

Appendix B

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 we are withholding is information about our regulatory activity (“Withheld Information”).

The Equality and Human Rights Commission 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.

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

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) The purpose of ascertaining whether any person has failed to comply with the law;
- c) Section 31(2)(c) The purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise.

Sections 31(2)(a) and 31(2)(c) are engaged because of EHRC’s responsibility to make formal decisions as a regulator.

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 regulatory and legal advice work.

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.

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 to protect the ability of the Commission to enter into dialogue in a confidential manner with bodies where we have concerns about compliance with the equality enactments and / or human rights. This is to allow those bodies to commit to engaging with the Commission and changing their policies and procedures, where necessary.
2. Whilst there is a public interest in accountability, the Commission believes that it already puts sufficient information into the public domain about its work.

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.