

36 Prejudice to effective conduct of public affairs

(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 [1999 c. 29.] 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.

Factors for withholding

- ◆ Allowing/ protecting free and frank discussions
- ◆ Preventing premature disclosure
- ◆ Allowing proper running of the organisation in accordance with established practices
- ◆ Allowing policy makers to take and advisors to give free and frank advice

Factors for disclosure

- ◆ Contribute to public understanding/ debate of matters that affect peoples' lives
- ◆ Openness and transparency in decision making process
- ◆ Scrutiny of actions/ advice of public officials

Reasons why public interest favours withholding information

- ◆ It is the reasonable opinion of the qualified person, the Council's Monitoring Officer, that disclosure of the information recorded by the Council in preparations for the EU Exit would prejudice the effective conduct of public affairs and inhibit the free and frank provision of advice and views for the purposes of deliberation.

Section 36 (2)(b)(i)(ii)

- ◆ It is necessary for public authority staff and others to express themselves openly, honestly and completely, or to explore extreme options when providing advice or giving their views, as part of the process of deliberation.
- ◆ It is important that this 'safe space' is protected and incomplete information is not disclosed to the public during the deliberation process.
- ◆ It would be to the detriment of this process if the information was released prematurely and it would inhibit the provision of frank advice and the process of free and frank discussion between the Council and its partners.

Section 36 (2)(c)

- ◆ Releasing incomplete information in regards to the Council's planning for the EU Exit would be likely to prejudice the effective conduct of public affairs by distracting the Council from the delivery of its public duty, either by diverting resources to deal with resulting requests for action, public concern about proposals, or by prejudicing the work of Government in this area.
- ◆ It is therefore our view that the public interest in withholding recorded information relating to the Council's preparations for the EU Exit outweighs the public interest in supplying it at this time.