



**20th BILETA Conference:
Over-Commoditised; Over-Centralised;
Over-Observed: the New Digital Legal
World?**

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FREEDOM OF INFORMATION

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1. Introduction

The Freedom of Information act is making headlines, allowing for 10 of the UK's oldest state secrets to be disclosed one month after its implementation;[1] from the release of a child killer in 1907 who was in fact convicted and sentenced to death to complaints made by the Unions who demanded fair pay for workers in respect of a government contract (which the Home office chose to disregard).

It's been four decades late since the labour party pledged itself to Freedom of Information in its election manifesto that the Freedom of Information Act has been fully implemented. In 1977 the government introduced the Croham Directive; the directive committed the government to publishing background material relating to policy statements and reports. It was not until 1997 when the cause of the Act was pursued by various Private Members bills,[2] during this period however the Data Protection Act 1984 was introduced, followed by the Local Government (Access to Information Act 1985) and further Acts giving rights to accessing personal records, medical records and environment information.

In the 1990's freedom of information was back on the agenda with the emphasis on the 'Right to know'[3] and the future of an '*open government*.[4]' As the code of practice (a non statutory code) put in place, an attempt to provide access to government information was making little difference to the right of obtaining information.[5] The bill was shelved and did not emerge again until 1998; it was amended and considered weaker than the original proposals when it received Royal Assent in December 2000. The Freedom of Information 2000 Act would enter into full force in 2005, the year of the Rooster.

2. New Rules

The Freedom of Information Act 2000[6] saw the end of the Public Records Act, (an Act which prevented access to public records for a period 30 years). A separate but similar piece of legislation was put in place in Scotland; The Freedom of Information (Scotland) Act 2002.[7] The different approach in legislation has created 2 very different stories of how the cause of the act has been implemented. The performance across the borders may have profound and lasting effects to our rights, until now there has been no such right or legislation that assists in holding public bodies to account. The legislation however does not create any right to sue for damages for breach of a statutory duty,[8] although it allows for the Commissioner's to take action to court, if the decision is not complied with. In contrast if there is an improper disclosure of information this may give rise to an action for damages for breach of confidence.

3. How it works

There are approximately 100,000 public bodies subject to the act, from the departments of central government to local schools and myriad organisations. While the UK act relates to relevant bodies in

England, Wales and Northern Ireland[i] a similar piece of legislation in Scotland entered into force identify their own public bodies.[ii]

3.1 Rule No. 1 - Publication Scheme

Public Authorities must produce a 'publication scheme',[9] which is, in essence, a guide to the information they hold. This is information, which is normally made available to the public, such as prospectuses, almanacs and websites. The UK's Information Commissioner[10] or the Scottish Information Commissioner must approve these publication schemes[11]. The Schemes across the borders are the same and should explain the following:[12]

Classed of Information the institution has published or plans to publish

How the information is published

Details of any charges

As information included in the publication scheme is exempt from requests for information, it may be in an institution's interest to consider including a wider range of documentation in its publication scheme than was previously considered necessary.[13]

3.2 Rule No. 2 – A request

Any individual will be able to make a request to an institution for information.[14]

The request has to be in writing, a short email can suffice as an official application. If an individual is the subject of that information then the principles of the Data Protection Act to protect the data subject will take precedence over any FOI right.[15]

The request must contain details of the applicant and of the information sought. An institution may ask for further details in order to identify and locate the information. Applicants will not be required to mention either the Freedom of Information Act or the Data Protection Act when making a request for information.

In responding to a request for information, institutions will be obliged to provide information recorded both before and after the Act was passed.

There is no obligation to comply with 'vexatious' requests, or 'repeated' requests.[16] This appears to have been taken as to include repeated requests from the same person for the same information, or requests which are intended to disrupt the public authorities work. If the institution has recently responded to an identical or substantially similar request from the same person, they are also entitled to refuse this under the above section. Nevertheless there is a duty to provide advice and assistance to anyone making a request.[17]

A request that is too sweeping or general may be refused.[18] This means they the authority has been unable to identify the information from your request. If unsure what kind of information the authority holds you have the right to ask. It may be of benefit to check their website to see if the information has been published. If they refuse they are still obliged to give you notice within the time limits. [19]

If you wish photocopies or data by email or to inspect the records, you are entitled to do so and the authority must give you access in your preferred format as long as its not too expensive or difficult to do so.

Thereafter they have 20 working days to comply or refuse and to provide grounds for exemptions. Where a fee is required, the 20 working days will be extended by up to three months until the fee is paid.[20] In contrast the UK FOI does not provide a time limit.

If you are refused you can request the authority to review its decision, however you must specify why you wish the decision to be reviewed and the reason for your dissatisfaction.[21] If you are unhappy with the review then you are entitled to make an appeal to the Scottish Information Commission, who has the right to enforce the request and thereafter raise a court action. In contrast there is no review policy in the UK Act; an authority has to give directions as to what to do if not happy with their decisions. Thereafter there is a right to appeal to the Information Commissioner.

3.3 Rule No. 3– Fees

Permissible fees will be calculated according to the Fees Regulations, which will come into force prior to January 2005. [22]

In most cases people will not be charged for information other than for photocopying.

3.4 Differences between UK and Scotland

Under the UK act an authority can refuse a request if finding and extracting the information will cost more than £450, for government departments the limits is £600.

Whereas in the Scottish FOI[23] Act the authority can't refuse a request unless it would cost more than £600. The first £100 of cost is waived, thereafter you may be asked to pay 10% of the costs i.e. for staff costs and copying and postages, but information cannot be merely refused because the cost exceeds its set limit. [24]

An example where England has used the fees to prevent disclosure is in the fatal shooting of James Ashley. On 15th January 1998 4 armed policemen burst into his flat he was in bed naked with his girlfriend and shot with a single bullet, at the time Mr Ashley was getting out of the bed to investigate the noise. James Ashley had a conviction for manslaughter, but Sussex police had said at that time he was wanted in connection with a stabbing at a pub in town. It turned out that his only involvement in the stabbing was to pull the assailant off the victim. At the time of the raid firearm officers had been briefed there was a large haul of drugs in the flat and the occupants and would be armed and dangerous, neither appeared to be accurate.

A request was made under the FOI for access to 2 internal confidential reports the police refused to comply as it would cost £3,000 to photocopy. [25]

In addition the Foreign Office refused to process a question about why Ronald Fiddler - the Moss Side man held at Guantanamo Bay - was detained and then released, because it would cost more than £600 to assess. [26]

3.5 Rule No. 4. Exemptions

Under the Scottish FOI Act, exemptions become subject to a disclosure test based on information: Which can reasonably be obtained other than by requesting the information [27]

Is prohibited by or under an enactment, is not compatible with Community obligation, or falls within the rules of being in contempt of court. [28]

If for future publication, but planned within 12 weeks of the request being made, or is with a view to report on research and disclosure would prejudice substantially the programme or third party interests.[29] However this time line is not applicable to the UK Act.

If disclosure would prejudice substantially relations between public authorities[30] administrations [31] and audit functions of the public authorities.[32]

Is exempt if it could prejudice substantially the collective responsibility of the Scottish ministers.[33]

In respect of National Security and defence, the information is exempt where a member of the Scottish executive signs a certificate.[34] If information regarding defences, or security of the colony is likely to 'substantially prejudice' this is exempt.[35]

In respect of relations between other states, organisations, etc or information to be held in confidence, is exempt if it would be likely to cause substantial prejudice.[36]

Relates the formulation of government policy, this includes ministerial communications, however after the decision on policy has been made any statistical information etc is not to be regarded as exempt, in determining which is exempt the Scottish Administration must have regard to the public interest.[37]

Is exempt if it relates to trade secrets or would substantially prejudice commercial interests[38]

Investigations by Scottish public authorities and proceedings arising from these in respect of

prosecuting an offence.[39]

Law enforcement is exempt in the event disclosure would prejudice substantially prevention, [40]

In respect of confidential communications in legal proceedings[41]and court records.[42]

Personal information is exempt[43]

Health safety and the environment are exempt if disclosure endangers the mental health of an individual. [44]

And at last any communications is exempt relating to HR and other member of the royal family.[45]

The difference between The Scottish Act and UK Act is that the Scottish Act appears to be a straightforward right to access information. In contrast the UK Act provides a duty to confirm or deny information is held, however the duty can be set aside by an exemption.

At the same time as Scotland has a substantial prejudice test in England there is a prejudice test. The difference is under the UK Act the Home Secretary said that harm should be “real, actual or of substance”. Whereas in Scotland the “substantially prejudice” specified interest provides a higher standard for the authorities to meet than in the UK.

The public interest test in Scotland states “information can be withheld only when the public interest in withholding it is greater than the public interest in disclosing it.” In contrast in England, once amended by the House of Lords it provided that where disclosure or non-disclosure is evenly balanced, scales would come down on side of disclosure.

3.6 Rule No. 5 Information Commissioners

The Commissioner is an independent public official reporting directly to Parliament who is responsible for implementing the Act. In Scotland it is the Scottish Information Commissioner. The position of Commissioner involves: Promoting good practice; Approving and advising on the preparation of publication schemes, providing information as to the public's rights under the Act; enforcing compliance with the Act

A person who has made a request for information may apply to the Information Commissioner for a decision on whether the request has been dealt with in accordance of the Act. In response, the Information Commissioner may serve a decision notice on the public authority and applicant, setting out any steps that are required for compliance with the Act. [46]

In Scotland the first investigations are now taking place under the act. The subject matter ranges from accessing names of police constables who have had complaints of racial abuse made against them. Information about ongoing investigations will soon be available on the Commissioner's and will be available on their website.[47]

The public authority has 20 days from receipt of the notice to obtain a signed certificate from a Cabinet Minister overriding the Information Commissioner's notice (Executive override). In Scotland[48] this is by the First Minister after consulting with the other Scottish Ministers, that the First Minister has, on reasonable grounds and after such consultation, formed the opinion that there has been no failure to comply with section1 (1) and that the information requested is of exceptional sensitivity.

Recognised Rules -"It's life, Captain, but not life as we know it." [49]

With the Act now in place, how is it fitting in with the rules and regulations already in place in our society, can the Act function and develop in light of the rules relating to privacy and freedom of expression or will its effectiveness be curtailed.

4. Privacy

Article 8 is for the right of privacy to be protected. Everyone has a right to respect his private and family life. The European Convention for the Protection of Human Rights and Fundamental Freedoms was adopted into the law of Scotland on the enactment of The Scotland Act 1998, in the

form of The Human Rights Act 1998.

The provisions of Article 8 decreed, “*Everyone has the right of respect for his private and family life, his home and correspondence.*” The intention was to protect the individual against arbitrary interference by public authorities.^[50] The ECHR required Member States to provide legal safeguards for the protection of privacy, to be overridden only in exceptional circumstances.

In the UK, the Data Protection Act 1998 was also forged out of the protection of private life guaranteed under Article 8. Its predecessor, The Data Protection Act 1994, had made little impact on the conduct of journalists and the business of newspapers, unlike the current 1998 Act.

The Directive was concerned with the protection of the right to privacy; it neither purports to set up this right nor suggests that it should be exercised as a priority over other rights. The objective of the Directive is stated within Article 1, which states: - “*Member States shall protect the fundamental rights and freedom of natural persons and in particular their right to privacy with respect to the processing of personal data.*”

In advancing the Commission and Court’s understanding of Article 8 the case of *Gaskin v United Kingdom*^[51] saw an applicant successfully convince a court, that his interest in obtaining access to information held by a local authority about his upbringing in public foster care concerned his private and family life. Not some general interest in access to information, which is not protected by Article 8.

Where a person can demonstrate the ‘specific’ importance of the information to them, a positive obligation can flow allowing access to it. The significance of the information to the individual is the only factor to be taken into consideration. The Commission has a strong view that Article 10 does not grant a general right of access to information generated by others.^[52]

The rights deriving from Article 8 gave strong privacy rights although likely conflicting with another human right under Article 10.

5. Freedom of Expression

Article 10 “*Everyone has the right to freedom of expression.... to hold opinions and to receive and to impart information and ideas without interference by public authority and regardless of frontiers.*” ^[53]

The European Convention on Human Rights and Fundamental Freedoms upholds the right to freedom of expression and the right to privacy are similarly guaranteed by Article 8. ^[54]

The concept of the right to “*receive and impart information and ideas*” is considered “*one of the essential foundations of a democratic society and one of the basic conditions for its progress.*”^[55]

A case, which demonstrates this, is *Open Door Counselling and Dublin Well Women v. Ireland*,^[56] the European Court held a governmental ban on counselling and circulation of information by clinics who provided information to women on where to find legal abortions in Britain. This injunction was held to violate the right to impart and receive information under Article 10. In contrast in *Leander v Sweden*^[57] an individual wanted to bring a claim arising from an unsuccessful job application. The individual sought confidential information from the government. The court held there was no right to this information, as Article 10 did not confer a right of access to the register containing information about his personal position. Neither did it embody an obligation on the Government to impart such information. It would be necessary to rely on Article 8 rather than Article 10. It is likely however with the implementation of FOI that the Leander decision may come under further scrutiny in the future.

This was also seen in 2002 *Persey v Secretary of State for environment Food and Rural Affairs*,^[58] where the court refused to invoke a judicial review of the Secretary’s of State decision to set up three closed enquiries into the outbreak of foot and mouth. It was decided that the right was to receive and

impart information not the right of access to information.

The commission has taken the view that Article 10 however does enable the public a right to access information if there was a concern regarding nuclear energy. [59]

It is widely acknowledged there is a fine balance in addressing privacy rights and freedom of expression. It appears that the Freedom of Information Act extends rights beyond Article 10 and as it was highlighted in *Hatton v. United Kingdom*, [60] the obligation on Member States to minimise, as far as possible, any interference with other basic human rights was emphasised. They were urged to find alternative solutions, by generally seeking to achieve their aims in the least onerous way as regards human rights. *"In order to do that, a proper and complete investigation and study within the aim of finding the best possible solution which would in reality strike the right balance."* So has the freedom of Act been able to strike the balance? Does the data protection act adequately protect individual's privacy interest or does it prevent the government from moving one step further, whilst Scotland embraces the FOI does it walk a tight rope of breaching a fundamental rights?

6. Privacy versus FOI

Whilst data protection has been used to undermine the 'openness' concept, the relationship between privacy and FOI is to comply where disclosure of information may be prohibited but the question of whether it is in the public interest has to also be considered.

As seen in the case of *Lord Ashcroft v Attorney General and Department for International Development*, [61] when the Guardian publish articles which had leaked from government departments, Lord Ashcroft brought proceeding under data protection and breach of confidence. Under the Data protection Act 1998 act if a controller has breached the data protection principles then they are entitled to damages. Lord Ashcroft was entitled to seek damages for injury to feelings and reputation. From this action a consultation paper was issued by the Lord Chancellors department proposing that rights of access should brought in line with the freedom of information act. The FOI has now facilitated the right to access "unstructured personal information held in manual form by a public authority." A request by an individual for information about him or herself will be exempt under the Freedom of Information Act and will continue to be handled as a 'subject access request' under the Data Protection Act.

In certain circumstances a request may involve the release of associated third party information. Where an applicant specifically requests information about a third party, or where responding to a request would involve the disclosure of personal information about a third party, it falls within the remit of the Freedom of Information Act.

Where the disclosure would not breach the principles, the authority may release the information. [62] It appears the FOI Act and Scottish FOI Act has sought to maintain a balance of rights by seeking to address the Data protection and breach of confidence laws, by making provisions for the Data protection laws. Although it is unclear if the balance has been maintained so far with the Act only fully being in place a few months. If a clear conflict arises it is possible that the FOI Act could be undermined.

To quote Maurice Frankel of the Campaign for Freedom of Information: *"No one yet knows where the line will be drawn - it's up to you to find out."*

Across the Board

Although the UK was slow in its perusant of invoking the act, a statutory right to the public allowed access to types information held by public authorities, was in existence for a number of years around the world.

In Sweden, the Freedom of the Press Act was in existence since 1766. The Swedish government is willing to make available documents compared to other countries whose governments who appear to exist in a secret society. For example the press recovered a letter about the new England manager Sven Goran Eriksson sent to Mr Persson from Tony Blair it related to England beating Germany 5-1

in the World cup qualifer in 2001. The letter, stated “*you are a star*[63]...*you can appear on British radio anytime. And thank you for Sven.*” when the British press requested a copy of the letter they were told they could not be released as it may “*damage international relations.*”[64]

Over in the USA they have enjoyed freedom of information laws since 4th July 1966 as well as freedom of expression rights Under the First Amendment of the US consitution. Although not all were pleased with the idea President Lynodn Johnson had to be dragged kicking and screaming to the signing ceremony,[65] suprisingly considering the conspiracy theory involving his presidency. During the Kosovo conflict Blair was horrified to learn from Bill Clinton that the American president dared to have written advice from his military advisers for fear of public exposure.[66] During the Clinton era the standard for disclosure was that officials should comply with requests unless the “*disclosure would be harmful.*” In contrast the Bush administration’s standard is disclosure should be withheld if there is a “*sound basis for doing so*”[67] clearly, a different test, with the Clinton era providing a stronger forum for an open government. It is interesting to note Freedom of Information legislation helped the Washington reported the role played by US defense Secretary Donald Rumsfield in assisting Saddam Hussein in the 1980’s.[68]

In Australia the Federal Freedom of Information Act 1982, resulted in revelations about the \$500,000 per year on average that each ex-prime minister of Australia costs taxpayers in that country for support of professional activities (and excluding the lifelong pension each receives).[69] As well as in Canada the Access to Information Act enacted in 1983, allowed Canadians to discover the Premier of Alberta and his entourage had billed taxpayers for a \$2,600 lunch tab and \$27 glasses of orange juice.[70]

Even in India the Freedom of Information Bill has been in existence since July 25, 2000. The Act enabled a man to use a local FOI Indian state of Maharashtra, to expose a widespread pattern of abuse by elected officials and civil servants who used government cars for personal use, including visits to tourist resorts and religious pilgrimages.[71]

Conversely, the European Union’s code of Conduct, which gives the public, the right to access documents of the EU’s Commission and councils, has come under scrutiny. For example in January 2004 the case of Olli Mattila v. Council of the European Union and Commission of the European Communities,[72] saw the European Court of Justice stating that both the European Commission and European Council could be required to disclose documents detailing the European Union’s foreign policy towards Russia and Ukraine. Overturning the Court of First Instance, the ECJ concluded that a categorical refusal to disclose the documents without any explanation, beyond a possible threat to the conduct of international relations, would violate the treaties and legislation of the European Community.

I find your lack of faith disturbing.... [73]

So what can be learned? Will the UK take up the pace of the rest of the world? Adequate provisions appear in place for privacy laws, and the European Convention of Human Rights enforces this, as well as public authorities’ rights to prevent access in certain circumstances. In Scotland they have embraced the right of disclosure, although some wonder whether the nation will be clamoring for a restriction of the Act. [74] In Canada, the Information Commissioner took office proclaiming that he believed that no public servant would ever attempt to undermine the public’s rights under the Act. Although seven years later he reported he was naive in his view. He has cited cases in which records had been deliberately shredded after they had been requested in order to prevent them being disclosed. “*Canadians were given a sad lesson in what public officials are capable of doing to undermine the public’s right to know*”[75]

It is clear to gage how the UK’s Act will be enforced it is unlikely to cause much friction, as

exemptions can be invoked where there is any fear or concern. Although the Scottish Act has moved closer to the ideology of the open government, the media and public have approved and have taken steps to invoke the use of the Act, whether the government will seek to curb the use in the future will be interesting to watch and a change made to the use of information being ‘substantially prejudicial.’ At first glance the Act is a success story, finally allowing the UK to catch up with the rest of the world. It does not appear to exploit personal data neither does it purport to stall the right to access information from public authorities, clearly as the Scottish public come across as having more rights than their counterparts when utilizing the Act, the future of the Act can only gain momentum.

Despite the fact that critics may take the view, “*When people talk of the freedom of writing, speaking, or thinking, I cannot choose but laugh. No such thing ever existed. No such thing now exists; but I hope it will exist. But it must be hundreds of years after you and I shall write and speak no more.*” [76] John Adams 1818

[1]

Britain’s best kept secrets, by Paula Dear and Martin Rosenbaum, <http://news.bbc.co.uk/1/hi/magazine/4230733.stm>

[2]

In 1978 a private member’s bill by Clement Freud MP sought to introduce freedom of information legislation another freedom of information bill, also drafted by the Outer Circle Policy Unit, and was introduced by Frank Hooley MP 1981. The bill was opposed by the Conservative government and defeated at second reading. David Steel MP.A Freedom of Information Bill, introduced again in 1987 by Archy Kirkwood MP, introduces a Freedom of Information Bill drafted by Campaign for Freedom of Information (CFI) in 1984 and again in 1992 the bill has only 45 minutes in parliament and does not get a second reading. In 1993 Mark Fisher introduces the Right to know bill. See S brief history of Freedom of Information in the UK, www.cfoi.org.uk/foihistory.html

[3]

In December 1997 the government issued a white paper, ‘your right to know’ which proposed a model freedom of information regime.

[4]

In July 1993 Government publishes Open Government white paper. www.cfoi.org.uk/foihistory.html

[5]

Base on the July 1993 white paper, Code of Practice comes into force April 1994. www.cfoi.org.uk/foihistory.html

[6]

Freedom of Information Act 2000 Chapter 36 <http://www.hmso.gov.uk/acts/acts2000/20000036.htm>

[7]

Freedom of Information (Scotland) Act 2002, asp 13 <http://www.scotland-legislation.hmso.gov.uk/legislation/scotland/acts2002/20020013.htm>

[8]

Section 55 *No civil right of action against Scottish public authority*

[9]

Section 19 (Publication schemes) UK FOI Act, Section 23 & 24 (Publication Schemes) Scottish FOI Act

[10]

<http://www.informationcommissioner.gov.uk/>

[11]

<http://www.itpublicknowledge.info/>

[12]

Publication scheme’s will usually include information such as, management or board meeting minutes, the authority’s annual budget and details of the services provided by the public authority.

[13]

The publication scheme should be available on the authority’s website or provided on request.

[14]

Section 8 (Requesting Information) Scottish FOI

[15]

Section 38, (Personal Information) Scottish FOI Act

[16]

Section 14 (Vexatious or repeated requests) Scottish FOI Act

[17]

Section 15 (Duty to provide advice and assistance) Scottish FOI Act

[18]

Section 16 (Refusal of request) Scottish FOI Act

[19]

However if it in relation to an identical or similar request or its unreasonable to respond in that time.

[20]

Section 10 (Time for compliance) Scottish FOI Act

[21]

Section 20 (Requirement for review of refusal etc) Scottish FOI Act

[22]

Scottish Statutory Instrument 2004 No. 376 The Freedom of Information (Fees for Disclosure under Section 13) (Scotland) Regulations 2004 <http://www.scotland-legislation.hmso.gov.uk/legislation/scotland/ssi2004/20040376.htm>

[23]

Section 9 (Fees) & Section 13 (Fees for disclosure in certain circumstances) - Scottish FOI Act, Section 12 (Excessive cost of compliance)

- [24] Section 12 Excessive costs Scottish FOI Act
- [25] No files release on Ashely death, http://news.bbc.co.uk/1/hi/england/southern_counties/4264099.stm
- [26] http://www.manchestersonline.co.uk/news/s/147/147398_freedom_of_information_act_found_wanting.html
- [27] Section 25 Information otherwise accessible
- [28] Section 26 Prohibitions on disclosure, the public interest test in section2 applies.
- [29] Section 27 Information intended for future publication.
- [30] Section 28 relations within the United Kingdom, The public interest test in section2 applies.
- [31] Section 28 (2)(a)-(d) Administration in the United Kingdom means, the Government of the United Kingdom, The Scottish Administration, the Executive committee of the Northern Ireland Assembly or, the National Assembly for Wales.
- [32] Section 40 Audit functions, public interest test.
- [33] Section 29 Prejudice to effective conduct of public affairs. Public interest test
- [34] Section 31 National security and defence, (1) and (2)
- [35] Section 31 National security and defence, (4) public interest test.
- [36] Section 32 International Relations, public interest test.
- [37] Section 29 Formulation of Scottish Administration policies, public interest tests.
- [38] Section 33 Commercial interests and the economy, public interest tests.
- [39] Section 34 (1) under Section 34 (2) If the information is for an enquiry under the Fatal Accidents and Sudden Deaths Inquiry Scotland 1976 is exempt but not for the time being concluded or for any other investigations, public interest test.
- [40] Section 35, Law enforcement, includes detection of crime, is dealing with tax or duty, re immigration controls, public interest test.
- [41] Section 36, public interest test, provides an equivalent in Scotland for information for which "legal professional privilege" may be claimed in England. There is also an absolute exemption for information obtained from another person if its disclosure would constitute a breach of confidence actionable by that person or any other person.
- [42] Section 37 absolute exemption for information
- [43] Section 38
- [44] Section 39 Health, Safety and the environment, The public interest test applies
- [45] Section 41 The public interest test in section2
- [46] Sections 54 (Powers of entry and inspection) In Scotland there are provision for the Commissioner's powers of entry and inspection.
- [47] Section 42, (The Scottish Information Commissioner)
- [48] Section 52 *Exception from duty to comply with certain notices,*
- [49] Spock, Star trek
- [50] Mark Thomson, Privacy before and after the Human Rights Act, communications Law Vol. 6 no. 6, 2001
- [51] (A/160) [1990] 1 F.L.R 167 ECHR
- [52] Hilton v UK No 12015/86 Dr 108 at 379 -280, See also p.311 Cpt Article 8 The right to respect for private and family life, home and correspondence
- [53] Human Rights Act 1998 under Art 10 (1), <http://www.hms.o.gov.uk/acts/acts1998/80042--d.htm> See also International Covenant on Civil and Political Rights (ICCPR) of 16 December 1966.
Article 19.2: (...) 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.(...).
- [54] Article 9 provides for derogation to the principals, for the processing of data for purely journalistic purposes " for the processing of personal data carried out solely for journalistic purposes or the purpose of artistic or literary expression only if they are necessary to reconcile the right to privacy with the rules governing freedom of expression"
- [55] (79) HANDYSIDE v. THE UNITED KINGDOM (5493/72) [1976] ECHR 5 (7 December 1976)/ *Handyside v United Kingdom* (1979-80) 1 EHRR 737 (ECtHR) applied.

[56]

Open Door Counselling and Dublin Well Women v. Ireland (1992), *Eur. Ct. H.R. Ser. A*, No. 246, 15 E.H.R.R. 244.

[57]

LEANDER v. SWEDEN (9248/81) [1987] ECHR 4 (26 March 1987)

[58]

2002 EWHC 371 (Admin) *The Times*, March 28 2002

[59]

A 1996 resolution conferred this right by the parliament of the Parliamentary Assembly of the Council of Europe Of particular relevance among various Council of Europe documents in the file under examination in the present case is Parliamentary resolution 1087 (1990) on the consequences of the Chernobyl disaster, which was adopted on the 26 April 1996 at the 16th, sitting. Referring not only to the risks associated with the production and use of nuclear energy in the civil sector but also to other matters, it states "public access to clear and full information...is a human right." See also EHRLR 2003, *Privacy v Freedom of Information*: is there a conflict, Timothy Pitt Payne

[60]

Hatton and Others v The United Kingdom, Application No. 36022/97, 8th July 2003.

[61]

Lord Ashcroft v Attorney General & Anor [2002] EWHC 1122 (QB) (31 May 2002)

[62]

However, if the third party has served notice under s.10 DPA 1998 that disclosure would cause them unwarranted substantial damage or distress, or the third party would not have a right to know about the information relating to them or a right of access to it under the DPA 1998, the institution is required to consider whether release of the information would be in the public interest

[63]

So you want to see the PM's memos, Martin Rosenbaum www.newsvote.bbc.co.uk

[64]

So you want to see the PM's memos, Martin Rosenbaum www.newsvote.bbc.co.uk

[65]

How free is American Information, by Kevin Anderson, 01/5/2005 www.newsbbc.co.uk/1/hi/world/americas/4146307

[66]

Andrew Rawnsley's, *Servants of the People*, See also <http://news.bbc.co.uk/1/hi/policitics4145069.stm>

[67]

How free is American Information, by Kevin Anderson, 01/5/2005 www.newsbbc.co.uk/1/hi/world/americas/4146307

[68]

So you want to see the PM's memos, Martin Rosenbaum www.newsvote.bbc.co.uk

[69]

<http://www.freedominfo.org/survey/rtk2004.pdf>

[70]

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PART 1, SCOTTISH PUBLIC AUTHORITIES, (1) The Scottish Ministers. (2) The Scottish Parliament. (3) The Scottish Parliamentary Corporate Body. <http://www.scotland-legislation.hmso.gov.uk/legislation/scotland/acts2002/20013--i.htm#end>

PART 2 NON MINISTERIAL OFFICE HOLDERS IN THE SCOTTISH ADMINISTRATION, (4) The Chief Dental Officer of the Scottish Administration. (5) The Chief Medical Officer of the Scottish Administration. (6) Her Majesty's Chief Inspector of Constabulary. (7) Her Majesty's Chief Inspector of Prisons for Scotland. (8) Her Majesty's Inspector of Anatomy for Scotland. (9) Her Majesty's Inspector of Fire Services for Scotland. (10) Her Majesty's inspectors of schools (that is to say, the inspectors of schools appointed by Her Majesty on the recommendation of the Scottish Ministers under the Education (Scotland) Act 1980 (c.44)). (11) The

Keeper of the Records of Scotland. (12) The Keeper of the Registers of Scotland. (13) A procurator fiscal. (14) The Queen's and Lord Treasurer's Remembrancer. (15) The Queen's Printer for Scotland. (16) The Registrar General of Births, Deaths and Marriages for Scotland. (17) The Registrar of Independent Schools in Scotland. (18) A rent officer appointed under section 43(3) of the Rent (Scotland) Act 1984 (c.58). (19) A social work inspector (that is to say, an officer authorised as such an inspector under section 6 of the Social Work (Scotland) Act 1968 (c.49)).

PART 3 LOCAL GOVERNMENT <http://www.scotland-legislation.hmso.gov.uk/legislation/scotland/acts2002/20013--j.htm>
 (20) An assessor appointed under section 27(2) of the Local Government etc. (Scotland) Act 1994 (c.39). (21) A council constituted by section 2 of that Act. (22) A joint board, within the meaning of section 235(1) of the Local Government (Scotland) Act 1973 (c.65). (23) A licensing board constituted in accordance with the provisions of section 1 of the Licensing (Scotland) Act 1976 (c.66). (24) (24) The Strathclyde Passenger Transport Authority. <http://www.scotland-legislation.hmso.gov.uk/legislation/scotland/acts2002/20013--k.htm>

PART 4 THE NATIONAL HEALTH SERVICE (25) The Clinical Standards Board for Scotland. (26) The Common Services Agency for the Scottish Health Service. (27) A Health Board, constituted under section 2 of the National Health Service (Scotland) Act 1978. (28) The Health Education Board for Scotland. (29) The Health Technology Board for Scotland. (30) A local health council, established under section 7 of the National Health Service (Scotland) Act 1978. (31) A National Health Service trust. (32) NHS 24. (33) A person providing general medical services, general dental services, general ophthalmic services or pharmaceutical services under Part II of the National Health Service (Scotland) Act 1978, but only in respect of information relating to the provision of those services. (35) A person providing personal medical services or personal dental services under arrangements made under section 17C of that Act, but only in respect of information relating to the provision of those services. (36) A person providing, in Scotland, piloted services within the meaning of the National Health Service (Primary Care) Act 1997 (c.46), but only in respect of information relating to the provision of those services. (37) The Post Qualification Education Board for Health Service Pharmacists in Scotland. (38) The Scottish Advisory Committee on Distinction Awards. (39) The Scottish Advisory Committee on the Medical Workforce. (40) The Scottish Ambulance Service Board. (41) The Scottish Council for Post Graduate Medical and Dental Education. (42) The Scottish Dental Practice Board. (43) The Scottish Health Advisory Service. (44) The Scottish Hospital Endowments Research Trust. (45) The Scottish Hospital Trust. (46) The State Hospitals Board for Scotland. (47) The Scottish Medical Practices Committee.

PART 5 EDUCATIONAL INSTITUTIONS (47) The board of management of a college of further education (expressions used in this paragraph having the same meaning as in section 36(1) of the Further and Higher Education (Scotland) Act 1992 (c.37)). (48) A central institution within the meaning of the Education (Scotland) Act 1980. (49) An institution in receipt of funding from the Scottish Higher Education Funding Council other than any institution whose activities are principally carried on outwith Scotland.

PART 6 POLICE (50) A chief constable of a police force in Scotland. (51) A joint police board constituted by an amalgamation scheme made or approved under the Police (Scotland) Act 1967 (c.77). (52) The Police Advisory Board for Scotland.

PART 7 OTHERS (53) The Accounts Commission for Scotland. (54) The Advisory Committee on Sites of Special Scientific Interest. (55) The Ancient Monuments Board for Scotland. (56) An area tourist board established by virtue of section 172(1) of the Local Government (Scotland) Act 1994 (c.39). (57) Audit Scotland. (58) The Auditor General for Scotland. (59) The Board of Trustees for the National Galleries of Scotland. (60) The Board of Trustees of the National Museums of Scotland. (61) The Board of Trustees of the Royal Botanic Garden, Edinburgh. (62) The Central Advisory Committee on Justices of the Peace. (63) The Crofters Commission. (64) The Deer Commission for Scotland. (65) The Fisheries Committee continued in existence by paragraph 5 of Schedule 9 to the Electricity Act 1989 (c.29). (66) The General Teaching Council for Scotland. (67) Highlands and Islands Enterprise. (68) The Historic Buildings Council for Scotland. (69) A justice of the peace advisory committee. (70) Learning and Teaching Scotland. (71) The Local Government Boundary Commission for Scotland. (72) The Mental Welfare Commission for Scotland. (73) A National Park authority, established by virtue of schedule 1 to the National Parks (Scotland) Act 2000 (asp 10). (74) The Parole Board for Scotland. (75) A person appointed for Scotland under section 3(1) of the Local Government and Housing Act 1989 (c.42). (76) The Royal Commission on the Ancient and Historical Monuments of Scotland. (77) The Scottish Agricultural Wages Board. (78) The Scottish Arts Council. (79) The Scottish charities nominee, appointed under section 12 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40). (80) The Scottish Children's Reporter Administration. (81) The Scottish Commission for the Regulation of Care. (82) The Scottish Conveyancing and Executry Services Board. (83) The Scottish Criminal Cases Review Commission. (84) Scottish Enterprise. (85) The Scottish Environment Protection Agency. (86) The Scottish Further Education Funding Council. (87) The Scottish Higher Education Funding Council. (88) Scottish Homes. (89) The Scottish Industrial Development Advisory Board. (90) The Scottish Information Commissioner. (91) The Scottish Law Commission. (92) The Scottish Legal Aid Board. (93) Scottish Natural Heritage. (94) The Scottish Prison Complaints Commission. (95) The Scottish Public Services Ombudsman. (96) The Scottish Qualifications Authority (97) The Scottish Records Advisory Council. (98) Scottish Screen. (99) The Scottish Social Services Council. (100) The Scottish Sports Council. (101) The Scottish Tourist Board. (102) Scottish Water. (103) Social Inclusion Partnerships. (104) The Standards Commission for Scotland. (105) The Trustees of the National Library of Scotland. (106) The Water Industry Commissioner for Scotland.

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