



Scottish Information
Commissioner

**Decision 217/2007 Mr John McGoldrick and the
Scottish Ministers**

*Forth and Tay Bridges: information relating to traffic modelling and
tolls*

**Applicant: Mr John McGoldrick
Authority: The Scottish Ministers
Case No: 200601480
Decision Date: 19 November 2007**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS



Decision 217/2007 Mr John McGoldrick and the Scottish Ministers

Forth and Tay Bridges: information relating to traffic modelling and tolls – variously claimed not to be held and withheld as otherwise available and under exemptions relating to policy development and effective conduct of public affairs – Commissioner required release of certain documents

Relevant Statutory Provisions and Other Sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) General entitlement; 2 (Effect of exemptions); 17 (Notice that information is not held); 25(1) (Information otherwise accessible); 29(1)(a) (Formulation of Scottish Administration policy etc); 30(b)(i) &(ii) (Prejudice to effective conduct of public affairs).

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

Facts

Mr McGoldrick requested information from the Scottish Ministers (the Ministers) relating to the Phase Two report on Forth and Tay bridge tolls, along with certain related traffic modelling information. The Ministers refused to provide the information, relying on sections 25 (on the basis that certain of the information, for which it provided references, was publicly available) and 29 (which relates to the formulation and development of government policy) of FOISA for withholding it. Following a review, which upheld the original decision, Mr McGoldrick remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, in the course of which the Ministers also argued that the information was exempt under section 30(b) of FOISA (on the basis that its disclosure would, or would be likely to, inhibit substantially the free and frank provision of advice and/or the free and frank exchange of views for the purposes of deliberation) the Commissioner found that the Scottish Ministers had partially failed to deal with Mr McGoldrick's request for information in accordance with Part 1 of FOISA, in that it had not been justified in claiming exemption for certain information under sections 29 and 30. He also accepted that the remainder of the information requested, insofar as it was not to be found in publicly available sources, was not held by the Ministers.



Background

1. On 14 March 2006, Mr McGoldrick wrote to the Ministers requesting the following information:
 - The [Phase Two] report on the analysis of Tay and Forth bridge toll scenarios and interaction with other bridges
 - Details of the brief that was given to whoever produced the report.
2. Mr McGoldrick submitted a second information request to the Ministers on 24 March 2006 for access to the output from the model showing the PM peak and interpeak effects for the Tay and Forth bridge tolls.
3. On 6 April 2006, the Ministers wrote to Mr McGoldrick in response to both of his requests for information. In this response the Ministers relied on section 25 of FOISA for not providing Mr McGoldrick with the report and modelling data which he had requested. The Ministers did provide Mr McGoldrick with website addresses that he could use to access this information. The Ministers relied on the exemption in section 29 of FOISA for withholding information from Mr McGoldrick regarding the brief for the consultancy work.
4. On 16 May 2006, Mr McGoldrick wrote to the Ministers requesting a review of their decision. In particular, Mr McGoldrick drew the Ministers' attention to his concern that the published information that he had been referred to by the Ministers did not contain the PM peak data that he had requested. Mr McGoldrick also indicated his dissatisfaction with the Ministers' reliance on section 29 of FOISA in relation to withholding the brief for the consultancy work.
5. The Ministers wrote to notify Mr McGoldrick of the outcome of their review on 22 June 2006. They upheld the decision they had reached in the original response to his requests. The Ministers did, however, provide Mr McGoldrick with more specific guidance as to where he would be able to locate the PM peak data in the reports that it had identified earlier.
6. On 13 September 2006, Mr McGoldrick wrote to my Office, stating that he was dissatisfied with the outcome of the Executive's review and applying to me for a decision in terms of section 47(1) of FOISA.
7. The application was validated by establishing that Mr McGoldrick 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

8. On 18 September 2006, the Ministers were notified in writing that an application had been received from Mr McGoldrick and were 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.
9. The investigating officer subsequently contacted the Ministers, asking them to provide further comments on the application and to respond to specific questions their submissions.

Submissions from the Ministers

10. The Ministers explained that the information Mr McGoldrick was seeking derived from a review of existing bridge tolls in Scotland. The review had been carried out in two phases, the traffic modelling and analysis work associated with both phases being undertaken by a consultancy firm on behalf of the Ministers.
11. In their responses to Mr McGoldrick, the Ministers indicated that they were relying on the exemptions in section 25 and section 29 of FOISA for not providing him with the information that he had requested. In their submissions to my Office, the Ministers advised that they were relying on section 17 of FOISA, along with the following exemptions in FOISA, for not providing the information to Mr McGoldrick:
 - Section 25(1) – Information otherwise accessible
 - Section 29(1)(a) – Formulation of Scottish Administration policy etc.
 - Section 30(b)(i) and (ii) – Prejudice to the effective conduct of public affairs.
12. Following further communications with the Ministers regarding the three documents withheld under sections 29(1)(a) and 30(b) of FOISA, the Ministers accepted that certain of the information contained in document 2 would have been publicly available at the time of Mr McGoldrick's request. As a result the Ministers reconsidered the reliance on these exemptions in respect of the whole of document 2 and submitted a redacted version of this document which it indicated it would be willing to disclose to Mr McGoldrick. This will be considered further in my analysis of the Executive's application of the exemptions in sections 29(1)(a) and 30(b).



Submissions from the applicant

13. In his application, Mr McGoldrick asked me to review the decision of the Ministers in relation to two of the three pieces of information that he requested from them, (i) the brief given to whoever produced the report he had asked for and (ii) the output from the model showing the PM peak and interpeak effects for the Tay and Forth bridge tolls.
14. In relation to the “brief” for the consultancy work, Mr McGoldrick advised that he was seeking whatever written instructions were given for the work. He believed that it was not in the public interest to withhold the instructions given for a technical piece of work, the results of which had gone into the public domain.
15. He also advised that the publicly available information he had been directed to did not contain the data he was seeking for the PM peak or the interpeak, but only data he was aware of already. He conceded that the information he required might not exist, but argued that if this was the case the Ministers should have said so when responding to his request.
16. I will consider the arguments presented by the parties further in my Analysis and Findings below.

The Commissioner’s Analysis and Findings

17. 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 Mr McGoldrick and the Executive, I am satisfied that no matter of relevance has been overlooked.
18. The Ministers submitted 5 documents to my Office, all which had been withheld from Mr McGoldrick as exempt from disclosure under FOISA. Mr McGoldrick has not in fact questioned the accessibility of documents 4 and 5 (in respect of which the Ministers have claimed the exemption under section 25(1) of FOISA only) in his application to me and it is clear that he has been given serviceable electronic links to these documents, which he appears to have used. I will therefore not consider the Ministers’ application of exemptions to these documents further in my decision.



19. The remaining documents withheld by the Ministers (documents 1, 2 and 3) all fall within the scope of Mr McGoldrick's request for the brief given to the consultants. I note and accept the Ministers' assertion that there was no formal brief for this work but that these documents record the informal discussions which informed the consultants' remit, along with the report on the first phase of the review (see paragraphs 10 above and 26 below).

Section 17 – Notice that information is not held

20. In response to my investigation, the Ministers argued that the information that Mr McGoldrick was seeking about the PM and interpeak traffic was not in fact held by them. When responding to Mr McGoldrick's request for information and requirement for review, however, they argued that the information was otherwise reasonably obtainable by Mr McGoldrick and therefore exempt under section 25(1) of FOISA. He was directed to where the Ministers understood the information to be found.
21. The Ministers advised that their consultants were commissioned to undertake a study of peak traffic output in relation to the tolled bridges. The modelling process had considered AM, interpeak and PM information, but only the AM information had been developed to give an indicative view of congestion effects. The Ministers advised that Mr McGoldrick had been informed of this and directed to an area of the report where he could find reference to interpeak and PM traffic data. Detailed analysis and reporting had been carried out for AM peak outputs only and therefore the information in the report which the Ministers had identified was as much information as was available on interpeak and PM traffic. Various documents were provided in support of this assertion.
22. Having considered the submissions that have been made by the Ministers in this connection, along with all other relevant information provided by them, I am satisfied that they do not (and did not at the time they dealt with his request) hold PM and interpeak data in addition to that identified to Mr McGoldrick at the time his request was considered. I am also satisfied that the Ministers took all reasonable steps at that time to direct Mr McGoldrick to the information that was held, in a publicly available document. In all the circumstances, therefore, I am satisfied that it was reasonable and appropriate for the Ministers to respond to this part of Mr McGoldrick's request by claiming that the information was exempt under section 25(1) of FOISA.

Section 29(1)(a) – Formulation of Scottish Administration policy etc

23. The Ministers have relied on the exemption in section 29(1)(a) of FOISA in respect of the information contained in documents 1, 2 and 3.



24. The exemption in section 29(1)(a) exempts information which relates to the formulation or development of government policy. As I have set out elsewhere (for example, case 075/2006 *Mr Paul Hutcheon and the Scottish Ministers*), I take the view that “formulation” means the output from the early stages of the policy process where options are generated and sorted, risks are identified, consultation occurs and recommendations or submissions are put to a Minister. “Development” is sometimes used interchangeably with “formulation”, but “development” may go beyond this stage. It may refer to the processes involved in improving on, altering or recording the effects of existing policy.
25. In considering the application of this exemption, public authorities must also take into account the requirements laid down in sections 29(2) and 29(3) of FOISA.
26. In justifying their reliance on this exemption, the Ministers submitted that there was in fact no formal brief for Phase Two of the Tolled Bridges review. They advised that the Phase One report formed the basis for further examination of broader issues, which were contained within Phase Two. The Ministers also advised that much of the “early thinking” which formed part of Phase Two had been discussed informally, and it is documents relating to this informal discussion that the Ministers are seeking to withhold from Mr McGoldrick (under exemptions including section 29(1)(a)). The Ministers argued that the information in these three documents related to the development of government policy.
27. As mentioned already, following correspondence between my investigating officer and them, the Ministers reconsidered the information contained in document 2 and accepted that some of it was in the public domain at the time of Mr McGoldrick’s request. As a result, the Ministers submitted a redacted version of this document which they indicated they were willing to release to Mr McGoldrick. The Ministers indicated that it was still relying on the exemption in section 29(1)(a) of FOISA for the information that it had redacted.
28. Having considered the information contained in documents 1, 2 and 3 and the submissions made by the Ministers, I am satisfied that the information in these documents does relate to the development of government policy.
29. As I am satisfied that the information in these documents does relate to the development of government policy, I am required to consider the application of the public interest test in section 2(1)(b) of FOISA to this information.



Public interest test

30. In considering the application of the public interest test in section 2(1)(b) of FOISA to the information that has been withheld, the Ministers provided combined public interest test arguments to justify their stance that the public interest in disclosure of the information was outweighed by that in maintaining the exemptions in sections 29(1)(a), 30(b)(i) and 30(b)(ii) of FOISA. These arguments are set out in full below:

“Whilst it is our practice to release information where possible, it is extremely important for us to be able to develop policies and exchange information internally on a confidential basis. This is essential for us to maintain the ability to advise Ministers freely and frankly on matters relating to the ongoing formulation and development of policy in an area which continues to be highly sensitive. While we recognise that there is a public interest in having access to information, we believe that this was satisfied by publication of the Phase Two Report of the Tolloed Bridges study.

We consider that there is 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 future and impair the candour and freedom within which papers are prepared, deliberated and revised in future. This in turn, is likely to have a detrimental effect on the efficiency and quality of the deliberative process.

There is a strong public interest in ensuring that, where necessary, advice in areas of ongoing policy development can take place in a non-public arena which will enable rigorous and frank debate about the merits and demerits of alternative courses of action, without fear that such considerations will be picked over out of context. It is 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 may not be immediately considered to be broadly politically acceptable.

One aspect of this is the public interest in protecting the impartiality of the civil service – this applies where a particular release of official advice might create the risk that officials could come under political or public pressure not to challenge ideas in the formulation of policy thus leading to poorer decision making.



Whilst we appreciate that the public interest test must be considered on a case by case basis, in this case, where the information relates to an important process (such as discussion and the provision of advice in order to reach policy decisions), there can be a public interest in protection of the process in itself. We would, for example, argue 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 future, e.g. because the advice or discussion would be oral instead of being written down. We would not suggest that the public interest in withholding internal communications applies where officials have just used strong or trenchant language – that would appear to us to focus the exemption on rigorous, outlandish or unusual statements. Rather it should focus on the real impact of releasing the information.”

31. In my view, when consideration is being given to the application of the public interest test, the consideration as to whether the public interest in disclosure is outweighed by the public interest in maintaining the exemption should be applied specifically to the information under consideration. The arguments advanced by the Ministers are largely general in nature and largely not specific to the information concerned.
32. It is clear to me that the matter of whether tolls should remain on the Forth and Tay road bridges is (or at least was at the time of Mr McGoldrick’s request) a matter of real public interest and debate. It is also apparent that this public interest extends to ascertaining the circumstances underlying the decision making of the Scottish Ministers in relation to the tolled bridges, the research and analysis which informed that decision making, and what matters were considered in the process.
33. I accept that it is important that where the Ministers are developing policies, they should be able to develop these policies, and exchange information internally on what might be termed a confidential basis where this is necessary to enable advice to be given freely and frankly on matters relating to ongoing policy formulation and development.



34. However, while I accept that this is important there is no indication on the documents which have been withheld that these have been provided in confidence. Further, while I accept that the matter of whether tolls remain on the Forth and Tay bridges was, at the time the Ministers dealt with Mr McGoldrick's request, still subject to debate (and remains so to the extent that the legislation to abolish the tolls is still proceeding through Parliament), it is clear from the documents which have been withheld that this information concerns discussions that took place in 2005, prior to Phase Two of the review being carried out. These discussions involved setting out the scope for Phase Two. Phase Two has now been completed and the report on this published (and had been at the time the Ministers dealt with Mr McGoldrick's request) and, in the case of document 2, certain of the information is (and was at the time the request was dealt with by the Ministers) already in the public domain. In addition, it has to be noted that the information contained in these documents is factual.
35. I have also considered the Executive's assertion that there is a public interest in advice in areas of ongoing policy development taking place in a non-public arena, which will enable rigorous and frank debate about the merits and demerits of alternative courses of action without fear that such considerations will be picked over out of context. It is my view, however, that release of the information in documents 1, 2 and 3 would assist in satisfying the public interest in the issues the consultants were asked to examine in carrying out the review. It is clear from some of the information that has been withheld (document 2) that if these documents were read in conjunction with information which is already publicly available then the content could be read in context.
36. On balance therefore I find that the public interest in disclosing the information in documents 1, 2 and 3 is not outweighed by the public interest in maintaining the exemption in section 29(1)(a) of FOISA. As a result I do not uphold the Executive's reliance on the exemption in section 29(1)(a) in respect of the information in documents 1, 2 and 3.

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

37. In order for the Ministers to be able to rely on the exemptions laid down in section 30(b) of FOISA, they would have to show that the disclosure of the information 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.



38. As I have said in previous decisions (e.g. 174/2006, *Christine Grahame MSP and the Scottish Executive*), it is my view that the standard to be met in applying these tests is high. In applying these exemptions, the chief consideration is not whether the information constitutes advice or opinion, but whether release of the information would inhibit substantially the provision of advice or exchange of views. The Ministers' own guidance on the application of section 30(b) points out that the word "inhibit" suggests a suppressive effect, so that communication would be less likely, more reticent or less inclusive. I take the view that in this context "inhibit" means to restrain, decrease or suppress the freedom with which advice is given, and opinions or options are expressed.
39. When considering the application of these exemptions, each request should be considered on a case by case basis, taking into account the effects anticipated from the release of the particular information involved. For example, this would involve considering:
- The nature of the information, and whether it does actually contain the provision of advice, or an exchange of views.
 - The subject matter of the advice or exchange of views.
 - The manner in which the advice or exchange of views are expressed, and
 - Whether the timing of release would have any bearing (releasing advice or views whilst a decision was being considered, and for which further views were still being sought, might be more substantially inhibiting than once advice has been taken).
40. In the course of my investigation, the Ministers submitted additional general submissions on the arguments it was relying on in justifying its conclusion that the exemptions in section 30(b) of FOISA applied to the information withheld in various cases subject to my consideration.
41. I have addressed these additional submissions already in paragraphs 23 to 31 of my decision number 089/2007, *Mr James Cannell and Historic Scotland*. As these new arguments are not specific to the information under consideration, I do not intend to discuss them further here, other than to say that I have considered them fully, along with the original submissions that the Ministers provided in this case, in reaching my conclusions on the applicability of the exemptions in section 30(b) to the information under consideration.



Section 30(b)(i)

42. The Ministers have relied on the exemption in section 30(b)(i) of FOISA in relation to one document (document 2) withheld from Mr McGoldrick.
43. In justifying their reliance on the exemption in section 30(b)(i) of FOISA, the Ministers has indicated that document 2 (including the redacted version of document 2) is considered to be exempt under section 30(b)(i) of FOISA, as it comprised advice on possible models and scenarios for use within the Phase Two report, and included potentially sensitive financial information and cost comparisons.
44. The Ministers amplified their argument by stating that it was very likely that exchanges of this nature would be jeopardised if these documents were considered suitable for release while the issues were still relevant to the development of current policy in a sensitive area. They claimed that officials 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, and that this would be to the substantial detriment of the policy process.
45. I accept that the information in document 2 does relate to advice on possible models and scenarios for use within the Phase Two report, but I cannot uphold the view of the Ministers that the financial information and cost comparisons contained in this document are of particular sensitivity. I am of this view as it is clear from looking at the Phase One report, which is readily accessible on the Transport Model for Scotland website, that this data is to be found there and is therefore publicly available. I note, however, that the Ministers have agreed to release this information to Mr McGoldrick in the redacted version of document 2 that has been submitted to my Office.



46. In any event, I do not accept that release of any of the information in document 2 would inhibit substantially the free and frank provision of advice. I am of this view as the review for Phase Two has been carried out and the report on the findings of this review is publicly available (and was at the time of Mr McGoldrick's request). Also, much of the information in this document is factual and was current and relevant in March 2005 when this document was produced in relation to the Phase Two review. In the circumstances, therefore, I do not accept that if this information were to be released that this would substantially inhibit future discussions about the tolled bridges, or that it would have done so or would have been likely to do so at the time the Ministers dealt with Mr McGoldrick's request. I am aware from the submissions that have been made by the Ministers that there was, at the time the Ministers dealt with Mr McGoldrick's request and subsequently, work ongoing regarding the tolls on the Forth and Tay bridges; however, it is clear from the resources the Ministers have directed me to that this was a new study for which a specific brief had been issued. Although the information available indicated that this study would be informed by the earlier work on the tolled bridges review, I am not satisfied that the release of any of the information in document 2 would inhibit substantially the free and frank provision of advice for this on-going study, or that it would have done so or would have been likely to do so at the time Mr McGoldrick's request was dealt with.
47. I am therefore not satisfied that the information in document 2 would be exempt under section 30(b)(i) of FOISA. As I am not satisfied that the information in document 2 would be exempt under section 30(b)(i) of FOISA, I am not required to consider the application of the public interest test to this information.

Section 30(b)(ii)

48. The Ministers have relied on the exemption in section 30(b)(ii) of FOISA in relation to the information in documents 1, 2 and 3.
49. In justifying its reliance on section 30(b)(ii) of FOISA in relation to documents 1, 2 and 3, the Ministers has submitted that these documents contain a discussion of ideas and proposals of particular methods.
50. The Ministers has relied on the same justification as outlined at paragraph 44 above to show what harm they see as being caused by release of the information in these documents.



51. While I accept that the information in these documents does relate to ideas and proposals of particular methods to be examined in Phase 2 of the review (and note the informal nature of the discussions that were taking place), I do not accept that release of this information would substantially inhibit the free and frank exchange of views in respect of matters concerning the tolled bridges, or that it would have done so or would have been likely to do so at the time Mr McGoldrick's request was dealt with.
52. As I have indicated above, the information in these documents relates to the scope for Phase Two of the review into the tolled bridges, which has now been completed and the reports published (as they had been at the time of Mr McGoldrick's request). The information contained within these documents is largely factual, and it is clear from reading some of the information that the matters discussed were adopted in the review. In the circumstances, I do not accept that there is any information contained within these documents that is of such sensitivity that release would inhibit discussions on this matter substantially in future, or would have done so or would have been likely to do so at the time Mr McGoldrick's request was dealt with. Furthermore these documents were prepared in March and July 2005. It is my view that any additional discussion regarding the tolled bridges, such as the work which was ongoing at the time Mr McGoldrick's request was dealt with and subsequently, would have relied on more up-to-date information and thinking than that which is included in these documents.
53. In all the circumstances, therefore I am not satisfied that any of the information in documents 1, 2 and 3 would be exempt under section 30(b)(ii) of FOISA. Accordingly, I am not required to consider the application of the public interest test to this information.
54. I therefore require the Ministers to release all of the information in documents 1, 2 and 3 to Mr McGoldrick.



Decision

I find that the Scottish Ministers complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to part of the information request made by Mr McGoldrick, by claiming that the PM and interpeak data he was seeking were either exempt under section 25(1) of FOISA or not held.

However, I also find that the Scottish Ministers misapplied the exemptions in sections 29(1)(a), 30(b)(i) and 30(b)(ii) of FOISA to documents 1, 2 and 3 (all of which comprise information falling within the scope of Mr McGoldrick's request for the brief given to the consultants) and to that extent failed to deal with the request in accordance with section 1(1) (and therefore Part 1) of FOISA.

I therefore require the Scottish Ministers to release all of the information contained in documents 1, 2 and 3 to Mr McGoldrick within 45 days after the date of intimation of this decision notice.

Appeal

Should either Mr McGoldrick or the Scottish 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
19 November 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.



17 Notice that information is not held

- (1) Where-
 - (a) a Scottish public authority receives a request which would require it either-
 - (i) to comply with section 1(1); or
 - (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),
if it held the information to which the request relates; but
 - (b) the authority does not hold that information,
it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.
- (2) Subsection (1) is subject to section 19.
- (3) Subsection (1) does not apply if, by virtue of section 18, the authority instead gives the applicant a refusal notice.

25 Information otherwise accessible

- (1) Information which the applicant can reasonably obtain other than by requesting it under section 1(1) is exempt information.
- (2) For the purposes of subsection (1), information-
 - (a) may be reasonably obtainable even if payment is required for access to it;
 - (b) is to be taken to be reasonably obtainable if-
 - (i) the Scottish public authority which holds it, or any other person, is obliged by or under any enactment to communicate it (otherwise than by making it available for inspection) to; or
 - (ii) the Keeper of the Records of Scotland holds it and makes it available for inspection and (in so far as practicable) copying by,
members of the public on request, whether free of charge or on payment.



- (3) For the purposes of subsection (1), information which does not fall within paragraph (b) of subsection (2) is not, merely because it is available on request from the Scottish public authority which holds it, reasonably obtainable unless it is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.

29 Formulation of Scottish Administration policy etc.

- (1) Information held by the Scottish Administration is exempt information if it relates to-
 - (a) the formulation or development of government policy;
 - (...)
- (2) Once a decision as to policy has been taken, any statistical information used to provide an informed background to the taking of the decision is not to be regarded, for the purposes of-
 - (a) paragraph (a) of subsection (1), as relating to the formulation or development of the policy in question; or
 - (b) paragraph (b) of that subsection, as relating to Ministerial communications.
- (3) In determining any question under section 2(1)(b) as respects information which is exempt information by virtue of subsection (1)(a), the Scottish Administration must have regard to the public interest in the disclosure of factual information which has been used, or is intended to be used, to provide an informed background to the taking of a decision.
- (4) In this section-

"government policy" means-

 - (a) the policy of the Scottish Administration; and
 - (b) in relation to information created before 1st July 1999, the policy of the Government of the United Kingdom;
 - (...)



30 Prejudice to effective conduct of public affairs

Information is exempt information if its disclosure under this Act-

(...)

(b) would, or would be likely to, inhibit substantially-

(i) the free and frank provision of advice; or

(ii) the free and frank exchange of views for the purposes of deliberation; or

(...)