

## Annex A

### **Exemption in full**

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

- (1) This section applies to—
  - (a) information which is held by a government department or by the National Assembly for Wales and is not exempt information by virtue of section 35, and
  - (b) information which is held by any other public authority.
- (2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act—
  - (a) would, or would be likely to, prejudice—
    - (i) the maintenance of the convention of the collective responsibility of Ministers of the Crown, or
    - (ii) the work of the Executive Committee of the Northern Ireland Assembly, or
    - (iii) the work of the executive committee of the National Assembly for Wales,
  - (b) would, or would be likely to, inhibit—
    - (i) the free and frank provision of advice, or
    - (ii) the free and frank exchange of views for the purposes of deliberation, or
  - (c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.
- (3) The duty to confirm or deny does not arise in relation to information to which this section applies (or would apply if held by the public authority) if, or to the extent that, in the reasonable opinion of a qualified person, compliance with section 1(1)(a) would, or would be likely to, have any of the effects mentioned in subsection (2).
- (4) In relation to statistical information, subsections (2) and (3) shall have effect with the omission of the words “in the reasonable opinion of a qualified person”.
- (5) In subsections (2) and (3) “qualified person”—
  - (a) in relation to information held by a government department in the charge of a Minister of the Crown, means any Minister of the Crown,
  - (b) in relation to information held by a Northern Ireland department, means the Northern Ireland Minister in charge of the department,
  - (c) in relation to information held by any other government department, means the commissioners or other person in charge of that department,
  - (d) in relation to information held by the House of Commons, means the Speaker of that House,
  - (e) in relation to information held by the House of Lords, means the Clerk of the Parliaments,
  - (f) in relation to information held by the Northern Ireland Assembly, means the Presiding Officer,
  - (g) in relation to information held by the National Assembly for Wales, means the Assembly First Secretary,

(h) in relation to information held by any Welsh public authority other than the Auditor General for Wales, means—

(i) the public authority, or

(ii) any officer or employee of the authority authorised by the Assembly First Secretary,

(i) in relation to information held by the National Audit Office, means the Comptroller and Auditor General,

(j) in relation to information held by the Northern Ireland Audit Office, means the Comptroller and Auditor General for Northern Ireland,

(k) in relation to information held by the Auditor General for Wales, means the Auditor General for Wales,

(l) in relation to information held by any Northern Ireland public authority other than the Northern Ireland Audit Office, means—

(i) the public authority, or

(ii) any officer or employee of the authority authorised by the First Minister and deputy First Minister in Northern Ireland acting jointly,

(m) in relation to information held by the Greater London Authority, means the Mayor of London,

(n) in relation to information held by a functional body within the meaning of the [1999 c. 29.] Greater London Authority Act 1999, means the chairman of that functional body, and

(o) in relation to information held by any public authority not falling within any of paragraphs (a) to (n), means—

(i) a Minister of the Crown,

(ii) the public authority, if authorised for the purposes of this section by a Minister of the Crown, or

(iii) any officer or employee of the public authority who is authorised for the purposes of this section by a Minister of the Crown.

(6) Any authorisation for the purposes of this section—

(a) may relate to a specified person or to persons falling within a specified class,

(b) may be general or limited to particular classes of case, and

(c) may be granted subject to conditions.

(7) A certificate signed by the qualified person referred to in subsection (5)(d) or (e) above certifying that in his reasonable opinion—

(a) disclosure of information held by either House of Parliament, or

(b) compliance with section 1(1)(a) by either House,

would, or would be likely to, have any of the effects mentioned in subsection (2) shall be conclusive evidence of that fact.

## **Exception in full**

### **12 Exceptions to the duty to disclose environmental information**

- (1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if--
  - (a) an exception to disclosure applies under paragraphs (4) or (5); and
  - (b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
- (2) A public authority shall apply a presumption in favour of disclosure.
- (3) To the extent that the information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with regulation 13.
- (4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that--
  - (a) it does not hold that information when an applicant's request is received;
  - (b) the request for information is manifestly unreasonable;
  - (c) the request for information is formulated in too general a manner and the public authority has complied with regulation 9;
  - (d) the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data; or
  - (e) the request involves the disclosure of internal communications.
- (5) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect--
  - (a) international relations, defence, national security or public safety;
  - (b) the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature;
  - (c) intellectual property rights;
  - (d) the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law;
  - (e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest;
  - (f) the interests of the person who provided the information where that person--
    - (i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;
    - (ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and
    - (iii) has not consented to its disclosure; or
  - (g) the protection of the environment to which the information relates.
- (6) For the purposes of paragraph (1), a public authority may respond to a request by neither confirming nor denying whether such information exists and is held by the public authority, whether or not it holds such information, if that confirmation or denial would involve the disclosure of information which would adversely affect any of the interests referred to in paragraph (5)(a) and would not be in the public interest under paragraph (1)(b).
- (7) For the purposes of a response under paragraph (6), whether information exists and is held by the public authority is itself the disclosure of information.
- (8) For the purposes of paragraph (4)(e), internal communications includes communications between government departments.
- (9) To the extent that the environmental information to be disclosed relates to information on emissions, a public authority shall not be entitled to refuse to disclose that information under an exception referred to in paragraphs (5)(d) to (g).

**FOIA Section 36 and EIR Regulation 12 (4)(e) Public Interest Test**

<b><i>Factors for disclosure</i></b>	<b><i>Factors for withholding</i></b>
<ul style="list-style-type: none"> <li>• There is a public interest in seeing what the practical driving test involves</li> <li>• Candidates will have more of an awareness of what is expected from them on test</li> <li>• By disclosing the routes, instructors can avoid using these at times when tests are conducted</li> <li>• Allowing instructors on test could, over a period of time, impact the confidential aspect of the test route, as instructors may, themselves, become familiar with the routes. Routes may therefore become known to instructors and candidates over time anyway</li> <li>• Instructor may insist on sitting in on tests against the candidates wishes so that they can become more familiar with the routes used</li> </ul>	<ul style="list-style-type: none"> <li>• The ability to multi-task is essential if a new driver is going to be able to manage route and traffic conditions whilst handling distractions which will arise, for example, when navigating an unfamiliar route or carrying passengers. ‘Independent driving’ on routes that are not communicated to candidates in advance of the test is therefore designed to give learner drivers the opportunity to be responsible for decision making, scanning for information, and other sub tasks while driving, rather than relying on guidance from their instructor or frequent direction from the examiner. The introduction of independent driving into the driving test aims to ensure that learner drivers are taught how to make their own decisions whilst interacting with other road users in different types of road and traffic conditions. This will increase newly qualified drivers all round abilities in ‘real driving’ and help to reduce the number of collisions new drivers are involved in (currently 1 in 5), and thus withholding the test routes ought to lead to safer roads and fewer accidents.</li> <li>• Publication of test routes would lead to some candidates only learning and being taught specific routes to being able to pass their test rather than the all round knowledge, skills and attitudes required to be a safe and responsible driver.</li> <li>• If routes were published it would, in some cases, result in unprepared and inexperienced drivers taking to the road without the relevant skills, knowledge and understanding.</li> <li>• Publication of routes could lead to some driving instructors making heavy use of the test routes when teaching their pupils, leading to an increase in traffic on those routes and higher noise and emission levels which impacts on residents of those areas.</li> <li>• Whilst there is a risk that routes may become known to instructors over time despite not being published, DSA regularly reviews and refreshes test routes. Publication of test routes would reduce the benefit of refreshing the routes.</li> </ul>

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

In this instance, the public interest in withholding the information requested outweighs the public interest in its release. Release of the test routes used at Mill Hill test centre would specifically negate the benefits offered by the independent driving element of testing and may also mean that many new drivers fail to develop the all-round knowledge, skills and understanding required to be a safe and responsible driver. DSA will therefore struggle to contribute to the government’s objective of improving road safety and reducing the number of road users killed or seriously injured on our roads.