

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 5 March 2009

Public Authority: Northern Lincolnshire and Goole Hospitals NHS Foundation Trust

Address: Diana, Princess of Wales Hospital
Scartho Road
Grimsby
North East Lincolnshire
DN33 2BA

Summary

The complainant made a number of requests in relation to 32 patients who were under the care of the public authority in 2004/2005. After considering the case, the Commissioner found the public authority had incorrectly confirmed that some of the information was held in breach of section 1(1)(a). The Commissioner also found that some of the limited information which could have been disclosed as a result was in any event correctly withheld by virtue of the provisions of section 12(2). The Commissioner did however find the public authority in breach of sections 17(1)(a), (b), and (c) and 17(5) of the Act. In respect of specific parts of the requests, the Commissioner also found that the exemptions at sections 40(1) and (5)(a) should have been applied by virtue of the fact that any information in relation to these requests if held by the public authority would constitute the complainant's personal data.

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 13 June 2006, the complainant requested the following information:

Part 1

'.....can you please confirm that the.....32 NLG patients who according to your....criteria were responsible for their actions in their assaulting of your staff did like me also have their treatment withdrawn immediately and indefinitely. If not why not?'

Part 2

'If I was treated differently to any of the.....32 NLG patients who according to your....criteria were responsible for their actions then please explain to me exactly how and exactly why.'

3. The public authority wrote to the complainant in response to the above requests on 27 June 2006 and 12 April 2007. It explained to the complainant that it had considered the issues raised by the requests as part of his persistent complaints following the withdrawal of his medical treatment. Since the Healthcare Commission had dealt with these issues, it decided that the *complainant's behaviour was vexatious*.
4. After a member of the Commissioner's staff had made it clear in a letter dated 13 March 2008 that they did not consider the public authority's response of 27 June 2006 was issued in accordance with the provisions of the Act, the public authority responded to the above requests in two letters dated 03 and 10 April 2008.
5. In relation to the first part of the request, the public authority stated; *'these patients did not all have their treatment withdrawn immediately.'* However, it declined to go into any further details because *'this would breach the Data Protection Act....(therefore).....this material....is being withheld in accordance with Section 40 of the Freedom of Information Act.'*
6. In relation to the second part of the request, the public authority explained that as a result of the findings of the Healthcare Commission, the Trust had already acknowledged that proper procedures were not followed in the complainant's case, and reminded the complainant that the Trust had consequently apologised as a result.
7. On 16 April 2008, the complainant made a further request for the following information:

Part 1

- a. Can you please tell me if the NLG Trust is still treating me as vexatious?*
- b. If so, why?*
- c. If so, can I appeal and how?*
- d. If I'm not vexatious, can you please tell me, exactly, when and why that decision was rescinded?*

You said "These patients (32 NLG patients) did not all have their treatment withdrawn immediately" Please tell me,

Part 2

a. *exactly how many of these patients you refer to, did have their treatment withdrawn?*

b. *exactly how many of these patients you refer to, were given documented verbal warnings about their behaviour, prior to any withdrawal of treatment?*

c. *exactly how many of these patients you refer to, were given documented written warnings, and how many written warnings each, about their behaviour, prior to any withdrawal of treatment?*

d. *exactly how long each of, the patients you refer to, had to wait before their treatment, was or was not withdrawn immediately?*

e. *exactly how long the periods of withdrawal of treatment was, for each, of the patients you refer to?*

f. *exactly how many of these patients you refer to, were given no documented verbal or written warnings, and had their treatment withdrawn immediately*

g. *exactly how many of these patients you refer to, had their treatment withdrawn for a period longer than 12 months, and if they did, how long each of those periods were?*

8. On 23 April 2008, the complainant requested an internal review of the Trust's decision to withhold the information requested on 13 June 2006 in relation to the 32 patients under section 40.

9. The Trust completed its internal review and responded in a letter dated 21 May 2008. It upheld its decision to withhold further information in relation to the 32 patients in question under section 40(2). In this letter it also included a response to the complainant's request of 16 April 2008.

10. In relation to the first part of his request of 16 April 2008, the Trust clarified that it was still treating the complainant as vexatious with regard to '*the pursuance of your specific complaint regarding your dermatology treatment at Scunthorpe General Hospital and the subsequent withdrawal of treatment.....*' It added that the complainant's appeal could be directed to either the Healthcare Commission or the Health Service Ombudsman.

11. In terms of the additional requests in relation to the 32 patients in question, the Trust deemed these requests vexatious by virtue of the provisions of section 14 of the Act '*on the basis of your persistence in raising these issues, both previously as a complaint and more recently under the provisions of the FOI....*' It added that the 52 separate emails received from the complainant purely in connection with his requests under the Act which all relate to his complaint against the Trust and subsequent withdrawal of his treatment, placed a significant burden on the Trust in terms of distraction and expense, were designed to cause disruption, and had the effect of harassing the Trust and staff within it.

The Investigation

Scope of the case

12. On 29 May 2008 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The Commissioner combined both the requests of June 2006 and April 2008 as part of single complaint, and initially identified the following issues as the scope of the complaint within his remit under the Act:
 - The public authority's decision to deem the complainant's additional requests of 16 April 2008 vexatious, and
 - The decision to withhold the information requested in relation to the 32 patients (June 2006) by virtue of the exemption contained in section 40 (2) of the Act.
13. However, subsequent findings (which are referred to below) led him to focus his consideration of the case under sections (1)(1)(a) and 12 of the Act. In view of his findings he has therefore not gone on to consider the application of sections 14 or 40 in respect of part 2(b) and (c) of the April 2008 request and part 1 of the June 2006 request respectively.
14. He also considered whether the public authority should have dealt with part 2 of the June 2006 request, and part 1 of the April 2008 request under the Act.
15. The Commissioner also considered whether the public authority was in breach of any of the provisions of section 17 of the Act.
16. However, in light of some of the complainant's correspondence to the Commissioner, he also considers it appropriate in this case to clarify that if he had considered the vexatious element of the complaint, it would have been in respect of the requests he made under the Act rather than the alleged persistent complaints about his dermatology treatment and subsequent withdrawal of his treatment by the Trust. Under section 14 of the Act, it is the request rather than the complainant which could be deemed vexatious.

Chronology

17. On 21 July 2008, the Commissioner invited the public authority to make submissions in respect of the application of sections 14 and 40 of the Act in relation to part 2 of the request of April 2008, and part 1 of the request of June 2006 respectively.
18. The public authority initially responded on 21 August 2008. It also responded to additional queries from the Commissioner on 12 September 2008, 29 September 2008, 14 October 2008 and 27 February 2009.

19. The public authority explained that it was keen to minimise further expenditure of public funds and would respond to the complainant's requests rather than continue to deem them vexatious.
20. According to the public authority, further searches had actually revealed that it did not hold most of the information requested by the complainant.
21. Contrary to its initial response to the complainant, further searches had revealed that none of the 32 patients referred to by the complainant had their treatment withdrawn (as per part 1 of the June 2006 request), and as a result it did not hold the information requested in part 2 (a), (d), (e), (f), and (g) of the April 2008 request.
22. The public authority further added that it could not determine how many of the 32 patients received verbal or written warnings (i.e. part 2(b) and (c) of the April 2008 request) due to the cost restrictions imposed by section 12(2) of the Act.
23. As noted above, the Commissioner therefore decided to investigate the complaint on the basis of sections 1 and 12 of the Act.

Analysis

Procedural matters

Section 1(1)

24. Under section 1(1)(a) of the Act, a public authority is required (subject to specific exemptions, none of which were relied on in this case) upon receipt of a request for information to either confirm or deny it holds the information requested.
25. A full text of section 1 is available in the Legal Annex at the end of this Notice.
26. As noted above, the Trust explained that none of the 32 patients had their treatment withdrawn. According to the Trust, it did not deem any of the 32 cases serious enough to warrant the withdrawal of treatment.
27. In relation to part 2 of the request of June 2006, the public authority referred the Commissioner to its letter to the complainant of 10 April 2008 where it explained that the Healthcare Commission had already found that the complainant was treated differently because incorrect procedures were followed in his case.
28. It is a question of fact whether or not the 32 patients had their treatment withdrawn. According to the public authority, further to the Commissioner's enquiries, it was;

'...able to confirm conclusively and without reference to the Incident Reporting System that treatment has only ever been withdrawn in a very small number of cases – none of which occurred during the 2004/05 period.....'

29. The Commissioner has found no evidence to question the public authority's revised position that none of the patients in question did actually have their treatment withdrawn.
30. The Commissioner finds the public authority in breach of section 1(1)(a) because as noted above, it incorrectly confirmed that it held information falling within the scope of the request by informing the complainant that some of the 32 patients in question had their medical treatment withdrawn.

Section 17

31. The public authority also breached section 17(1)(b) and (c) because its letter to the complainant of 27 June 2006 which the Commissioner considers to be a refusal notice was technically defective as it did not specify the exemption(s) it was relying upon.
32. The public authority also breached section 17(1)(a), (b) and (c) because it did not inform the complainant that it was relying on section 12(2) of the Act regarding the request for information relating to whether any of the 32 patients in question were issued documented verbal and/or written warnings.
33. The public authority also breached section 17(5) for failing to specify its reliance on section 12(2) within 20 working days.
34. A full text of section 17 is available in the Legal Annex at the end of this Notice.

Section 12 (part 2(b) and (c) of April 2008 request)

35. Under section 12(1) of the Act, a public authority is not obliged to comply with a request for information (by virtue of the provisions of section 1(1)(b)) if to do so would exceed the appropriate cost limit. Furthermore, under section 12(2), a public authority is not obliged to comply with the duty to confirm or deny it holds information (by virtue of the provisions of section 1(1)(a)) if to do so would exceed the appropriate cost limit.
36. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (regulations) sets the cost limit at £450 for non-central government bodies based on an hourly rate of £25.
37. A full text of section 12 is available in the Legal Annex at the end of this Notice.
38. According to the public authority, to determine the number of patients out of the 32 in question who were issued verbal and/or written warnings (part 2 (b) and (c) of April 2008 request), it would have to go through the medical records of

every patient in the particular location in which each of the 32 incidents were reported.

39. The public authority further explained that '*in all probability*' copies of warning letters would have also been stored by the relevant departments had they been issued. It however went on to add that none of the relevant departments returned any warning letters for 2004/05 from searches conducted pursuant to the investigation. According to the public authority therefore, '*(it) is possible.....that formal warning letters may not have been sent.*'
40. It was therefore not possible for the public authority to confirm or deny it held the information requested above without exceeding the appropriate cost limit.
41. According to the public authority, to identify the 32 patients in questions in order to determine whether it holds any information about whether any of the 32 patients in question received documented verbal and/or written warnings, it would need to search;
 - The Electronic Incident Reporting System (DATIX),
 - Paper copies of the incident report forms, and
 - The medical records of all patients passing through the various locations where the incidents are reported to have occurred on the dates in question.
42. The public authority explained that it was able to identify the exact incident locations via the data inputted from the Incident Report Forms on to its electronic Incident Reporting System (DATIX) as the forms themselves are stored in its archives.
43. It explained that during the 2004/2005 period, the name of the 'aggressor' (i.e. patient) was not recorded as part of the incident detail on DATIX due to '*a problem with a backlog of data input...(and) in order to catch up, only a minimum amount of data was inputted from the paper based Incident Report Forms on to the electronic Incident Reporting System.*' According to the public authority, it would only be able to obtain the date and location of incident, details of the person affected, the classification code and brief description of the incident from DATIX. The system (i.e. DATIX) could therefore be analysed to retrieve all of the above information as they relate to the 32 patients in question. According to the public authority, this would take approximately 1 hour.
44. It went on to add that the current arrangements in place are more robust and the names of 'aggressors' as well as more information about them is routinely recorded in respect of all incidents.
45. The public authority provided the Commissioner with a copy of the Incident Report Forms in use in 2004/2005 as well as a print out of the data recorded on DATIX at the time.
46. The Commissioner notes that the print out from DATIX include the following information: reference number, location (i.e. relevant department), incident date, code (i.e. nature of incident), description of the incident, and action

taken. It does not include a specific column for the name of the 'aggressor'. The public authority however explained that, the names, if included on the hard copies of the incident forms, would have been included in the free text box on the front page of the form.

47. According to the public authority, since the information recorded on DATIX cannot be used to specifically identify the 32 patients, it would have to go through the completed incident report forms for 2004/2005 to be able to confirm whether it holds the information requested.
48. According to the DATIX system, there were 8451 incidents reported in 2004/05. The public authority explained that the incident report forms were stored in approximately 10 archive boxes each containing 800 completed incident forms. It however explained that, *'during that period (i.e. 2004/2005), incident forms were simply stored in archive boxes and not filed in either date (day) or number order as they should have been.'*
49. The public authority explained that it would take approximately 30 seconds to go through each form. This equates to approximately 70 hours based on an individual carrying out this task.
50. The public authority however pointed out if the details of the 'aggressor' had been recorded on the incident forms, the medical records of the 'aggressor' would need to be retrieved and examined to determine if they contain information relating to whether a verbal and/or written warning had been issued. It estimated it would take approximately 15 minutes to locate and retrieve each record, and a further 15 minutes to examine each record. This equates to a total of 16 hours to retrieve and examine the 32 records in question.
51. If details of the aggressor were not however recorded on some or all of the incident forms, it would need to retrieve and search the manual medical records of all the patients at the location in question within the period in question (i.e. 2004/2005).
52. Since it already has a record of the locations of the incidents, it would only need to retrieve the medical records for the patients at that particular location during the period in question.
53. According to the public authority, approximately 300,000 patients received treatment in these locations in 2004/2005. If this was narrowed down to the dates when the incidents occurred, it would leave approximately 26,000 manual medical records to be retrieved and examined for the information requested.
54. The records would then subsequently be searched for the entries for the date in question to whether any information was recorded regarding whether a written and /or verbal warning was issued about a violent or aggressive incident. This would take approximately 30 seconds per record.

Commissioner's Assessment

55. The Commissioner is satisfied that the information recorded in DATIX in 2004/2005 would not have been sufficient for the public authority to determine whether, at the time of the request, it held the information requested.
56. In the Commissioner's view, it is more likely for the public authority to be able to determine this by examining the hard copies of the completed incidents forms for the 32 incidents in question. It is arguably also highly likely that this information if held, would be available in the medical records of the 32 patients in question.
57. However, based on the public authority's explanation above, the Commissioner is satisfied that it would have exceeded the appropriate cost limit to determine whether the information requested was held at the time of the request.
58. The Commissioner therefore finds that to determine the number of patients (out of the 32 in question) who were issued documented verbal and/or written warnings would have exceeded the £450 cost limit set by the regulations. The public authority was therefore exempt from complying with this aspect of the request by virtue of the provisions contained in section 12(2) of the Act.
59. In reaching the above decision, the Commissioner was guided by the Information Tribunal's (Tribunal) interpretation of the requirements placed upon it in ruling on the application of section 12. According to the Tribunal in *Robin Williams v Information Commissioner & Cardiff & Vale NHS Trust (EA/2008/0042)*;
- 'It was not open to the Tribunal to disallow reliance upon section 12 on the basis that the Trust could have organised its records more efficiently. The question was whether the information was held by the Trust or its agents and if so the time taken in compliance with the letter of the request...'* (Paragraph 28).
60. Notwithstanding the above, the code of practice issued pursuant to section 46 of the Act places a responsibility on public authorities to adopt and maintain robust records management policies and procedures. The Commissioner has therefore addressed this point in the 'Other Matters' section of this Notice.

Exemption

Section 40(1) and (5)(a)

61. In terms of part 2 of the request of June 2006 and part 1 of the April 2008 request, the Commissioner's view is that this information is exempt by virtue of the provisions of section 40(1) of the Act. The reasons for his decision are outlined below.
62. 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 is 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..'

63. The requests in question are clearly about the complainant's personal circumstances. The Commissioner is satisfied that any information held in relation to the above requests would constitute the personal data of the complainant. Therefore, the public authority should not have responded under the auspices of the Act by virtue of the combined provisions of sections 40(5)(a) and 40(1).
64. Section 40(5)(a) provides that the duty to 'confirm or deny' in accordance with section 1(1)(a) does not arise in relation to information which if it were held by a public authority would be exempt information by virtue of subsection 1.
65. Section 40(1) provides that any information which constitutes the personal data of an applicant is exempt from disclosure under the Act.
66. A full text of section 40 is available in the Legal Annex at the end of this Notice.

The Decision

67. The Commissioner finds the public authority in breach of section 1(1)(a) because it incorrectly confirmed that it held information falling within the scope of the request by informing the complainant that some of the 32 patients in question had their medical treatment withdrawn.
68. The Commissioner finds the public authority in breach of section 17(1)(b), and (c) because the refusal notice of 27 June 2006 did not specify the exemption(s) it had relied on.
69. The public authority incorrectly addressed part 2 of the request of June 2006 and part 1 of the request of April 2008. In the Commissioner's view, this information is exempt by virtue of the provisions of section 40(1) and (5)(a) of the Act. The Commissioner further comments about this in the other matters section of this notice.
70. The Commissioner finds that section 12(2) applies in relation to the request for copies of documented verbal and/or written warnings issued to the 32 patients in question.
71. The Commissioner however finds the public authority in breach of section 17(1) (a), (b) and (c) because it did not inform the complainant that it was relying on the provisions of section 12(2) of the Act.
72. The Commissioner also finds the public authority in breach of section 17(5) for its late application of section 12(2).

Steps Required

73. The Commissioner requires no steps to be taken.

Other matters

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

75. The [Code of Practice](#) issued in accordance with the provisions of section 46 emphasises the need for public authorities to ensure that they maintain robust arrangements for the creation, location, archiving, and destruction of records.

76. Whilst the authority has indicated that there were records management structures in place during 2004/2005, there is evidence to suggest that in relation to the recording and subsequent retrieval of information relating to incidents of patient aggression, the Trust's approach did not accord with the expected standards of good practice. The authority has assured the Commissioner that it is strengthening and reinforcing its approach to records management in this area, and the Commissioner believes that the authority may benefit from the advice and guidance provided by The National Archives in this respect. This can be obtained at:

<http://www.nationalarchives.gov.uk/recordsmanagement/>

77. The Commissioner acknowledges this case was complicated by the ongoing issues surrounding the withdrawal of the complainant's medical treatment. However, in light of the broad interpretation of personal data, he would encourage the public authority to always initially consider the possibility of the application of sections 40(1) and 40(5)(b)(i) when responding to requests made under the Act but which are linked to the applicant's grievance against the public authority.

Right of Appeal

78. 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 5th day of March 2009

Signed

**Nicole Duncan
Head of FOI Complaints**

**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.”

Exemption where cost of compliance exceeds appropriate limit

Section 12(1) provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

Section 12(2) provides that –

“Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.”

Section 12(3) provides that –

“In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.”

Section 12(4) provides that –

“The secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

- (a) by one person, or
- (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.”

Section 12(5) – provides that

“The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are estimated.

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.”

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) he 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.