

Annex A

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

Factors for disclosure	<i>Factors for withholding</i>
<ul style="list-style-type: none"> • Public scrutiny of areas covered by the theory testing procedure would lead to an increased confidence in the test • Candidates will be more aware of what is expected from them in the theory test and type of questions used • Disclosure would promote transparency and accountability in DSA's carrying out of the theory test • Disclosure would provide transparency as to the process and application of the theory test 	<ul style="list-style-type: none"> • The impact of disclosure would be that the theory test questions would not be a reliable indication of road safety competency if details of these (enabling the candidate to target revisions for specific answers) were made publicly available. Candidates would learn the questions and answers by rote rather than learning and understanding all the underlying aspects of each topic area required to become a safe and responsible driver. • Disclosure would be likely to have an adverse effect on the wider general public as it would compromise the integrity of theory testing. This could lead to unprepared drivers taking to the road without the relevant knowledge to be a safe and responsible driver. DSA could therefore struggle to meet the government's objective of improving road safety • DSA takes sufficient steps to ensure candidates are aware of the format of the theory test questions as we publish practice questions and a HPT training DVD is available. All the information on which the test is based on is in the public domain
<p><u>Decision</u></p> <p>In this instance, the public interest in withholding details of questions used in the theory test outweighs the public interest in its release. It would not be in the public interest to release the information requested as it would prejudice the effective conduct of DSA's affairs by undermining the integrity of the Theory Test. Learner drivers would fail to develop the all-round knowledge and understanding required to be a safe and responsible driver This in turn would greatly limit the effectiveness of the test and consequently have an adverse impact on road safety.</p>	