

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 13 May 2010

Public Authority: Children and Family Court Advisory and Support Service
Address: 6th Floor
Sanctuary Buildings
Great Smith Street
London
SW1P 3BT

Summary

The complainant requested minutes of all meetings of the Corporate Management Team of the public authority for the period April 2008 to June 2009. The public authority stated that some of the information requested was not held and, in relation to the information that was held, refused the request and cited the exemptions provided by sections 36(2)(b)(i) (inhibition to the free and frank provision of advice), 36(2)(b)(ii) (inhibition to the free and frank exchange of views for the purposes of deliberation) and 36(2)(c) (other prejudice to the effective conduct of public affairs). The Commissioner finds that the public authority stated correctly and in accordance with section 1(1)(a) of the Act that some of the information requested was not held; but in relation to the information that was held, that none of the exemptions cited were engaged, and that the public authority breached sections 1(1)(b) and 10(1) in failing to disclose this information within 20 working days of receipt of the request, and sections 17(1)(c) and section 17(3)(b) in failing to explain its application of the exemptions and the public interest test. Although not cited by the public authority, the Commissioner has also considered the exemption provided by section 40(2) (personal information) and found that this was engaged in relation to a small part of the information requested. The public authority is required to disclose the information requested, apart from the small part of this in relation to which the Commissioner finds that the exemption provided by section 40(2) was engaged.

The Commissioner's Role

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

The Request

2. The public authority received the following information request from the complainant on 4 June 2009:

"Can you send me the minutes of all the [Corporate Management Team] and Extended [Corporate Management Team] meetings since the start of April 2008."

3. The public authority responded to this on 1 July 2009 and stated that some of the information requested was not held as minutes had not been taken of every Corporate Management Team (CMT) meeting during the period specified in the request. In relation to the minutes that were held, the public authority refused the request, citing the exemptions provided by sections 36(2)(b)(i) (inhibition to the free and frank provision of advice), 36(2)(b)(ii) (inhibition to the free and frank exchange of views for the purposes of deliberation) and 36(2)(c) (other prejudice to the effective conduct of public affairs). No reasoning was given as to why these exemptions were believed to be engaged, or for why the balance of the public interest was believed to favour the maintenance of these exemptions.
4. The complainant responded on 15 July 2009 and asked the public authority to carry out an internal review of its handling of his request. The public authority responded with the outcome of the review of 26 August 2009 and confirmed that the refusal was upheld. No reasoning for this decision was given.

The Investigation

Scope of the case

5. The complainant contacted the Commissioner in connection with the refusal of his information request on 21 September 2009. The

complainant referred to the position of the Commissioner's office being that minutes of senior level meetings should be made available. The complainant also referred to the performance of the public authority having been criticised by Ofsted on a number of occasions and that this meant that there was a public interest in disclosure of the information requested. The complainant also suggested that improving understanding of the decision making process behind a number of restructures and policy changes within the public authority meant that the public interest favoured disclosure.

Chronology

6. The Commissioner contacted the public authority initially on 13 January 2010. The public authority was asked to respond with clarification about the citing of section 36 and with a copy of the withheld information. The public authority was also asked to provide an explanation as to why minutes had not been taken of every CMT meeting held during the period specified in the request.
7. The public authority responded to this on 16 February 2010 and supplied to the Commissioner's office a copy of the withheld information. The public authority did not at this stage provide a response to any of the other questions asked in the letter of 13 January 2010 and the Commissioner contacted the public authority again and advised that it would be necessary for it to respond in full to each of the questions asked in his previous letter.
8. The public authority responded to this on 1 March 2010 and explained its reasoning for citing section 36. A further exchange of correspondence between the Commissioner's office and the public authority followed during which the public authority provided an explanation as to why not all of the CMT meetings held during the relevant period had been minuted.

Analysis

Substantive Procedural Matters

Section 1

9. The public authority has stated that it does not hold minutes for some of the CMT meetings held during the period specified in the request. The task for the Commissioner here is to reach a conclusion as to whether the public authority is correct and in compliance with section

- 1(1)(a) when stating that this information is not held. The Commissioner's conclusion will be made on the basis of the balance of probabilities and will take into account the scope, quality, thoroughness and results of the searches carried out by the public authority as well as considering any other reasons offered by the public authority to explain why the information is not held.
10. By way of explanation of the searches carried out for information falling within the scope of the request, the public authority stated that all CMT minutes are kept in a single location; a specific area of the IT network of the public authority to which access is restricted. The public authority has stated that as this is the only location in which CMT minutes would have been held, there was no possibility that the searches carried out in response to the request could have missed any relevant minutes.
 11. The Commissioner considers the issue of why minutes were not taken of every CMT meeting to be more important in this case than the explanation of the searches that were carried out. During the investigation, it was raised with the public authority that it appeared surprising that not every CMT meeting would have been minuted given the apparent high level of these meetings. The public authority was asked to comment on this point.
 12. The public authority explained that the decision that not all meetings of the CMT were to be minuted had been taken by the Chief Executive, who was of the view that only those meetings at which "*formal business*" was discussed needed to be minuted. The public authority went on to explain that the CMT met frequently and that not all of the meetings included formal discussion of the business of the public authority. Instead such meetings may, for example, discuss "*topical issues*". Those CMT meetings that did not include formal discussion of the business of the public authority were not minuted.
 13. The conclusion of the Commissioner is that he accepts that, on the balance of probabilities, no further CMT minutes to those identified previously are held by the public authority. The basis for this conclusion is that the Commissioner accepts both the description from the public authority of how the CMT minutes are held and that this means it is unlikely that any minutes that were held would have been overlooked, and the explanation that not all CMT meetings are minuted owing to the decision of the Chief Executive that this was not necessary for all CMT meetings.

Exemptions

Section 36

14. The public authority has cited subsections 36(2)(b)(i), 36(2)(b)(ii) and 36(2)(c). Section 36(2)(b)(i) provides an exemption where disclosure would, or would be likely to, inhibit the free and frank provision of advice and 36(2)(b)(ii) the same in relation to the inhibition of the free and frank exchange of views for the purposes of deliberation. Section 36(2)(c) provides an exemption where disclosure would, or would be likely to, prejudice the effective conduct of public affairs in a manner other than that specified in section 36(2)(b). These sections are set out in full in the attached legal annex, as are all other sections of the Act referred to in this Notice. Consideration of this exemption is a two stage process; first the Commissioner must conclude whether the exemption is engaged. Secondly, this exemption is qualified by the public interest. This means that, if the exemption is engaged, the information should be disclosed anyway if the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure.
15. Section 36 can only be cited where the opinion of a specified Qualified Person (QP) is that the exemption is engaged. When investigating the citing of section 36, the Commissioner will:
 - ascertain who is the qualified person for that particular authority;
 - establish that an opinion was given;
 - ascertain when the opinion was given;
 - consider whether the opinion given was reasonable in substance and reasonably arrived at.
16. For each public authority, the QP is specified either in the Act, or is authorised by a Minister of the Crown. The Ministry of Justice publishes a list of the authorised QP for each public authority. For the public authority in this case, the QP is the Chief Executive. The public authority has provided evidence that the Chief Executive gave an opinion on the citing of this exemption on 27 June 2009.
17. As to whether this opinion was reasonable, the Commissioner has considered first whether it was reasonably arrived at. This involves consideration of the process undertaken by the QP in forming their opinion. If, for example, the QP had reached their decision on the basis of the toss of a coin, the Commissioner would conclude that this opinion was not reasonably arrived at. In this case the public authority has stated that the QP discussed the issues arising from this request with the freedom of information officer at the public authority. The

public authority has also stated that the QP had access to the minutes falling within the scope of the request. Whilst the public authority has not been explicit about this, the Commissioner assumes that the public authority is suggesting that the QP either viewed these minutes when considering his opinion in connection with the citing of section 36, or that he was familiar with the contents of these minutes through having viewed these previously. On the basis that the QP discussed this request with the freedom of information officer and on the basis that the QP had access to the minutes falling within the scope of the request, the Commissioner accepts that the opinion of the QP was reasonably arrived at.

18. Turning to whether this opinion was reasonable in substance, the reasoning of the QP is a general concern about the inhibitory effect that he believes would result to participants in meetings if these participants were concerned that their contributions may later be disclosed. The public authority has been specific that the QP believed that inhibition and prejudice *would* result, rather than *would be likely* to result. Specifically in connection with section 36(2)(b)(i), the public authority stated that participants in meetings, which can include junior staff, give advice on proposals made in meetings. The opinion of the QP was that disclosure in this case would inhibit participants in CMT meetings from providing free and frank advice in future.
19. In connection with section 36(2)(b)(ii), the public authority quoted the following from its document *"The Role and Function of CMT"*:

"Powers

CMT is authorised by the Chief Executive to make decisions on all corporate matters.

CMT take decisions at CMT meetings and at SPIB meetings. The decisions taken at [Service and Practice Improvement Board] meetings include CMT members in that decision-taking process. Accountability at all times remains with CMT.

How decisions are taken by CMT

CMT members will discuss each item that has been referred to the meeting and will attempt to make a decision by consensus. Key alternative or dissenting views will be recorded, and the Chief Executive remains ultimately accountable for each decision and must be satisfied a consensus is the right one for the Service, taking into account all points made."

The opinion of the QP was that disclosure in this case would inhibit the meeting participants from exchanging views freely and frankly and that this would prejudice the process described in the quote above.

20. The Commissioner accepts the premise of the QP's opinion and that if the result of disclosure that the public authority predicts did come about, this would result in inhibition relevant to sections 36(2)(b)(i) and (ii). The Commissioner does not, however, accept the premise of the QP's arguments in relation to section 36(2)(c) for the following reasons.
21. In order for the Commissioner to accept that the opinion of the QP is objectively reasonable on section 36(2)(c), what prejudice other than that specified in sections 36(2)(b)(i) and (ii) that the QP believes would be at least likely to result through disclosure must be clearly identified. In this case the public authority has described its status and role when setting out why the QP believed that section 36(2)(c) was engaged and stated that it would be through disruption to its ability to perform this role that prejudice would result to the effective conduct of public affairs. The manner in which the QP believed this prejudice would result, however, appeared to be through inhibition to the participants in CMT meetings; the same reasoning that was advanced in connection with and that is relevant to sections 36(2)(b)(i) and (ii). The Commissioner does not, therefore, believe that any prejudice that would not be covered by sections 36(2)(b)(i) and (ii) has been identified by the public authority in connection with the citing of section 36(2)(c).
22. Turning to whether the reasoning of the QP for his opinion on sections 36(2)(b)(i) and (ii) was objectively reasonable, the Commissioner has focussed here on the content of the information in question. As noted above, the opinion of the QP was that inhibition *would* result through disclosure, rather than this opinion being that inhibition would *be likely* to result. This means that the Commissioner must reach a conclusion as to whether it was objectively reasonable for the QP to be of the opinion that inhibition would result. The test that the Commissioner applies when considering whether prejudice would result is that the likelihood of this must be at least more probable than not. The Commissioner considers this to be in line with the approach taken by the Information Tribunal in the case *Hogan v Oxford City Council & The Information Commissioner* (EA/2005/0026 and 30) in which it stated:

"[the] prejudice test is not restricted to "would be likely to prejudice". It provides an alternative limb of "would prejudice". Clearly this second limb of the test places a much stronger

evidential burden on the public authority to discharge.”
(paragraph 36)

23. In relation to other exemptions that use the wording *would* or *would be likely*, the Commissioner will go on to consider the test for *would be likely*, which is that the likelihood of the identified result occurring must be at least real and significant, if he concludes that the test for *would* is not met. In connection with section 36, however, the options for the Commissioner are either to accept the opinion of the QP as to the likelihood of the prejudice, or conclude that the exemption is not engaged. If the Commissioner concludes that it was not objectively reasonable for the QP to hold the opinion that inhibition *would* result, it is not for the Commissioner to substitute his own opinion that inhibition *would be likely* to result.
24. The view of the Commissioner is that, as the opinion of the QP was that inhibition would result, the content of the information in question must clearly support the suggestion that inhibition relevant to sections 36(2)(b)(i) and (ii) would be more probable than not to result through the disclosure of this information for this opinion to be objectively reasonable. The Commissioner is not convinced that this conclusion can be drawn on the basis of the content of this information for the following reasons.
25. First, in the absence of the public authority making any reference to specific parts of the content of the minutes when explaining the basis for the QP's opinion, the Commissioner believes that it may be the case that this opinion was based more on the fact of the nature of the information in question, which records high level meetings within the public authority at which key decisions are made, than the specific content of this information. The view of the Commissioner is that the record of high level strategic meetings should be made proactively available, unless there are overriding reasons why this should not be the case. This is reflected in his model publication scheme, which states in the definition document for non departmental public bodies that minutes of senior level meetings should be published. The Commissioner does not, therefore, accept that the status of this information as the minutes of senior level meetings is an argument in favour of the reasonableness of the QP's opinion that carries any weight.
26. Secondly, the content of the information contains little that could be described as a record of the provision of advice, or of the exchange of views, free and frank or otherwise. Even in the absence of such content, the Commissioner would have accepted that the opinion was reasonable if there was content within the minutes where it would be

reasonable to conclude that the future operation of CMT meetings would be negatively affected through disclosure, even without this directly recording the provision of advice or the exchange of views. An example of such content could be where the minutes record strong criticism of the organisation or an issue that would be likely to impact negatively to a significant degree upon stakeholders or staff members within the public authority. Where sensitive issues such as this are discussed, it could be reasonable to argue that the participants in the meeting would have a reasonable expectation that the record of these discussions would be confidential. Having reviewed the contents of the minutes, the Commissioner is unconvinced that any of this content would fall within this category. It is also the case that the public authority has not pointed to any specific part of the content of these minutes.

27. The expectation of confidentiality held by the participants in the CMT meetings could also be relevant if these participants had been given any guarantee of the confidentiality of the discussions. On this point the Commissioner notes that the public authority has not stated that the participants in the CMT meetings were given any guarantee of confidentiality. It could also be argued that the content of the minutes were drafted in a such way that it was not clear from these whether controversial or sensitive issues had been discussed in these meetings and so any guarantee of confidentiality made in relation to controversial or sensitive discussions had, in this way, been at least partially satisfied.
28. There is content within the minutes that discusses staffing issues. To the extent that this discloses information that would relate to identifiable staff members, particularly where these are not senior staff members, it is reasonable for this information to be confidential. The relevant exemption where a concern exists about the disclosure of information about an individual other than the requester is provided by section 40(2). Where the concern of a public authority relates to the disclosure of information relating to individuals, this exemption should be cited, rather than section 36. Content from the minutes in question that discloses information relating to identifiable individuals is covered in the separate section 40(2) analysis below.
29. The conclusion of the Commissioner is that the opinion of the QP was not objectively reasonable. As a general point, the Commissioner would expect that, where the opinion of the QP is that prejudice would result, which means that the Commissioner will assess whether it is objectively reasonable to hold the opinion that inhibition would be at least more likely than not, he would expect the public authority to provide clear reasoning that relates closely to the specific information

in question in support of this opinion. The public authority has failed to provide any such arguments in this case. In the absence of such reasoning in this case, the Commissioner has considered what the nature of the information and what the specific content of this information suggest about the reasonableness of the opinion.

30. As noted above, the Commissioner's general view on whether the minutes of senior level meetings should be made available is indicated through the inclusion of these in his model publication scheme. On the issue of the content of the minutes, the case of the public authority is weakened by the minutes not including any content that it is clear should be characterised as a record of the free and frank provision of advice, or of the free and frank exchange of views. As the Commissioner has concluded that it was not objectively reasonable for the QP to hold the opinion that disclosure of the information in question would inhibit the free and frank provision of advice or the free and frank exchange of views for the purposes of deliberation, he finds that the exemptions provided by sections 36(2)(b)(i) and (ii) are not engaged. He also concludes that section 36(2)(c) is not engaged as the public authority has failed to clearly identify the prejudice other than that specified in sections 36(2)(b)(i) or (ii) that was the basis for the QP's opinion that this subsection was engaged. As this conclusion has been reached, it has not been necessary to go on to consider the balance of the public interest.

Section 40

31. Whilst the public authority has not cited section 40(2), where he has ordered disclosure of information any part of the content of which may be personal data relating to individuals other than the requester, the Commissioner will consider whether to use his discretion to consider section 40(2) in relation to that information. The Commissioner believes this to be in line with his twin responsibilities in relation to both the Freedom of Information and Data Protection Acts. In this case the Commissioner believes that it is appropriate to consider section 40(2) in relation to some of the content of the information that he has concluded above is not exempt. This information is contained in paragraph 3 of the CMT minutes dated 4 November 2008.
32. Section 40(2) provides an exemption for information that constitutes the personal data of any individual other than the requester and where the disclosure of that personal data would breach any of the data protection principles. The first step in the consideration of this exemption is to address whether the information in question, or any part of it, constitutes personal data according to the definition in

section 1 of the Data Protection Act 1998 (DPA). Section 1(1) of the DPA states the following on this issue:

“personal data’ means data which relate to a living individual who can be identified-

- (a) from those data, or*
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller”.*

33. The information in question here does not identify any individual by name. However, the Commissioner believes that this information relates to a sufficiently small number of individuals (it is specified in the minutes that the number of individuals referred to is five) and provides sufficient information about these individuals (the minutes specify the job title of these individuals and that these individuals will be made redundant), that an individual with knowledge of the internal workings of the public authority at that time, such as an employee of the public authority, would be able to identify these five individuals. The Commissioner believes, therefore, that, in accordance with part (b) of the quote above, this information constitutes the personal data of the five individuals referred to.
34. Turning to whether disclosure of this personal data would breach any of the data protection principles, the Commissioner has focussed here on the first data protection principle, which requires that personal data be processed fairly and lawfully. The Commissioner’s approach to the first data protection principle is to consider first whether disclosure would be, in general, fair. Central to this question is what the reasonable expectation of the data subjects would be about whether this information would be subject to disclosure.
35. The information in question records the decision that the five staff members in question are to be made redundant. Given the content of this information, the Commissioner considers it clear that the data subjects would expect this information to remain confidential and the Commissioner agrees that this would be a reasonable expectation on the part of those individuals. On this basis the Commissioner concludes that the disclosure of this information would be unfair and in breach of the first data protection principle. The exemption provided by section 40(2) is, therefore, engaged in relation to paragraph 3 of the CMT minutes dated 4 November 2008.
36. The information that the Commissioner has considered this exemption in relation to is specified above at paragraph 31. However, the

Commissioner will also accept that this analysis applies to any other content that the public authority can clearly demonstrate constitutes the personal data of any individual aside from the requester and where it is reasonable to conclude that disclosure of this information would constitute a breach of the first data protection principle. He would note that it is clear that the large majority of the information in question is not the personal data of any individual. Furthermore, where the public authority identifies other information as constituting the personal data of an individual, it should only withhold this where it can clearly and convincingly make a case that the disclosure of this information would breach the first data protection principle, or any of the other data protection principles.

37. In this context the Commissioner notes that his view is that it is unlikely that information that identifies the participants in the CMT meetings would be exempt under section 40(2) to the extent that this information relates to these participants in their professional capacity. This view would also extend to any part of the content that identifies individuals who were not participants in the CMT meetings, where the content in question only relates to those individuals in their professional capacity and where this content does not suggest that the individuals would have a genuine expectation of confidentiality.

Procedural Requirements

Sections 1 and 10

38. In failing to disclose the information requested within twenty working days of receipt of the request on the basis of exemptions that the Commissioner now finds were not engaged, the public authority failed to comply with the requirements of sections 1(1)(b) and 10(1).

Section 17

39. Both the refusal notice and the internal review outcome failed to provide any explanation as to why the exemptions cited were believed to be engaged, or why the public interest in the maintenance of the exemptions was believed to outweigh the public interest in disclosure. In so doing, the public authority failed to comply with the requirements of sections 17(1)(c) and 17(3)(b).

The Decision

40. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act in that it refused to disclose the information requested within twenty working days of receipt of the request on the basis of the exemptions provided by sections 36(2)(b)(i), 36(2)(b)(ii) and 36(2)(c), which the Commissioner now finds were not engaged. In so doing the public authority failed to comply with the requirements of sections 1(1)(b) and 10(1). The Commissioner also finds that the public authority failed to comply with the requirements of sections 17(1)(c) and 17(3)(b) in its handling of the request. However, the Commissioner does find that the exemption provided by section 40(2) was engaged in relation to a small part of the information in question and that the public authority stated correctly and in accordance with section 1(1)(a) that some of the information requested was not held.

Steps Required

41. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- disclose to the complainant the CMT minutes held for the period specified in the request, with the exception of the information specified above at paragraph 31, which is exempt under section 40(2), and any other content within the minutes for which the public authority can clearly make the case that it should be exempted under section 40(2).
42. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

43. 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

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

As referred to above at paragraph 4, when giving the outcome of the internal review, the public authority gave no reasoning for concluding that the refusal of the request should be upheld. Paragraph 39 of the section 45 Code of Practice states the following:

"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."

45. The internal review response from the public authority did not reflect that a reconsideration of the request conforming to the description above took place. The Commissioner would advise the public authority that a response giving the outcome of an internal review should state the reasoning for why the initial refusal was upheld and should reflect that there has been a genuine reconsideration of the request.
46. The Commissioner's published guidance on internal reviews states that a review should be conducted within 20 working days, unless there are exceptional circumstances, in which case the review period may be extended to 40 working days. In this case the Commissioner notes that there appeared to be no exceptional circumstances, but that the public authority failed to provide the outcome to the review within 20 working days. The public authority should ensure that internal reviews are carried out promptly in future.

Right of Appeal

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

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

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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

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

Dated the 13th day of May 2010

Signed

**David Smith
Deputy Commissioner**

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

Legal Annex

Section 1

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 10

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 17

Section 17(1) provides that -

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

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies."

Section 17(3) provides that -

"A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a

separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

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

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

Section 36

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
- (d) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs."

Section 40

Section 40(2) provides that –

"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."