

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 1 September 2008

Public Authority: Cabinet Office
Address: 70 Whitehall
London
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Summary

The complainant asked the public authority for drafts of the Iraq dossier from 11 to 16 September 2002 which were circulated to Joint Intelligence Committee members, a covering note with redactions removed, and any comments on the drafts made by the Defence Intelligence Staff or anyone else. The public authority decided that some of the information was not held, and the remainder was exempt under sections 27(1) and/or 36(2)(b)(ii) of the Freedom of Information Act 2000 ('the Act'). Following a complaint to the Commissioner, it added that the withheld information was also exempt under section 24(1). The Commissioner decided that, in failing to specify in its refusal notice all of the exemptions which applied to each element of the requested information, the public authority breached section 17(1)(b). The Commissioner also decided that some of the withheld information should be released on the grounds that it was not exempt under sections 24(1) and although exempt under 36(2)(b)(ii) the balance of the public interest favoured disclosure. The public authority had therefore breached section 1(1)(b) in failing to disclose this information, and in addition section 10(1) in failing to disclose it within the statutory time limit. In applying the section 36(2)(b)(ii) exemption without having first obtained a valid qualified person's opinion the Cabinet Office also failed to comply with the requirements of section 36(2). Finally, the Commissioner decided that the public authority failed to comply with its duty under section 10(1) to confirm or deny within 20 working days whether it held the requested information, and also breached section 17(1) by failing to provide the details required by that section within 20 working days.

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 6 June 2005 the complainant requested from the Cabinet Office the following information:

'1) The draft circulated to JIC [Joint Intelligence Committee] members by John Scarlett on 16 September 2002 with a covering note ref Jp182. I know that this is not the draft submitted to the Hutton Inquiry dated 16 September 2002 because Mr Scarlett's note refers to Part 2, Chapter 2. There is no such Chapter in that document.

2) The draft of the dossier dated 15 September 2002. This was referred to in evidence to the Hutton Inquiry by Martin Howard of the DIS and by Julian Miller. Mr Miller told the Hutton Inquiry that the DIS may well have commented on this draft when explaining how memoranda relating to subsequent drafts bore this date (in error).

3) I would also like to see a full copy of Mr Scarlett's note Jp182, i.e. to have the information that was redacted when the note was submitted to the Hutton Inquiry.

4) I would also like to have a copy of any comments made by the DIS or anyone else on the dossier draft of 15 September 2002.'

3. The Cabinet Office replied on 26 August 2005, apologising for the delay. It claimed that the reference to Part 2, Chapter 2 had been an error and that the draft dated 15 September 2002 was the same as that of 16 September, which was *'revised continuously between 11 and 16 September inclusive'* and was published on the Hutton website. It stated that the redacted information in the note 'Jp182' and the comments were being withheld as exempt under sections 27(1) and 36(2) of the Act respectively. The Cabinet Office informed the complainant of its internal review procedure and the role of the Information Commissioner.
4. On 31 August 2005 the complainant requested an internal review.
5. The Cabinet Office had not provided an internal review decision to the complainant by 13 October 2005 and on that date he complained to the Commissioner.
6. On 2 December 2005 the Cabinet Office sent the complainant its internal review decision upholding the original. It informed the complainant of his right to complain to the Commissioner.

The Investigation

Scope of the case

7. The complainant confirmed on 5 December 2005 that he wanted the Commissioner to deal with a number of issues which are addressed below.

Chronology

8. On 14 December 2005 the Commissioner asked the Cabinet Office to address a number of procedural issues raised by the complainant. The Cabinet Office wrote to the complainant accordingly on 29 December 2005.
9. The complainant informed the Commissioner that, in light of the Cabinet Office's obstructiveness and failure to provide advice and assistance, he would be making a separate freedom of information request to ascertain who had provided comments on the draft dossier (the complaint arising from this has been addressed in the Decision Notice referenced 'FS50134653').
10. The Commissioner subsequently wrote to the complainant and the Cabinet Office on 20 December 2006. He asked the Cabinet Office to provide him with the withheld information and to clarify certain issues.
11. The Cabinet Office provided its comments on 21 March 2007, together with some of the withheld information. It stated that it was now also applying the section 24(3) exemption to all of the information.
12. On 27 March 2007 the Commissioner asked the Cabinet Office to forward the remaining information.
13. The Commissioner sent a reminder on 17 May 2007, also requesting clarification of the Cabinet Office's application of section 24(3).
14. After a further reminder from the Commissioner, the Cabinet Office replied on 25 June 2007. It stated that it wanted the withheld information to be viewed at its own offices, due to its sensitivity. It also explained that its previous citation of section 24(3) had been an administrative error and that it was actually applying section 24(1), so a Ministerial certificate was not relevant.
15. There was some further correspondence between the Commissioner and the Cabinet Office. On 11 October 2007 a representative of the Commissioner considered the withheld information at the offices of the Cabinet Office.
16. A further visit was made on 26 February 2008 at which the Cabinet Office indicated that it was also applying section 27(1) to a section from one of the documents to which it had applied sections 36(2)(b)(ii) and 24(1).

17. The Cabinet Office subsequently provided the Commissioner with further comments on 28 March 2008 about this application of section 27(1) and other matters.
18. On 1 May 2008 the Commissioner referred a further query to the Cabinet Office regarding the circumstances in which the qualified person had given their opinion.
19. He sent a reminder on 16 May 2008.
20. He issued a further reminder on 27 May 2008.
21. The Cabinet Office provided the requested clarification on 6 June 2008.
22. On the same day the Commissioner raised with the Cabinet Office an issue which had arisen from its latest response, and requested a copy of relevant documentation.
23. The Cabinet Office telephoned the Commissioner on 13 June. The Commissioner indicated that he required sight of the written submission which had been made to the qualified person, and the record of that person's opinion.
24. The Cabinet Office replied on 18 June 2008 with an explanation of events, indicating that it did not consider that it was necessary for the Commissioner to see the documents which he had requested.
25. The Commissioner requested the documentation again on the same day, providing reasons.
26. He sent a reminder on 9 July 2008.
27. On 10 July 2008 the Cabinet Office asked the Commissioner for an explanation as to why he required sight of the documentation.
28. The Commissioner provided an explanation on 14 July 2008.
29. The Cabinet Office forwarded the requested documentation on 30 July 2008, together with a further explanation of events.

Analysis

Procedural matters

30. The complainant suggested that the Cabinet Office had failed in its internal review to address two procedural issues which he had raised: its alleged failure to confirm or deny whether it held the requested information, and its failure to address his query about the qualified person's opinion. The query about the qualified person's opinion is addressed in the analysis of the section 36 exemption below.

Confirm or deny

31. The Commissioner notes that, in relation to the requests for drafts of the dossier dated 15 and 16 September 2002, the Cabinet Office made the following statement in its internal review decision of 2 December 2005: *'I can confirm that the Cabinet Office does not hold the information you requested'*. The Cabinet Office subsequently confirmed to the Commissioner that the only draft which it retained from that period was the one dated 16 September 2002, which was available on the Hutton Inquiry website. The Commissioner therefore considers that the Cabinet Office did in fact answer the complainant's query, and that it satisfactorily addressed the first two parts of the complainant's request by informing him that it did not hold the requested information. The complainant subsequently told the Commissioner that he wanted any drafts produced between 11 and 16 September 2002. The Cabinet Office has confirmed to the Commissioner that it does not hold any drafts other than those which are available on the Hutton Inquiry website.
32. In relation to the half sentence redacted from a note called 'Jp182', the Cabinet Office told the complainant that this information was being withheld as exempt under section 27 of the Act. The Commissioner considers that the clear implication of that response was that the information was held by the Cabinet Office, and he does not believe that it was necessary for the Cabinet Office to have made the point any more explicitly. Finally, regarding the request for any comments made on the dossier, the refusal notice stated: *'I can confirm that the Cabinet Office holds information which relates to the drafting process which took place...between 11 and 16 September 2002'*. Again, the Commissioner has concluded that the Cabinet Office discharged its obligation to confirm or deny whether it held the information.

Delay in issuing refusal notice

33. The Commissioner also notes the length of time which it took the Cabinet Office to deal with this request. 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.'

Section 1(1) states:

'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.'*

Furthermore, 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.'*

34. In this case the complainant made his request on 6 June 2005, but the Cabinet Office did not provide him with a decision until 26 August 2005. It therefore took 55 working days to respond to the information request. The Commissioner recognises that the Cabinet Office's refusal notice in this case was conducted prior to the issuing of his *'Good Practice Guidance No 4'* in February 2007, in which he provided advice to public authorities on relevant timescales. However, he notes that the 55 working days which the Cabinet Office took to issue its refusal notice was clearly in breach of the statutory timescale. Accordingly, the Commissioner finds that, in failing to confirm or deny within 20 working days whether it held the requested information, the Cabinet Office breached the requirements of section 10(1); and that it also breached section 17(1) by failing to provide the details required by that section within 20 working days.

Late application of section 24 exemption

35. The Commissioner notes that the Cabinet Office did not cite the section 24(1) exemption until 21 March 2007, some time after the complainant had approached the Commissioner. Section 17(1)(b) of the Act places an obligation upon the public authority that its refusal notice *'specifies the exemption in question'*. In failing to specify at the outset all of the exemptions which it was applying the Cabinet Office breached section 17(1)(b).

Exemptions

36. Of the information which the Cabinet Office did hold, it withheld information on the following basis:

- the redaction from the note 'Jp182' by reference to the exemptions in sections 27(1) and 24(1) of the Act;
- comments on the draft dossier by reference to sections 36(2)(b)(ii) and 24(1); except for–
- a section from one document which it withheld by reference to section 27(1) and (2).

Exemption – section 27

Redaction from document 'Jp182'

37. Section 27(1) of the Act provides 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,

(c) the interests of the United Kingdom abroad, or

(d) the promotion or protection by the United Kingdom of its interests abroad.'

38. Section 27(1)(a) will only be engaged if the requested information relates to international relations and disclosure of it would be likely to cause some prejudice to United Kingdom relations with – in this case – another state. The Commissioner considers that 'likely to prejudice' requires that there should be evidence that there 'may very well' be prejudice. In this case, the Cabinet Office claimed that disclosure of the redacted information would reveal information of a confidential nature concerning the relationship between the United Kingdom and another state and would be likely to prejudice relations between the two. In particular, it stated that it might damage *'the trust within which confidential exchanges between the United Kingdom and other Governments takes place'* with the consequence that such confidential exchanges might not be respected in the future. Having considered the information and the nature and content of the withheld information relates to the Commissioner is satisfied that it was likely that disclosure would result in significant prejudice to the relationship with the other state or states.

39. Since section 27 is a qualified exemption it is subject to a public interest test under section (2)(2)(b) of the Act. This favours disclosure unless, *'in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure of the information'*.

40. In favour of disclosing the information the Cabinet Office accepted that there is:

'ongoing public, media and political debate about the production of the dossier and the reasons the UK went to war in Iraq. Release of information relating to the dossier might add to the understanding and knowledge of this subject.'

On the other hand, it stated that:

'the effective conduct of the United Kingdom's international relations, and its ability to protect and promote its interests abroad, would be compromised if we released the information', and

'the trust within which confidential exchanges between the United Kingdom and other Governments takes place might be damaged and in future might not be respected'.

41. The Commissioner has received an explanation from the Cabinet Office that disclosure of the half-sentence redacted from the document 'Jp182' would reveal information of a confidential nature concerning the relationship between the United Kingdom and another state or states and that it would be likely to prejudice relations between the United Kingdom and other states. In particular, the Cabinet Office claimed that disclosure might damage *'the trust within which confidential exchanges between the United Kingdom and other Governments takes place'* with the consequence that such confidential exchanges might not be respected in the future. Having considered the information and the nature and content of the withheld information the Commissioner is satisfied that it was likely that disclosure would result in significant prejudice to the relationship with another state or states. While the Commissioner accepts that disclosure of the redacted information would be relevant to the ongoing debate about the production of the dossier, since it would resolve questions about what the redaction related to, having considered the information itself he does not believe that it would make any significant contribution to that debate. On the other hand, he believes that there would be significant damage to the United Kingdom's reputation and the trust which other states would have in its undertakings in the future should the redacted information be disclosed. In the circumstances, the Commissioner is satisfied that the public interest in maintaining the section 27(1) exemption outweighs the public interest in disclosure of the redacted information in the document 'Jp182'.

Section from comments made on the dossier

42. The Cabinet Office also applied section 27(1), together with section 27(2), to a section of a document which referred specifically to comments on the draft dossier on behalf of an international organisation. Section 27(1) is engaged if the

requested information relates to international relations and disclosure would be likely to cause the relevant prejudice – in this case, prejudice to relations between the United Kingdom and the relevant international organisation, or to (the promotion or protection of) United Kingdom interests abroad.

43. The Cabinet Office also applied section 27(2) to this information. 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.'

Section 27(3) further provides that:

'For the purposes of this section, any information obtained from a State, organisation or court is confidential at any time while the terms on which it was obtained require it to be held in confidence or while the circumstances in which it was obtained make it reasonable for the State, organisation or court to expect that it will be so held.'

Unlike section 27(1), section 27(2) is not subject to a prejudice test but applies only if the requested information is in fact confidential. There is no requirement that any breach of confidence be actionable for this exemption to apply. Information may be confidential because of a formal confidentiality agreement, or because the context in which it was obtained implies a duty of confidence.

44. The Cabinet Office has claimed that, when comments on the draft dossier were invited, it was made clear that this was on the basis of confidentiality; this was stated in the document, and the document itself was marked 'Confidential'. The Cabinet Office has stated:

'It is the standard practice of UK Government to treat drafting comments on confidential documents as confidential and this would have been understood by both parties.'

It also claimed that failure to preserve this confidentiality would harm the United Kingdom's relations not only with the international organisation concerned but also with other international organisations and foreign governments, since it would be evidence that the United Kingdom does not protect such information. This would lead to an erosion of trust.

45. The Commissioner is satisfied that there would have been a reasonable expectation on the part of the individual whose comments are recorded in the section that the comments would be treated on a confidential basis. He has therefore concluded that section 27(2) is engaged. He has also concluded that prejudice would be likely to be caused to the United Kingdom's relations with the international organisation concerned and with other international organisations and foreign governments for the reasons identified by the Cabinet Office, primarily in that disclosure would erode trust in the United Kingdom's ability to

protect information provided in confidence. Accordingly, he has concluded that section 27(1) is engaged.

46. The Cabinet Office provide the Commissioner with its assessment of the public interest test in relation to section 27(1) and (2). In favour of disclosure it identified the following factors. First, there was a public interest in as much information as possible being made available *'so that the public could develop a fuller understanding of the United Kingdom's conduct of its relations with the international community before the start war [sic] in Iraq in 2003'*. Secondly, there was a *'public interest in transparency about how the decision making process which led up to the war was informed'*.
47. In favour of maintaining the section 27 exemption it referred to the potential prejudice to the United Kingdom's relations with many other states and international organisations. It pointed out that any damage to those intimate and confidential links would undoubtedly be against the public interest. Any loss of trust *'could seriously limit the effectiveness of our diplomacy'*, and doubts about the commitment to confidentiality *'could encourage international organisations and foreign governments to make arrangements without reference to the UK or to refuse to engage with the UK about matters vital to the UK's interests'*.
48. The Commissioner has had regard to the nature of the information at issue, the particular circumstances in which the comments were obtained from the individual, and the relationship between the United Kingdom and the international organisation to which the individual belonged. Disclosure of the requested information would increase public confidence, promote decision makers' accountability to the public, and facilitate public understanding and debate. However, these factors have to be balanced against the importance of maintaining trust and confidence between governments, and the fact that there was an expectation among the parties that their discussions would be treated in confidence. 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. Furthermore, he considers that the information will remain confidential for as long as those involved expect it to be so held, and that is likely to be the case for the foreseeable future because the issues involved remain 'live'. Accordingly, the Commissioner is satisfied that the balance of the public interest favours maintaining the exemptions in section 27(1) and (2) of the Act in respect of the information contained within the document section.

Exemption – section 24(1)

49. Since the Commissioner has concluded that the information to which the Cabinet Office applied section 27 of the Act was exempt from disclosure by virtue of that section, he does not propose to consider the application of section 24(1) to that information. The remaining information which was requested relates to the comments made on the dossier by the Defence Intelligence Staff and other bodies.

50. Section 24(1) states:

'Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security.'

In the case of *Baker v the Information Commissioner and the Cabinet Office* (EA/2006/0045) the Information Tribunal noted that it was unable to find an exhaustive definition of 'national security' in either statute or judicial decisions, but it referred to a House of Lords decision (*Secretary of State for the Home Department v Rehman* [2001] UKHL 47; [2003] 1 AC 153) which made a number of observations on the issue. Of relevance to this case are its statements that 'national security' means the security of the United Kingdom and its people; action against a foreign state may be indirectly capable of affecting the security of the United Kingdom; and reciprocal cooperation between the United Kingdom and other states in combating international terrorism is capable of promoting the United Kingdom's national security.

51. Having considered the information which was withheld by the Cabinet Office, the Commissioner is not satisfied that all of the comments on the draft dossier constituted information which engages the section 24 exemption. Specifically, he does not consider that the comments arising from bodies other than the Defence Intelligence Staff, and some of the comments made by officials of the Defence Intelligence Staff relating solely to the drafting of the dossier, can be said to amount to information whose exemption is required for the purpose of safeguarding national security.

Information not from Defence Intelligence Staff

52. Regarding the comments on the draft dossier arising from bodies other than the Defence Intelligence Staff, the Commissioner is not convinced that disclosure of this part of the information would threaten any intelligence sources, or that it would have a prejudicial effect on intelligence collection methods. The comments were made by individuals from outside the 'intelligence community' and related to the facts and opinions contained within the draft dossier itself. Since these were the very facts and opinions which the relevant politicians and officials were minded to publish in the dossier, the Commissioner considers that comment on and debate around them is unlikely to be any more prejudicial to intelligence sources or collection methods than publication in the dossier of the facts and opinions themselves.

53. Since the government had, at the time of the request, published the dossier the Commissioner has concluded that exemption of this information – comments on the drafting of the dossier arising from bodies other than the Defence Intelligence Staff – is not necessary in order to safeguard national security.

Information from Defence Intelligence Staff

54. The information from the Defence Intelligence Staff comprised (i) information which essentially amounted to drafting comments on the proposed dossier; (ii)

information that comprised 'technical' intelligence assessments; and (iii) the names, anonymised designations and contact details of individuals within the Defence Intelligence Staff.

(i) Information from Defence Intelligence Staff – drafting comments

55. As with the information provided by bodies other than the Defence Intelligence Staff, the Commissioner considers that the drafting comments do not engage the section 24(1) exemption: the comments related to facts and opinions contained within the draft dossier itself, and focused on presentational matters rather than touching on national security issues. Consequently, disclosure would not threaten any intelligence sources or have a prejudicial effect on intelligence collection methods. In the circumstances the Commissioner has decided that there is no evidence that exemption would be *'required for the purpose of safeguarding'* national security. Since section 24(1) is not engaged by this information, the Commissioner has gone on to consider whether it is exempt by virtue of the other exemption applied by the Cabinet Office (see paragraph 70 onwards).

(ii) Information from Defence Intelligence Staff – 'technical' intelligence assessments

56. In relation to the rest of the Defence Intelligence Staff information, comprising essentially 'technical' intelligence assessments, the Commissioner has also considered whether exemption would be *'required for the purpose of safeguarding'* national security. The Commissioner takes the view that, for exemption to be *'required'*, the requested information must relate to national security, and there must be evidence that its disclosure would cause specific and real threats to national security.
57. In the view of the Commissioner, disclosure of the essentially 'technical' intelligence assessments could potentially threaten intelligence sources and have a prejudicial effect on intelligence collection methods. The Commissioner accepts that *'confidence and anonymity'* are generally essential for sources to be willing and able to provide intelligence, and any deterrent effect produced by disclosure could therefore potentially damage national security. The Commissioner's conclusion is that disclosure of that part of the Defence Intelligence Staff information relating to 'technical' intelligence assessments could well have a prejudicial impact on United Kingdom national security. Accordingly, exemption of the information would be more than merely useful in safeguarding national security, and the section 24 exemption is engaged.
58. Section 24 is a qualified exemption and therefore subject to a public interest test under section (2)(2)(b) of the Act. While the Cabinet Office did not provide a separate assessment of the public interest test for section 24(1), it did claim that the balance of the public interest was the same as that provided for section 36(2)(b)(ii), and expressed its view that disclosure would damage the ability of the Joint Intelligence Committee and the Cabinet Office to protect the United Kingdom's national interest from *'disruptive threats'*.
59. In his letter to the Commissioner of 21 March 2007 the complainant claimed that the Cabinet Office had failed to explain why the public interest favoured

maintaining the section 36(2)(b)(ii) exemption, but had instead merely asserted that it did by rehearsing the underlying logic behind each of the respective exemptions. He made a number of points which are relevant to the public interest test for the section 24 exemption. First, he claimed that the dossier was a *'one-off document'* which meant that no official could reasonably believe that their comments would generally be more likely to come into the public domain if the information were to be released. The Commissioner accepts that there is some merit in this argument, since the security officials contributing to the dossier would have been aware that, exceptionally, they were involved in the drafting of a document for publication in the public domain. In the Commissioner's view the exceptional nature of the enterprise should provide those officials with some assurance that this case does not set a wider precedent.

60. Secondly, the complainant asserted that the dossier was *'not an intelligence assessment at all'* and was in fact being withheld due to the likely embarrassment which disclosure would cause to politicians and officials. However, for the purposes of the section 24 exemption the issue is whether the substance of the information relates to 'national security'. As the Commissioner has already explained, his view is that it does. However, he accepts the complainant's suggestion that likely embarrassment to politicians is not a relevant public interest factor in favour of maintaining the exemption. In the case of *DfES v the Commissioner and the Evening Standard (EA/2006/0006)*, the Information Tribunal laid down principles guiding how to assess the public interest in cases involving the section 35 exemption. The Commissioner considers that some of these principles can also be applied to the section 24 and 36 exemptions in this case. The Tribunal declared that the public interest in maintaining the exemption provided by section 35(1)(a) is in protecting, from compromise or unjust public criticism, civil servants rather than ministers. The Tribunal asserted that it is not unfair to politicians to release information that allows the policy decisions they took to be challenged after the event. The Commissioner takes the view that a similar distinction can be made between the role of politicians and public officials in the production of the dossier. However, while the Commissioner therefore accepts the complainant's point that the embarrassment of politicians is not a relevant consideration, he is mindful that the effect of disclosure on officials is relevant.
61. In this case that demarcation between 'politicians' and 'officials' is problematic precisely because of the suggestion that politicians and officials engaged in improper 'political' interference in the 'technical' judgement of the intelligence agencies – so-called 'sexing up'. This was the basis of the third point made by the complainant: disclosure of the information *'may well show not only that the dossier was 'sexed-up' as a result of ministerial or spin doctor interference...but that officials and/or ministers subsequently covered this up.'* The ostensible function of the dossier was to provide the British government's 'technical' assessment of *'Iraq's Programme for Weapons of Mass Destruction'*. Allegations have been made that the dossier was politically manipulated so that it no longer constituted a 'technical' assessment capable of underpinning a 'neutral' assessment of the issues. There is therefore a strong public interest in a degree of exposure of the circumstances of the dossier's production, because that would facilitate public understanding of and participation in the debate about alleged

Iraqi weapons capability and intentions, and promote accountability and transparency of the bodies responsible for producing the dossier and for taking decisions on the basis of its contents. The latter point would of course be of even greater significance if there was evidence that the dossier was deliberately manipulated in order to present an exaggerated case for military action, particularly as its intended audience included Parliament itself. The Cabinet Office has accepted that there was a public interest in releasing the information in order to contribute to the ongoing public, media and political debate about the production of the dossier and the reasons why the United Kingdom went to war in Iraq.

62. On the other hand, the Cabinet Office stated that disclosure might damage *'the effectiveness of the Government's intelligence machinery'*. It claimed that:

'In order to be fully effective the drafting process for intelligence documents must take place in private. Flows of intelligence based information always rely upon confidence and anonymity. If the UK's intelligence community is seen as unable to protect its sources and methods future flows of such information will be inhibited. The information withheld here does not relate directly to intelligence sources. However the officials who offer their comments are conduits through which such sources inform HMG. If their work is to be viewed in public there is an obvious risk to future effectiveness in this area.'

This argument consists of two main points: that the drafting process requires 'private space'; and that intelligence flows from sources must be protected by way of confidentiality and anonymity.

63. The Cabinet Office also made a third point that the requested information had not become less sensitive over time because:

'The sensitivity of the JIC [Joint Intelligence Committee] drafting process and intelligence collection methods, sources and capabilities, as reflected in JIC assessments, is not time limited in the short and medium term. It is not possible to place precise timescales upon the sensitivity of such information'.

64. In relation to the first point, the Commissioner takes the view that, while the dossier was being produced, those commenting needed 'private space' in which to develop their views. However, once it had been published the need for such private space no longer existed. As the Tribunal stated in the *Evening Standard* case cited above, *'The timing of a request is of paramount importance'*. It decided that while policy is in the process of formulation it is highly unlikely that the public interest would favour disclosure, and both ministers and officials are entitled to hammer out policy without the *'threat of lurid headlines depicting that which has been merely broached as agreed policy'*. The Commissioner considers that, not least because it was intended for ultimate publication, the construction of the dossier was a process analogous to the formulation and development of policy, and that it would therefore be unlikely that the public interest would favour disclosure of comments while the dossier was being created. Since it has now

been published, however, the Commissioner has decided that the need for those providing comments to have a 'private space' in which to develop their views no longer operates as a persuasive public interest factor in favour of maintaining the exemption.

65. Regarding the second point, the Commissioner accepts that '*confidence and anonymity*' are generally essential for sources to be willing and able to provide intelligence, and that where information relates to intelligence sources there is a strong – indeed, almost overriding – public interest in protecting them. However, whether disclosure of comments which are made after consideration of such intelligence would prejudice the original sources, or make them less willing to provide intelligence in the future, is a matter of fact in any particular case.
66. In respect of the third point, the Commissioner is prepared to give some credence to the argument that information which could compromise intelligence collection methods and sources is likely to remain sensitive for a considerable length of time. He also believes that the potential prejudice which could arise from premature disclosure is sufficiently serious that even a low risk of the prejudice occurring would weigh significantly in the balance of the public interest test. In this case he considers that the crucial issue is whether disclosure of the comments about the dossier would in fact be likely to have any prejudicial effect on intelligence collection methods and sources.
67. The Cabinet Office also addressed the fact that some of the information surrounding the dossier had been disclosed during the Hutton Inquiry and Lord Butler's review. It pointed out that this:

'was released for specific purposes in order to meet remits that had been given to them by Government. These were exceptional releases of information that is normally hidden from public view for a number of very sound reasons. Lords Hutton and Butler...were able to decide what should and should not be made publicly available to meet their objectives...[and] about the requirement to protect information that would be damaging if released...'

The Commissioner accepts that the fact that the dossier was made publicly available does not create a presumption that other information bearing on the production of the dossier should be disclosed.

68. The Commissioner has closely examined the information relating to 'technical' intelligence assessments to which the Cabinet Office has applied the exemption under section 24(1). He accepts that the information is sufficiently proximate to the original intelligence sources that disclosure would be likely to have a damaging effect on future flows of such information. Accordingly, he has concluded that the public interest in maintaining the exemption outweighs the public interest in disclosure, and it was therefore appropriate for the Cabinet Office to have withheld the information.

(iii) Information from Defence Intelligence Staff – names/designations/contact details

69. Some of the documents from the Defence Intelligence Staff include the names, anonymised designations and contact details of individuals. The Commissioner believes that these should be redacted where they are names or designations of officials within the Defence Intelligence Staff or any of the security bodies stipulated in section 23(3). His reason for taking that view is that the fact that the email addresses of these individuals are anonymised designations clearly demonstrates that such information is sensitive from a national security perspective and therefore engages the section 24 exemption. Furthermore, the public interest factors in withholding such information are similar to those addressed in relation to the other 'technical' intelligence information, whereas the factors favouring disclosure – public understanding, accountability and transparency – are relatively weaker (this is particularly the case with transparency). In the circumstances the Commissioner is satisfied that the names, anonymised designations and contact details of individuals contained within the information arising from the Defence Intelligence Staff should be redacted from any documents which are disclosed.

Exemption – section 36(2)(b)(ii)

70. The Commissioner has decided that the information originating in bodies other than the Defence Intelligence Staff, and that part of the Defence Intelligence Staff information which comprises drafting comments, does not engage section 24(1). He has therefore gone on to consider whether it is exempt by virtue of section 36(2)(b)(ii). 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...'*

Engagement of the exemption

71. The Cabinet Office informed the Commissioner in its letter of 21 March 2007 that the qualified person was the then Foreign Secretary, who had first been consulted on 24 February 2005 and asked to reconfirm his opinion on 7 November 2005. The Commissioner is satisfied that this was the appropriate 'qualified person' as laid down in section 36(5) of the Act. However, the Commissioner noted the dates on which the opinion was given – 24 February 2005 and 7 November 2005 – compared with the date of the request, which was 6 June 2005. He asked the Cabinet Office to explain how the qualified person's opinion could have been obtained before the request had been made. The Commissioner was not satisfied with the Cabinet Office's explanation and sought further details.

72. The Cabinet Office clarified that the qualified person had been approached in respect of an earlier request for information relating to the Iraq dossier. In response to the Commissioner's query the Cabinet Office gave a number of unsatisfactory explanations as to what had happened. In its letter of 6 June 2008 it stated that *'The earlier request covered the information [which the complainant in this case] requested on 6 June 2005'*. When the Commissioner queried this the Cabinet Office responded on 18 June 2008 by accepting that the previous application *'did not cover'* the information requested in this case, but that the submission to the qualified person in that case had been drafted broadly and *'The judgement reached at the time [the current] request was first considered was that the [qualified person's] opinion covered the information [the complainant in this case] requested'*. Having considered the submission sent to the qualified person in the earlier request, and compared it with the terms of the request in this case, the Commissioner does not agree that the submission covered the substance of the request in this case, nor, in light of the disparate nature of the two requests, does he believe that the Cabinet Office could reasonably have taken the view that it did. The Commissioner takes the view that, in applying the section 36(2)(b)(ii) exemption without having first obtained a valid qualified person's opinion, the Cabinet Office failed to comply with the requirements of section 36(2).
73. In his complaint, the complainant informed the Commissioner that the Cabinet Office had failed to address a query which he had made about whether a qualified person's opinion had been obtained. The Cabinet Office told the complainant on 29 December 2005 that it had obtained the opinion of a qualified person. It apologised for not having previously made this clear, but stated that it had assumed that its use of section 36 would have signalled that the opinion of a qualified person had been obtained. In the Commissioner's view, the requirement under section 36 is that a qualified person's opinion be obtained, not that the fact be expressly communicated to the applicant. However, he takes the view that, in deciding what details should be provided to the applicant in responding to a request, public authorities should consider in each individual case whether it would be helpful to explain that the matter has been addressed by the appropriate qualified person. His view is that in most cases it would be appropriate to volunteer this information. In this case, the Commissioner notes that the fact that the Cabinet Office applied section 36 did not mean that it had in fact obtained a qualified person's opinion in relation to the requested information. He also notes that the Cabinet Office avoided providing the complainant with full details of the circumstances in which it had obtained the qualified person's opinion – details which were also lacking in the information which it initially supplied to the Commissioner himself.
74. The Commissioner has established that, in fact, the Cabinet Office purported to rely on an opinion which had been provided in response to an earlier request for information which was substantively different from that requested in this case. The Commissioner takes the view that in such circumstances the qualified person's opinion cannot be considered to have been 'obtained' at all, and that the section 36 was therefore not engaged at the point when the Cabinet Office purported to apply it in the initial refusal notice. Furthermore, the Commissioner notes that at no point when dealing with the complainant's request or during the

Commissioner's investigation did the Cabinet Office volunteer the fact that there was a defect in the process of obtaining the reasonable opinion of the qualified person.

75. In the event, the Cabinet Office obtained reconfirmation from the qualified person on 7 November 2005 that his opinion remained the same. In deciding whether this rendered the qualified person's opinion unreasonable, the Commissioner notes that the Information Tribunal decided in the case *McIntyre v The Information Commissioner & the Ministry of Defence* (EA/2007/0068) that:

'even if there are flaws in the process these can be subsequently corrected, provided this is within a reasonable time period which would usually be no later than the internal review.'

Further, the Tribunal stated that:

'the Act encourages or rather requires that an internal review must be requested before the Commissioner investigates a complaint under s.50. Parliament clearly intended that a public authority should have an opportunity to review its refusal notice and if it got it wrong to be able to correct that decision before a complaint is made.'

The Commissioner has therefore concluded that, if an otherwise reasonable opinion has been given by the qualified person by the time of the public authority's internal review, section 36 will be engaged. In this case, the opinion was reconfirmed on 7 November 2005 and the internal review decision was issued on 2 December 2005. The Commissioner has therefore decided that the Cabinet Office was able to engage section 36.

76. The Commissioner has considered the Defence Intelligence Staff comments. He considers that there is at least the potential for disclosure to inhibit the free and frank exchange of views. The Commissioner is therefore satisfied that the opinion given by the qualified person that disclosure would, or would be likely to, produce the relevant prejudice was a reasonable one, and that the section 36(2)(b)(ii) exemption is engaged in respect of the information.

Public interest test

77. The Cabinet Office accepted that there was a public interest in releasing the information in order to contribute to the ongoing public, media and political debate about the production of the dossier and the reasons why the United Kingdom went to war in Iraq. The Commissioner believes that there is also a strong public interest in promoting the accountability and transparency of the bodies responsible for producing the dossier and for taking decisions on the basis of its contents.
78. On the other hand, the Cabinet Office claimed that the dossier drafting process requires 'private space', and that intelligence flows from sources should be protected through confidentiality and anonymity. The Commissioner does not accept the validity of the first point in this case, since the request was made after

the drafting process had been completed. He agrees that *'confidence and anonymity'* for sources is necessary to avoid prejudicing intelligence work and therefore the national interest, but he is unconvinced in this case that disclosure of second-hand comments about the contents of the dossier would in fact prejudice any *'intelligence flows'*. In particular, the Cabinet Office itself has accepted that the withheld information did not relate directly to intelligence sources, the comments were made by individuals from outside the *'intelligence community'* and the comments related to facts and opinions contained within the draft dossier itself.

79. The Cabinet Office also raised an issue specifically related to section 36(2)(b)(ii), when it stated that there was a strong public interest in allowing *'officials who contribute to the intelligence assessment process to express their views in a free and frank manner'* without *'the content of discussions and deliberations'* being disclosed *'in the near future.'* As the Commissioner noted in relation to the public interest test regarding the section 24(1) exemption, the Tribunal decided in the *Evening Standard* case (albeit in relation to section 35) that officials of public authorities can be expected to provide appropriately candid advice when offering their opinions even though information about those opinions might subsequently be disclosed. In another case, *Lord Baker v the Commissioner and the Dept for Communities and Local Government* (EA/2006/0043), the Tribunal reached a similar conclusion, claiming that arguments that disclosure will lead to poorer record keeping should be given little weight since that potential mischief was capable of being addressed by staff management. It also commented that transparent provision of the full information behind a decision removes any suspicion of *'spin'* and therefore promotes confidence in public authorities: *'by making the whole picture available, it should enable the public to satisfy itself that it need have no concerns on the point'*.
80. Having considered the public interest factors in favour and against maintaining the section 36(2)(b)(ii) exemption in relation to those comments which were not exempt under section 24(1), the Commissioner has decided that the balance of the public interest favours disclosure.
81. Since section 24(1) is not engaged and the public interest test in section 36(2)(b)(ii) favours disclosure, the Commissioner has decided that the information originating in bodies other than the Defence Intelligence Staff, and that part of the Defence Intelligence Staff information which comprises drafting comments, should be disclosed. The relevant information has been identified in a separate Schedule which is being provided to the Cabinet Office. (In relation to a section in one of these documents the Commissioner has already accepted that the information was properly withheld under section 27(1) and (2), and this information should therefore be redacted from the information released to the complainant.) In failing to disclose information which, although exempt under section 36(2)(b)(ii), should have been disclosed because the public interest in maintaining the exemption did not outweigh that in disclosure, the Cabinet Office breached section 1(1)(b), and in failing to disclose it within the statutory time limit it also breached section 10(1)..

The Decision

82. The Commissioner's decision is that the Cabinet Office did not deal with the request for information in accordance with the Act. In taking 55 working days to respond to the information request it failed to comply with its duty under section 10(1) to confirm or deny within 20 working days whether it held the requested information, and also breached section 17(1) by failing to provide the details required by that section within 20 working days. It also breached section 17(1)(b) in failing in its refusal notice to specify all of the exemptions which applied to each element of the requested information, since it only cited section 24(1) after the complainant had approached the Commissioner. The Commissioner has also concluded that some of the withheld information was not exempt under section 24(1) and that some, although exempt under section, 36(2)(b)(ii) should have been disclosed because the public interest in maintaining the exemption did not outweigh that in disclosure. The Cabinet Office therefore breached section 1(1)(b) in failing to disclose this information, and section 10(1) by failing to provide it within the statutory time limit. Finally, in applying the section 36(2)(b)(ii) exemption without having first obtained a valid qualified person's opinion the Cabinet Office failed to comply with the requirements of section 36(2).

Steps Required

83. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- the Cabinet Office should disclose to the complainant the information identified in the separate Schedule with which it has been provided.
84. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

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

Other matters

86. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matter 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.

87. In exceptional circumstances it may be reasonable to take longer, but the total time taken should not exceed 40 working days, and as a matter of good practice the public authority should explain to the requester why more time is needed. Furthermore, in such cases the Commissioner expects a public authority to be able to demonstrate that it has commenced the review procedure promptly following receipt of the request for review and has actively worked on the review throughout that period.
88. The complainant's internal review request was made on 31 August 2005. The Cabinet Office sent the complainant its internal review decision on 2 December 2005, after the complainant had approached the Information Commissioner on 13 October 2005. While there is no timescale laid down in the Act for a public authority to complete an internal review, the Commissioner takes the view that, in the absence of exceptional circumstances, a reasonable time for completing an internal review is 20 working days from the date of the request for review. In this case the Cabinet Office took 67 working days.
89. The Commissioner recognises that the Cabinet Office's internal review in this case was conducted prior to the issuing of the *'Good Practice Guidance No 5'* in February 2007. However, he considers that the 67 working days which the Cabinet Office took to complete this internal review does not constitute a reasonable timescale. Accordingly, the Commissioner wishes to register his view that the Cabinet Office fell short of the appropriate standards of good practice in failing to conclude the internal review within a reasonable timescale.
90. As a separate matter, the complainant has requested *'an explicit statement as to whether the Commissioner believes that the Cabinet Office operates a complaints policy that complies with the requirements of the s45 Code of Practice'*. The Code of Practice laid down in section 45 of the Act (the 'Access Code') provides clear guidance on how public authorities should deal with requests for information. The Commissioner does not propose to comment in this Decision Notice on the general issue of whether the Cabinet Office's complaints policy conforms with the requirements of the Access Code. The Commissioner's FOI Good Practice and Enforcement Team is responsible for monitoring and investigating allegations of non-conformance with the Section 45 Access Code of Practice, and any issues arising from the Team's work which the Commissioner wants to comment upon publicly would be raised in the Commissioner's Annual Report.

Right of Appeal

91. 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@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 served.

Dated the 1st day of September 2008

Signed

**Graham Smith
Deputy 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 16(1) provides that -

“It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it”.

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(2) states –

“Where–

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-
 - (i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
 - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and
- (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.”

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 24(1) provides that –

“Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security.”

Section 24(3) provides that –

“A certificate signed by a Minister of the Crown certifying that exemption from section 1(1)(b), or from section 1(1)(a) and (b), is, or at any time was, required for the purpose of safeguarding national security shall, subject to section 60, be conclusive evidence of that fact.”

Section 27(1) provides 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,
- (c) the interests of the United Kingdom abroad, or
- (d) the promotion or protection by the United Kingdom of its interests abroad.”

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 27(3) provides that –

“For the purposes of this section, any information obtained from a State, organisation or court is confidential at any time while the terms on which it was obtained require it to be held in confidence or while the circumstances in which it was obtained make it reasonable for the State, organisation or court to expect that it will be so held.”

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(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,