

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 14 July 2008

Public Authority: The National Archives
Address: Kew
Richmond
Surrey
TW9 4DU

Summary

The complainant wrote to The National Archives (TNA) to request access to 29 closed files relating to Anglo-American policy in South Asia during the early 1960s. He subsequently contacted the Commissioner to complain about TNA's withholding of two of these files under the section 27 exemption of the Act (International Relations). Following intervention by the Commissioner, TNA decided to release both files apart from a small amount of information contained within one of them, which it continued to withhold under section 27. The Commissioner decided that he is satisfied with TNA's application of the exemption to withhold that information. However, he has also decided that TNA breached sections 10 and 17 of the Act in its handling of the request for these two files and that it breached a number of procedural provisions of the Act in its handling of several other requested files.

The Commissioner's Role

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

2. On 2 April 2005, the complainant wrote to The National Archives (TNA) to request that closed files listed in his request be opened at TNA. The complainant provided the references of 29 files to which his request referred and stated that they all related to Anglo-American policy in South Asia during the early 1960s.

3. On 4 April 2005, TNA informed the complainant that seven of the files requested (references of each provided) are not held by TNA as they have been retained by the Foreign and Commonwealth Office (FCO) under section 3.4 of the Public Records Act 1958. TNA therefore advised the complainant to contact the FCO to request access to these files. In respect of the remaining requested files, TNA informed the complainant that a review will be conducted of their closure status and he will be contacted once this process has been completed.
4. On 3 May 2005, TNA advised the complainant that it was not yet able to inform him of whether the requested files can be opened. It stated that it would have to consult a number of departments in relation to the request and, in this case, section 10 of the Act grants it an extra ten working days to do so.
5. In response to requests for developments on the handling of his request, TNA provided further updates to the complainant on 16 June 2005, 19 September 2005, 25 November 2005, 14 February 2006 and 22 February 2006. In each update the complainant was informed that TNA was still not in a position to respond substantively regarding PREM 11/3828 and PREM 11/3838 as it was awaiting advice from FCO. However, no reference was made to the remaining files requested on 2 April 2005.
6. In the update of 22 February 2006, TNA provided the following explanation to the complainant:

“I am writing to update you regarding your request for PREM 11/3828 and PREM 11/3838. As you know, we believed the section 27 exemption might apply to this document. This section exempts information that, if it was released, could put at risk: relations between the United Kingdom and any other state, international organisation or international court, the interests of the United Kingdom abroad; or the United Kingdom’s ability to promote or protect its interests. The definition of ‘state’ includes the government of any state and any part of such a government. In such cases we need to decide if the public interest lies in releasing or withholding this document. In this case the Foreign and Commonwealth Office has been considering this question and has decided that the public interest in withholding this document outweighs the public interest in making it available.”

“Unfortunately it seems unlikely that we will be able to make these documents available to you. However, as the record is a historical record held at The National Archives we are required to seek the opinion of the Lord Chancellor before applying this public interest test, through the medium of the Advisory Council on Public Records and Archives. This process will take a further two to three weeks and when it is complete we will let you know the final result of your enquiry.”
7. On 28 March 2006, the TNA wrote to the complainant to inform him of its decision in relation to the files PREM 11/3828 and PREM 11/3838. It stated that all the information contained within these files was being withheld under section 27 of the Act (International Relations). In relation to the public interest test under section 27, TNA advised that: “We considered the general public interest in being

open and accountable and providing as full a historical record as possible but concluded that the public interest lay in not releasing this record because the release would harm the United Kingdom's relations with another country." TNA also informed the complainant that: "To reach this decision the FCO had to consult with a number of different parties and consequently the consultation process was a lengthy one."

8. On 10 April 2006, the complainant contacted TNA to request an internal review of its decision. He asked it to take the following considerations into account in doing so:
 - i. The files in question date from the final years of the Macmillan administration in the early 1960s and are now in excess of 40 years old. From a historical perspective, it is hard to conceive how information from the early 1960s could in the opening decade of the twenty-first century genuinely risk, 'the United Kingdom and any other state, international organisation or international court; the interests of the United Kingdom abroad; or the United Kingdom's ability to promote or protect its interests'.
 - ii. The scope and depth of documentation covering the Macmillan government's relations with South Asia which is openly available within the National Archives and other historical depositories in the United Kingdom, is extensive and now affords seemingly unrestricted access to information on a variety of contentious subjects during this period, such as the Kashmir dispute.
 - iii. Accessible files within the FO 371 Foreign Office and DO 196 Commonwealth Relations Office series contain a wealth of information duplicated within the PREM 11 series covering South Asia, and may well have revealed the substance of material currently withheld in PREM 11/3828 and PREM 11/3838.
 - iv. Archives within the United States, such as the John F Kennedy presidential Library, United States National Archives, and the United States Library of Congress have withdrawn the last restrictions on information relating to American policy within South Asia during the early 1960s, including US interaction and collaboration with the Macmillan Government. A failure of the United Kingdom to adhere to similar standards of transparency risks hampering the production of an accurate and authoritative international history of Western relations with South Asia.
 - v. Withholding the files requested will prove detrimental to the conduct of a serious historical review into the Macmillan administration's relations with India and Pakistan. Given the significant passage of time which has elapsed since the creation of the files in question, and the extent of the information covering Anglo-Indian and Anglo-Pakistan relations during the early 1960s already in the public domain, it appears dubious that the public interest would be best served by refusing to declassify PREM 11/3828 and PREM 11/3838.

9. On 4 May 2006, TNA wrote to the complainant to inform him of the outcome of its internal review in which it upheld its application of section 27 to the entire contents of the requested files being withheld. It also provided the complainant with a statement from FCO, which it had consulted in response to the complainant's request:

"The FCO have considered that there is a public interest in providing a full historical account of the ongoing [Kashmir] dispute. However the release of the information is likely to adversely affect our relations with the UK's bilateral relations with both India and Pakistan, which may result in an escalation of the dispute further adding to an already unstable situation. The FCO must also consider the effect on UK commercial interest as we trade substantially with both countries. With all the above considerations we have decided that the public interest is best served by maintaining the use of exemption 27. However we are happy that the titles [of the files] are made public.

They are:

PREM 11/3828: Relations between India and Pakistan: UK interest

PREM 11/3838: China/India frontier dispute."

10. On 9 January 2008, TNA wrote to the complainant to inform him that it had come to its attention that it have not responded to him fully regarding his request of 2 April 2005. Specifically, TNA informed the complainant that it had found to have failed to provide him with a final response regarding the following files:

FO 371/166356/1 – Dispute between India and Pakistan about Kashmir, 1962

FO 371/166358/1 – Dispute between India and Pakistan about Kashmir, 1962

PREM 11/3839 – China-India frontier dispute: part 2, 1962

11. In respect of these files, TNA informed the complainant that it was "now in a position to respond regarding the files" and was able to inform him "that the majority of the requested information has now been released for public viewing". It confirmed that FO 371/166356/1 had now been opened in its entirety; one sentence within FO 371/166358/1 was being withheld under section 27 (application and public interest test reasoning provided); and "a small part" of PREM 11/3839 was being withheld under section 40 (personal information) and section 41 (information provided in confidence) of the Act (explanation provided).

The Investigation

Scope of the case

12. On 9 May 2006 the complainant contacted the Commissioner to complain about the way his request for access to PREM 11/3828 and PREM 11/3838 had been handled. The complainant specifically asked the Commissioner to consider points he had previously put to TNA in his request for an internal review (as reproduced in paragraph 8, above).

13. The Commissioner therefore proceeded to fully investigate TNA's handling of the request for these two files. He did not investigate the application of exemptions in relation to the remaining files requested as this matter did not fall within the scope of the complaint or any subsequent representations to him from the complainant. However, the Commissioner did choose to consider TNA's compliance with various procedural aspects of the Act in respect of these remaining files.

Chronology

14. On 23 August 2007, the Commissioner contacted TNA to request copies of all the information withheld from the complainant and any further representations TNA wishes to make about its handling of the case.
15. TNA responded to the Commissioner on 2 October 2007. It informed him that it would prefer for the Commissioner to visit the information at its premises rather than sending copies. It also informed him that it had decided to release PREM 11/3838 (China/India frontier dispute) "as the information within this file is no longer considered to be sensitive". In respect of this file, TNA provided the following update as to its status:

"When this case was subject to internal appeal, the FCO indicated that they would be happy to re-assess the decision in two years time.....The file has recently been re-reviewed and FCO are of the opinion that all of the information contained within can now be released. This file will be available for viewing at the National Archives from 9 October 2007."

TNA also confirmed that a re-review was conducted on PREM 11/3828, but it was concluded that "none of the information within this file can be released at this point in time".

16. In its submission, TNA provided summaries of the withheld information in confidence, in order to provide examples. As such, details of that which was provided in this capacity cannot be included in this Notice. However, the Commissioner can confirm that the explanation provided set out the specific reasons as to how TNA believed, at the time of the request, that release of the information (by reference to the contents of each file) would be likely to prejudice the UK's international relations, including specific public interest arguments for and against the release of this material.
17. TNA also provided the following representations about the handling of the request from a procedural point of view. (The Commissioner did not consider these specific representations to have been provided in confidence.):
 - i. In accordance with section 66 of the Act TNA, as the records authority' in consultation with the Cabinet Office as the 'responsible authority', identified the fact that a qualified exemption, s27(1)(a), applied to all of the information contained within the two files. TNA advised the Cabinet Office that in its opinion s27 applied to the two files on 19 May 2005.

- ii. The response to the complainant of 22 February 2006 was the first time TNA informed him that a public interest test was being carried out in respect of the two files and it has been noted that this should have been mentioned earlier. Instead, TNA only informed the complainant that a public interest test was being carried out with regard to “some” of the files originally requested.
 - iii. As the ‘responsible authority’, the Cabinet Office was responsible for carrying out the public interest tests [as specified in s66(4) of the Act]. The process from start to finish was a lengthy one. The Cabinet Office consulted the FCO in order to obtain their expert opinion. The FCO ensured that all factors in favour or release were given full consideration and in turn drew upon the expert opinion of both desk officers based in the UK and abroad: this included contacting the offices of the High Commissioners based in both India and Pakistan to ensure that full consideration was given to whether or not any of the requested information could be released. Once this process was complete the Cabinet Office confirmed that the public interest favoured withholding all of the information from both files. On 9 March 2006 the public interest tests were submitted to the Advisory Council on National Records and Archives for consideration as the Lord Chancellor’s representative, as required by s66(5)(a) of the Act. Following this, a final response was sent to the requestor regarding these two files on 28 March 2006.
18. On 12 December 2007, the Commissioner visited TNA to view the contents of PREM 11/3828. He also assessed the contents of 11/3838 (China/India frontier dispute) in order to attempt to draw a comparison between the contents of each file.
 19. Following his visit, and having reflected upon the information which continued to be withheld (that being the entire contents of PREM 11/3828), the Commissioner wrote to TNA on 18 December 2007 to request clarification or a reconsideration of its decision to withhold the entire contents of the file. This was on the basis of the following observations he made on his visit:
 - The Commissioner provided details of examples of information contained within the file which he did not consider would either have the prejudicial effects on the UK’s international relations, if released, which TNA set out in its confidential submission to him, or would favour the withholding the information under the public interest test.
 - He also provided details of documents which were similar in content to those found in PREM 11/3838, which TNA had agreed to release.
 - Finally, he set out his view that it was not clear how releasing contents of the file which are less sensitive would identify the content or nature of the information to which he accepts that section 27 applies.
 20. On 29 January 2008, TNA responded to the Commissioner to inform him that it was in consultation with both the relevant authority (the Cabinet Office) and the

FCO regarding the issues he raised in the letter of 18 December 2007. It stated that they were jointly considering whether or not some of the information contained within the file PREM 11/3828 can now be released.

21. On 25 February 2008, TNA informed the Commissioner of the following:

“TNA and the Cabinet Office, on the expert advice of the FCO, have reconsidered the decision taken in 2005. The outcome of our deliberations is that we are now content to release some of the information contained within PREM 11/3828. The remainder of the information will remain closed under section 27. Additionally, a very small part of the information we have identified for potential release comprises communications with the Government of the United States. The FCO have contacted the US Government with regard to these communications. We expect to be able to release these, but until we receive a response consider section 27 still applies to this part of the requested information.”

22. On 28 February, TNA provided the following clarification to the Commissioner about its new position:

“We consider a total of c.20 pages should continue to be withheld under section 27. FCO are currently consulting the US Government regarding a further total of 8 pages [details provided]. We believe this information is potentially releasable, but await confirmation from the US.”

23. On 29 February 2008, the Commissioner informed the complainant of TNA's latest position. In response, the complainant requested that the Commissioner no longer consider the withholding of the documents subject to consultation with the US Government as part of his complaint and instead restrict his investigation to TNA's withholding of the remaining documents it continues to withhold. This was in order to prevent an extended delay in the issuing of a Decision Notice as TNA subsequently informed the Commissioner by telephone that it could take a further six months to receive a response from the US Government to its enquiry. The Commissioner agreed to this course of action.

24. In response, on 6 March 2008 the Commissioner visited TNA to view the information which it continues to withhold (and which the complainant still wished him to consider). The Commissioner assessed the contents of this information and compared it to the remaining contents of the file which it had now agreed to release. An overview of the number and types of documents within this file which TNA has now agreed to release can be found in Annex 1.

Findings of fact

25. Before deciding whether to apply an exemption to information which is located within a transferred record designated as 'closed', section 66 of the Act requires TNA to consult the public authority from which that information originated, known as the 'responsible authority'. In this case, PREM 11/3828 and PREM 11/3838 constitute transferred public records and the responsible authority is the Cabinet Office.

Analysis

Procedural matters

Section 17 – Refusal of request

26. Under section 17 of the Act, a public authority must issue a refusal notice specifying its reliance upon an exemption within twenty working days of receiving a request. However, under the Freedom of Information (Time for Compliance with Request) Regulations 2004, TNA may have an extra ten working days to do so in cases involving a transferred public record that has not been designated as open and where it needs to determine whether requested information is held. The Commissioner is satisfied that it was appropriate for TNA to have applied these Regulations in this case.
27. Although the complainant received many communications updating him on its handling of his request, the Commissioner notes that he was not issued with a refusal notice, placing formal reliance upon an exemption, until 22 February 2006. This constitutes a breach of section 17(1) and the Time for Compliance Regulations. However, the Commissioner welcomes TNA's subsequent acknowledgement of this failing.
28. In cases where a public authority applies a qualified exemption it may, under section 17(3), having notified the requestor accordingly, take extra time, which must be "reasonable in the circumstances", to decide the balance of the public interest test. The Commissioner notes that the complainant was not notified of the outcome of the balance of the public interest test under section 27 until 28 March 2006. Given that the complainant submitted his request almost a year prior to this date, and having considered the nature of the information withheld from the complainant as well as its context, the Commissioner does not consider the time taken to issue this Notice to have been reasonable in the circumstances.

Remaining files

29. Although the Commissioner is not considering the application of exemptions in relation to the complainant's access to the remaining files requested, he wishes to draw attention to TNA's first and only response to the complainant of 9 January 2008 in relation to three other files. The timing of this response constitutes a severe breach of section 10 (Time for compliance with request) in relation to the information to which access was granted, and section 17(1) in relation to the information to which exemptions were applied. The Commissioner further notes that it appears that no response was sent to the complainant in respect of 17 remaining files initially requested. This constitutes a breach of section 1(1) (General right of access to information held by public authorities).

Exemption

Section 27 – International Relations

30. As TNA has now agreed to release much of the information falling within the scope of the complainant's appeal, the Commissioner has restricted his analysis of the application of section 27 to the information which it continues to withhold and which the complainant still wishes him to consider.
31. The provisions of section 27 of the Act can be found in the legal annex. Unlike certain exemptions under the Act, there is no provision whereby section 27 can automatically no longer be applied when the information in question reaches a certain age. However, the Commissioner recognises that, in general, the sensitivity of exempt information reduces over time. As section 27 is a prejudice-based exemption, this consideration will determine whether, on a case-by-case basis, the exemption can be applied to historical records relating to international relations (as in this case). Furthermore, even if it is likely that disclosure of the information would prejudice international relations, consideration about its age will also assist in determining whether the public interest test favours its disclosure.
32. The Commissioner assessed the contents of the file falling within the scope of his analysis. The documents consist of the following:
- 9 Telegrams
 - Submission on the Sino / Indian conflict
 - Extract from a submission entitled 'Possible solution to the Kashmir problem'
 - Letter to the Prime Minister
33. The Commissioner concluded that disclosure of this information would be likely to prejudice the UK's international relations in respect of section 27(1). His specific reasons for reaching this conclusion cannot be provided in this Notice as to do so would compromise the information in question. However, it can be stated that his decision stemmed from his assessment of the sensitivity of the contents of these documents with regard to the nature of views and comments expressed, and the context in which these were made, in respect of:
- The continued dispute and controversies over the status of Kashmir; and
 - The importance of the UK's good relations with both India and Pakistan.
34. However, section 37 is a qualified exemption. As such, it may only be maintained in order to exempt the information from disclosure where, in accordance with 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 disclosing the information".
35. The Commissioner considered the following public interest factors in favour and against the maintenance of the exemption under section 27:
36. Against

- i. Furthering the public's understanding of the Kashmir dispute and the UK's activities and representations on the matter at the time the information was produced.
 - ii. Furthering the public's understanding of the way in which the matters discussed in the information remain of relevance today and have a bearing upon current circumstances.
 - iii. Promoting accountability in respect of decisions taken by, and the position of, the British Government at the time the information was produced.
 - iv. Transparency in the decision-making process.
 - v. Public participation in government decisions.
 - vi. Time elapsed since the information was produced, in that all the individuals identified in the information had, by the time of the request, retired from public life or died.
37. In favour
- i. The extent to which the public interest in transparency, accountability and public understanding on the matters discussed is met by the release of the vast majority of the contents of PREM 11/3828.
 - ii. Ongoing sensitivities regarding the status of Kashmir and the extent to which controversies in this area would be furthered by the release of the information.
 - iii. The impact which release of this information would be likely to damage the UK's relations with India and Pakistan.
 - iv. Prejudice to ongoing efforts to reach a solution to the Kashmir problem, particularly in respect of UK diplomatic activity.
 - v. The ability to sensitively explore and suggest solutions to international disputes with foreign governments; and protection of the negotiating positions of the UK's allies.
 - vi. The ability to engage in free and frank considerations on such matters, in respect of the expression of views in relation to both issues and individuals.
38. The Commissioner concluded that, in the interests of public understanding, transparency in decision making and accountability especially, there is a strong public interest in disclosing all of this information. However, he also gave weight to the opinion of the FCO in this matter, in light of their expert status in areas of international relations. In particular, the Commissioner accepts that the information remains sensitive and that its disclosure would be likely to undermine the UK's international relations with India and Pakistan and hamper resolution of

the Kashmir dispute. On balance the Commissioner concluded that these arguments in favour of maintaining the exemption were the most persuasive in his consideration of the public interest test.

39. In all the circumstances of this particular case, the Commissioner ultimately reached the opinion that the public interest in disclosing any of this information is narrowly outweighed by the public interest in maintaining the exemption under section 27.

The Decision

40. The Commissioner's decision is that the public authority dealt with the following element of the request in accordance with the requirements of the Act:

- i. The application of section 27 (International relations) to the information contained within PREM 11/3828 which TNA continues to withhold.

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

- i. Section 1(1) (General right of access to information held by public authorities) in relation to 17 files requested by the complainant to which no response was provided.
- ii. Section 10(1) (Time for compliance with request) in relation to information falling within FO 371/166356/1, FO371/166358/1 and PREM 11/3839 to which access was granted to the complainant on 9 January 2008.
- iii. Section 17(1) (Refusal of request) in relation to the timing of the refusal notices of 22 February 2006 and 9 January 2008.
- iv. Section 17(3) (Refusal of request) in relation to the timing of the refusal notice of 28 March 2006.

Steps Required

42. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

- i. Make available to the complainant the contents of all the information referred to which TNA does not wish to (or no longer wishes to) withhold. (This excludes the information within PREM 11/3828 for which confirmation for release is being sought from the Government of the USA.)

- ii. Reply to complainant in respect of the remaining files requested for which no response has been issued.
43. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Other matters

44. Although it does not form part of this Decision Notice the Commissioner wishes to highlight the following matters:
45. The complainant confirmed that he did not wish the information for which permission for release is being sought from the Government of the USA to be considered by the Commissioner for the purposes of his investigation. However, the complainant informed the Commissioner that he remains interested in accessing this information and that this element of his request should be treated by TNA as ongoing. The Commissioner therefore recommends that TNA responds to the complainant in respect of this information as soon as possible following receipt of notification from the Government of the USA.
46. In respect of information contained in transferred records, section 66 of the Act requires that TNA consult with the 'responsible authority', unless that information has been designated as 'open' for the purposes of the section. In this case, the 'responsible authority' is the Cabinet Office, who in turn carried out consultation with the Foreign and Commonwealth Office. From the documentation available to him, it appears to the Commissioner that the process of consultation was subject to undue delay and that this had a detrimental impact upon TNA's ability to provide timely responses to the complainant's request. In light of this, the Commissioner recommends that TNA review its procedures for dealing with requests which invoke section 66, in order to ensure that the potential for future delays within the consultation process is minimised. The Commissioner recognises that this recommendation will require the co-operation of the responsible authority and hopes that the contents of this Decision Notice will have an educative value in this respect. However, as the authority to which the request is made, ultimately it is TNA who must ensure that the obligations of the Act are met.

Failure to comply

47. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

48. 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@tribunals.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 14th day of July 2008

Signed

**Richard Thomas
Information Commissioner**

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

Annex 1 - Schedule of information contained within PREM 11/3828 which TNA has agreed to release

Telegrams

Outward telegrams from Colonial Relations Office (CRO): 24 Telegrams.

Inward Telegrams to CRO: 55 Telegrams and 1 Telegram with one paragraph redacted.

Outward Telegrams from FCO to New York: 6 Telegrams.

Inward Telegrams from New York to Foreign and Commonwealth Office: 14 telegrams.

Outward Telegrams from FCO to Washington: 1 Telegram.

Inward from Washington to FCO: 3 Telegrams.

Prime Ministers Personal Telegrams from Prime Minister Nehru: 2 Telegrams.

1 draft telegram from PM to Pakistani President and 1 Outward Telegram (Ayub Din Khan).

(16 pages of accompanying internal CRO correspondence relating to Telegrams).

Minutes of meetings

3 documents: Records of conversation between Prime Minister and Pakistani High Commissioner and meeting between Foreign Secretary and PHC.

1 document Record of Meeting between Prime Minister, PHC and Foreign Secretary (3 pages).

1 document containing Personal Minute of PM.

Letters

Three letters from Pakistan to Prime Minister (from President Ayub Khan, 1962).

2 letters from PHC to CRO.

Other documents

9 pages of submission entitled 'Possible solution to the Kashmir problem' with accompanying notes (3 lines removed).

1 document (10 pages) relating to Eisenhower's visit to India Jan 1960.

Annex 2 – 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(4) provides that -

“A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt 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.”

Section 17(6) provides that –

“Subsection (5) does not apply where –

- (a) the public authority is relying on a claim that section 14 applies,
- (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
- (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.”

Section 17(7) provides that –

“A notice under section (1), (3) or (5) must –

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (b) contain particulars of the right conferred by section 50.”

International Relations

Section 27(1) provides that –

“Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) relations between the United Kingdom and any other State,
- (b) relations between the United Kingdom and any international organisation or international court,
- (c) the interests of the United Kingdom abroad, or
- (d) the promotion or protection by the United Kingdom of its interests abroad.”

Section 27(2) provides that –

“Information is also exempt information if it is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court.”

Section 27(3) provides that –

“For the purposes of this section, any information obtained from a State, organisation or court is confidential at any time while the terms on which it was obtained require it to be held in confidence or while the circumstances in which it was obtained make it reasonable for the State, organisation or court to expect that it will be so held.”

Section 27(4) provides that –

“The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a)-

- (a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1), or
- (b) would involve the disclosure of any information (whether or not already recorded) which is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court.”

Section 27(5) provides that –

“In this section-

"international court" means any international court which is not an international organisation and which is established-

- (a) by a resolution of an international organisation of which the United Kingdom is a member, or
- (b) by an international agreement to which the United Kingdom is a party;

"international organisation" means any international organisation whose members include any two or more States, or any organ of such an organisation;

"State" includes the government of any State and any organ of its government, and references to a State other than the United Kingdom include references to any territory outside the United Kingdom.”