

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 20 November 2007

Public Authority: King's College
Address: Cambridge
CB2 1ST

Summary

The complainant requested information concerning the details of the departure from the public authority of the former Provost. The public authority refused this request, citing sections 36, 40, 41 and 43. The Commissioner found that sections 36 and 40 were cited correctly. As these exemptions covered the entirety of the information withheld from the complainant, it was not necessary for the Commissioner to form a view as to whether sections 41 and 43 were cited correctly.

The Commissioner's Role

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

The Request

2. On 21 April 2006, the complainant made the following information request:
 - (i) *"All papers and minutes of the Council and Governing Body relating to the resignation of Dame Judith Mayhew Jonas as Provost, including the final agreement(s) reached with her."*
 - (ii) *"All papers and minutes of the Council and Governing Body relating to my suspension and dismissal that I have not already been provided and including the record of the report to the Governing Body of the settlement and statement agreed on 8 July 2004."*
 - (iii) *"Any other papers and minutes of the Council or Governing Body since my suspension that refer to me."*

(iv) *"The 2005 Report of the Inspectors of Accounts."*

3. The public authority responded to this on 8 May 2006. With that response the information requested at (iv) was disclosed.
4. The response stated that the information requested at parts (ii) and (iii) of the request was refused under section 40(1) as the information requested here was considered personal data relating to the complainant. The public authority also stated that these parts of the information request would be dealt with as a subject access request made under section 7 of the Data Protection Act 1998.
5. The information requested as part (i) of the request above was withheld under the following exemptions:

Section 21 – the public authority stated that 'publishable' minutes and papers were exempt under this provision as these could be accessed by making an appointment with the public authority to view these documents.

Section 36(2)(b) – the qualified person (the "QP") for the purposes of this provision, in this case the Acting Provost, believed that disclosure of 'closed business' minutes would inhibit the free and frank provision of advice, or the free and frank exchange of views.

Section 40(2) – the public authority believed that to disclose details of the final agreement reached with the former Provost would breach the first data protection principle, which states that personal data shall be processed fairly and lawfully.

Section 41 – the public authority believed that it owed a duty of confidence to the former Provost and disclosure of the final agreement would be a breach of this duty of confidence.

Section 43(2) – the public authority believed that to disclose details of the final agreement reached with the former Provost would prejudice its commercial interests when negotiating the details of employment with the successor to the former Provost.

6. The complainant responded to this on 13 May 2006. In this letter, the complainant requested that the public authority carry out an internal review of its decision to refuse part (i) of his request under sections 36, 40, 41 and 43.
7. The public authority responded to this on 6 June 2006. This letter advised the complainant that the refusal of part (i) of his request was upheld, with the exemptions previously cited confirmed.

The Investigation

Scope of the case

8. The complainant initially contacted the Information Commissioner on 16 November 2005 in connection with an information request dated 16 September 2005. The complainant also submitted a second information request to the public authority, dated 7 November 2005.
9. The Commissioner contacted the public authority on 24 March 2006 in connection with the information requests of 16 September 2005 and 7 November 2005. Following an exchange of correspondence between the public authority and the Commissioner, it became apparent that there had been misunderstandings between the public authority and the complainant about the precise information that the complainant wished to access.
10. The Commissioner recommended to the complainant that he should correspond directly with the public authority in order to ensure that the public authority was clear as to the precise information that the complainant wished to access. The request of 21 April 2006 was an amended and refined version of his earlier requests and was made following the initial exchange of correspondence between the Commissioner, the public authority and the complainant.
11. The complainant contacted the Commissioner on 10 June 2006 to confirm that he wished the Commissioner to investigate the public authority's refusal of his request of 21 April 2006. Following this, the Commissioner corresponded with the complainant in order that the scope of the complaint was entirely clear.
12. During this correspondence, the complainant confirmed that part (iv) of his request was not included within the scope of his complaint as he had received the information requested here. The complainant also confirmed that parts (ii) and (iii) of his request were not included within the scope of his complaint as the public authority had treated these aspects of his request as subject access requests under section 7 of the Data Protection Act 1998, as it had stated it intended to in its refusal notice of 8 May 2006.
13. Therefore, part (i) of the request above is the only part of the request that falls within the scope of this case. This notice focuses on whether the public authority applied the exemptions provided by sections 36, 40, 41 and 43 correctly. This notice does not, however, cover the citing of section 21, as the complainant has stated that he has accessed the information identified by the public authority as being available through other means.

Chronology

14. The Commissioner contacted the public authority initially on 9 May 2007. In this letter, the public authority was informed of the scope of the case and was asked to respond clarifying its stance in relation to the complainant's information request. Specifically, the public authority was asked to comment as follows:

- **Section 36(2)(b)**

15. The public authority was asked to clarify the position with regard to the QP for the purposes of this provision. In this case, the acting Provost had acted as the qualified person. The Commissioner was aware that the public authority had previously received legal advice that an authorisation signed by the appropriate Government Minister had stated that the qualified person for a university would be the Vice Chancellor or Chief Executive.
16. In the case of an independent college, as the public authority considered itself to be in this case, the legal advice had been that the authorisation for a Vice Chancellor or Chief Executive of a university to act as the qualified person could be extended to the Provost of the public authority. The rationale for this was that this authorisation was intended to cover the 'education and skills sector' rather than solely universities. In connection with this, the public authority was asked to supply to the Commissioner a copy of the authorisation signed by the appropriate Government Minister, if the public authority had a copy of this.
17. The Commissioner was also aware that the public authority had previously written to the then Department for Constitutional Affairs (now the Ministry of Justice) for confirmation as to who should act as the qualified person. The public authority was asked to confirm if it received a reply from the DCA about this. The public authority was asked to forward a copy of any reply that it had received to the Commissioner's Office.

- **Section 40(2)**

18. In connection with this provision, the public authority was asked to advance any further arguments, in addition to those included in the refusal notice of 8 May 2006, as to why it believed that the disclosure of personal information here would be in breach of the first data protection principle. The public authority was also asked to respond stating whether information about the departure of the former Provost was in the public domain, for example through a press release or other press coverage.

- **Section 41**

19. The public authority was advised that, on the basis of the papers available to the Commissioner at that stage, it did not appear that this exemption was engaged. It was stressed to the public authority that section 41 could only apply to information that had been provided to the public authority by a third party. In this case, it appeared that the information to which the public authority believed this exemption applied had been generated internally by the public authority.
20. The public authority was asked to respond confirming whether the information withheld under this provision had indeed been generated internally. Alternatively, if this information had been provided to the public authority by a third party, the public authority was asked to confirm this.

- **Section 43(2)**

21. In connection with this provision, the public authority was asked to advance any further arguments, in addition to those given in the refusal notice, as to why its commercial interests would be prejudiced through disclosure of the requested information. The public authority was also asked to provide any further arguments that it wished to as to why the public interest favoured maintenance of the exemption in this case.

- **The response from the public authority**

22. The public authority responded to this on 2 July 2007. In connection with section 36(2)(b), the public authority forwarded a copy of an authorisation signed by the Parliamentary Under Secretary of State from the Department for Education and Skills. This authorisation provided that the qualified person for a university would be the Vice Chancellor or Chief Executive of the University.

23. In this case, the public authority did not have an official with either of these titles, but had considered that this authorisation could be extended to the senior official of the public authority; the Provost. The public authority had sought legal advice on this issue that had confirmed that the Provost would be the qualified person. The public authority confirmed that they had not received a response about this issue from the DCA.

24. Later, the public authority provided to the Commissioner a copy of an authorisation signed by the Parliamentary Under Secretary of State for Skills, Department of Innovation, Universities and Skills. This authorised the head of colleges within collegiate universities by whatever title is used to act as the qualified person for the purposes of section 36 of the Act.

25. In connection with section 40(2), the public authority confirmed that a press release about the departure of the previous Provost had been issued and a copy of this was provided to the Commissioner. This press release included a brief reasoning for the departure of the former Provost and no details of the financial settlement reached. The public authority also stated that some information related to the departure of the former Provost was included in its annual accounts for the year ending June 2005. These accounts include a total figure for termination payments made to staff at the public authority during the year ending June 2005.

26. The public authority referred to a Decision Notice previously issued by the Commissioner, FS50068239, in which the Commissioner had concluded that the section 40 exemption should be upheld and had referred to the reasonable expectations of privacy held by employees of the public authority. The public authority felt that the former Provost had a reasonable expectation of privacy in relation to the information requested by the complainant and had been given specific guarantees that this information would remain confidential.

27. In connection with section 41, the public authority maintained that section 41 applied. The public authority stated that it believes it owes a duty of confidence to the former Provost and that this is guaranteed by the explicit confidentiality

clauses relating to the withheld information. The public authority again referred to the Decision Notice in case reference FS50068239 in which the Commissioner had acknowledged the importance of compromise agreements to the relationship between employer and employee.

28. In connection with section 43(2), the public authority stated that it is currently negotiating a termination settlement with an employee and that this employee was using the settlement reached with the former Provost as a 'benchmark' in their case. The public authority argued that it was in the public interest for it to be able to maintain a competitive bargaining position and that its commercial interests would be prejudiced if its bargaining position was harmed through disclosure.
29. On a general point, the public authority stated that it was not 'significantly' publicly funded as only 1/7 of its funding came from the public purse. The public authority felt that this reduced any public interest arguments in favour of disclosure.
30. The Commissioner contacted the public authority again on 25 July 2007. In this letter, the public authority was asked to respond to further questions concerning its application of section 36(2)(b). Specifically, the public authority was asked to respond stating the following:
 - the reasons why the QP considered that the disclosure of the information in question would, or would be likely to, inhibit the free and frank provision of advice or the free and frank exchange of views for the purpose of deliberation, and
 - why the public interest is considered to favour maintenance of this exemption.
31. The public authority responded to this on 8 August 2007. In response to the question of the inhibition that the QP believed would result from disclosure, the arguments given in the refusal notice of 8 May 2006 were reiterated:

“matters proceeding on a closed rather than an open basis of this nature are discussed [in such a way as to] encourage those attending the meeting to consider the issues and then express themselves freely without fear that their views will come into the public domain. It is also likely to encourage those who are unable to be present at the meeting to understand the matters that were discussed and to contribute their own views in due course. Similar considerations apply in respect of the minutes that are circulated on a closed basis. Disclosure of the material...is likely to inhibit frankness in the provision of advice and the exchange of views.”
32. The public authority advised that it had an established practice of keeping committee minutes of “open business” separate from “closed business”, with the intention that this would enable discussions held on a closed basis to be fully free and frank. It believed that the exemption applied regardless of the contents of the information in this case as it believed that disclosure of the details of any discussion carried out on the understanding that it was to be confidential would prejudice the frankness of any future discussions as it would not be possible to

give any assurance of confidentiality. Notwithstanding this argument, it is apparent that the public authority considers the matters discussed in this case to be of particular sensitivity.

33. On the issue of the public interest, the public reiterated the arguments given in its refusal notice of 8 May 2006 as to why the public interest favoured maintenance of the exemption, which were as follows:
- The public authority recognised a public interest in ensuring that it is accountable and transparent, but believed that this is reduced in this case as it is not directly accountable to elected representatives.
 - The public authority recognised that there may be some public interest in its spending of public funds, but argued that this factor is reduced as the majority of its income does not come from public funds.
34. The public authority went on to give further arguments about the balance of the public interest:
- The public authority argued that being capable of governing itself effectively is in the public interest and this ability could be prejudiced through disclosure if this resulted in reduced confidence in the system of confidential committee deliberation and this lead to decisions being taken without committee discussion or sanction.
 - The public authority referred to guidance produced by the Department for Constitutional Affairs on the issue of disclosure of committee minutes which states that if this created a situation where committee proceedings are not properly recorded in an attempt to avoid future disclosure, this would be counter to the public interest.
 - The public authority also referred to guidance produced by the DCA which stresses the importance of a space within which officials can carry out discussions freely and frankly.
 - The public authority further referred to criteria for the use of section 36 produced by the DCA which asks:
Will publication make people less likely to engage in discussion as part of the deliberative process? Would it distort or restrain that discussion?
The public authority argued that the answer to both of these questions would be yes.
 - The public authority went on to argue that disclosure of the information requested by the complainant would result in nothing being committed to paper in future, which would prejudice the effective governance of the public authority.
35. The public authority also stressed that it cited section 36 only after careful consideration of this. To this end, the public authority had sought legal advice after receiving the information request in the form of a briefing on the interpretation of section 36 and a legal opinion from Counsel on the balance of the public interest, which advised that it would be reasonable to conclude that the balance of the public interest in this case favoured maintenance of the exemption.

36. The public authority later confirmed by telephone that the QP considered the issues arising from the complainant's request on or around 6 May 2006. Following consideration of this matter, the QP chose to cite section 36.

Findings of fact

37. The public authority holds recorded information falling within the scope of each part of the information request.
38. The complainant has received the information requested at parts (ii), (iii) and (iv) of the request. The complainant has also accessed that information withheld from part (i) of the request under section 21.

Analysis

Section 36

39. In order for this exemption to be cited, the opinion of a qualified person must be sought. Section 36(5)(o) specifies that the qualified person for any public authority that does not fall within (a) to (n) of that subsection, is either a Minister of the Crown, the public authority itself if authorised by a Minister, or an officer or employee of the public authority if authorised by a Minister.
40. The public authority in this case falls within section 36(5)(o). As noted above at paragraph 24, the public authority has provided to the Commissioner a copy of an authorisation signed by a Minister of the Crown for the head of colleges within collegiate universities to act as the qualified person for the purposes of section 36. The Commissioner is satisfied that the Acting Provost, as head of the public authority at the time that the information request was received, was the correct qualified person here.
41. Considering whether this exemption has been applied correctly is a two stage process. Firstly, inhibition must be established, in this case to the free and frank provision of advice or the free and frank exchange of views for the purpose of deliberation as the public authority has cited section 36(2)(b). Establishing inhibition where section 36(2)(b) has been cited means, in effect, establishing if the opinion of the QP is objectively reasonable. If the Commissioner concludes that it is, he accepts that inhibition would be, or would be likely to be, caused through disclosure of the information in question.
42. Secondly, this exemption is subject to the public interest. If the public interest favours the maintenance of the exemption, the information should be withheld. If, however, the public interest favours disclosure of the information, it should be disclosed regardless of the prejudice to the effective conduct of public affairs that would result from this disclosure.

The opinion of the qualified person

43. This exemption applies to meeting minutes classed by the public authority as “closed business minutes”. On or around 6 May 2006, the QP referred to the minutes in question. Having considered the content of these minutes and the focus of the discussions recorded in these minutes, the opinion of the QP was that disclosure of these minutes would be likely to result in inhibition to discussions conducted in future committee meetings held on a closed basis as it would not be possible to give any guarantee that contributions to a discussion would remain confidential. The QP believed that being able to conduct committee meetings on a closed basis was essential to the ability of the public authority to govern itself effectively.
44. Having viewed the information withheld here, the Commissioner is satisfied that the discussions it records were of a free and frank nature. Whilst the Commissioner would conclude otherwise if it appeared that business had been conducted on a closed basis unnecessarily, in this case the Commissioner recognises that the sensitive nature of these discussions concerning the removal of a staff member at the public authority and which would necessarily require the exchange of frank views meant that it was appropriate for them to be confidential. This confidentiality would prevent inhibition to free and frank exchanges.
45. The Commissioner concludes that the opinion of the QP here was objectively reasonable. In forming this conclusion, the Commissioner notes that the information in question records free and frank discussion concerning an issue of sensitivity and that those participating in the discussion held a high expectation of confidentiality as a result of the meeting being conducted on a closed basis.

The public interest

46. In the case of *Guardian & Brooke v The Information Commissioner & the BBC*, the Information Tribunal acknowledged that the application of the public interest test to the s36 exemption, “involved a particular conundrum,” noting that although it is not for the Commissioner to form his own view on the likelihood of prejudice under this section (because this is given as a reasonable opinion by a qualified person), in considering the public interest, “it is impossible to make the required judgement without forming a view on the likelihood of inhibition or prejudice” (para. 88).
47. In the Tribunal’s view, the reasonable opinion is limited to the *degree of likelihood* that inhibition or prejudice would occur, on the balance of probabilities. It therefore argued that the reasonable opinion, “does not necessarily imply any particular view as to the *severity* or *extent* of such inhibition [or prejudice] or the *frequency* with which it will or may occur, save that it will not be so trivial, minor or occasional as to be insignificant” (para 91).
48. This means that whilst the Commissioner should give due weight to the reasonable opinion of the qualified person when assessing the public interest, he can and should consider the severity, extent and frequency of prejudice or inhibition to the subject of the effective conduct of public affairs.

49. In this case, the Commissioner recognises that disclosure could result in a significant inhibition to free and frank discussions. As noted previously, the public authority is specific about conducting some business on a closed basis where this is necessary in order to ensure that the exchanges are free and frank. In a situation where a committee has to discuss and decide on an issue of controversy or sensitivity such as employment matters, fear that their contributions could be subject to later disclosure could clearly inhibit participants in a discussion from contributing freely and frankly.
50. As previously mentioned, having reviewed the information, the Commissioner is satisfied that the withheld information does indeed record comments that are free and frank about the situation with the former Provost and that in view of this the harm that would result if this material were disclosed would be reasonably severe. In reaching this conclusion the Commissioner is mindful of the fact that opinions and comments given by third parties will often be integral to the decision as to how to take an employment matter forward or what outcome would be appropriate and in the best interests of the public authority.
51. When considering the extent and frequency of the harm the Commissioner notes that issues surrounding employment and leadership and possible departures from the public authority are likely to arise in the future. Therefore it is likely that similar discussions, which would benefit from free and frank input, will occur in the future. These decisions have a considerable impact on the individual or individuals that are the subject of the discussion as well as on the public authority and those that it serves. The Commissioner recognises that, in view of this, it is important that decisions are taken on the basis of the best available information and evidence. It is therefore in the public interest not to hinder the supply of that evidence.
52. In view of the comments above, the Commissioner is satisfied that the level of prejudice in this case would be significant and that this must be taken into account when deciding the balance of the various public interest arguments.
53. When considering where the balance of the public interest lies and accounting for the presumption within the Act in favour of disclosure, an appropriate starting point is to recognise the enhancement to the transparency and accountability of any public authority through disclosure of information. In this case, the public authority has itself recognised this as a valid argument in favour of disclosure.
54. The public authority has argued that any argument about transparency in the spending of public money would be reduced in this case as a result of the public authority only receiving a small proportion of its funding from the public purse. The argument about the public authority only being partially publicly funded could be extended to a general argument that the public interest in it as a whole is reduced as a result of this. The Commissioner would not consider this a valid argument. Whilst the Commissioner notes that the public authority is only partly funded from the public purse, it is a public authority for the purposes of the Act. The Act makes no distinction between public authorities that are 100% publicly funded and those that are only in part publicly funded.

55. It is apparent to the Commissioner that the circumstances of the departure of the former Provost from the public authority have been the source of comment and speculation. Whilst it is important to distinguish between what is in the public interest and what is of interest to the public, there is a legitimate public interest in how a public authority has responded to challenging circumstances and reached decisions in respect of the Provost and her position. In view of the circumstances, the Commissioner considers this to be a valid public interest argument of some significance in favour of disclosure.
56. In addition to the argument that disclosure would ensure greater accountability and transparency, the Commissioner also considers that it would help the public to understand the Provost's departure, the decision to provide a financial settlement and how that payment was determined.
57. The arguments of the public authority centre on its belief that disclosure could prejudice its ability to govern itself effectively. The public authority argues that, in general, the ability to conduct business with a guarantee of confidentiality where appropriate is essential to its ability to govern itself effectively. In relation to this specific circumstance, the public authority believes that its ability to act in this situation would have been impaired had it not been possible to conduct discussions with a guarantee of confidentiality and that a detriment to its ability to govern itself effectively would be counter to the public interest.
58. The Commissioner recognises that, in general, it is important for a public authority to have a space in which it can carry out discussions without fear of disclosure of the record of these discussions. In this case, the Commissioner believes that the sensitive nature of the discussions surrounding the departure of the former Provost mean that this is an example of where it is legitimate for the public authority to have a space to conduct these discussions in confidence. Given that frank and full input is integral to decisions of this nature and that therefore the level of prejudice is likely to be substantial, the Commissioner considers this to be a public interest argument of particular weight in favour of maintenance of the exemption.

Conclusion

59. The conclusion of the Commissioner is that the balance of the public interest favours the maintenance of the exemption here. In coming to this conclusion, the Commissioner has given weight to the likelihood and severity of the inhibition resulting from disclosure, which the Commissioner recognises could be considerable.
60. The Commissioner has recognised public interest arguments in favour of disclosure here; specifically that this would enhance the openness and accountability of the public authority and that there is a particular public interest in understanding how the public authority reacted to the situation of the departure of the former Provost.
61. However, in this case the Commissioner recognises the sensitive nature of the committee discussions and believes that it is in the public interest for a space to

be maintained in which such discussions can be carried out free from possible future disclosure.

Section 40

62. This exemption has been applied by the public authority to information containing details of the final agreement reached between the public authority and the former Provost. The considerations of the Commissioner here are two fold; firstly, whether the information in question does constitute personal data relating to the former Provost and, secondly, whether this disclosure would be fair and in compliance with the first data protection principle. If disclosure would be unfair and in breach of the first data protection principle, the exemption provided by section 40(2) will apply.

Is the information personal data?

63. The Commissioner accepts that the information in question is personal data relating to the former Provost. The former Provost is clearly identifiable from this information and it is also clear that this information is of biographical significance to the former Provost, in that it specifies the financial benefit derived by her as a result of her departure from the public authority.

Would disclosure of this information be fair?

64. As noted above at paragraph 25, some information about the departure of the former Provost from the public authority is in the public domain, through a press release and through the annual accounts of the public authority. Although these do not detail the financial settlement reached between the public authority and the former Provost nor any other details of this departure.
65. If it was the case that the public authority was arguing that any information about the departure of the former Provost should be withheld, the existence in the public domain of this information would be a strong argument in favour of disclosure. However, the information withheld in this case has not been disclosed into the public domain.
66. It is important to consider the level of expectation that this information may be disclosed. The data subject here was given very specific guarantees that this information would not be disclosed and, indeed, also agreed herself to make no disclosure of the details of the agreement. It is clear that the data subject would have a strong expectation that the details of her arrangement with the public authority would not be disclosed.
67. The public authority has referred to a previous Decision Notice issued by the Commissioner, case reference FS50068239, in which the Commissioner noted the importance of finding a balance between the accountability and transparency of the public authority and respect for the legitimate expectations of privacy held by employees of public authorities. The Commissioner recognises that there is a generally held expectation of privacy around details of financial arrangements between employer and employee and would consider it legitimate for the former

Provost to have an expectation of privacy in relation to the information withheld here.

68. The Commissioner considers that there is a legitimate interest in the public understanding the departure of the former Provost and the decision to make a payment to her. This is on the basis that she occupied a significant position within the public authority and that she has, at least in part, benefited from public funds. However, whilst he recognises that these are legitimate interests they must, nevertheless, be balanced against the impact of disclosure upon the former Provost.
69. The nature of the information itself is of significance. In this case, it is clear that the detailing of the financial settlement made between the public authority and the complainant mean that this information can legitimately be considered as of some sensitivity. The information records details of the financial benefit derived by the former Provost as well as comments that could impact on her ability to secure similar positions. Therefore, if the information were disclosed it would constitute a considerable infringement of her privacy rights.

Conclusion

70. The conclusion of the Commissioner is that the exemption provided by section 40(2) does apply to the information in question here. Disclosure of this information would be unfair and in breach of the first data protection principle.
71. In coming to this conclusion, the Commissioner has given particular regard to the strong and legitimate expectation of privacy that the data subject would hold about this information and the degree to which disclosure would infringe her right to privacy. This is based both on the nature of the information and on the specific guarantees of confidentiality given at the time that the information was created.

Section 41 / Section 43

72. As the Commissioner has concluded that sections 36 and 40 have been applied correctly to the entirety of the information withheld, it is not necessary to consider sections 41 and 43, which were also cited by the public authority. The Commissioner has not formed any conclusion as to whether these exemptions were cited correctly.

The Decision

73. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act in that it correctly cited sections 36(2)(b) and section 40(2).

Steps Required

74. The Commissioner requires no steps to be taken.

Right of Appeal

75. 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

76. 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 20th day of November 2007

Signed

**Graham Smith
Deputy Commissioner**

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

Legal Annex

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

(c) 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.”