Freedom of Information Act 2000 (FOIA)

Decision notice

Date:	**24 August 2021**
Public Authority:	**Public Health England**
Address:	**Wellington House** **133-155 Waterloo Road** **London** **SE1 8UG**

Decision (including any steps ordered)

1. The complainant has requested information about the decision to de-classify COVID-19 as a High Consequence Infectious Disease. Public Health England ("PHE"), provided some information but withheld the remainder, relying on section 36 of the FOIA (prejudice to the effective conduct of public affairs) to do so.

2. The Commissioner's decision is that PHE is not entitled to rely on section 36 in respect of two out of the three documents it has withheld. Where PHE is entitled to rely on section 36, the public interest favours maintaining the exemption. PHE also breached both section 10 and section 17 of the FOIA in responding to the request.

3. The Commissioner requires PHE to take the following steps to ensure compliance with the legislation.

    - Disclose, to the complainant, the documents it has identified to the Commissioner as Annex B and C respectively.

4. PHE must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 22 April 2020 the complainant requested information of the following description:

> *"1. Can you provide all communications (to include meeting minutes, emails, voice calls, documentation, internal and external memoranda, and external communications with government, the DHSE, and the NHS) in relation to the decision to reclassify the 2019 novel coronavirus/SARS-CoV-2/COVID-19 from a HCID, please?*
> *"2. Was this PHE's responsibility and decision?*
> *"3. Why was the decision made?*
> *"4. On what basis was it made?*
> *"5. When was the decision made, and what is your definition of a HCID?*
> *"6. Can you explain the reasoning why in Dec 2019 you continued to class inter alia SARS, MERS and Avian influenzae as HCIDs, but there was a subsequent discontinuation of the 2019 novel coronavirus as a HCID, please?*
> *"8. Why is there not a January 2020 online or any other 2020 edition of you list of Global high consequence infectious disease events monthly updates, please? I gather some update was expected to be provided by PHE in January ? Please could you provide copies of all updates in 2020?*
> *"9. Was or is 2019 novel coronavirus/SARS-CoV-2/COVID-19 a notifiable disease?*
> *"10. Should 2019 novel coronavirus/SARS-CoV-2/COVID-19 be a HCID?*
> *"11. Should 2019 novel coronavirus/SARS-CoV-2/COVID-19 be reclassified as a HCID?*
> *"12. Given the extensive global impact of 2019 novel coronavirus/SARS-CoV-2/COVID-19 as compared with SARS/MERS/Avian Influenzae, why is it not also a HCID?"*

6. On 28 August 2020, PHE responded. It provided information in respect of elements 2-12 of the request but withheld information falling within the scope of element 1. It relied on section 36 of the FOIA to withhold this information.

7. The complainant requested an internal review on 16 September 2020. PHE sent the outcome of its internal review on 19 November 2020. It upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner on 28 November 2020 to complain about the way his request for information had been handled.

9. In line with her usual practice when dealing with cases involving section 36, the Commissioner wrote to PHE on 17 June 2021, asking it to provide a submission as to why the exemption was engaged and also asking for a copy of the Qualified Person's opinion. In its submission to the Commissioner, PHE explained that:

> *"PHE's qualified person under the Freedom of Information Act 2000 (the Act) is the Secretary of State for Health and Social Care (SoS). In this instance, the opinion of the SoS was communicated through informal channels at the time of processing the request that Section 36 was engaged.*
>
> *"Given the unprecedented challenges faced by the SoS and PHE during the COVID-19 pandemic, PHE's view was that it was not proportional to make formal submissions to the SoS for every case in which the Section 36 exemption was applied. Further, PHE notes that the Information Commissioner's Office recognised the challenges faced by organisations during the COVID-19 pandemic and a flexible approach to processing information requests. As a designated Category 1 responder organisation under the Civil Contingency Act, PHE had a central role in the COVID-19 response and had significant burdens on its resources.*
>
> *"PHE applied the Section 36 exemption after informal discussions and sought formal approval as needed. PHE would like to clarify that this approach was used for a limited period during 2020; our standard approach at present is to confirm the opinion of the qualified person prior to sending final responses."*

10. The Commissioner has concerns about this approach from PHE and will comment further under the Other Matters section of this notice. It is not clear from PHE's responses whether the Qualified Person was even aware that this information had been requested, let alone that they had expressed an opinion about the potential consequences of disclosure of its disclosure. PHE's refusal notice (perhaps wisely) did not state what the qualified person's opinion was or which limbs of the exemption they considered to be engaged. Whilst sympathetic to the pressures facing PHE at the time, the Commissioner considers that, because of the exemption's strict reliance on the opinion of the Qualified Person, on the basis of the available evidence, it is likely that PHE had not correctly

engaged the exemption when it issued its refusal notice and was therefore not entitled to rely upon that exemption.

11. However, as part of its preparation for responding to the Commissioner's investigation, PHE sought a formal opinion on the application of section 36 from Ms Jo Churchill MP, Parliamentary Under Secretary of State at the Department of Health.

12. A public authority is entitled to change the exemptions on which it wishes to rely at any time between the point at which it completes its internal review and the point at which the Commissioner issues her decision – and, indeed, beyond that. Whilst the Commissioner does not consider that it is likely that section 36 would have been engaged when PHE issued its refusal notice or when it completed its internal review, she recognises that PHE has, in effect, relied on the exemption late.

13. The Commissioner therefore considers that the scope of her investigation is to determine whether or not PHE was entitled to rely on section 36 of the FOIA to withhold the requested information.

Background

14. The UK maintains a list of High Consequence Infectious Diseases (HCIDs) which gives special status to certain diseases.[1] Patients who have (or are suspected of having) contracted an HCID are required to be isolated from other patients, with specific infection control mechanisms put in place to prevent further spread. Confirmed cases must also be reported to health authorities.

15. There are six criteria for determining whether a new disease should be treated as an HCID. These include its transmission and mortality rates, the challenges of identifying and treating suspected cases and the breadth of response required from health authorities in order to contain its spread effectively.

16. When it first emerged, COVID-19 was initially treated by the UK as an HCID. This was because, in January 2020 (before any confirmed cases in the UK) there was no established, reliable, test for confirming the virus' presence and insufficient data about mortality. The scientific advisors therefore recommended that COVID-19 should be deemed an HCID on a

[1] https://www.gov.uk/guidance/high-consequence-infectious-diseases-hcid

precautionary basis. However, in March, having several tests available to confirm cases and with more reliable data available to indicate a relatively low mortality rate (in comparison to other HCIDs), the scientific advice was that, whilst COVID-19 met some of the HCID criteria, it did not meet all of them and should no longer be regarded as an HCID.

Reasons for decision

Section 36 – Prejudice to the Effective Conduct of Public Affairs

17. Section 36(1) of the FOIA states that this exemption can only apply to information to which section 35 does not apply.

18. Section 36(2) of the FOIA states that information is exempt from disclosure if, in the reasonable opinion of the Qualified Person, disclosure of the information:

> *(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 Cabinet of the Welsh Assembly Government.*
>
> *(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".*

19. Section 36 is a unique exemption within the FOIA in that it relies on a particular individual (the Qualified Person) within the public authority giving an opinion on the likelihood of prejudice occurring. It is not for the Commissioner to stand in the shoes of that individual and provide her own opinion. The Commissioner's role is to: establish that an opinion has been provided by the Qualified Person; to assure herself that that opinion is "reasonable" and; to make a determination as to whether there are public interest considerations which might outweigh any prejudice.

Who is the qualified person and have they given an opinion?

20. PHE provided a submission to the Minister on 3 August 2021, asking her to approve its use of three limbs of the section 36 exemption to withhold the requested information. PHE also provided the Commissioner with a copy of an email from the Minister's office the following day, confirming that she was content to approve.

21. The Commissioner is satisfied that Ms Churchill MP is entitled to act as the Qualified Person for the purposes of section 36 of the FOIA and that she gave her opinion on 4 August 2021.

What was the Qualified Person's opinion and was it reasonable?

22. Whilst it is clearly preferable if the Qualified Person provides their own informed opinion, the Commissioner recognises that many public authorities will frame their submissions to the minister in such a way that the minister is able to give a straightforward "approve" or "disapprove" answer. In such circumstances she takes the Qualified Person as having adopted the contents of the submission as their own opinion.

23. PHE's submission ran to just three and a half pages – one of which was a cover sheet. Of the remainder, more than a page and a half was devoted to setting out the chronology of the request and the requirements of section 36. Once the recommendations to the minister had been laid out (twice) that apparently only left just two paragraphs in which the merits of the exemption could be laid out:

> *"The public interest test needs to be considered on a case by case basis. Both PHE and DHSC recognise that there is public interest in making information available for greater transparency and openness. However, better decision making is supported by PHE staff having a safe space where they can develop ideas, debate the full range of options and reach decisions away from external interference. It is in the public's interest that officials should be free*

to discuss policy options with the knowledge that (when appropriate) the contents of those discussions will remain private.

"Putting this information in the public domain would mean that officials may be impeded from offering full and frank advice in the future potentially resulting in poorer decision making and public services. PHE has laid out the public interest test for case reference 21/04/cs/157 in its original response (see Annex D). Additionally, PHE considers the following factors to support maintaining the exemption:

a. Disclosure may prejudice the effective discussion and engagement of the full range of novel and innovative approaches to a particular issue

b. Premature disclosure may prejudice effective engagement with the full range of stakeholders including public and private sector bodies."

24. Considerations of public interest have no place in a Qualified Person's opinion. The Qualified Person's role is to give an opinion about the likelihood of prejudice occurring. As the first paragraph quoted above clearly relates to the public interest, the Commissioner has disregarded it for the purposes of assessing what the Qualified Person's opinion was and whether it was reasonable.

25. The Commissioner also notes that the submissions recommendation was that the Qualified Person agree that both section 36(2)(b)(i), section 36(2)(b)(ii) and section 36(2)(c) were engaged.

26. As noted above, the Qualified Person's opinion need not be the *most* reasonable opinion available: it need only be within the spectrum of opinions that that a reasonable person might be expected to hold.

27. The Commissioner is also aware that the Upper Tribunal ruled in *Information Commissioner v Malnick & ACOBA* [2018] UKUT 72 (AAC) that an opinion that is reasonable in substance meets the threshold of reasonableness – regardless of whether the process by which it was arrived at was reasonable. An opinion that is reasonable on its face is an opinion that is reasonable – regardless of how that opinion was arrived at.

28. Nevertheless, the opinion, as quoted above, is short and lacking in analysis. Whilst the submission suggests that copies of the withheld information was provided to the Minister, the paragraphs quoted above are generic and make no reference to the particular contents of the information or the particular circumstances of the request.

29. Whilst PHE's submission contained more detailed explanations as to why the prejudice ought to be avoided, these were not in the submission provided to the minister and hence cannot be considered to form part of the Qualified Person's opinion.

30. The withheld information comprises of three documents which PHE dealt with as Annexes A, B and C. Annex A contains several chains of emails within and between PHE and health authorities in Scotland, Wales and Northern Ireland. Annex B contains a letter from the Chair of the Advisory Committee of Dangerous Pathogens (ACDP) to Professor Jonathan Van Tam, the Deputy Chief Medical Officer. Annex C is a document setting out the joint conclusion of the representatives of the four national health authorities on the classification of COVID-19.

31. The Commissioner has first considered whether either of the limbs of section 36(2)(b) is engaged.

32. Section 36(2)(b)'s two limbs protect the ability of officials to discuss issues and provide advice candidly. The Commissioner recognises that officials will sometimes need to discuss unpopular or controversial matters. If officials restrict their advice and discussions to only those matters considered palatable it will result in lower quality advice and lower quality decision-making.

33. Information does not have to notably "free and frank" for the exemption to be engaged – however, the more factual the information, the less likely it is that it's disclosure will deter officials from speaking their minds in future.

34. In relation to Annex A, the emails represent the discussions between the health authorities of the four nations of the UK. Whilst the Commissioner does consider that officials should not easily be dissuaded from giving their opinions, she does recognise that these were emails created at a time when health authorities were under a lot of pressure from the looming pandemic and decisions had to be taken quickly. She does therefore accept that it is not unreasonable to suggest that disclosure of these emails may cause officials to be more circumspect in future. She therefore accepts that the Qualified Person's opinion is reasonable in this respect and therefore both section 36(2)(b)(i) and 36(2)(b)(ii) of the FOIA are engaged in relation to Annex A.

35. However, in respect of Annex B and Annex C, the Commissioner does not accept that the Qualified Person's opinion is reasonable.

36. The ADCP is, as its name suggests, set up to advise the government. The Committee would have no reasonable expectation that the government would treat its advice on such a high profile issue as

confidential. Annex B reflects the settled view of the Committee – not the views of individual members. The Commissioner does not consider it reasonable to suggest that the Committee would be less likely to provide advice in future – or that it would be less likely to inform the government of the outcome of its conclusion.

37. Equally with Annex C, the Commissioner does not accept that the four nations of the UK would stop collaborating if this information is released. The document does not attribute particular views to any individual health authority – rather it is the end product of a discussion.

38. Finally, the Commissioner also notes that, at the time of the request, the following was stated on a government website:

> *"As of 19 March 2020, COVID-19 is no longer considered to be a high consequence infectious disease (HCID) in the UK. There are many diseases which can cause serious illness which are not classified as HCIDs.*
>
> *"The 4 nations public health HCID group made an interim recommendation in January 2020 to classify COVID-19 as an HCID. This was based on consideration of the UK HCID criteria about the virus and the disease with information available during the early stages of the outbreak. Now that more is known about COVID-19, the public health bodies in the UK have reviewed the most up to date information about COVID-19 against the UK HCID criteria. They have determined that several features have now changed; in particular, more information is available about mortality rates (low overall), and there is now greater clinical awareness and a specific and sensitive laboratory test, the availability of which continues to increase.*
>
> *"The Advisory Committee on Dangerous Pathogens (ACDP) is also of the opinion that COVID-19 should no longer be classified as an HCID."*[2]

39. Whilst the Commissioner accepts that the content of the withheld information expands somewhat on these points, she considers that any prejudice to the free and frank provision of advice or discussion is likely to result primarily from the publication of the substance of that advice rather than the withheld information.

[2] https://www.gov.uk/guidance/high-consequence-infectious-diseases-hcid

40. The Qualified Person's Opinion is silent on why any additional prejudice to the candour of advice and discussion would result from disclosure of the withheld information. The Commissioner therefore cannot accept that this aspect of the Qualified Person's opinion is reasonable.

41. The Commissioner does not therefore accept that either section 36(2)(b)(i) and 36(2)(b)(ii) of the FOIA are engaged in relation to either Annex B or Annex C.

42. Finally, the Commissioner has looked at the application of section 36(2)(c) of the FOIA. In order for this limb to be engaged, the public authority must demonstrate that disclosure would "otherwise prejudice the conduct of public affairs." The relevant case law states that "otherwise", in this context, must refer to some sort of prejudice not covered by any other limb of the exemption.

43. The qualified person's opinion refers to the need for "effective engagement" with stakeholders. In its submission, PHE referred to the need for consistent messaging during the pandemic.

44. The Commissioner has accepted, in a recent decision notice,[3] that the government does have a need, during a national emergency, to ensure clear and consistent messaging. Where disclosure undermines that messaging, it can otherwise prejudice the effective conduct of public affairs.

45. However, the Commissioner does not consider that this particular withheld information could reasonably be said to undermine the messaging of the government in general or of PHE in particular.

46. The decision to de-classify COVID-19 was taken in March 2020 and it was announced at that time – alongside the reasoning for the decision. Whilst the withheld information may expand on that reasoning, the Commissioner does not consider that it contains anything that would be likely to contradict or undermine any of the government's messaging. Indeed, the Annex C in particular would be more likely to strengthen the messaging as it expands on why the government had taken the decision that it had. Even Annex A (which contains material which is more discursive) does not contain material which would, in the Commissioner's view, undermine the important public health messaging that was going on at the time. It is therefore not reasonable to suppose

[3] https://ico.org.uk/media/action-weve-taken/decision-notices/2021/2620029/ic-55785-q0y1.pdf

that disclosure of this information would "otherwise" prejudice the effective conduct of public affairs.

47. The Commissioner does not therefore consider that section 36(2)(c) of the FOIA is engaged in relation to any of the withheld information.

Public interest test

48. As the Commissioner has found that the exemption is engaged in relation to two limbs of three, she must consider the balance of the public interest in maintaining those two limbs of the exemption in respect of Annex A.

49. The Qualified Person's opinion does not state whether the higher bar of "would" prejudice or the lower bar of "would be likely to" prejudice was engaged – although PHE's submission indicates that the lower bar was the one being relied upon. Whilst it is easier to demonstrate that disclosure "would be likely to" cause prejudice, this carries less weight in the public interest test.

50. There is always a public interest in transparency and in public authorities being accountable for the decision that they make.

51. The Commissioner has also recognised that the general interest in transparency is amplified in matters relating to the pandemic, the government's preparations for it and the government's handling of it. The government introduced draconian laws aimed at combatting the pandemic. It is not for the Commissioner to judge whether such measures were necessary but she does recognise the importance of public access to information which might help the public decide whether such measures were appropriate – either in their substance or their timing.

52. Set against that, PHE set out several reasons why the public interest ought to favour maintaining the exemption:

> *"Better decision making is supported when officials can develop ideas and debate the full range of options. Other ICO cases have upheld decisions that this ability for free and frank discussion may be impacted by release of information. PHE view [sic] that releasing the requested information would lead to substantial questioning of decisions. At the time of [the complainant]'s request, the public interest was better served by clear, consistent messaging on the understanding of COVID-19 as a disease.*
>
> *"PHE worked hard to maintain public confidence and demonstrate transparency in the COVID-19 response at the time of [the complainant]'s request. PHE participated in regular press briefings*

with government officials to ensure accurate messaging and accountability for decisions. Information specific to the status of COVID-19 as a High Consequence Infectious Disease (HCID) was placed in the public domain...It highlighted that the January 2020 decision was an interim recommendation, and the updated status as of March 2020 was based on a change in knowledge of the disease. This was a clear, easily understandable public message to provide assurance on increasing scientific understanding of COVID-19…

"…PHE acknowledges that further scrutiny will take place during the formal inquiry into the Government's handling of the COVID-19 pandemic response; it is appropriate for material (such as the communications requested by [the complainant]) to be considered with full context and without prejudgement on the outcome of the inquiry."

53. The Upper Tribunal concluded in *Maurizi v Information Commissioner & Crown Prosecution Service* [2019] UKUT 262 (AAC) that the point at which the balance of the public interest must be assessed is the point at which the public authority issues its final refusal of the request – usually when it provides the outcome of its internal review.

54. The Commissioner was not impressed with PHE's reference to the public inquiry as part of its reason for withholding the information. Firstly, that Inquiry, even at the date of this notice, is many months from even beginning its work, let alone completing it. The fact that a public inquiry will, at some point in the future, begin looking at COVID-19 and the government response, does not mean that information relating to COVID-19 cannot be released in the meantime – unless it can be demonstrated that disclosure would affect the Inquiry's ability to go about its task.

55. Furthermore, the Commissioner notes that the Government only announced its intention to establish a public inquiry in May 2021 – some eight months after the request was first refused and six months after PHE provided the outcome of its internal review. She cannot therefore consider this to be a relevant public interest factor at the point at which PHE withheld the information.

56. Turning to broader public interest considerations, the Commissioner does expect that, on a general level, public officials, particular those at higher levels of seniority, should not easily be deterred from providing robust advice – regardless of the possibility of future disclosure. However, each case must turn on its own specific facts.

57. The Commissioner recognises that, at the point the emails contained in Annex A were sent, the four governments of the UK in general and the parts of them dealing with health policy in particular, were under a tremendous pressure due to steadily-rising numbers of infections, hospitalisations and deaths from COVID-19. Decisions that would normally have been deliberated on for weeks had to be taken in a matter of hours – and the fast-moving nature of events is reflected in the information itself. Whilst the information itself does not contain any obviously "frank" observations, the Commissioner does recognise the principle that there is the potential of a "chilling effect" on future discussions and advice if such emails – intended to be private – are placed into the public domain.

58. The Commissioner also considers that, given she is ordering disclosure of Annex B and Annex C, the public interest in also disclosing Annex A is diminished. Much of the information in Annex A is reflected in the other two documents and several of the emails concern the logistics of arranging a meeting or other administrative processes. Therefore the Commissioner takes the view that there is very little in Annex A that would aid public understanding of the decision that had been taken – beyond what is already (or soon will be) in the public domain.

59. The Commissioner therefore considers that the public interest favours maintaining the exemption in respect of Annex A.

Procedural Matters

60. Section 10 of the FOIA states that a public authority must comply with its duty under section 1(1) of the FOIA "promptly and in any event not later than the twentieth working day following the date of receipt."

61. Section 17(1) of the FOIA states that when a public authority wishes to withhold information or to neither confirm nor deny holding information it 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.*

62. PHE received the request in May 2020, but it did not inform the complainant that it held relevant information (or disclose any of it) until August 2020 – some three months later. Furthermore, the

Commissioner does not consider that it correctly refused the request in August 2020 because, on the balance of probabilities, the exemption was not correctly engaged.

63. The Commissioner therefore considers that PHE breached both section 10 and section 17 of the FOIA when responding to the request.

Other matters

Use of section 36 exemption

64. The Commissioner feels obliged to place on record her concerns about the way in which PHE has relied on section 36 in this case.

65. PHE has, rightly, pointed to the incredible strain it was under at the time it received the request. The Commissioner has, within the statutory framework she is subject to, done her utmost to ensure that the right of access to information is upheld in a manner which is pragmatic, reasonable and proportionate to the challenges being faced across the public sector over the last 18 months. Indeed she has applied that pragmatic approach in this case.

66. However, as the Commissioner has noted above, the Qualified Person's opinion is not just incidental to the application of this exemption: it is (apart from cases involving statistical information) the central and defining feature of that exemption. Given the importance placed on the opinion of the Qualified Person by the exemption, it therefore follows that that opinion must have been properly obtained.

67. It was open to Parliament to relax this requirement in order to reduce the burden on the Qualified Person (who is usually one of, if not the most senior official within the public authority) during the pandemic – but it chose not do so. The Commissioner therefore considers that the statute and associated case law remain unchanged. She is thus obliged to apply them as normal.

68. In order to engage the exemption, the Qualified Person must give a reasonable opinion that disclosure of the withheld information would (or would be likely to) prejudice the effective conduct of public affairs. The opinion does not have to be given in writing (even though that is obviously preferable) but a public authority should create some form of permanent record showing what the Qualified Person's opinion was. In this case PHE was not able to provide any records demonstrating what the Qualified Person was told about the request at the time, what they said or even if they were consulted at all. The Qualified Person is not

able to delegate responsibility for providing an opinion to their private office – it must be their opinion and their opinion alone.

69. On the basis of the evidence provided to the Commissioner, it would appear that, not only did PHE not correctly engage section 36 when it originally issued its refusal notice to this request, but that its responses demonstrate that it may have relied on this exemption inappropriately in respect of a number of other requests too.

70. The Commissioner notes that PHE has stated that this policy was only used for a short period last year and that there were exceptional circumstances prevailing. She is not unsympathetic to such arguments – but equally she cannot ignore such practice.

Recording the Qualified Person's opinion

71. The Commissioner notes that even when PHE did obtain a proper opinion from its Qualified Person, that opinion was undermined by a poor submission to the Qualified Person.

72. The submission provided was poor in several respects:

- It failed to provide adequate reasoning as to why each limb of the exemption would be engaged
- It failed to consider the question of likelihood of the identified prejudice occurring (ie. "would" occur or "would be likely to" occur)
- It included public interest considerations – when the Qualified Person's role is to consider the possibility or likelihood of prejudice.

73. The Commissioner would draw attention to her own suggested template for recording the Qualified Person's opinion which sets out the various steps of the exemption and the matters that the Qualified Person must consider.[4]

[4] https://ico.org.uk/media/for-organisations/documents/2260004/record-of-the-qualified-persons-opinion.doc

Right of appeal

74. 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,
    LEICESTER,
    LE1 8DJ

    Tel: 0203 936 8963
    Fax: 0870 739 5836
    Email: grc@justice.gov.uk
    Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

75. 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.

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

Signed .....

Roger Cawthorne
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