

Annex B

Section 35 of the Freedom of Information Act

Exemption in full

Formulation of government policy, etc.

35. - (1) Information held by a government department or by the National Assembly for Wales is exempt information if it relates to-

- (a) the formulation or development of government policy,
- (b) Ministerial communications,
- (c) the provision of advice by any of the Law Officers or any request for the provision of such advice, or
- (d) the operation of any Ministerial private office.

(2) Once a decision as to government policy has been taken, any statistical information used to provide an informed background to the taking of the decision is not to be regarded-

- (a) for the purposes of subsection (1)(a), as relating to the formulation or development of government policy, or
- (b) for the purposes of subsection (1)(b), as relating to Ministerial communications.

(3) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1).

(4) In making any determination required by section 2(1)(b) or (2)(b) in relation to information which is exempt information by virtue of subsection (1)(a), regard shall be had to the particular public interest in the disclosure of factual information which has been used, or is intended to be used, to provide an informed background to decision-taking.

(5) In this section-

"government policy" includes the policy of the Executive Committee of the Northern Ireland Assembly and the policy of the National Assembly for Wales;

"the Law Officers" means the Attorney General, the Solicitor General, the Advocate General for Scotland, the Lord Advocate, the Solicitor General for Scotland and the Attorney General for Northern Ireland;

"Ministerial communications" means any communications-

- (a) between Ministers of the Crown,
- (b) between Northern Ireland Ministers, including Northern Ireland junior Ministers, or
- (c) between Assembly Secretaries, including the Assembly First Secretary,

and includes, in particular, proceedings of the Cabinet or of any committee of the Cabinet, proceedings of the Executive Committee of the Northern Ireland Assembly, and proceedings of the executive committee of the National Assembly for Wales;

"Ministerial private office" means any part of a government department which provides personal administrative support to a Minister of the Crown, to a Northern Ireland Minister or a Northern Ireland junior Minister or any part of the administration of the National Assembly for Wales providing personal administrative support to the Assembly First Secretary or an Assembly Secretary;

"Northern Ireland junior Minister" means a member of the Northern Ireland Assembly appointed as a junior Minister under section 19 of the Northern Ireland Act 1998.

Public Interest Test

<i>Factors for disclosure</i>	<i>Factors for withholding</i>
<ul style="list-style-type: none"> • Greater transparency makes government more accountable to the electorate • There is a public interest in being able to assess the quality of advice being given by Ministers 	<ul style="list-style-type: none"> • Decision making should be based on the best advice available and full consideration of all the options. • Disclosure of information at this stage would severely impact on DSA's ability to make a free and informed decision about the future of test centres. • The need to conduct rigorous and candid risk assessments of policies including consideration of the pros and cons without premature disclosure that might close off options • If officials advice were put into the public domain it would seriously undermine their ability to provide impartial advice to without concern about the possible reactions or pressure from stakeholders
<i>Reasons why public interest favours withholding information</i>	
<p>After consideration of the factors for and against disclosure, it has been concluded that releasing the information would be against the publics' interest as it would seriously impact on the decision and policy making process in terms of the future of driving test centres.</p>	