

General Right of Access .....	2
Effect of Exemptions .....	3
Public Authorities.....	4
Request for Information .....	4
Fees .....	5
Time for Compliance .....	6
Means by which communication can be made .....	7
Exemption where cost of compliance exceeds appropriate limit .....	8
Fees for disclosure where cost of compliance exceeds appropriate limit .....	9
Vexatious or Repeated Requests.....	9
Duty to provide Advice and Assistance .....	10
Refusal of Request.....	10
Publication Schemes .....	12
Information Accessible by other Means.....	13
Information intended for future publication.....	14
Information supplied by or relating to, bodies dealing with security matters .....	14
National Security .....	16
Certificates under ss.23 and 24: supplementary provisions .....	16
Defence .....	17
International Relations .....	17
Relations with the United Kingdom .....	18
The economy. ....	19
Investigations and proceedings conducted by public authorities.....	19
Law enforcement.....	21
Court Records .....	23
Audit functions. ....	24
Parliamentary privilege. ....	25
Formulation of Government Policy .....	25
Prejudice to effective conduct of public affairs. ....	27
Communications with Her Majesty. ....	30
Health and safety. ....	30
Environmental information.....	31
Personal information. ....	31
Information provided in confidence.....	33
Legal Professional Privilege .....	33
Commercial interests. ....	34
Prohibitions on disclosure. ....	34
Issue of code of practice by Secretary of State.....	34
Issue of code of practice by Lord Chancellor .....	35
Application for decision by Commissioner .....	37
Offence of altering etc. records with intent to prevent disclosure .....	38

## **Relevant Statutory Obligations and Provisions under the Act**

### **General Right of Access**

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

"Any person making a request for information to a public authority is entitled -

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him."

#### **Section 1(2) provides that -**

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

#### **Section 1(3) provides that -**

"Where a public authority -

- (a) reasonably requires further information in order to identify and locate the information requested, and
- (b) has informed the applicant of that requirement,

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

#### **Section 1(4) provides that -**

"The information -

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

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

**Section 1(5) provides that –**

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

**Section 1(6) provides that –**

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

**Effect of Exemptions**

**Section 2(1) provides that –**

“Where any provision of Part II states that the duty to confirm or deny does not arise in relation to any information, the effect of the provision is that either –

- (a) the provision confers absolute exemption, or
- (b) 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 public authority holds the information

section 1(1)(a) does not apply.”

**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”

**Section 2(3) provides that –**

“For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption –

- (a) section 21
- (b) section 23

- (c) section 32
- (d) section 34
- (e) section 36 so far as relating to information held by the House of Commons or the House of Lords
- (f) in section 40 –
  - (i) subsection (1), and
  - (ii) subsection (2) so far as relating to cases where the first condition referred to in that subsection is satisfied by virtue of subsection (3)(a)(i) or (b) of that section,
  - (iii) section 41, and
  - (iv) section 44”

## **Public Authorities**

### **Section 3(1) provides that –**

“in this Act “public authority” means –

- (a) subject to section 4(4), any body which, any other person who, or the holder of any office which –
  - (i) is listed in Schedule 1, or
  - (ii) is designated by order under section 5, or
- (b) a publicly-owned company as defined by section 6”

### **Section 3(2) provides that –**

“For the purposes of this Act, information is held by a public authority if –

- (a) it is held by the authority, otherwise than on behalf of another person, or
- (b) it is held by another person on behalf of the authority.”

## **Request for Information**

### **Section 8(1) provides that –**

“In this Act any reference to a “request for information” is a reference to such a request which –

- (a) is in writing,
- (b) states the name of the applicant and an address for correspondence, and
- (c) describes the information requested."

**Section 8(2) provides that –**

"For the purposes of subsection (1)(a), a request is to be treated as made in writing where the text of the request –

- (a) is transmitted by electronic means,
- (b) is received in legible form, and
- (c) is capable of being used for subsequent reference."

**Fees**

**Section 9(1) provides that -**

"A public authority to whom a request for information is made may, within the period for complying with section 1(1), give the applicant a notice in writing (in this Act referred to as a "fees notice") stating that a fee of an amount specified in the notice is to be charged by the authority for complying with section 1(1)."

**Section 9(2) provides that -**

"Where a fees notice has been given to the applicant, the public authority is not obliged to comply with section 1(1) unless the fee is paid within the period of three months beginning with the day on which the fees notice is given to the applicant."

**Section 9(3) provides that -**

"Subject to subsection (5), any fee under this section must be determined by the public authority in accordance with regulations made by the Secretary of State."

**Section 9(4) provides that -**

"Regulations under subsection (3) may, in particular, provide –

- (a) that no fee is to be payable in prescribed cases,
- (b) that any fee is not to exceed such maximum as may be specified in, or determined in accordance with, the regulations, and

(c) that any fee is to be calculated in such manner as may be prescribed by the regulations."

**Section 9(5) provides that -**

"Subsection (3) does not apply where provision is made by or under any enactment as to the fee that may be charged by the public authority for the disclosure of the information."

**Time for Compliance**

**Section 10(1) provides that -**

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

**Section 10(2) provides that -**

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

**Section 10(3) provides that -**

"If, and to the extent that -

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

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

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

**Section 10(4) provides that -**

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

**Section 10(5) provides that -**

"Regulations under subsection (4) may –

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

**Section 10(6) provides that –**

"In this section –

"the date of receipt" means –

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

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

**Means by which communication can be made**

**Section 11(1) provides that –**

"Where, on making his request for information, the applicant expresses a preference for communication by one or more of the following means, namely –

- (a) the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,
- (b) the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and
- (c) the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant.

The public shall so far as is reasonably practicable give effect to that preference."

**Section 11(2) provides that –**

"In determining for the purposes of this section whether it is reasonably practicable to communicate information by a particular means, the public authority may have regard to all the circumstances, including the cost of doing so"

**Section 11(3) provides that –**

“Where a public authority determines that it is not reasonably practicable to comply with any preference expressed by the applicant in making his request, the authority shall notify the applicant of the reasons for its determination”

**Section 11(4) provides that –**

“Subject to subsection (1), a public authority may comply with a request by communicating information by any means which are reasonable in the circumstances.”

**Exemption where cost of compliance exceeds appropriate limit**

**Section 12(1) provides that –**

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

**Section 12(2) provides that –**

“Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.”

**Section 12(3) provides that –**

“In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.”

**Section 12(4) provides that –**

“The secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.”

**Section 12(5) – provides that**



"The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are estimated."

### **Fees for disclosure where cost of compliance exceeds appropriate limit**

#### **Section 13(1) provides that –**

"A public authority may charge for the communication of any information whose communication –

- (a) is not required by section 1(1) because the cost of complying with the request for information exceeds the amount which is the appropriate limit for the purposes of section 12(1) and 12(2), and
- (b) is not otherwise required by law,
- (c) such fee as may be determined by the public authority in accordance with regulations made by Secretary of State."

#### **Section 13(2) provides that –**

"Regulations under this section may, in particular, provide –

- (a) that any fee is not to exceed such maximum as may be specified in, or determined in accordance with, the regulations, and
- (b) that any fee is to be calculated in such a manner as may be prescribed by the regulations."

#### **Section 13(3) provides that –**

"Subsection (1) does not apply where provision is made by or under any enactment as to the fee that may be charged by the public authority for the disclosure of the information."

### **Vexatious or Repeated Requests**

#### **Section 14(1) provides that –**

"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious"

#### **Section 14(2) provides that –**

"Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that

person unless a reasonable interval has elapsed between compliance with a previous request and the making of the current request.”

## **Duty to provide Advice and Assistance**

### **Section 16(1) provides that -**

“It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.”

### **Section 16(2) provides that –**

“Any public authority which, in relation to the provision of advice and assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.

## **Refusal of Request**

### **Section 17(1) provides that -**

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

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

### **Section 17(2) states –**

“Where–

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim–
  - (i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
  - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and

- (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached."

**Section 17(3) provides that -**

"A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

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

**Section 17(4) provides that -**

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

**Section 17(5) provides that -**

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

**Section 17(6) provides that -**

"Subsection (5) does not apply where -

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

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

**Section 17(7) provides that –**

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

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

**Publication Schemes**

**Section 19(1) provides that –**

"It shall be the duty of every public authority –

- (a) to adopt and maintain a scheme which relates to the publication of information by the authority and is approved by the Commissioner (in this Act referred to as a "publication scheme"),
- (b) to publish information in accordance with its publication scheme, and
- (c) from time to time to review its publication scheme."

**Section 19(2) provides that –**

"A publication scheme must –

- (a) specify classes of information which the public authority publishes or intends to publish,
- (b) specify the manner in which information of each class is, or is intended to be, published, and
- (c) specify whether the material is, or is intended to be, available to the public free of charge or on payment."

**Section 19(3) provides that –**

"In adopting or reviewing a publication scheme, a public authority shall have regard to the public interest –

- (a) in allowing public access to information held by the authority, and
- (b) in the publication of reasons for decisions made by the authority."

**Section 19(4) provides that –**

"A public authority shall publish its publication scheme in such manner as it thinks fit."

**Section 19(5) provides that –**

"The Commissioner may, when approving a scheme, provide that his approval is to expire at the end of a specified period."

**Section 19(6) provides that –**

"Where the Commissioner has approved the publication scheme of any public authority, he may at any time give notice to the public authority revoking his approval of the scheme as from the end of the period of six months beginning with the day on which the notice is given."

**Section 19(7) provides that –**

"Where the Commissioner –

- (a) refuses to approve a proposed publication scheme, or
- (b) revokes his approval of publication scheme,
- (c) he must give the public authority a statement of his reasons for doing so."

**Information Accessible by other Means**

**Section 21(1) provides that –**

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

**Section 21(2) provides that –**

"For the purposes of subsection (1)-

- (a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and

- (b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment."

**Section 21(3) provides that –**

"For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme."

**Information intended for future publication**

**Section 22(1) provides that –**

"Information is exempt information if-

- (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),
- (b) the information was already held with a view to such publication at the time when the request for information was made, and
- (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a)."

**Section 22(2) provides that –**

"The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which falls within subsection (1)."

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

**Section 23(1) provides that –**

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

**Section 23(2) provides that –**

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

**Section 23(3) provides that –**

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

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

**Section 23(4) provides that –**

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

**Section 23(5) provides that –**

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

## **National Security**

### **Section 24(1) provides that –**

"Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security."

### **Section 24(2) provides that –**

"The duty to confirm or deny does not arise if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of safeguarding national security."

### **Section 24(3) provides that –**

"A certificate signed by a Minister of the Crown certifying that exemption from section 1(1)(b), or from section 1(1)(a) and (b), is, or at any time was, required for the purpose of safeguarding national security shall, subject to section 60, be conclusive evidence of that fact."

### **Section 24(4) provides that –**

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

## **Certificates under ss.23 and 24: supplementary provisions**

### **Section 25(1) provides that –**

"A document purporting to be a certificate under section 23(2) or 24(3) shall be received in evidence and deemed to be such a certificate unless the contrary is proved."

### **Section 25(2) provides that –**

"A document which purports to be certified by or on behalf of a Minister of the Crown as a true copy of a certificate issued by that Minister under section 23(2) or 24(3) shall in any legal proceedings be evidence (or, in Scotland, sufficient evidence) of that certificate."

### **Section 25(3) provides that –**



"The power conferred by section 23(2) or 24(3) on a Minister of the Crown shall not be exercisable except by a Minister who is a member of the Cabinet or by the Attorney General, the Advocate General for Scotland or the Attorney General for Northern Ireland."

## **Defence**

### **Section 26(1) provides that –**

"Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice–

- (a) the defence of the British Islands or of any colony, or
- (b) the capability, effectiveness or security of any relevant forces."

### **Section 26(2) provides that –**

"In subsection (1)(b) "relevant forces" means–

- (a) the armed forces of the Crown, and
- (b) any forces co-operating with those forces, or any part of any of those forces."

## **International Relations**

### **Section 27(1) provides that –**

"Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice–

- (a) relations between the United Kingdom and any other State,
- (b) relations between the United Kingdom and any international organisation or international court,
- (c) the interests of the United Kingdom abroad, or
- (d) the promotion or protection by the United Kingdom of its interests abroad."

### **Section 27(2) provides that –**

"Information is also exempt information if it is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court."

### **Section 27(3) provides that –**

"For the purposes of this section, any information obtained from a State, organisation or court is confidential at any time while the terms on which it was obtained require it to be held in confidence or while the circumstances in which it was obtained make it reasonable for the State, organisation or court to expect that it will be so held."

**Section 27(4) provides that –**

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

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

**Section 27(5) provides that –**

"In this section-

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

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

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

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

**Relations with the United Kingdom**

**Section 28(1) provides that –**

"Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice relations between any administration in the United Kingdom and any other such administration."

**Section 28(2) provides that –**

"In subsection (1) "administration in the United Kingdom" means-

- (a) the government of the United Kingdom,
- (b) the Scottish Administration,
- (c) the Executive Committee of the Northern Ireland Assembly, or
- (d) the National Assembly for Wales."

**Section 28(3) provides that –**

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

**The economy.**

**Section 29(1) provides that –**

"Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) the economic interests of the United Kingdom or of any part of the United Kingdom, or
- (b) the financial interests of any administration in the United Kingdom, as defined by section 28(2)."

**Section 29(2) provides that –**

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

**Investigations and proceedings conducted by public authorities.**

**Section 30(1) provides that –**

"Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of-

- (a) any investigation which the public authority has a duty to conduct with a view to it being ascertained-
  - (i) whether a person should be charged with an offence, or
  - (ii) whether a person charged with an offence is guilty of it,

- (b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or
- (c) any criminal proceedings which the authority has power to conduct."

**Section 30(2) provides that –**

"Information held by a public authority is exempt information if-

- (a) it was obtained or recorded by the authority for the purposes of its functions relating to-
  - (i) investigations falling within subsection (1)(a) or (b)
  - (ii) criminal proceedings which the authority has power to conduct,
  - (iii) investigations (other than investigations falling within subsection (1)(a) or (b)) which are conducted by the authority for any of the purposes specified in section 31(2) and either by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under any enactment, or
  - (iv) civil proceedings which are brought by or on behalf of the authority and arise out of such investigations, and
- (b) it relates to the obtaining of information from confidential sources."

**Section 30(3) provides that –**

"The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1) or (2)."

**Section 30(4) provides that –**

"In relation to the institution or conduct of criminal proceedings or the power to conduct them, references in subsection (1)(b) or (c) and subsection (2)(a) to the public authority include references-

- (a) to any officer of the authority,
- (b) in the case of a government department other than a Northern Ireland department, to the Minister of the Crown in charge of the department, and

(c) in the case of a Northern Ireland department, to the Northern Ireland Minister in charge of the department."

**Section 30(5) provides that –**

"In this section-

"criminal proceedings" includes-

- (a) proceedings before a court-martial constituted under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 or a disciplinary court constituted under section 52G of the Act of 1957,
- (b) proceedings on dealing summarily with a charge under the Army Act 1955 or the Air Force Act 1955 or on summary trial under the Naval Discipline Act 1957,
- (c) proceedings before a court established by section 83ZA of the Army Act 1955, section 83ZA of the Air Force Act 1955 or section 52FF of the Naval Discipline Act 1957 (summary appeal courts),
- (d) proceedings before the Courts-Martial Appeal Court, and
- (e) proceedings before a Standing Civilian Court;

"offence" includes any offence under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957."

**Section 30(6) provides that –**

"In the application of this section to Scotland-

- (a) in subsection (1)(b), for the words from "a decision" to the end there is substituted "a decision by the authority to make a report to the procurator fiscal for the purpose of enabling him to determine whether criminal proceedings should be instituted",
- (b) in subsections (1)(c) and (2)(a)(ii) for "which the authority has power to conduct" there is substituted "which have been instituted in consequence of a report made by the authority to the procurator fiscal", and
- (c) for any reference to a person being charged with an offence there is substituted a reference to the person being prosecuted for the offence."

**Law enforcement**

**Section 31(1) provides that –**

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

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

**Section 31(2) provides that –**

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

- (a) the purpose of ascertaining whether any person has failed to comply with the law,
- (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,
- (c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,

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

**Section 31(3) provides that –**

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

**Court Records**

**Section 32(1) provides that –**

"Information held by a public authority is exempt information if it is held only by virtue of being contained in-

- (a) any document filed with, or otherwise placed in the custody of, a court for the purposes of proceedings in a particular cause or matter,
- (b) any document served upon, or by, a public authority for the purposes of proceedings in a particular cause or matter, or
- (c) any document created by-
  - (i) a court, or
  - (ii) a member of the administrative staff of a court, for the purposes of proceedings in a particular cause or matter."

**Section 32(2) provides that –**

"Information held by a public authority is exempt information if it is held only by virtue of being contained in-

- (a) any document placed in the custody of a person conducting an inquiry or arbitration, for the purposes of the inquiry or arbitration, or
- (b) any document created by a person conducting an inquiry or arbitration, for the purposes of the inquiry or arbitration."

**Section 32(3) provides that –**

"The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of this section."

**Section 32(4) provides that –**

"In this section-

- (a) "court" includes any tribunal or body exercising the judicial power of the State,
- (b) "proceedings in a particular cause or matter" includes any inquest or post-mortem examination,
- (c) "inquiry" means any inquiry or hearing held under any provision contained in, or made under, an enactment, and
- (d) except in relation to Scotland, "arbitration" means any arbitration to which Part I of the Arbitration Act 1996 applies.

**Audit functions.**

**Section 33(1) provides that –**

"This section applies to any public authority which has functions in relation to-

- (a) the audit of the accounts of other public authorities, or
- (b) the examination of the economy, efficiency and effectiveness with which other public authorities use their resources in discharging their functions."

**Section 33(2) provides that –**



"Information held by a public authority to which this section applies is exempt information if its disclosure would, or would be likely to, prejudice the exercise of any of the authority's functions in relation to any of the matters referred to in subsection (1)."

**Section 33(3) provides that –**

"The duty to confirm or deny does not arise in relation to a public authority to which this section applies if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the exercise of any of the authority's functions in relation to any of the matters referred to in subsection (1)."

**Parliamentary privilege.**

**Section 34(1) provides that –**

"Information is exempt information if exemption from section 1(1)(b) is required for the purpose of avoiding an infringement of the privileges of either House of Parliament."

**Section 34(2) provides that –**

"The duty to confirm or deny does not apply if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of avoiding an infringement of the privileges of either House of Parliament."

**Section 34(3) provides that –**

"A certificate signed by the appropriate authority certifying that exemption from section 1(1)(b), or from section 1(1)(a) and (b), is, or at any time was, required for the purpose of avoiding an infringement of the privileges of either House of Parliament shall be conclusive evidence of that fact."

**Section 34(4) provides that –**

"In subsection (3) "the appropriate authority" means-

(a) in relation to the House of Commons, the Speaker of that House,  
and

(b) in relation to the House of Lords, the Clerk of the Parliaments."

**Formulation of Government Policy**

**Section 35(1) provides that –**

"Information held by a government department or by the National Assembly for Wales is exempt information if it relates to-

- (a) the formulation or development of government policy,
- (b) Ministerial communications,
- (c) the provision of advice by any of the Law Officers or any request or the provision of such advice, or
- (d) the operation of any Ministerial private office."

**Section 35(2) provides that –**

"Once a decision as to government policy has been taken, any statistical information used to provide an informed background to the taking of the decision is not to be regarded-

- (a) for the purposes of subsection (1)(a), as relating to the formulation or development of government policy, or
- (b) for the purposes of subsection (1)(b), as relating to Ministerial communications."

**Section 35(3) provides that –**

"The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1)."

**Section 35(4) provides that –**

"In making any determination required by section 2(1)(b) or (2)(b) in relation to information which is exempt information by virtue of subsection (1)(a), regard shall be had to the particular public interest in the disclosure of factual information which has been used, or is intended to be used, to provide an informed background to decision-taking."

**Section 35(5) provides that –**

"In this section-

"government policy" includes the policy of the Executive Committee of the Northern Ireland Assembly and the policy of the National Assembly for Wales;

"the Law Officers" means the Attorney General, the Solicitor General, the Advocate General for Scotland, the Lord Advocate, the Solicitor General for Scotland and the Attorney General for Northern Ireland;

"Ministerial communications" means any communications-

- (a) between Ministers of the Crown,
- (b) between Northern Ireland Ministers, including Northern Ireland junior Ministers, or
- (c) between Assembly Secretaries, including the Assembly First Secretary, and includes, in particular, proceedings of the Cabinet or of any committee of the Cabinet, proceedings of the Executive Committee of the Northern Ireland Assembly, and proceedings of the executive committee of the National Assembly for Wales;

"Ministerial private office" means any part of a government department which provides personal administrative support to a Minister of the Crown, to a Northern Ireland Minister or a Northern Ireland junior Minister or any part of the administration of the National Assembly for Wales providing personal administrative support to the Assembly First Secretary or an Assembly Secretary;

"Northern Ireland junior Minister" means a member of the Northern Ireland Assembly appointed as a junior Minister under section 19 of the Northern Ireland Act 1998."

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

#### **Section 36(1) provides that –**

"This section applies to-

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

#### **Section 36(2) provides that –**

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

- (a) would, or would be likely to, prejudice-
  - (i) the maintenance of the convention of the collective responsibility of Ministers of the Crown, or
  - (ii) the work of the Executive Committee of the Northern Ireland Assembly, or

- (iii) the work of the executive committee of the National Assembly for Wales,
- (b) would, or would be likely to, inhibit-
  - (i) the free and frank provision of advice, or
  - (ii) the free and frank exchange of views for the purposes of deliberation, or
- (c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

**Section 36(3) provides that –**

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

**Section 36(4) provides that –**

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

**Section 36(5) provides that –**

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

- (a) in relation to information held by a government department in the charge of a Minister of the Crown, means any Minister of the Crown,
- (b) in relation to information held by a Northern Ireland department, means the Northern Ireland Minister in charge of the department,
- (c) in relation to information held by any other government department, means the commissioners or other person in charge of that department,
- (d) in relation to information held by the House of Commons, means the Speaker of that House,
- (e) in relation to information held by the House of Lords, means the Clerk of the Parliaments,

- (f) in relation to information held by the Northern Ireland Assembly, means the Presiding Officer,
- (g) in relation to information held by the National Assembly for Wales, means the Assembly First Secretary,
- (h) in relation to information held by any Welsh public authority other than the Auditor General for Wales, means-
  - (i) the public authority, or
  - (ii) any officer or employee of the authority authorised by the Assembly First Secretary,
- (i) in relation to information held by the National Audit Office, means the Comptroller and Auditor General,
- (j) in relation to information held by the Northern Ireland Audit Office, means the Comptroller and Auditor General for Northern Ireland,
- (k) in relation to information held by the Auditor General for Wales, means the Auditor General for Wales,
- (l) in relation to information held by any Northern Ireland public authority other than the Northern Ireland Audit Office, means-
  - (i) the public authority, or
  - (ii) any officer or employee of the authority authorised by the First Minister and deputy First Minister in Northern Ireland acting jointly,
- (m) in relation to information held by the Greater London Authority, means the Mayor of London,
- (n) in relation to information held by a functional body within the meaning of the Greater London Authority Act 1999, means the chairman of that functional body, and
- (o) in relation to information held by any public authority not falling within any of paragraphs (a) to (n), means-
  - (i) a Minister of the Crown
  - (ii) the public authority, if authorised for the purposes of this section by a Minister of the Crown, or

(iii) any officer or employee of the public authority who is authorised for the purposes of this section by a Minister of the Crown."

**Section 36(6) provides that –**

"Any authorisation for the purposes of this section-

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

**Section 36(7) provides that –**

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

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

**Communications with Her Majesty.**

**Section 37(1) provides that –**

"Information is exempt information if it relates to-

- (a) communications with Her Majesty, with other members of the Royal Family or with the Royal Household, or
- (b) the conferring by the Crown of any honour or dignity."

**Section 37(2) provides that –**

"The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1)."

**Health and safety.**

**Section 38(1) provides that –**

"Information is exempt information if its disclosure under this Act would, or would be likely to-

- (a) endanger the physical or mental health of any individual, or
- (b) endanger the safety of any individual."

**Section 38(2) provides that –**

"The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, have either of the effects mentioned in subsection (1)."

**Environmental information.**

**Section 39(1) provides that –**

"Information is exempt information if the public authority holding it-

- (a) is obliged by regulations under section 74 to make the information available to the public in accordance with the regulations, or
- (b) would be so obliged but for any exemption contained in the regulations."

**Section 39(2) provides that –**

"The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1)."

**Section 39(3) provides that –**

"Subsection (1)(a) does not limit the generality of section 21(1)."

**Personal information.**

**Section 40(1) provides that –**

"Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject."

**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.”

**Section 40(4) provides that –**

“The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).”

**Section 40(5) provides that –**

“The duty to confirm or deny-

- (a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and
- (b) does not arise in relation to other information if or to the extent that either-
  - (i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of the Act were disregarded, or
  - (ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).”



**Section 40(6) provides that –**

"In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded."

**Section 40(7) provides that –**

"In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;

"data subject" has the same meaning as in section 1(1) of that Act;

"personal data" has the same meaning as in section 1(1) of that Act."

**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."

**Section 41(2) provides that –**

"The duty to confirm or deny does not arise if, or to the extent that, the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) constitute an actionable breach of confidence."

**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."

**Section 42(2) provides that –**

"The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) in respect of which such a claim could be maintained in legal proceedings."

### **Commercial interests.**

#### **Section 43(1) provides that –**

"Information is exempt information if it constitutes a trade secret."

#### **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)."

#### **Section 43(3) provides that –**

"The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the interests mentioned in subsection (2)."

### **Prohibitions on disclosure.**

#### **Section 44(1) provides that –**

"Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it-

- (a) is prohibited by or under any enactment,
- (b) is incompatible with any Community obligation, or
- (c) would constitute or be punishable as a contempt of court."

#### **Section 44(2) provides that –**

"The duty to confirm or deny does not arise if the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) fall within any of paragraphs (a) to (c) of subsection (1)."

### **Issue of code of practice by Secretary of State**

#### **Section 45(1) provides that –**

"The Secretary of State shall issue, and may from time to time revise, a code of practice providing guidance to public authorities as to the practice

which it would, in his opinion, be desirable for them to follow in connection with the discharge of the authorities' functions under Part I."

**Section 45(2) provides that –**

"The code of practice must, in particular, include provision relating to –

- (a) the provision of advice and assistance by public authorities to persons who propose to make, or have made, requests for information to them,
- (b) the transfer of requests by one public authority to another public authority by which the information requested is or may be held,
- (c) consultation with persons to whom the information requested relates or persons whose interests are likely to be affected by the disclosure of information,
- (d) the inclusion in contracts entered into by public authorities of terms relating to the disclosure of information, and
- (e) the provision by public authorities of procedures for dealing with complaints about the handling by them of requests for information."

**Section 45(3) provides that –**

"The code may make different provision for different public authorities."

**Section 45(4) provides that –**

"Before issuing or revising any code under this section, the Secretary of State shall consult the Commissioner."

**Section 45(5) provides that –**

"The Secretary of State shall lay before each House of Parliament any code or revised code made under this section."

**Issue of code of practice by Lord Chancellor**

**Section 46(1) provides that –**

"The Lord Chancellor shall issue, and may from time to time revise, a code of practice providing guidance to relevant authorities as to the practice which it would, in his opinion, be desirable for them to follow in connection with the keeping, management and destruction of their records."

**Section 46(2) provides that –**

"For the purpose of facilitating the performance by the Public Records Office, the Public Record Office of Northern Ireland and other public authorities of their function under this Act in relation to records which are public records for the purposes of the Public Records Act 1958 or the Public Records Act (Northern Ireland) 1923, the code may also include guidance as to –

- (a) the practice to be adopted in relation to the transfer of records under section 3(4) of the Public Records Act 1958 or section 3 of the Public Records Act (Northern Ireland) 1923, and
- (b) the practice of reviewing records before they are transferred under those provisions."

**Section 46(3) provides that –**

"In exercising his functions under this section, the Lord Chancellor shall have regard to the public interest in allowing public access to information held by relevant authorities."

**Section 46(4) provides that –**

"The code may make different provision for different relevant authorities."

**Section 46(5) provides that –**

"Before issuing or revising any code under this section the Lord Chancellor shall consult –

- (a) the Secretary of State
- (b) the Commissioner, and
- (c) in relation to Northern Ireland, the appropriate Northern Ireland Minister."

**Section 46(6) provides that –**

"The Lord Chancellor shall lay before each House of Parliament any code or revised code made under this section."

**Section 46(7) provides that –**

"In this section "relevant authority" means –

- (a) any public authority, and
- (b) any office or body which is not a public authority but whose administrative and departmental records are public records for the

purposes of the Public Records Act 1958 or the Public Records Act (Northern Ireland) 1923.”

### **Application for decision by Commissioner**

#### **Section 50(1) provides that -**

“Any person (in this section referred to as “the complainant”) may apply to the Commissioner for a decision whether, in any specified respect, a request for information made by the complainant to a public authority has been dealt with in accordance with the requirements of Part I.”

#### **Section 50(2) provides that -**

“On receiving an application under this section, the Commissioner shall make a decision unless it appears to him-

- (a) that the complainant has not exhausted any complaints procedure which is provided by the public authority in conformity with the code of practice under section 45
- (b) that there has been undue delay in making the application
- (c) that the application is frivolous or vexatious , or
- (d) that the application has been withdrawn or abandoned.”

#### **Section 50(3) provides that -**

“Where the Commissioner has received an application under this section he shall either-

- (a) notify the complainant that he has not made any decision under this section as a result of the application and of his grounds for not doing so, or
- (b) serve notice of his decision (in this Act referred to as a “Decision Notice”) on the complainant and the public authority.”

#### **Section 50(4) provides that -**

“Where the Commissioner decides that a Public Authority-

- (a) has failed to communicate information, or to provide confirmation or denial, in a case where it is required to do so by section 1(1), or
- (b) has failed to comply with any of the requirements of sections 11 and 17,

the decision notice must specify the steps which must be taken by the authority for complying with that requirement and the period within which they must be taken.”

## **Offence of altering etc. records with intent to prevent disclosure**

### **Section 77(1) provides that –**

“Where –

- (a) a request for information has been made to a public authority, and
- (b) under section 1 of this Act or section 7 of the Data Protection Act 1998, the applicant would have been entitled (subject to payment of any fee) to communication of any information in accordance with that section,

any person to whom this subsection applies is guilty of an offence if he alters, defaces, blocks, erases, destroys or conceals any record held by the public authority, with the intention of preventing the disclosure by that authority of all, or any part, of the information to the communication of which the applicant would have been entitled.”

### **Section 77(2) provides that –**

“Subsection (1) applies to the public authority and to any person who is employed by, is an officer of, or is subject to the direction of, the public authority.”

### **Section 77(3) provides that –**

“A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.”

### **Section 77(4) provides that –**

“No proceedings for an offence under this section shall be instituted –

- (a) in England or Wales, except by the Commissioner or by or with the consent of the Director of Public Prosecutions;
- (b) in Northern Ireland, except by the Commissioner or by or with the consent of the Director of Public Prosecutions for Northern Ireland.”