Information Commissioner's Office

Promoting public access to official information and protecting your personal information

FREEDOM OF INFORMATION ACT 2000

ENFORCEMENT NOTICE

Dated 22nd May 2006

To: The Legal Secretariat to the Law Officers

Of: Attorney General's Chambers
9 Buckingham Gate
London SW1E 6JP

The Information Commissioner (the "Commissioner") pursuant to his enforcement powers under the Freedom of Information Act 2000 (the "Act") has received a number of complaints in relation to requests for information made to the Legal Secretariat to the Law Officers ("the LSLO") in accordance with the Act. The complainants allege that the LSLO has failed to comply with its obligations in respect of providing access to information in accordance with Part 1 of the Act.

A. Background

1. The requests sought access to information relating to the advice given by the Attorney General to the Prime Minister and/or his staff on the legality of military intervention in Iraq in 2003 and related information (the "Requested Information"). The information requested by the complainants is summarised in Annex 1.

2. Requests for similar information were received by a number of government departments, including the Cabinet Office. However this notice relates to requests made to the LSLO.

3. The applications for the Requested Information (the "Requests") were in most cases refused by the LSLO and other government departments in reliance upon the exemptions from the duty to provide access to information set out in Part II of the Act. Where the Requests were refused, in accordance with the duty on public authorities set out in section 17 of the Act, applicants were given notices of refusal. Although these notices varied according to the particular requests, each refusal notice set out the exemptions on which the public authority sought to rely and stated why the exemption applied to the request by referring to a standard form statement agreed amongst government departments and issued by the LSLO setting out the grounds for refusal (the "LSLO Statement"). This statement is reproduced at Annex 2.

4. In brief, refusal of the Requests was made in reliance upon the exemptions in:

    a. Section 42 (Legal Professional Privilege);
    b. Section 35(1)(a) (Formulation or development of government policy);
    c. Section 35(1)(b) (Ministerial communications);

d. Section 35(1)(c) (Provision of advice by any of the Law Officers or any request for the provision of such advice).
e. Section 27(1) (International Relations).
f. Section 27(2) (Confidential Information obtained from a state other than the UK or from an international organisation or international court).
g. Section 41(1) (Information provided in confidence).

B. **Consideration of alleged failure of compliance with the Act**

The Commissioner, pursuant to the Act has considered whether the action taken by the LSLO amounts to a failure to comply with the requirements of Part I of the Act.

In considering this matter the Commissioner has taken into account the following:

1. Sections 1 and 2 of the Act provide that:

"1. (1) Any person making a request for information to a public authority is entitled-

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.

(2) Subsection (1) has effect subject to the following provisions of this section and to the provisions of sections 2,9,12 and 14….."

"2. (2) In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that-

(a) the information is exempt information by virtue of a provision conferring absolute exemption, or

(b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information".

2. On 6th April, 2nd June, and 28th June 2005 the Cabinet Office made available for inspection by the Commissioner various documents actually or potentially falling within the scope of one or more of the Requests. Assurances were received from the Treasury Solicitor's Department that neither the LSLO, nor the Cabinet Office, holds any further information considered to fall within the scope of the relevant Requests. On 1st December 2005 the Commissioner inspected further documents, considered to fall outside the scope of the Requests, which were made available to provide wider context. The Commissioner has reviewed all the documents which have been made available to him, the contents of the refusal notices and the LSLO Statement to which they refer.

3. The Commissioner is satisfied that the LSLO is a public authority within section 3 of the Act. The Commissioner is also satisfied that the Requested Information is held by the LSLO.

4. The Commissioner is further satisfied that the Requests made to the LSLO were valid requests made in accordance with section 1 of the Act and that the applicants were entitled under section 1(1)(b) of the Act to have the Requested Information communicated to them except to the extent that the Act provides otherwise.

5. In considering this matter, the Commissioner has also taken into account various materials on the public record. These include:

   - the Attorney General's statement, in the form of a Written Answer, to the House of Lords on 17th March 2003 (the "17th March Statement");

   - the FCO paper entitled "Iraq: Legal basis for the use of force", sent by the Foreign Secretary to the Right Honourable Donald Anderson MP on 17th March 2003

   - various Parliamentary exchanges and public statements about the nature and status of legal advice relating to the military intervention in Iraq. Examples are attached in Annex 3;

   - the Review of Intelligence on Weapons of Mass Destruction (the Butler Report), especially paragraphs 366-387, which for ease of reference are attached to this Notice as Annex 4 and which (at paragraph 386) includes the full text of the 17th March Statement.

6. The Commissioner has also taken into account the full text of the Attorney General's written advice dated 7th March 2003 (the "7th March Advice") which was published by the government, following a partial leak, in April 2005. The 7th March Advice fell within the Requested Information and was not in the public domain when the Requests were made or when the complaints were made to the Commissioner.

7. In considering this matter, the Commissioner has considered the exemptions upon which the LSLO has sought to rely. He has taken fully into account the substance of the LSLO Statement and further written and oral representations made to him. He has noted that reliance is no longer placed on section 41 as a possible exemption in relation to the Requested Information other than the 7th March Advice. In those circumstances he has not considered whether or not reliance on section 41 was justified.

8. The Commissioner is satisfied from the context and the nature of the documentation that some of the information contained in some of the documents he has reviewed engage the following exemptions under the Act:

> ***Section 27(1) –*** *Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice -*
>
> *(a) relations between the United Kingdom and any other State…..*
>
> ***Section 27(2) –*** *Information is also exempt information if it is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court.*

The Commissioner is satisfied that certain specific items of the Requested Information engage section 27(1) because their disclosure would prejudice the government's ability to obtain full input from other States on policies with an international element. There is a well-established convention that diplomatic discussions are normally treated in confidence. This ensures that all parties feel able to exchange free and frank views that it may be more difficult to state publicly. The convention also gives all States confidence to impart information which might otherwise be deemed too sensitive or contentious to share. Such information may not have a quality of confidence but disclosure nevertheless could prejudice the UK's relations with other States. Prejudice could, for example arise simply by confirming that discussions with certain States had taken place.

In addition, section 27(2) of the Act makes specific provision for the exclusion of information which has the necessary quality of confidence and is obtained from other States. The exemption contained within this sub-section does not require any prejudice to be shown. However, the Commissioner is also satisfied that the same specific items within the Requested Information are subject to section 27(2). In reaching these conclusions the Commissioner has taken into account section 27(3) of the Act which provides that for the purposes of the exemption information is confidential at any time while the terms on which it was obtained require it to be held in confidence or while the circumstances in which it was obtained make it reasonable for the State providing the information to expect that it will be so held. The Commissioner accepts that where information falling within the scope of the requests is subject to section 27(2) it is reasonable for the body or bodies supplying the information to expect that it would continue to be held in confidence at the time that the requests were received.

9. The Commissioner is further satisfied that the information contained in all of the documents he has reviewed – including the 7th March Advice - engage at least one of the following exemptions under the Act:

> ***Section 35(1) –*** *Information held by a government department….is exempt information if it relates to –*

(a) the formulation or development of government policy,
(b) Ministerial communications, [or]
(c) the provision of advice by any of the Law Officers or any request for the provision of such advice.

***Section 42(1)** – information in respect of which a claim to legal professional privilege……could be maintained in legal proceedings is exempt information.*

10. The effect of all of these exemptions is qualified by the provisions of section 2 of the Act. Section 2 introduces a 'public interest' test to the effect that the obligation in section 1 to provide access to information does not apply if, or to the extent that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

11. The public interest test set out in section 2(2)(b) of the Act involves balancing the public interest factors in favour of disclosing the information requested against the public interest factors in favour of maintaining the exemption. Where both sets of factors are evenly balanced the Act contains a presumption in favour of disclosure. Under section 2(2)(b) a public authority may only withhold information where "in all of the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information". The Act does not define "the public interest" nor does it specify the factors that should be taken into account when determining whether it favours disclosing information or maintaining a qualified exemption.

12. The following sections of this Notice set out the respective public interest arguments which the Commissioner has taken into account in relation to the exemptions relied upon by the LSLO.

C. The Public Interest Test

Section 27 – International Relations

Public interest arguments in favour of maintaining the exemption

1. There is a public interest in the government being able to seek the view of other States when developing policies and taking decisions that involve an international element or where the views or experiences of those nations may be pertinent to the issue at hand. The ability to enter into discussions with other States ensures that the government has a better understanding of their position or stance on a particular matter and can promote more effective working relationships. Open and honest communication between States can also improve the UK government's ability to negotiate acceptable outcomes to specific international issues.

2. In order for international relations to be as effective as possible it is important to ensure that all States feel able to provide full and frank views about particular issues on the understanding that they will be treated in confidence unless otherwise agreed. It is important to maintain trust between States that such a convention applies so that all relevant views and information can be exchanged irrespective of sensitivity, possible embarrassment or potential controversy. If some of the Requested Information were disclosed the Commissioner is satisfied that other States would be reluctant to enter into similar discussions in the future or at the very least to be as open about their views. In addition if the information were released other States, not simply those relevant here, may also be dissuaded from entering into discussions with the government.

3. As mentioned above, it is important that the government is able to take decisions having had an opportunity to consider information, including confidential information, relevant to a particular issue. Where such information is held by another State it is in the public interest that the government has sufficiently strong relations with other nations to enable it to obtain that material. To ensure access to such information it is important that the government consider any conditions that the provider of the information may attach. In this case, given that the Commissioner is satisfied that the supplier of information considered it to be confidential and that it should be treated as such, there is a public interest in respecting such condition in order to ensure that the government is freely able to access similar material in the future.

4. The Commissioner is also satisfied that it is in the public interest to treat the information as confidential to ensure that where the government imparts its own information to other States they adhere to any conditions that the government thought it reasonable to attach to the disclosure.

Public interest arguments in favour of disclosure

5. There is a public interest in knowing whether the government has sought views from other States when making decisions about a proposed course of action. It is also in the public interest to understand decisions taken by the government and to be able to make an informed judgement about the extent to which the views of other States have been taken into account when reaching a particular outcome. This promotes greater transparency and accountability for actions taken by the government.

6. There is also a public interest in people developing a better understanding of the sort of circumstances in which the views and opinions of other States are sought. This helps people to understand, contribute to and challenge those decisions and the process by which they are reached.

7. It is also in the public interest that people are able to determine whether or not the government has acted appropriately when seeking input from other States. This will help to improve confidence in the decisions that have been taken and will reassure the

public that all relevant information has been taken into account when determining that a particular course of action should be followed.

Sections 35 and 42 – Formulation of Government Policy and Legal Professional Privilege

In many cases the public interest considerations in relation to sections 35 and 42 of the Act will be distinct. However, in this particular case the two are closely intertwined and can largely be considered together. Section 35(1)(b) relates to "ministerial communications", in this case communications involving the Attorney General. Section 35(1)(c) relates to advice of the Law Officers. While in principle this advice need not be legal advice, in this particular instance the advice is of a legal nature and attracts legal professional privilege.

Arguments in favour of maintaining the exemptions

8. In the LSLO Statement which accompanied the refusal notices – reproduced at Annex 2 - the LSLO set out the factors that it considered supported the public interest in maintaining the claimed exemptions in sections 35 and 42. The factors were elaborated in the written and oral representations which were made to the Commissioner (which also set out public interest arguments relating to the information falling within the section 27 exemption). The Commissioner recognises and accepts the strength of all these arguments and has taken them fully into account without needing to reproduce them in full in the body of this Notice. They can be stated in summary form as follows.

9. There is a public interest in allowing government a protected, clear space – away from exposure to public view - in which it can debate matters internally, and take and receive legal advice, with candour and free from the pressures of public political debate. The need for such space for full, free and frank deliberation is increased with matters of great sensitivity and gravity.

10. There is a public interest in government and the Prime Minister being able to seek legal advice in confidence. There must be a reasonable expectation that such advice and the fact that it has been sought, will remain confidential to ensure that the legal opinion is full and frank. As with any professional adviser, the Law Officers must be made aware of the background and of any relevant detail to inform their advice on a particular issue. If there were no expectation of confidentiality Ministers may be dissuaded from providing full information or from seeking advice in the first place.

11. The particular importance of maintaining the confidentiality of advice given by the Law Officers is reflected in the long-standing convention, observed by successive Governments, that neither the advice of Law Officers, nor the fact that their advice has been sought, is disclosed outside government. This convention is explicitly recognised in section 35 of the Act and paragraph 24 of the Ministerial Code.

12. There is a public interest at the heart of the doctrine of legal professional privilege. A client needs to be confident that information shared with a lawyer, and advice received from that lawyer, will remain confidential. Without such confidence there are risks of lack of openness between client and lawyer and threats to the administration of justice. The detailed policy arguments supporting the doctrine were most recently considered and fully set out in the judgment of the House of Lords in *Three Rivers DC v Bank of England (No. 6) [2004] UKHL 48.* The same public interest arguments that relate to legal professional privilege in general apply with particular force to legal advice provided by the Law Officers.

13. These public interest arguments apply particularly given that legal advice is liable to set out legal reservations, risks and possible counter-arguments.

14. There is additionally a particular public interest in not disclosing legal analysis or advice which is preliminary or provisional in its nature. This extends to exchanges which involve processes of investigation, research and deliberation where clarification may be sought or arguments tested.

15. There is a public interest in maintaining the confidentiality of material of the nature of the Requested Information. Its disclosure could be damaging to decision-making – especially the processes of seeking and giving policy and legal advice - within central government in future. It could deter or inhibit requests of potentially unwelcome or controversial advice, and the recording of advice, and could even lead to advice being deliberately tailored with a view to publication.

16. The reasons favouring non-disclosure of the Requested Information apply with especial force in the context of a decision of such gravity, sensitivity and difficulty in policy terms, legal complexity and diplomatic sensitivity as that concerning the decision to take military action in Iraq in 2003 and in the context of advice given personally by the Attorney General at the highest levels of government.

Arguments in favour of disclosure

17. The arguments in favour of disclosure of all or some of the Requested Information which the Commissioner has taken fully into account are set out below. The Commissioner recognises and accepts the strength of all these arguments.

18. It is in the public interest that society should – to the maximum extent possible – be able to understand, debate and challenge decisions taken by the government. Where there is a decision of such gravity and magnitude as the decision to commit the country to military action, there is a public interest in the government being able to demonstrate that the decision has been fully debated and that the appropriate advice has been sought from professional advisers. People should be able to understand the full basis upon which that decision has been taken and also how it is justified. Where public and political opinion is sharply divided, the argument in favour of disclosing information

which furthers such understanding, particularly on the part of military and civilian participants, is even stronger.

19. As stated in the LSLO Statement, our society operates with belief in and acceptance of the rule of law. There is a public interest in knowing that a government engaging in a major act of military intervention is acting in accordance with the rule of law, has sought the appropriate professional advice and is not acting in an unlawful or legally questionable manner.

20. There is a public interest in understanding the legal basis for the decision to join the invasion of Iraq .The invasion, and its legality, was (and to a considerable extent remains) a matter of intense public controversy. The more people are informed, the more they can understand and participate meaningfully in the debate about whether it was appropriate for the government to commit the United Kingdom to military action in Iraq. Questions have been raised in many places – including by the Secretary-General of the United Nations and by academic and practising lawyers - about the legality of the military action. A fuller picture of the key materials which informed the preparation of the Attorney General's conclusions and the relevant advice which preceded them would illuminate the 17th March Statement and thus help to inform the ongoing debate on this issue.

21. More precisely, there is a public interest in knowing how the Attorney General reached the unequivocal conclusion made public on 17th March 2003, that the military intervention in Iraq would be lawful. In particular there is a public interest in understanding the process leading from the 7th March Advice to the 17th March Statement and the reasons for the differences between the two.

22. There is a public interest in disclosure of information relating to the statement of 17th March 2003 by the Attorney General, given that the House of Commons relied explicitly upon that statement in a formal Resolution when deciding to support military action on 18th March 2003. Disclosure would enable people to make a more informed judgement about the way in which the decision was reached and whether or not it was justified.

23. There is a public interest in disclosing further information given uncertainty about the status and nature of the 17th March Statement. It would have been reasonable for Parliament and the public to assume that the 17th March Statement had been based on a thorough analysis of all relevant legal considerations and that its unequivocal conclusion reflected a similar conclusion, even if reached on balance, in an Opinion or Advice prepared by the Attorney General. It may not have been explicitly presented as a "summary" of any Advice, but it had the characteristics of a summary, and it appears to have been widely understood at the time to have had a status of this or a similar nature. This impression was subsequently reinforced by references to the Attorney's "concluded" views, to a "summary of my view of the legal position" and to "an accurate reflection of his opinion". Although care was taken to spell out that the government was not publishing the "legal advice per se", nor a summary of advice, it was a legitimate

assumption that there was at least full consistency and a continuity between the 7th March Advice and the 17th March Statement. It is clear, however, that the 7th March Advice was in fact significantly more equivocal in nature and did not reach a firm conclusion. To that extent at least, there was not full consistency with the 7th March Advice. Examples of Parliamentary exchanges and other comments referring to the status of the 17th March Statement are included in Annex 3.

24. It is highly exceptional (though not unprecedented) for the concluded views of the Attorney General to be made public. It is not necessary to decide whether the publication of the 17th March Statement amounted to waiver of legal professional privilege, but there is a public interest in establishing the extent to which published statements are consistent with fuller advice that had been given. Although the Statement - and the accompanying Foreign Office memorandum - went beyond a bald assertion of legality, they were unequivocal, with no suggestion of legal risks, reservations or possible counter-arguments or even that the conclusions had been reached on the balance of competing arguments. When government chooses to publish a statement which was intended to be seen as a clear statement of the legal position the government was adopting, there is a public interest in knowing the extent to which it had been based on firm and confident analysis and advice, or was at least consistent with what had gone before.

25. The unequivocal way in which the conclusions of the Attorney General were expressed may have given the impression, or at least entitled both Parliament and the public to make assumptions, that these views were based on (and consistent with) advice and/or previous analysis which had been fully considered and that the conclusions were firm and confident. The subsequent publication of the 7th March Advice now allows the public to form some judgements on that issue, but there remains a public interest in a fuller understanding as to how the concluded views in the 17th March Statement were reached or justified, especially given the more equivocal nature of the 7th March Advice. There is a particular public interest, in these circumstances in understanding more of the chain of events between the 7th March Advice and the 17th March Statement and the reasons for the differences between the two, and hence in disclosure of some or all of the underlying material from that period.

26. Although this might be expected to be primarily for the government's own decision, there is a public interest in publishing materials to demonstrate that the Attorney General's published conclusions were in fact constructed on the basis of detailed analysis and consideration. There is a public interest in demonstrating to the public how the advice provided by him was formulated, taking into account relevant background information

27. There is a public interest in requiring disclosure of some or all of the Requested Information given the principle that engagement in military action should be based – and as far as possible be seen to be based - on a sound legal foundation.

D. The Commissioner's Conclusions on the balance of the public interest arguments

This is a highly exceptional case from almost every perspective. As required by section 2 of the Act, these conclusions apply only to this case. The Commissioner does not believe that wider precedent implications can, or should, be deduced from these conclusions.

Section 27

1. The Commissioner has considered the public interest arguments relating to section 27, as set out above, both individually and cumulatively. He has balanced the respective public interest arguments and has determined the extent to which, in all the circumstances of this case, the public interest in maintaining each exemption outweighs the cumulative public interest in disclosing the Requested Information.

2. Section 27, seeking to avoid prejudice to international relations, is clearly an exemption which raises much wider issues than the predominantly domestic focus of the Freedom of Information Act. A central rationale of the Act, expressed in terms of the presumption in favour of disclosure and an explicit recognition of the public interest in the disclosure of information, is to increase the transparency and accountability of UK government and other public authorities. The section 27 exemptions are not absolute and it cannot be said that there will never be circumstances where public interest considerations require disclosure notwithstanding the engagement of one or both of the exemptions.

3. In this case, however, the Commissioner is satisfied that the arguments for maintaining the exemption are compelling and that there is nothing in the substance of the relevant information, nor in the wider context, which leads to the conclusion that there is a greater public interest in disclosure.

Sections 35 & 42

4. The Commissioner has considered the public interest arguments as summarised above, both individually and cumulatively. He has balanced the respective public interest arguments and has determined the extent to which, in all the circumstances of this case, the public interest in maintaining each exemption outweighs the cumulative public interest in disclosing the Requested Information. He has attached particular weight to the contention put to him that these public interest arguments - particularly in terms of the damage which disclosure could cause to the operations of central government - reflect the considered assessment of those public authorities responsible for the subject matter of the Requested Information. This is a powerful, but not conclusive, argument.

5. The Commissioner accepts the significance and value in government being able to seek and receive advice in private space away from public scrutiny to formulate policy.

   The Commissioner considers that the public interest in maintaining legal professional privilege in general (section 42) and in exempting advice from the Law Officers in particular (section 35(1)(c)) are of particular importance in the circumstances of this case. He recognises the importance of the government and the Prime Minister being able to seek professional legal advice in confidence, particularly from the Attorney General. The Commissioner is very aware of the importance of the confidentiality which has traditionally (though not absolutely) attached to legal advice from the Attorney General. The wider principle that legal advice should attract legal professional privilege is supported by very strong public interest arguments. The principle promotes the administration of justice and the ability of an individual to confide in his legal adviser, receive advice and take appropriate action to abide by the law. The arguments for maintaining legal professional privilege are strong and therefore the circumstances in which the public interest will favour disclosure of information that is legally privileged are likely to be highly exceptional.

6. In this particular case, the Commissioner considers that the strongest arguments which have been put forward favouring non-disclosure can be characterised in terms of principle. In effect, it is said that enforced disclosure of high-level legal advice of this nature would have severe "chilling" effects. The possibility of disclosure, it is argued, will inhibit exchanges which express free, full, frank and powerful views.

7. Against these considerations, the Freedom of Information Act calls for a new approach, with considerably greater transparency than before. It may be surprising that neither material covered by legal professional privilege, nor exchanges with the Law Officers, are granted absolute exemption from disclosure. The fact is that none of the exemptions in this case are absolute. Parliament has clearly anticipated that, notwithstanding the strong confidentiality associated with each of the exemptions in this case, each is qualified and can be overridden, on a case by case basis, where the public interest considerations are sufficiently powerful. If there are any "chilling" effects, these are attributable to the Act, not to individual decisions made under it. The Act – in the context of a mature democracy – makes provision for the disclosure of information held by public authorities to a considerably greater extent than before its enactment. As was made clear by ministers and others during the Parliamentary debates, this enables the public to access more detail about the way in which government has reached decisions, to improve trust and confidence in government and to enable citizens to understand and participate in debates on issues of public importance from a more informed standpoint.

8. Notwithstanding the weight of the arguments for non-disclosure, the Commissioner recognises powerful counter-arguments as set out in Section C above. He attaches very substantial weight in this case to the fact that, highly exceptionally, the 17th March

Statement was made public. Moreover, there were differences between the 7th March Advice and the 17th March Statement and the view was allowed to gain ground – or at least not corrected - that the 17th March Statement had some sort of summary status. These circumstances generate a very strong public interest in clarifying the relationship between the two documents and hence in disclosing further information about more detailed analysis and advice and the chain of events. Questions also remain about the nature and status of the17th March Statement which may be clarified by greater disclosure of underlying materials. There is also a time factor – the public interest arguments against disclosure are now weaker than they might have been in 2003.

9. In this case, the Commissioner has concluded that the balance of the competing public interests does not, and cannot, yield a single or simple answer applicable to all the Requested Information.

10. The arguments for maintaining the exemptions are sufficiently powerful that the Commissioner has concluded that the balance of the competing public interests does **not** require the disclosure of those parts of the Requested Information which were uncirculated drafts or were of a preliminary, provisional or tentative nature or which may reveal legal risks, reservations or possible counter-arguments as expressed by any of those involved in the provision of advice or information informing that advice.

11. However, the Commissioner has also concluded that the balance of the competing public interests **does** require the disclosure of those parts of the Requested Information (not otherwise exempted through section 27) which led to, or supported, the concluded views which were made public by the Attorney General in the 17th March Statement. As the government chose to outline an unequivocal legal position, on such a critical issue at such a critical time, the balance of the public interest calls for disclosure of the recorded information which lay behind those views. By this means the public can better understand the background and rationale behind that published Statement and the extent to which reliance upon those final conclusions was in fact justified.

12. To this extent, but only to this extent, the Commissioner has concluded that in this case the public interest for disclosure is so strong that it is not outweighed by the public interest in maintaining the section 35 and 42 exemptions. To this extent the Commissioner concludes that the LSLO failed to comply with the requirements of Part I of the Act and has acted in contravention of its obligations under sections 1 and 2 of the Act.

13. The 7th March Advice, which has now been published, goes a considerable way to meet the disclosure requirement in line with the Commissioner's conclusions. It includes a great deal of material which led to or supported the views which were made public by the Attorney General in the 17th March Statement, notwithstanding that it also included material which revealed legal risks, reservations or possible counter-arguments as expressed by the Attorney General.

14. The Commissioner recognises that the nature of the other documents falling within the Requested Information makes it impossible, or extremely difficult, to separate the information which supported the conclusions which were made public by the Attorney General in the 17th March Statement. He therefore does not believe that it would be feasible to order disclosure of documents falling within the Requested Information after redaction of material which was of a tentative or provisional nature or which may reveal legal risks, reservations or possible counter-arguments.

15. He has therefore concluded that this Enforcement Notice should be expressed in terms of a requirement to publish a **Disclosure Statement to set out the substance of all the recorded material within the Requested Information which led to or supported the views made public by the Attorney General in the 17th March Statement**. Certain documents can be identified as including material which falls within these parameters and the substance of that material needs to be incorporated into the Disclosure Statement.

16. The Commissioner will need to be satisfied that the statement to be published fully meets the requirements as expressed above. However, nothing prevents the Disclosure Statement from including other material, whether falling outside the Requested Information, or outside the terms of this Notice, which provides meaningful context or otherwise explains the content and status of the 17th March Statement.

E. Enforcement notice

For the reasons, and to the extent, set out in this Notice the Information Commissioner has therefore reached the view that the LSLO has failed to comply with the requirements of Part I, and has acted in contravention of its obligations under section 1 of the Act.

Accordingly, the Commissioner, through this Enforcement Notice, requires the LSLO:

1. to prepare a Disclosure Statement setting out the substance of all the recorded material falling within the Requested Information (except that which is specifically exempt under section 27 of the Act) which led to or supported the conclusions made public by the Attorney General in the 17th March Statement;

2. to incorporate within the Disclosure Statement the substance of those parts of certain documents, as notified to the LSLO, which falls within these parameters; and

3. within 28 days from the date on which this Notice is served, to make the Disclosure Statement available to the general public and to those complainants notified to LSLO by the Commissioner.

The Commissioner is satisfied that the Disclosure Statement prepared by the LSLO and attached to this Notice as Annex 6 meets the requirements set out at (1) and (2) above.

F. Right of Appeal

There is a right of appeal against this Notice to:

The Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 6000877
Fax: 0116 249 4253
email: informationtribunal@dca.gsi.gov.uk

Information about appeals is set out in the attached Annex 5 and is also available from the Tribunal.

Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Notice is served. If Notice of Appeal is served late the Tribunal will not accept it unless it is of the opinion that it is just and right to do so by reason of special circumstances.

Dated the 22nd day of May 2006

Signed:……

Richard Thomas
Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

ANNEX 1

SUMMARY OF REQUESTS FOR INFORMATION RELATED TO THE ATTORNEY GENERAL'S ADVICE ON THE LEGALITY OF MILITARY INTERVENTION IN IRAQ MADE TO THE LSLO

1. The Legal Advice given by the Attorney General, Lord Goldsmith, to the Government on the legality of military action against Iraq.

2. Each of any earlier iterations of the Attorney General's advice, including dates.

3. All internal emails or other inter-departmental correspondence relating to reasons for changes between any such draft iterations.

4. Ministerial correspondence, including correspondence of the Attorney General and the Solicitor General, on the subject of the legality of the Iraq conflict.

ANNEX 2

LEGAL SECRETARIAT TO THE LAW OFFICERS STATEMENT REFERRED TO IN REFUSAL NOTICES ISSUED IN RESPONSE TO REQUESTS

This note sets out in more detail the reasons why the Legal Secretariat to the Law Officers considers that the Attorney General's advice on the legality of the military action taken in Iraq in March 2003 and the related information you have requested is exempt from disclosure under the Freedom of Information Act and why, in all the circumstances of the case, the public interest in maintaining each applicable exemption clearly outweighs the public interest in disclosing this information.

Section 42(1) The advice is legal advice to the Prime Minister and government in respect of which a claim to legal professional privilege could be maintained in legal proceedings. There has been no waiver of that privilege.

In the case of section 42, there is a strong public interest in a person seeking access to legal advice being able to communicate freely with his legal advisers in confidence, and in being able to receive advice from his legal advisers in confidence. The House of Lords has said that legal professional privilege is "a fundamental condition on which the administration of justice as a whole rests": R v Derby Magistrates' Court ex p B [1996] AC 487. The importance of the public interest in maintaining the confidentiality of communications between lawyers and their clients has been recently reaffirmed by the House of Lords in Three Rivers DC v Bank of England (No. 6) [2004] UKHL 48. It is based on the following considerations:

(a) The underlying rationale for having a strong rule against disclosure is that it both encourages clients to seek legal advice in order properly to arrange their affairs and promotes full and frank exchanges between clients and their legal advisers, which is judicially recognised as being something strongly in the public interest, for a variety of reasons: see for example Lord Rodger's comments in Three Rivers (No. 6) especially at paragraph [54]: "If the advice given by lawyers is to be sound, their clients must make them aware of all the relevant circumstances of the problem. Clients will be reluctant to do so, however, unless they can be sure that what they say about any potentially damaging or embarrassing circumstances will not be revealed later." See also paragraphs [29] and [34] (Lord Scott), [61]-[62] (Lady Hale), [106] and [112] (Lord Carswell) and [120] (Lord Brown).

(b) These reasons apply with particular force in relation to legal advice concerning sensitive and difficult governmental decisions, because (i) it is strongly in the public interest that governmental action should respect the rule of law, which makes it imperative both that the government should seek legal advice in relation to difficult policy decisions and that clear, fully informed and fully reasoned and balanced legal advice should be available to the decision-makers with responsibility for such decisions; (ii) if either the instructions given by or the advice provided to government were liable to be put in the

public domain, the great pressures of political debate and criticism are such that the instructions and advice might not be as full and frank as they should be if they had to take into account the impact they would have in the public debate in which they would feature. This would directly undermine the point at (i) above.

(c) Furthermore, the public interest in allowing government to have a clear space, immune from exposure to public view, in which it can debate matters internally with candour and free from the pressures of public political debate, is given recognition in the Act itself (see section 35), and has also been judicially recognised: see eg Conway v Rimmer [1968] AC 910, 952 (Lord Reid); Burmah Oil Co Ltd v Bank of England [1980] AC 1090, 1112 (Lord Wilberforce), 1121 (Lord Salmon), 1126-1127 (Lord Edmund-Davies), and 1143-1145 (Lord Scarman).

(d) It is also an important factor, which underlies the general rationale for legal professional privilege and its particular application in the case of governmental decisions, that the rule against disclosure should be known to operate with reasonable certainty in advance, since if its application were uncertain and too readily displaced, that would undermine the very public interest in encouraging full and frank exchanges between government and its legal advisers which the rule is supposed to promote. This is a common feature of rules which are designed to promote free exchange of information: see eg Prebble v Television New Zealand Ltd [1995] 1 AC 321, 334A-D and A v UK (2003) 36 EHRR 51 (protection for free speech in Parliament, through clear rules of parliamentary privilege); R v Mirza [2004] 1 AC 1118 (protection of free debate in the jury room); Goodwin v UK (1996) 22 EHRR 123 (protection of journalists' sources); R v Derby Magistrates, ex p. B [1996] 1 AC 487, 508E (strict rule of legal professional privilege, to protect exchanges between clients and lawyers); R v Chief Constable of the West Midlands Police, ex p. Wiley [1995] 1 AC 274, 297D-E; and AG v Blake [2001] 1 AC 268, 287D-F (strict rule of non-disclosure to encourage informants to provide information).

(e) All the reasons for favouring non-disclosure of information referred to above apply with especial force in the context of a decision of such gravity, sensitivity and difficulty in policy terms, legal complexity and diplomatic sensitivity as that concerning the decision to take military action in relation to Iraq in 2003; and in the context of advice given personally by the Attorney General at the highest levels of Government.

(f) The particular importance of maintaining the confidentiality of advice given by the Law Officers is reflected in the long-standing convention, observed by successive Governments, that neither the advice of Law Officers, nor the fact that their advice has been sought, is disclosed outside government. This convention is recognised in paragraph 24 of the Ministerial Code and in section 35(1)(c) of the Act (see below).

The same considerations apply equally to your request for each of the "copies of earlier versions of such advice … and all emails and any other inter-departmental correspondence relating to the rationale behind changes made to this advice".
Section 35(1)(a) The advice relates to the formulation or development of government policy, namely in relation to the measures to be taken in respect of Iraq and its non-compliance with Security Council resolutions.

Section 35(1)(b) The advice relates to Ministerial communications in that it relates to a communication between the Attorney General and the Prime Minister.
Section 35(1)(c) The advice relates to the provision of advice by one of the Law Officers (the Attorney General) to the Prime Minister.

The same factors as mentioned above in the context of section 42 are relevant in the case of each of the exemptions under sections 35(1)(a), (b) and (c).

In these circumstances, and having regard to the factors set out above, the Legal Secretariat to the Law Officers has concluded that the public interest in maintaining the exemptions clearly outweighs the public interest in disclosure of the advice, and we therefore consider that section 2(2)(b) of the Act applies.

The Legal Secretariat also relies on the exemptions in sections 27(1) and (2) (international relations), 41(1) (information provided in confidence) and further on section 35(1)(c). No further information is provided in relation to these exemptions, in reliance on section 17(4) of the Act.

ANNEX 3

EXAMPLES OF STATEMENTS AND PARLIAMENTARY EXCHANGES ABOUT THE ATTORNEY GENERAL'S 17TH MARCH 2003 STATEMENT

House of Lords debate of 17th March 2003

In the House of Lords on 17th March 2003, Lord Lester had made the following comment (Col W85):

> *"Having waived privilege in respect of the Attorney General's conclusions, I hope that in fairness to the Attorney-General the Government will publish his full reasons so that we can see more than the one-page summary".*

House of Commons debate of 18th March 2003

During the debate in the House of Commons on 18th March 2003 the then shadow Foreign Secretary, the Rt. Hon. Michael Ancram MP said (Col. W893) that he accepted:

> "*the Attorney-General's advice. It is not the advice of an individual lawyer or legal expert but the considered legal advice of a person who is charged with the constitutional duty of advising the Government and the House on the legality or otherwise of actions. The House should give exceptional weight to that advice."*

House of Lords Written Answer of 6th November 2003

In a Written Answer in the House of Lords on 6th November 2003, when asked by Lord Lester about the difference between his "views" and his "advice", the Attorney General said (Col. WA 129):

> *This statement [17 March] was a summary of my view of the legal position, rather than a detailed consideration of the legal issues. The statement was nevertheless consistent with my detailed legal advice."*

Attorney General's press release of 25th February 2005

The Attorney General's Office issued a press release on 25th February 2005 which stated that the Written Answer of 17th March 2003 *"did not purport to be a summary of my confidential legal advice to Government".*

Prime Minister's press conference of 25th February 2005

At the Prime Minister's press conference of 25 February 2005 the following exchanges took place:

> **Question**: Prime Minister, Michael Mates this morning, who is a member of the Intelligence and Security Committee, a member of the Butler Inquiry, has added his voice to those calling for evidence, or the opinion of the Attorney General on the Iraq war to be made public, and appears to cast some doubt on whether we have been told properly what that advice was. As the government have already broken the precedent by publishing the legal advice on the Royal wedding, why don't you publish that and clear this up once and for all, otherwise there appears to be a question mark over the legality of the war, which won't go away.
>
> Prime Minister: First of all, we haven't broken the precedent, and secondly Peter Goldsmith has made a statement and I have got absolutely nothing to add to it.
>
> Question: Can I ask, would you describe the parliamentary answer that the Attorney General gave on 17 March 2003 as a fair summary of his formal written legal opinion?
>
> **Prime Minister:** *Well again, I have got nothing to add to what the Attorney General said. He has been over these questions literally scores of times and the position, Gary, has not changed. I know you guys will want to go back into it, and back into it, and back into it.*
>
> **Question:** *But it was presented as a fair summary of his formal legal opinion, was it not?*
>
> **Prime Minister**: *Well that is what he said, and that is what I say.*
>
> **Question:** …set it out.
>
> **Prime Minister:** Honestly Gary, he has dealt with this.
>
> **Question:** But he hasn't.
>
> **Prime Minister:** Yes he has dealt with it time, and time, and time again. Now I know that some people will not agree, and they are never going to agree about this, but I am sorry there is no point in thinking if…
>
> **Question:** Inaudible.
>
> **Prime Minister:** I am sorry Gary, I have answered your question, that is enough".

No. 10 Press Briefing of 9th March 2005

A press briefing was held at 10 Downing Street on 9th March 2005 at which the Prime Minister's Official Spokesman (PMOS) was questioned about the status of the 17th March Statement. It was put to the spokesman that:

> *"at the Cabinet meeting, as Clare Short had claimed, everyone was given a two page Parliamentary answer that had summarised the legal advice, the PMOS replied that the written answer was not a summary, but rather, was the Attorney General's view".*

The spokesman went on to clarify that *"there was a clear distinction made by lawyers between an expression of views and an explanation, and a summary of legal advice".*

Foreign Secretary's comments on Radio 4 Today programme - 25th April 2005

On 25th April 2005 the Rt. Hon. Jack Straw MP made the following comments:

JS: The Attorney General's advice was never going to be published whatever it said because Attorney General's advice is never published.

JH: No. There is a precedent for it.

JS: Very, very limited and very specific precedent…What indeed has often not been the case is that the Attorney General's view, based on his advice, has often not been published. In this particular case the Attorney General took the view that he ought to make clear a summary of his position and indeed did that. And that was set out very categorically. The Attorney General has repeated on many, many occasions that the view set out in the House of Lords on the 17th of March was indeed an accurate reflection of his opinion. That remains his view. Now I also just want to say this because some of those who argue that the legal advice was somehow wrong are basically trying to say that the war was not justified".

ANNEX 4

EXTRACTS FROM THE BUTLER REPORT

5.7 THE ROLE OF INTELLIGENCE IN ASSESSING THE LEGALITY OF THE WAR

366. We have examined the Attorney General's advice on the legality of war in Iraq, and taken oral evidence from him on two occasions.

367. The Attorney General was briefed on relevant intelligence issues in September 2002 and February 2003.

368. At our request, the Legal Secretariat to the Law Officers submitted to us a background note on the usual procedure by which the Government obtains legal advice from the Law Officers, who are the Government's principal legal advisers. In view of the public interest in this matter, we judge that it may be worth setting this out.

369. There is no set procedure for seeking the advice of the Law Officers. The usual practice is for a Government lawyer in the Whitehall department with the lead interest in the issue to write to the Legal Secretary to the Law Officers, or to one of the officials in the Legal Secretariat, with a request for Law Officers' advice. It is not, however, the invariable practice for advice to be sought in this way. On occasion, Ministers write directly to the Law Officers to seek their advice. Paragraph 22 of the Ministerial Code describes the type of case where it will normally be appropriate to consult the Law Officers.

370. Requests for advice normally set out the background and provide the department's own legal analysis of the issue. Depending on the circumstances, a number of things might happen once the request is received. The lead department might be asked for further information or further analysis of the legal question if the Legal Secretariat felt that this was needed; it might be necessary to convene a meeting between the Law Officers and relevant departmental lawyers to discuss the matter; the Law Officers might ask for the views of outside counsel on the issue before giving their advice; or the letter might simply be submitted by the Legal Secretariat to the Law Officers for their views.

371. Once the Law Officers have formed a view on the matter, officials in the Legal Secretariat would normally write back to the lead department recording the Law Officers' advice. In some cases, the Law Officers may communicate their advice directly to the Minister of the lead department.

372. There is a long-standing convention, adhered to by successive Governments (and recognised in paragraph 24 of the Ministerial Code), that neither the fact that the Law Officers have been consulted in relation to a particular matter nor the substance of any

advice they may have given is disclosed outside Government. The purpose of the convention is to enable the Government, like everyone else, to obtain full and frank legal advice in confidence. There is a strong public interest in the Government seeking legal advice so that it acts in accordance with the law. If there were a risk that Law Officers' advice would be made public, this might inhibit the provision of full and frank legal advice. The rationale for the convention is the same as that which underpins the doctrine of legal professional privilege, which also applies to Law Officers' advice.

373. We have been advised of only three examples in the past 100 years of the actual advice of the Law Officers being disclosed publicly. Two of those examples relate to the provision of documents in judicial proceedings, namely the Factortame litigation and the Scott Inquiry. In both of those cases, the advice given by the Law Officers was central to the issues in the proceedings. The third example arose from the Westland affair when a letter from the then Solicitor General to the then Secretary of State for Defence was published by the Government. This followed, however, the unauthorised disclosure of part of the Solicitor General's letter in breach of the convention, which gave rise to serious consideration of prosecutions under the Officials Secrets Act and led to, or contributed to, the resignation of two Cabinet Ministers.

374. In the case of Iraq, the Attorney General offered initial advice to the Government prior to the adoption of United Nations Security Council Resolution 1441, when consideration was being given to the enforcement of Iraq's compliance with its disarmament obligations under United Nations Security Council Resolution 687 and subsequent relevant resolutions. That advice mainly concerned legal interpretation of relevant United Nations Security Council resolutions. But the Attorney General did conclude that, on the basis of the information he had seen, there would be no justification for the use of force against Iraq on grounds of self-defence against an imminent threat.

375. Following the passing of United Nations Security Council Resolution 1441, there was disagreement inside the FCO on whether a further decision of the Security Council would be needed before the UK could lawfully use force against Iraq to secure compliance by Iraq with its disarmament obligations. The Foreign Secretary told us that he took the view that, particularly in the light of the negotiating history of Security Council Resolution 1441, such a further decision was not essential but that all concerned in the FCO accepted that the final word would belong to the Attorney General.

376. In the ultimate event, a Deputy Legal Adviser in the FCO, Ms Elizabeth Wilmshurst, disagreed with the Government's position and felt it necessary to resign. We took evidence from Ms Wilmshurst and she told us that her view rested on a difference over legal arguments and was not related to intelligence.

377. The Attorney General has told us that, during the course of negotiation of Resolution 1441 and in the weeks following the adoption of that resolution, he had a number of discussions with the Prime Minister, the Foreign Secretary and senior officials from their departments about what happened during the negotiations, and on the interpretation of

Resolution 1441, including whether it was of itself sufficient to authorise the use of force in the event that Iraq failed to take the 'final opportunity' afforded to it by the Security Council to comply with its disarmament obligations. The Attorney General has also told us that, in order to assist him in reaching a concluded view of the proper interpretation of the resolution, he also spoke to Sir Jeremy Greenstock, the UK Permanent Representative to the United Nations, and in February 2003 met members of the US Administration who as co-sponsors of the Resolution had detailed knowledge of the negotiation of the resolution.

378. The Attorney General informed the Prime Minister's Chief of Staff (Mr Powell), his Foreign Policy Adviser (Sir David Manning) and Baroness Morgan of his view of the legal position at a meeting on 28 February 2003. The Prime Minister's office subsequently asked the Attorney General to put those views in writing, which he did in a formal minute to the Prime Minister on 7 March 2003.

379. We have received an account from the Attorney General of that advice, and have read it. It was based on the legal interpretation of relevant United Nations Security Council resolutions and negotiating history in the United Nations, and not on WMD-related intelligence. It did, however, require the Prime Minister, in the absence of a further United Nations Security Council resolution, to be satisfied that there were strong factual grounds for concluding that Iraq had failed to take the final opportunity to comply with its disarmament obligations under relevant resolutions of the Security Council and that it was possible to demonstrate hard evidence of non-compliance and non-co-operation with the requirements of Security Council Resolution 1441, so as to justify the conclusion that Iraq was in further material breach of its obligations.

380. On the basis of the Attorney General's advice, the Government drew up its military campaign objectives (set out at Annex C) which made it clear that the Government's overall objective for the military campaign was to bring about Iraq's disarmament in accordance with its obligations under the relevant United Nations Security Council resolutions and that the obstacle to achieving this was the then current Iraqi regime, supported by the security forces under its control. The Government therefore concluded that military action was necessary to remove the Iraqi regime from power, in order to secure compliance by Iraq with its disarmament obligations. The Attorney General confirmed to us his view that, while the assessment that it was necessary to remove the current regime to enforce compliance with its disarmament obligations was not for him, he saw no reason to regard this as being other than a proper and reasonable political and military assessment for the Government to make.

381. The Attorney General decided that it was in the interests of public servants, both military and civil, who would have to carry through any decision to take military action that a statement should be made in clear and simple terms as to his view of the legal position. The Attorney General informed Lord Falconer and Baroness Morgan at a meeting on 13 March of his clear view that it was lawful under Resolution 1441 to use force without a further United Nations Security Council resolution.

382. The Legal Secretary to the Law Officers informed the Legal Adviser to the Ministry of Defence on 14 March of the Attorney General's view, the Legal Adviser to the Ministry of Defence having written to the Legal Secretary on 12 March asking for confirmation of the legal position in order that the Chief of the Defence Staff could issue the order to commit armed forces to military action.

383. Following the end of negotiations in the United Nations on a further Security Council resolution, the Legal Secretary to the Attorney General wrote to the Private Secretary to the Prime Minister on 14 March 2003 seeking confirmation that:

. . . it is unequivocally the Prime Minister's view that Iraq has committed further material breaches as specified in paragraph 4 of resolution 1441.

384. The Prime Minister's Private Secretary replied to the Legal Secretary on 15 March, confirming that:

. . . it is indeed the Prime Minister's unequivocal view that Iraq is in further material breach of its obligations, as in OP4 of UNSCR 1441,because of 'false statements or omissions in the declarations submitted by Iraq pursuant to this resolution and failure by Iraq to comply with, and co-operate fully in the implementation of, this resolution'.

385. We have been told that, in coming to his view that Iraq was in further material breach, the Prime Minister took account both of the overall intelligence picture and of information from a wide range of other sources, including especially UNMOVIC information.

386. The Attorney General set out his view of the legal position to the Cabinet on 17 March, by producing and speaking to the Written Answer he gave to Parliament on that date:

Baroness Ramsay of Cartvale: *What is the Attorney General's view of the legal basis for the use of force against Iraq*.

The Attorney General: *Authority to use force against Iraq exists from the combined effect of Resolutions 678,687 and 1441. All of these resolutions were adopted under Chapter VII of the UN Charter which allows the use of force for the express purpose of restoring international peace and security:*

1. In Resolution 678,the Security Council authorised force against Iraq, to eject it from Kuwait and to restore peace and security in the area.

2. In Resolution 687,which set out the ceasefire obligations after Operation Desert Storm, the Security Council imposed continuing obligations on Iraq to eliminate its weapons of mass destruction in order to restore international peace and security in the area.

Resolution 687 suspended but did not terminate the authority to use force under Resolution 678.

3. A material breach of Resolution 687 revives the authority to use force under Resolution 678.

4. In Resolution 1441,the Security Council determined that Iraq has been and remains in material breach of Resolution 687,because it has not fully complied with its obligations to disarm under that resolution.
5. The Security Council in Resolution 1441 gave Iraq "a final opportunity to comply with its disarmament obligations" and warned Iraq of the "serious consequences" if it did not.

6. The Security Council also decided in Resolution 1441 that, if Iraq failed at any time to comply with and co-operate fully in the implementation of Resolution 1441,that would constitute a further material breach.

7. It is plain that Iraq has failed so to comply and therefore Iraq was at the time of Resolution 1441 and continues to be in material breach.

8. Thus, the authority to use force under Resolution 678 has revived and so continues today.

9. Resolution 1441 would in terms have provided that a further decision of the Security Council to sanction force was required if that had been intended. Thus, all that Resolution 1441 requires is reporting to and discussion by the Security Council of Iraq's failures, but not an express further decision to authorise force.

387. On the same date, the Foreign Secretary gave a more detailed statement of the legal position in his letter to both Houses of Parliament which included a note summarising Iraq's record on non-compliance with United Nations Security Council Resolution 1441.

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ANNEX 5

FREEDOM OF INFORMATION ACT 2000

RIGHT OF APPEAL AGAINST ENFORCEMENT NOTICE

1. Section 57(2) of the Freedom of Information Act 2000 gives a public authority on which an enforcement notice has been served a right of appeal to the Information Tribunal.

2. If you decide to appeal, and if the Tribunal considers:-

   a) that the notice against which the appeal is brought is not in accordance with the law; or

   b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,

   the Tribunal will allow the appeal or substitute such other notice as could have been made by the Commissioner. In any other case the Tribunal will dismiss the appeal.

3. You may bring an appeal by serving a notice of appeal on:

   The Information Tribunal
   Arnhem House Support Centre
   PO Box 6987
   Leicester
   LE1 6ZX

   Tel: 0845 6000877
   Fax: 0116 249 4253
   email: informationtribunal@dca.gsi.gov.uk

   a) The notice of appeal should be served on the Tribunal within 28 days of the date on which the notice was served on or given to you.

   b) If your notice of appeal is late the Tribunal will not accept it unless it is of the opinion that it is just and right to do so by reason of special circumstances.

4. The statutory provisions concerning appeals to the Information Tribunal are contained in Sections 57 and 58 of the Freedom of Information Act 2000, Schedule 6 of the Data Protection Act 1998 (as amended by Schedule 4 of the Freedom of Information Act) and the Information Tribunal (Enforcement Appeals) Rules 2005

(Statutory Instrument 2005, No. 14). Further information about appeals is available from the Information Tribunal.

ANNEX 6

DISCLOSURE STATEMENT