



Scottish Information  
Commissioner

## **Decision 090/2007 Mr W and the Scottish Executive**

*Request for copy of emails*

**Applicant: Mr W**  
**Authority: Scottish Executive**  
**Case No: 200503029**  
**Decision Date: 25 July 2007**

**Kevin Dunion**  
**Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews  
Fife  
KY16 9DS



## Decision 090/2007 – Mr W and the Scottish Executive

***Request for emails held by an officer in the Scottish Executive Justice Department – several exemptions applied – Commissioner upheld withholding of information in part***

### Relevant Statutory Provisions and other Sources

---

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 2 (Effect of exemptions); 8(1) (Requesting information); 28 (Relations within the United Kingdom); 30(b) (Prejudice to effective conduct of public affairs); 36(1) (Confidentiality); section 38(1)(b) (personal information).

Data Protection Act 1998 (the DPA) sections 1(1) (Basic interpretative provisions); 2 (Sensitive personal data); Schedule 1 (The data protection principles: the first principle).

The full text of each of these provisions is reproduced in Appendix 1 to this decision. Appendix 1 forms part of this decision.

### Facts

---

Mr W requested a copy of all emails on all matters sent to and received by an officer of the Scottish Executive (the Executive) between specified dates. The Executive supplied some emails but withheld others, citing sections 25, 28, 30(b), 36(1) and 38(1)(b) of FOISA, upholding this decision on review.

After an investigation, the Commissioner found that the Executive had dealt with some aspects of Mr W's request for information in accordance with Part 1 of FOISA, but that some information had been incorrectly withheld under sections 28 and 30(b) of FOISA. He required the Executive to release the information detailed in Appendix 2 to this decision.



## Background

---

1. On 19 August 2005 Mr W requested a printed copy of all emails sent to and from an officer of the Executive's Justice Department from and including 5 May 2005 to 17 August 2005.
2. On 29 August 2005 the Executive responded, seeking to clarify the request and to establish whether all emails were required or only those relating to the applicant.
3. On 31 August 2005 Mr W responded clarifying that he required a printed copy of all emails on all matters sent to and received by the officer from and including the dates 5 May 2005 to 17 August 2005.
4. On 28 September 2005 the Executive responded claiming exemptions under sections 30(b)(i) and (ii), 38(1)(a) and 38(1)(b) of FOISA. However, as the information refused under section 38(1)(a) (personal data of which the applicant is the data subject) could be provided through a subject access request under the Data Protection Act 1998, this information was released to Mr W.
5. On 30 September 2005 Mr W wrote to the Executive and requested a review of the decision to withhold the remaining emails.
6. On 27 October 2005 the Executive responded, upholding the original decision and adding a further exemption under section 36(1) of FOISA. This review clarified that 160 emails had been considered. Of these, 101 were deemed to contain personal information and were exempted under section 38(1)(b) of FOISA. 25 emails were deemed to concern the free and frank provision of advice and exchange of views, and therefore were considered exempt under section 30(b)(i) and (ii) of FOISA. 4 emails were deemed to contain advice from legal advisers and were exempted under section 36(1) of FOISA. 2 emails were deemed otherwise accessible and exempted under section 25(1) of FOISA. The remaining 29 emails had already been released to the applicant (see paragraph 4 above).
7. On 31 October 2005 Mr W applied to the Scottish Information Commissioner for a decision as to whether the Executive had dealt with his information request in accordance with FOISA.
8. The case was allocated to an investigating officer. Mr W's application was validated by establishing that he had made a valid information request to a Scottish public authority and had applied to the Commissioner for a decision only after asking the public authority to review its response to his request.



## The Investigation

---

9. My investigating officer contacted the Executive in terms of section 49(3)(a) of FOISA for its comments on the application and for further information in relation to this case, in particular the information requested by Mr W. The Executive responded on 13 December 2005.

### Submissions from the Executive

10. The Executive began its response of 13 December 2005 by stating that it now considered the applicant's request to be vexatious.
11. The Executive also stated that it now did not consider the request to be valid in terms of section 8(1)(c) of FOISA.
12. The Executive provided a copy of all 160 emails, a commentary on how the exemptions quoted applied to each email and an explanation of the public interest and harm issues they had considered in deciding whether to release the information or maintain exemptions.
13. An abbreviated schedule numbering and dating the emails and citing the exemptions claimed appears in Appendix 2, which forms part of this decision.
14. The Executive provided me with a further submission, setting out its revised general approach to the exemptions in section 30(b), with a letter of 2 May 2007.

### Submissions for the applicant

15. The applicant stated his belief that the exemptions applied to the emails constituted a device to deny him access to material which could aid him. He accepted the Executive's application of section 25(1) of FOISA (Information otherwise accessible) to two documents – emails containing published opinions from Scottish courts, available via the Scottish Court Service website.
16. I shall consider the submissions of both parties in greater detail in my analysis and findings below.



## The Commissioner's Analysis and Findings

---

17. As the applicant has already received 29 emails and has accepted that another 2 are otherwise accessible to him and therefore exempt under section 25(1) of FOISA, this investigation will concentrate on the exemptions applied to the remaining 129.
18. As the Executive has stated that only one exemption applies to each email, I will consider each exemption in turn. Firstly, however, I need to consider the Executive's assertions that the request was either invalid or vexatious.

### Was the request valid in terms of section 8(1)(c) of FOISA?

19. The Executive claimed that the request was not valid in terms of section 8(1)(c) of FOISA in that the request did not describe the information required but instead identified a class or category of information (i.e. all emails to and from the officer specified by Mr W).
20. There appears to be two issues for consideration in this instance:-
  - 1) the definition and scope of the word "information" and whether this should be taken to mean a general class of information (e.g. email) or specific items within a class (e.g. emails relating to extradition).
  - 2) Is describing a class or category of "information" sufficient for the request for that class or category still to be a valid request for information in terms of section 8(1)(c) of FOISA.

#### **Issue 1 – definition of the word "information"**

21. Section 73 of FOISA interprets "information" for the purposes of FOISA as "information recorded in any form". While this provides an interpretation of the word for the purposes of FOISA, it does not provide a useful definition of what word "information" might include.
22. The definition of "information" has been discussed in relation to the UK Freedom of Information Act 2000 (MacDonald, J. & Jones, C.H.: *The Law of Freedom of Information*, Oxford UP, 2003, p.112-113) and in parliamentary debate (*Hansard* HC, 4 April 2000, col.909) but again, with nothing defining "information" for the purposes of the legislation any more specifically than section 73 of FOISA.
23. However, the Oxford Dictionary of Current English defines "information" as "knowledge" or "items of knowledge". Other standard dictionaries contain similar definitions.



24. Clearly, emails are part of the category “items of knowledge” and are therefore information.
25. In my view the definition of “information” may include categories of information as well as specific items within a category. Therefore in the present case the category - emails - should be considered to be information.

***Issue 2 – is describing a class or category of information sufficient for FOISA?***

26. Turning to the second issue, it may be appropriate here to discuss the purpose of section 8(1)(c) of FOISA. The Justice 1 Committee of the Scottish Parliament provides useful insight into interpreting the purpose of section 8 of FOISA.
27. In the Committee’s submissions on the Bill which became FOISA, it was stated that “... the system should be straightforward, user-friendly and open to all. At the same time... it has to be efficient and workable from the point of view of those who are providing the information.” (*Scottish Parliament Official Report*, Justice 1 Committee, Tuesday 5 February 2002. Col. 3184.)
28. This is borne out in other guidance in relation to the UK FOI Act where it is stated that the requirement to describe the information requested “...is clearly imposed to allow a public authority to identify the specific information sought by the applicant amongst a potentially huge volume of information.” (Wadham, J. & Griffiths, J: *Blackstone’s Guide to the Freedom of Information Act 2000* (2<sup>nd</sup> Ed), Oxford UP, 2005, p.46.)
29. Further, it has been argued that the right to obtain access to information is what is established by the legislation, rather than access to the document or record itself. This means that the request should describe the information as opposed to a document or other form of record. The public authority cannot restrict access to a particular document referred to in the request (McDonald & Jones, 2003. p.113)
30. In my view, having taken all these comments into account, section 8 of FOISA is a mechanism whereby the authority is provided with: a permanent record of the request; a name and place to seek clarification (if required) and send the information and, most appropriately in this case, useful identifiers in order to locate and retrieve the information requested. It does not in my opinion serve as a semantic test that must be satisfied in order to access information.
31. Mr W’s description of the information he required was clear - all emails to and from a named officer of the Executive’s Justice Department between 5 May 2005 and 17 August 2005. Combined, this describes the “recorded items of knowledge”, i.e. the information, the applicant required.



32. In my view, this is a request for information in which the information is sufficiently described in order for the authority to identify and retrieve it.
33. That the Executive was able to identify, retrieve, examine and exempt some 160 emails would appear to vindicate the view that the applicant described the information with enough precision in order for the request to be processed.
34. I am satisfied that Mr W provided a description of the information he required in order for the Executive to locate and retrieve that information and that this was in accordance with section 8(1)(c) of FOISA.

#### **Section 14 of FOISA – vexatious or repeated requests**

35. In its submission the Executive stated that it considered the applicant's request to be vexatious. The Executive claimed that the request had no serious purpose or value (and therefore was manifestly unreasonable) and that it was designed to cause disruption or annoyance.
36. There is no definition of "vexatious" contained in FOISA. However, paragraphs 23 and 24 of the Scottish Ministers' Code of Practice on the Discharge of Functions by Public Authorities under the Freedom of Information (Scotland) Act 2002 (the Code) provide some guidance to public authorities on what the term means. In addition, the Information Commissioner has produced guidance (Freedom of Information Act Guidance No 22: Vexatious and Repeated Requests) for public authorities dealing with analogous situations for the purposes of the Freedom of Information Act 2000 and this was quoted by the Executive in support of its assertions in relation to this request. I agree that the points advanced by the Executive may be relevant in determining whether a request is vexatious.
37. The Executive has implied that there was some ulterior motive to the applicant's request. It has, however, provided no substantive evidence for the propositions that the request had no serious purpose or value and was designed simply to cause disruption or annoyance. There is certainly no evidence advanced to establish that it did cause disruption or annoyance. The Executive simply stated that it felt this to be the case and that it might be inferred from the fact that Mr W had described simply a class or category of information.
38. I can understand why in some circumstances this type of request could be thought to be vexatious. However in this case I can find no evidence in the correspondence supplied to me by either the Executive or the applicant that would provide substance to the claims that the applicant's request had no serious purpose of value, or that it was designed to cause disruption or annoyance. Indeed, in his submissions to me the applicant has set out substantive reasons for requiring the information requested, which are not on the face of them vexatious.



39. I do not accept the Executive's assertion that the request was vexatious.

### **Section 28 of FOISA – relations within the United Kingdom**

40. Section 28 of the Act provides that information may be withheld if its disclosure would, or would be likely to, prejudice substantially relations between any administration in the United Kingdom and any other such administration. The relevant administrations for the purposes of this section are the Government of the United Kingdom and the three devolved administrations within the UK.
41. The Executive has submitted that the release of this information would be damaging as its disclosure would have an effect on the principle of good communication between various administrations, where the exchange of views and information helps understanding of common issues and problems.
42. The two documents exempted under this section (emails 129 and 139) contain attached reports from the Parole Board (for England and Wales), forwarded to the Scottish Executive Justice Department by the Parole Board for Scotland's Secretariat. The reports relate to Judicial Reviews of Parole Board decisions in England and Wales
43. The Parole Board (PB) and the Parole Board for Scotland (PBS) are both independent public bodies. Neither is part of any administration in the United Kingdom for the purposes of section 28. It has not been explained to me, nor do I understand, how the release of information generated by one of those bodies for its own purposes and then shared with the other, even if that information happened to have been further shared with one or more of the UK administrations, would affect relations between administrations, never mind prejudice those relations substantially.
44. The information in question concerns the policy and operations of the Parole Board as they may be affected by certain judicial review cases. It says nothing about the policy or operations of any administration covered by section 28, or about relations between them. It may be of interest to the Executive (which is part of the Scottish Administration), and for that matter to the Government of the United Kingdom, but there is a world of difference between two of the administrations sharing a common interest in information generated elsewhere and the release of that information causing, or being likely to cause, substantial prejudice to relations between them. I do not accept that the necessary connection between release and substantial prejudice to relations has been made by the Executive, or for that matter that it can be.





45. In the circumstances, I do not accept that relations between the administrations in the United Kingdom would be prejudiced substantially were emails no 129 and 139 to be released. Therefore I do not consider that the exemption in section 28 of FOISA applies to the information in them. Therefore, I need not consider whether the public interest in maintaining the exemption outweighs that in disclosure.

### **Section 30 of FOISA – prejudice to effective conduct of public affairs**

46. The Executive has claimed that the information contained in 25 emails is exempt under section 30(b)(i) and (ii) as its release would inhibit substantially the free and frank provision of advice and the free and frank exchange of views for the purposes of deliberation.
47. Generally, information withheld under section 30(b) will require to be either an exchange of views (section 30(b)(ii)) or the provision of advice (section 30(b)(i)). In all cases, the authority must demonstrate that future practice in (as the case may be) the exchange of views or the provision of advice would be substantially inhibited by disclosure.
48. Given the harm test contained in these exemptions (“inhibit substantially”), the standard to be met in applying the test in sections 30(b)(i) and (ii) of FOISA is high. When considering the application of the exemptions in section 30(b) of FOISA, each request should be considered on a case by case basis, taking into account the effects anticipated from the release of the particular information involved. This is likely to involve consideration of:
- the subject matter of the advice or exchange of views;
  - the content of the advice or exchange of views;
  - the manner in which the advice or exchange of views is expressed;
  - whether the timing of release would have any bearing (releasing advice or views whilst a decision was being considered, and for which further views were still being sought, might be more substantially inhibiting than once a decision had been taken)
49. The Executive stated that the emails under consideration related to sensitive information and that officers should be free to provide and receive advice, comment and engage in deliberation without the disclosure of such information. Given the nature of the request, it focused in particular on the perceived inhibiting effect on the officer whose emails were requested.



50. The Executive asserted that some of the emails contained advice provided to the Justice Minister and that there would be real harm were Ministers unable to seek and receive the candid advice of officials within a secure environment in which to develop their thinking and explore options.
51. I do not accept that simply because information is prepared, received or commented on by public officials or Ministers that it is *a priori* exempt information. Neither can I accept the automatic presumption that harm will be caused by the release of information relating to the release of this type of information. While I have considered the arguments put forward in this regard by the Executive with its letter of 2 May 2007, my views on the Executive's revised position on section 30(b) are set out fully in Decision 089/2007 (Mr James Cannell and the Scottish Executive) and I do not consider it necessary to add anything in relation to these arguments in this particular decision.

***Consideration of emails 79; 141; 142 and 155***

52. I am not persuaded that the exemptions in section 30(b) of FOISA apply to emails 79; 141; 142 and 155.
53. These emails provide little by way of detail and do not appear to contain forthright expressions of advice or opinion. The content of the emails is often general in nature: in one example it consists solely of the expression "Some minor suggestions attached" (email 79.) On one occasion (email 141), the emails itself consists merely the header, detailing nothing more than that one official forwarded an email (email 142) to another official on a certain date and time. Email 142 is of rather more substance but relates simply to statistical information that I cannot regard as being capable of having the requisite inhibiting effect, even at the time it was produced. Email 155 merely suggests the holding of a meeting: the meeting may have been of some importance, but I cannot see how the email itself would be capable of engaging either exemption.
54. In all the circumstances, I am not persuaded by either the content or context of this information or by the Executive's submissions to persuade me that their disclosure could be expected to have an inhibiting effect on similar future exchanges, or on the accurate recording and transmission of similar records in the future.
55. Given that I do not accept that these emails qualify for the exemption under section 30(b) of FOSIA, I am not required to consider whether the public interest lies in maintaining the exemption or releasing the information.



***Consideration of emails 37; 52; 53; 54; 67; 68; 69; 70; 76; 77; 78; 80; 121; 133; 146; 154; 156; 157; 158; 159 and 160***

56. The Executive has submitted that the information contained in a substantial number of these emails relates to discussions on the possible amendment to the Extradition Act 2003. Others relate to the drafting of circulars and other matters of common interest to the Justice Department and the Scottish Prison Service, or to the provision of advice to the Justice Minister. To some extent, the information relates to individual cases.
57. In this case, I accept the Executive's argument that the topics these emails cover are sensitive and require candour and the forthright expression of views and that, on balance, future exchanges on these or similar matters, in similar circumstances, would be materially affected by disclosure, being likely to become more reticent, less encompassing of the issues and less widely shared.
58. Further, it appears to me that the matters addressed in these emails were still under active consideration at the time the Executive dealt with Mr W's request. I accept that timing will be of particular relevance in the majority of cases, and that in general it is less likely to be appropriate for information relating to sensitive matters such as were under consideration here to be disclosed while deliberation on them is still ongoing.
59. Having considered the information contained in emails 37; 52; 53; 54; 67; 68; 69; 70; 76; 77; 78; 80; 121; 133; 146; 154; 156; 157; 158; 159 and 160 (and their attachments), I am prepared to accept that the exemptions in section 30(b) (i) and (ii) apply to that information.

***The public interest***

60. Given that I accept that the information contained in the emails listed in paragraph 59 above qualifies for exemption under section 30(b)(i) and (ii) of FOISA, I must now consider the public interest.
61. The exemptions in section 30(b) are qualified and are therefore subject to the public interest test contained in section 2(1)(b) of FOISA. Even when a public authority finds that this exemption applies to the information requested, they must go on to consider whether, in all the circumstances of the case, the public interest in disclosing the information is outweighed by the public interest in maintaining the exemption. If the two are evenly balanced, the presumption should always be in favour of disclosure.



62. There is always a general public interest in making information held by public authorities accessible, to enhance scrutiny of decision making and thereby improve accountability and participation. It is difficult, however, in this particular case, to identify a more particular public interest in the release of the information in these emails, as opposed to any personal interest the applicant may have in them.
63. The Executive has argued that, given the breadth of the request and the relatively short period covered by it, the information supplied would provide only a very brief snapshot of the discussions being undertaken in this area. Disclosure, the Executive argues, would not have been in the public interest as it would not have added to public understanding of the issues being discussed or appreciation of the processes involved.
64. I accept the Executive's position in the circumstances of this particular case and therefore am not persuaded that release would have provided a coherent view or understanding of what, if any, position the Executive had taken on the matters under consideration, or how any proposals under consideration would impact on other policy areas or legislation. I have always accepted as a general proposition, as the Executive has also argued here, that Ministers and officials need a secure environment in which to develop their thinking and explore options on sensitive questions of policy, without fear of disclosure at a time when it could still compromise that process. In the circumstances of this case, having considered the public interest both in disclosure and in the information being withheld, it appears to me that the stronger public interest favours the maintenance of that secure environment and therefore the maintenance of the exemption.
65. I am therefore satisfied that, on balance, the public interest in disclosing emails 37; 52; 53; 54; 67; 68; 69; 70; 76; 77; 78; 80; 121; 133; 146; 154; 156; 157; 158; 159 and 160 (and their attachments) is outweighed by the public interest in maintaining the exemptions under section 30(b)(i) and (ii), and consequently accept that the Executive was correct to apply those exemptions to the information in the emails.

### **Section 36 of FOISA – confidentiality**

66. There are four emails, 33, 51, 73 and 79, considered by the Executive to be exempt under section 36(1) of FOISA.
67. Section 36(1) provides that information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings is exempt information. One type of communication covered by this exemption is communications between a legal adviser (including an in-house legal adviser) and his/her client. For the exemption to apply to this particular type of communication, certain conditions must be fulfilled.



68. Firstly, the information being withheld must relate to communications with a legal adviser. In this case the information withheld is the communicated legal advice to the Executive (as client).
69. Secondly, the legal adviser must be acting in his/her professional capacity and the communications must occur in the context of his/her professional relationship with his/her client.
70. In this case the legal adviser is the Office of the Solicitor to the Scottish Executive (OSSE) giving legal advice on various issues. These comprise professional legal advice within a relationship where the legal adviser has been asked to provide an opinion in his/her professional capacity to a client (the Executive).
71. I am satisfied that the information in these four emails is information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings. As a result these emails would be covered by the exemption contained in section 36(1) of FOISA.

***Public interest***

72. Section 36(1) is a qualified exemption and is subject to the public interest test contained in section 2(1) (b) of FOISA. Therefore, even where an authority considers the information to be exempt it must still go on to consider whether, in all the circumstances of the case, the public interest in disclosing the information is outweighed by the public interest in maintaining the exemption.
73. In Decision 023/2005 and subsequent decision in relation to this exemption, I concluded that there would always be a strong public interest in maintaining the right to confidentiality of communications between legal adviser and client. As a result, while I will consider each case on an individual basis, I am likely only to order the release of such communications in highly compelling cases.
74. Having considered all submissions in this matter I am of the view that in this case there is no public interest in disclosure sufficiently strong to outweigh the public interest in maintaining confidentiality of communications. Consequently, I am satisfied that on this occasion the Executive correctly applied the public interest test in withholding emails 33, 51, 73 and 79 and that this information is exempt by virtue of section 36(1) of FOISA.



## Section 38 of FOISA – personal information

75. The exemption under section 38 relates to personal information. Section 38(1)(b) of FOISA, read in conjunction with section 38(2)(a)(i) (or, as appropriate, section 38(2)(b)), exempts information if it constitutes personal data, the disclosure of which to a member of the public otherwise than under FOISA would contravene any of the data protection principles in Schedule 1 to the DPA. This particular exemption is an absolute exemption. Therefore, where a public authority considers that information falls within the scope of this exemption it is not required to consider the public interest in relation to the information.
76. The emails in question relate to Parole Board tribunals and related matters, mentioning specific prisoners and other individuals (including Scottish Executive officials, Parole Board for Scotland members and secretariat staff, and other consultant specialists, for example clinical psychologists) by name.
77. Given the definition of personal data contained in section 1(1) of the DPA (see the Appendix below), I am satisfied that each email in this group has a particular identifiable prisoner as its focus, containing information which is biographical in relation to each prisoner and would in some way or other affect that prisoner's privacy, and consequently that all the information in this group is the personal data of the prisoners concerned.
78. Insofar as the information in this group relates to the health of the individuals concerned, the offences they committed or the sentences they are serving, it is also sensitive personal data within the meaning of section 2 of the DPA.
79. The Executive states that disclosure of this information would breach the first data protection principle. The first data protection principle states that personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in Schedule 2 of the DPA is met. If the data is sensitive personal data as defined by section 2 of the DPA, one of the conditions in Schedule 3 also requires to be met. The Executive have argued that it would be unfair to release personal data about the individuals concerned, given that those individuals would not expect their personal data to be placed into the public domain.
80. In the circumstances, I accept that the individuals concerned would have had no reasonable expectation that their personal data (as contained in these emails) would be released into the public domain and therefore am not satisfied that it would be fair for the emails to be disclosed.
81. I find that the release of the information to Mr W under FOISA would not be fair and therefore would infringe the first data protection principle. Therefore, I must find that that information is exempt in terms of section 38(1)(b) of FOISA.



## Decision

---

I find that the Scottish Executive (the Executive) dealt with certain aspects of Mr W's request for information in accordance with Part 1 of FOISA, in that it correctly applied sections 30(b)(i) and (ii), 36(1) and 38(1)(b) of FOISA to certain of the information withheld, as detailed in Appendix 2 below.

However, I also find that the Executive did not deal with Mr W's request for information in accordance with Part 1 of FOISA, in that it misapplied the exemptions in sections 28 and 30(b)(i) and (ii) of FOISA to certain of the information withheld (again, as detailed in Appendix 2 below) and to that extent failed to comply with section 1(1) of FOISA.

Finally, I find that the Executive would not have been correct to deal with Mr W's request for information in accordance with section 14(1) of FOISA, or as a request which did not meet the requirements of section 8(1) of FOISA.

I require the Executive to release to Mr W a copy of the emails identified for release in Appendix 2 below, within 45 days of receipt of this decision notice.

## Appeal

---

Should either Mr W or the Scottish Executive wish to appeal against my decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days of receipt of this notice.

**Kevin Dunion**  
**Scottish Information Commissioner**  
**25 July 2007**



## **APPENDIX 1**

### **Relevant Statutory Provisions**

#### **Freedom of Information (Scotland) Act 2002:**

##### **1 General entitlement**

(1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

##### **2 Effect of exemptions**

(1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that-

- (a) the provision does not confer absolute exemption; and
- (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

##### **8 Requesting information**

(1) Any reference in this Act to "requesting" information is a reference to making a request which-

- (a) is in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
- (b) states the name of the applicant and an address for correspondence; and
- (c) describes the information requested.

##### **14 Vexatious or repeated requests**

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

##### **28 Relations within the United Kingdom**

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

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





- (a) the Government of the United Kingdom;
- (b) the Scottish Administration.

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

Information is exempt information if its disclosure under this Act-

...

- (b) would, or would be likely to, inhibit substantially-
  - (i) the free and frank provision of advice; or
  - (ii) the free and frank exchange of views for the purposes of deliberation

...

### **36 Confidentiality**

(1) Information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings is exempt information.

### **38 Personal information**

(1) Information is exempt information if it constitutes-

- (b) personal data and either the condition mentioned in subsection (2) (the "first condition") or that mentioned in subsection (3) (the "second condition") is satisfied;

(2) 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 (c.29), 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.
- (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress; and

(b) in any other case, that such disclosure would contravene any of the data protection principles if the exemptions in section 33A(1) of that Act (which relate to manual data held) were disregarded.



## Data Protection Act 1998

### 1 Basic interpretative provisions

- (1) In this Act, unless the context otherwise requires –  
...  
"personal data" means data which relate to a living individual who can be identified –  
    (a) from those data, or  
    (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual  
...

### 2 Sensitive personal data

- In this Act "sensitive personal data" means personal data consisting of information as to-  
...  
(e) his [the data subject's] physical or mental health or condition  
...

## SCHEDULE 1

### THE DATA PROTECTION PRINCIPLES

#### PART I

#### THE PRINCIPLES

1. 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.



## APPENDIX 2

### Description of emails withheld and Commissioner's decision upon application of exemptions

Email No.	Date	Exemption	Upheld?
1	5-May-05	N/A	Disclosed
2	10-May-05	s38(1)(b)	Yes – withhold
3	10-May-05	s38(1)(b)	Yes – withhold
4	10-May-05	s38(1)(b)	Yes – withhold
5	10-May-05	s38(1)(b)	Yes – withhold
6	18-May-05	s38(1)(b)	Yes – withhold
7	20-May-05	s38(1)(b)	Yes – withhold
8	18-May-05	s38(1)(b)	Yes – withhold
9	10-May-05	s38(1)(b)	Yes – withhold
10	10-May-05	s38(1)(b)	Yes – withhold
11	5-May-05	s38(1)(b)	Yes – withhold
12	10-May-05	s38(1)(b)	Yes – withhold
13	16-May-05	s38(1)(b)	Yes – withhold
14	17-May-05	s38(1)(b)	Yes – withhold
15	16-May-05	s38(1)(b)	Yes – withhold
16	26-May-05	s38(1)(b)	Yes – withhold
17	30-Jun-05	s38(1)(b)	Yes – withhold
18	20-May-05	s38(1)(b)	Yes – withhold
19	26-May-05	s38(1)(b)	Yes – withhold
20	26-May-05	s38(1)(b)	Yes – withhold
21	26-May-05	s38(1)(b)	Yes – withhold
22	26-May-05	s38(1)(b)	Yes – withhold
23	1-Jun-05	s38(1)(b)	Yes – withhold
24	2-Jun-05	s38(1)(b)	Yes – withhold
25	2-Jun-05	s38(1)(b)	Yes – withhold
26	2-Jun-05	s38(1)(b)	Yes – withhold
27	2-Jun-05	s38(1)(b)	Yes – withhold
28	2-Jun-05	s38(1)(b)	Yes – withhold
29	2-Jun-05	s38(1)(b)	Yes – withhold
30	25-May-05	s38(1)(b)	Yes – withhold
31	19-May-05	s38(1)(b)	Yes – withhold
32	26-May-05	N/A	Disclosed
33	30-May-05	s36(1)	Yes – withhold
34	31-May-05	s38(1)(b)	Yes – withhold
35	31-May-05	s38(1)(b)	Yes – withhold



36	31-May-05	s38(1)(b)	Yes – withhold
37	31-May-05	s30(b)	Yes – withhold
38	3-Jun-05	s38(1)(b)	Yes – withhold
39	6-Jun-05	s38(1)(b)	Yes – withhold
40	3-Jun-05	s38(1)(b)	Yes – withhold
41	3-Jun-05	s38(1)(b)	Yes – withhold
42	3-Aug-05	s38(1)(b)	Yes – withhold
43	3-Aug-05	s38(1)(b)	Yes – withhold
44	3-Aug-05	s38(1)(b)	Yes – withhold
45	4-Aug-05	s38(1)(b)	Yes – withhold
46	4-Aug-05	s38(1)(b)	Yes – withhold
47	12-Aug-05	s38(1)(b)	Yes – withhold
48	12-Aug-05	s38(1)(b)	Yes – withhold
49	12-Aug-05	s38(1)(b)	Yes – withhold
50	15-Aug-05	s38(1)(b)	Yes – withhold
51	8-Jun-05	s36(1)	Yes – withhold
52	8-Jun-05	s30(b)	Yes – withhold
53	1-Jun-05	s30(b)	Yes – withhold
54	31-May-05	s30(b)	Yes – withhold
55	9-Jun-05	s38(1)(b)	Yes – withhold
56	7-Jun-05	s38(1)(b)	Yes – withhold
57	9-Jun-05	s38(1)(b)	Yes – withhold
58	10-Jun-05	s38(1)(b)	Yes – withhold
59	13-Jun-05	s38(1)(b)	Yes – withhold
60	13-Jun-05	s38(1)(b)	Yes – withhold
61	13-Jun-05	s38(1)(b)	Yes – withhold
62	15-Jun-05	s38(1)(b)	Yes – withhold
63	13-Jul-05	s38(1)(b)	Yes – withhold
64	13-Jul-05	s38(1)(b)	Yes – withhold
65	20-Jul-05	s38(1)(b)	Yes – withhold
66	21-Jul-05	s38(1)(b)	Yes – withhold
67	13-Jun-05	s30(b)	Yes – withhold
68	14-Jun-05	s30(b)	Yes – withhold
69	4-Jun-05	s30(b)	Yes – withhold
70	8-Jun-05	s30(b)	Yes – withhold
71	14-Jun-05	s38(1)(b)	Yes – withhold
72	21-Jun-05	s38(1)(b)	Yes – withhold
73	21-Jun-05	s36(1)	Yes – withhold
74	22-Jun-05	s38(1)(b)	Yes – withhold
75	23-Jun-05	N/A	Disclosed
76	28-Jun-05	s30(b)	Yes – withhold
77	29-Jun-05	s30(b)	Yes – withhold
78	4-Jul-05	s30(b)	Yes – withhold
79	7-Jul-05	30(b)/36(1)	Yes – withhold



80	6-Jul-05	s30(b)	Yes – withhold
81	8-Jul-05	N/A	Disclosed
82	14-Jul-05	s38(1)(b)	Yes – withhold
83	14-Jul-05	s38(1)(b)	Yes – withhold
84	14-Jul-05	s38(1)(b)	Yes – withhold
85	3-Aug-05	s38(1)(b)	Yes – withhold
86	18-Jul-05	s38(1)(b)	Yes – withhold
87	20-Jul-05	s38(1)(b)	Yes – withhold
88	1-Aug-05	s38(1)(b)	Yes – withhold
89	29-Jul-05	s38(1)(b)	Yes – withhold
90	29-Jul-05	s38(1)(b)	Yes – withhold
91	29-Jul-05	s38(1)(b)	Yes – withhold
92	2-Aug-05	s38(1)(b)	Yes – withhold
93	2-Aug-05	s38(1)(b)	Yes – withhold
94	10-Aug-05	s38(1)(b)	Yes – withhold
95	10-Aug-05	s38(1)(b)	Yes – withhold
96	8-Aug-05	s38(1)(b)	Yes – withhold
97	2-Aug-05	s38(1)(b)	Yes – withhold
98	4-Aug-05	N/A	Disclosed
99	4-Aug-05	N/A	Disclosed
100	5-Aug-05	s38(1)(b)	Yes – withhold
101	5-Aug-05	s38(1)(b)	Yes – withhold
102	8-Aug-05	s38(1)(b)	Yes – withhold
103	8-Aug-05	s38(1)(b)	Yes – withhold
104	8-Aug-05	s38(1)(b)	Yes – withhold
105	8-Aug-05	s38(1)(b)	Yes – withhold
106	15-Aug-05	s38(1)(b)	Yes – withhold
107	10-Aug-05	s38(1)(b)	Yes – withhold
108	15-Aug-05	s38(1)(b)	Yes – withhold
109	16-Aug-05	s38(1)(b)	Yes – withhold
110	15-Aug-05	s38(1)(b)	Yes – withhold
111	10-Aug-05	s38(1)(b)	Yes – withhold
112	10-Aug-05	s38(1)(b)	Yes – withhold
113	12-Aug-05	s38(1)(b)	Yes – withhold
114	12-Aug-05	s38(1)(b)	Yes – withhold
115	10-Aug-05	s38(1)(b)	Yes – withhold
116	12-Aug-05	s38(1)(b)	Yes – withhold
117	1-Aug-05	s38(1)(b)	Yes – withhold
118	12-Aug-05	s38(1)(b)	Yes – withhold
119	12-Aug-05	s38(1)(b)	Yes – withhold
120	1-Aug-05	s38(1)(b)	Yes – withhold
121	15-Aug-05	s30(b)	Yes – withhold
122	19-Oct-05	N/A	Disclosed
123	11-Aug-05	N/A	Disclosed
124	9-Oct-05	N/A	Disclosed



125	19-Oct-05	N/A	Disclosed
126	19-Oct-05	N/A	Disclosed
127	19-Oct-05	N/A	Disclosed
128	19-Oct-05	N/A	Disclosed
129	19-Oct-05	s28	No – release
130	19-Oct-05	N/A	Disclosed
131	19-Jul-05	N/A	Disclosed
132	19-Oct-05	N/A	Disclosed
133	19-Oct-05	s30(b)	Yes – withhold
134	19-Oct-05	N/A	Disclosed
135	19-Oct-05	s25	Applicant accepts otherwise accessible
136	19-Oct-05	s38(1)(b)	Yes – withhold
137	5-Jul-05	s38(1)(b)	Yes – withhold
138	19-Oct-05	N/A	Disclosed
139	19-Oct	s28	No – Release
140	19-Oct-05	s38(1)(b)	Yes – withhold
141	19-Oct-05	s30(b)	No – release
142	4-Jul-05	s30(b)	No – release
143	19-Oct-05	N/A	Disclosed
144	24-Jun-05	N/A	Disclosed
145	19-Oct-05	N/A	Disclosed
146	19-Oct-05	s30(b)	Yes – withhold
147	19-Oct-05	N/A	Disclosed
148	19-Oct-05	N/A	Disclosed
149	19-Oct-05	N/A	Disclosed
150	19-Oct-05	s25	Applicant accepts otherwise accessible
151	19-Oct-05	N/A	Disclosed
152	1-Jun-05	N/A	Disclosed
153	19-Oct-05	N/A	Disclosed
154	19-Oct-05	s30(b)	Yes – withhold
155	19-Oct-05	s30(b)	No – release
156	31-May-05	s30(b)	Yes – withhold
157	19-Oct-05	s30(b)	Yes – withhold
158	19-Oct-05	s30(b)	Yes – withhold
159	19-Oct-05	s30(b)	Yes – withhold
160	19-Oct-05	s30(b)	Yes – withhold