



Scottish Information
Commissioner

**Decision 196/2007 Mr Rob Edwards and the
Scottish Ministers**

EU infractions database

Applicant: Mr Rob Edwards

Authority: Scottish Ministers

Case No: 200601389

Decision Date: 29 October 2007

**Kevin Dunion
Scottish Information Commissioner**

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Decision 196/2007 Mr Rob Edwards and the Scottish Ministers

Request for copy of EU infractions database – information withheld under various exemptions – public interest considered – refusal of request partially upheld by Commissioner

Relevant Statutory Provisions and Other Sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 2 (Effect of exemptions); 28 (Relations within the United Kingdom); 30(b) and (c) (Prejudice to effective conduct of public affairs); 32(1)(a)(ii) and (b)(ii) (International relations).

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

Facts

Mr Edwards requested a copy of the EU infractions database from the Scottish Ministers (the Ministers). The Ministers responded by refusing to supply the information requested, citing various exemptions under FOISA. Following a review which upheld the original decision, Mr Edwards remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that in claiming certain information to be exempt without appropriate justification, the Ministers had partially failed to deal with Mr Edward's request for information in accordance with Part 1 of FOISA. He required the Ministers to provide certain information to Mr Edwards.

Background

1. On 26 May 2006, Mr Edwards wrote to the Ministers requesting the following information:



- An up-to-date copy of the database the Ministers maintained on alleged infractions of European Union directives.
2. On 14 June 2006, the Ministers wrote to Mr Edwards seeking clarification of the meaning of “up-to-date”. The Ministers queried whether Mr Edwards was seeking a list of all current infraction cases and, if not, the precise information he was seeking.
 3. In an email of 14 June 2006 Mr Edwards indicated that he meant the latest, updated version of the infractions database which the Ministers maintained. Mr Edwards explained that in correspondence released to him by the Ministers in response to other FOI requests he had seen numerous references to an internal “infractions database” which was regularly updated by different departments. Mr Edward explained that he was seeking a complete copy of the database in its most recent form. Mr Edwards explained that he was seeking to understand the substance of the allegations made by the EU that affected the Ministers.
 4. On receipt of this clarification the Ministers advised Mr Edwards that the 20 working day time limit for response to his request had been reset and that the new deadline for a response was 12 July 2006.
 5. The Ministers provided a substantive response to Mr Edwards on 11 July 2006. The Ministers advised that a series of exemptions applied to the information requested, namely 28(1) (relations between UK administrations), section 30(b) and (c) (prejudice to the effective conduct of public affairs), section 32(1)(a) and section 32(1)(b) (international relations). The Ministers set out their submissions in respect these exemptions and in respect of the public interest test.
 6. On 18 July 2006, Mr Edwards wrote to the Ministers requesting a review of their decision. In particular, Mr Edwards indicated that without having seen the database, it was difficult to judge whether it was really in the public interest to withhold the database in its entirety. He asked for this to be checked.
 7. On 16 August 2006, the Ministers wrote to notify Mr Edwards of the outcome of their review. They confirmed their original decision and advised that the exemptions had been correctly applied. The Ministers indicated that the public interest in withholding the information contained in the database outweighed the public interest that would be served by releasing it.
 8. On 22 August 2006, Mr Edwards wrote to my Office, stating that he was dissatisfied with the outcome of the Ministers’ review and applying to me for a decision in terms of section 47(1) of FOISA.



9. The application was validated by establishing that Mr Edwards 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

10. On 11 September 2006, the Ministers were notified in writing that an application had been received from Mr Edwards and asked to provide my Office with their comments and specified items of information required for the purposes of the investigation, all in terms of section 49(3)(a) of FOISA. The Ministers responded with the information requested and the case was then allocated to an investigating officer.
11. The Ministers supplied my office with a copy of the database requested, current as at the time of Mr Edwards' request. Mr Edwards had indicated in his request for review and in his application to my office that he was querying whether it was necessary to withhold the database in its entirety. Therefore the investigation addressed whether the database as a whole should be disclosed and, if not, whether information could be extracted and supplied to Mr Edwards.

The Commissioner's Analysis and Findings

12. In their submissions to my office the Ministers supplied background information about the EU infractions database.

EU infraction proceedings

13. Infraction proceedings are the legal process by which the European Commission (the Commission) takes a Member State to the European Court of Justice (ECJ) for breach of its obligations under the EU Treaty. There are two types of infractions procedures brought by the Commission against Members States: Article 226 and Article 228 proceedings. The Commission initiates Article 226 proceedings when it considers a Member State has failed to implement Community law correctly. The Commission may commence Article 228 proceedings if a Member State has failed to implement an ECJ ruling under Article 226. The Ministers advised that if the ECJ found against a Member State it could impose a considerable fine.



14. The Ministers submitted that it was the understanding that correspondence between the Commission and a Member State in the preliminary stages of infraction proceedings was regarded as confidential by both parties. The Ministers explained that the aim was to facilitate an amicable settlement of the dispute without the glare of publicity and pressure from interested third parties. The Ministers indicated that it was considered that disclosure of documents could undermine the protection of the public interest (public security, international relations, monetary stability, court proceedings, inspections and investigations).
15. The Ministers explained that details of infraction cases that involved them were recorded and held centrally by their Europe Division on an internal database, which was used to produce reports for Ministers and the Cabinet Sub-Committee on Legislation. The Ministers advised that the information held on infraction cases was kept up to date by the relevant policy officials, who were instructed to include as much information as possible in order to give Europe Division a complete picture of the state of play in each case. The Ministers submitted that much of this information was confidential. They supplied helpful background information about the kind of information recorded on the database.
16. The Ministers have published on their website general information about each alleged infraction (see <http://www.scotland.gov.uk/Resource/Doc/1066/0007478.pdf>). This includes basic information such as the reference number, the type of proceedings (i.e. Article 226 or Article 228) and the relevant piece of EU legislation.
17. I also undertook my own research into EU infraction proceedings. I was interested in the kind of information (if any) that had been disclosed and/or published by the Commission or by Member States in respect of these proceedings. From this research I gathered that certain information about an alleged infraction or infringement (as it may also be described) may be disclosed during the process. The Commission will publish the decision reached at any given stage; for example, the Commission will indicate that a letter Article 226 has been issued to a Member State or that the matter has been referred to the ECJ. The Commission does not automatically disclose the content of that letter or the nature of the alleged breach. However, in some cases, the Commission may decide to issue a press release which will be published on its website. Further information about cases involving an alleged infringement that are subsequently referred to the ECJ will be published by virtue of the Court's judgement.



18. The *Commission Communication to the European Parliament and the European Ombudsman on relations with the complainant in respect of infringements of community law* contains a section on “Publicising infringement decisions.” This states that Commission decisions on infringement cases are published within one week of their adoption on the Secretariat General’s website. It further states that decisions to deliver a reasoned opinion to a Member State or to refer a case to the Court of Justice will also be publicised by means of a press release unless the Commission decides otherwise.
19. As a result, I understand that the amount of information published in respect of any individual alleged infraction may vary and this will depend on the nature of the alleged breach and whether it is ultimately referred to the ECJ.

Information contained in the database

20. Before I go on to consider the individual exemptions applied by the Ministers I consider it helpful to provide brief information about the content of the database requested by Mr Edwards. The database is an Access database and each infraction case appears as a separate record. Each record contains a series of fields that can be completed by the relevant official. The first section contains general information and includes such fields as the status of the case (i.e. whether it is ongoing), a brief description of the case, the title of the relevant piece of EU legislation and information about the relevant Whitehall and Scottish Government contacts. The next section of the record (entitled “Tracking”) provides further detail about the timetable and the next steps and includes such fields as “Potential problems”, “Anticipated Commission response”, “Follow up action” and “Case history”. There are further sections relating to decisions of the Commission and the ECJ under Articles 226 and/or 228. In assessing the application of the exemptions, I have considered in each case the information contained within each separate field.



Application of section 28(1) - relations within the UK

21. The Ministers submitted that disclosure of the information requested would be likely to prejudice substantially their relations with the UK Government and the other devolved administrations. The Ministers argued that devolved administrations needed to be able to work with each other and with Whitehall to resolve infraction cases. The Ministers indicated that there needed to be full and frank exchange of views and opinions since the UK Government, as the Member State, was responsible for replying to the Commission on behalf of all the devolved administrations. Details of these exchanges between the Ministers and the other administrations were held on the database. If views or information provided by other administrations, or relating to an infraction case they were involved in, could be released by the Ministers under FOISA, then it would be likely that this would severely inhibit communications and working relationships. The Ministers argued that the result would be that the UK Government and the other devolved administrations would tend to work in isolation, which would weaken the UK's response to the Commission on infraction cases.
22. In support of their submissions the Ministers referred to the Memorandum of Understanding between the UK Government and the devolved administrations and the supplementary "Concordat on Co-ordination of European Policy Issues – Scotland" which established an agreed framework for cooperation, joint working and exchange of information between the Scottish and UK administrations on EU matters.
23. Authorities seeking to rely on this exemption will need to show that disclosure will substantially prejudice relations between UK administrations. There is no definition of "substantial prejudice" in the Act, but my view is that in order to claim this exemption the risk of damage being caused by disclosing information would have to be real or very likely, not hypothetical. The harm caused or likely to be caused must be significant, not marginal, and it would have to occur in the near (or at least the foreseeable) future and not in some distant time. Authorities should consider disclosing the information asked for unless it would cause them real, actual and significant harm.



24. Authorities should avoid classifying types of documents as potentially falling within this exemption. As with all exemptions, the use of section 28 needs to be justified on a case by case basis and decisions to withhold or release information must relate to the specific information requested. In particular, section 28(1) does not give a blanket exemption to all correspondence between the Ministers and the UK Government or to all information in which reference is made to the position or actions of the UK administration. I do not accept that the release of information in one case should be seen as setting a precedent for the routine release of information in all cases, which I accept might cause substantial prejudice to relations between administrations. In order for the exemption to apply to information withheld in this case, I must be satisfied that the release of the particular information contained within the relevant field would substantially prejudice relations between UK administrations.
25. As I have indicated above, the database contains a number of fields. The information contained within those fields ranges from basic information about the alleged infraction to comments speculating on the response from the Commission. The Ministers have themselves published certain information about each current infraction proceeding; that is, the reference number, the type of proceedings (i.e. Article 226 or Article 228) and the relevant piece of EU legislation. I understand, therefore, that where this information appears in the database it is not exempt.
26. The section of the record titled "Tracking" potentially contains the most sensitive information recorded in the database in that it provides information on potential problems, the anticipated Commission response, follow up action and case history. It is not always evident whether information in these fields has been supplied by the UK Government or whether the content reflects the Ministers' own views. I anticipate that this will vary from case to case. In some cases, the information within these fields refers to the position taken by the UK Government or another UK administration.
27. It is clear from the nature of the comments that they have generally been entered in an informal manner with an emphasis on substance rather than on form; the entry is not always in full sentences, for example. I also accept that in some cases this information is candid and frank, particularly where the database records information about possible problems and the anticipated response from the Commission.



28. Having considered the information contained within each record I accept that certain information in the database is exempt by virtue of section 28(1). I have accepted that section 28(1) applies to information where it has been supplied by the UK Government, where it is candid and frank in nature and where it relates to ongoing proceedings. I have noted that in some cases the database includes information about the actions of the UK Government or of another UK administration. In some cases, this information is routine in nature or was in the public domain by the time of Mr Edwards' request (because, for example, the UK Government had already introduced the relevant draft regulations). However, I have accepted that disclosure of sensitive information about another UK administration would be likely to prejudice substantially relations between that and the Scottish Administration where the infraction proceedings are still ongoing.
29. I do not accept, however, that disclosure of all information contained within the database is exempt by virtue of section 28(1). It is clear that certain information is derived from departments within the Scottish Government and concerns action taken or to be taken by the Scottish Administration. Likewise other information, although possibly supplied by another UK administration, is either in the public domain or is routine information the disclosure of which I do not consider would or would be likely to prejudice substantially relations between administrations.
30. In particular, I do not consider that, in most cases, a brief description of the alleged breach or routine information about the necessary steps required to address the alleged breach would meet the harm test set out in section 28(1).
31. Section 28(1) is subject to the public interest test contained in section 2(1) of FOISA. Therefore where I have upheld the exemption I must go onto consider whether the public interest in disclosing the information is outweighed by the public interest in maintaining the exemption.
32. The Ministers made a number of submissions in respect of the application of the public interest to information withheld under section 28(1). The Ministers submitted that the public interest in releasing the database was outweighed by the public interest in maintaining good relations within the UK to enable complete and robust responses to the Commission on infraction cases. The Ministers argued that while they recognised the importance of transparency in the government's operations, the handling of complex and sensitive issues such as infraction cases required a clear private space in which both UK Government and devolved administrations could operate. The Ministers submitted that the devolution settlement relied very much on mutual cooperation and trust between the administrations. Where disclosure of information might cause damage to this relationship, the Ministers argued that this was a strong reason for the balance of the public interest to lie in withholding the information concerned.



33. The Ministers advanced two further reasons in support of their argument that inhibited relations resulting from disclosure would not be in the public interest. Firstly, they submitted that there could be substantial delays in implementing EU laws and the UK, as the Member State, could be levied with a substantial fine (payment of which would be the responsibility of the relevant devolved administration). Secondly, constrained communications could potentially weaken the quality of the legislation implementing EU laws.
34. I accept that there is a strong public interest in maintaining good and effective relations between the Scottish and other UK administrations, and that any counter argument that disclosure would be in the public interest where the exemption applied would have to be compelling in order to outweigh the public interest in non-disclosure. After weighing up the arguments for and against I have come to the view that, where the exemption applies, the public interest lies in withholding the information rather than in disclosing it.
35. My detailed findings on the application of section 28(1) to each infraction record are set out in Appendix 2 to this decision.

Section 30(b)(i) and (ii) and section 30(c)

36. The Ministers submitted that disclosing the database would be likely to inhibit substantially the free and frank provision of advice and the free and frank exchange of views for the purposes of deliberation, thus prejudicing substantially the effective conduct of public affairs. The Ministers therefore considered that section 30(b)(i) and (ii) and section 30(c) applied to the information requested.
37. The Ministers reaffirmed some the arguments they had made in respect of section 28(1) (as set out above). They also indicated that policy officials across the Scottish Government were responsible for entering and reviewing information as an infraction case proceeded and that frequently this information was very detailed and sensitive. The Ministers argued that if the database were to be disclosed, it was very likely that this would have a substantially inhibiting effect on the information contained within it, in particular the views and deliberations recorded in it. The Ministers indicated that this, in turn, would greatly reduce the value and effectiveness of the database. This would be detrimental to the Scottish Government's ability to respond to infraction cases and to brief Ministers and senior officials about them. As a result, the Ministers argued, release would be likely to prejudice substantially the effective conduct of public affairs.



38. The Ministers' submissions in respect of section 30(b) and (c) appear to be co-dependent. I understand that the Ministers are arguing that because disclosure would inhibit substantially the free and frank provision of advice or exchange of views for the purposes of deliberation that this in turn would reduce the value of the database and thereby prejudice substantially the effective conduct of public affairs. I do not accept that section 30(c) can be dependent on section 30(b) in this way. In particular, section 30(c) states that the authority must demonstrate that disclosure would "otherwise prejudice substantially the effective conduct of public affairs". Therefore it seems to me that an authority seeking to rely on section 30(c) must find additional grounds for prejudice to those it has relied on in respect of section 30(b).
39. I will examine the arguments in relation to section 30(c) in greater detail in paragraphs 58-61 below. Before I do that, I will consider the application of section 30(b) to the information requested. The two exemptions in section 30(b) provide that information is exempt if its disclosure would, or would be likely to, inhibit substantially (as the case may be) the free and frank provision of advice, or the free and frank exchange of views for the purposes of deliberation, respectively.
40. Generally speaking, the exemptions in section 30(b) of FOISA allow for information to be withheld if its disclosure would, or would be likely to, inhibit substantially the imparting or commissioning of advice, or the offering or requesting of opinion, comment or consideration. The term "inhibit" is not defined in FOISA. However, I take the view that in this context it means to restrain, decrease or suppress the freedom with which opinions or options are expressed. The Ministers' own guidance to its staff on the application of the exemptions in section 30(b) of FOISA points out that the word "inhibit" suggests a suppressive effect, so that communication would be less likely to be made, or would be made in a more reticent or circumscribed fashion, or would be less inclusive.
41. The term "deliberation" tends to refer to the evaluation of the competing arguments or considerations that may have an influence on a public authority's course of action. I consider that it will include expressions of opinion and recommendations, but will not include purely factual material or background information. The information should reveal the "thinking process" or reflection that has gone into the decision.
42. The exemptions under section 30(b) of FOISA acknowledge that the prospect of disclosure of information which reveals internal thinking processes may be detrimental to the ultimate quality of decision making within a public authority, and that this could lead to less candid and robust discussions, insufficient records being created, hard choices being avoided and, ultimately, the quality of government being undermined.



43. I am of the view that it is important for public authorities to treat each request for information on a case by case basis. Release of internal communications in one case should not be taken to imply that such communications will “routinely” be released in future. The individual circumstances of each case must be taken into consideration and the public interest in each case assessed on its own merits.
44. In considering the application of any exemption, I always look at the actual information withheld, not simply the category of information to which it belongs or the type of situation in which the request has arisen. In other words, in considering these particular exemptions, I must consider whether the disclosure of that particular information would, or would be likely to, in all the surrounding circumstances, have the substantially inhibiting effect described in section 30(b) of FOISA. 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 the future.
45. In section 30(b) of FOISA, the chief consideration is not whether the information itself constitutes advice or the exchange of views for the purposes of deliberation, but whether the release of the information that has been withheld would inhibit substantially the free and frank provision of advice or the free and frank exchange of views for the purposes of deliberation.
46. Nevertheless, where information is withheld under section 30(b)(i) of FOISA and that information itself contains the free and frank provision of advice, this is likely to constitute stronger grounds in support of the view that the disclosure of such information would, or would be likely to, inhibit the free and frank provision of advice in future. Conversely, if the information does not constitute free and frank advice, then the case for withholding is likely to be weaker. The same reasoning applies for section 30(b)(ii) of FOISA.
47. Even if the information falls within the categories identified in section 30(b) the authority must still demonstrate that release of the information would or would be likely to inhibit substantially the free and frank provision of advice or exchange of views for the purposes of deliberation.
48. It is clear that the Ministers has applied section 30(b) to a class of information, that is, to the contents of the whole database rather than to the specific information contained in each field of each record. In a number of previous cases, as in the preceding paragraphs, I have indicated that the individual circumstances of each case must be taken into consideration. Advice and expressions of opinion can be exempt from disclosure only where that disclosure would have a substantially inhibiting effect in the future. In assessing the inhibiting effect disclosure might have the authority should consider:



- a) the subject matter of the advice or opinion,
 - b) the content of the advice or opinion itself,
 - c) the manner in which the advice or opinion is expressed, and
 - d) whether the timing of release would have any bearing (releasing advice or opinion whilst a decision was being considered, and for which further views were still being sought, might be more substantially inhibiting than once a decision has been taken).
49. I have considered carefully the information contained within the database. As I have indicated above, the information contained in certain fields is frank and candid in content. The nature of the entries appears to confirm the Ministers' submission that the purpose of the database is to include as much relevant information as possible and that the emphasis is on the substance rather than the form or presentation of this information. I have also taken into account the subject matter of the opinions and comments. Naturally, the comments address alleged infringements of EU legislation, in most cases at a point when the relevant proceedings are still ongoing. In the circumstances, I accept that the information contained within the database is likely to be at its most sensitive at that point.
50. I have also taken into account that the purpose of any correspondence between the Commission and the Member State at this stage is to inform the Member State about the alleged infringement and to seek its comments. I understand that this represents a negotiation stage whereby a solution might be reached between the Commission and the Member State without the need to proceed to the ECJ. In this respect, the process necessitates both parties being as free and frank as possible.
51. I also accept that the timing of the request is pertinent to the consideration of section 30(b). Mr Edwards has requested an up-to-date copy of the database. As stated above, the database contains information about those cases which were ongoing at the time of Mr Edwards' request (although I note that certain of the cases the database contains had been completed at that time).



52. Given all of these circumstances, I am satisfied that certain information contained within the database is exempt by virtue of section 30(b) in that it is free and frank comment made in connection with an ongoing investigation and negotiations. I am satisfied that its disclosure would inhibit substantially the free and frank provision of advice or exchange of views for the purposes of deliberation. However, I am not satisfied that disclosure of all information contained within the database would inhibit substantially the free and frank provision of advice or exchange of views for the purposes of deliberation. In fact, I find that the majority of the information contained within the database is routine information or was already in the public domain at the time of Mr Edwards' request. I have further noted that some of the cases had been completed at the time of the request. In particular, as noted above in relation to section 28(1) I do not consider that, in most cases, a brief description of the alleged breach or routine information about the necessary steps required to address the alleged breach would meet the harm test contained in section 30(b).
53. Section 30(b) is subject to the public interest test and therefore in each case where the exemption has been upheld I have considered whether the public interest in disclosure of the information is outweighed by the public interest in withholding it.
54. The Ministers made a number of submissions in respect of the application of the public interest in respect of section 30(b). The Ministers argued that Europe Division was responsible for monitoring infractions and if it could not rely on the information in the database being complete then it could not monitor, or respond to, complex cases properly. Further, if that were the case it could not be guaranteed that any relevant information reported to Ministers (which would be based on the information in the database) was complete or accurate. This in turn would impact the Ministers' responsibility to ensure that EU legislation was transposed correctly and on time. On this basis, the Ministers argued that the public interest in disclosure of the information was outweighed by the public interest in maintaining the exemption.
55. Where in this case I have accepted that section 30(b) applies to the information withheld I have also found that the public interest in disclosing the following information is outweighed by the public interest in withholding it. In reaching this decision I have considered the desirability of making information available to the public and the general need for transparency and accountability in decision making. However, I have also taken into account that Ministers and officials should be able to discuss matters of substance freely and openly, the timing of this request and the sensitivity of the subject matter.



56. Finally, I have taken into account the revised general arguments in relation to section 30(b) put forward by the Ministers with their letter of 2 May 2007. My views on the Ministers' revised position on section 30(b) are set out fully in *Decision 089/2007 Mr James Cannell and the Scottish Ministers* and I do not consider it necessary to add anything in relation to these arguments in this particular decision.
57. My detailed findings on the application of section 30(b) to each infraction record are set out in Appendix 2 to this decision.

Application of Section 30(c)

58. The Ministers also sought to rely on section 30(c) to withhold information contained within the database. Section 30(c) states that information is exempt if it would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs. As I stated above, it appears that the Ministers' reliance on section 30(c) is dependent on its submissions in respect of section 30(b). I understand that the Ministers are arguing that if officials are inhibited from being free and frank in their exchanges then they will be record less information and this would, in turn, reduce the effectiveness and value of the database. This would be detrimental to the ability of officials to respond to infraction cases and to brief Ministers and senior officials.
59. However, in order to rely on section 30(c) the authority has to demonstrate that disclosure would otherwise prejudice substantially the effective conduct of public affairs. I understand this to mean that an authority must demonstrate a separate and different prejudice to that identified in section 30(b). I am required to consider whether the reduced value of the database and the detriment to the ability of officials to brief Ministers and senior officials represent a separate prejudice from the inhibition to the free and frank exchange of views or provision of advice required for the purposes of section 30(b).
60. In my view, the Ministers have not demonstrated a separate ground of prejudice as required by section 30(c). As stated above, section 30(b) permits authorities to withhold information where disclosure would inhibit substantially the free and frank provision of advice or exchange of views for the purposes of deliberation. Therefore it is not enough to demonstrate simply that officials or Ministers would be inhibited; disclosure must also impact on their ability to provide advice or exchange for views for the purposes of deliberation. It seems to me that the reduced value and/or detriment to the ability of officials to brief Ministers or respond to EU infractions is incorporated within the terms of section 30(b) in that the purpose of the database, as I understand it, is to assist with deliberations on EU infraction cases and to provide advice to Ministers.



61. As a result, I do not consider that the Ministers has identified how disclosure of information contained within the database would prejudice substantially the effective conduct affairs in addition to the inhibition as set out in section 30(b). As a result, I do not uphold the application of section 30(c) in addition to the application of section 30(b).
62. As I have not upheld the application of section 30(c) I am not required to go on to consider whether the public interest in disclosure of the information is outweighed by the public interest in maintaining the exemption.

Application of section 32(1)(a)(ii) prejudice to international relations

63. The Ministers also relied on section 32(1)(a)(ii) of FOISA to withhold the contents of the database. The Ministers submitted that there was an understanding between the Commission and Member States that correspondence relating to the preliminary stages of the infraction process remained confidential. The aim of this, it was submitted, was to facilitate an amicable and speedy settlement of the dispute. As this might involve communication with the ECJ and the Commission it was vitally important that the details of any negotiations remained confidential. The Ministers pointed out that the database contained a field named “Anticipated Commission response” which outlined their view on how the Commission was likely to respond. Another field, “Case history”, frequently contained information which had been exchanged in confidence. The Ministers submitted that disclosure of this information would almost certainly prejudice substantially its relations with the Commission and the ECJ.
64. Section 32(1)(a)(ii) states that information is exempt if its disclosure would, or would be likely to, prejudice substantially relations between the United Kingdom and any international organisation or international court. Section 32(3) defines both “international court” and “international organisation” (see Appendix 1 for full definition). I am satisfied that both the European Commission and the European Court of Justice fall within these respective definitions.
65. In my briefing on section 32 I make it clear that in considering the application of the exemption under section 32(1)(a) authorities should be aware that it is the international relations and interests of the United Kingdom **as a whole** which should be at risk of substantial prejudice from the release of information, not those of a component region, part, or sector of the UK, nor indeed those of the public authority itself. I make the point that authorities should therefore only consider the application of this exemption if it can be clearly demonstrated that substantial prejudice to the international relations or interests of the entire UK would result from the release of information. Therefore I need to be satisfied that disclosure would harm the relationship between the UK as a whole and the Commission and/or the ECJ, not just the relationship between the Ministers and those bodies.



66. In support of its submissions the Ministers enclosed an extract from their own guidance on “confidentiality” in respect of EU infraction proceedings. That guidance indicates that in a recent decision, the Court of First Instance confirmed that Member States were entitled to expect confidentiality from the Commission in respect of preparatory documents relating to investigations which might lead to infraction proceedings, although it indicated that this did not necessarily cover all documents related to infraction proceedings.
67. In order to assess any likely prejudice to the relations between the UK and the Commission and ECJ it seemed to me helpful to examine in more detail the EU’s own access to information regime, including the attitude of the EU institutions to release of information relating to infraction proceedings and the views of the European Ombudsman and the ECJ in this regard. Individuals can complain to the European Ombudsman if they do not get access to the information they have sought, or take the matter to the ECJ. The EU actually has two courts. The lower court, the Court of First Instance, deals with cases where individuals sue the EU institutions. The second EU court is the European Court of Justice which hears appeals from the lower court and cases where EU institutions sue each other or where there are disputes between EU institutions and Member States.
68. *Regulation No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents* governs access to EU documentation held by the institutions. The Commission’s own guidance on infringement proceedings states that access to information relating to these proceedings will be governed by Regulation No 1049/2001. Article 4 of Regulation No 1049/2001 contains exceptions to the right of access, including provision that institutions shall refuse access where disclosure would undermine the protection of the purpose of inspections, investigations and audits. This is the exception on which the institutions have generally relied in withholding information relating to infraction proceedings.
69. One of the key statements on access to information relating to infringement proceedings appears in Case T-191/99 *Petrie and Others v Commission* [2001] ECR II-3677. In that case, the Court stated that:



“This requirement of confidentiality remains even after the matter has been brought before the Court of Justice, on the ground that it cannot be ruled out that discussions between the Commission and the Member State in question regarding the latter’s voluntary compliance with the Treaty requirements may continue during the court proceedings and up to delivery of the judgement of the Court of Justice. The preservation of that objective, namely an amicable resolution of the dispute between the Commission and the Member State concerned before the Court of Justice has delivered judgement, justifies refusal of access to the letters of formal notice and reasoned opinions drawn up in connection with the Article 226 EC proceedings on the ground of protection of the public interest relating to inspections, investigations and court proceedings...”

70. It seems to me, however, that this statement has to be balanced against other factors. Both the Court and the European Ombudsman have made it clear that the authority should not simply state that the possible opening of infringement proceedings is sufficient grounds as justification for refusing to supply all documents requested by an applicant; rather the authority should address the actual documents being requested. Both the Ombudsman and the Court have emphasised the importance of considering partial disclosure.
71. I have also noted that in a number of decisions the information has been disclosed once the procedure has been completed.
72. It is also worth noting that under Regulation No 1049/2001 a Member State has the right to veto access to a document it has itself created, which seems to permit a level of self-determination in terms of access to information the Member State has itself produced. In fact, the overriding impression is that the Commission is concerned to protect the confidentiality of the Member State rather than information about its own actions.
73. For example, in the case of *Mara Messina v Commission T-76/02 [2003] ECR II-3203* the applicant sought access to correspondence exchanged between the Commissioner and the Italian authorities to certain documents concerning a State aid scheme. The Commission refused to supply the information but invited the applicant to send her application to the Italian authorities whilst making it clear that, for its part, it would have no objection to the disclosure of the letters which it had itself sent to those authorities. The Commission subsequently sent the applicant those documents which it had drawn up in the course of the examination of the aid scheme in question. I understand that the Commission had reached a decision on the scheme prior to the applicant’s request for information. Nonetheless, I mention this case because it suggests that the Commission is less concerned about protecting from disclosure its own correspondence.



74. However, the key issue is the extent to which the above discussion is relevant to the information that has been requested. The above cases and guidance predominantly focus on the actual correspondence; that is, the Article 226 letters and reasoned opinions. In fact, the database generally contains only basic information about each alleged infraction and not the detail I would expect to exist in the actual correspondence.
75. The majority of the information in the database is factual information about the nature of the complaint, its status and the next steps. The Ministers themselves publish basic information about the alleged infraction while excluding information about the substance of the complaint. Nonetheless, I am unable to see why disclosure of basic information about the nature of the complaint would prejudice substantially the UK's relations with the EU institutions. EU infraction proceedings are initiated where it is alleged that a Member State has failed properly to implement Community Law. Having considered the substance of the complaints contained in the database I have real difficulty in understanding why this information should have the substantially prejudicial effects described by the Ministers. In some cases, the alleged failure to transpose certain elements of Community Law will, in any event, be known beyond the confines of the parties to the proceedings. In other cases, the complaint will have originated from an interested third party. Finally, the Commission may itself have issued a press release about the alleged infraction.
76. In their submissions to my office the Ministers emphasised the need to protect the ongoing negotiations among the Commission, ECJ and Member State and pointed to various fields where details of these negotiations were likely to be included; in particular, "Anticipated Commission response" and "Case history". I have looked carefully at the information included in these fields in each record. Again, I have had real difficulty in understanding how disclosure of information in the former field would prejudice relations with the Commission or the ECJ. The information contained within this field is very often brief. Further, while I can see that disclosure might harm the UK Government's negotiating position and/or embarrass the government in those cases where the information is more substantive, and while it is likely in appropriate circumstances to be exempt under section 30(b), I cannot see how disclosure would prejudice substantially its relations with the Commission. Comments of substance may, however, fall within the protection of section 30(b). Likewise, the information contained in "Case history" is often very brief and rarely includes information about the actual substance of the negotiations. Indeed, some of this information has clearly been derived from sources other than the Commission. Again, where this field includes comments of substance, this information is likely to be protected by section 30(b).



77. I have taken into account all of the above in considering the application of this exemption to the information contained within the database. The Ministers have emphasised the understanding between the Member States and the Commission that all information relating to infraction proceedings should remain confidential. However, the case law and guidance appear to point to a desire to protect the confidentiality of the Member State rather than that of the EU institutions. I have not yet been persuaded that the EU would raise objections were a Member State to decide itself to disclose information relating to infraction proceedings. Further, both the Ombudsman and the ECJ have emphasised the importance of partial disclosure where appropriate. Nevertheless, a key factor in this case has been the nature of the information contained within the database. Mr Edwards has not requested the actual correspondence between the two parties. Rather he is seeking information contained in the database, much of which is brief in content.
78. I have considered carefully the information within each field in each record. I am not satisfied that the disclosure of any information contained within these fields would substantially prejudice relations between the UK Government and the Commission or the ECJ. I do not accept that disclosure of information supplied by the Commission or ECJ or information relating to the negotiations is in itself enough to prejudice substantially relations with the EU institutions. Rather the content of the information would have to be something of substance to meet the high harm test laid down by section 32(1)(a)(ii). This means that I must be satisfied that the prejudice would be real, actual and of significant substance before I will uphold the application of section 32(1)(a)(ii).
79. As I have not upheld the application of section 32(1)(a)(ii) to any of the information requested I am not required to go on to consider whether the public interest in disclosing the information is outweighed by the public interest in maintaining the exemption.

Application of section 32(1)(b)(ii)

80. The Ministers submitted that the information held on the database included information provided by the Commission which was confidential because it was provided to them by the Commission on the understanding that it would be held in confidence. The Ministers indicated that this information was clearly exempt under section 32(1)(b)(ii).
81. Section 32(1)(b)(ii) states that information is exempt if it is confidential information obtained from an international organisation or international court. Section 32(2) provides that information obtained from an organisation or court is confidential at any time while-
- (a) the terms on which that information was obtained require it to be held in confidence; or



- (b) the circumstances in which it was obtained make it reasonable for the State, organisation or court to expect that it will be so held.
82. The Ministers again pointed to their own guidance on EU Infractions. This guidance states at paragraph 23 that the general position is that correspondence between the Commission and a Member State in preliminary stages of Article 226 proceedings, Article 226 letters and Reasoned Opinions are regarded as confidential by both parties. Paragraph 24 of the guidance refers to the decision of the Court of First Instance mentioned in paragraph 67 above.
83. Before I consider the substance of this exemption I consider it helpful to reaffirm the limited amount of information contained in the database that could be considered to have been supplied by the Commission. Almost all the information contained within the database appears to have been produced internally or derived from the UK Government or other external sources. Almost exclusively, the only information that can be described as information supplied by the Commission is that setting out the substance of the complaint and, in limited cases, further comments from the Commission. As I said above, in many cases this is very brief information and, having considered the information held in each case, I have really difficulty in understanding how it could be considered to be confidential.
84. I am not persuaded that it is the intention or expectation of the Commission that complete confidentiality should be maintained in respect of all information relating to infraction proceedings and frankly, I find this unrealistic. The Commission itself may issue a press release announcing the initiation of infraction proceedings, and further the complaint may have come from a source other than the Commission, such as an interested third party. In other cases, the failure to transpose a certain element of community law will be known outside the confines of the government and the EU institutions. I have also noted that according to the Ministers' own guidance the decision from the Court of First Instance addresses the Member States' expectation of confidentiality, again suggesting that the Commission is concerned to protect the Member State rather than its own information.



85. The database contains limited information that could be considered to have been supplied by the Commission. I consider that the confidential nature of the complaint would need to be examined in each case to determine the extent which it is known outside the two parties. Ministers have not identified, in each case, the information that has been supplied by the Commission nor has it supplied evidence to demonstrate the confidential nature of each item of information, and I cannot accept that any of this information is on the face of it confidential. The only information that could be described as having been obtained from the ECT relates to its own judgements, which are published in any event. In the circumstances, therefore, I have not upheld the application of section 32(1)(b)(ii) to any of the information contained within the database.
86. Given I have not upheld the application of section 32(1)(b)(ii) to any of the information requested, I am not required to go on to consider whether the public interest in disclosing the information is outweighed by the public interest in maintaining the exemption.

Decision

I find that the Scottish Ministers (the Ministers) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Edwards.

I find that by withholding as exempt that information which I have accepted as not requiring to be disclosed in Appendix 2 to this decision (i.e. where I have accepted that an exemption applies and the public interest in disclosure is not outweighed by that in maintaining the exemption in question) the Ministers complied with Part 1 of FOISA.

However, in failing to disclose the remaining information in the EU infractions database (i.e. those parts identified in Appendix 2 as information to be disclosed) the Ministers failed to comply with Part 1 (and in particular section 1(1)) of FOISA.

I therefore require the Ministers to provide Mr Edwards with the information identified in Appendix 2 as information to be disclosed, within the period of 45 days after the date of intimation of this decision notice.



Appeal

Should either Mr Edwards or the Ministers wish to appeal against this 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 after the date of intimation of this decision notice.

Kevin Dunion
Scottish Information Commissioner
29 October 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.
- (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.



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;
 - (c) the Ministers Committee of the Northern Ireland Assembly; or
 - (d) the National Assembly for Wales.

30 Prejudice to effective conduct of public affairs

Information is exempt information if its disclosure under this Act-

- (a) ...
- (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; or
- (c) would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs.

32 International relations

- (1) Information is exempt information if-
 - (a) its disclosure under this Act would, or would be likely to, prejudice substantially-
 - (i) ...
 - (ii) relations between the United Kingdom and any international organisation or international court;
 - (iii) ...



- (iv) ...; or
 - (b) it is confidential information obtained from-
 - (i) ...
 - (ii) an international organisation or international court.
 - (2) For the purposes of subsection (1), information obtained from a State, organisation or court is confidential at any time while-
 - (a) the terms on which that information was obtained require it to be held in confidence; or
 - (b) the circumstances in which it was obtained make it reasonable for the State, organisation or court to expect that it will be so held.
 - (3) In subsection (1)-
 - "international court" means an international court which-
 - (a) is not an international organisation; and
 - (b) is established-
 - (i) by a resolution of an international organisation of which the United Kingdom is a member; or
 - (ii) by an international agreement to which the United Kingdom is a party;
 - "international organisation" means-
 - (a) an international organisation whose members include any two or more States; or
 - (b) an organ of such an international organisation;
 - "State" includes-
 - (a) the government of any State; and
 - (b) any organ of such a government,
- and references to a State other than the United Kingdom include references to any territory outwith the United Kingdom.



Appendix 2

Record number	Exemptions applied	Exemption upheld?	Public interest	Information to be disclosed
2006/2112	28(1)	No	N/A	All information in record with exception of information in following fields: Next steps; Potential problems; Anticipated Commission response; Follow-up action; Case history
	30(b)(i) & (ii)	Partially	Partial release	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
2002/4783	28(1)	No	N/A	All information in record with exception of information in following fields: Next steps; Potential problems; Anticipated Commission response; Follow-up action; Case history
	30(b)(i) & (ii)	Partially	Partial release	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
2002/4156	28(1)	No	N/A	All information in record
	30(b)(i) & (ii)	No	N/A	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
2002/2173	28(1)	Partially	Partial release	All information in record with exception of information in following fields: Next steps; Potential problems; Anticipated Commission response; Follow-up action; Case history
	30(b)(i) & (ii)	Partially	Partial release	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
2002/2165	28(1)	Partially	Partial	All information in record with exception of information in following



			release	fields:
	30(b)(i) & (ii)	Partially	Partial release	Potential problems; Anticipated Commission response
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(a)	No	N/A	
2001/4821	28(1)	Partially	Partial release	All information in record with exception of information in following fields:
	30(b)(i) & (ii)	Partially	Partial release	Next steps; Potential problems; Anticipated Commission response; Follow-up action; Case history
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
2001/4027	28(1)	Partially	Partial release	All information in record with exception of information in following fields:
	30(b)(i) & (ii)	Partially	Partial release	Next steps; Potential problems; Anticipated Commission response; Follow-up action
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
2000/4976	28(1)	No	N/A	All information in record
	30(b)(i) & (ii)	No	N/A	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
2000/4905	28(1)	Partially	Partial release	All information in record with exception of information in following fields:
	30(b)(i) & (ii)	Partially	Partial release	Article 226 fields
	30(c)	No	N/A	



	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
1999/5132	28(1)	No	N/A	All information in record with exception of information in following fields: Next steps; Follow-up action; Case history
	30(b)(i) & (ii)	Partially	Partial release	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
2000/4126	28(1)	No	N/A	All information in record
	30(b)(i) & (ii)	No	N/A	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
1997/4742	28(1)	No	N/A	All information in record
	30(b)(i) & (ii)	No	N/A	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
2000/4304	28(1)	No	N/A	All information in record with exception of information in following fields: Case history; Commission Decision; Commission Decision; Additional comments
	30(b)(i) & (ii)	Partially	Partial release	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
2000/2305	28(1)	Partially	Partial release	All information in record with exception of information in following fields: Next steps; Potential problems; Anticipated Commission response; Case history; Commission Decision
	30(b)(i) & (ii)	Partially	Partial release	
	30(c)	No	N/A	



	32(1)(a)	No	N/A	(no.2)
	32(1)(b)	No	N/A	
2000/2231	28(1)	Partially	Partial release	All information in record with exception of information in following fields: Next steps; Follow-up action; Case history
	30(b)(i) & (ii)	Partially	Partial release	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
2000/2180	28(1)	Partially	Partial release	All information in record with exception of information in following fields: Next steps; Potential problems; Anticipated Commission response; Follow-up action; Case history
	30(b)(i) & (ii)	Partially	Partial release	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
1999/4323	28(1)	No	N/A	All information in record
	30(b)(i) & (ii)	No	N/A	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
1998/2392	28(1)	Partially	Partial release	All information in record with exception of information in following fields: Next steps; Potential problems; Anticipated Commission response; Follow-up action; Case history; Commission Decision (226)
	30(b)(i) & (ii)	Partially	Partial release	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
1999/2119	28(1)	No	N/A	All information in record
	30(b)(i) & (ii)	No	N/A	



	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
1998/5023	28(1)	No	N/A	All information in record
	30(b)(i) & (ii)	No	N/A	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
1998/2265	28(1)	No	N/A	All information in record with exception of information in following fields: Next steps; Anticipated Commission response; Case history
	30(b)(i) & (ii)	Partially	Partial release	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
1997/2185	28(1)	No	N/A	All information in record
	30(b)(i) & (ii)	No	N/A	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
1994/2106	28(1)	No	N/A	All information in record
	30(b)(i) & (ii)	No	N/A	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
1996/2092	28(1)	No	N/A	All information in record with exception of information in following fields: Next steps; Potential problems;
	30(b)(i) & (ii)	Partially	Partial release	



	30(c)	No	N/A	Anticipated Commission response; Follow-up action
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
1988/0202	28(1)	No	N/A	All information in record
	30(b)(i) & (ii)	No	N/A	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
2003/0578	28(1)	No	N/A	All information in record
	30(b)(i) & (ii)	No	N/A	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
2002/523207	28(1)	No	N/A	All information in record
	30(b)(i) & (ii)	No	N/A	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
2004/10830	28(1)	No	N/A	All information in record with exception of information in following fields: Next steps; Potential problems; Anticipated Commission response; Follow-up action
	30(b)(i) & (ii)	Partially	Partial release	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
2004/2036	28(1)	No	N/A	All information in record
	30(b)(i) & (ii)	No	N/A	
	30(c)	No	N/A	



	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
1998/2391	28(1)	No	N/A	All information in record
	30(b)(i) & (ii)	No	N/A	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
2004/0376	28(1)	No	N/A	All information in record
	30(b)(i) & (ii)	No	N/A	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
2003/4461	28(1)	No	N/A	All information in record
	30(b)(i) & (ii)	No	N/A	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
2003/0341	28(1)	No	N/A	All information in record
	30(b)(i) & (ii)	No	N/A	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
2004/2062	28(1)	No	N/A	All information in record with exception of information in following fields: Next steps; Potential problems; Anticipated Commission response; Follow-up action; Case history; Commission Decision; Additional
	30(b)(i) & (ii)	Partially	Partial release	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	



	32(1)(b)	No	N/A	Info
2004/1056	28(1)	No	N/A	All information in record
	30(b)(i) & (ii)	No	N/A	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
2002/2311	28(1)	No	N/A	All information in record with exception of information in following fields: Potential problems; Anticipated Commission response
	30(b)(i) & (ii)	Partially	Partial release	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
2004/1505	28(1)	No	N/A	All information in record
	30(b)(i) & (ii)	No	N/A	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
2001/4426	28(1)	No	N/A	All information in record
	30(b)(i) & (ii)	No	N/A	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
2003/2146	28(1)	No	N/A	All information in record with exception of information in following fields: Description of Case; Anticipated Commission response; Follow-up
	30(b)(i) & (ii)	Partially	Partial release	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	



	32(1)(b)	No	N/A	
2001/2121	28(1)	No	N/A	All information in record
	30(b)(i) & (ii)	No	N/A	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
2004/1512	28(1)	No	N/A	All information in record
	30(b)(i) & (ii)	No	N/A	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
2005/0248	28(1)	No	N/A	All information in record
	30(b)(i) & (ii)	No	N/A	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
2005/0255	28(1)	No	N/A	All information in record
	30(b)(i) & (ii)	No	N/A	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
2005/0256	28(1)	No	N/A	All information in record
	30(b)(i) & (ii)	No	N/A	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	



2004/1507	28(1)	No	N/A	All information in record
	30(b)(i) & (ii)	No	N/A	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
2004/1508	28(1)	No	N/A	All information in record
	30(b)(i) & (ii)	No	N/A	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
2003/4012	28(1)	No	N/A	All information in record
	30(b)(i) & (ii)	No	N/A	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
2001/4985	28(1)	No	N/A	All information in record
	30(b)(i) & (ii)	No	N/A	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
2004/1502	28(1)	No	N/A	All information in record
	30(b)(i) & (ii)	No	N/A	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
2004/4506	28(1)	No	N/A	All information in record with exception of information in following



	30(b)(i) & (ii)	Partially	Partial release	fields: Description of case; Case history; Commission decision (no.1); Commission decision (no.2); Additional info
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
2005/0436	28(1)	No	N/A	All information in record
	30(b)(i) & (ii)	No	N/A	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
2005/0442	28(1)	No	N/A	All information in record
	30(b)(i) & (ii)	No	N/A	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
2003/4272	28(1)	Partially	Partial release	All information in record with exception of information in following fields: Next steps; Potential problems; Anticipated Commission response; Follow-up action; Case history; Commission decision (no 1)
	30(b)(i) & (ii)	Partially	Partial release	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
2004/2022	28(1)	Partially	Partial release	All information in record with exception of information in following fields: Potential problems; Anticipated Commission response
	30(b)(i) & (ii)	Partially	Partial release	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	



2005/2252	28(1)	No	N/A	All information in record
	30(b)(i) & (ii)	No	N/A	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
2005/0722	28(1)	No	N/A	All information in record
	30(b)(i) & (ii)	No	N/A	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
2005/0724	28(1)	No	N/A	All information in record
	30(b)(i) & (ii)	No	N/A	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
2005/0725	28(1)	No	N/A	All information in record
	30(b)(i) & (ii)	No	N/A	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
2005/0726	28(1)	No	N/A	All information in record
	30(b)(i) & (ii)	No	N/A	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
2005/D120815	28(1)	No	N/A	All information in record



	30(b)(i) & (ii)	No	N/A	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
2005/4139	28(1)	Partially	Partial release	All information in record with exception of information in following fields: Description of case; Next steps; Anticipated Commission response
	30(b)(i) & (ii)	Partially	Partial release	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
2005/4298	28(1)	Partially	Partial release	All information in record with exception of information in following fields: Next steps; Anticipated Commission response
	30(b)(i) & (ii)	Partially	Partial release	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
2006/0186	28(1)	Partially	Partial release	All information in record with exception of information in following fields: Commission decision
	30(b)(i) & (ii)	Partially	Partial release	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	
2006/0183	28(1)	No	N/A	All information in record with exception of information in following fields: Potential problems
	30(b)(i) & (ii)	Partially	Partial release	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	



	32(1)(b)	No	N/A	
2006/0180	28(1)	No	N/A	All information in record
	30(b)(i) & (ii)	No	N/A	
	30(c)	No	N/A	
	32(1)(a)	No	N/A	
	32(1)(b)	No	N/A	