

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 12 August 2010**

**Public Authority:** UK Financial Investments Ltd  
**Address:** 2<sup>nd</sup> Floor  
Oceanic House  
1A Cockspur Street  
London  
SW1Y 5BG

### Summary

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The complainant requested information about UK Financial Investments' discussions with Lloyds Banking Group regarding the level of remuneration paid to employees. UK Financial Investments provided the complainant with some information but withheld the remaining information on the basis of the exemptions contained at sections 40, 41, 42 and 43. The Commissioner has concluded that the remaining information is exempt from disclosure on the basis of sections 41 and 42; he has therefore not considered the public authority's reliance on sections 40 and 43.

### 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.

### Background

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2. UK Financial Investments Limited (UKFI) was set up on 3 November 2008 to manage the government's investments in financial institutions including the Royal Bank of Scotland, Lloyds TSB/Halifax Bank of Scotland, Northern Rock and Bradford & Bingley.

3. HM Treasury is the sole shareholder in UKFI. Under the provisions of section 6 of the Act any company whose sole shareholder is a government department is considered to be a 'publicly-owned company' and thus a public authority for the purposes of the Act.

## The Request

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4. On 3 March 2009 the complainant submitted the following request to UKFI:

'Please disclose the following under the FOI Act:

a) the dates on which meetings were held with the Lloyds Banking Group since August 2008 at which that bank's level of remuneration (including bonuses) for its employees was discussed (this information to include in each case the date of the meeting and the name of the bank involved).

b) copies of all communications (including emails) with Lloyds Banking Group since August which refer to that bank's level of remuneration (including bonuses) for its employees.

c) copies of all records of meetings and telephone calls with Lloyds Banking Group since 1 July 2007 which refer to that bank's level of remuneration (including bonuses) for its employees.

I would like to receive the copies of the actual documents by email.'

5. UKFI responded on 26 March 2009 and provided the complainant with the dates of the meetings with Lloyds Banking Group ('Lloyds') since August 2008 which included discussion of remuneration matters. However UKFI explained that it considered the remainder of the information falling within the scope of the requests to be exempt from disclosure on the basis of sections 41, 42, 43 and also section 40.
6. The complainant contacted UKFI on 9 April 2009 and asked for an internal review to be conducted.

7. UKFI informed the complainant of the outcome of the internal review on 12 May 2009. This upheld the application of the exemptions cited in the refusal notice.
8. Following the Commissioner's commencement of his investigation, UKFI agreed to disclose a number of documents to the complainant. UKFI provided these documents to the complainant on 13 May 2010.

## **The Investigation**

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### **Scope of the case**

9. On 26 May 2009 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant identified a number of reasons why she believed that the public interest favoured disclosing the information that she had requested and these are set out in the 'Analysis' section below.
10. As noted above, during the course of the Commissioner's investigation, UKFI disclosed a number of documents to the complainant. Therefore this decision notice only considers whether the remaining documents that have not been provided to the complainant are exempt from disclosure under the Act.

### **Chronology**

11. Unfortunately, due to a backlog of complaints received about the Act, the Commissioner was unable to begin his detailed investigation of this case immediately. Therefore it was not until 28 January 2010 that the Commissioner contacted UKFI in relation to this complaint. In this letter the Commissioner asked UKFI to provide him with a copy of the information requested by the complainant. The Commissioner also asked to be provided with detailed submissions to support UKFI's application of the four exemptions cited in the refusal notice.
12. The Commissioner received a substantive response from UKFI on 19 March 2010. In this response UKFI provided the Commissioner with copies of the requested information along with detailed submissions to support the application of the various exemptions. In its response UKFI indicated that it was now prepared to disclose a number of documents to the complainant.

13. The Commissioner contacted UKFI on 30 March 2010 and asked it to provide the complainant with copies of the documents that it was now prepared to disclose.
14. As noted at paragraph 8, the complainant was provided with these documents on 13 May 2010.

## Analysis

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### Exemptions

15. UKFI has argued that the majority of the withheld information is exempt from disclosure on the basis of section 41 because it was provided to it in confidence by Lloyds. The Commissioner has considered the application of this exemption to this particular set of information first before going on to consider the exemptions that UKFI has relied upon to withhold the remaining information.

### Section 41 – Information provided in confidence

16. This section states that:

‘41-(1) Information is exempt information if -

- (a) it was obtained by the public authority from any other person (including another public authority), and
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.’

17. Therefore for this exemption to be engaged two criteria have to be met; the public authority has to have obtained the information from a third party **and** the disclosure of that information has to constitute an actionable breach of confidence.
18. UKFI has argued that the information in question that has been withheld was provided to it by Lloyds and therefore meets the requirements of section 41(1)(a). The Commissioner has reviewed this information and is satisfied that this is the case.
19. With regard to section 41(1)(b), in cases where the information is commercial in nature such as this present case (as opposed to say information of a personal nature), the approach adopted by the

Commissioner in assessing whether disclosure would constitute an actionable breach of confidence is to follow the test of confidence set out in *Coco v A N Clark (Engineering) Ltd* [1968] FSR 415 (the *Coco* test).

20. This judgment suggested that the following three limbed test should be considered in order to determine if information was confidential:
- Whether the information had the necessary quality of confidence;
  - Whether the information was imparted in circumstances importing an obligation of confidence; and
  - Whether an unauthorised use of the information would result in detriment to the confider.
21. UKFI has provided the Commissioner with detailed submissions to support its position that the three criteria above are met. The Commissioner has considered these submissions and also set out his conclusions in relation to their merit below:

Does the information have the necessary 'quality of confidence'?

22. The Commissioner believes that information will have the necessary quality of confidence if it is not otherwise accessible to the requestor, is more than trivial and is of importance to the confider. Information will not have the necessary quality of confidence if it is already in the public domain.
23. UKFI has argued that it is clear from the subject matter of the withheld information that it has the necessary quality of confidence not least because it constitutes commercially sensitive information. Having considered the content of the withheld information the Commissioner is satisfied that it has the necessary quality of confidence: it is clear that information is more than trivial and of significant importance to Lloyds. He is also satisfied that information is not in the public domain.

Does the information have the necessary obligation of confidence?

24. The Commissioner recognises that an obligation of confidentiality may be expressed explicitly or implicitly. Whether or not there is an implied obligation of confidence may depend on the nature of the information itself, and/or the relationship between the parties.
25. In the circumstances of this case UKFI has argued that as the information in question was covered by a non-disclosure agreement between UKFI and Lloyds it was clear that there was an explicit obligation of confidence. In light of this fact, and moreover given the

content of the information itself and the circumstances under which it was provided to UKFI, the Commissioner accepts that UKFI holds this information under a clear obligation of confidence.

Would disclosure be detrimental to any party?

26. Where commercial information is purported to have been imparted in confidence the Commissioner considers that there would have to be a detrimental impact to the commercial interests of the confider for this limb of the *Coco* test to be engaged.
27. UKFI has explained that the information in question contains detailed information on levels of compensation (i.e. salaries and bonuses) for both individuals and groups within Lloyds and disclosure of this information would be likely to harm the commercial interests of Lloyds for a number of reasons. Given the sensitivity of the information in question the Commissioner is limited as to what he can include in this Notice, however he believes that he can summarise the ways in which the UKFI have argued that this prejudice will occur in the following ways:
  28. Firstly, disclosure of this information could allow other banks and recruitment firms to poach Lloyds' staff more easily. Secondly, employees within banks are not usually aware of the remuneration details of their colleagues; disclosure of this could therefore create tension between employees within Lloyds and exacerbate recruitment and retention problems from which government investee banks are currently suffering. Such recruitment and retention problems would have a direct impact on Lloyds' performance. Thirdly, disclosure of the information, and dissemination of it within Lloyds could result in pressure to increase salaries to certain groups within the bank.
  29. On the basis of these reasons, and the more detailed evidence that UKFI has provided to support the likelihood of them occurring, the Commissioner is prepared to accept that disclosure of this information would be likely to prejudice Lloyds' commercial interests. It follows that the Commissioner therefore accepts that disclosure of the information would be detrimental to the confider.

Would disclosure of the confidential information be actionable?

30. Although section 41 of the Act is an absolute exemption and thus not subject to the public interest test contained at section 2 of the Act, the common law concept of confidence suggests that a breach of confidence will not be actionable in circumstances where a public authority can rely on a public interest defence. The Commissioner

must therefore consider whether the public interest in disclosing the information overrides the duty of confidence that is owed.

31. In *Derry v Information Commissioner* (EA/2006/0014) the Information Tribunal clarified that the test to be applied in deciding whether the public interest provides a defence to a breach of a duty of confidence is that the duty should be maintained unless the public interest in disclosing the information outweighs the public interest in protecting confidences.

### **Public interest in maintaining the confidence**

32. UKFI explained to the Commissioner that in order to fully understand its reasoning behind the application of the various exemptions, including the reliance on section 41 of the Act, it was necessary to understand the nature of the relationship between it and the government's investee banks, which obviously include Lloyds.
33. UKFI explained it has some specific rights to work with the banks as set out in the recapitalisation agreements between HM Treasury and the government investee banks and in the Asset Protection Scheme conditions agreed between HM Treasury and the banks. The remainder of its remit is set out in its relationship framework document with HM Treasury which sets out its role as an engaged and active shareholder.<sup>1</sup> UKFI confirmed that this means that for most of its day-to-day work with the banks it does not have additional rights or powers over the banks over and above any other shareholder. For example, UKFI does not have policy making powers, regulatory powers or statutory rights to demand information from the government's investee banks.
34. Given this background, UKFI argued that if it disclosed the withheld information in this case there would be a significant reduction in the information that Lloyds would be prepared to share with UKFI in the future, especially in relation to commercially sensitive information. In order to support this assertion UKFI argued that logic and reason dictate that information volunteered to it and which has the effect of causing detriment to the bank concerned will cease to be made available in the future. Moreover, UKFI argued that by disclosing information provided to it by Lloyds would also have a similar effect on the information which the other trustee banks provided it with in the future.
35. UKFI argued that such a reduction in the information it received from the banks would not be in the public interest for a number of reasons.

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<sup>1</sup> <http://www.ukfi.co.uk/releases/UKFI%20Introduction.pdf>

This was because without access to commercially sensitive information held by the banks UKFI would be denied its ability to be an active shareholder and maintain its robust oversight of the banks. This would fundamentally undermine UKFI's ability to, and success in, its objective of creating and protecting value for the taxpayer as a shareholder and devising an exit strategy.

### **Public interest in disclosing the information**

36. In submissions to the Commissioner the complainant argued that the level of the remuneration for employees in the banking sector was a matter of great public interest since it had been identified by many as one of the causes of the current financial crisis. For this reason it was also widely accepted that it is an important matter of public policy to ensure that the future remuneration of bankers is set at an appropriate level. Consequently the complainant argued that the public interest would be best served by full transparency and accountability; by the public being able to establish whether lessons have been learnt and policies rectified; and by the public being fully informed so that UKFI and the government can be accountable for their role in this area.

### **Balance of the public interest**

37. The Commissioner agrees with the complainant's assertion that the level of remuneration paid to those in the banking sector is, following the financial crisis, a matter of notable public policy. The Commissioner therefore accepts that the public interest arguments identified by the complainant deserve to be given significant weight. Furthermore the Commissioner believes that disclosure of the information could improve the public's confidence in the role of UKFI, on behalf of government, in monitoring this particular aspect of the government investee banks. Again, the Commissioner believes that such an argument should not be dismissed lightly. In the Commissioner's opinion the weight attributable to such arguments is increased given the large amount of public money that has been used to support the banks and the public's understandable interest in knowing how such money will be repaid.
38. Moreover, the Commissioner is conscious of the fact that a key factor in assessing the weight that should be attributed any balance of the public interest is the actual content of the requested information itself. Having reviewed the withheld information in question the Commissioner is confident that its disclosure could clearly serve the interests that have been identified above.
39. The Commissioner recognises that there is information in the public domain about UKFI's role and remit with regards to levels of

remuneration in government investee bank, most notably in the Shareholder Relationship Framework Document. However, the Commissioner believes that even when there is a significant and informative level of information in the public domain about a particular issue there will still be a public interest in providing the public with the any further information held by a public authority in order to issue that the 'full picture' about a particular issue is made available to the public.

40. However, the Commissioner believes that the consequences of disclosing this information in terms of affecting the voluntary supply of information to UKFI are ones that are very detrimental and clearly run directly contrary to the public interest for the reasons identified by UKFI. In the Commissioner's opinion the public interest arguments in favour of maintaining the confidence owed to Lloyds therefore need to be given particularly strong regard. In reaching this conclusion the Commissioner believes that it is vital to note that disclosure may not just affect the supply of remuneration information by Lloyds to UKFI but the supply of a variety of confidential and sensitive information from all government investee banks to UKFI. Given this fundamental impact on UKFI's working relationships, and the inverse nature of the public interest test under section 41, and despite the validity and strength of the public interest arguments in favour of disclosing the information, the Commissioner has therefore concluded that the public interest favours maintaining confidence, UKFI would not have a valid public interest defence to any breach of confidentiality.

## **Section 42 – legal professional privilege**

41. UKFI has withheld the remaining information on the basis of the exemption contained at section 42.<sup>2</sup>
42. Section 42(1) provides that information is exempt from disclosure if the information is protected by legal professional privilege and this claim to privilege could be maintained in legal proceedings.
43. There are two categories of legal professional privilege: advice privilege where no litigation is contemplated or pending and litigation privilege where litigation is contemplated or pending. For litigation privilege to apply there must be a reasonable prospect of litigation, i.e. a real likelihood, not just a fear or possibility.

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<sup>2</sup> The Commissioner notes that UKFI has also argued that this information is exempt on the basis of section 41 but for different reasons to the information that it was provided with by Lloyds – rather it was provided with this information in confidence by an external lawyer. However given the content of this information the Commissioner believes that it is more appropriate to consider the application of section 42 initially rather than section 41.

44. The category of privilege which UKFI is relying on to the remaining information is advice privilege. This privilege is attached to documents exchanged between a client and its legal advisers, and any part of a document which evidences the substance of such a communication, where there is no pending or contemplated litigation. The information must be communicated in a professional capacity; consequently not all communications from a professional legal adviser will attract advice privilege. For example, informal legal advice given to an official by a lawyer friend acting in a non-legal capacity or advice to a colleague on a line management issue will not attract privilege.
45. Furthermore, the document in question also needs to have been created for the principal or dominant purpose of seeking or giving legal advice. The determination of the dominant purpose is a question of fact which can usually be found by inspecting the documents themselves.
46. The Commissioner accepts that the remaining information attracts legal advice privilege because the dominant purpose of the information is clearly the provision of legal advice to UKFI by an external, third party lawyer.

### **Public interest test**

47. However section 42 is qualified exemption and therefore the Commissioner must consider whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the report. This public interest differs from the inverse one considered above in relation section 41; under a qualified exemption the information will be disclosed unless the public interest favours maintaining the exemption – in other words there is an inbuilt presumption in favour of disclosure.

### **Public interest arguments in favour of maintaining the exemption**

48. UKFI argued that there was a clear public interest in protecting the confidentiality of communications between lawyers and their clients in order to ensure that decisions are taken in a fully informed context.
49. UKFI noted the fact there was significant in built weight in maintaining this exemption that had been accepted by a number of Information Tribunal decisions and also by the High Court, in particular in the case of *Department for Business Enterprise and Regulatory Reform v O'Brien and the Information Commissioner*. At paragraph 53 of his decision Williams J held that:

'The in-built public interest in withholding information to which legal professional privilege applies is acknowledged to command significant weight. Accordingly, the proper approach for the Tribunal was to acknowledge and give effect to the significant weight to be afforded to the exemption in any event; ascertain whether there were particular or further factors in the instant case which pointed to non-disclosure and then consider whether the features supporting disclosure (including the underlying public interests which favoured disclosure) were of equal weight at the very least.'

### **Public interest arguments in favour of disclosing the requested information**

50. The Commissioner believes that the public interest arguments in favour of disclosure in relation section 42 mirror those in favour of disclosure in respect of section 41 and therefore he has not repeated them here.

### **Balance of the public interest arguments**

51. In considering the balance of the public interest under section 42, the Commissioner accepts that there is a strong element of public interest inbuilt into legal professional privilege in order to protect the confidentiality of communications between lawyers and their clients. This confidentiality is essential so that clients can share information fully and frankly with legal advisers in order that any advice is given in context and with the full appreciation of the facts and furthermore that the advice which is given is comprehensive in nature. However, he does not accept, as previously argued by some public authorities that the factors in favour of disclosure need to be exceptional for the public interest to favour disclosure. The Information Tribunal in *Pugh v Information Commissioner* (EA/2007/0055) were clear:

'The fact there is already an inbuilt weight in the LPP exemption will make it more difficult to show the balance lies in favour of disclosure but that does not mean that the factors in favour of disclosure need to be exceptional, just as or more weighty than those in favour of maintaining the exemption'. (Tribunal at para. 41).

52. Consequently, although there will always be an initial weighting in terms of maintaining the exemption, the Commissioner recognises that there are circumstances where the public interest will favour disclosing the information. In order to determine whether this is indeed the case, the Commissioner has considered the likelihood and severity of the

harm that would be suffered if the advice was disclosed by reference to the following criteria:

- how recent the advice is; and
- whether it is still live.

53. In order to determine the weight that should be attributed to the factors in favour of disclosure the Commissioner has used the following criteria:

- the number of people affected by the decision to which the advice relates;
- the amount of money involved; and
- the transparency of the public authority's actions.

54. With regard to the age of the advice the Commissioner accepts the argument advanced on a number of occasions by the Information Tribunal that as time passes the principle of legal professional privilege diminishes. This is based on the concept that if advice is recently obtained it is likely to be used in a variety of decision making processes and that these processes are likely to be harmed by disclosure. However, the older the advice the more likely it is to have served its purpose and the less likely it is to still be used as part of a decision making process.

55. In many cases the age of the advice is closely linked to whether the advice is still live; advice is said to be live if it is still being implemented or relied upon and therefore may continue to give rise to legal challenges by those unhappy with the course of action adopted on that basis.

56. The legal advice that has been withheld is dated only a matter days before the complainant submitted her request on 3 March 2009 and therefore the Commissioner accepts that the advice was very recent. Logically, given the date of advice, the Commissioner also accepts that at the time of the request the advice was still live.

57. With regard to the public interest factors in favour of disclosure, as explained above in the context of section 41 the Commissioner believes that they deserve to be given notable weight.

58. In the context of the criteria identified above specifically relevant to an analysis of section 42, although the Commissioner obviously accepts that a significant amount of public money has been invested by the government into Lloyds, the legal advice upon which this decision relates does not relate directly to all aspects of this investment. This to

say the legal advice does not relate to the decision by the government to actually invest in the various banks. Similarly although all taxpayers arguably have an interest in decisions taken by Lloyds in respect of remuneration decisions given the public money that has been invested; the number of people **directly** affected by the decision is relatively low – arguably only those employed by Lloyds who will receive the remuneration. As noted above the Commissioner recognises that UKFI, via its Framework, has been clear about what its remit is in terms of remuneration levels within the government investee banks, albeit that this transparency does not obviously extend to revealing the details of individual discussions about levels of remuneration within particular banks.

59. Furthermore, as noted above, key to the balancing of the public interest is the degree to which the content of the information would in fact advance the public interests in disclosure. Having considered the information that has been withheld on the basis of section 42 the Commissioner believes that the degree to which the information would actually inform the public about UKFI's involvement in Lloyds' level of remuneration is limited. (This contrast to the Commissioner's findings with regard to the information withheld on the basis of section 41 is largely due to the differing volumes information withheld under each exemption.)
60. In conclusion, when taking into account the strong inbuilt weight in favour of protecting legal professional privilege, the fact that this information is recent and live, and the fact that disclosure would not add substantially to the public's understanding of UKFI's discussions with Lloyds about its level of remuneration, the Commissioner believes that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
61. As the Commissioner has reached the above conclusions in respect of sections 41 and 42 he has not gone on to consider UKFI's reliance on sections 40 and 43.

## **The Decision**

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62. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

## **Steps Required**

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63. The Commissioner requires no steps to be taken.

## Right of Appeal

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64. 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](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 sent.

**Dated the 12th day of August 2010**

**Signed .....**

**Steve Wood**  
**Head of Policy Delivery**

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

## **Legal Annex**

### **Freedom of Information Act 2000**

#### **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.”

#### **Effect of Exemptions**

**Section 2(2)** provides that –

“In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that –

(a) the information is exempt information by virtue of a provision conferring absolute exemption, or

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

#### **Publicly-owned companies**

“(1) A company is a “publicly-owned company” for the purposes of section 3(1)(b) if—

(a) it is wholly owned by the Crown, or

(b) it is wholly owned by any public authority listed in Schedule 1 other than—

- (i) a government department, or
  - (ii) any authority which is listed only in relation to particular information.
- (2) For the purposes of this section—
- (a) a company is wholly owned by the Crown if it has no members except—
    - (i) Ministers of the Crown, government departments or companies wholly owned by the Crown, or
    - (ii) persons acting on behalf of Ministers of the Crown, government departments or companies wholly owned by the Crown, and
  - (b) a company is wholly owned by a public authority other than a government department if it has no members except—
    - (i) that public authority or companies wholly owned by that public authority, or
    - (ii) persons acting on behalf of that public authority or of companies wholly owned by that public authority.
- (3) In this section—
- “company” includes any body corporate;
  - “Minister of the Crown” includes a Northern Ireland Minister.”

### **Personal information**

**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.”

**Section 40(3)** provides that –

“The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-

- (i) any of the data protection principles, or
  - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.”

### **Information provided in confidence**

**Section 41(1)** provides that –

“Information is exempt information if-

- (a) it was obtained by the public authority from any other person (including another public authority), and
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.”

### **Legal Professional Privilege**

**Section 42(1)** provides that –

“Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.”

### **Commercial interests**

**Section 43(2)** provides that –

“Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).”