

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 21 October 2010

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

Summary

The complainant made a number of requests to King's College Cambridge, focusing on a number of issues relating to King's College School. The College confirmed that it held some information in its own right, but that this information was exempt from disclosure under sections 36 and 40 of the Act. However, in relation to the majority of the requested information the College informed the complainant that the information was held by the School. It went on to explain that the School was not part of the College, and as it was an independent school it was not subject to the Act. Therefore it was not required to provide copies of this information. After investigating the case the Commissioner decided that for the purposes of the Act the School is part of the College, and therefore the information held by the School was covered by the provisions of the Act. Therefore the Commissioner requires the College to comply with its duties under section 1 in relation to this information. In addition to this, the Commissioner also decided that the remaining information was not exempt under sections 36 and 40. Therefore this information should be disclosed. Finally the Commissioner also decided that the College had not met the requirements of sections 10 or 17.

The Commissioner's Role

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

Background

2. King's College Cambridge (the "College") is one of the Colleges of Cambridge University, and was established by Royal Charter in 1441. One of the requirements of this Charter was that the College educates 16 choristers. The College's website notes that,

"One of our statutory responsibilities is to educate 16 choristers, and for this purpose the College operates King's College School."¹

3. King's College School (the "School") is a fee-paying independent school.² The College and the School are closely linked (which is of primary issue in this case), and the School is often described as an integral part of the College. For example the Independent Schools Inspectorate, in its 2010 Standards Inspection Report, described the School as,

"...an integral part of King's College and the Provost of King's is its chair of governors. The school governors are appointed by King's College and include both a number of King's fellows and those recruited from beyond the college."³

The Request

4. On 13 November 2009 the complainant made a request to the College for a number of pieces of information:
- (i) The Independent School Inspectors' (ISI) letter and Advice Note relating to the school inspection commissioned by the Department for Children, Schools and Families.
 - (ii) The ISI unpublished report referred to in the Provost's letter dated 6 November 2009.
 - (iii) All other correspondence with DCSF relating to the DCSF inspection.
 - (iv) A copy of the Statutory Notice served on the School.

¹ http://www.kings.cam.ac.uk/about/foi/kings-college.html#who_we_are;

²

http://www.kcs.cambs.sch.uk/Groups/10875/Kings_College_School/About_Us/Prospectus/Our_School/Our_School.aspx

³

http://www.kcs.cambs.sch.uk/Groups/35258/Kings_College_School/About_Us/Inspection_Reports/Inspection_Reports.aspx

- (v) Details of who drafted the Provost's letter dated 6 November 2009 and the advice given on the drafting of such letter.
- (vi) The headmaster's manuscript notes of the meeting with inspectors on 18 September 2009.
- (vii) All correspondence and emails (along with supporting papers) between the headmaster, senior management and staff on the matter of the DCSF inspection, including minutes of each and every meeting held to discuss this matter.
- (viii) All correspondence and emails (along with supporting papers) with any Governor on the matter of the DCSF inspection, including minutes of each and every meeting held to discuss this matter.
- (ix) Detailed minutes (along with supporting papers) of all King's School Governor's meetings since May 2008, including minutes of any sub-committee (including the Legal sub-committee).
- (x) Summary of the work that the Provost mentions in his letter of 6 November 2009 that has already been carried out by the headmaster, bursar and legal sub-committee in conjunction with the School's lawyers.
- (xi) The Action Plan or Statutory Action Plan to be agreed with the DCSF.
- (xii) Detailed minutes (along with supporting papers) of all Council meetings since May 2008 relating to the School.
- (xiii) Copies of any correspondence (including emails and supporting papers) between the senior management of King's and the Governors in response to [the complainant's] letters to the Chairman of Governors (on 19 April and 23 October), Kester Cunningham John (25 March 2009) and [named individual] (22 February 2009) in which they repeatedly refer to the systematic failure in procedures (including regulatory failures).
- (xiv) Copy of the King's data protection policy.
- (xv) Copy of the most recent School Information and Self-Evaluation Form (SIEF).
- (xvi) Details of all complaints (formal and informal) which are required to be logged under the ISI complaints regulation and which were made in the 3-year period to November 2009 categorised between the following headings:
 - Complaints against teacher/staff conduct (including use of inappropriate language, conduct & behaviour)
 - Complaints about pastoral care
 - Complaints about senior management
 - Complaints about quality of teaching
 - Complaints about lack of qualification, training, knowledge and skills
 - Complaints about bullying
 - Complaints about school administration

- Complaints about communication with parents
 - Complaints about premises and facilities
- (xvii) No of disciplinary actions taken against staff and senior management over the 3 year period to November 2009 categorised between the following headings:
- Verbal warnings
 - Written warnings
 - Dismissal
5. The complainant contacted the College in an email on 20 November 2009 and made an additional request for:
- (a) Form A. Confirmation that an independent school is causing concern.
 - (b) Would you please also confirm the name of the Proprietor of King's College School.
6. The complainant contacted the College in an email on 24 November 2009 and made an additional request for:
- (a) The name of the solicitors (including the name of the partner) who are advising the School on the new procedures.
 - (b) For each incident of regulatory failure:
 - (i) the name of regulation which the School has failed and the month and year when such regulation was introduced.
 - (ii) the name of the senior management team member at King's who had responsibility for ensuring compliance for such regulation.
 - (c) Details of membership of the Employment Board of the School and copies of all minutes and papers relating to any meetings.
 - (d) Summary details of the [...] teacher that was not CRB checked and who had to leave the School at short notice.
7. The complainant contacted the College via email on 28 November 2009 and made an additional request for:
- (a) Immediately following the Review Panel hearing on 8 December 2008, I gave [the Chair of the Review Panel] a copy of a letter dated 5 December 2008 from a Woodroffes (solicitors). A copy of this letter was also given to the Provost some months later. This letter summarised the findings of an internal investigation carried out at [named School] by its own solicitors and was very revealing in its findings. [The Chair of the Review Panel] indicated to me that he would look into the matter. The request is for copies of all minutes, discussion notes, notes of telephone calls and other written material that shows how the School, [the

Chair of the Review Panel], the Provost and other governors considered the additional material contained in the Woodroffes letter dated 5 December 2008 and the actions that were taken as a consequence.

- (b) Confirmation (with date) that a professional reference [regarding a named teacher] was eventually provided by the principal of [named School].
8. Finally, the complainant contacted the College in an email on 6 December 2009 and made an additional request for:
- (a) Details of each and every ISI course or workshop attended by the Headmaster, Senior Management of the School, and any of its governors during the 12 months to September 2009.
 - (b) The date of appointment of Veale Wasborough as new educational solicitors to the School.
9. The College responded to all these requests in a letter dated 10 December 2009. It confirmed that it held some information relevant to these requests, but that, "most of it, to the extent that the records exist, is held by the King's College School rather than King's College." It went on to explain that as the School was an independent school it was not subject to the Act. Therefore the information held by the School was not addressed any further.
10. In relation to the complainant's request of 13 November 2009 it stated that it did not hold any records in relation to items (i) to (iv), (vi) to (xi), (xiii), and (xv) to (xvii). In relation to item (v) it informed the complainant that the College had no record of who drafted the letter in question. It also provided some limited information about who had an input in the drafting of the letter. In relation to item (xii) it provided the complainant with some information, but stated that some minutes (and their attached papers) were being withheld under sections 36 and 40. Finally, in relation to item (xiv) it informed him that this information was available on its website, and was therefore exempt under section 21.
11. In relation to the first part of the request of 20 November 2009 it informed him that it did not hold this information. In relation to the second part of this request it provided some information to answer this part of the request.
12. In relation to the request of 24 November 2009 it informed him that it did not hold any information in relation to items (b) to (d). In relation to item (a) it informed him that the name of the solicitors was now available to him. It also stated that it did not hold any information in

- relation to how that law firm deployed its partners or solicitors.
13. In relation to the request of 28 November 2009 it informed him that it did not hold any information relating to either part of the request.
 14. In relation to the first part of the request of 6 December 2009 it informed him that it did not hold this information. It provided him with some information in relation to the second part of the request.
 15. The complainant wrote to the College in a letter dated 11 December 2009 and expressed his dissatisfaction at its response. In particular he argued that the School was part of the College, and that therefore the information held by the School fell under the Act, as the College and the School were one and the same. He also argued that as the Provost of the College was also the Chair of the School Governors, "by writing and receiving documents (relating to the School) in the capacity of both Provost and Chair of the School Governors, it must be the case that King's College...holds most of the records that were subject to my FOI request." The Commissioner has interpreted this as a request for an internal review.
 16. Following an exchange of emails the College wrote to the complainant on 11 January 2010. It informed him that it considered that it had complied with the requirements of the Act, and advised him to make a complaint to the Commissioner if he remained unhappy. The Commissioner has commented on the College's failure to carry out a proper internal review in the "other matters" section at the end of this notice.

The Investigation

Scope of the case

17. The complainant contacted the Commissioner on 15 December 2009 to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the College's arguments that information about the School was not subject to the Act.
18. The Commissioner wrote to the complainant on 24 May 2010 and asked whether he was also complaining about the College's use of sections 21, 36 and 40. The complainant responded in an email dated 25 May 2010 and confirmed that he was also complaining about the

College's use of sections 36 and 40. The complainant did not refer to section 21.

19. The Commissioner wrote to the complainant on 3 June 2010 and confirmed that the scope of the case would be to reach a view on whether the information about the School came under the scope of the Act, and also to consider the College's use of sections 36 and 40. He also noted that if the outcome of the investigation was that the information about the School did come under the Act the outcome of the case in relation to this information would be to order the College to comply with the requirements of section 1 of the Act.

Chronology

20. The College wrote to the Commissioner on 5 February 2010 and provided him with a copy of the information it was withholding under sections 36 and 40.
21. The Commissioner wrote to the College on 3 June 2010 and asked it to provide further submissions to support its argument that information held by the School did not come under the scope of the Act. He also asked further questions regarding the relationship between the School and the College, and in relation to the legal status of the School. Finally, he also asked it to provide further submissions to support its use of sections 36 and 40.
22. Following telephone conversations on 11 and 17 June 2010, the College provided a substantive response in a letter dated 16 July 2010.

Analysis

Substantive Procedural Matters

Section 1 - does information held by the School come under the Act?

23. 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.”

The duty placed on a public authority under section 1(1) is subject to the provisions of section 1(2). This states that section 1(1) has effect subject to the provisions of section 1(2) and sections 2, 9, 12 and 14.

The full text of section 1 can be found in the Legal Annex at the end of this Notice.

24. The primary issue in this case is whether information held by the School comes under the scope of the Act by virtue of the School being part of the public authority that is the College. As noted above, if the Commissioner reaches the view that it is, the College will be under a duty to comply with the requirements of section 1.
25. The College has argued that the School is an independent school (within the meaning of section 463 of the Education Act 1996) and as such is not subject to the provisions of the Act. It has argued that although the School has close ties to the College, independent schools in general are not subject to the Act. It has also argued that this was what was intended when the Act was drawn up. It has referred both the complainant and the Commissioner to the Ministry of Justice’s response to the consultation on the designation of additional public authorities, which stated that,

“The Act and the National Curriculum do not apply to private schools. Parents and carers who choose to pay for their child to attend a private school exercise a high degree of choice and control. The Government believed that the law as it currently applies and the disciplines of the market place provide sufficient incentive for fee-paying independent schools to operate in line with the interests of pupils and their parents. It sees no justification at present to bring such schools within the scope of [the Act].”⁴

26. The Commissioner is aware that independent schools are not normally covered by the provisions of the Act. However, in this case this is complicated by the relationship between the College and the School. The College’s argument is that although the School is “an integral part” of the College and despite their close ties, it is still independent from the College for the purposes of the Act, and therefore falls outside the Act’s provisions. It has also argued that the Act applies to the Governing Body of the College, rather than to the College itself, and

⁴ http://www.justice.gov.uk/consultations/docs/consultation-response-_section5.pdf

that information about the School is not held by the Governing Body. The complainant has argued that given the close ties between the College and the School they are, for all intents and purposes, one and the same. Therefore, information held by the School is caught by the provisions of the Act by virtue of the School being part of the College for the purposes of the Act.

27. For the Act to apply to this information, the information has to be held by a public authority, as defined in the Act. In this case, the relevant definition of a 'public authority' is set out in paragraph 53 of Schedule 1 of the Act. This states that the definition of a public authority includes,

“(1) The governing body of –

...

(b) a university receiving financial support under section 65 of the Further and Higher Education Act 1992,

...

(e) any college, school, hall or other institution of a university which falls within paragraph (b).”

In this case the Governing Body of the College is a public authority for the purposes of the Act by way of paragraph 53(1)(e) of Schedule 1.

28. The College has argued that,

“Clearly, the School is not (and is not part of) the College's Governing Body. The question is therefore whether information that the School holds is information that is held “on behalf of” the College's Governing Body [...] or whether it is held on its own behalf.”

The College has gone on to provide substantive arguments as to why the information held by the School is not held on behalf of the College's Governing Body.

29. The Commissioner does not agree with this reasoning, and considers that if information is held by the College for its own purposes, it would also be held by the College's Governing Body. Therefore the fundamental question is whether the School is part of the College for the purposes of the Act. If so, the information held by the School would be held by the College, and the College's Governing Body. Therefore he

has first considered whether the College's Governing Body does hold the information in question by virtue of the School being part of the College.

30. In order to reach a view on this, during the investigation of the complaint the Commissioner asked the College to provide him with further information as to the School's legal status, and asked whether the School is a legal entity in its own right. The College has confirmed that the School has no independent legal personality, and is part of the legal person that is the College.
31. The Commissioner has gone on to consider the status of the Governing Body of the School. In particular he has considered whether, despite the School being a part of the legal person that is the College, the School's Governing Body is, in reality, independent from the College.
32. This is the position of the College. In support of this argument it has stated:

"In principle, the College's Governing Body is ultimately responsible for the School. However, direct line management responsibility for the School lies with the School Governors (of which the [College's] provost is the chairman). Further, under the College's Ordinances, the School Governors report to the College's Council (which has day-to-day responsibility for the College's management) rather than the College's Governing Body. This is also the position in practice: the School Governors report to the Council on their Budget, and the School's Headmaster reports each year to the Council. In neither case is there a report to the Governing Body."

Therefore the College has argued that, although in principle the School's Governing Body is answerable to the College's Governing Body, in reality it reports to the College's Council. This creates a high degree of separation from the College's Governing Body.

33. To emphasise this degree of separation the College has also described the financial position of the School. It has stated that,

"...the School operates a separate budget that is maintained by the School Bursar and agreed – subject to the [College] Council's approval – by the School Governors. Although the School's budget is ultimately incorporated into the College's statutory accounts, the College's financial year is different from the School's financial year, and decisions about the School's budget

are made by the Finance Committee of the School Governors, rather than the College's Council / Governing Body."

However, the Commissioner also notes that the College's Accounts list the School's income as part of the College's Consolidated Income and Expenditure Account.⁵

34. The College has sought to emphasise the separation between the School and itself – a relationship that it has described as "relatively arms-length". In particular it has pointed out that:
- the School's site is separate from the College, and members of the College do not have access to the School;
 - the Headmaster appoints members of the teaching staff, the Bursar appoints non-teaching staff, and both may also engage legal advisors without reference to the College's Council or Governing Body;
 - the School Governors are responsible for School Policies;
 - although the College's Statutes make references to arrangements for the education of the 16 Choristers (see paragraph 2 above), the School's functions extend well beyond the education of the Choristers; and
 - "...records relating to the day-to-day activities of the School are held by the School... Further, there has never been an occasion, within living memory, when the College's Governing Body has asked to see any School documents other than those that have been specifically prepared by the School for submission to the Governing Body."
35. The Commissioner acknowledges that independent schools are not subject to the Act, and he has some sympathy with the College using this as the starting point for its arguments in this case. However, he also notes that the relationship between the College and the School is somewhat unusual, and that therefore the School in this case is (potentially) in a different position to most independent schools.
36. After considering the above submissions at length the Commissioner has noted that, despite the fact that the College is arguing that the School is (for all intents and purposes) independent, it has still had to acknowledge that the College's Governing Body is ultimately responsible for the School.
37. The Commissioner has gone on to consider how independent the School's Governing Body is from that of the College. In the School's

⁵ <http://www.kings.cam.ac.uk/files/about/college-accounts-2009.pdf>

Terms and Conditions he has noticed that in the definitions it states that the School's Governors,

"...means the Governors of the School who are appointed from time to time to be responsible for governance of the School, under the terms of the governing instrument of King's College Cambridge and are directed by the Governing Body of King's College Cambridge."⁶ [Commissioner's emphasis]

38. The Commissioner also notes that the College's Accounts state that,

"The School Governors, of which the Provost is Chairman, are appointed by the College Council and are responsible to Council and, where appropriate, to the Governing Body, for the educational and financial policy, and for the effective administration and staffing of the School."⁷

39. As noted at paragraph 32 above, during the investigation of the case the College has attempted to differentiate between the Governing Body of the College and the College's Council, arguing that the School Governors report to the College's Council rather than the College's Governing Body. In considering this argument the Commissioner has considered the governing instrument of the College, i.e. the College's Statutes and Ordinances 2007 (the "Ordinances"), in order to gain a further insight into the relationship between the Governing Body of the College, the College's Council, and the Governing Body of the School.⁸

40. The Ordinances state that the Governing Body of the College shall consist of the Provost and all the Fellows, other than Visiting Fellows and Honorary Fellows, and four members of the College's students who are in residence, at least one of whom shall be an undergraduate and one a graduate student. It also states that "There shall be held in every academic year a meeting of the Governing Body, to be called the Annual Congregation."

41. The Ordinances go on to state that the College's Council,

"...shall have such authority in relation to the general administration and management of the affairs of the College as shall from time to time be entrusted to it by the Governing Body, and such authority may be withdrawn or modified in like manner.

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http://www.kcs.cambs.sch.uk/Articles/164841/Kings_College_School/About_Us/School_Policies/School_Policies.aspx

⁷ <http://www.kings.cam.ac.uk/files/about/college-accounts-2009.pdf>

⁸ <http://www.kings.cam.ac.uk/sites/default/files/about/statutes-ordnances-2007.pdf>

[Commissioner's emphasis] The Council may, to the extent of the authority so entrusted to it, exercise all powers which by the Statutes are given to the Governing Body by name, but it shall not be authorised to perform any acts which by the Statutes a Congregation is expressly required or empowered to perform."

42. The Ordinances then state that the Council may from time to time establish Council Committees to deal with specific matters of business. The Commissioner notes that one of the Council's Committees listed in the Ordinances is the School's Governors.
43. Finally, he notes that the Ordinances state that, "The arrangements for the governance of the School shall be fixed by Regulation of the Council."
44. Bearing these points in mind the Commissioner is not persuaded that the role of the College's Council in the running of the School creates the degree of separation from the College's Governing Body that has been argued. He believes that there is strong evidence that the Governing Body of the School has only limited independence from the Governing Body of the College or from the College's Council, which he believes acts on behalf of the Governing Body of the College. He also again notes that the School has no legal personality in its own right, but is instead part of the legal person that is the College. Whilst he sympathises with the College's viewpoint that as other independent schools do not fall under the scope of the Act, nor should the School in this case, he has to apply the legislation to the facts of this case. Given the peculiar relationship between the College and the School in this case, the Commissioner believes that despite the position of other independent schools in connection to the Act, in this case the information in question does come under the scope of the Act by virtue of the School being part of the College. Therefore the Commissioner believes that the College should comply with the requirements of section 1 of the Act in relation to this information (as set out at paragraph 23 above).

Exemptions

Section 36

45. In the refusal notice the College accepted that it held some information that fell under the scope of the complainant's requests that was subject to the Act. It stated that it was relying upon section 36(2) to withhold this information as the qualified person considered, "...that the disclosure of these documents would, or would be likely to, inhibit the

free and frank provision of advice, or the free and frank exchange of views for the purposes of deliberation.”

46. During the course of the investigation the Commissioner asked the College to confirm which parts of section 36 it was seeking to rely upon. In response the College confirmed that it was relying upon section 36(2)(b)(ii) to withhold this information.
47. Section 36(2)(b)(ii) states that information to which the section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under the Act would, or would be likely to, inhibit the free and frank exchange of views for the purposes of deliberation. This is a qualified exemption, and is therefore subject to the public interest test.
48. The full text of section 36 is available in the Legal Annex at the end of this Notice.
49. Information can only be exempt under section 36(2)(b)(ii) if, in the reasonable opinion of a qualified person, disclosure would, or would be likely to, lead to the adverse consequences described at paragraph 47 above. In order to establish whether the exemption has been applied correctly the Commissioner must:
 - establish that an opinion was given;
 - ascertain that it was given by a qualified person;
 - ascertain when the opinion was given; and,
 - consider whether the opinion was objectively reasonable and reasonably arrived at.

If the Commissioner decides that the exemption is engaged he must then go on to consider whether the public interest in maintaining the exemption outweighs the public interest in disclosure.

50. During the course of the investigation the Commissioner asked the College for details of the decision taken by the qualified person, in order for him to ascertain that an opinion was given and also that it was given by an appropriate person at an appropriate time.
51. In this case the College has stated that the reasonable opinion was given by the Provost of the College. It has explained that the Provost is the qualified person by virtue of an Order signed by the Parliamentary Undersecretary of State for the Department of Innovation, Universities and Skills, dated 27 July 2007. Therefore the Commissioner is satisfied that the Provost of the College was a qualified person for the purposes of section 36 of the Act.

52. The College has advised that the decision to apply section 36(2)(b)(ii) was made by the qualified person on 9 December 2009. Therefore the Commissioner is also satisfied that the decision to apply this exemption was made at an appropriate time, i.e. at the time when the request was being considered.
53. In reaching a view on whether the qualified person's opinion is a reasonable one the Commissioner has been guided by the views of the Tribunal in *Guardian & Brooke v ICO & the BBC* [EA/2006/0011 & EA/2006/0013]. This found that a qualified person's opinion under section 36 is reasonable if it is both reasonable in substance and reasonably arrived at. It elaborated that the opinion must therefore be "objectively reasonable" and based on good faith and the proper exercise of judgement, and not simply an opinion within a range of reasonable opinions. However, it also accepted that there may (depending on the facts) be room for conflicting opinions, both of which are reasonable. In considering whether an opinion was reasonably arrived at it proposed that the qualified person should only take into account relevant matters and that the process of reaching a reasonable opinion should be supported by evidence, although it also accepted that materials which may assist in the making of a judgement will vary from case to case and that conclusions about the future are necessarily hypothetical.⁹
54. The Commissioner has first considered whether the qualified person's opinion was reasonably arrived at.
55. During the investigation of the case the Commissioner asked the College to provide further details as to how the qualified person's opinion had been obtained. In particular, he asked it to provide a copy of the submissions given to the qualified person in order for them reach their opinion and a copy of the opinion which was subsequently provided. If either the submissions or opinion were not written down he asked the College to describe the nature of the submissions and the opinion itself.
56. The College has confirmed that the qualified person was provided with a copy of the withheld information when they were asked to give their opinion. It noted that the qualified person was not provided with a separate written submission regarding the possible application of this exemption, but was provided with a draft copy of the refusal notice. This, it stated, provided the qualified person with a suitable overview of the issues.

⁹ EA/2006/0011 & EA/2006/0013, paras 60 & 64.

57. The fact that there was no written submission to the qualified person puts the Commissioner in a difficult position when determining whether the qualified person only took into account relevant factors when giving his opinion. The Commissioner believes that this represents a flaw in the process of the application of section 36. However, he has noted that the College has stated that the qualified person was provided with a draft version of the refusal notice, which provides some detail as to why the qualified person believed that section 36(2)(b)(ii) was engaged.
58. The refusal notice clearly addresses all of the complainant's requests (as listed at paragraphs 4 to 8 above), and goes through each of the groups of requests in turn. In addition to this, after examining the withheld information in question, the Commissioner is satisfied that the arguments made in the refusal notice for the application of this exemption (which provided the qualified person with the suitable overview) do relate to that information. Therefore, having considered these factors the Commissioner is satisfied that the qualified person only took into account relevant factors when reaching the decision to apply this exemption. Therefore, he is satisfied that the qualified person's opinion was reasonably arrived at.
59. The next steps for the Commissioner are to consider whether the qualified person's opinion was a reasonable one (i.e. whether it is reasonable in substance) and, if so, whether the public interest in favour of maintaining the exemption outweighs the public interest in disclosure.
60. The College has informed the Commissioner that the qualified person's opinion was not recorded in writing when it was given. This again puts the Commissioner in a difficult position when (in this instance) determining whether the qualified person's opinion is a reasonable one, as it is not entirely clear what his opinion actually was. This has been made more problematic by the evidence that has been provided to the Commissioner. For instance, in the refusal notice the College did not quote which parts of section 36 it was relying upon, although it stated that the qualified person believed that disclosure, "would, or would be likely to, inhibit the free and frank provision of advice or the free and frank exchange of views for the purposes of deliberation." Although not actually referred to by the College, the Commissioner notes that this quotes both sections 36(2)(b)(i) and 36(2)(b)(ii). He also notes that it does not state whether these inhibitory effects would be actual or likely. However, when asked by the Commissioner to clarify its position on the use of section 36 the College informed him that the qualified person only believed that section 36(2)(b)(ii) applied, and that the

inhibition would be likely to happen were the information to be disclosed. Therefore from an initial reading of the refusal notice it would appear that the qualified person had believed that the disclosure would, or would be likely to, cause the inhibitory effects described in sections 36(2)(b)(i) and/or (ii). However, the College has now confirmed that the qualified person actually believed that disclosure would be likely to cause the inhibitory effect described in section 36(2)(b)(ii).

61. Therefore the Commissioner has had some difficulty in determining what the qualified person's opinion actually was. However, as the College has clearly stated (in its submissions to the Commissioner) that the qualified person believed that section 36(2)(b)(ii) applied, the Commissioner has gone on to consider its explanation as to the basis for the qualified person's opinion, under section 36(2)(b)(ii).
62. The withheld information relates to relevant excerpts of minutes from meetings of the College's Council where they had discussed the appointment of School Governors in closed sessions. In addition to the extracts of minutes, the withheld information also contains some related papers that were used in these discussions. The College has argued that disclosure of this information would be likely to undermine trust and confidence among the College's Council members that discussions during "closed" sessions would remain confidential. This would be likely to inhibit the free and frank exchange of views for the purposes of deliberation. This could, in turn, inhibit effective decision making and governance within the College in the future.
63. In addition to this the College has pointed out (albeit in its arguments for the Public Interest Test) that the qualified person had also noted that the College Council meetings that the withheld information related to were relatively recent, and that some of the issues discussed in this withheld information were still live at the time of the request. However, it has not provided any further submissions to support this.
64. In addition to this, the Commissioner has also noted that in the refusal notice the College argued that:
 - Papers are prepared for a closed meeting of the Council in order to encourage those attending the meeting to, "consider the issues and then express themselves freely without fear that their views will come into the public domain."
 - Papers prepared for a closed meeting of the Council are, "also likely to encourage those who are unable to be present at the meeting to understand the matters that were discussed and to contribute their own views in due course. Similar considerations

apply in respect of the minutes that are circulated on a closed basis.”

65. The Commissioner has considered these arguments in relation to the information being withheld under this exemption. Whilst he cannot detail the withheld information, he notes that it appears to be of a relatively high level, and does not record any details of any discussion which occurred at the closed sessions of the College Council. In relation to the College's comment that the meetings were relatively recent, the Commissioner notes that the meetings in question were held in July, October and November 2008 – over 12 months prior to the request being made. He has also noted that the College has not provided any evidence to support its statement that the issues discussed in the withheld information were still live at the time of the request. The Commissioner also believes that the related papers which concern the appointment of individual School governors – whilst containing some personal information – are of a relatively high level. In addition to this the College has not drawn his attention to any part of this withheld information which it believes to be particularly sensitive. Instead, it appears to the Commissioner that in applying this exemption the College does not appear to have considered the actual contents of the information itself.
66. Therefore, having reviewed the withheld information, and in the absence of any specific, reasonable, arguments from the College, the Commissioner is unable to identify how the disclosure of this information would be likely to have the effects suggested.
67. In light of the nature of the withheld information and the lack of any detailed explanation from the College as to how disclosure of the withheld information would have been likely to have had the effects suggested by the qualified person, the Commissioner is not convinced that the qualified person's opinion was a reasonable one. He has therefore found that section 36(2)(b)(ii) is not engaged in relation to information withheld under this exemption.
68. As he has found that this exemption is not engaged the Commissioner has not gone on to consider the public interest test.

Section 40

69. As noted at paragraph 45 above, in the refusal notice the College accepted that it held some information that fell under the scope of the complainant's requests that was subject to the Act. Specifically, this information was relevant excerpts of minutes from meetings of the College's Council where they had discussed the appointment of School

Governors in closed sessions, together with related papers that were used in these discussions.

70. In the refusal notice the College stated that,

“These minutes, and the three papers relating to them, concern the appointment of individual governors of the School and as such they include personal information about third parties.”

It went on to argue that the disclosure of this information would be in breach of the first principle of the Data Protection Act 1998 (the DPA). Therefore, it explained, this information was exempt under section 40(2).

71. Section 40(2) provides an exemption for information which is the personal data of an individual other than the applicant, and where one of the conditions listed in sections 40(3) or 40(4) is satisfied.

72. The full text of section 40 can be found in the Legal Annex at the end of this Notice.

73. Although not stated by the College, the Commissioner believes that the College is relying upon section 40(3)(a)(i).

74. The condition listed at section 40(3)(a)(i) applies where the disclosure of the information to any member of the public would contravene any of the data protection principles. In this case the College has stated that the disclosure of the withheld information would be in breach of the first principle of the DPA.

75. In order to establish whether this exemption has been correctly applied the Commissioner has first looked at whether the withheld information constitutes the personal data of a third party.

76. Section 1 of the DPA defines personal data as data which relate to a living individual, who can be identified:

- from that data, or
- from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.

77. In this case the College has argued that the minutes, and the related papers, contain the personal data of individuals who were in due course appointed as School Governors. In his letter dated 3 June 2010 the Commissioner asked the College to specify whether it was relying upon this exemption to withhold all or only some of the information in

question. However, the College has not clarified this point. Therefore the Commissioner has proceeded on the basis that the College has applied this exemption, on this basis, to all of the information in question.

78. Having considered the withheld information, the Commissioner believes that only some of this information consists of the personal data of these individuals (i.e. individuals who were in due course appointed as School Governors). He has listed the information which he believes to consist of their personal data in the Confidential Annex attached to the end of this Notice.
79. In relation to the remainder of the withheld information, which does not consist of the personal data of these third parties, the Commissioner finds that section 40(2) does not apply.
80. The Commissioner notes that this information does contain references to other individuals (such as the names of College Council members). The College has not referred to this information when providing its arguments to the Commissioner, and its submissions have solely focused on the individuals who were being considered for appointment as a School Governor. Therefore the Commissioner has proceeded on the basis that the College is not seeking to rely upon this exemption in relation to this information. However, if the College were to seek to rely upon this exemption in relation to this information, given the nature of this information the Commissioner would not consider that disclosure would be in breach of the first data protection principle.
81. In relation to the withheld information which is the personal data of individuals who were in due course appointed as School Governors, the Commissioner has gone on to consider whether the disclosure of this information would be in breach of the first principle of the DPA.
82. The first principle provides that:

“Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

 - (a) at least one of the conditions in Schedule 2 is met, and
 - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.”
83. The College has argued that the disclosure of this information would be unfair, and also that none of the conditions in Schedule 2 of the DPA would be met.

84. The Commissioner has first considered whether the disclosure of the withheld information would be fair.

Would it be unfair to disclose the information?

85. In relation to its argument that disclosure would be unfair, the College has stated that although the individuals in question were in due course appointed as School Governors, and although they are identified as such in publicly available sources, the withheld information contains personal data of those individuals which are not in the public domain.
86. It has argued that whilst these individuals would expect that their applications to be appointed as a School Governor would be discussed by the College's Council, they would reasonably expect that such discussions would take place in closed sessions, and that these discussions would not be more widely published or disclosed. The College also pointed out that these individuals were not informed, when applying to be a Governor, that their personal data might be disclosed to third parties.
87. In reaching a view on these arguments the Commissioner has considered them in relation to the withheld information.
88. As noted above, the withheld information consists of extracts from the minutes of closed sessions of the College Council where they discussed the appointment of School Governors, as well as related papers that were used in these discussions.
89. In relation to the excerpts of the minutes of the Council meetings, the Commissioner believes that they are high level and (as noted at paragraph 65 above) do not record any details of any discussion which occurred at these closed sessions. Bearing in mind the contents of the minutes, and that the School publishes the names of its Governors, the Commissioner does not believe that the disclosure of this information would cause any unnecessary interference with the rights, freedoms and legitimate interests of the individuals concerned. Therefore he believes that the disclosure of this information would be fair.
90. In relation to the related papers that were used at the Council meetings, the Commissioner has noted that some of this information is again of a high level nature. Bearing in mind the factual nature of this information, the Commissioner does not believe that the disclosure of this information would cause any unnecessary interference with the rights, freedoms and legitimate interests of these individuals. Therefore he believes that the disclosure of this information would be fair.

91. However, the Commissioner also notes that a limited amount of the information contained in the related papers does show more detailed information relating to the individuals in question. Bearing in mind the nature of this information and the reasonable expectations of the individuals concerned, the Commissioner is satisfied that the disclosure of this information would be unfair, and therefore in breach of the first principle of the DPA. Therefore the Commissioner is satisfied that this information is exempt from disclosure under sections 40(2) and 40(3)(a)(i). The information that he believes should be withheld under this exemption is listed in the Confidential Annex attached to the end of this Notice

Would it be unlawful to disclose the information?

92. In relation to the information which he believes would be fair to disclose, the Commissioner has gone on to consider whether the processing would be lawful. In this case, the Commissioner is not aware of any duty of confidence or statutory bar protecting the information and he is satisfied that the disclosure would not be unlawful.

Schedule 2 conditions

93. In relation to the information which he believes would be fair to disclose, the Commissioner has gone on to consider whether any of the conditions in schedule 2 of the DPA can be met.
94. The Commissioner considers that the most applicable condition in this case is condition 6 which gives a condition for processing personal data where:
- The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.
95. In order to consider whether this condition is met the Commissioner believes that disclosure must satisfy a three part test:
- there must be legitimate interests in disclosing the information,
 - the disclosure must be necessary for a legitimate interest of the public, and

- even where the disclosure is necessary, it nevertheless must not cause unwarranted interference (or prejudice) to the rights, freedoms and legitimate interests of the data subject.
96. The College has argued that the complainant has little legitimate interest in knowing the personal details of the nomination and appointment of School Governors. Therefore, it has argued, that this condition is not met.
97. The Commissioner is not persuaded by this argument. He believes there is a legitimate interest in public authorities being as open and transparent as possible. In addition to this, given the role that School Governors play in the running of schools, the Commissioner believes that the public has a legitimate interest in increasing understanding of the appointment process for these individuals. In addition to this, the Commissioner also believes that the disclosure of this information is necessary for increasing public understanding of the process by which the School Governors are appointed.
98. Having already established that the processing is fair, the Commissioner is also satisfied that the release of the withheld information would not cause any unnecessary interference with the rights, freedoms and legitimate interests of the individuals in question. In reaching this view the Commissioner has again been mindful of the nature of the requested information, and the details of the submissions provided by the College.
99. Therefore the Commissioner is of the view that the disclosure of the withheld information (other than that referred to in paragraph 91 above) would not breach the first principle of the DPA. As such, he is not persuaded that section 40(2) in conjunction 40(3)(a)(i) applies to this information.
100. The exemption listed at section 40(2) and section 40(3)(a)(i) is an absolute exemption, and therefore is not subject to a public interest test.
101. The full text of section 40 can be found in the Legal Annex attached to the end of this Notice.

Procedural Requirements

102. Section 1(1) states 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."

103. Section 1(2) states that:

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

104. Section 10(1) states 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."

105. As the Commissioner has decided that most of the information withheld under sections 36(2)(b)(ii), 40(2) is not exempt from disclosure under any of the exemptions cited by the College, he believes that this information should have been provided to the complainant in line with the duty at section 1(1)(b). The College's failure to do so therefore constitutes a breach of section 1(1)(b). Furthermore, by failing to provide this information within 20 working days of the request the College also breached section 10(1).

106. In relation to the information held by the School, as he has decided that this information is, for the purposes of the Act, held by the College, the Commissioner believes that the College should have complied with the requirements of section 1(1) – subject to the provisions of the sections of the Act listed in section 1(2). The College's failure to do so therefore constitutes a breach of section 1(1). Furthermore, by failing to comply with section 1(1) within 20 working days of the request the College also breached section 10(1).

107. The Commissioner has also considered whether the College has complied with its obligations under section 17(1).

108. Section 17(1) requires a public authority, which is relying upon an exemption in order to withhold requested information, to issue a refusal 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.
109. In the refusal notice the Trust stated that it was relying upon "section 40(2)" and "section 36(2)(b)". However, the College did not fully specify which parts of these exemptions it was seeking to rely upon. For this reason the Commissioner believes that the College did not comply with the requirements of section 17(1)(b).
110. The full texts of sections 1, 10 and 17 can be found in the Legal Annex at the end of this Notice.

The Decision

111. The Commissioner's decision is that the College dealt with the request in accordance with the requirements of the Act in that it correctly relied upon section 40(2) in conjunction with 40(3)(a)(i) to withhold some of the information requested at (xii) of the request dated 13 November 2009.
112. However, the Commissioner has also decided that the College did not deal with the request for information in accordance with the Act in that:
- The College did not deal with the request for information in accordance with section 1(1)(b) insofar as it inappropriately relied upon sections 36(2)(b)(ii), 40(2) in conjunction with 40(3)(a)(i) to withhold some of the information requested at (xii) of the request dated 13 November 2009. In failing to comply with the requirements of section 1(1)(b) within 20 working days it also breached section 10(1).
 - The College did not deal with the request for information in accordance with section 1 in so far as it claimed that it did not hold some of the requested information for the purposes of the Act. In failing to comply with the requirements of section 1 in relation to this information within 20 working days it also breached section 10(1).
 - The College also failed to meet the requirements of section 17(1) in that it failed to fully specify which parts of sections 36(2)(b) and 40(2) it was seeking to rely upon to withhold the requested information.

Steps Required

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113. The Commissioner requires the College to take the following steps to ensure compliance with the Act:

The College should disclose the withheld information (previously withheld under sections 36(2)(b)(ii), 40(2) as set out in the Confidential Annex attached to this Notice.

The College should meet the requirements of section 1(1) in relation to the other requests made by the complainant dated 13 November 2009, 20 November 2009, 24 November 2009, 28 November 2009 and 6 December 2009 (as detailed in paragraphs 4 to 8 above).

114. The College must take the steps required by this Notice within 35 calendar days of the date of this Notice.

Failure to comply

115. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Other matters

116. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.
117. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, i.e. requests for an internal review. In this case the College did not carry out a proper internal review, and instead it merely reiterated its general stance and advised the complainant to make a complaint to the Commissioner. The Commissioner, therefore, advises that the College ensures that future internal reviews are carried out in accordance with the guidelines in the section 45 Code of Practice.
118. The Commissioner notes that there was no written submission to the qualified person vis-à-vis the application of section 36. In addition to this he also notes that no record was kept of the opinion of the

qualified person in relation to the applicability of section 36 to the information that was withheld. He regards it as a matter of good practice that a submission to the qualified person is made in writing, and that a proper record of that submission, and of the resultant opinion of the qualified person, should be kept. He also reminds the College of his guidance note "section 36 – what should be recorded".¹⁰

¹⁰ Section 36 – what should be recorded
http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/section_36_practicalities_v1.pdf

Right of Appeal

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

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

Tel: 0845 600 0877

Fax: 0116 249 4253

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

Website: www.informationtribunal.gov.uk

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

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

Dated the 21st day of October 2010

Signed

Steve Wood
Head of Policy Delivery

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

Legal Annex

Section 1

- (1)** 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.
- (2)** Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.
- (3)** 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.
- (4)** 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.
- (5)** 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).
- (6)** 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”.

Section 10

- (1)** 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.
- (2)** 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.
- (3)** 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.
- (4)** 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.
- (5)** Regulations under subsection (4) may –

 - (a) prescribe different days in relation to different cases, and
 - (b) confer a discretion on the Commissioner.
- (6)** 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.

Section 17

- (1)** 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.
- (2)** 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.
- (3)** 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.
- (4)** 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.
- (5)** 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.
- (6)** 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.
- (7)** 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.

Section 36

- (1)** 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.

- (2)** 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.
- (3)** 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).
- (4)** 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".
- (5)** 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.
- (6)** 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.
- (7)** 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.

Section 40

- (1) 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.
- (2) 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.
- (3) 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.
- (4) 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).
- (5) 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) he 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 that 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).
- (6) 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.
- (7) 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.