

Annex B

Section 31 (1) (g) – 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).

We consider that disclosure of documents relating to CAA’s allegations, would be likely to prejudice the Commission’s ability to carry out the following functions as set out in subsection 2:

- (a) ascertaining whether any person has failed to comply with the law
- (b) ascertaining whether any person is responsible for any conduct which is improper
- (c) ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise.

This is because disclosure of information relating to an ongoing investigation could influence relevant parties’ responses to the Commission’s enquiries. This in turn may hinder the Commission’s ability to ascertain whether there are circumstances which would justify regulatory action in pursuance of the Equality Act.

Additionally, disclosure of correspondence between the Commission and organisations may erode trust and lead to organisations being less open in their interactions with the Commission.

It is essential that for the Commission to perform its role as a regulator effectively, we ensure that our ability to obtain relevant information is not compromised.

As section 31 is a qualified exemption we have considered whether the public interest lies in maintaining the exemption or disclosing the information.

Factors in Favour of Disclosure

1. Presumption under the Freedom of Information Act of disclosure.
2. Significant public interest in the Commission's investigation on CAA's allegations.

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

1. As a regulator we must be able to consider areas of concern within a 'safe space' to allow for a considered and proportionate response.
2. Disclosure could adversely affect the Commission's ability to carry out effective pre-enforcement work.
3. Disclosure could prejudice the exercise of our functions by decreasing the amount of information supplied voluntarily from organisations. Third parties must feel confident to share information freely with the Commission.

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 monitor, investigate and ascertain compliance with the equality laws and to work with others to encourage and promote good practice and compliance with the law.