Decision 089/2007 Mr James Cannell and Historic Scotland

Advice to a minister concerning a listed building appeal

Applicant: Mr James Cannell
Authority: Historic Scotland
Case No: 200600959
Decision Date: 21 June 2007

Kevin Dunion
Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS

Decision 089/2007 Mr James Cannell and Historic Scotland

Request for any material that was available to the Secretary of State which enabled him to decide to hold a public inquiry in relation to a listed building appeal – section 30(b)(i) of the Freedom of Information (Scotland) Act 2002 applied – prejudice to effective conduct of public affairs – Commissioner required disclosure

Relevant Statutory Provisions and Other Sources

Freedom of Information (Scotland) Act 2002 (FOISA): sections 1(1) (General entitlement); 2 (Effect of exemptions); 30(b)(i) (Prejudice to effective conduct of public affairs).

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

Facts

Mr Cannell wrote to Historic Scotland to request a copy of advice given to a Minister concerning a listed building appeal. Historic Scotland responded by withholding the information under section 30(b) of FOISA on the grounds that disclosure would prejudice the effective conduct of public affairs. Mr Cannell was not satisfied with this response and asked Historic Scotland to review its decision.

Historic Scotland carried out a review and, as a result, notified Mr Cannell that it had upheld its original decision to withhold the information under section 30(b)(i) of FOISA. Mr Cannell was dissatisfied with the outcome of the review and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that Historic Scotland had failed to deal with Mr Cannell's request for information in accordance with Part 1 of FOISA. He required Historic Scotland to provide Mr Cannell with the information he had requested.

Background

1. On 15 March 2006, Balfour & Manson, Solicitors (on behalf of Mr Cannell) wrote to the Scottish Executive Inquiry Reporters Unit (SEIRU) requesting the following information: the material which was available to the Secretary of State which enabled him to decide that a public inquiry should be held in relation to an issue concerning Mr Cannell and the removal of decorative stained glass panels from his house

2. On 31 March 2006, Historic Scotland wrote to Balfour & Manson in response to their request for information. The request had been passed to Historic Scotland, an Executive Agency of the Scottish Executive, by the SEIRU.

3. In its letter Historic Scotland confirmed that it held a document falling within the scope of the request and containing advice to the relevant Minister. Historic Scotland stated that it was withholding the information, citing the exemptions under section 30(b)(i) and (ii) of FOISA which concern prejudice to the effective conduct of public affairs. Details of the public interest considerations that had been taken into account were also provided.

4. On 13 April 2006, Balfour & Manson wrote to Historic Scotland requesting a review of its decision to withhold the information. In particular, the applicants argued that it was hard to imagine what the public interest was in a set of panels in Mr Cannell's house and asked for an explanation.

5. Historic Scotland acknowledged receipt of the request for review and wrote to Balfour & Manson on 17 May 2006, providing the outcome of its review. In its response Historic Scotland stated that after carrying out a careful and detailed review it had found that the decision to withhold the information under section 30(b)(i) of FOISA was correct and therefore the information was exempt from disclosure.

6. In relation to its consideration of the public interest test, Historic Scotland informed the applicants that it had concluded that the balance lay in favour of withholding the information. It was explained that the greatest public interest in non-disclosure was to enable and allow a secure environment in which officials might develop their thinking and consider options in frank communications and discussions with Ministers. Historic Scotland concluded that the public interest in the topic of the panels of the house in question was outweighed by the public interest in the ability for frank discussion to take place with advice for consideration being proffered to Ministers.

7. On 25 May 2006, Balfour & Manson wrote to my Office, detailing their client's dissatisfaction with the outcome of Historic Scotland's review and applying to me for a decision in terms of section 47(1) of FOISA.

8. The case was then allocated to an investigating officer and the application validated by establishing that the applicant had made a request for information to a Scottish public authority and had applied to me for a decision only after asking the authority to review its response to that request.

The Investigation

9. On 8 August 2006, Historic Scotland was notified in writing that an application had been received on behalf of Mr Cannell and was asked for its comments on the application in terms of section 49(3)(a) of FOISA. In particular, it was asked for copies of the information withheld, along with full analysis of any exemptions it considered applicable to that information and of the application of the public interest test.

10. In line with agreed procedures, the Freedom of Information Unit of the Scottish Executive (the Executive) responded on behalf of Historic Scotland on 23 August 2006.The Executive sent the investigating officer a copy of the information that had been withheld, with its comments on the application of the section 30(b)(i) exemption and the public interest test. Further arguments on the application of section 30(b) (of relevance to this case and others) were provided by the Executive with a letter of 2 May 2007. During the course of the investigation the investigating officer contacted the Executive, asking it to respond to specific questions concerning the application.

11. I will comment in detail on the Executive's arguments in my analysis and findings below.

The Commissioner's Analysis and Findings

12. In coming to a decision on this matter, I have considered all of the information and the submissions that have been presented to me by both the applicant and the Executive and I am satisfied that no matter of relevance has been overlooked.

13. In their application to me, Balfour & Manson advised that their client understood that when a public inquiry into the matter of their client's panels was convened it was on the basis that there was deemed to be an issue arising of both public and political controversy. It was claimed on behalf of their client that at the inquiry which followed there were no representations from any member of the public or from any politicians. They contended that their client found it hard to see on what basis a decision was reached to convene the inquiry. Their client wished to see whatever documentation and other written material was available to the Minister to justify initiating an inquiry on that basis.

14. The Executive stated that the only document which fell within the scope of Mr Cannell's request was a minute dated 7 April 1999 to the relevant Minister (acting on behalf of the Secretary of State) providing advice from the Director of Heritage Policy in Historic Scotland. The minute contained recommendations concerning the holding of a public local inquiry into the matter of Mr Cannell's panels. Following my investigation, I am satisfied that no further information is held by the Executive in relation to Mr Cannell's request for information.

15. Before considering the application of section 30(b)(i) of FOISA to the information requested, I consider it helpful to provide some background information and context to this application and the information being sought by Mr Cannell.

16. In the Executive's submissions to me details were provided of the chronology of events concerning the listed building enforcement notice (LBEN) to which the applicants' request related. Eight decorative panels were removed from Mr Cannell's category B listed property without the necessary listed building consent having been applied for, or granted, by Glasgow City Council. In 1998, Glasgow City Council served a LBEN on Mr Cannell, requiring the reinstatement of the panels.

17. Mr Cannell appealed the LBEN and the Secretary of State then recalled the case for his own decision. The appeal was first considered via written submissions and a site inspection, following which the inquiry reporter appointed by the Secretary of State was unable to make a recommendation as to whether the appeal should be upheld or rejected. At this stage, Historic Scotland provided advice to the Minister in relation to the holding of a public inquiry on the matter.

18. A public inquiry was held, but the Executive has informed my investigating officer that the LBEN appeal has to be re-determined, for a number of reasons, and is at present on hold pending the outcome of Mr Cannell's application to me for a decision.

Section 30(b)(i) – Prejudice to effective conduct of public affairs

19. Section 30(b)(i) of FOISA allows information to be withheld if its disclosure under FOISA would, or would be likely to, inhibit substantially the free and frank provision of advice.

20. In this instance the minute in question contains factual information concerning the background to and conduct of Mr Cannell's appeal. However the main focus of the document is the advice and recommendation provided by the Director of Heritage Policy to the Minister.

21. The Executive argued that the minute to the Minister outlined the background to Mr Cannell's LBEN appeal, and contained recommendations to the Minister concerning the possible holding of a public inquiry to assist in the determination of the appeal. The Executive was of the view that the minute constituted advice to a Minister and was clearly covered by the exemption in section 30(b)(i) of FOISA.

22. The Executive simply maintained that disclosure of the minute would prejudice substantially the effective conduct of public affairs by being likely to inhibit substantially the free and frank provision of advice. It was argued that officials regularly advised Ministers on similar cases and they could feel constrained from offering full and frank advice on future occasions if they were concerned that their comments would be made public in such circumstances.

23. In its further general submission on the application of section 30(b), the Executive argues that the rationale for the exemptions in this section lies in the need for an organisation to be able to communicate freely and frankly. Typically, the Executive continues, an organisation's position on any issue does not emerge fully formed but rather is usually the result of careful discussion and the exchange of views of various internal (and sometimes external) stakeholders. For the Executive, this process includes advice to Ministers, who must make the ultimate judgement, and the Executive considers it vital that Ministers and officials feel able to (and indeed do) express and debate their views frankly and confidentially.

24. The Executive considers that the disclosure of specific communications, often (although not necessarily) containing advice and discussion, would be likely to inhibit substantially the free and frank provision of advice and exchange of views for the purposes of deliberation. The Executive considers it very likely that exchanges "of this nature" would be jeopardised if these communications were considered suitable for release while the issues remained relevant to the development of current policy or thinking in what it states "is often a sensitive area". Officials would, it argues, feel constrained from offering full and frank advice on future occasions if they were concerned that their comments would be made public in such circumstances, leading to substantial detriment in the policy and decision-making processes.

25. Building on these arguments, the Executive makes a number of specific points setting out its key areas of disagreement with my interpretation of section 30(b) in previous decisions. In particular, it argues that:

- Consideration of the nature, subject, content, context, manner of expression and timing of the information is more appropriate to the application of the public interest test than to determination of whether substantial inhibition is or is likely to occur;

- Substantial inhibition is likely to be the cumulative effect of a number of separate releases of information rather than the result of one, or perhaps even several, releases;

- Future events being impossible to predict with any degree of certainty, it should be recognised that releasing advice or views is, by definition, likely to have a substantially inhibiting effect;

- It is reasonable to expect a degree of consistency in decisions about what information should be released and therefore, where internal communications are released in one or more cases, it is inevitable the officials will conclude that there is a high probability that other internal communications will also require to be disclosed, leading to inhibition of the way in which advice or views are given in the future. The Executive does not believe officials in an organisation as large as itself will generally be familiar with the detailed circumstances which have led to information being released in one case but not in another and will simply note that internal communications are likely to be released.

26. The Executive's letter of 2 May 2007 indicates that its further general submission on section 30(b) is the outcome of its developed thinking on the exemptions in the light of experience, leading to a review of its arguments in existing cases and an updated set of arguments to be taken into account in the investigation of cases (such as this one) involving these exemptions. I am therefore taking these updated arguments as the basis of the Executive's case in relation to section 30(b)(i), although needless to say I have taken full account of its earlier arguments where they appear to be of more specific relevance to this particular case.

27. At the root of the Executive's updated arguments appears to be the notion that substantial prejudice should be assumed to follow from the release of advice or deliberation. Effectively, I am asked to accept that all internal communications of an authority (in this case the Executive) relating to the expression of opinion should be exempt, as officials generally will not familiarise themselves with the circumstances of a case which has led to particular information being released, rather simply proceeding on the basis that all internal communications are likely to be released and modifying their giving of advice and/or views with the consequence that they are less free and frank in future.

28. I do not accept this premise. In my judgement and experience, professional civil servants are well able to understand that some information of a particular type will be released and other information of the same general type will be withheld, depending on the circumstances. In any event, the effect of starting from this position would be to undermine the whole basis of freedom of information and I am certain that was not the intention of Parliament when the legislation was brought forward. FOISA introduced a general right to information and, while that right has to be balanced against the need to protect genuinely sensitive information, there is no justification in section 30(b) for the blanket exemption of all internal communications for fear that officials will react negatively to the release of information. FOISA was intended to secure changed working assumptions and practices in the interests of openness and I have no doubt that the threshold for substantial inhibition in both parts of section 30(b) must be set rather higher than mere assumption and assertion of harm.

29. The Executive is effectively claiming that the prospect of harm should be readily accepted, with the possibility of disclosure still provided for by the public interest test, which can then be used to consider the nature and degree of harm and whether this outweighs the benefits of release. I do not accept this line of reasoning. It is clear that the public interest test is only engaged if the authority can show that without the application of the exemption, the disclosure of the information would, or would be likely to, inhibit substantially the free and frank provision of advice. If this cannot be shown, the public interest in release or in withholding does not require to be considered. The factors which could give rise to harm by way of substantial inhibition therefore have to be considered when determining whether the exemption applies.

30. I understand the point made by the Executive about the difficulty in predicting future harm with any degree of certainty, but the absence of certainty does not permit the assumption that substantial inhibition would or would be likely to occur. I note that it is now more than two years since the introduction of Part 1 of FOISA and I have yet to be presented with concrete examples of where harm (substantial or otherwise) has in fact been caused by the release of information under Part 1, whether following one of my decisions or in other circumstances.

31. In all the circumstances, therefore, I am not persuaded that the Executive's revised arguments on the application of section 30(b) require me to review my existing general approach to these exemptions. In this case in particular, I can see no basis for taking an alternative approach to the exemption in section 30(b)(i) .

32. It should be clear by now from previous decisions that I do not, as a rule, accept the application of the exemptions in section 30(b) to the information in an entire class of documents (for example, advice to Ministers) simply because they belong to that particular class. I believe that view to have been upheld by the Court of Session in the conjoined cases of *The Scottish Ministers v The Scottish Information Commissioner (William Alexander's Application)* and *The Scottish Ministers v The Scottish Information Commissioner (David Elstone and Martin Willams's Applications).* A full assessment of the nature and content of the information will be necessary to determine whether either exemption applies, along with due consideration of all other relevant circumstances, and it cannot necessarily follow from my requiring release of one particular piece of information in particular circumstances that information of that general variety will require to be disclosed routinely in future.

33. It should also be clear that the main consideration in determining whether this group of exemptions is triggered is not so much whether the information constitutes advice or (as the case may be) an exchange of views – although obviously that will be relevant in many cases – but rather whether the release of the information would, or would be likely to, have the substantially inhibiting effect required for the relevant exemption to apply. In this connection, I look for authorities demonstrating a real risk or likelihood that actual harm will occur at some time in the near (certainly the foreseeable) future, not simply that harm is a remote possibility. Also, the harm in question should take the form of substantial inhibition from expressing advice and/or views in as free and frank a manner as would be the case if disclosure could not be expected to follow. The word "substantial" is important here: the degree to which a person will or is likely to be inhibited in expressing themselves has to be of some real and demonstrable significance.

34. In this case, I have taken into consideration my decisions 211/2006 Mr Gordon Watson and the Scottish Executive and 231/2006 Mr Jim Thomson and the Scottish Executive. Like the information requested in those cases, the Historic Scotland minute appears to be a formal submission to the Minister, following an established format and providing considered advice based on fact and a knowledge of the relevant legal and procedural requirements. While the Director of Heritage Policy may not be a professional planner, he is clearly drawing on the expertise of his agency in relation to the historic environment and the legal framework that exists to protect it.

35. As in these earlier case, it is clear to me that a submission of this kind is produced as part of a rigorous process to ensure that due process is followed in providing advice to the Minister to enable the Secretary of State (or now the Scottish Ministers) to be able to determine the appropriate action to take in a given set of circumstances during an appeal. It seems to me that advice of this kind, as and when required, forms an essential part of the appeal process. As in the earlier cases, it does not seem to me to be possible for such advice not to be given in future and, given the possibility of challenge and the consequent need to be able to demonstrate that due process has been followed, I do not believe that it would be possible for such advice not to be recorded in future.

36. However, I need to go on to consider whether the views or advice expressed by officials would be less free and frank in the future were this information to be released. No particular aspect of the facts, recommendations or specific considerations in the advice under consideration in this case has been drawn to my attention. I have taken into account the context in which the advice was provided and the individual who gave this advice. The advice was provided by the Director of Heritage Policy who is acting, it seems to me, in an expert advisory capacity. He is the senior policy adviser in an agency charged with advising the Minister on the protection of the historic environment, and while his professional or academic background may not be of direct relevance to this area, he will undoubtedly draw on the professional and other expertise within his agency in framing and providing his advice.

37. In the circumstances then, it seems to me that release of the information in this case will not inhibit substantially the free and frank provision of advice in future cases because there will always be an expectation that Historic Scotland (or whichever arm of the Executive is charged with advising Ministers on such matters) will provide full and frank advice which reflects accurately all relevant considerations falling within its remit. Again, given the possibility of challenge and the need therefore to maintain full records of any advice given to Ministers in relation to the procedures followed, it does not seem to me possible that the advice given would not be recorded in future.

38. In relation to the timing of the release of the information and whether that should have any bearing, the investigating officer contacted the Executive during the course of the investigation in order to ascertain the exact stage of the proceedings that the Executive had originally described as being “a very long and complex case which has still to be determined”.

39. The aim of obtaining this information was to determine the relative importance of the minute and the potential harm or inhibiting effect – if any – that disclosure of such information may cause to any ongoing proceedings. In this instance I have had to consider whether the document was only of material importance to the holding of the public local inquiry, or whether the document is still of material importance to any subsequent, ongoing proceedings relating to this matter.

40. Having examined the minute in detail and having obtained a detailed chronological list from the Executive concerning Mr Cannell’s LBEN appeal and related proceedings, I am satisfied that the focus of the minute in question is the question of whether or not a public local inquiry should have been held. The public local inquiry which the minute refers to took place on 21 September and 2 November 1999. Following a recommendation from the reporter, the appeal was refused by Scottish Ministers on 5 June 2000.

41. As that stage of proceedings had been concluded and the outcome of the public local inquiry was known to both parties well before Mr Cannell's information request, I am of the view that disclosure of the minute would not result in the potential harm or inhibiting effect that the Executive claims would result from release.

42. In conclusion, therefore, I do not consider that the Executive has demonstrated that disclosure of this information would substantially inhibit the free and frank provision of advice, given the context within which this advice was provided and, in respect of the recommendations made, the role and expertise of the individual and agency supplying that advice.

43. I therefore find that section 30(b)(i) of FOISA does not apply to the information withheld.

The public interest test

44. The exemption in section 30(b)(i) of FOISA is subject to the public interest test laid down by section 2(1)(b) of FOISA. In this instance I have considered it helpful to go on to consider whether, in all the circumstances of the case, the public interest in disclosure of the information withheld is outweighed by the public interest in maintaining the exemption, as if, contrary to my findings, the exemption in section 30(b)(i) of FOISA did apply to the information.

45. The Executive presented my Office with a detailed submission in relation to its consideration of the public interest test. It was argued that, in this particular case, the contents of the minute to the Minister would be of interest only to Mr Cannell as the owner of the property affected. The case was viewed by the Executive as having no wider significance, not, for example, setting a precedent or relating to any change in policy.

46. The Executive maintained that it was difficult to see how there would be any public interest in disclosing the information requested. Instead, it was argued that there was a clear public interest in withholding the information. The following arguments were provided by the Executive as justification for arriving at such a conclusion.

47. The Executive insisted that there was a strong public interest in high quality policy and decision-making: for Government to succeed in upholding that public interest, Ministers and officials had to be able to consider, as in any other organisation, all available options, however unpalatable. They needed to be able to debate those options rigorously, to expose all their merits and demerits and to understand their possible implications.

48. It was argued that their candour in doing so would be affected by their assessment of whether the content of their discussions would be disclosed in the future, when it might undermine or constrain the Government's view on settled policy or policy that was at the time under discussion and development. The Executive added that inappropriate disclosure also had the potential, not only to limit the full and frank discussion of issues between Ministers or officials, but also to distort public perceptions of advice provided by officials. It was argued that the prospect of disclosure therefore had the potential to affect the impartiality of the advice provided.

49. The Executive considered that there was a strong public interest in maintaining the integrity of the process of giving free and frank advice in this sort of case: the knowledge of possible disclosure might inhibit provision of advice in the future and impair the candour and freedom within which papers were prepared in future.

50. It was also argued that there was a strong public interest in ensuring that, where necessary, advice about matters on which Ministers needed to take decisions could be given in a non-public arena. This enabled rigorous and frank debate about the merits and demerits of alternative courses of action, without fear that such considerations would be taken out of context. The Executive maintained that it was in the public interest for decision-making to be based on the best advice available, with a full consideration of all the options, including those that might not be immediately considered to be broadly politically acceptable.

51. The Executive acknowledged that the public interest test must be considered on a case by case basis, but in this case it was argued that where the information requested related to what the Executive considered to be an important process (such as the provision of advice to a Minister leading up to a decision on whether to hold a public inquiry), there could be a public interest in the protection of a process in itself.

52. The Executive argued that the public interest in protecting internal communications should be applied in cases where the likely effect of releasing information would be the suppression of effective communication in the future, for example because the advice or discussion would be oral instead of being written down. It was maintained that the public interest test should focus on the real impact of releasing the information.

53. For the most part, the foregoing arguments on the public interest are repeated in the Executive's general submission on section 30(b). The importance of Ministers being able to rely on high quality advice is emphasised, particularly in decision-making where issues are of a highly contentious nature. In cases such as this, the Executive deems there to be a strong public interest in maintaining the integrity of the process of giving free and frank advice. The Executive is also concerned that the public interest test in relation to section 30(b) should not be seen to be "higher" than when dealing with other exemptions.

54. I accept substantial elements of the Executive's argument in principle: in particular, I agree that there is considerable public interest in ensuring that Ministers are fully informed about the various factors involved when decisions are taken, and that if officials were substantially inhibited from providing full and considered advice in a free and frank manner, this could ultimately impinge upon the quality of the decision. There is clearly a strong public interest in avoiding such an outcome.

55. I do not, however, accept that the public interest is likely to favour the protection of an entire process, such as the giving of advice to Ministers (either generally or in the context of a particular process such as the one under consideration here). The focus of the public interest test in any given case should be the information under consideration in that case and the actual or likely impact of its release.

56. I do not take the view that the public interest test in relation to section 30(b) should be regarded as "higher" than that applying in relation to other exemptions. Rather, even if the Executive's arguments are accepted, the question is whether there are countervailing arguments which indicate an equally strong, or stronger, public interest in support of disclosure. I take the view that it is generally in the public interest to disclose information which enhances scrutiny of decision-making processes and thereby improves accountability and participation.

57. As I indicated in the earlier decisions referred to above (see paragraph 34), this is particularly the case when it comes to significant planning decisions, in this case those affecting individuals. It is my view that individuals who are affected by the planning process should generally be entitled to have access to formal advice and recommendations made by officials to Ministers, such as the Historic Scotland minute under consideration in this case, in order to better understand the reasons for particular decisions having been made. The decision having been made by the Minister concerned, there will generally not be a strong argument for the information being withheld on public interest grounds.

58. As I also indicated in those earlier decisions, I believe that there is significant public interest in the disclosure of information which would contribute to ensuring that any public authority with regulatory responsibilities is adequately discharging its functions. In this case, the LBEN appeal had been recalled by the Secretary of State and he was required to reach a decision under the relevant planning legislation. The reporter appointed to consider the appeal and make a recommendation to the Secretary of State was unable to make that recommendation, at which point Historic Scotland provided advice and recommendations to the Minister as to whether a public inquiry should be held. There is clearly a public interest in being satisfied that the decision on the holding of a public inquiry was made on the basis of appropriate considerations.

59. Having considered fully the Executive's arguments in relation to the information that has been withheld in this instance, along with the information itself and the context within which it was given, and having considered the fact that the stage of proceedings to which the information relates had long since been concluded by the time Mr Cannell's request was considered by the Executive, I have decided, in the specific circumstances of this case, that the balance of the public interest favours disclosure.

60. In conclusion then, if, contrary to my findings, the exemption at section 30(b)(i) of FOISA did apply, then it is my view that in all the circumstances of this case, the public interest in disclosing the information would not have been outweighed by that in maintaining the exemption.

Decision

I find that Historic Scotland failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with Mr Cannell's information request.

I find that the disclosure of the information requested would not, and would not be likely to, inhibit substantially the free and frank provision of advice. Therefore, I find that Historic Scotland misapplied section 30(b)(i) of FOISA in dealing with Mr Cannell's request and consequently failed to deal with the request in accordance with section 1(1) of FOISA.

I require Historic Scotland to provide the information to Mr Cannell within 45 days of the date of receipt of this decision notice.

Appeal

Should either Mr Cannell or Historic Scotland wish to appeal against this decision, there is a right to 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 decision notice.

Kevin Dunion
Scottish Information Commissioner
21 June 2007

Appendix

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.

(2) For the purposes of paragraph (a) of subsection 1, the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption –

(a) section 25;

(b) section 26;

(c) section 36(2);

(d) section 37; and

(e) in subsection (1) of section 38 –

(i) paragraphs (a), (c) and (d); and

(ii) paragraph (b) where the first condition referred to in that paragraph is satisfied by virtue of subsection (2)(a)(i) or (b) of that section.

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

(…)