

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 14 December 2010

Public Authority: Northern Ireland Prison Service (an executive agency of the Department of Justice)
Address: Room 218a Dundonald House
Upper Newtownards Road
Belfast BT4 3SU

Summary

The complainant requested copies of correspondence relating to the departure of the former Governor of Maghaberry Prison in December 2009. NIPS withheld the information, citing sections 36(2)(b)(i) and (ii) and (c) and section 40(2) of the Act.

The Commissioner finds that the exemptions under sections 36(2)(b)(i) and (ii) and 40(2) are engaged. The Commissioner finds that in relation to the information withheld under sections 36(2)(b)(i) and (ii) the public interest in maintaining the exemption outweighs the public interest in disclosure. The Commissioner does not require any steps to be taken. The Commissioner also finds that in its handling of the request NIPS breached section 17(3)(b) of the Act.

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. This complaint relates to an individual who was appointed as Governor of HMP Maghaberry Prison in July 2009. The appointment was made on the basis of a secondment, as the individual was at that time employed by the National Offender Management Service. The Governor unexpectedly left his post after 5 months in office and returned to his original employer.
3. The Commissioner notes that under the Act the Northern Ireland Prison Service (NIPS) is not a public authority itself, but was, at the time of the request, actually an executive agency of the Northern Ireland Office (the NIO). Therefore, the public authority in this case was actually the Northern Ireland Office, not NIPS.
4. However, on 12 April 2010, NIPS became an executive agency of the Department of Justice (the DoJ) following the devolution of policing and justice powers. However, for the purposes of clarity the Commissioner has referred to NIPS rather than the NIO or the DoJ throughout this Decision Notice.

The Request

5. On 5 January 2010 the complainant submitted a request to NIPS for:
“...all correspondence relating to the departure of [the former Governor of Maghaberry Prison] in the three months before and after his departure.”
6. On 6 January 2010 NIPS wrote to the complainant seeking clarification of his request – specifically, as to whether he was seeking correspondence relating solely to the departure of the Governor from his post at Maghaberry Prison.
7. On 1 February 2010 NIPS issued a refusal notice to the complainant in respect of the requested information, citing the exemptions under sections 36(2)(b) and (c) and 40(2) of the Act as a basis for its refusal to disclose the requested information.
8. The complainant requested an internal review of NIPS’ decision to withhold the requested information. The result of that review was that NIPS upheld the original decision not to disclose the information under the grounds as set out in the exemptions specified above. The result of the review was communicated to the complainant on 11 February 2010.

The Investigation

Scope of the case

9. On 15 February 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
 - NIPS' application of the exemptions under sections 36(2)(b) and (c) and 40(2) to the withheld information.
 - The way in which NIPS carried out the public interest test as set out in section 2(2) of the Act.

Chronology

10. On 23 April 2010 the Commissioner wrote to NIPS to request a copy of the withheld information and detailed submissions regarding its application of the exemptions specified above.
11. On 28 April 2010 NIPS responded to the Commissioner with a copy of the withheld information and its detailed submissions as requested.
12. On 26 October 2010 the Commissioner requested and received further information from NIPS.

Findings of fact

13. The withheld information consists of essentially two types of information. These are as follows:
 - Information relating to the former Governor's departure and the reasons for this.
 - Information relating to prison policy and management of the system in general, incorporating comments and opinions of the former Governor in relation to the management and policy arrangements at Maghaberry Prison specifically and the prison system in general.

Analysis

Exemptions

Section 40(2) – personal data of third parties

14. Section 40(2) of the Act (see Legal Annex) is an exemption which relates to the personal information of individuals other than the applicant. This provision creates an absolute exemption (one not subject to the public interest test) for information falling within the definition of personal data contained in section 1(1) of the Data Protection Act 1998 (the DPA).

Is the withheld information personal data?

15. Personal data is defined in section 1(1)(a) of the DPA as:

“data which relate to a living individual who can be identified: - from those data, or; from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller.”

16. NIPS applied the exemption under section 40(2) to information relating to the former Governor’s departure and the reasons for this. The Commissioner is satisfied that this information falls within the definition of personal data as it contains information about living individuals (i.e, the former Governor and members of his family) who could be identified from that information.
17. Personal data is exempt if either of the conditions set out in section 40(3) or 40(4) are met. The relevant condition in this case is at section 40(3)(a)(i), where disclosure would breach any of the data protection principles as set out in Schedule 1 to the DPA. NIPS claimed that disclosure of the information would breach the first, second and sixth data protection principles.

The first data protection principle

18. NIPS claimed that disclosure would be unfair and therefore would breach the first data protection principle. The first data protection principle states that:

“Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless-

*(a) at least one of the conditions in Schedule 2 is met, and
(b) in the case of sensitive personal data, at least one of the
conditions in Schedule 3 is also met”.*

Fairness

19. In establishing whether disclosure would be fair, the Commissioner has looked to balance the consequences of any release of personal data and the reasonable expectation of the data subject with general principles of accountability and transparency.
20. To guide him when weighing up these competing interests, the Commissioner has borne in mind the following factors:
 - i. The consequences of disclosure
 - ii. The data subject's reasonable expectations of what would happen to their personal data
 - iii. The balance between the rights and freedoms of the data subject and the legitimate interests of the public.

The consequences of disclosure

21. The Commissioner has considered whether disclosure would cause any unnecessary or unjustified damage or distress. Having seen the withheld information, he has concluded that it is deeply personal information regarding the former Governor and his family, who would be very distressed if that information was placed in the public domain.
22. The Commissioner has also considered the fact that the former Governor's role was high profile and would, by its nature, bring him into contact with criminals, many of whom may have very negative opinions of the prison system. Disclosure of personal information regarding the former Governor and his family could leave them vulnerable to being targeted by such criminals. The Commissioner agrees with NIPS's argument that disclosure would cause them considerable damage and distress.

Reasonable expectations

23. The Commissioner has considered the reasonable expectations of the former Governor regarding his personal information. The Commissioner notes that NIPS released very limited information into the public domain regarding the former Governor's resignation, stating that it was for "domestic and personal reasons". Given this explanation, it is clear that the relevant withheld information would be highly personal in nature, and would relate to the former Governor and

his family. NIPS was of the view that the individuals concerned would have had a strong expectation of privacy and would not have expected personal information relating to their private lives to be disclosed. The Commissioner agrees with this view.

24. In addition to the information relating to the former Governor's resignation, NIPS also withheld some information relating to the former Governor's secondment. Again, having considered this information the Commissioner is satisfied that it relates to financial and personnel matters, which the former Governor would consider private and sensitive. The Commissioner is of the view that the former Governor would have a reasonable expectation that this information would not be disclosed into the public domain.
25. However, the Commissioner has previously held that the greater the seniority of a role, the less likely it is that disclosing information about an individual's public duties will be unwarranted or unfair. In this instance it could be argued that the former Governor, having taken up such a high profile post, should have expected a degree of public scrutiny when he left after five months.
26. While therefore accepting the senior status of the Governor, the Commissioner has also gone on to consider the nature of the withheld information itself. As indicated above, it clearly relates to the private and family life of the former Governor, rather than his public duties.
27. In his guidance on the exemption provided by section 40(2), the Commissioner has drawn a distinction between information concerning the public life of an employee at a public authority and information about the employee's private life. The Commissioner has emphasised that disclosure of information should normally only relate to an employee's official functions and responsibilities, where decisions or actions may be accountable to the public they serve.
28. Therefore, in this case the Commissioner is satisfied that the former Governor could have reasonably expected that information relating to his private life would not be disclosed into the public domain.

The rights of the individual versus the legitimate public interest

29. In seeking to balance the competing interests of the individual's right to privacy against the public interest in disclosure, the Commissioner has weighed up parts i and ii of the factors referred to in paragraph 20 above.

30. Notwithstanding a data subject's reasonable expectations or any damage or distress caused to them by disclosure, the Commissioner believes that it may still be fair to disclose personal data if it can be argued that the legitimate interest in the public accessing the material is compelling. Therefore, when assessing fairness the Commissioner will also balance the rights and freedoms of the former Governor with the legitimate interests in disclosing the information into the public domain.
31. NIPS does not believe that there is a compelling legitimate interest in the public accessing the withheld information as the details already publicly available regarding the former Governor's tenure, departure and salary details, should be sufficient to inform the public without need to disclose further personal information.
32. The Commissioner has considered whether there is a legitimate interest in the public accessing the withheld information. The Commissioner accepts that there is a general public interest in transparency of public sector organisations, which are funded by the public purse. There is also a more specific public interest in knowing the reasons why those who are seconded to high level posts within the public sector would choose to leave the posts prior to the end of the agreed secondment period. Those interests would be served by the disclosure of the withheld information. However, the Commissioner does not believe that any legitimate interest in the public accessing the withheld information would outweigh the potential damage and distress caused by disclosure of that information as indicated above. Therefore the Commissioner is not satisfied that disclosure of the withheld information is necessary to meet a legitimate public interest.
33. In view of all of the above, the Commissioner is satisfied that disclosure of this portion of the withheld information would be unfair and as such would contravene the first data protection principle. Therefore the Commissioner is satisfied that this information was correctly withheld under section 40(2) of the Act, and the Commissioner is not required to consider the other data protection principles.

Section 36 - prejudice to the effective conduct of public affairs

34. Sections 36(2)(b)(i) and (ii) provide that information is exempt if its disclosure would, or would be likely to, inhibit the free and frank provision of advice, or the free and frank exchange of views for the purposes of deliberation. Section 36(2)(c) provides that information is exempt if its disclosure would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

35. When investigating cases involving the application of section 36, in order to establish whether the exemption has been applied correctly the Commissioner considers it necessary to:
- Ascertain who is the qualified person or persons for the public authority in question;
 - Establish that an opinion was given;
 - Ascertain when the opinion was given; and
 - Consider whether the opinion given was reasonable
36. With regard to the fourth criterion, in deciding whether the opinion was 'reasonable' the Commissioner has been assisted by the Information Tribunal's comments in the case *Guardian Newspapers & Brooke v Information Commissioner & BBC* [EA/2006/0011 & EA/2006/0013]. In this case the Tribunal considered the sense in which the qualified person's opinion is required to be reasonable. It concluded that in order to satisfy the sub-section the opinion must be both 'reasonable in substance and reasonably arrived at' (paragraph 64).
37. The Commissioner has also been guided by the Tribunal's further comments in *Guardian & Brooke* at paragraph 91, in which it indicated that the reasonable opinion is limited to the degree of likelihood that inhibition or prejudice may occur and thus 'does not necessarily imply any particular view as to the *severity* or *extent* of such inhibition [or prejudice] or the *frequency* with which it will or may occur, save that it will not be so trivial, minor or occasional as to be insignificant'. Therefore, in the Commissioner's opinion this means that when assessing the reasonableness of an opinion the Commissioner is restricted to focusing on the likelihood of that inhibition or harm occurring, rather than making an assessment as to the severity, extent and frequency of prejudice or inhibition of any disclosure.

The engagement of section 36(2)

38. Section 36(5)(a) states that in relation to information held by a government department in charge of a Minister of the Crown, the qualified person includes any Minister of the Crown. In this case the Commissioner notes that at the time of the request NIPS was an executive agency of the NIO. The reasonable opinion in relation to the complainant's request was given by Mr Paul Goggins MP, who at the time of this request was Minister of State for Prisons. The Commissioner is therefore satisfied that Mr Goggins was a qualified person for the purposes of section 36(5)(a) of the Act.

39. In its submissions to support the application of section 36(2)(b)(i) and (ii) and (c), NIPS has explained that the process by which this opinion was provided was as follows: the qualified person's opinion was sought on 28 January 2010, before a substantive response was sent to the complainant in this case. On 1 February 2010 the qualified person approved the use of section 36 in relation to most of the withheld information.
40. NIPS provided the Commissioner with a copy of its detailed submission to the qualified person in order for him to form his opinion that certain documents were exempt on the basis of section 36. In this submission NIPS outlined the complainant's request and the information falling within the scope of that request. It explained its recommendations in relation to the application of section 36(2)(b)(i) and (ii) and (c) to most of the withheld information and provided a draft response to the complainant's request. The submission did not specify which subsection of section 36 it recommended relying upon, however NIPS confirmed to the Commissioner that it was relying on subsections 36(2)(b)(i) and (ii) and (c) and this is reflected in its draft response to the complainant's request.
41. The Commissioner has first considered whether the qualified person's opinion was reasonably arrived at and notes that he was provided with a submission from his own officials detailing the request and providing him with a draft response in which it showed the public interest test carried out and the conclusion of that test. It asked for the qualified person's opinion on the application of section 36 to the withheld information. However, the Commissioner notes that, whilst the submission outlined the request and provided the qualified person with a draft response to that request to assist him in reaching his decision, no evidence was provided as to the factors that he considered in forming the view that disclosure of the withheld information would or would be likely to inhibit the free and frank provision of advice, exchange of views or otherwise prejudice the effective conduct of public affairs.
42. In considering whether the opinion was reasonable in substance the Commissioner has taken into account the fact that the withheld information reflects the views of Prison Service officials regarding the development of policy. It specifically reflects the views of the former Governor, and those of senior Prison Service management officials, regarding the development of policy and other issues within both Maghaberry Prison and the prison system in Northern Ireland as a whole. NIPS argued that the continued effectiveness of NIPS' policy development and implementation of change depended on senior NIPS officials being able to express their views in as free and frank a manner

as possible. If those officials became aware that their views could be disclosed, they could become less willing to express those views and dialogue between senior Prison Service officials could be inhibited. This was considered a potential barrier to improvements within the wider Northern Ireland prison system.

43. The Commissioner considers that it was reasonable for the qualified person to conclude that disclosure of the withheld information was likely to stifle any future exchanges of views and provision of advice in relation to proposed changes within the prison system. This could prejudice the effectiveness of discussions which may lead to the implementation of such changes. The Commissioner notes that the process as to how the opinion was arrived at appeared to have some flaws, however he considers that the opinion can be regarded as reasonable in substance.
44. NIPS' submission to the qualified person highlights the need for senior Prison Service officials to be able to provide unrestrained, frank and candid views and advice. The Commissioner is therefore satisfied that, even though the submission did not specify the subsections of section 36 upon which NIPS wished to rely, the language used in the submission could have been clearly identified as relating to sections 36(2)(b)(i) and (ii). The Commissioner notes that the qualified person has not explicitly specified whether disclosure would **or** would be likely to cause the prejudice outlined in sections 36(2)(b)(i) and (ii).
45. However, the Commissioner notes that the language used in NIPS' draft response to the complainant's request, which he considers to be part of the submission to the qualified person, indicates that NIPS considers that disclosure would be likely to cause the said prejudice. The qualified person approved that response, so it could be logically assumed that the qualified person considers that disclosure would be likely to cause prejudice. However, for completeness, the Commissioner has referred to the findings of the Tribunal in the case of *McIntyre v Information Commissioner and MoD [EA/2007/068]* and has decided that the lesser test should be applied. The Tribunal in *McIntyre* commented at paragraph 45 that:

"we consider that where the qualified person does not designate the level of prejudice, that Parliament still intended that the reasonableness of the opinion should be assessed by the Commissioner but in the absence of designation as to level of prejudice that the lower threshold of prejudice applies, unless there is other clear evidence that it should be at the higher level."

46. The Commissioner has identified some weaknesses in the process by which the qualified person's opinion was arrived at. These are considered in paragraphs 41-44 above. However, despite those weaknesses, the Commissioner considers that the qualified person's opinion was reasonably arrived at. Although it was not apparent to the Commissioner which factors were taken into account by the qualified person in considering the likelihood of prejudice, nor did the submission to the qualified person specify which subsections of section 36 were being relied upon by NIPS, the Commissioner is nevertheless satisfied that the submission was sufficiently detailed to allow the qualified person to reasonably arrive at his opinion.
47. The Commissioner is therefore satisfied that the exemptions under sections 36(2)(b) (i) and (ii) are engaged in relation to the information withheld under those subsections, i.e. that information which was not withheld under section 40(2). The Commissioner believes, having perused the withheld information, that the information withheld under the section 36 exemption is covered entirely by the section 36(2)(b) (i) and (ii) exemptions. Therefore, the Commissioner has not gone on to consider whether or not the section 36(2)(c) exemption is engaged.

Public Interest Test

48. Section 2(2)(b) of the Act states that a public authority may refuse to disclose information requested if in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
49. Section 36(2)(b)(i) and (ii) is a qualified exemption and therefore the Commissioner must consider whether the public interest in maintaining the exemption outweighs the public interest in disclosure of the information. The Tribunal in *Guardian & Brooke* indicated the distinction between consideration of the public interest under section 36 and consideration of the public interest under the other qualified exemptions contained within the Act:

"The application of the public interest test to the s 36(2) exemption involves a particular conundrum. Since under s 36(2) the existence of the exemption depends upon the reasonable opinion of the qualified person it is not for the Commissioner or the Tribunal to form an independent view on the likelihood of inhibition under s36(2)(b), or indeed of prejudice under s 36(2)(a) or (c). But when it comes to weighing the balance of public interest under s 2(2)(b), it is impossible to make the required judgment without forming a view on the likelihood of inhibition or prejudice."

50. The Commissioner agrees with the Tribunal's approach. The fact that it is *"not for the Commissioner to form an independent view..."* does not prevent him from considering the severity, extent and frequency of any prejudice or inhibition which might occur when he is assessing the public interest. Whilst the Commissioner can and should give due weight to the reasonable opinion of the qualified person when assessing the public interest, he can and should also consider the severity, extent and frequency of the likely prejudice or inhibition which would be likely to be caused by disclosure of the information withheld under section 36 and any relevant subsections.

Public interest arguments in favour of disclosing the withheld information

51. NIPS identified the following factors favouring disclosure:
- there is a general public interest in disclosure of official information,
 - disclosure would encourage transparency and accountability on the part of public sector organisations, and
 - public debate would be better informed by disclosure of the withheld information.
52. The Commissioner acknowledges that there is a strong public interest in openness and transparency in relation to government activities. In this case disclosure of the withheld information would inform the public about the views of the former Governor, and those of senior Prison Service management officials, regarding the development of policy and other issues within both Maghaberry Prison and the prison system in Northern Ireland as a whole. It would also inform the public about the departure of the former Governor.
53. The Commissioner also considers that disclosure of the information withheld under section 36(2)(b)(i) and (ii) could increase public understanding of the measures taken to implement change and improvement throughout the prison system and the discussions which inform these measures.

Public interest arguments in favour of maintaining the exemption

54. NIPS considered that disclosure of the withheld information would be likely to stifle any future candid expression of views and provision of advice by senior Prison Service officials, as they would be much less candid in their opinions if they thought these were likely to be published. This could damage relationships between the current management team and staff at Maghaberry Prison. It is the

Commissioner's view that this stifling effect would be likely to cause severe prejudice to future arrangements for change and improvement within the prison system as it would be likely to harm future discussions and proposals in relation to those arrangements, which could lead to improvements not being made to the system. This would mean that there would be ineffective and inefficient management of a public resource paid for from the public purse, which would not be in the public interest.

55. In addition, NIPS argued that disclosure of the withheld information would adversely affect decision-making by senior management, who would not be in full possession of the facts or the opinions of those officials. This could lead to flawed decisions being made which could lead to a breakdown of security and other measures within the prison system. This is a considerable risk as it could be prejudicial to the continued effectiveness of the management of, in particular the implementation of changes to, the prison system as a whole. Inhibition of dialogue between officials, caused by disclosure, would therefore be prejudicial to the continual improvement of the prison system, which would not be in the public interest.
56. Given the importance of NIPS' policy development and implementation, the Commissioner agrees that there is a strong public interest in maintaining the integrity of that process in order to preserve the ability of NIPS officials to better discuss their plans and proposals regarding the prison system.

Balance of the public interest arguments

57. In deciding where the balance of public interest lies the Commissioner has considered the arguments put forward by NIPS. The Commissioner also recognises that there is a strong public interest inherent in maintaining the continued effectiveness of the management and development of the Northern Ireland Prison Service.
58. Having reviewed the information withheld under section 36(2)(b)(i) and (ii), the Commissioner considers that the advice given and the views exchanged by the former Governor and other senior Prison Service officials and management were expressed in a free and frank manner. In relation to any inhibition of the frankness of future advice and exchange of views by officials, the Commissioner believes that the guiding principle is the robustness of those officials, i.e. they should not be easily deterred from carrying out their functions properly in order to ensure the continual smooth running of the prison system. However, such arguments must be considered on a case by case basis and in this case the Commissioner accepts that an effect would be

likely as the policy development and implementation were “live” issues at the time of the request and weight must be given to protecting the process in question so that relevant parties involved in the discussions surrounding the policy development can continue to contribute to them with frankness and candour.

59. The Commissioner acknowledges that disclosure of the withheld information could provide the public with further information regarding measures taken by Prison Service officials to ensure continual development of and improvements to the management of the prison system. However he considers that, while disclosure of the withheld information would provide the public with the most up-to-date knowledge regarding those measures, this benefit to the public would be outweighed by the disadvantage, i.e. the resulting prejudice to future discussions and to the effectiveness of future management and policy development strategies. The Commissioner is mindful that NIPS has already made public such details of the former Governor’s tenure and departure as it felt were reasonable and proportionate in the circumstances. The Commissioner believes that these details are sufficient to inform public debate without need for further disclosure.
60. The Commissioner therefore considers that the likely extent, severity and frequency of the prejudice arising from disclosure of the withheld information and the ensuing prejudice likely to be caused to the management of the prison system in Northern Ireland outweighs the public interest in promoting public understanding of and confidence in the measures taken to ensure effective management and the implementation of changes and improvements to the prison system as a whole. The Commissioner concludes that the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information.

Procedural Requirements

Section 17(3)(b) – refusal notice

61. Section 17(3) of the Act states 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—

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

62. In its refusal notice, NIPS detailed a number of public interest factors in favour of maintaining the exemption. The Commissioner was not of the opinion that this equated to "stating the reasons" for claiming that the public interest in maintaining the exemption under sections 36(2)(b)(i) and (ii) outweighed that in disclosing the information to which that exemption applied and he communicated this opinion to NIPS in his letter of 23 April 2010.
63. The Commissioner is of the view that, in order to comply with section 17(3), a refusal notice should include discussion of all the factors for disclosure being balanced against those in favour of maintaining the exemption. This should inform the applicant as to how the public authority has balanced the public interest considerations. As NIPS failed to do this, the Commissioner considers that NIPS has breached section 17(3)(b) of the Act.

The Decision

64. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- It correctly applied the exemptions under section 36(2)(b)(i) and (ii) and section 40(2)
65. However, the Commissioner has also decided that NIPS failed to deal with the following element in accordance with the Act:
- It breached section 17(3)(b) of the Act by failing to correctly explain the public interest arguments considered in relation to the withheld information.

Steps Required

66. The Commissioner requires no steps to be taken.

Other matters

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

- NIPS carried out an internal review, the result of which was communicated to the complainant on 11 February 2010. That result did not show any evidence of the reviewer having considered the exemptions in detail, nor did it indicate that a comprehensive public interest test had been carried out. According to the section 45 Code of Practice, a public authority should carry out a "fair and thorough" review of decisions taken pursuant to the Act. A review should also "enable a fresh decision to be taken on a reconsideration of all the factors relevant to the issue." The Commissioner does not believe that NIPS' internal review meets these requirements and will continue to monitor NIPS' compliance with the Act and its accompanying Code of Practice in this regard.

Right of Appeal

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

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

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

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

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

Dated the 14th day of December 2010

Signed

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

Legal Annex

Freedom of Information Act 2000

Section 17(3) - Refusal of request

- 17(3) A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming—
- (b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

36(2) - Prejudice to effective conduct of public affairs

- 36(2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act—

...

- (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.

...

- (5) In subsections (2) and (3) “qualified person”—

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

Section 40(2) – third party personal information

- 40(2) Any information to which a request for information relates is also exempt information if—

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.

- (3) The first condition is—

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene—
 - (i) any of the data protection principles
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

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