

Office of the Information Commissioner

Guidance Note

Freedom of Information Act
2014 – Section 40: Financial
and Economic Interests of the
State

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Contents

Introduction	1
1.0 Section 40: Financial and Economic Interests of the State – Overview	2
Section 40(1).....	2
Section 40(2).....	2
Section 40(3).....	2
FOI History and Warning regarding Commissioner’s Decisions.....	2
2.0 Financial & Economic Interests	4
Identify the Potential Harm	5
Consider the Reasonableness of any Expectation that the Harm Will Occur	5
The National Economy & the Financial Interests of the State – subsection (1)(a).....	8
Undue Disturbance of Business – subsection (1)(b).....	9
Decisions to Invest or Expand, Research & Industrial Development Strategy – subsection (1)(c)	10
Unwarranted Benefit or Loss – subsection (1)(d).....	10
3.0 Records	12
4.0 The Public Interest	14



Introduction

The Information Commissioner has prepared this Guidance Note in relation to section 40 of the Freedom of Information (FOI) Act 2014.

The Note is a short commentary on the interpretation and application of section 40 of the Act by the Commissioner. It is intended to provide a brief summary of the relevant issues relating to this provision.

This Note is intended to provide general guidance only and is not legally binding. The application of the provision in any particular case will always depend on the particular record(s) and the relevant facts and circumstances.

1.0 Section 40: Financial and Economic Interests of the State – Overview

1.1.1 This Note explains the Commissioner’s approach to section 40 of the FOI Act. Section 40 protects certain records relating to the financial and economic interests of the State.

1.1.2 Section 40 is a discretionary exemption.

Section 40(1)

1.2.1 Section 40(1) is what is known as a ‘harm-based’ exemption, i.e. it applies where the granting of access to a record can reasonably be expected to cause a particular harm. It applies where the granting of access to a record could reasonably be expected to have a certain result. In considering the application of section 40(1), it is the effect of disclosure of the record(s) concerned that should be considered.

Section 40(2)

1.3.1 Section 40(2) sets out a list of the types of records to which section 40(1) may apply. An FOI body may invoke section 40(2) only in conjunction with section 40(1). Thus, the relevant requirements of section 40(1) must still be met.

Section 40(3)

1.4.1 The exemption at section 40(1) is subject to the public interest test at section 40(3) – the exemption does not apply where the public interest would, on balance, be better served by granting than by refusing to grant the FOI request.

FOI History and Warning regarding Commissioner’s Decisions

1.5.1 Section 40 is similar to section 31 of the FOI Act 1997. This Guidance Note makes reference to previous decisions of the Commissioner where the application of section 31 was considered under the FOI Act 1997 (or under the FOI Act 1997 as amended) in so far as they remain relevant. To simplify matters for the reader, all references to section 31 in those decisions have been replaced by section 40 of the FOI Act 2014 in this Guidance Note. Where this occurs, such references are denoted by an asterisk (*).

1.5.2 The provision at section 40(1)(d) - which applies where access to the record could reasonably be expected to result in an unwarranted benefit or loss to a person or class of persons - was previously at section 31(1)(c) of the 1997 Act. Also, the provision which is now at section 40(1)(c) – which relates to decisions by enterprises to invest or expand in the State, their research strategies or the industrial development strategy of the State - is a new provision in the 2014 Act which was not previously included in the 1997 Act.

1.5.3 Reference may also be made in this Note to other provisions of the FOI Act 2014 which are relevant. Where reference is made to previous decisions of the Commissioner relating to such provisions under the FOI Act 1997 (or the FOI Act

1997 as amended), those provisions are replaced with the relevant, equivalent provision in the 2014 Act. Again, where this occurs, such references are denoted by an asterisk (*).

1.5.4 A reference to the Commissioner in the context of the decisions referred to in this Guidance Note may include an officer to whom the function of making the decision had been delegated by the Commissioner.

1.5.5 The previous decisions of the Commissioner (or of the officer delegated to make the decision) are referred to in this Note by Case Number. The Cases may be found on the Commissioner's website at www.oic.ie.

1.5.6 While references in this Note are made to previous decisions of the Commissioner in so far as they remain relevant, it is possible that other parts of these decisions no longer represent the current position – this could be due to factors such as a change in the legislation or decisions of the Courts. Caution should be exercised in referring to any decision of the Commissioner that was made under the FOI Act 1997, or under the FOI Acts 1997 & 2003, to ensure that all parts of the decision being referred to remain relevant (including such decisions as are published on the OIC website).

2.0 Financial & Economic Interests

What the Act states:

40. (1) A head may refuse to grant an FOI request in relation to a record (and, in particular, but without prejudice to the generality otherwise of this subsection, to a record to which subsection (2) applies) if, in the opinion of the head—

- (a) access to the record could reasonably be expected to have a serious, adverse effect on the ability of the Government to manage the national economy or on the financial interests of the State,
- (b) premature disclosure of information contained in the record could reasonably be expected to result in undue disturbance of the ordinary course of business generally, or any particular class of business, in the State and access to the record would involve disclosure of the information that would, in all the circumstances, be premature,
- (c) access to the record could reasonably be expected to have a negative impact on decisions by enterprises to invest or expand in the State, on their research activities or on the effectiveness of the industrial development strategy of the State, particularly in relation to the strategies of other states, or
- (d) access to the record could reasonably be expected to result in an unwarranted benefit or loss to a person or class of persons.

2.1.1 Section 40(1) is what is known as a harm-based provision. Where an FOI body relies on section 40(1) it should:

- identify the potential harm specified in the relevant paragraph of subsection (1) that might arise from disclosure and
- having identified that harm, consider the reasonableness of any expectation that the harm will occur.

2.1.2 The FOI body should explain how and why, in its opinion, release of the record(s) could reasonably be expected to give rise to the harm envisaged. A claim for exemption under section 40(1) must be made on its merits and in light of the contents of each particular record concerned and the relevant facts and circumstances of the case. A claim for exemption pursuant to section 40(1) which is class-based is not sustainable e.g. a claim for exemption for 'any' draft report.

2.1.3 The onus to produce evidence of prejudice falls on the FOI body and, in the absence of same, the Commissioner is entitled, under section 22 of the 2014 Act, to hold against the FOI body.

Example: In Case 140181 a submission from Cork City Council to the Commissioner in relation to its decision to refuse access to certain internal audit reports referred to sections 40(1)(d)*, 40(2)(n)* and 40(2)(o)* of the Act. The Commissioner stated that, if the Council considered that certain details were exempt under those provisions, there was an onus on it to justify this assertion. She found that it had not done so and she had no basis on which to find that this harm-based exemption applied.

2.1.4 The FOI body should show how release of the record could reasonably be expected to cause the harm envisaged, i.e. it should show the link between granting access to the record concerned and the harm identified. It should do this by reference to the specific record being considered for release: what is it about the particular record or the particular information in the record which, if released, could reasonably be expected to cause the harm envisaged? An FOI body's submissions to the Commissioner should be sufficiently detailed to demonstrate that link.

Identify the Potential Harm

2.2.1 The FOI body should identify the potential harm specified in the relevant paragraph of subsection (1) that might arise from disclosure. The onus is on the FOI body to identify the harm.

Example: In Case 120202 the Commissioner found that the Department of Justice and Equality had not identified how the release of information in a report of the Prison Service Vote Audit could give rise to a serious adverse effect on the financial interests of the State nor had it addressed the expectation that this might occur. The information included tables of overpayment analysis, issues identified with invoices and a narrative on process and controls in place for prison tuck shops. The Commissioner noted that in both the overpayments and invoices, the numbers of instances were very small in proportion to the overall number of payments issued. She found that section 40(1)(a)* did not apply.

Consider the Reasonableness of any Expectation that the Harm Will Occur

2.3.1 The FOI body should then consider the reasonableness of its expectation that the harm will occur. In examining the merits of an FOI body's view that the harm could reasonably be expected, the Commissioner does not have to be satisfied that such an outcome will definitely occur. The test is not concerned with the question of probabilities or possibilities. It is concerned with whether or not the decision maker's expectation is reasonable. It is sufficient for the FOI body to show that it expects an outcome and that its expectations are justifiable in the sense that there are adequate grounds for the expectations.

2.3.2 Consideration should be given to what disclosure of the record would actually reveal. For example, where the information contained in the record is already known or in the public domain, it may not be reasonable to expect that prejudice or harm would result from its disclosure.

Example: In Case 98078 the Department of Health and Children argued that release of certain health board reports would undermine the public confidence in the ability of the Irish healthcare system to meet the health needs of the population and create exaggerated and misleading cases for extra resources in the system. The Commissioner found that the information contained in the records was given to board members in broad terms and, via the health boards, to the members of the public on request. Having reviewed the records in question, the Commissioner stated that he failed to see how their release could reasonably be expected to have the consequences envisaged in section 40* of the Act. The Department also refused access to certain letters from the Department to certain health boards and hospitals. However, the Commissioner found that the main

thrust of these letters was to emphasise the need for the health agencies concerned to stay within budget and to draw attention to items that may be causing budget variance. He found that the need for health agencies to stay within the budget determination was widely known. He did not find that any of the consequences necessary for section 40* to come into play could be reasonably expected.

2.3.3 Consideration should be given to the actual content of the record concerned.

Example: In Case 100279 the Department of Finance relied on two exemptions, including section 40*, for its refusal to grant access to a sentence in a record concerning its view on changes to the Common Agricultural Policy (CAP). The Commissioner found that section 40* did not apply as the general view expressed in the record could not be seen reasonably to impact negatively on the financial interests of the State. He also noted that agreement had been reached by the European Agriculture Ministers on the reform of the CAP.

2.3.4 In considering the reasonableness of any expectation, the Commissioner will have regard to any assumptions on which the expectation is based.

Example: In Case 98078 the Commissioner found that the expectations of the Department of Health and Children were not reasonable. The Department had refused access to records relating to expenditure trends/ outcomes for health boards and voluntary hospitals. It argued that, given the size of the health budget, an assumed overrun could undermine the markets' perception of the Government's will to control public spending. It said that premature disclosure would result in undue disturbance of the ordinary course of business of the management of the health services because it would undermine public confidence in the ability of the healthcare system to meet the health needs of the population and create exaggerated and misleading cases for extra resources. However, the Commissioner found that this argument relied on the assumption that the information in the records, if released, might be misunderstood by certain people. He considered that the possibility of information being misunderstood could rarely, if ever, be a good cause for refusing access to the records. He also found that the Department's argument also seemed to imply that it and the various health agencies were incapable of explaining their records to the public and were unable to present information to the public in a way which would allow any objective observer to draw accurate and balanced conclusions. He did not believe that he would be justified in accepting that any such assumption was well-founded.

2.3.5 The time at which the FOI decision is being made is relevant. It is possible that the release of the record could not reasonably be expected to result in the harm envisaged due to the passage of time.

Example # 1: In Case 100279 the Commissioner found the content of the redacted portion of a record had lost whatever sensitivity it may have had. The Department of Finance had relied on a number of exemptions, including section 40*, for its refusal to grant access to a redacted portion of a record relating to Shannon Airport and to the establishment of Terminal 2 at Dublin Airport. However, it did not detail the effects of its release. The Commissioner examined the record which was created in 2004 (approximately nine years prior to the

decision) and did not see how any of the sections relied on by the Department applied. In his view, the matters referred to had been completed.

Example # 2: In Case 100171 the records at issue (which related to industrial grant information) were over 15 years old. The Commissioner stated that section 40* is not a class-based exemption and that it requires a showing of a reasonable expectation that some impact will result from the release of the record concerned: a serious adverse effect in the case of section 40(1)(a)* and an unwarranted benefit or loss in the case of section 40(1)(d)*. He found that sections 40(1)(a)* and (d)* did not apply. Amongst other matters, the Commissioner noted that the Irish and world economies had drastically changed since the time the records had been created. He did not accept that industrial grant information dating from over 15 years previously was of any relevance to the economy at the time of his decision.

2.3.6 An FOI body relying on section 40(1) should explain its case fully to the Commissioner. It should be noted that, while the Commissioner is required by section 22(10) of the FOI Act to give reasons for his decisions, this is subject to the requirement of section 25(3) that he take all reasonable precautions during the course of a review to prevent disclosure of information contained in an exempt record. This may mean, for example, that the description he can give in his decision of the record(s) at issue or the material he can refer to is limited.

Example: In Case 100173, the Department of Finance had made detailed submissions to the Commissioner in support of its case, but the Commissioner stated that she was constrained in the extent to which she could give reasons for her decision. This was primarily due to the possibility that disclosing the Department's arguments for refusing the request could give rise to the very harms it was seeking to protect against. However she could say that in essence, the Department of Finance had argued that disclosure of the records at issue could cause the financial markets to take a negative view of Ireland's capacity to repay borrowing. As such, given the (then) current economic climate, it considered that disclosure of the records could reasonably be expected to have a serious adverse effect on the financial interests of the State or on the ability of the Government to manage the national economy. Having carefully considered the Department's arguments on this point, the Commissioner found that it was reasonable to expect that such harm would arise and that the records qualified for exemption under section 40(1)(a)*.

2.3.7 An FOI body relying on section 40(1) for its refusal to grant access to a record must go on to consider the public interest test at section 40(3) before reaching a conclusion on the application of the exemption.

The National Economy & the Financial Interests of the State – subsection (1)(a)

2.4.1 Section 40(1)(a) envisages two potential types of harm:

- serious, adverse effect on the ability of the Government to manage the national economy or
- serious, adverse effect on the financial interests of the State.

2.4.2 As indicated above, an FOI body relying on section 40(1)(a) for its refusal to grant access to a record should:

- identify the potential harm specified in paragraph (a) that might arise from disclosure and
- having identified that harm, consider the reasonableness of any expectation that the harm will occur.

Example: In Case 140063 the Commissioner was satisfied that access to certain records relating to the special liquidation of Irish Bank Resolution Corporation Ltd (IBRC), while the special liquidation process of IBRC remained ongoing, could reasonably be expected to have a serious, adverse effect on the ability of the Government to manage the national economy. The Commissioner noted that the Preamble to the IBRC Act 2013 stated that it was necessary in the public interest to ensure that the financial support provided by the State to IBRC was, to the extent achievable, recovered as fully and efficiently as possible. He accepted that confidentiality was regarded both by the Special Liquidators and the Minister for Finance as necessary to facilitate the liquidation process. He was satisfied that the assurance of confidentiality with respect to the communications between the Special Liquidators and the Minister or his officials was considered to have been a contributing factor in the success achieved in recovering the State's financial support to IBRC as the Oireachtas intended. He considered it reasonable to expect that a breach of confidentiality would undermine the process and thus hinder the efforts being taken on behalf of the State to restore order in the public finances. He found that, subject to consideration of the public interest, section 40(1)(a)* applied.

2.4.3 While there may be a connection between the subject matter of the records and matters related to the economy, this does not mean that the harm envisaged by section 40(1)(a) could reasonably be expected to occur as result of their release.

Example: In Case 130272 the Commissioner accepted that a particular event to which the FOI body had referred generated a boost to the economy. However, she was not satisfied that release of the records could reasonably be expected to have the effects it feared. The Department of Transport, Tourism and Sport argued that release of the records (emails from an American Football promoter) would draw attention to alleged difficulties and make it more difficult to sell Ireland as a destination. Reports had estimated that one event – a football game between Notre Dame and the Navy - generated an estimated boost of €100 million to the economy as a whole including €25 million in tax revenue. The Commissioner accepted that the Notre Dame v Navy game generated a boost to the economy. She acknowledged that there were clearly issues between the Navy and the applicant's organisation. However, she noted that, despite publicity about these issues, another high profile game had taken place which also generated a boost to the economy. Having regard to their content and the

apparent purpose of their submission to the Department, the Commissioner did not accept that the release of the records could reasonably be expected to have anything like the effects feared by the Department. She found that a fear of adverse publicity was not, in itself, sufficient to engage the exemption.

2.4.4 The harms envisaged in section 40(1)(a) relate to the national economy and the financial interests of the State. While it may be argued that the exemption would apply only to FOI bodies operating at national or international level, the Commissioner takes the view that it can apply to the information held by the full range of FOI bodies, provided that disclosure of the records could cause serious adverse effects to the interests of the State.

Example: In Case 080240 it was argued that section 40* was not intended to apply to the full range of public bodies including local authorities, but only to the State at national and international level. It was submitted that section 40(1)(a)* referred to the financial interests of the State and was not applicable to a "small to medium Local Authority (classified on the basis of its annual budget)" where disclosure of a record "could reasonably be expected to bankrupt the Local Authority". However, the Commissioner stated that it was clear from the terms of the exemption that it can apply to the information of public bodies provided that disclosure of the records could cause serious, adverse effects to the interests of the State.

Undue Disturbance of Business – subsection (1)(b)

2.5.1 Section 40(1)(b) applies where premature disclosure of information contained in the record could reasonably be expected to result in undue disturbance of the ordinary course of business generally, or any particular class of business, in the State and access to the record would involve disclosure of the information that would, in all the circumstances, be premature.

2.5.2 Thus, as indicated above, an FOI body relying on section 40(1)(b) for its refusal to grant access to a record should:

- identify the potential harm specified in paragraph (b) that might arise from disclosure – i.e. undue disturbance of the ordinary course of business generally, or any particular class of business, in the State - and
- having identified that harm, consider the reasonableness of any expectation that the harm will occur.

It is important to note that section 40(1)(b) also requires that disclosure of the information be premature.

2.5.3 The Commissioner takes the view that section 40(1)(b) is designed to cover business in the ordinary meaning of the word (that is relating to commercial activity, trade or professions), not the provision of services by or on behalf of the State.

2.5.4 The Commissioner has accepted that a class of business includes, for example, banking.

Example: In Case 140063 the Commissioner accepted that banking was a particular class of business for the purposes of section 40(1)(b)* of the Act. The records related to the special liquidation of Irish Bank Resolution Corporation Ltd.

(IBRC). The Commissioner noted that one of the purposes of the special liquidation of IBRC as stated in the IBRC Act was "to restore confidence in the banking sector by furthering the reorganisation of the Irish banking system in the public interest". He noted further that it was also intended "to underpin Government support measures in relation to the banking sector". He accepted that disclosure of the information requested at that time could reasonably be expected to result in an undue disturbance of the business of winding up IBRC in the manner intended by the Oireachtas in order to restore confidence in the Irish banking sector. He found that, having regard to the purposes of the IBRC Act, it was reasonable to expect that disclosure of confidential information while the liquidation process remained ongoing could cause further disruption to the banking sector and thus access to the records concerned would involve disclosure of the information that would, in all the circumstances, be premature. He found, subject to consideration of the public interest, that section 40(1)(b)* applied.

Decisions to Invest or Expand, Research & Industrial Development Strategy – subsection (1)(c)

2.6.1 Section 40(1)(c) is a new provision introduced by the FOI Act 2014. It applies where access to the record could reasonably be expected to have a negative impact on decisions by enterprises to invest or expand in the State, on their research activities or on the effectiveness of the industrial development strategy of the State, particularly in relation to the strategies of other states.

2.6.2 Again, where an FOI body relies on section 40(1)(c) it should:

- identify the potential harm specified in paragraph (c) that might arise from disclosure and
- having identified that harm, consider the reasonableness of any expectation that the harm will occur.

Unwarranted Benefit or Loss – subsection (1)(d)

2.7.1 Section 40(1)(d) applies where access to the record could reasonably be expected to result in an unwarranted benefit or loss to a person or class of persons. As stated above, this provision was previously at section 31(1)(c) of the 1997 Act.

2.7.2 Thus, as is the case with the other provisions in section 40(1) referred to above, where an FOI body relies on section 40(1)(d) it should:

- identify the potential harm – unwarranted benefit or loss to a person or class of persons – that might arise from disclosure and
- having identified that harm, consider the reasonableness of any expectation that the harm will occur.

Example # 1: In Case 010102 the Commissioner found that RTE had not shown how the release of the information in the records could reasonably be expected to result in an unwarranted benefit or loss to a person or class of persons. The records contained details of the salaries paid to RTE's 25 highest paid presenters for a period of three years. RTE had argued that, if details of individual salaries were released, its competitors might consider approaching its presenters by offering salaries above that offered by RTE in order to encourage them to work with them. However, the Commissioner found that this argument ignored the fact

that a presenter or his/her agent was already generally free to disclose his/her earnings to a competitor of RTE. The Commissioner did not accept that RTE's competitors would not approach one of RTE's presenters simply because they were not aware of the details of the presenter's salary notwithstanding the fact that they might wish to offer him/her a contract.

Example # 2: In Case 150390 IDA Ireland Ltd claimed that a number of exemptions, including section 40(1)(d), applied in relation to a valuation report on lands for a proposed development. The Commissioner found that certain parts of the record were exempt under section 36(1)(c). However, in considering the application of section 40(1)(d), he found that the IDA had not identified any unwarranted benefit or loss that would arise from the release of the information in the record. He also found that the record did not contain any information on the proposed arrangements between the parties and that much of the information was already in the public domain. He was satisfied that the IDA had not justified its position and that, therefore, section 40(1)(d) did not apply.

2.7.3 The Commissioner takes the view that the context of the section 40 exemption suggests that it is intended to protect the financial and economic interests of the State and of public bodies. He considers that, to the extent that it may also protect the interests of persons generally (as suggested by section 40(1)(d)), this would seem to be the case only to the extent that harm to a person (other than the State or a public body) would also result in harm to the State or a public body. The commercial interests of persons generally are protected by section 36.

2.7.4 Accordingly, the Commissioner considers that the key issue in considering the application of section 40(1)(d) is the extent to which, if at all, the grant of the request would damage the interests of the State or some public body. Such damage would also have to meet the test of being "unwarranted".

3.0 Records

What the Act states:

40(2) This subsection applies to a record relating to—

- (a) rates of exchange or the currency of the State,
- (b) taxes, revenue duties or other sources of income for the State, a local authority or any other public body,
- (c) interest rates,
- (d) borrowing by or on behalf of the State or a public body,
- (e) the regulation or supervision by or on behalf of the State or a public body of the business of banking or insurance or the lending of money or of other financial business or of institutions or other persons carrying on any of the businesses aforesaid,
- (f) dealings in securities or foreign currency,
- (g) the regulation or control by or on behalf of the State or a public body of wages, salaries or prices,
- (h) proposals in relation to expenditure by or on behalf of the State or a public body including the control, restriction or prohibition of any such expenditure,
- (i) property or other assets held by or on behalf of the State or a public body and transactions or proposed or contemplated transactions involving such property, or other assets,
- (j) foreign investment in enterprises in the State,
- (k) industrial development in the State,
- (l) trade between persons in the State and persons outside the State,
- (m) trade secrets or financial, commercial, industrial, scientific or technical information belonging to the State or a public body, that are of substantial value or reasonably likely to be of substantial value,
- (n) information the disclosure of which could reasonably be expected to affect adversely the competitive position of a public body in relation to activities carried on by it on a commercial basis,
- (o) the economic or financial circumstances of a public body,
- (p) investment or provision of financial support by or on behalf of the State or a public body,
- (q) liabilities of the State or a public body, or
- (r) advising on or managing public infrastructure projects, including public private partnership arrangements (within the meaning of the State Authorities (Public Private Partnership Arrangements) Act 2002).

3.1.1 Section 40(2) sets out specific examples of the type of record that may be covered by section 40(1). The records listed may qualify for exemption under section 40(1) provided that the relevant test in subsection (1) is met. Thus, an FOI body may invoke section 40(2) only in conjunction with one of the paragraphs of section 40(1) and it should show that the requirements of subsection (1) are met.

Example: In Case 100173 the Commissioner was satisfied that the records were captured by the category of information identified at section 40(2)(e)*. However, she stated that the real test was whether any of the harms envisaged in subsection (1) could reasonably be expected to result consequent on disclosure of a record.

3.1.2 Even if a record does not fall into any of the classes listed in section 40(2), it could still be exempt under section 40(1).

Example: In Case 130271 the Department of Transport, Tourism and Sport argued that certain records fell to be considered under section 40(1)(a)*. It also considered that they met the description provided for in section 40(2)(k)* and (n)*. The Commissioner was not satisfied that the records were captured by the category of information identified at section 40(2)(k)* or that they were captured by section 40(2)(n)*. However, as a record that does not fall into any of the classes at section 40(2)* could still be exempt under section 40(1)*, she found it necessary to consider section 40(1)(a)* in relation to the records in their own right having regard to the arguments of the FOI body and section 22(12)*.

4.0 The Public Interest

What the Act states:

40 (3) Subsection (1) does not apply in relation to a case in which, in the opinion of the head concerned, the public interest would, on balance, be better served by granting than by refusing to grant the FOI request concerned

4.1.1 The exemption at section 40(1) does not apply where, on balance, the public interest would be better served by granting the request than by refusing it. Thus, where an FOI body is relying on section 40(1) for its refusal to grant access to a record, it must go on to consider the public interest test at section 40(3).

4.1.2 The public interest is dealt with in a separate Guidance Note.

4.1.3 The Commissioner has accepted that section 40 itself recognises that there is a public interest in protecting the State and public bodies from loss or prejudice.

Example: In Case 100173 the Commissioner found that it was relevant to consider the extent to which release of the records might undermine the public interest in protecting the financial and economic interests of the State and the possible effects of release on those financial and economic interests and on the Government's ability to manage the national economy. Having accepted the contention of the Department of Finance that the release of the records could reasonably be expected to have a serious, adverse effect on the financial interests of the State, the Commissioner did not believe that the public interest in achieving transparency was sufficient to outweigh the public interest in ensuring that such harm did not arise. She stated that she was unaware of any overwhelming public interest in the case that could rightly set aside the public interest in protecting the financial interests of the State.

4.1.4 The Commissioner may also have regard to a public interest reflected in legislation.

Example: In Case 140063 the Commissioner noted that the Irish Bank Resolution Corporation (IBRC) Act 2013 recognised a public interest in the State's financial support to IBRC being recovered as fully and efficiently as possible. He, therefore, did not see how, on balance, it could serve the public interest to risk undermining the liquidation process while it remained ongoing by disclosing information that could inhibit the exchange of information between the Special Liquidators and the Minister for Finance. He found that granting the applicant's request would contravene the public interest recognised by the Oireachtas in the IBRC Act. He also found that the public interest in openness and accountability in relation to the liquidation process had been served to some degree by the publication of a Progress Update Report.