

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 2 March 2009

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

Summary

1. The complainant asked the public authority for information in a file entitled '*Arrangements for Mark Thatcher's overseas trips and security 1982-90*', and to provide a schedule of the documents within it. The public authority cited section 27 of the Act and extended the time limit in order to consider the public interest test. It subsequently cited sections 23, 24, 27(1)(a), 27(2) and 36(2)(b). The Commissioner decided that the public authority failed, within the statutory time limit, to issue its original refusal notice and to specify the exemption(s) which it was applying, a breach of sections 10(1) and 17(1); and that, in extending the time limit for consideration of the public interest test for an unreasonable length period it also breached section 17(3). In response to the request for a schedule, the public authority breached section 1(1)(a) by claiming that it did not hold that information and section 10(1) by failing to confirm within the statutory time limit that it was held. In relation to the exemptions, it failed to specify which sub-section of section 27, and sub-paragraph of section 36(2)(b), applied to each element of the information, in breach of its obligations under section 17(1)(b). It failed to identify that sections 21 and 40 applied to some of the information, instead improperly withholding it by reference to other exemptions, a breach of section 17(1)(b). It did not comply with its obligations under section 1(1)(b) in that it failed to communicate to the complainant information to which he was entitled, on the mistaken basis that it was exempt from disclosure under sections 27(1)(a), 27(2), and 36(2)(b)(i) and (ii), which also constituted a breach of the time limit in section 10(1). Finally, it applied section 24 to certain information even though all of it was exempt by virtue of section 23(1), thereby breaching section 24(1) of the Act. The Commissioner concluded that the public authority had properly withheld some information but the remaining information should now be disclosed.

The Commissioner's Role

2. 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

3. On 14 March 2005 the complainant requested from the Cabinet Office a complete copy of the file entitled '*Arrangements for Mark Thatcher's overseas trips and security 1982-90*'. He also requested a schedule of the documents contained within the file, including a brief description of each document and whether it was being disclosed.
4. The Cabinet Office acknowledged the request on 15 March 2005.
5. On 15 April 2005 it informed the complainant that it required an extension of time in order to consider the public interest test in relation to section 27 of the Act, and aimed to respond by 6 June.
6. It claimed a further extension on 6 June 2005, estimating that it needed until 4 July to respond.
7. On 12 September 2005 it provided a substantive response, apologising for the delay. It enclosed some information, but stated that the remainder was being withheld as exempt under sections 23, 24, 27(1)(a), 27(2) and 36(2)(b) of the Act. It stated that it did not hold a schedule of the documents within the file. It informed the complainant of his right to request an internal review and to complain to the Commissioner.
8. The complainant requested an internal review on 16 January 2006. He made the point that sensitivities around the issue would have faded over time whereas disclosure of the information would fulfil the important public interest in allowing the public to pass judgement on the expenditure of public money.
9. On 19 January 2006 the Cabinet Office acknowledged receipt of the internal review request.
10. It did not provide a substantive response until 28 June 2006. It apologised for the delay. In relation to the original decision, it stated that it was upholding its application of all of the exemptions. It reminded the complainant of his right to approach the Commissioner.

The Investigation

Scope of the case

11. On 28 June 2006 the complainant wrote to the Commissioner. He complained that the Cabinet Office had misjudged the public interest test. He also pointed out that it had failed to provide him with the schedule which he had requested.

Chronology

12. The Commissioner wrote to the complainant and the Cabinet Office on 23 January 2008. He asked the Cabinet Office to comment on various issues, and to provide him with the information which had been withheld.
13. The Cabinet Office replied on 19 February 2008 indicating that a substantive response would be available within the next few days.
14. No response was forthcoming and the Commissioner sent another reminder on 14 March 2008.
15. He sent a further reminder on 28 March 2008, stating that he intended to issue an Information Notice unless the requested information was provided by 4 April 2008.
16. The Cabinet Office replied on 4 April 2008 with its comments. It also provided a letter dated 3 April 2008 from its Director of Security and Intelligence, which provided an assurance that the information withheld by reference to section 23 was either received from one of the bodies listed in section 23(3) or was related to them. The Cabinet Office attached the withheld information which fell within exemptions other than section 23. It stated that it was dropping its reliance on section 24 since all of the information which engaged that exemption also fell within section 23.
17. The Commissioner sought a further explanation from the Cabinet Office on 10 July 2008 about the information to which section 23 had been applied.
18. The Cabinet Office replied on 18 July 2008. It provided a further explanation regarding the application of section 23 during a visit to its offices by a representative of the Commissioner on 2 September 2008.

Analysis

Procedural matters

Form of information

19. The complainant raised the point in his complaint to the Commissioner that the Cabinet Office had failed to provide him with a schedule of the documents within the file as requested, including a brief description of each document and whether it was being disclosed. In its refusal notice dated 12 September 2005 the Cabinet Office's response was that it did not hold a schedule of the documents within the file. The complainant did not raise the issue again in his request for an internal review and the Cabinet Office did not address the point again at that stage.
20. In claiming that it did not hold the information, the Cabinet Office was effectively claiming that it was not required to create a schedule which it did not already hold because to do so would amount to creating new information. However, the Commissioner notes that the information that would comprise the schedule is in fact part of other information which is held by the Cabinet Office. In his view, requests are for 'recorded information' rather than for documents. Since the information already exists, by constituting it in a schedule the Cabinet Office cannot be said to be creating it. Production of a schedule may be a new task but it is not the creation of new information, merely a re-presentation of that which already exists. For this reason, the Commissioner takes the view that, for the purposes of the Act, the schedule requested by the complainant was in fact held by the Cabinet Office.
21. Section 1(1)(a) of the Act provides that applicants are entitled:

'to be informed in writing by the public authority whether it holds information of the description specified in the request...'

In claiming that it did not hold the information the Cabinet Office therefore breached section 1(1)(a). Furthermore, since it also failed to confirm that it held the information within the statutory time limit, it breached section 10(1) of the Act, which requires 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.'

22. The Commissioner has decided that the Cabinet Office should now provide to the complainant the requested schedule. In relation to the information which the Cabinet Office disclosed to the complainant as not being exempt, and any information which it discloses as a result of this Decision Notice, this will be provided in the form of the documents themselves and therefore need not be provided in the schedule (although it will of course be open to the Cabinet Office to identify it in the schedule anyway). (The Commissioner notes that as part of his

investigation he has himself been provided with a schedule of the information by the Cabinet Office.)

Breach of 20 day refusal notice

23. The complainant objected that the Cabinet Office had failed to issue its original refusal notice within the statutory timescale of 20 working days (stipulated in section 10(1) of the Act, as noted above). The Commissioner has provided guidance on this issue in his *'Good Practice Guidance No 4'*.
24. As the Commissioner has explained in that guidance, public authorities should aim to respond fully to all requests within 20 working days. In cases where the public interest considerations are exceptionally complex it may be reasonable to take longer but in the Commissioner's view the total time taken to deal with an internal review should in no case exceed 40 working days. Where any additional time beyond the initial 20 working days is required to consider the public interest, the public authority must still serve a 'refusal notice' under section 17 of the Act within 20 working days even in those cases where it is relying on a qualified exemption and has not yet completed the public interest test. That notice must state the exemption(s) being relied on and, if not apparent, why the exemption applies. The notice must include an estimate of the time by which this decision will be made. If the final decision is to withhold the information requested, a second notice must then be issued providing the reasons for the decision on the public interest. No further notice is required if the final decision is to disclose the information.
25. The complainant's request was made on 14 March 2005. The Cabinet Office acknowledged the request on 15 March 2005, and on 15 April 2005 it issued a refusal notice informing the complainant that it required an extension of time in order to consider the public interest test in relation to section 27 of the Act. The Cabinet Office therefore took 22 working days to issue its initial refusal notice. The Commissioner recognises that this occurred prior to the issuing of his *'Good Practice Guidance No 4'* in February 2007. Nevertheless, the Cabinet Office failed to comply with its duty to issue the refusal notice within the statutory time limit, in breach of section 10(1) of the Act, and to specify within the same time limit the exemption(s) which it was applying, in breach of section 17(1).

Delay in considering public interest following extension

26. Having claimed an extension on 15 April 2005 to consider the section 27 public interest test, the Cabinet Office then gave itself a further extension on 6 June 2005, and only issued a final refusal notice dealing with the public interest test on 12 September 2005. Section 17(3) of the Act states that the second refusal notice following an extension of the time limit should be issued *'within such time as is reasonable in the circumstances'*.
27. Although the Cabinet Office provided updates, the Commissioner takes that view that the period from 14 March to 12 September 2005 – 125 working days – to provide its decision regarding the public interest test was wholly unreasonable. In cases where the public interest considerations are exceptionally complex it may

be reasonable to take an extension longer than an additional 20 working days but in the Commissioner's view no case should exceed 40 working days. While recognising again that the Cabinet Office dealt with this case prior to the issuing of the 'Good Practice Guidance No 4' in February 2007, the Commissioner therefore finds that in extending the time limit for consideration of the public interest test the Cabinet Office breached the requirements of section 17(3) of the Act.

Exemption – section 23

28. Section 23(1) states:

'Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).'

In this case the Cabinet Office provided the Commissioner with a letter dated 3 April 2008 from its Director of Security and Intelligence, in which he gave an assurance that the information withheld by reference to section 23 was either received from one of the bodies listed in section 23(3) or was related to them. On 2 September 2008 the Cabinet Office provided a further explanation of the nature of the information.

29. The Commissioner is prepared, in limited circumstances, to accept the assurance of a senior official that information withheld under section 23(1) has indeed been supplied by or is related to security bodies specified in section 23(3). He will only do so where the official occupies a position in relation to the security bodies which allows them genuinely to validate the provenance of the information, and where the official is independent of the public authority's process for dealing with freedom of information requests. For completeness, it should be noted that the Commissioner retains the power to serve an Information Notice under section 51 where he considers it appropriate and it remains open to the public authority to obtain, in appropriate cases, a conclusive ministerial certificate under section 23(2). The Commissioner is satisfied that the Director of Security and Intelligence in the Cabinet Office occupied such a position in this case. Accordingly, he has concluded that this element of the requested information engaged the exemption under section 23(1). Since section 23(1) is an absolute exemption, there is no public interest test.

Exemption – section 24

30. The Cabinet Office informed the Commissioner on 4 April 2008 that it was dropping its reliance on section 24 on the grounds that all of the information which engaged that exemption also fell within section 23. The Commissioner has therefore not considered the application of section 24 to the withheld information. However, he notes the provisions of section 24(1) of the Act:

'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.'

Accordingly, in this case the Cabinet Office was not entitled to cite the exemption under section 24 because all of the relevant information was in fact exempt under section 23(1)..

Exemption – section 27(1)(a) and (2)

31. The Cabinet Office claimed that a number of documents fell within section 27(1)(a); of these it claimed that a number were also exempt under section 27(2) and/or section 36(2).

Section 27(2)

32. 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(2) – engagement of the exemption

33. As a preliminary issue the Commissioner notes that the Cabinet Office did not specify which of the withheld documents it considered to fall within section 27(2). However, it responded to the Commissioner's query about why the withheld information was confidential by stating that it consisted of documents exchanged in confidence between the United Kingdom and representatives of the diplomatic and security services of another state or states, and of documents in which British officials made detailed reference to information provided by those representatives. It stated that it was rarely considered necessary for states to make an explicit declaration that such information was to be held in confidence. Section 17(1)(b) of the Act places an obligation upon the public authority that its refusal notice *'specifies the exemption in question'*. The Commissioner's view is that the public authority is thereby required to refer to the specific part(s) of the relevant exemption(s). In this case the Cabinet Office referred to both section 27(1)(a) and 27(2) without specifying which applied to each element of the information, and thereby failed to comply with its obligations under section 17(1)(b).
34. Section 27(2) is not subject to a test of prejudice but applies only if the requested information is in fact confidential. Information may be confidential because of a formal confidentiality agreement, or because the context in which it was obtained implies a duty of confidence. In the case of *Campaign Against the Arms Trade (CAAT) v the Information Commissioner and Ministry of Defence (EA/2006/0040)*, where the appellant had requested certain Memoranda of Understanding between the United Kingdom Government and the Kingdom of Saudi Arabia, the Information Tribunal commented on confidentiality under section 27. The Tribunal confirmed that there was a distinction between the confidentiality test which characterised section 27 of the Act, and the common law of confidence applied in section 41, since the concept of confidentiality is subject to different interpretations in different countries and it would therefore be unrealistic to expect

a common understanding. The Tribunal took the view that the test of confidentiality under section 27 should be judged against *'what would have been reasonable for the [other state] to have expected'*, its attitude to the subject matter of the requested information, and its particular characteristics, including *'the secretive nature of its society'* and the fact that the *'concept of freedom of information and transparency is generally alien to their culture'*. The Tribunal also stated that there was no justification in *'imposing on the [other state] our particular customs and principles as to transparency or democratic accountability'*, particularly since the exemption remained subject to an assessment of the public interest. In light of the Tribunal's finding, the Commissioner's view is that confidentiality should be judged against what would have been reasonable in the mind of the confider, taking into consideration their culture, principles and possible lack of awareness about the United Kingdom's Freedom of Information Act. However, if the information is already in the public domain the Commissioner considers that it is unlikely to be confidential; and if it has been put in the public domain by the state or international organisation which supplied it, then it cannot be considered confidential.

35. The Cabinet Office pointed out that in this case the appropriate United Kingdom embassy had had contact with a *'policy-level contact'* at the diplomatic security service of another state involved who had advised that, *'from his professional point of view, a failure to protect confidential information would have a negative impact on the Embassy's relationship with Diplomatic Security'*. However, the Commissioner notes that this assessment of consequences – in other words, the potential prejudice arising from disclosure – is not actually relevant to the question of whether section 27(2) is engaged, since it is not a prejudice-based exemption and revolves around the question of whether the other states involved intended that information provided by them should be treated in confidence. The Cabinet Office has not claimed that its policy contact provided any comment on this point. (The possibility of prejudice is relevant to the public interest test, however, which is addressed below.)
36. Having considered the information withheld by reference to section 27, the Commissioner accepts that copy correspondence between other states and their own United Kingdom embassies which are marked 'Confidential' were intended to be treated in confidence by the United Kingdom, and that the expectation would have been that the confidentiality was open-ended. Accordingly, those documents engage section 27(2). There is also information relating to entry documents, details of which the Cabinet Office has claimed it is standard government-to-government practice to keep confidential. The Commissioner accepts that there was an expectation of confidence in respect of this information which was also open-ended, and that this information therefore also engages section 27(2).
37. Of the remaining documents to which the Cabinet Office applied section 27, some concern technical issues regarding the assessment and implementation of security arrangements for Mark Thatcher, while others relate to discussions about the nature of the security threat to him and the 'policy' of how to deal with it. Some of this information could be regarded as having been 'obtained' from other states. However, the Commissioner does not consider that the Cabinet Office has provided evidence to show that this information was intended to be treated in

confidence. In considering the application of section 27 to this part of the information the Commissioner has therefore assessed section 27(1)(a) and not section 27(2).

Section 27(2) – public interest test

38. The information which does engage section 27(2) comprises copy correspondence between other states and their own United Kingdom embassies which are marked 'Confidential', and information relating to entry documents. Since section 27(2) 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'*.
39. In its refusal notice the Cabinet Office noted that there was a general public interest in access to information about government, how it reaches its decisions and discharges its public functions. There was also a strong public interest in maintaining good working relationships based on trust with other states for mutual benefit, especially in the areas of security and law enforcement. In addition, the information was between 15 and 23 years old. In favour of maintaining the exemption it stated that, as the information was confidential information provided by another state, releasing it would be likely to prejudice relations with that state.
40. In its comments to the Commissioner the Cabinet Office elaborated on its assessment of the public interest test. In favour of disclosure it identified facilitating public understanding of the United Kingdom's conduct of its relations with other countries. There was also a public interest in transparency of the arrangements made to protect high profile citizens resident or travelling abroad.
41. On the other hand, disclosure of information which had been provided in the expectation that it would be kept confidential would produce a range of detrimental effects against the public interest. It would cause both the state(s) involved and other states to reconsider in the future whether to cooperate not only in similar arrangements but also in the exchange of a range of other confidential information. It claimed that there was the potential for permanent damage to the United Kingdom's international reputation, loss of prestige and serious limitation of the effectiveness of its diplomacy. The Cabinet Office also appeared to assert the unique capability of the executive branch of the state in judging what was required to promote good United Kingdom international relations, referring to what it claimed was the courts' consistent recognition that the protection and promotion of international relations is a matter that is *'outside judicial expertise'*, with the courts having:
- 'consistently refrained from requiring the Executive to act on the basis of an assessment by the Courts as to the best means of effecting international relations...even when the rights asserted by claimants have been of the greatest significance'*.
42. The Cabinet Office stated that it had taken into account the age of the information – between 15 and 23 years – and had concluded that the passage of time would

have diminished the public interest in disclosure since the information *'could shed no light on any matter of current public concern'*. However, the Cabinet Office noted that, at the time of the request, Mark Thatcher had been a defendant in a high-profile court case in South Africa, the security of his residence overseas was therefore a live issue, there was the possibility that the United Kingdom might become involved in making arrangements similar to those addressed in the withheld information, and so disclosure of the information might have raised doubts about the United Kingdom's ability to keep any such negotiations confidential.

43. The Commissioner notes that, in the *CAAT* case cited above, the Information Tribunal expressed its acceptance that the provisions in section 27(2) and (3) of the Act assumed an *'inherent disservice to the public interest in flouting international confidence'*. In that particular case disclosure of the requested information *'would have been seen as reneging on or flouting the basis upon which that information was obtained'*. The Tribunal applied significant weight to this in the context of international comity and relationships.
44. The Commissioner takes the view that disclosure of other states' copy correspondence marked 'Confidential', and information relating to entry documents, 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 desirability of maintaining trust and confidence between governments, and in particular the fact that there was an expectation among the parties that the information 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. Having considered all of these factors, the Commissioner takes the view that the balance of the public interest under section 27(2) lies in withholding this part of the information.

Section 27(1)(a)

45. The Cabinet Office claimed that information was exempt by virtue of section 27(1)(a) of the Act. 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...'

Section 27(1)(a) – prejudice test

46. To engage the section 27(1)(a) exemption it is necessary for the public authority to demonstrate that disclosure of the information would cause some relevant prejudice. The Commissioner's interpretation of 'likely to prejudice' is that there should be evidence of a significant risk of prejudice to the subject of the exemption. The degree of risk must be such that there 'may very well' be

prejudice to those interests. Whether prejudice exists is to be decided on a case by case basis. The prejudice test is a dynamic concept and different levels of prejudice will occur at different times according to the varying circumstances affecting the international relations or interests of the United Kingdom abroad.

47. The Commissioner notes that the information relevant to section 27(1)(a) in this case comprises reports and discussions of technical assessments and action taken regarding Mark Thatcher's security. Having considered this information and the submissions made by the Cabinet Office, the Commissioner considers that no prejudice would be caused to relations between the United Kingdom and the state(s) involved were some elements of it to be disclosed, specifically:

- technical security assessments;
- reports of discussions between United Kingdom officials and Mark Thatcher relating to his security;
- other reports relating to Mark Thatcher's security exchanged between United Kingdom officials and/or politicians.

48. These are the Commissioner's reasons for taking this view. The technical security assessments merely identify practical steps that would be required to obtain certain enhancements in security. The Commissioner does not believe that these measures are in any way remarkable or disclose any classified or privileged expertise, nor does he consider that the involvement of the other state(s) in responding positively to a request to protect a United Kingdom citizen abroad is contentious. Accordingly, disclosure of the information would be unlikely to lead to any negative conclusions about the actions of the other state(s) such that they would be caused embarrassment, and accordingly it is highly unlikely that United Kingdom relations with those other state(s) would be damaged.

49. Regarding the reports, these are internal United Kingdom documents. The Commissioner takes the view that a degree of robust, honest or even negative comment on the actions of other states might be expected and tolerated in such internal documents without leading to prejudice to relations with those other states. In any event, the Commissioner does not consider that the reports identified above express any sentiment which would cause embarrassment to the other state(s) involved, such that prejudice would be caused to the relationship with the United Kingdom.

50. Since the Commissioner does not believe that any prejudice to United Kingdom relations with the other state(s) would arise from disclosure of this part of the information, he has decided that the section 27(1)(a) exemption is not engaged. Accordingly, if the Cabinet Office failed to communicate this information to the complainant when he was entitled to it, it would be in breach of its obligations under section 1(1)(b) of the Act. Whether he was so entitled is dependent on whether the information is exempt by virtue of the other exemptions in section 36 or 40 of the Act which were cited by the Cabinet Office. The question of whether these exemptions were in fact applicable is addressed later in this Decision Notice.

51. In addition, attached to one document is an ordinance of a Town Council in the United States. The Commissioner considers that the ordinance was likely to have been publicly available in 1986 and that, in any event, no prejudice would ensue from its disclosure twenty years later. The section 27(1)(a) exemption is therefore not engaged by this information and it should be disclosed.
52. On the other hand, the Commissioner accepts that prejudice may very well ensue from disclosure of some of the withheld information other than that dealt with in the foregoing paragraphs. This is information dealing with discussions between United Kingdom officials and representatives of the other state(s) involved relating to assessments of risk and security issues, and negotiations about the action to be taken as a consequence. These are not internal United Kingdom documents and the Commissioner takes the view that the other state(s) involved are more likely to consider the details of their discussions or negotiations with the United Kingdom to be sensitive information. Disclosure of this information would therefore be more likely to prejudice relations between the United Kingdom and the other state(s) involved. Having considered the information in detail, the Commissioner considers that disclosure would be likely to result in a relevant prejudice and that the exemption under section 27(1)(a) is therefore engaged in respect of this information.

Section 27(1)(a) – public interest test

53. 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'*.
54. As recounted in respect of section 27(2), the Cabinet Office claimed that there was a general public interest in access to information about government, how it reaches its decisions and discharges its public functions. There was also a public interest in facilitating public understanding of the United Kingdom's conduct of its relations with other countries, and in making transparent the arrangements for protecting high profile citizens resident or travelling abroad. In addition, since the information was between 15 and 23 years old there was less potential for disclosure to embarrass other states. Mitigating this latter point, however, it noted that, at the time of the request, Mark Thatcher had been a defendant in a high-profile court case in South Africa where the security of his overseas residence might therefore be a live issue, since the United Kingdom might become involved in making arrangements similar to those addressed in the withheld information and so disclosure of the information in this case might raise doubts about the United Kingdom's ability to keep negotiations confidential.
55. In favour of maintaining the exemption, the Cabinet Office claimed that releasing private and possibly critical comments by British officials or diplomats could offend the other state(s) involved. It could cause both the state(s) involved and other states to reconsider in the future whether to cooperate not only in similar arrangements but also in the exchange of a range of other confidential information. The Cabinet Office also claimed that there was the potential for permanent damage to the United Kingdom's international reputation, loss of

prestige and a serious limitation of the effectiveness of its diplomacy. The Cabinet Office suggested that the courts had recognised that the protection and promotion of international relations is a matter for the judgement of the executive branch of the state.

56. Having considered the information dealing with discussions between United Kingdom officials and representatives of the other state(s) involved relating to assessments of risk and security issues, and negotiations about the action to be taken as a consequence, the Commissioner accepts that there was the potential for permanent damage to the United Kingdom's international relations with the other state(s) involved. He therefore takes the view that the Cabinet Office was justified in concluding that the public interest in maintaining the section 27(1)(a) exemption in respect of this information outweighed the public interest in disclosure. The relevant information is identified in a separate Schedule which will be sent to the Cabinet Office with this Decision Notice.

Exemption – section 36(2)(b)(i) and (ii)

57. The Cabinet Office applied section 36(2)(b)(i) and (ii) to part of the withheld information. However, it did not specify which of these sub-paragraphs applied to each element of the information. Section 17(1)(b) of the Act places an obligation upon the public authority that its refusal notice '*specifies the exemption in question*'. The Commissioner's view is that the public authority is thereby required to refer to the specific part(s) of the relevant exemption. Since the Cabinet Office failed to do so in this case, the Commissioner has concluded that it therefore breached section 17(1)(b).

58. 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 - ...

...(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...'*

59. The Commissioner has confirmed with the Cabinet Office that the qualified person in this case was the Solicitor General acting on behalf of the Attorney General. The Commissioner is satisfied that this was the appropriate 'qualified person' as laid down in section 36(5) of the Act.
60. The Cabinet Office also confirmed that the opinion had been sought on 22 June 2005 and given on 15 July 2005. The Cabinet Office explained that it had provided the qualified person with copies of the withheld information and an explanation of why it believed that the exemption was engaged. The Solicitor General had not agreed that all of this information was exempt under section

36(2)(b) and twenty documents (some with minor redactions) had been released. A written record had been kept.

61. The Information Tribunal has decided (*Guardian & Brooke v The Information Commissioner & the BBC* (EA/2006/0011 and EA 2006/0013)) that a qualified person's opinion under section 36 is reasonable if it is both '*reasonable in substance and reasonably arrived at*'. In that decision it elaborated that the opinion must be 'objectively reasonable' and based on good faith and the proper exercise of judgement, and not simply '*an opinion within a range of reasonable opinions*'. However, it also accepted that '*there may (depending on the facts) be room for conflicting opinions, both of which are reasonable*'. In considering whether an opinion was reasonably arrived at it proposed that the qualified person should only take into account relevant matters and that the process of reaching a reasonable opinion should be supported by evidence, although it also accepted that materials which may assist in the making of a judgement will vary from case to case and that conclusions about the future are necessarily hypothetical.
62. The Commissioner notes that in this case the qualified person was provided with copies of the requested information and given an explanation of why the section 36 exemption applied. Having considered this briefing, the qualified person concluded that section 36 did not in fact apply to a significant portion of the withheld information. In these circumstances the Commissioner believes that the qualified person gave proper consideration to the issue of whether to apply section 36 in this case and that the process of obtaining his opinion was objectively reasonable.
63. However, the Commissioner is not satisfied that the qualified person's opinion – that disclosure of the information would, or would be likely to, inhibit the free and frank provision of advice or exchange of views – is a reasonable one. The Cabinet Office did not specify what level of prejudice the disclosure would generate (ie 'would' or 'would be likely to' inhibit). In accordance with the Information Tribunal's decision in *McIntyre v The Information Commissioner and the Ministry of Defence* (EA/2007/0068), the Commissioner has therefore given consideration to the lower threshold:
- '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.'*
64. Some of the information comprises reports, and reports of discussions, exchanged between United Kingdom officials, United Kingdom politicians and Mark Thatcher, relating to the latter's security. The remainder comprises a Parliamentary Question and a briefing note produced in response to it.
65. When asked by the Commissioner to clarify the harm which it considered would arise from disclosure of this information, the Cabinet Office indicated in relation to the reports that it boiled down to the disinclination of officials, both British and foreign, to provide free and frank advice for the benefit of the United Kingdom in

future cases should the information in this case be disclosed. It accepted that there was no 'direct' risk of harm because the particular security issue had become redundant many years previously. The Cabinet Office did not explain why officials would be deterred from discharging their obligations to provide proper advice, other than to point out that some of the advice involved making comments about Mark Thatcher, and to claim that in the context of security matters *'there was a very great need for officials to be able to speak freely to each other', 'to weigh all kinds of information, not merely factual information but unsubstantiated speculation, critical comments and personal reactions'*, and that *'Nothing should inhibit officials from contributing fragments of information even where they are unaware of the whole picture'*. In relation to the Parliamentary Question material, it stated that disclosure of this information would affect the willingness of officials to include political background when preparing future briefings for Parliamentary Questions or for Ministers. This would apply even to factual information, since disclosure of that would provide political opponents of the government with an insight into how such information is selected and make it easier for them to anticipate the content of briefing packs in the future.

66. The Commissioner is not convinced by the Cabinet Office's arguments. For a relevant prejudice to occur, he would have to accept that officials required to provide advice on a specific issue (in this case, security arrangements for the Prime Minister's son) would decline to do so unless they had certain assurances (implicit or explicit) that the advice would remain confidential, possibly for decades. The Information Tribunal has ruled (in the case of *John Connor Press Associates Limited v The Information Commissioner* (EA/2005/0005)) that *'the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk'*; and in *Hogan v Oxford City Council & The Information Commissioner* (EA/2005/0026, EA/2005/0030) it stated that the *'evidential burden rests with the decision maker to be able to show that some causal relationship exists between the potential disclosure and the prejudice'*. In this case the Commissioner's view is that the Cabinet Office has not demonstrated that the suggested prejudice would in fact be likely to ensue from disclosure. In particular, he considers that the prospect of disclosure of information some twenty years after it was generated is likely to have a very low deterrent effect on officials' inclination to discharge their professional obligations. He also rejects the Cabinet Office's point regarding the effect of disclosure of purely factual information provided in a briefing note to a Parliamentary Question.
67. Furthermore, the Information Tribunal has indicated in a number of cases that it is not generally inclined to accept the argument that officials will be deterred from providing proper advice by the possibility of its disclosure. In the case of *DfES v the Commissioner and the Evening Standard* (EA/2006/0006) the Tribunal stated that it was unimpressed with the argument that the threat of disclosure of civil servants' advice would cause them to be less candid when offering their opinions. It concluded that *'we are entitled to expect of [civil servants] the courage and independence that...[is]...the hallmark of our civil service'*; civil servants are *'highly educated and politically sophisticated public servants who well understand the importance of their impartial role as counsellors...'*; and they should not be easily discouraged from doing their job properly. The Commissioner does not believe that disclosure of records of discussions and reports involving United

Kingdom officials, politicians and Mark Thatcher relating to the latter's security would make officials responsible for providing advice and recording information less likely to perform their duties properly. Such public servants would be in breach of their professional duty as public servants should they either fail to discharge their obligations to provide advice, deliberately withhold relevant information or fail to behave in a manner consistent with the Civil Service Code. It is a matter for the Cabinet Office to ensure that its officials continue to perform their duties according to the required standards. In addition, the Commissioner has no reason to believe that the officials of the foreign state(s) involved in this case would not also exhibit the same degree of professionalism.

68. In light of this conclusion by the Tribunal, and the evidential burden which the *John Connor Press Associates Limited* case put on public authorities to show a real and significant risk of prejudice, the Commissioner takes the view that there would have to be some specific evidence that public officials would be deterred from doing their job properly were the information in this case to be disclosed. He does not consider that the Cabinet Office has provided such evidence. Accordingly, the Commissioner has concluded that it was not objectively reasonable for the qualified person to have formed the opinion that disclosure of this information would be likely to prejudice the effective conduct of public affairs, and he has therefore decided that the section 36 exemption is not engaged. In failing to communicate to the complainant information to which he was entitled, on the mistaken basis that it was exempt from disclosure under section 36(2)(b)(i) and (ii), the Cabinet Office breached its obligations under section 1(1)(b).

Exemption – section 21

69. In relation to the information concerning the Parliamentary Question, the Commissioner notes that the Parliamentary Question itself is included within the withheld information. Section 21 states:

'(1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.'

70. Parliamentary Questions are publicly available and this element of the withheld information was therefore reasonably accessible to the applicant in this case. Accordingly, the Commissioner takes the view that section 21 could have been applied to it. However, since public authorities are under a duty, set out in section 16 of the Act, to *'provide advice and assistance, so far as it would be reasonable to expect the authority to do so'*, the Commissioner considers that, had the Cabinet Office withheld this part of the information by reference to section 21, it would have been obliged to advise the complainant where he could access the Parliamentary Question.

Exemption – section 40

71. Even though a public authority may not have referred to a particular exemption when refusing a request for information, the Commissioner may in some circumstances take it into account during the course of his investigation if it seems appropriate to him in any particular case. In the case of *Department for*

Business, Enterprise and Regulatory Reform v Information Commissioner and Friends of the Earth (EA/2007/0072) the Tribunal stated that it:

'may decide on a case by case basis whether an exemption can be claimed outside the time limits set by [sections] 10 and 17 depending on the circumstances of the particular case',

although it added the caveat that:

'it was not the intention of Parliament that public authorities should be able to claim late and/or new exemptions without reasonable justification otherwise there is a risk that the complaint or appeal process could become cumbersome, uncertain and could lead public authorities to take a cavalier attitude towards their obligations'.

72. The Commissioner has adopted the Tribunal's approach, and in deciding whether to apply a new exemption he has regard to his obligations as a public authority under the Human Rights Act 1998, which prevent him acting incompatibly with rights protected by that Act. He considers that exemptions which are likely to relate to rights under the convention include sections 38 and 40, and in some circumstances sections 30, 31 & 41. In this case, although the Cabinet Office did not refer to section 40 of the Act, the Commissioner takes the view that a very limited amount of information is exempt under that section, and that the rights of the data subjects to which that information relates require him to consider whether the information is exempt under section 40(2) of the Act.

73. Section 1(1) of the Data Protection Act 1998 states that: *"personal data" means data which relate to a living individual who can be identified'* from the data. The information in this case comprises the name of two households with whom Mark Thatcher had resided, and the telephone number of an official of a foreign state. The Commissioner has concluded that this does indeed constitute 'personal data'.

74. Section 40(2) of the Act provides an exemption for information that constitutes the personal data of third parties:

'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.'

The first and second conditions are set out in section 40(3) and (4).

75. The relevant condition in this case is at subsection (3)(a)(i), where disclosure would breach any of the Data Protection Principles. The Data Protection Principles are set out in Schedule 1 of the Data Protection Act 1998. In this case the Commissioner considers that disclosure would breach the First Data Protection Principle, which states:

'1 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.'

Accordingly, personal data may not be disclosed unless to do so would be fair, lawful and would satisfy at least one of the conditions in Schedule 2.

76. In assessing the First Data Protection Principle the Commissioner takes the view that information which is about the home or family life of an individual, their personal finances, personal references, or other genuinely sensitive information, is likely to deserve protection. By contrast, information which is about someone acting in an official or work capacity is normally disclosable unless there is some particular risk of damage or distress to the individual concerned. As the Commissioner's published *'Awareness Guidance No 1'* on section 40 states:

'information which is about someone acting in an official or work capacity should normally be provided on request unless there is some risk to the individual concerned'.

'The exemption should not be used, for instance, as a means of sparing officials embarrassment over poor administrative decisions'.

'On the other hand, information such as home addresses or internal disciplinary matters would not normally be disclosed'.

77. The Commissioner has considered the individuals' likely expectations, and has concluded that it is extremely unlikely that they would have expected the information to have been disclosed. The householders with whom Mark Thatcher resided were private citizens who are unlikely to have even been aware that they had been referred to in the documents in this case. For the public official's telephone number, it is not certain that it is still extant, and in any event its disclosure to the 'world at large' in an uncontrolled way would be likely to prejudice the ability to fulfil their role adequately of any official to whom it is currently assigned. In the circumstances, the Commissioner is satisfied that the individuals involved would have had a legitimate expectation of privacy with respect to this information.

The Decision

78. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act. The Cabinet Office failed, within the statutory time limit, to issue its original refusal notice and to specify the exemption(s) which it was applying, a breach of sections 10(1) and 17(1); and in extending the time limit for consideration of the public interest test the Cabinet Office took an unreasonable length of time, again in breach of section 17(3). In response to the request for a schedule, the public authority breached section 1(1)(a) by claiming that it did not hold that information.
79. In relation to the exemptions, the Cabinet Office failed to specify which sub-section of section 27, and sub-paragraph of section 36(2)(b), applied to each element of the information, in breach of its obligations under section 17(1)(b). It failed to identify that sections 21 and 40 applied to some of the information, instead improperly withholding it by reference to other exemptions, a breach of section 17(1)(b). It did not comply with its obligations under section 1(1)(b) in that it failed to communicate to the complainant information to which he was entitled, on the mistaken basis that it was exempt from disclosure under sections 27(1)(a), 27(2), and 36(2)(b)(i) and (ii), which also constituted a breach of the time limit in section 10(1). Finally, it applied section 24 to certain information even though all of it was exempt by virtue of section 23(1), thereby breaching section 24(1) of the Act.
80. The Cabinet Office properly withheld some information by reference to the section 23(1) and 27(2) exemptions.

Steps Required

81. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- the Cabinet Office should provide the complainant with the information identified in the separate Commissioner's Schedule sent to it;
 - the Cabinet Office should provide the complainant with advice as to where he can access the Parliamentary Question or else provide him with a copy of it;
 - the Cabinet Office should provide to the complainant the schedule which he requested (except insofar as the information in such a schedule would fall within the exempt information identified above).

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

Failure to comply

82. 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

Internal review delay

83. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern. Section VI of the Code of Practice (provided for by section 45 of the Act) makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information. As he has made clear in his *'Good Practice Guidance No 5'*, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review.
84. 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.
85. The complainant's internal review request was made on 16 January 2006. The Cabinet Office did not send its internal review decision to him until 28 June 2006. The Cabinet Office therefore took 112 working days to complete the review. The Commissioner also notes that the internal review merely upheld the original decision without providing any substantive analysis of the issues. While the Commissioner recognises that the Cabinet Office's internal review in this case was conducted prior to the issuing of his *'Good Practice Guidance No 5'* in February 2007, he considers that the 112 working days which the Cabinet Office took to complete this internal review does not constitute a reasonable timescale. He would therefore like to take this opportunity to remind the Cabinet Office of the expected standards in this regard.

Quality of internal review

86. The substance of the Cabinet Office's internal review decision was to note the points made by the complainant in his request for internal review, to state that the Cabinet Office *'maintains its previous decision'* regarding all of the exemptions, and for the reviewer to state:

'I am satisfied that the decisions taken by the Cabinet Office in applying these exemptions and in considering the public interest in the case of the qualified exemptions, was rigorous and properly judged after a full consideration of all of the facts of the case...'

87. Paragraph 39 of the section 45 Code of Practice encourages authorities to provide a fair and thorough review of matters, including a fresh look at the application of exemptions:

'The complaints procedure should provide a fair and thorough review of handling issues and of decisions taken pursuant to the Act, including decisions taken about where the public interest lies in respect of exempt information. It should enable a fresh decision to be taken on a reconsideration of all the factors relevant to the issue.'

In this case the Commissioner takes the view that the internal review was inadequate, since there is no evidence that it genuinely engaged with the complainant's points or undertook a proper reconsideration of the issues. Again, the Commissioner reminds the Cabinet Office of the expected standards in this regard.

Right of Appeal

19. 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 2nd day of March 2009

Signed

**Richard Thomas
Information Commissioner**

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

Legal Annex

Section 1(1) provides that -

'Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.'

Section 1(2) provides that -

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

Section 1(3) provides that –

'Where a public authority –

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

(b) has informed the applicant of that requirement,

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

Section 1(4) provides that –

'The information –

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

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

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

Section 1(5) provides that –

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

Section 1(6) provides that –

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

Section 10(1) provides that –

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

Section 10(2) provides that –

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

Section 10(3) provides that –

‘If, and to the extent that –

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

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

Section 10(4) provides that –

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

Section 10(5) provides that –

‘Regulations under subsection (4) may –

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

Section 10(6) provides that –

‘In this section –
“the date of receipt” means –

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

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

Section 17(1) provides that -

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

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.’

Section 17(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 17(4) provides that -

'A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.'

Section 17(5) provides that -

'A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.'

Section 23(1) provides that -

'Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).'

Section 23(2) provides that -

'A certificate signed by a Minister of the Crown certifying that the information to which it applies was directly or indirectly supplied by, or relates to, any of the bodies specified in subsection (3) shall, subject to section 60, be conclusive evidence of that fact.'

Section 23(3) provides that -

'The bodies referred to in subsections (1) and (2) are-

- (a) the Security Service,
- (b) the Secret Intelligence Service,
- (c) the Government Communications Headquarters,
- (d) the special forces,

- (e) the Tribunal established under section 65 of the Regulation of Investigatory Powers Act 2000,
- (f) the Tribunal established under section 7 of the Interception of Communications Act 1985,
- (g) the Tribunal established under section 5 of the Security Service Act 1989,
- (h) the Tribunal established under section 9 of the Intelligence Services Act 1994,
- (i) the Security Vetting Appeals Panel,
- (j) the Security Commission,
- (k) the National Criminal Intelligence Service, and
- (l) the Service Authority for the National Criminal Intelligence Service.'

Section 23(4) provides that –

'In subsection (3)(c) 'the Government Communications Headquarters' includes any unit or part of a unit of the armed forces of the Crown which is for the time being required by the Secretary of State to assist the Government Communications Headquarters in carrying out its functions.'

Section 23(5) provides that –

'The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).'

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(2) provides that –

'The duty to confirm or deny does not arise if, or to the extent that, exemption from section 1(1)(a) 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 24(4) provides that –

'A certificate under subsection (3) may identify the information to which it applies by means of a general description and may be expressed to have prospective effect.'

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 27(4) provides that –

‘The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a)-

- (a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1), or
- (b) would involve the disclosure of any information (whether or not already recorded) which is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court.’

Section 27(5) provides that –

‘In this section-

‘international court’ means any international court which is not an international organisation and which is established-

- (a) by a resolution of an international organisation of which the United Kingdom is a member, or
- (b) by an international agreement to which the United Kingdom is a party;

'international organisation' means any international organisation whose members include any two or more States, or any organ of such an organisation;

'State' includes the government of any State and any organ of its government, and references to a State other than the United Kingdom include references to any territory outside the United Kingdom.'

Section 36(1) provides that –

'This section applies to-

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

Section 36(2) provides that –

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

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

Section 36(3) provides that –

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

Section 36(4) provides that –

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

Section 36(5) provides that –

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

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

Section 36(6) provides that –

‘Any authorisation for the purposes of this section-

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

Section 36(7) provides that –

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

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