

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date 15 May 2007

**Public Authority:** The Charity Commission  
**Address:** 13-15 Harmsworth House  
Bouverie Street  
London  
EC4Y 8DP

### Summary

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The complainant asked the public authority for all recorded information held about a charity he managed. The public authority provided some information initially and at the internal review stage, but withheld other information under sections 31, 40 and 41 of the Freedom of Information Act 2000 ('the Act'). After the Commissioner's intervention the public authority released further information but continued to withhold details of the identity of a person who had made a complaint about the charity. The Commissioner decided that the public authority was justified in applying section 31 to this information, and that it was not therefore necessary to go on to assess the remaining exemptions cited by the public authority. However, he also decided that there was a breach of section 10(1) of the Act in that the Commission did not respond to the complainant's request within twenty working days and section 17(7) as the refusal notice was not adequate.

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 ('the Act'). This Notice sets out his decision.

### The Request

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2. On 25 May 2005 the complainant requested from the Charity Commission ('the Commission') *'a complete copy of all recorded information held by your Commission about the above Charity'*, which was the 'Charity'.

3. The Commission asked the complainant on 24 June 2005 to provide further details of the specific information which he required. The complainant apparently did not receive this letter and the Commission forwarded a copy on 30 June 2005.
4. The complainant stated on 21 July 2005 that he wanted all recorded information in all formats.
5. The Commission wrote back on 7 September 2005. It apologised for the delay. It explained that it was not obliged to send copies of records generally, but only to give details of information held. It informed the complainant that it held on its Central Register file, which was open for inspection by the public, a copy of the charity's governing document (a trust deed dated 14 October 1982) and various sets of accounts from 1983 to 1991. It also identified items of correspondence between itself and the complainant in 2004 and 2005, some of which was no longer retained in accordance with its records retention policy.
6. The complainant responded on 22 September 2005 with the following issues.
  - He asked *'which officers/members of staff you conferred with before sending me the text of your letter, and what was the advice each gave?'*.
  - He requested a copy of the Commission's publication scheme.
  - He expressed his view that the Commission had not provided full details of all the information which it held about the 'Charity', which he again requested.
  - In relation to the Commission's records retention policy, he requested *'full details of the policy and when it was first introduced, and any subsequent dates on which it was amended or revised, and in each case precisely what the amendments or revisions were'*.
  - He asked the Commission to explain how the policy worked, since it claimed not to have some correspondence but was able to report the relevant dates and contents.
  - He indicated that he required full details of any letter or other inquiry that the Commission had received about the 'Charity' which had led it to send him a letter on 9 June 2004 seeking to establish whether the charity was still active.
7. The Commission dealt with these points in a letter of 28 October 2005.
  - It stated that its letter of 7 September 2005 had been drafted after legal advice had been obtained, but that the Commission *'is not obliged to advise you of the name or names of colleagues with whom [the writer] may have conferred nor of any advice given by any individual officer'*.

- It enclosed a copy of its publication scheme.
  - It expressed the view that its letter of 7 September 2005 had provided a comprehensive response to the complainant's information request.
  - It stated that its Records and Information Management Unit would be responding to the point about details of the records retention policy.
  - It explained that the computerised case management system could sometimes identify when correspondence had been received or sent even when the documents themselves had no longer been retained.
  - It did not specifically address the complainant's final point about inquiries regarding the 'Charity', but it stated that it was not required to send copies of records generally but only to give details of information that it held.
  - It informed the complainant that, if he was still dissatisfied with the response, he could refer the matter to the Parliamentary Ombudsman via his Member of Parliament.
8. The Commission's Records and Information Management Unit also wrote to the complainant on 28 October 2005. It stated that the information requested by the complainant was *'contained within the copies of the Commission's retention policies that I have enclosed and which go back to 1994'*. It explained that the Case Management System was designed to provide statistical information, whereas the case related records were retained in case files, and that it was therefore possible that information within the Case Management System could outlive the actual record to which it referred. Finally, it notified the complainant that it was now the Commission's policy *'that, where practical, all new records must be stored and managed electronically within a new electronic records management system'*.
9. After the complainant approached the Information Commissioner's Office, the Commission conducted an internal review of its decision and wrote to the complainant on 5 June 2006. It stated that, at the time of his request, the information which it held was as follows:
- A copy of the charity's governing Trust Deed, which it had assumed the complainant would already hold in his capacity as correspondent and trustee of the charity.
  - Various set of accounts for the period 1983-1991, which it had assumed the complainant would also hold for the same reason.
  - Records of two complaints about the charity which had led to cases being raised by the Commission. It explained that some of the information had been destroyed in accordance with the Commission's document retention policies and other information appeared to have been lost due to initial problems with its new electronic records management system. It stated that it did *'not generally provide information which would reveal the identity*

*of the complainant without that person's permission and whilst we have written to the person concerned we have not received a response', and enclosed a copy of a document 'Complaints about charities' which included information about confidentiality and disclosure in relation to complaints. It enclosed copies of the information it retained as Case Log Reports, but stated that the identity of the complainant had been redacted on the grounds that it was exempt under section 31(2)(f), (g) and (h), section 40, and section 41 of the Act. It explained its application of the public interest test regarding section 31.*

## The Investigation

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### Scope of the case

10. On 10 June 2006 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points.

- He required copies of the Trust Deed and accounts.
- He required all the information held by the Commission from the two complaints cases, in a readily comprehensible form (he requested an explanation of the initials recorded under the 'Action Code' in the Case Log Reports; he objected that the Reports were too cryptic to be intelligible; he asked for any documentary evidence which the complainants about the charity had provided to the Commission, as well as details of attempts the complainants had made to get the charity to address their concerns in accordance with the procedures in the Commission's publication '*Complaints about charities*'; and, in response to the Commission's point that much of the information was no longer held, he suggested that '*the staff themselves could readily write-up a full account providing all the full information*').
- He wanted to know whether the Commission held any other information about the charity.
- He requested the job title and position of the person who had produced the review decision letter.

### Chronology

11. In response to an approach from the Information Commissioner's Office, on 20 June 2006 the Commission sent the complainant copies of the Trust Deed, the sets of accounts, and a letter dated 19 November 1982 confirming registration of the charity, and confirmed that all recorded information which it did not consider to be subject to an exemption had now been provided to him.

12. The Information Commissioner's Office wrote to the Commission on 21 November 2006 seeking clarification of various points. It also wrote to the complainant on the same day, advising him that the Commissioner could not deal with the issue of the Commission's investigation into allegations made about the charity, since that did not relate to the way in which the complainant's request had been handled by the Commission but rather to its investigative function in respect of charities.
13. The complainant replied on 29 November 2006 raising some further issues of complaint.
  - He objected that the Commission had failed to comply with his request within the statutory time limit of twenty working days.
  - He claimed that the Commission had failed to provide him with information to which he was entitled *'based on natural justice and my human rights'*, asserting that *'The Human Rights Act is enshrined in UK law and countermands the quoted exemptions under sections 31, 40 and 41 of the Act'*.
14. On 15 December 2006 the Commission provided its comments to the Commissioner. It confirmed that

*'all the recorded information held by the Commission about the [charity] that is not considered to be subject to an exemption has been provided to [the complainant]... The Commission does not hold any information about the allegations and the evidence against the charity over and above the information which has already been provided to [the complainant]. The only information that the Commission has not disclosed is the identity of the complainant.'*

It provided the Case Log Reports; an explanation of the initials recorded under the 'Action Code' in those Reports, apologising that this had not been sent to the complainant earlier; and stated that the individual who had been dealing with the request was a lawyer in the Commission's Legal Division.

In relation to the section 31 exemption the Commission noted that sections 31(1)(g) and 31(2)(f), (g) and (h) were particularly relevant. It explained the prejudice which it believed would ensue from disclosure:

*'it is important that such information is kept confidential where possible, because of the likely effect that it is likely to have on the future provision of such information. The Commission relies upon the provision of information from members of the public to carry out its functions as a regulator of charities. Disclosing the identity of complainants would have the effect of discouraging people from approaching the Commission, and would impede the proper regulation of charities against mismanagement and misconduct. This would adversely impact on the Commission's ability to regulate effectively and carry out its public functions.'*

In relation to the public interest test it stated:

*'disclosure of the information will be likely to affect public confidence in the sector as a whole. The factors in favour of disclosure include the need for the Commission as a public body to be transparent and accountable, and to provide assistance to members of the public with regard to information held by the Commission as far as possible. The Commission take the view, that the factors against disclosure outweigh those in favour as there is a wider public interest in protecting the identity of complainants to encourage people to provide information which they might otherwise be reluctant to provide as this enables the Commission to act more effectively as a regulator and ensuring public confidence in the charitable sector.'*

It pointed out that its approach to complaints was set out in its guidance 'Complaints about Charities', which was available on its website. This stated:

*"We will respect confidences so far as we are able, with due regard to your rights to privacy under data protection and human rights legislation. It is not, for instance, normally our policy to send a copy of the complainant's letter (or any other papers which may identify them) to the charity unless they have given their consent or it is unavoidable"*.

15. Regarding the section 40 exemption, the Commission stated that section 40(2) applied, since the information related to personal data about someone other than the applicant.

*'The data protection principles should be followed when processing information or data which includes disclosure. The first data protection principle is that data shall be processed fairly and lawfully, and in particular, shall not be processed unless at least one of the conditions in Schedule 2 is met. The Commission considers that the disclosure of the names of complainants would not be fair and may not be lawful, but that in any event, none of the conditions in Schedule 2 are met. In particular the data subject has not given their consent to the processing.'*

It noted that its guidance 'Complaints about Charities' stipulated that complainants' identities would normally only be disclosed with their consent, and that this created an expectation of confidence. It also took the view that:

*'The second data protection principle states that personal data shall be obtained only for one or more specified purposes, and shall not be further processed in any manner which is incompatible with that purpose. The name of the complainant was obtained in the course of the Commission carrying out its statutory functions as regulator but the disclosure of that name is not in furtherance of our functions. It is relevant to consider the purpose to which the information is to be put by the person requesting it. In cases of a complaint there is a potential risk of reprisal which may lead to damage and/or distress to individuals.'*

16. The Commission also commented on its application of section 41(1)(a):

*'To constitute an actionable breach of confidence, the information must be worthy of protection, not be readily available to the public, and provided under a duty of confidence. There is a risk that disclosure would be to the detriment of the person to whom the confidence is owed. In cases of a complaint there is a potential risk of reprisal which may lead to damage and/or distress to individuals. There is also a risk that disclosing the identity of complaints would hinder the Commissions [sic] ability to carry its functions if complaints [sic] were deterred from providing information.'*

*'The Act creates a presumption in favour of disclosure however the courts have recognised limited circumstances under which confidential information may be disclosed: with consent; where required by law and where there is an overriding public interest. The complainant has not given consent to disclosure. Disclosure is not required by law. There is an overriding public interest in protecting the identity of complainants to encourage people to provide information which they might otherwise be reluctant to provide which enables the Commission to act more effectively as a regulator and ensuring public confidence in the charitable sector. The public interest arguments in favour of maintaining confidentiality have been identified above under the section 31 exemption.'*

17. The Information Commissioner's Office acknowledged receipt of a further letter from the complainant on 15 January 2007. On 23 February it asked the Commission to clarify whether it had already provided the complainant with the explanation of the initials recorded under the 'Action Code' in the information Case Log Reports. The Commission informed the Commissioner that it had now sent that explanation to the complainant, on 27 February.

## Analysis

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18. The complainant requested 'a complete copy of all recorded information' held about the charity the 'Charity'. As an opening point, the Information Commissioner's Office advised him that the Commissioner could not scrutinise the Commission's investigation of the charity, since that did not relate to its handling of the complainant's information request.
19. The complainant raised various issues in his letters of complaint dated 10 June and 29 November 2006 which the Commissioner is able to address. First, he required copies of the Trust Deed and accounts. These were provided by the Commission on 20 June 2006, although the Commission indicated that it would have sent them earlier had the complainant confirmed that he did not retain copies which it assumed he held in his capacity as correspondent and trustee of the charity.
20. Secondly, the complainant required all the information held by the Commission about the two complaints which had been made against the 'Charity', in a readily comprehensible form. He made a number of points in relation to this.

- He requested an explanation of the initials recorded under the 'Action Code'. The Commission sent this explanation to him on 27 February 2007 following the intervention of the Commissioner.
- The complainant also objected that the Case Log Reports sent by the Commission on 5 June 2006 were too cryptic to be intelligible. The Commissioner takes the view that, now that the Commission has provided the complainant with the 'Action Codes', it has taken reasonable steps to make the Case Log Reports intelligible.
- The complainant also asked the Commission for any documentary evidence provided to the Commission by those complaining about the charity, as well as details of any attempt they had made to address their concerns directly to the charity. The Commissioner notes that in its comments of 15 December 2006 the Commission confirmed that:

*'all the recorded information held by the Commission about the [charity] that is not considered to be subject to an exemption has been provided to [the complainant]... The Commission does not hold any information about the allegations and the evidence against the charity over and above the information which has already been provided to [the complainant]. The only information that the Commission has not disclosed is the identity of the complainant [about the charity].'*

The Commission has therefore confirmed that it has provided all of the information which it retains in relation to the complaint about the charity apart from the name of the person complaining. Therefore, whether or not the Commission ever held any documentary evidence provided by the complainants or evidence that the complainants had complied with the procedures in 'Complaints about charities', it has confirmed that it does not now hold any such information beyond what it has already provided to the complainant.

- In response to the Commission's point that much of the information was no longer held, the complainant suggested that *'the staff themselves could readily write-up a full account providing all the full information'*. In fact, the Act does not require public authorities to create information. Section 84 of the Act defines information as 'recorded in any form' and therefore gives a right of access to recorded information and does not require a public authority to create information. Accordingly, the Commissioner does not consider that the Commission was under any obligation to take the step suggested by the complainant.
21. Thirdly, the complainant wanted to know whether the Commission held any other information about the charity. The Commission's letter of 15 December 2006 has confirmed that all such recorded information has been provided except for the identity of the complainant. The Commission applied exemptions under sections 31, 40 and 41 to that information, and the exemptions issue is addressed below.



22. Fourthly, the complainant requested the job title and position of the person who produced the review decision letter. The Commission has informed the Commissioner that the individual dealing with the review was a lawyer in its Legal Division.
23. Fifthly, the complainant objected that the Commission had failed to comply with his request within the statutory time limit of twenty working days. The complainant made his original request on 25 May 2005. The Commission asked him on 24 June 2005 to provide further details of the specific information which he required. The complainant apparently did not receive this letter and the Commission forwarded a copy on 30 June. The complainant then provided clarification on 21 July 2005. The Commission provided its response on 7 September 2005, apologising for the delay. Section 10(1) of the Act states:

*'Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.'*

However, under section 1(3) of the Act:

*'where a public authority –*

*(a) reasonably requires further information in order to identify and locate the information requested, and*

*(b) has informed the applicant of that requirement',*

*The authority is not required to comply with the request until that further information is provided (this is also a direct quote)*

The twenty working day time limit does not start until the authority has had sufficient information to enable it to deal with the request. In this case, the Commission asked for clarification because the complainant had requested *'all recorded information'* about the Charity, and the Commission took the view that it was *'not obliged to provide you with copies of records generally'*. It suggested that the complainant provide more specific information, *'for example dates of particular letters of correspondence in relation to a particular subject from or to the charity correspondent etc'*. The Commissioner takes the view that in this case the complainant's original request was sufficiently specific for the Commission to have been able to process it without seeking further clarification, since the requested information appears to have been held within delineated case files and a Case Management System. In the circumstances, he considers that the Commission should have dealt with matters within twenty working days of the day following receipt of the request, which was made in a letter dated 25 April 2005. A response should therefore have been made before the end of May 2005, but was not actually provided until 7 September 2005. The Commissioner finds this delay by the Commission in dealing with the request to be regrettable.

The Commissioner also notes that the Refusal Notice of the 7 September 2005 was not in accordance with section 17(7)(b). This section requires a public authority advises the complainant of their rights to complain to the Information Commissioner. The refusal notice of the 7 September 2005 does not address this requirement.

24. Sixthly, the complainant claimed that the Commission had failed to provide him with information to which he was entitled *'based on natural justice and my human rights'*, asserting that *'The Human Rights Act is enshrined in UK law and countermands the quoted exemptions under sections 31, 40 and 41 of the Act'*. The Commissioner does not consider there to be any force in this argument and has proceeded to consider exemptions applied by the Commission. The Commission's application of the exemptions to the information about the complainant's identity is addressed below.

### Exemption – section 31

25. The Commission provided the complainant with all of the information which it held about the Charity except the identity of the person who complained about the charity. It cited the exemptions under sections 31, 40 and 41 of the Act to justify withholding that information.
26. The Commission claimed that section 31(1)(g) and section 31(2)(f) and (g) applied. Section 31(1)(g) states:

*'Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-...*

*...(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2).'*

Within subsection (2) paragraphs (f) and (g) state:

*'The purposes referred to in subsection (1)(g) to (i) are-...*

*...(f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration,*

*(g) the purpose of protecting the property of charities from loss or misapplication.'*

27. In its comments to the Commissioner the Commission indicated the prejudice that it considered was likely to result from disclosing this information. It pointed out that its complaints policy was set out in its guidance *'Complaints about Charities'*, available on its website, which stated:

*"We will respect confidences so far as we are able, with due regard to your rights to privacy under data protection and human rights legislation. It*

*is not, for instance, normally our policy to send a copy of the complainant's letter (or any other papers which may identify them) to the charity unless they have given their consent or it is unavoidable”.*

The Commission took the view that:

*‘The Commission relies upon the provision of information from members of the public to carry out its functions as a regulator of charities. Disclosing the identity of complainants would have the effect of discouraging people from approaching the Commission, and would impede the proper regulation of charities against mismanagement and misconduct. This would adversely impact on the Commission’s ability to regulate effectively and carry out its public functions.’*

The Commissioner takes the view that there is indeed likely to be a deterrent effect on complainants if their identities may be disclosed, and that deterring potential complainants from approaching the Commission creates a significant risk of prejudice to the Commission’s ability to regulate effectively. Accordingly, the Commissioner considers that the exemption under section 31 is engaged in this case.

28. Section 31 is a qualified exemption and therefore subject to a public interest test under section 2(2)(b) of the Act: *‘in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure of the information’*. This means that, if the public interest is equally balanced, the information must be disclosed. Where the qualified exemptions are engaged, therefore, there is a presumption in favour of disclosure, though this only operates where the public interests are equal. The Commission applied the public interest test and concluded that:

*‘disclosure of the information will be likely to affect public confidence in the sector as a whole. The factors in favour of disclosure include the need for the Commission as a public body to be transparent and accountable, and to provide assistance to members of the public with regard to information held by the Commission as far as possible. The Commission take the view, that the factors against disclosure outweigh those in favour as there is a wider public interest in protecting the identity of complainants to encourage people to provide information which they might otherwise be reluctant to provide and this enables the Commission to act more effectively as a regulator and ensuring public confidence in the charitable sector.’*

The factors in which the Commission identified in favour of disclosure were therefore:

- maintaining public confidence in the sector as a whole;
- general principles of transparency and accountability;
- providing assistance to members of the public regarding information held by the Commission.

The factors identified by the Commission in favour of maintaining the exemption were:

- protecting complainants;
- fostering conditions to encourage people to provide information;
- facilitating effective regulation by the Commission and therefore public confidence in the charitable sector.

29. The Commissioner considers that the Commission was justified in concluding that the factors in favour of maintaining the exemption outweighed the factors in favour of disclosure. In particular, he takes the view that the public interest in maintaining public confidence, and facilitating transparency and accountability are substantially served by the information which the Commission does release, and details of complainants' identities would add relatively little to promote those elements of the public interest. On the other hand, release of such information would be likely to have a deterrent effect on complainants coming forward, with a resulting negative impact on the Commission's ability to regulate effectively. Furthermore, the Commission's guidance *'Complaints about Charities'* expressly advises potential complainants that:

*"We will respect confidences so far as we are able...It is not, for instance, normally our policy to send a copy of the complainant's letter (or any other papers which may identify them) to the charity unless they have given their consent or it is unavoidable"*.

In this particular case, as the Commission pointed out in its internal review decision, it wrote to the person complaining about the charity but did not receive a response. In the circumstances the Commissioner considers that the attempt to encourage people to provide information, and potential complainants' confidence in the Commission's complaints procedures, would be undermined were the Commission to disclose complainants' identities in breach of the undertakings given in its own guidance.

## Exemptions – section 40 and section 41

30. Since the Commissioner considers that the Commission was justified in concluding that the identity of the complainant in this case should not be disclosed because of the exemption under section 31, he does not consider it necessary to address the other exemptions cited by the Commission under sections 40 and 41.

## The Decision

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31. The Commissioner's decision is that the Commission dealt with the following elements of the request in accordance with the requirements of the Act:

it was justified in withholding information about the identity of the complainant in accordance with the exemption under section 31 of the Act.

However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

there was a breach of section 10(1) of the Act in that the Commission did not respond to the complainant's request within the time for compliance set out in section 10 of the Act.

there was a breach of section 17(7) of the Act in that the Commission did not, in its refusal notice, inform the complainant of his rights under section 50 of the Act.

## Steps Required

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32. The Commissioner requires no steps to be taken.

## Right of Appeal

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33. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 15<sup>th</sup> day of May 2007**

**Signed .....**

**Steve Wood**  
**Assistant Commissioner**

**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**

## Legal Annex

### General Right of Access

**Section 1(1)** provides that -

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

**Section 1(2)** provides that -

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

**Section 1(3)** provides that –

“Where a public authority –

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”

**Section 1(4)** provides that –

“The information –

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”

**Section 1(5)** provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”



**Section 1(6)** provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.”

### **Time for Compliance**

**Section 10(1)** provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

**Section 10(2)** provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.”

**Section 10(3)** provides that –

“If, and to the extent that –

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

**Section 10(4)** provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

**Section 10(5)** provides that –

“Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.”

**Section 10(6)** provides that –

“In this section –

“the date of receipt” means –

- (a) the day on which the public authority receives the request for information, or
- (b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom

### **Refusal of Request**

**Section 17(1)** provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

**Section 17(2)** states –

“Where–

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-
  - (i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
  - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and
- (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.”

**Section 17(3)** provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.”

**Section 17(5)** provides that –

“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.”

### **Law enforcement**

**Section 31(1)** provides that –

“Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders,
- (c) the administration of justice,
- (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,
- (e) the operation of the immigration controls,
- (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,
- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),
- (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
- (i) any inquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.”

**Section 31(2)** provides that –

“The purposes referred to in subsection (1)(g) to (i) are-

- (a) the purpose of ascertaining whether any person has failed to comply with the law,
- (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,
- (c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,
- (d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on,
- (e) the purpose of ascertaining the cause of an accident,
- (f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration,
- (g) the purpose of protecting the property of charities from loss or misapplication,
- (h) the purpose of recovering the property of charities,
- (i) the purpose of securing the health, safety and welfare of persons at work, and
- (j) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work.”

**Section 31(3)** provides that –

“The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).”