

## **Annex A**

### **Section 31: Law Enforcement**

Section 31 (1) (g) provides an exemption from the 'right to know', if disclosure of the information would or would be likely to prejudice the exercise by any public authority of its functions for any of the purposes specified in subsection (2).

The information that the EHRC is withholding (Withheld Information) is a Legal Allocations Analysis spreadsheet from 2010 containing information about alleged discriminatory adverts.

We have set out below our considerations which have led to the decision to engage the Section 31 (1) (g) exemption.

**1. Identify the public authority that has been entrusted with a function to fulfil one of the purposes listed in subsection (2).**

The Equality and Human Rights Commission (EHRC) is Great Britain's national equality body and is a statutory non-departmental public body established by the Equality Act 2006. The EHRC safeguards and enforces laws that protect people's rights to fairness, dignity and respect.

**2. Confirm that the function has been specifically designed to fulfil that purpose.**

The functions of the EHRC, as summarised above, are set out in Section 8 of the Equality Act 2006.

**3. Explain how the disclosure would prejudice that function.**

We consider that with respect to the Withheld Information, the disclosure would be likely to prejudice the Commission's ability to carry out the following functions as set out in subsection 2:

- a) Section 31(2)(a) ascertaining whether any person has failed to comply with the law;
- b) Section 31(2)(b) ascertaining whether any person is responsible for any conduct which is improper; and

- c) Section 31(2)(c) ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise.

Sections 31(2)(a) and 31(2)(b) are engaged because of EHRC's responsibility to make formal decisions as a regulator. Sections 31(2)(b) and 31(2)(c) are engaged because EHRC have general duties and powers to promote equality and diversity. For the Commission to function as an effective regulator and be able to ascertain information for the purposes specified above, it is essential that the Commission is able to maintain an appropriate level of confidentiality when conducting its legal work. Disclosure of details of the information provided to the EHRC, to the world at large, would be likely to discourage others from sharing information with the EHRC and would negatively impact our ability to request and/or receive necessary information in the future.

The EHRC considers that the disclosure of the Withheld Information would be likely to prejudice its ability to properly perform the functions listed above.

### ***The Public Interest Test***

As section 31 is a qualified exemption we have considered whether the public interest lies in maintaining the exemption or disclosing the information. The EHRC considered and took account of the starting presumption under the FOI that disclosure is in the public interest and considered the following:

### **Factors in Favour of Disclosure**

1. Presumption under the Freedom of Information Act of disclosure.
2. Satisfy a public interest in the areas of concern reported to the Commission.

### **Factors in Favour of Maintaining the Exemption (i.e. Non-Disclosure)**

1. As a regulator we must maintain appropriate level of confidentiality to be able to carry out our role and achieve the best legal outcomes. Disclosure of information provided to us sends out a message to others that information will not be confidential.

2. Information provided by others can be key in identifying areas of concern. It is entirely possible that significant areas of concern would not be identified or uncovered if third parties did not feel they could come to the Commission in confidence. In addition, if information provided by third parties were to be made public, people would be less likely to share information with the EHRC when asked to do so, or of their own volition.
3. It would be unfair to report allegations made against organisations where they have not had an opportunity to defend their position. This is particularly so where the allegations made are historic and matters may have since been rectified.

On balance, we have concluded that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. This is because we consider there is a stronger public interest in the Commission being able to exercise its statutory functions under the Equality Act 2006 effectively. It is essential that the Commission is able to effectively ascertain compliance with the equality laws and achieve the best outcome to promote good practice and compliance with the law.