

- a party (other than a head) to the proceedings of—
- (a) information contained in an exempt record, or
  - (b) information as to whether a record exists or does not exist in a case where the head concerned is required by this Act not to disclose whether the record exists or does not exist.
- (2) Without prejudice to the generality of *subsection (1)*, precautions under that subsection may include—
- (a) hearing the whole or part of any such proceedings as aforesaid otherwise than in public,
  - (b) prohibiting the publication of such information in relation to any such proceedings as it may determine, including information in relation to the parties to the proceedings and the contents of orders made by the High Court in the proceedings, and
  - (c) examining a record or a copy of a record without giving access or information in relation thereto to a party (other than a head) to the proceedings.
- (3) In the performance of his or her functions under this Act, the Commissioner shall take all reasonable precautions (including conducting the whole or part of a review under *section 22* or an investigation under *section 44* otherwise than in public) to prevent the disclosure to the public or, in the case of such a review, to a party (other than a head) to the proceedings concerned of information specified in *paragraph (a)* or *(b)* of *subsection (1)* or matter that, if it were included in a record, would cause the record to be an exempt record.

#### Stay on certain decisions

26. (1) This section applies to—
- (a) a decision to grant a request to which *section 38* applies, and
  - (b) a decision under *section 22*.
- (2) Effect shall not be given to a decision to which this section applies before, whichever is the later of—
- (a) the expiration of the time for—
    - (i) making an application for a review to the Commissioner under *section 22*, or
    - (ii) bringing an appeal to the High Court from the decision,as may be appropriate, or
  - (b) if such an application or appeal is made or brought, the final determination or withdrawal thereof.

#### Fees and charges

27. (1) Such amount as may be appropriate having regard to the provisions of this section

shall be charged by the FOI body concerned under this subsection and paid by the requester concerned to the body in respect of the grant of an FOI request. The amount of a charge under this subsection shall be equal to the estimated cost of the search for and retrieval and copying of the record concerned by the FOI body concerned for the requester.

- (2) For the purposes of *subsection (1)* “search for and retrieval” includes time spent by the FOI body in—
  - (a) determining whether it holds the information requested,
  - (b) locating the information or documents containing the information,
  - (c) retrieving such information or documents,
  - (d) extracting the information from the files, documents, electronic or other information sources containing both it and other material not relevant to the request, and
  - (e) preparing a schedule specifying the records for consideration for release.
- (3) For the purposes of *subsection (1)*—
  - (a) the amount of the cost of the search for and retrieval of a record shall be calculated at the rate of such amount per hour as stands prescribed for the time being in respect of the time that was spent, or ought, in the opinion of the head concerned, to have been spent, by each person concerned in carrying out the search and retrieval efficiently,
  - (b) the amount of the cost of the copying of a record shall not exceed such amount (if any) as stands prescribed for the time being, and the determination of that amount shall be in compliance with any provisions standing prescribed for the time being in relation to such determination,
  - (c) subject to *subsection (12)* the total amount of a charge under *subsection (1)* shall not exceed such amount as stands prescribed for the time being as the appropriate maximum amount for search and retrieval and copying,
  - (d) there shall be no charge under *subsection (1)* if, in the opinion of the head concerned, the total amount of the charge would be less than such amount (if any) as stands prescribed for the time being as the appropriate minimum amount for search and retrieval and copying, and
  - (e) different maximum and minimum amounts may be prescribed under this subsection in respect of different public bodies or prescribed bodies and the power to prescribe such a maximum (in relation to any particular body) shall be exercised in a manner to take account of the greater amount that *subsection (12)* provides for the prescription of (in relation to that body) as concerns the overall ceiling limit.
- (4) Where the record or records concerned contains or contain only personal information relating to the requester concerned the charge under *subsection (1)* shall not be made, unless the grant concerned relates to a significant number of records, and in

considering whether or not such a charge shall be made, the means of the requester shall be taken into account.

- (5) Subject to *subsection (3)*, where, in the opinion of the head concerned, the estimated cost, as determined by the head, of the search for and retrieval and copying of a record the subject of an FOI request is likely to exceed the appropriate minimum level as prescribed—
  - (a) a deposit of such amount as may be determined by the head (not being less than 20 per cent of such cost) shall be charged by the FOI body concerned and paid by the requester concerned to the body,
  - (b) the process of search for and retrieval of the record shall not be commenced by the body until the deposit has been paid, and
  - (c) the head shall, not later than 2 weeks after the receipt of the request aforesaid, cause a notice in writing for payment of the deposit to be given to the requester and the notice shall include an estimate of the length of time that the process of searching for and retrieving the record will occupy and a statement that the process will not begin until the deposit has been paid and that the date on which a decision will be made in relation to the request will be determined by reference to the date of such payment.
- (6) A head may reduce the amount of or waive a search and retrieval and copying charge or deposit under *subsection (1)* or *(5)* if, in his or her opinion, some or all of the information contained in the record concerned would be of particular assistance to the understanding of an issue of national importance.
- (7) In a case to which *subsection (5)* applies, the head concerned shall, if so requested by the requester concerned—
  - (a) assist the requester if the requester wishes to amend or limit the request in order to reduce or eliminate the charges that arise or are likely to arise under *subsection (1)*,
  - (b) if amendments are specified under *paragraph (a)*, make such of them (if any) to the request as the requester may determine.
- (8) Where a deposit under *subsection (5)* is paid, the amount of the charge under *subsection (1)* payable in respect of the grant of the FOI request concerned shall be reduced by the amount of the deposit.
- (9) Where a deposit under *subsection (5)* is paid and, subsequently, the grant of the FOI request concerned is refused or is granted in relation to a part only of the record concerned, the amount of the deposit or, if a charge under this section is payable in respect of the grant, so much (if any) of that amount as exceeds the amount of the charge shall be repaid to the requester concerned.
- (10) Where a charge or a deposit under this section is paid, and subsequently, the charge or deposit is annulled or varied under *section 21, 22 or 24*, the amount of the charge or deposit so annulled or, as the case may be, any amount thereof in excess of the amount thereof as so varied shall be repaid to the requester concerned.

- (11) *Section 13(1)* shall be construed and have effect—
- (a) in relation to a case in which a deposit is payable under *subsection (5)*, as if the reference to 4 weeks were a reference to a period consisting of 4 weeks together with the period from the giving of the notice under *subsection (5)(c)* concerned to the requester concerned to the date of the receipt of the deposit,
  - (b) in relation to a case in which such a deposit is annulled following a review under *section 21* or *22* or an appeal under *section 24*, as if the reference to 4 weeks were a reference to a period consisting of 4 weeks together with the period from the giving of the notice under *subsection (5)(c)* to the requester concerned to the date of the decision under *section 24* or, as the case may be, of the giving to the requester concerned of notice under *section 21* or *22* of the decision, and
  - (c) in relation to a case in which an amendment pursuant to *subsection (7)* has the effect of eliminating such a deposit, as if the reference to the receipt of a request under that section were a reference to the making of the amendment.
- (12) (a) Where the amount of a search and retrieval and copying charge under *subsection (1)* exceeds or is likely to exceed the overall ceiling limit prescribed, under *paragraph (b)*, for the purposes of this subsection—
- (i) the body concerned shall so inform the requester,
  - (ii) the body shall assist the requester if the requester wishes to amend or limit the request in order to reduce the charges that arise or are likely to arise under *subsection (1)* to an amount less than or equal to the overall ceiling limit so prescribed,
  - (iii) if the requester does not amend or limit the request such that the charges that arise or are likely to arise under *subsection (1)* are reduced to an amount less than or equal to the overall ceiling limit so prescribed, the body may refuse the request, and
  - (iv) where the body decides to process the request, the requester shall be required to pay the full cost of the charges likely to be payable and *subsection (5)* shall apply.
- (b) There shall be prescribed for the purposes of this subsection an amount to be called, and in this section referred to, as the overall ceiling limit; and different such amounts may be prescribed for those purposes in respect of different public bodies or prescribed bodies.
- (13) (a) A fee of such amount (if any) as may be prescribed shall be charged by the FOI body concerned under this subsection and paid by the applicant concerned to—
- (i) the body in respect of an application under *section 21*, or
  - (ii) the Commissioner in respect of an application under *section 22*.
- (b) A fee under this subsection shall be paid at the time of the making of the application concerned and, if it is not so paid, the head concerned or, as the case may be, the Commissioner shall refuse to accept the application, and it shall be

deemed, for the purposes of this Act, not to have been made.

- (c) Fees of different amounts may be prescribed under *paragraph (a)* in respect of different classes of applicant.
- (14) An FOI body shall endeavour to establish a facility by which payment or refund of any fees due under this Act may be made electronically.

## PART 4

### EXEMPT RECORDS

#### Meetings of the Government

28. (1) A head may refuse to grant an FOI request if the record concerned—
- (a) has been, or is proposed to be, submitted to the Government for its consideration by a Minister of the Government or the Attorney General and was created for that purpose,
  - (b) is a record of the Government other than a record by which a decision of the Government is published to the general public by or on behalf of the Government, or
  - (c) contains information (including advice) for a member of the Government, the Attorney General, a Minister of State, the Secretary General to the Government for use by him or her solely for the purpose of the transaction of any business of the Government at a meeting of the Government.
- (2) A head shall refuse to grant an FOI request if the record concerned—
- (a) contains the whole or part of a statement made at a meeting of the Government or information that reveals, or from which may be inferred, the substance of the whole or part of such a statement, and
  - (b) is not a record—
    - (i) referred to in *paragraph (a)* or *(c)* of *subsection (1)*, or
    - (ii) by which a decision of the Government is published to the general public by or on behalf of the Government.
- (3) Subject to this Act, *subsection (1)* does not apply to a record referred to in that subsection—
- (a) if and in so far as it contains factual information relating to a decision of the Government that has been published to the general public, or
  - (b) if the record relates to a decision of the Government that was made more than 5 years before the receipt by the head concerned of the FOI request concerned.
- (4) A decision to grant an FOI request in respect of a record to which *paragraph (a)* or *(b)* of *subsection (1)* applies shall not be made unless, in so far as it is practicable to do