

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 12 February 2009

Public Authority: University of Westminster
Address: 4-12 Little Titchfield Street
London
W1W 7UW

Summary

The complainant requested the results of a job evaluation process as well as correspondence and related information generated from the implementation process. The public authority withheld the information by virtue of the exemptions contained in sections 22 and 40(2) (by virtue of the provisions of section 40(3)(a)(i)) of the Act. The Commissioner concluded that section 22 was incorrectly applied in relation to the job evaluation results, section 40(2) was not engaged in respect of some parts of the job evaluation results because a redacted version could have been disclosed, and the public authority was in breach of sections 1, 10, and 17 of the Act. He has ordered the public authority to respond to the complainant's outstanding requests in accordance with section (1)(1)(a) of the Act, and to also disclose a redacted version of the job evaluation results.

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. The Commissioner's office was not provided with copies of the original requests made by the complainant and one out of the two refusal notices issued by the public authority. He however understands from the outcome of the public authority's internal review that the requests were made on 1 September 2006 and 9 October 2006. The complainant does not dispute the dates the requests were made nor does he dispute the contents of the requests as quoted in the internal review document. Both set of requests are reproduced below.

01 September 2006 Request

'....the full policies regarding professors' salary reviews. These should include any variations that you or others have made over the past 5 years.'

'.....the balance in the policy between objective principles based on the use of formulae and other means of assessing salaries that are not based on formulae.'

3. According to the internal review document, public authority responded to the above request on 03 October 2006 and explained it held the following information:

- *'The professoriate salary formula for the applicant*
- *The determination of the salary grade for the applicant*
- *Table of professor's salaries*

4. The public authority disclosed the information held with regard the professoriate salary formulae and the determination of the salary grade. It however withheld the table containing the professor's salaries by virtue of the exemption contained in section 40(2).

09 October 2006 Request

'....the documents produced by the university including the VC's office and the personnel department, concerning the job evaluation for professors. This should include minutes of meetings between personnel officials and the VC, working papers in relation to the JEs, records of discussions about the JE process and any discussions (and papers) on establishing relativities in the professors' JE process, and also includes any papers produced by Hay.'

5. The public authority responded on 02 November 2006 and explained it held the following document with regard the above request:

'The Hay Report into the Professoriate pay evaluation programme.'

6. It initially withheld this report by virtue of the exemption contained in section 22 of the Act.

7. Following advice from the Commissioner's staff, the complainant requested a review of the public authority's decisions.

8. On 18 July 2007, the public authority wrote to the complainant with the outcome of the internal review it had conducted in relation to both set of requests.

9. The review upheld the original decision in relation to the request of 01 September 2006. It however concluded that the exemption contained in section 40(2) also applied to the request of 09 October 2006 because the complainant *'made a specific request for "any papers produced by Hay"'*

The Investigation

Scope of the case

10. The complainant had already contacted the Commissioner by 14 November 2006 to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
- The application of section 22 without informing him when the requested information was likely to be disclosed;
 - The incorrect application of section 40;
 - The delay in the public authority's response.

Chronology

11. On 16 May 2008, the Commissioner wrote to the complainant outlining the scope of the investigation and invited him to comment if he considered there were additional matters to investigate.
12. The complainant responded on 20 May 2008. He stated from the outset that he was only prepared to conditionally accept the Commissioner's outline of the scope of the investigation until he was in a position to verify the correspondence between himself and the public authority. However, he also added that in addition to the scope outlined by the Commissioner, the public authority did not address his requests for information in relation to the job evaluation process (i.e. minutes of meetings, emails, etc), as well as the fact that he had not received the information withheld by virtue of section 22.
13. The Commissioner wrote back to the complainant on 20 May 2008. He explained that the decision was taken to investigate his case on the basis of the contents of the public authority's internal review document rather than original unedited copies of his correspondence with the public authority due to the fact that he had explained to the Commissioner's case reception unit that he was unable to access these documents as he was having problems with his computer.
14. The Commissioner also explained that he would be unable to consider the case on the basis of the complainant's conditional acceptance of its scope. He advised the complainant to write back to his office when he had verified the relevant documents and was happy with the scope of the investigation.
15. On 24 June 2008, the complainant advised the Commissioner that he had been unable to access the relevant documents and would be happy for the investigation to commence.
16. On 27 June 2008, the Commissioner wrote to the public authority inviting its submissions in relation to issues raised by the case.
17. Specifically, in relation to the application of section 22, the Commissioner asked the public authority to clarify the exact information which had been withheld under

- the provisions of this exemption, and also confirm whether or not the information had been disclosed.
18. In relation to the request of 01 September 2006, the Commissioner asked the public authority to address the outstanding requests in accordance with the provisions of section 1(1)(a) of the Act. He also asked the public authority to provide a detailed explanation in relation to the application of section 40(2) to the table of professors' salaries.
 19. Furthermore, in relation to request of 09 October 2006, the Commissioner also asked the public authority to address the outstanding requests in accordance with section 1(1)(a) of the Act as well as provide a detailed explanation in relation to the application of section 40(2) to the Hay Report.
 20. The public authority responded on 25 July 2008.
 21. The Commissioner subsequently wrote to the public authority for clarification on 30 July 2008 and 11 August 2008. The public authority responded to the Commissioner's enquiries on 07 August 2008 and 26 September 2008 respectively.

Analysis

Procedural matters

Section 1(1)(a)

22. Under section 1(1)(a) of the Act, a person making a request for information is entitled to be informed in writing by the public authority in question whether it holds the information described by the request.
23. A full text of Section 1 is available at the end of this Notice.
24. The Commissioner notes that the public authority did not address the following requests:
 - a. Any variations to the policies regarding Professors' salary reviews made in the last 5 years. (01 September 2006)
 - b. The balance in the policy between the principles based on the use of formulae and other means of assessing salaries. (01 September 2006)
 - c. Documents produced by the University including the VC's office and the personnel department including minutes of meetings between personnel officials and the VC, working papers in relation to the JEs, records of discussions about the JE process. (09 October 2006)

- d. Discussions and papers on establishing relativities in the Professors' JE process. (09 October 2006)
25. The public authority explained to the Commissioner it does not hold any information in relation to request (a) above because in the five years leading up to September 2006, there were no variations to policies regarding Professors' salary review.
26. In terms of request (b), it further explained that it holds the formulae used in scoring the job evaluation exercise and had already provided the complainant with a copy but it did not hold information relating to 'any balance' between the principles based on the used of formulae and other means of assessing salaries.
27. In relation to request (c), the public authority explained that the job evaluation process was part of the implementation of a nationally-agreed 'Pay Framework for the Modernisation of Pay Structures.'
28. According to the public authority, the activities relating to 'Framework Agreement' were regularly reported to the Court of Governors Committee, and that it holds the minutes from these meetings. It also informed the Commissioner that the activities relating to the 'Framework Agreement and JE (job evaluation) process relating to the Professoriate as part of the wider Framework Agreement initiative' were reported as required to the then Vice Chancellor's Executive Group and Personnel Committee. According to the public authority, it also holds the minutes and papers from these meetings.
29. In relation to request (d), the public authority also explained that in the context of the job evaluation process, all that it holds in this regard is the Hay Report in relation to the Professorial Job Evaluation exercise.
30. The Commissioner finds the public authority in breach of section 1(1)(a) of the Act because it did not address any of the above listed requests in its correspondence with the complainant.

Section 10

31. Under section 10(1), a public authority is required to respond to a request in accordance with section 1 within 20 working days.
32. A full text of section 10 is available in the Legal Annex at the end of this Notice.
33. The Commissioner finds that the public authority breached section 10(1) of the Act because it failed to respond to the complainant's request of 01 September 2006 within 20 working days.

Exemptions

Section 22

34. Information is exempt from disclosure by virtue of the exemption contained in section 22 if it is held by a public authority with a view to publishing it at a future date.
35. Section 22 is a qualified exemption and accordingly subject to a public interest test.
36. A full text of section 22 is available in the Legal Annex at the end of this Notice.
37. The public authority explained that the Hay Report is divided into three sections, and clarified that it was sections 1 and 2 which were withheld under section 22. It informed the Commissioner that these sections have been published internally and are therefore in the public domain.
38. The Commissioner however noted the following:
 - The Hay Report was completed in 2006 and sections 1 and 2 were presented to staff under the cover of the 'Professorial Pay Policy' presentation.
 - The internal review document referred to section 22 as applying to '*information.....regarding the job evaluation process...*' which was to be provided to all staff '*over time*'.
 - The public authority did not subject the decision to withhold these sections of the Hay Report '*over time*' to a public interest test.
39. A public authority is not required to specify a definite date for publication when applying the exemption at section 22. Indeed, a date could be determined after it has applied the exemption. However, the reasonableness test in section 22(1)(c) would effectively include a consideration of the timing for intended publication in light of the factors the public authority took into account in withholding the information before the intended date for publication.
40. The review concluded that providing the information requested before it was officially released could jeopardise the evaluation process.
41. Sections 1 and 2 of the Hay Report contain an outline of the characteristics of Professorial roles and their relative grading as a result (i.e. core, higher, and highest). It also contains a 'pay policy' which is essentially a document containing the issues and options taken into account in introducing a revised pay policy for Professors.
42. As the public authority impliedly stated in its internal review, the job evaluation process was ongoing at the time of the request. In light of the likelihood that the information requested had not been finalised due to the ongoing process as well as the fact that it was disclosed within two months after the complainant's request, the Commissioner is of the view that it was reasonable to withhold it

at the time of the request. However, as noted above, this is subject to a public interest test.

43. In light of the public authority's clarification above, the Commissioner considers it was reasonable to have applied section 22 to sections 1 and 2 of the Hay report. He however finds the public authority incorrectly applied section 22 to section 3 of the Hay report.
44. The Commissioner also finds the public authority in breach of section 17(3)(b) because it failed to carry out a public interest test when it applied the exemption at section 22.

Section 40(2)

45. Information may be withheld under section 40(2) if it constitutes the personal data of individual(s) other than the requester (i.e. third parties), and also satisfies either the first or second condition referred to in 40(3).
46. A full text of section 40 is available in the Legal Annex at the end of this Notice.

Table of Professorial Salaries

47. According to the public authority, withholding the requested information referred to above satisfies the first condition in section 40(3) because its disclosure would contravene the first data protection principle (section 40(3)(a)(i)).

Is the withheld information personal data as defined by the Data Protection Act 1998 (DPA)?

48. Section 1 of the DPA defines personal data as;

'data which relate to a living individual who can be identified from those data or from those data and other information which is in the possession of, or likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.'

49. According to the public authority, the information withheld is a list of all individual Professors and their personal salary details at the time of the request. It however provided the Commissioner with a table of Professorial scales which it explained is available on its website. The table of Professorial scales contains a total of 9 spine points with a specific non-incremental amount for each spine point. The public authority explained that the information withheld as opposed to the Professorial scales would identify an individual Professor and his/her position on the spine point thereby disclosing his/her specific salary.
50. The Commissioner was provided with a table containing the information which would be included in the table of professorial salaries. The table includes columns for names of the Professors, their area of expertise, and their current spine point. As noted above, a Professor's exact salary is effectively determined

by their position on the spine point as salaries are non- incremental within spine points.

51. The Commissioner is satisfied that a table containing a list of individual Professors and their spine points or their exact salaries constitutes personal data within the definition of the DPA because it is information which relates to identifiable individuals.

Would the disclosure of the withheld information contravene the first data protection principle?

52. The first data protection principle states in part; *'Personal 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....'*
53. The full text of the first data protection principle is available in the Legal Annex at the end of this Notice.
54. The Commissioner considers the most applicable condition for processing in this case is likely to be Schedule 2(6)(1) which states;

'The processing is necessary for the purpose of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.'

55. In considering whether or not disclosing the withheld information would contravene the first data protection principle, the Commissioner took into account the reasonable expectations of the Professors, and their rights and freedoms relative to the legitimate interest of the public.
56. As noted above, the salary details of Professors (without naming individuals) by spine points are published by the public authority. In the context of their role, the Professors may have expected the remuneration package associated with their roles to be a matter of public knowledge. However, the Commissioner is of the view that this expectation is unlikely to have extended to their personal salary details (i.e. the exact salary amount they receive).
57. The Commissioner is also of the view that the public has a legitimate interest in knowing that the salaries paid to Professors reflect their role within higher education institutions as these institutions are funded by the tax payer, and there is of course an inherent public interest in ensuring value for public funds.
58. The Commissioner considers that the public interest would be satisfied by disclosing the salary scales paid to Professors employed by the public authority, and is satisfied that the information contained in the Professorial Salary Scales meets the legitimate interest of the public in this regard.
59. Although Professors are amongst the most senior of University staff, the Commissioner is of the view that they have a right to expect their personal salary

details to be kept private especially since the public are already aware of the salary range for the role which they undertake. They would expect as part of their role to be subjected to a greater degree of scrutiny in comparison to junior staff, however, this does not automatically exclude them from any rights to privacy. Therefore, any intrusion into an area which is arguably quite sensitive would have to be warranted and the Commissioner does not consider that such an intrusion is warranted in this case.

60. He is therefore satisfied that disclosing the personal salary details of Professors employed by the public authority would contravene the fairness element of the first data protection principle, and that the application of section 40(2) to the information was justified.

Hay Report (Job Evaluation Results)

61. The public authority explained in its correspondence with the Commissioner that it was section 3 of the Hay Report, which is essentially a spreadsheet of the results for the Job Evaluation (JE) exercise that was withheld under section 40(2).
62. The spreadsheet includes the names and roles of the Professors, scores for each of them according to 'know how, problem solving, and accountability', the formulae used to calculate each score, profile descriptor, the Professors who had been 'Re-evaluated', and notes describing their areas of expertise.
63. Having viewed the spreadsheet, the Commissioner is satisfied that each row contains information which constitute personal data within the definition of the DPA because apart from the scores listed for the competencies, it also includes the names of the Professors and (in some cases their specific roles) to which these scores relate to as well as notes describing their areas of expertise.
64. According to the public authority, redacting the names, role, and note information on the spreadsheet would not necessarily protect the anonymity of the Professors as their colleagues are likely to possess information which would make it possible to identify one or more individuals from the redacted spreadsheet.
65. The Commissioner asked the public authority to provide him with any specific information on the spreadsheet and/or elsewhere which could be combined with the scores to identify the Professors in the manner suggested above.
66. The public authority wrote to the Commissioner stating it did not have any evidence or specific information which could be combined with the scores on the spreadsheet to identify specific Professors.
67. During the course of the investigation, the public authority had provided the Commissioner with a copy of a document titled; 'Professorial Pay Policy' which was presented by the Hay Group to staff of the public authority. It contains the scores which were expected to be achieved in relation to 'know how' by virtue of academic qualifications as well as the roles undertaken. It also contains the

distribution of the scores for 'know how' according to the number of staff who fell within the 'Highest, Higher and Core' levels.

68. Without specific reference to any information which could be combined with a redacted version of the spreadsheet to identify the Professors, the Commissioner is of the view that a redacted version would not identify the Professors any more than the information contained in the 'Professorial Pay Policy' document.
69. The names, roles, and the information in the notes section are the most obvious identifying features on the spreadsheet. However, the Commissioner also notes that a very small number of Professors were re-evaluated. Their numbers suggests that they could be easily identified if this fact was left on the spreadsheet.
70. Therefore, based on the information provided to him by the public authority, the Commissioner is not persuaded that the scores, formulae used to calculate these scores, and the profile descriptor alone would be enough to identify the specific Professors to which they relate. He does not consider these have identifying features on their own as they relate to a large number of individuals, and the public authority was unable to provide specific information which they could be combined with to identify specific individuals.
71. The Commissioner therefore finds that section 40(2) (and by extension section 40(3)(a)(i)) applies to the following information in section 3 of the Hay report:
- names,
 - the fact that an individual was re-evaluated,
 - information relating to roles, and
 - information in the notes section.
72. The Commissioner however finds that the public authority incorrectly applied the exemption at section 40(2) (and by extension section 40(3)(a)(i)) to the remainder of the information in section 3 of the Hay report.

The Decision

73. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- It correctly applied section 22 to sections 1 and 2 of the Hay report,
 - It correctly applied section 40(2) (and by extension section 40(3)(a)(i)) to the information outlined in paragraph 71 above,
 - It correctly applied section 40(2) (and by extension section 40(3)(a)(i)) to the Table of Professorial Salaries.
74. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

75. The public authority breached section (1)(1) (b) because it incorrectly applied section 40(2) (and by extension section 40(3)(a)(i)) to all of the information in section 3 of the Hay report other than the information outlined in paragraph 71 above.
76. It also breached section 10(1) for failing to disclose a redacted version of section 3 of the Hay report.
77. The public authority breached section 1(1) (a) of the Act as it did not respond to all of the complainant's requests.
78. It breached section 10(1) as it did not respond to the request of 01 September 2006 within 20 working days
79. It breached section 17(1)(b) as it did not specify to the complainant that section 40(2) was being applied by virtue of the provisions of section 40(3)(a)(i) in relation to both the table of Professorial salaries and section 3 of the Hay report.
80. It breached section 17(3)(b) for failing to carry out a public interest test when it applied the exemption contained at section 22.
81. It breached section 17(7) (a) and (b) because the refusal notice issued on 02 November 2006 did not specify that the complainant had a right to request an internal review as well as a further right of appeal to the Commissioner.
82. It incorrectly applied section 22 in relation to part 3 of the Hay report.

Steps Required

83. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
 - Respond to the complainant's outstanding requests (listed at paragraph 24 above) in accordance with section 1(1) (a).
 - Disclose the spreadsheet containing the job evaluation results specifically redacting the information outlined in paragraph 71 above.
84. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Other matters

85. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

86. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information (internal reviews). As noted above, the public authority did not notify the complainant of its internal review procedure. However, even after the complainant had requested a review in December 2006 following advice from the Commissioner's staff, it took the public authority 7 months to complete the review. As he has made clear in his *'Good Practice Guidance No 5'*, published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. Whilst he recognises that in this case the delay occurred before the publication of his guidance on the matter, the Commissioner remains concerned that it took over seven months for an internal review to be completed.
87. The Commissioner is concerned that the standard of the refusal notice and the manner in which the request was handled was poor in this case. The public authority has apologised for the manner in which this case was handled and also informed the Commissioner that it is putting measures in place to ensure its procedures are improved in accordance with the Commissioner's good practice guidance.
88. The Commissioner has taken note of this and no further action will be taken at present. However, the Commissioner will monitor any future complaints to his office involving this public authority and would expect to see improvements in relation to the public authority's adherence to the procedural requirements of the Act as well as related good practice.

Failure to comply

89. 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

90. 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.
Website: www.informationtribunal.gov.uk

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

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 12th day of February 2009

Signed

**Anne Jones
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

Information intended for future publication

Section 22(1) provides that –

“Information is exempt information if-

- (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),
- (b) the information was already held with a view to such publication at the time when the request for information was made, and
- (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).”

Section 22(2) provides that –

“The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which falls within subsection (1).”

Personal information.

Section 40(1) provides that –

“Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.”

Section 40(2) provides that –

“Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.”

Section 40(3) provides that –

“The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.”

Section 40(4) provides that –

“The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).”

Section 40(5) provides that –

“The duty to confirm or deny-

- (a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and
- (b) does not arise in relation to other information if or to the extent that either-
 - (i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or
 - (ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).”

Section 40(6) provides that –

“In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.”

Section 40(7) provides that –

In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;

"data subject" has the same meaning as in section 1(1) of that Act;

"personal data" has the same meaning as in section 1(1) of that Act.

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.”