

Annex B

Section 36 exemption in full and public interest test

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.

Section 36 Public Interest Test

<i>Factors for disclosure</i>	<i>Factors for withholding</i>
<ul style="list-style-type: none"> • Public scrutiny of driving test pass rates in respect of individual examiners would lead to an increased confidence in future tests. • Greater transparency makes government more accountable to the electorate. • As an agency it is our duty to act in an open and transparent manner. 	<ul style="list-style-type: none"> • Providing the pass and fail statistics for identifiable examiners may result in the public comparing rates and incorrectly drawing conclusions on an examiner assessing a candidate's ability too harshly or too leniently. • Driving examiners would be aware that their pass and fail rates were published and may modify, or maybe viewed as modifying their practice to influence their statistics. This may result in a candidate being marked more leniently or more strictly than would otherwise have been the case, i.e. the candidate would not be assessed purely on their driving ability. In the instance where they are marked more leniently, road safety would be compromised as drivers may not have the necessary skills to drive cars. This would inadvertently create a quota system. • The release of such statistics would affect the integrity of the practical driving test by introducing another element of result scrutiny.
<i>Reasons why public interest favours withholding information</i>	
<p>In this instance, the factors for withholding the information requested outweigh the factors to release. It would not be in the public interest for the pass or fail rates of any identifiable examiner to be published in general or broken down into categories as it would prejudice the effective conduct of public affairs. The release of this information could lead to a driving examiner assessing a candidate's driving ability incorrectly and ultimately compromise road safety.</p>	