

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 11 January 2010

**Public Authority:** Cabinet Office  
**Address:** 70 Whitehall  
London  
SW1A 2AS

### Summary

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The Complainant requested from the public authority a copy of the information held by it regarding the occupation of Admiralty Arch by Greenpeace in July 2006. During the course of the Commissioner's investigation the public authority released all of the information falling within the request except one sentence which is now withheld under section 23 and one paragraph withheld under s31(1)(a) and s36(2)(b)(i). The Commissioner decided that sections 23 and 31(1)(a) had been correctly applied. Due to his finding regarding section 31 the Commissioner did not go on to consider the applicability of section 36. The Commissioner further decided that a number of procedural breaches had occurred by the Cabinet Office's handling of the information request.

### The Commissioner's Role

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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

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2. The complainant, on 19 July 2006, requested that the Cabinet Office provide him with all documents held by the Cabinet Office and 10 Downing Street relating to the "Greenpeace occupation" of Admiralty Arch that had occurred on 12 July 2006 and that also related to the allegation made by Greenpeace that illegally logged timber was being used at that site. (At the time of the "occupation" Admiralty Arch was undergoing renovation.)
3. The Cabinet Office, in an email dated 15 August 2006, informed the complainant that it was considering whether section 36 exempted it from the duty to

- communicate the requested information to him and that it would require in excess of 20 working days to consider the public interest test. The Cabinet Office estimated that it would take a further 12 working days to consider the public interest test but that if it were to take longer it would inform him.
4. The Cabinet Office, in an email dated 16 October 2006, explained to the complainant that whilst it did hold the information requested it believed that it was exempt from the duty of disclosure by virtue of section 36(2)(b)(i) or (ii) and section 36(2)(c) of the Act and that the public interest favoured the maintenance of the exemption. The letter explained to the complainant that if he were not happy with the decision he could seek an internal review of it, and relevant contact details were provided.
  5. The complainant, in correspondence dated 16 October 2006, lodged “an official appeal” with the Cabinet Office against their decision. The Cabinet Office considered this to be a request for a review of their decision, however no review was actually carried by the Cabinet Office in response to this request (see paragraph 10 below).
  6. The Cabinet Office, in a letter to the complainant dated 8 May 2008, explained, that as a response to the Commissioner’s investigation, it was releasing the majority of the information he had requested to him. The information was released by providing a redacted typed copy of the original written information. In the redacted typed copy, where information continued to be withheld, this was stated along with the exemption relied upon. The exemptions relied upon, not to communicate the remaining information to the complainant, were stated to be those provided by sections 23 and 36 of the Act. Where information was not provided because, in the Cabinet Office’s opinion, it was outside the scope of what was requested this was also indicated.
  7. The Cabinet Office, in letters to the complainant dated 16 November and 15 December 2009, explained, that as a further response to the Commissioner’s investigation, it was now releasing information to him that it had originally considered to be out of scope of his information request.

## **The Investigation**

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### **Scope of the case**

8. On 27 March 2007 the complainant contacted the Commissioner to complain about the way his request for information had been handled.

### **Chronology**

9. The Commissioner commenced his investigation, on 19 November 2007, by writing to the Cabinet Office. The Commissioner requested a copy of the withheld information and clarification of the circumstances surrounding the

- obtaining and giving of the qualified person's opinion as required by section 36 of the Act.
10. On 11 January 2008, the Cabinet Office supplied its substantive response to the Commissioner's letter. The Cabinet Office explained that due to an oversight on their part the review of its original decision, as requested by the complainant, had not been undertaken. The Cabinet Office also provided further details regarding the obtaining of the qualified person's opinion and explained that a copy of the exempted information would be made available to the Commissioner.
  11. In the Cabinet Office's letter dated 11 January 2008 it also explained that due to an office move it was now unable to locate some of the requested information. Accordingly it was not in a current position to be able to provide the Commissioner with a copy of the same.
  12. The Cabinet Office in a letter to the Commissioner dated 3 April 2008 explained that as with previous cases involving the application of section 23, it was providing the Commissioner with a letter from the Cabinet Office's Director, Security and Intelligence which confirmed that information falling within the scope of this request was either received from one of the bodies listed in section 23(3) or was directly related to them. This was the first time that the Cabinet Office sought to rely on section 23 not to communicate some of the requested information to the complainant.
  13. The Cabinet Office, in its letter dated 8 May 2008, explained to the Commissioner that following on from its letter dated 11 January 2008 it had now located the requested information and also enclosed a copy of the same. The Cabinet Office indicated which portion had now been released, which was withheld solely under section 36 and which was withheld under section 23. Where information was withheld under section 23 it had been redacted but it was clear from their annotation how much information had been redacted and its location. Some of the information provided to the Commissioner had not been provided to the complainant on the grounds that the Cabinet Office considered it fell outside of what was requested. The Cabinet Office also confirmed that it had now sent to the complainant information it was willing to disclose
  14. The Cabinet Office went on to say that where information could be withheld by virtue of section 23 and by virtue of section 36, it would dispense with its reliance on section 36 and rely solely on section 23 not to communicate the withheld information to the complainant. The Cabinet Office went on to explain that a suitably qualified person had certified that section 23 was properly engaged and referred the Commissioner back to its letter dated the 3 April 2008.
  15. By way of correspondence dated 4 and 25 June 2009 the Commissioner expressed to the Cabinet Office that he doubted that it had been correct not to disclose certain information to the complainant on the grounds that it was outside the scope of what had been requested. The Cabinet Office was invited to make further submissions on these issues. The Cabinet Office acknowledged receipt of the correspondence but did not provide a substantive answer until 13 November 2009 in which it explained that after further consideration it now believed that this

information was indeed within scope of the request and that it would be released to the complainant. This information consisted of a number of paragraphs found in the following documents:

- Memorandum between civil servants dated 12 July 2006
  - Memorandum between civil servants dated July 2006
16. The Cabinet Office, in its letter of 13 November 2009, also stated that information it had previously considered exempt solely by virtue of section 36 was also exempt by virtue of section 31(1)(a). The pertinent information here being part of a paragraph (numbered 8) in the memorandum between civil servants dated July 2006 as mentioned above. The letter then went on to also explain that as a result of re-considering the matter the Cabinet Office had identified further information that they considered to be in scope of the complainant's information request and it was in the further process of considering whether it should be released to the complainant in accordance with the Act. By way of a letter dated 15 December 2009 this "new" information was communicated to the complainant and the Commissioner.
17. In light of the above this Notice only considers the application of exemptions to the remaining disputed information, namely the sentence withheld under section 23(1) and the paragraph withheld under section 31(1)(a) and sections 36(2)(b)(i) and (ii) and 36(2)(c).

### **Background Fact**

18. The Commissioner notes that 10 Downing Street is the Prime Minister's Office and is now part of the Cabinet Office.

### **Analysis**

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#### **Exemptions**

19. The Act provides a right of access to information held by public authorities. Section 1 establishes this right to know by placing two related obligations on public authorities. Firstly, when an applicant requests information, a public authority has a duty to inform the applicant whether it holds the information, this is known as the duty to confirm or deny. Secondly, if the authority does hold the information it must communicate it to the applicant. The Act provides a number of exemptions from the above obligations.
20. The Cabinet Office relied on the exemptions provided by sections 23, 36(b)(i) or (ii) and (c) of the Act not to disclose certain of the requested information to the complainant. As stated above, section 23 was not relied upon by the Cabinet Office until 3 April 2008. This is therefore a late claim and the Commissioner has firstly considered whether to consider the application of this exemption at all.

#### Section 23

21. On the validity of late claims for exemptions, the Commissioner will follow the approach endorsed by the Tribunal in the case of the Department for Business, Enterprise and Regulatory Reform v Information Commissioner and Friends of the Earth (EA/2007/0072). The Tribunal questioned whether a new exemption can be claimed for the first time before the Commissioner, concluding that the Tribunal (and presumably the Commissioner) “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”. The Tribunal added 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”.
22. Factors which the Tribunal has accepted as being reasonable justifications for the application of exemptions before the Commissioner and/or the Tribunal for the first time include:
- the nature of the information in question which the exemption is designed to protect, taking into consideration risks associated with disclosure;
  - where some of the disputed information is discovered for the first time during the Commissioner’s investigation, and therefore the public authority has not considered whether it is exempt from disclosure;
  - where the authority has correctly identified the harm likely to arise from disclosure however applies these facts and reasoning to the wrong exemption;
  - where the public authority had previously failed to identify that a statutory bar prohibited disclosure of the requested information, and therefore ordering disclosure would put the public authority at risk of criminal prosecution; and
  - where the refusal notice was issued at an early stage of the implementation of the Act when experience was limited, although this factor is likely to become far less relevant in the future.
23. The Commissioner’s decision is that, due to the nature of the section 23 exemption and the interests it is designed to protect, that this is an appropriate case to exercise his discretion and consider this exemption late relied upon by the Cabinet Office.
24. The parts of section 23 relevant to this request state that:
- ‘23(1) 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).
- (3) The bodies referred to in subsection (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
  - (l) the Service Authority for the National Criminal Intelligence Service'.
  - (m) the Serious Organised Crime Agency.
25. The Cabinet Office has argued that some of the information falling within the scope of this request is exempt from disclosure on the basis of section 23(1) because it is information supplied by, or relates to, bodies dealing with security matters. The information comprises of one sentence, in a paragraph titled "Security" in a memorandum between civil servants bearing the date July 2006.
26. In the circumstances of this case, given the nature and subject-matter of the information requested, and taking into account the context provided by the remainder of the document from which the sentence was redacted the Commissioner is prepared to accept the assurance given in the letter mentioned in paragraph 12 above that the information falling within the scope of this request is exempt from disclosure by virtue of section 23(1) for the reasons given by the Cabinet Office. Since section 23(1) it is an absolute exemption no public interest test applies, and the Commissioner has therefore concluded that it was appropriate for the Cabinet Office to have withheld this information.

#### Section 31(1)(a)

27. As stated above the Cabinet Office on the 13 November 2009 informed the Commissioner that section 31(1)(a), as well as section 36(2)(b)(i) and (ii) and section 36(2)(c), would also exempt from disclosure information comprising a part of a paragraph (numbered 8) in the memorandum between civil servants dated July 2006 and mentioned above. Again the Commissioner has firstly considered whether to accept this late reliance on an exemption.
28. The Commissioner, in considering whether to adjudicate on this late relied upon exemption, referred himself to the law and factors laid out in paragraphs 21 and 22 above. The Commissioner's decision is, due to the serious security implications concerned with a public disclosure of the security measures at Admiralty Arch that this is an appropriate case to exercise his discretion and consider the exemption late relied upon by the Cabinet Office.

Section 31(1)(a) is as follows:

"Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice –

a. the prevention or detection of crime...”

29. The Cabinet Office, in its reliance on section 31(1)(a), said it was engaged as public knowledge of the security measures installed on the Cabinet Office estate would, or would be likely to prejudice the prevention or detection of crime.
30. To engage the exemption it is necessary that disclosure of the information would or would be likely to 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 even if the risk falls short of being more probable than not.
31. The particular information here is concerned with security arrangements at Admiralty Arch. The Cabinet Office occupies office space at Admiralty Arch as do other departments of government. The Commissioner's view is that disclosing information regarding these security arrangements “may very well” prejudice the prevention of crime. It is not difficult to understand that those who would engage in criminal activity at Admiralty Arch might be assisted and emboldened in attempts to by-pass security arrangements by the releasing of this information, which would prejudice the prevention of crime. The Commissioner accepts that the likelihood of the information in question in this case leading to such a prejudice is substantially more than remote, and that the identified prejudice is real actual and of substance. Accordingly the Commissioner finds the exemption engaged; section 31(a) is a qualified exemption and 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'*.
32. Regarding the consideration of the public interest test the Cabinet Office explained that it accepted that there is a general public interest in the security measures deployed by the Cabinet Office. However, it went on to say, there is a strong public interest in the protection of the government estate and in minimising the potential for security breaches to occur. Additionally releasing the information could potentially lead to the identification of scale and nature of the protection that might or might not be afforded to civilians and buildings at the site.
33. The Commissioner acknowledges the inherent public interest in disclosure by increasing the transparency of a public authorities conduct. In the particular circumstances of this case there might be some public interest in demonstrating that the public visiting, and civil servants working in, government offices are properly protected and that measures taken are proportionate. However these findings are outweighed by the potential for the information to be maliciously used to circumvent security measures. There is a strong public interest, in ensuring that the security and safety of the government, civil servants and visiting members of the public is not jeopardised by assisting criminal activity via the release of security information. The Commissioner decision is therefore that the public interest clearly favours the maintenance of the exemption and thus the non – release of this information.

34. The Commissioner, having decided that section 31(1)(a) did allow the Cabinet Office not to communicate the “security arrangement “ information to the complainant, further decided that he need not to consider the application of section 36(1)(b).

### **Procedural Requirements**

35. Any information which the public authority is required to release must be disclosed to the applicant within the 20 working day time limit as proscribed by section 10(1) of the Act. Where the authority is relying on one or more of the exemptions and is withholding information, it must issue a Refusal Notice (under section 17 of the Act) within the same timeframe, specifying the exemption and why it applies.
36. The Cabinet Office first relied on the exemptions afforded by sections 23 and 31 in the course of the Commissioner’s investigation, some considerable time after it had issued its refusal notice. This omission from the refusal notice, which was not corrected by an internal review, means it is defective and in breach of section 17(1) of the Act. By disclosing some information to the complainant more than twenty working days after it was requested, the Cabinet Office breached section 10(1) and also section 1(1)(b) of the Act.

### **The Decision**

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37. The Commissioner’s decision is that the Cabinet Office dealt with the following elements of the request in accordance with the requirements of the Act:
- (1) In its application of sections 23(1) and 31(1)(a).
38. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- (1) By communicating information to the complainant more than twenty working days after it was requested, the Cabinet Office breached section 10(1) and also section 1(1)(b) of the Act.
- (2) The Cabinet Office’s refusal notice breached the following
- section 17(1) for the failure to issue a valid refusal notice in 20 working days
  - section 17(1)(b) for its failure to cite sections 23(1) or s31(1)(a)
  - section 17(1)(c) for its failure to explain why sections 23(1) or 31(1)(a) applied
  - section 17(3)(b) for its failure to explain the public interest test for section 31(1)(a).



## Steps Required

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39. The Commissioner requires no steps to be taken.

## Other Matters

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40. Although they do not form part of this decision notice the Commissioner wishes to comment upon the Cabinet Office's failure (when asked by the complainant) to conduct a review of its decision not to communicate some of the information requested to him.
41. Internal reviews are referred to in the Code of Practice, and a failure to conduct an internal review may lead to monitoring by the Commissioner's enforcement team and, in some instances, structured intervention, for example, the issuing of a Practice Recommendation. The Commissioner's Enforcement Strategy provides more detail about practice recommendations and structured intervention.
42. In light of the concerns that have arisen during his investigation this case will be referred to the Commissioner's Good Practice and Enforcement Team which will consider whether any further action is appropriate in the context of the ICO's FOI Enforcement Strategy.

## Right of Appeal

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43. 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](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://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 11<sup>th</sup> day of January 2010**

**Signed .....**

**Lisa Adshead  
Senior FOI Policy Manager**

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

## Legal Annex

### General Right of Access

**Section 1(1)** provides that -

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

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

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

**Section 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”.”

## **Time for Compliance**

**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.”

## **Refusal of Request**

**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 17(6)** provides that –

“Subsection (5) does not apply where –

- (a) the public authority is relying on a claim that section 14 applies,

- (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
- (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.”

**Section 17(7)** provides that –

“A notice under section (1), (3) or (5) must –

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

### **Information supplied by, or relating to, bodies dealing with security matters**

**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.

(m) the Serious Organised Crime Agency”

**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).”

### **Law enforcement**

**Section 31(1)** provides that –

“Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders,
- (c) the administration of justice,
- (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,
- (e) the operation of the immigration controls,
- (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,
- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),
- (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
- (i) any inquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.”

**Section 31(2)** provides that –

“The purposes referred to in subsection (1)(g) to (i) are-

- (a) the purpose of ascertaining whether any person has failed to comply with the law,
- (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,

- (c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,
- (d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on,
- (e) the purpose of ascertaining the cause of an accident,
- (f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration,
- (g) the purpose of protecting the property of charities from loss or misapplication,
- (h) the purpose of recovering the property of charities,
- (i) the purpose of securing the health, safety and welfare of persons at work, and
- (j) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work."

**Section 31(3)** provides that –

“The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).”

### **Prejudice to effective conduct of public affairs.**

**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-

- (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.