) in relation to information held by any Welsh public authority other than the Auditor General for Wales, means-
 - (i) the public authority, or
 - (ii) any officer or employee of the authority authorised by the Assembly First Secretary,
- (i) in relation to information held by the National Audit Office, means the Comptroller and Auditor General,
- (j) in relation to information held by the Northern Ireland Audit Office, means the Comptroller and Auditor General for Northern Ireland,
- (k) in relation to information held by the Auditor General for Wales, means the Auditor General for Wales,
- (l) in relation to information held by any Northern Ireland public authority other than the Northern Ireland Audit Office, means-
 - (i) the public authority, or
 - (ii) any officer or employee of the authority authorized by the First Minister and deputy First Minister in Northern Ireland acting jointly,
- (m) in relation to information held by the Greater London Authority, means the Mayor of London,
- (n) in relation to information held by a functional body within the meaning of the Greater London Authority Act 1999, means the chairman of that functional body, and
- (o) in relation to information held by any public authority not falling within any of paragraphs (a) to (n), means-
 - (i) a Minister of the Crown,
 - (ii) the public authority, if authorized for the purposes of this section by a Minister of the Crown, or
 - (iii) any officer or employee of the public authority who is authorized for the purposes of this section by a Minister of the Crown.”

Section 36(6) provides that –

“Any authorisation for the purposes of this section-

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

Section 36(7) provides that –

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

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