

### 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
- ◆ Accountability of the Council for an open and transparent process

**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 TAG and EAG minutes and papers would be likely to prejudice the effective conduct of public affairs and inhibit the free and frank provision of advice and views for the purposes of deliberation. TAG and EAG do not have any decision making powers on behalf of the Council and no decisions are made during such meetings.

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

- ◆ It is necessary for public authority employees and members 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 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 as it would likely inhibit the provision of frank advice and the process of free and frank discussion between the Council and its members.

**Section 36 (2)(c)**

- ◆ Releasing the minutes and papers of internal meetings would be likely to prejudice the effective conduct of public affairs by distracting the Council from the delivery of its public duty.
- ◆ It is therefore our view that the public interest in withholding this information outweighs the public interest in supplying it.

### Regulation 12(4)(e) Internal Communications

**12.** - (1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if –

- (a) an exception to disclosure applies under paragraphs (4) or (5); and
- (b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

(2) A public authority shall apply a presumption in favour of disclosure.

(3) To the extent that the information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with regulation 13.

**(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that -**

- (a) it does not hold that information when an applicant's request is received;
- (b) the request for information is manifestly unreasonable;
- (c) the request for information is formulated in too general a manner and the public authority has complied with regulation 9;
- (d) the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data; or

**(e) the request involves the disclosure of internal communications.**

(5) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect -

- (a) international relations, defence, national security or public safety;
- (b) the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature;
- (c) intellectual property rights;
- (d) the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law;
- (e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest;
- (f) the interests of the person who provided the information where that person -
  - (i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;
  - (ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and
  - (iii) has not consented to its disclosure; or

(g) the protection of the environment to which the information relates.

<i>Factors for withholding</i>	<i>Factors for disclosure</i>
<ul style="list-style-type: none"> <li>◆ Need for space for internal deliberation and decision making processes.</li> <li>◆ Release of the requested information may create a 'chilling effect' on the free and frank exchange of views and ideas in future.</li> <li>◆ Legal precedent for Councils to conduct business in private.</li> </ul>	<ul style="list-style-type: none"> <li>◆ Accountability of the Council for an open and transparent process</li> <li>◆ Contribute to public understanding/ debate of matters that affect peoples' lives</li> <li>◆ Openness and transparency in decision making process</li> <li>◆ Scrutiny of actions/ advice of public officials</li> </ul>

### **Reasons why the public interest favours withholding information**

- The TAG Group is an internal meeting designed to provide advice, scrutiny and challenge to the Executive Portfolio Holder for Highways and Transport and support the development of the Local Transport Plan and any other associated documents.
- The EAG is an internal meeting designed to provide advice, scrutiny and challenge to the Executive Portfolio Holder for Environment and support the development of Environment Strategy and any other associated documents.
- The EAG and TAG do not have any decision making powers and no decisions are made during such meetings on behalf of the Council.
- The information that is recorded at these meetings qualifies as internal communications as it is not disclosed to officers outside of the Council.
- The TAG and EAG Group is a safe space for officers and members develop ideas, debate live issues away from external interference and distraction.
- Disclosure of these internal communications could jeopardise the public authorities' ability to think in private and discuss ideas in a free and frank manner.
- The release of internal communications can create a 'chilling effect' on open discussions and debates and deter officers from being forthcoming with views and ideas.
- It is therefore our view that the public interest in withholding this information outweighs the public interest in supplying it.