

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 21 December 2009

Public Authority: Department for Communities and Local Government
Address: Ashdown House
123 Victoria Street
London
SW1E 6DE

Summary

The complainant requested information held by DCLG about the legal advice obtained in relation to the Government decision to remove the 85 year rule from the Local Government Pension Scheme (LGPS). DCLG confirmed that it held certain information but that it was subject to legal professional privilege and was therefore exempt under section 42 of the Act, claiming that the public interest in maintaining the exemption outweighed the public interest in disclosing it. At a late stage in the investigation DCLG also claimed reliance on section 35. The Commissioner is satisfied that DCLG applied section 42 correctly to the withheld information in this case. The Commissioner has therefore not made a decision on the section 35 exemption. The Commissioner has also recorded a number of procedural breaches in relation to DCLG's handling of the request.

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.

Background

2. This request relates to the Government decision to remove the '85 year rule' in 2006. The '85 year rule', also known as the 'rule of 85' was one of the calculation criteria in Local Government Pension Schemes (LGPS) when working out the entitlement of pension on the retirement of LGPS members. The 85 year rule or calculation centred on the age of the member and the length of reckonable service when working out actuarial reduction in pension entitlements (the 85 year

rule allowed members to draw an unreduced pension at retirement if their age plus their years of 'pensionable' service exceeded 85 years).

3. The Government decided to remove the 85 year rule with effect from 1 October 2006 as part of the Local Government Pension Scheme (Amendment) Regulations 2006 on the basis that it believed the 85 year rule was age discriminatory. UNISON took the case to court to attempt to quash the removal of the 85 year rule as it believed that the decision was based on an erroneous understanding of the Government's legal obligations under the EU discrimination directive (2000/78/EC). This was the first case to be brought under the Employment Equality (Age) Regulations 2006. In *UNISON v The First Secretary of State* [2006] EWCH2373 (Admin) (27 September 2006) the High Court found that the 85 year rule in the LGPS was discriminatory on the grounds of age and that it was not unreasonable of the Government to take the view that it may not be able to defend the 85 year rule for younger employees. UNISON sought a judicial review of the decision which was refused by the Court because it considered that the Government did have a rational basis for making the decision to remove the 85 year rule.
4. On 15 June 2007 it was announced by the Minister for Local Government (Phil Woolas), that there would be statutory consultation on proposals to extend the levels of protection in the LGPS for older employers which was originally introduced by the Local Government Pension Scheme (Amendment) and (Amendment 2) Regulations 2006. The proposal was to provide full rather than tapered protection for affected scheme members to 2020.

The Request

5. Between August and November 2006 the complainant corresponded with his MP, the Rt. Hon. Helen Goodman, on the subject of the 85 year rule (an outline of this correspondence is set out at Annex 1 to this Notice). On 7 February 2007 the complainant made the following request to Ms Goodman:

"To simplify matters, answers to the following questions would be appreciated:

- i) *As the latest information contains no reference to employer contributions there is a suspicion amongst union members that employers contributions are set to be reduced, please would you clarify what is intended, as it is impossible to consult meaningfully without this information?*

Please would you supply copies of correspondence between the Government and the Local Government Association concerning employer contributions? This is a Freedom of Information request.

- ii) *It is apparent, if the 85 rule falls foul of Age Discrimination Laws, then so must protection based on age rather than length of service. I ask again, please would you confirm whether this is the case?*

Please would you supply copies of the Government Legal advice and all other advice concerning protections based on age rather than length of service? This is a Freedom of Information Request.

- iii) *Concerning LGPS in Scotland, I understand protection arrangements are superior to those intended for England and Wales. I ask again, please would you confirm whether this is the case and if so please would you explain why members of the LGPS in Scotland are deserving of a better protection deal than those in England and Wales.*

Please would you supply copies of the Government Legal Advice and all other advice concerning the difference between the protections intended for Scotland and those intended for England and Wales? This is a Freedom of Information Request

6. On 19 February 2007 the Rt. Hon. Helen Goodman responded to the complainant stating that she had passed the request to Phil Woolas MP, the then Minister for Local Government and Community Cohesion at the Department for Communities and Local Government (DCLG) as his was the relevant department involved in negotiations with LGPS and she did not have access to any of the requested documents.
7. Helen Goodman received an undated response from Phil Woolas on 8 March 2007. This letter did not refer to the Act, but advised that it would not be possible to divulge the legal advice on the matter as it would be against legal professional privilege.
8. Helen Goodman passed the letter from Phil Woolas to the complainant, who was dissatisfied with the response. The complainant wrote to DCLG on 26 March 2007 to request an internal review.
9. On 11 April 2007 DCLG acknowledged the complainant's request for an internal review. The complainant contacted DCLG on 26 April 2007 to ask when he might receive the result of the review.
10. On 11 May the complainant contacted the Commissioner to complain that he had not received the result of the internal review. On 26 May 2007 the Commissioner contacted DCLG to remind it of its obligations under the Act.

The Investigation

Scope of the case

11. On 2 July 2007 the complainant contacted the Commissioner to complain that he had still not received any response to his request for an internal review. The complainant subsequently clarified to the Commissioner that his complaint focused on DCLG's refusal to provide him with the information he requested.

12. During the course of the Commissioner's investigation DCLG did conduct an internal review. The result of this review was communicated to the complainant on 15 January 2009. The complainant remained dissatisfied with DCLG's handling of the request, so the Commissioner continued with his investigation. The complainant asked the Commissioner to consider the application by DCLG of section 42, legal professional privilege, in relation to all 6 questions and the application of the public interest test. The Commissioner has addressed the issue of internal review at the 'Other matters' section below.

Chronology

13. On 22 August 2008 the Commissioner contacted DCLG and asked for clarification of why it had refused to provide the information, as well as a copy of the withheld information. Having considered the correspondence in this case the Commissioner noted that DCLG had not cited any exemptions under the Act. However the Commissioner noted that Phil Woolas's letter received on 8 March 2008 referred to information being covered by legal professional privilege. Therefore the Commissioner considered it appropriate to ask DCLG for arguments relating to section 42 of the Act, which relates to legal professional privilege.
14. The Commissioner did not receive a response to this letter, and he sent a number of further letters requesting a response. On 22 January 2009 the Commissioner wrote to DCLG expressing his concern that no response had been received to date. The Commissioner pointed out that failure to respond within 10 days would now result in the issuing of an Information Notice.
15. The complainant provided the Commissioner with a copy of DCLG's internal review letter dated 15 January 2009. In this letter DCLG stated that its original decision to rely on section 42 was confirmed and also stated that there was strong and well established public interest in the protection of legally privileged material. DCLG did not provide further rationale for its reliance on section 42 in this letter.
16. On 6 February 2009 the Commissioner received an email from DCLG with a copy of a letter with an explanation of its handling of the complainant's request and application of the Act. DCLG also indicated that it now wished to rely on section 35(1)(c) and section 35(3) of the Act in relation to the withheld information. On 10 February 2009 the Commissioner received copies of the withheld information.

Analysis

Exemptions

Section 42 – Legal professional privilege

17. Section 42(1) of the Act provides that information is exempt from disclosure if the information is protected by legal professional privilege (privilege) and this claim to

privilege could be maintained in legal proceedings. Section 42 is a class based exemption which means that it is not necessary to demonstrate that any prejudice may occur to the professional legal adviser/client relationship if information were to be disclosed. Instead it is already assumed that the disclosure of information might undermine the relationship of the lawyer and client.

18. Legal professional privilege protects the confidentiality of communications between a lawyer and client. It has been defined by the Information Tribunal in the case of *Bellamy v the Information Commissioner and the DTI (EA/2005/0023)* as:

“a set of rules or principles which are designed to protect the confidentiality of legal or legally related communications and exchanges between the client and his, her or its lawyers, as well as exchanges which contain or refer to legal advice which might be imparted to the client, and even exchanges between the clients and their parties if such communication or exchanges come into being for the purpose of preparing for litigation.” (para. 9)

19. The Commissioner understands that there are two types of privilege – litigation privilege and legal advice privilege. Litigation privilege will be available in connection with confidential communications made for the purpose of providing or obtaining legal advice in relation to proposed or contemplated litigation. Advice privilege will apply where no litigation is in progress or being contemplated. In these cases, the communications must be confidential, made between a client and professional legal adviser acting in their professional capacity and made for the sole or dominant purpose of obtaining legal advice. Communications made between adviser and client in a relevant legal context will attract privilege.
20. The Commissioner has viewed and considered the information subject to the request and in his view all of the requested information attracts advice privilege as it was provided for the sole purpose of advising on the duties, rights and obligations of the public authority. Therefore the Commissioner is of the view that all the withheld information is legal advice and subject to legal professional privilege and for the purposes of section 42 of the Act the exemption is engaged.

The public interest test

21. As section 42 is also a qualified exemption the Commissioner must consider whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Public interest factors in favour of disclosing the requested information

22. The complainant's view is that DCLG has failed to make clear why it is in the public interest to withhold legal information about the protection arrangements of a Local Government Pension Scheme. He further states that he wants to be able to establish whether the protection arrangements comply with age discrimination legislation.

23. The Commissioner considers the factors in favour of disclosing the information to include:
- the assumption in the Act in favour of disclosure
 - the amount of money involved
 - the number of people affected
 - the transparency of the public authority's actions
 - and any other circumstances that may relate to a particular case
24. The Commissioner believes that Parliament did not intend this exemption to be used as an absolute exemption. Indeed the Tribunal's decision in the case of the *Mersey Tunnel Users Association versus ICO & Mersey Travel (EA/2007/0052)* underlined this point. In that case the Tribunal concluded that the public interest favoured disclosing legal advice received by Mersey Travel, in particular the Tribunal placed weight on the fact that the legal advice related to an issue of public administration and therefore the advice concerned issues which affected a substantial number of people. It stated that:
- "We find, listing just the more important factors, that considering the amounts of money involved and numbers of people affected, the passage of time, the absence of litigation, and crucially the lack of transparency in the authority's actions and reasons, that the public interest in disclosing the information clearly outweighs the strong public interest in maintaining it..."*
25. DCLG accepted that there is a public interest in the public knowing that decisions have been taken with sound legal advice. DCLG pointed out that disclosure of such information could lead to greater public engagement and understanding of the processes of Government and an enhanced understanding of why decisions are taken and could lead to the public being able to question decisions from an informed view. However DCLG submitted this as a general view which was not related specifically to the information requested in this case.
26. The Commissioner has considered the general public interest in public sector pay and pensions that has come to the fore in the media in recent years. He considers that, as public sector pay and pensions are funded by public taxes, that there is a legitimate public interest in the public being assured of value for money. The LGPS fund amounts to current and future costs of many billions of pounds. There has been significant coverage in the press of the cost of public sector pension schemes and the need for reform on public sector pay. More recently, and in the past 18 months, there has been further pressure with the national and international financial situation and the decline in value of pension funds and potential shortfalls which may require additional injections of public money. The Commissioner understands that any attempt to reform public sector pay and pensions would be subject to debate and discussion and advice from Government legal advisers and that the public may, in certain circumstances, have a right to know how such advice is interpreted during the decision making process.
27. Finally, the Commissioner considers that the passage of time is a factor which favours disclosure, however, in this case the legal advice is relatively recent.

When older legal professional privilege is involved disclosure is likely to reduce any potential harm to the privilege holder, and as it is no longer relevant to the decision-making process underpins the argument in favour of disclosure.

Public interest factors in favour of withholding the information

28. The Commissioner has considered the following factors in relation to the public interest in withholding the information:
- the inbuilt weight of the concept of legal professional privilege.
 - the likelihood and severity of harm arising by disclosure.
 - whether the advice is recent; live or protects advice relating to the rights of individuals.
 - other circumstances relating to this particular case.
29. DCLG states that the public interest arguments for maintaining the exemption are strong given the client lawyer relationship. As such, being able to carry out full and frank discussions in that context is fundamental to the administration of justice. Any disclosure of legal advice may result in a prejudice to its ability to defend its legal interests. DCLG also asserts that the Government's decision making would not be fully informed and would therefore be affected to its detriment if comprehensive and candid legal discussions were not able to be held.
30. The Commissioner recognises that there is a strong and inbuilt public interest in protecting the concept of legal professional privilege. The concept has developed to ensure that clients are able to receive advice from their legal advisers in confidence. This is a central principle in the justice system and there is a strong public interest in maintaining that confidentiality. The protection afforded by privilege ensures that the advice provided is based upon a full exchange of information pertinent to the case. Eroding the principle of legal professional privilege could therefore harm the ability of parties to provide or receive legal advice on a full and frank basis. This in turn could damage the parties' ability to effectively determine their legal opinions, or to defend or seek legal restitution against other parties in accordance with their rights. In the case of *Bellamy v the ICO and the DTI (EA/2005/0023)* the Tribunal commented that):
- “...there is a strong element of public interest inbuilt into the privilege itself. At least equally strong countervailing considerations would need to be adduced to override that inbuilt interest...it is important that public authorities be allowed to conduct a free exchange of views as to their legal rights and obligations with those advising them without fear of intrusion, save in the most clear case...”*
31. The Commissioner notes that if legal advice has been recently obtained, it is more likely to be used in a variety of decision-making processes and have current or future significance. The Commissioner recognises that these decision-making processes would be likely to be affected by disclosure. In particular the Commissioner is mindful that there has already been legal action in the High Court which is open to legal challenge through the judicial process and there

continues to be consultation and negotiation on the transitional provisions and protections for those affected by the 85 year rule.

32. In *Pugh v Information Commissioner and Ministry of Defence (EA/2007/0055)*, the Information Tribunal said that there may be an argument in favour of disclosure where the subject matter of the requested information would affect “a significant group of people”. Whilst the Commissioner understands that the numbers of LGPS scheme members affected by the decision is great, he recognises that the number of taxpayers who would be affected by increased costs of public sector spending is greater.
33. The Commissioner has noted the information already in the public domain relating to the ongoing debate about the LGPS, particularly the view of the Government in respect of the judgment and the reasons behind the removal of the 85 year rule. It is clear that one of the intentions of the Government in removing the 85 year rule was the reduction in cost to the taxpayer. There has been ongoing consultation with members in respect of protection arrangements and in this respect the reasons are reasonably transparent, and would not be added to by the release of the legal advice.

Balance of the public interest arguments

34. The Commissioner accepts that the established public interest arguments in protecting legal professional privilege must be given due weight. There will always be an initial weighting in favour of maintaining the exemption due to the importance of the concept behind LPP, namely, safeguarding the right of any person to obtain free and frank legal advice which goes to serve the wider administration of justice. This position was endorsed by Justice Williams in the High Court case of *DBERR v Dermot O'Brien [2009] EWHC 164 (QB)* :
- “Section 42 cases are different simply because the in-built public interest in non-disclosure itself carries significant weight which will always have to be considered in the balancing exercise (para 41)... The in-built public interest in withholding information to which legal professional privilege applies is acknowledged to command significant weight” (para 53)*
35. Justice Williams indicated though that section 42 should not accordingly become an absolute exemption “by the back door”. Public interest favouring disclosure would need to be of “equal weight at the very least...” (para 53). The Commissioner is also mindful of the Tribunal’s comments in *Bellamy* in relation to identifying public interest arguments in favour of disclosure.
36. The Commissioner notes the decision of the High Court on 27 September 2006 that the 85 year rule was discriminatory on the basis of age. The Commissioner has had sight of the full judgment *Unison v The First Secretary of State [2006] EWCH 2373 (Admin)*, which outlines arguments and reasoning put before the court. This is available to the public and contains the views and the considerations of the Government on the subject of the 85 year rule. In this respect there is information already in the public domain to provide clarity and transparency for the public to understand the decision of the Government to

remove what was in their view, a discriminatory rule. There is also detail within the judgment of the Government view on the value for money of schemes such as LGPS. It is the view of the Commissioner that making the legal advice behind the decision available publicly would not necessarily provide any additional understanding of how the decision was made and does not sufficiently sway the arguments in favour of disclosure.

37. The Commissioner understands that there is and always will be a public interest in the decisions made by Government. The Commissioner also considers that there is a strong public interest in disclosing information that aids in the public's understanding of how government works. There should also be transparency to aid the public in being informed on matters under debate. However, the Commissioner believes that the release of the legal advice would not add to or aid the understanding of the decision based on it, and that it could in fact cause harm to the client relationship between the Government and its legal advisers and subsequently affect its ability to defend its legal interests.
38. In the Commissioner's opinion there is a strong public interest in understanding the reasons for decisions made by public authorities – in this case, the legality of the removal of a rule from a pension scheme. Disclosure of the legal advice may therefore assist the public's understanding of the legality of the removal of this rule. The Commissioner has placed significant weight on the fact that the removal of the 85 year rule does affect the financial position of the scheme members, however he believes that this is outweighed by the additional financial burden placed on the taxpayer.
39. The Commissioner understands the strong arguments for maintaining legal professional privilege given the client lawyer relationship and as such being able to carry out full and frank discussions in that context is fundamental to the administration of justice. The Commissioner also understands that in such circumstances decision making would be not fully informed and therefore be affected to its detriment if comprehensive and candid legal discussions were not able to be held.
40. In considering where the public interest lies the Commissioner has taken into account the sensitivity and significance of the advice provided which, in his view, leads him to conclude that the inbuilt weight of legal professional privilege in relation to this information is very strong. The Commissioner has attached weight to the fact that the legal advice affects a significant number of LGPS members but moreover has balanced this with the affect on taxpayers. Disclosure of the advice would enable the public to further understand, challenge and debate the reasoning behind the Governments views and decisions, although much of this is available through information already available such as the court judgement and ongoing press releases from the Minister as well as information provided to the LGPS members. The Commissioner has also noted that the advice remains 'live' in terms of the issues to which it relates and therefore at the time of the request the potential for harm to the privilege holder was reasonably significant. Taking all these factors into account: the proportion of people it affects; the 'live' nature of the advice; its sensitivity and significance and the possible harm resulting from the release of the information itself, the Commissioner has concluded that the

public interest in maintaining the exemption outweighs the public interest in disclosing the information under section 42.

Section 35 - Formulation of government policy

41. The Commissioner notes that DLGG sought to rely on the exemption under section 35 of the Act at an advanced stage of the investigation. The Commissioner is mindful of the Tribunal's view as expressed in *Department for Business, Enterprise and Regulatory Reform v Information Commissioner and Friends of the Earth EA/2007/0072, 29 April 2008*) in which it was concluded that:

".....may decide on a case by case basis whether an exemption can be claimed outside the time limits set by [sections] 10 and 17 depending on the circumstances of the particular case".

42. The Commissioner is accordingly under no obligation to consider exemptions introduced at such a late stage. However, in this particular case the Commissioner is satisfied that all the information was correctly withheld under section 42. Therefore the Commissioner does not consider it necessary to make a decision in relation to section 35.

Procedural Requirements

Section 17: refusal notice

43. Where a public authority refuses a request for information it is required under section 17(1) of the Act to provide the applicant with a 'refusal notice' explaining the exemption or exemptions relied upon (see the legal annex for more details). This notice must be provided within the timescale set out in section 10(1), no later than twenty working days following the date the request was received. Section 17(2) provides that a public authority may take additional time to consider the public interest in relation to a qualified exemption, if the authority is satisfied that the exemption is engaged. However the refusal notice issued under section 17(1) must still contain the following elements:
- i) an explanation as to which exemptions are being applied, and why
 - ii) confirmation that the public interest test is still under consideration
 - iii) an estimate of the date by which the authority expects to reach a decision in relation to the public interest test
 - iv) details of the applicant's right of appeal under section 50 of the Act.
44. The Commissioner is of the view that the letter sent to the complainant by Phil Woolas should have been a refusal notice, since it advised that the request was refused. However this letter did not comply with any of the requirements of section 17 of the Act.
45. The Commissioner notes that DCLG accepted that it did not provide an adequate refusal notice, and remedied this at the internal review stage. The Commissioner is of the view that this demonstrates the value of conducting an effective internal

review, as it provides an opportunity for a public authority to learn from initial handling errors and correct these before a complaint is made to the Commissioner.

46. The Commissioner also notes that DCLG sought to rely on the exemption under section 35 of the Act, but failed to raise this until the latter stages of the Commissioner's investigation. Neither the refusal notice nor the internal review letter cited this exemption, therefore DCLG failed to comply with section 17(1) in this regard.
46. The Commissioner is of the view that DCLG failed to comply with the requirements of section 17(1), 17(2), 17(3) and 17(7) as its refusal notice did not contain the elements referred to in paragraph 42 above.

The Decision

47. The Commissioner's decision is that DCLG dealt with the following elements of the request in accordance with the requirements of the Act:
 - DCLG correctly withheld the information in reliance on the exemption under section 42(1) of the Act.
48. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
 - Section 17(1), 17(2), 17(3) and 17(7) in that DCLG failed to provide an adequate refusal notice to the complainant.

Steps Required

49. The Commissioner requires no steps to be taken.

Other matters

50. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
51. The complainant requested an internal review on 26 March 2007. The request for review was acknowledged in April of that year by way of an email to the complainant. In addition, a letter apologising for the delay and explaining that the review would be actioned in accordance with Departmental procedure was sent to the complainant's MP. However, the actual outcome of the review was not communicated to the complainant until 15 January 2009.

52. The review explained that the original response to the complainant's request was handled as Ministerial Correspondence rather than as a request for information and that this appeared to result in the request being overlooked. The Department offered an apology and explained that the need to follow the FOI handling procedures had been raised internally as a result. Whilst the Commissioner welcomes the Department's recognition of its shortcomings in this regard, he notes that the review lacked sufficient detail on the reconsideration of section 42 (1), and on the balance of public interest. He is therefore of the opinion that the Department did not carry out a thorough review and in so doing failed to conform to Part VI of the section 45 Code of Practice.
53. Further, Part VI of the section 45 Code of Practice makes it desirable practice that internal review procedures encourage a prompt determination of the complaint. As he has made clear in his 'Good Practice Guidance No 5', published in February 2007, the Commissioner considers that 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. The Commissioner is concerned that in this case, it appeared to take over 440 working days for an internal review to be completed,
54. The Commissioner is disappointed that such a delay ensued despite repeated attempts to secure conformity with Part VI of the Code of Practice more generally, as described in his [practice recommendation](#) of the 3 November 2008.

Right of Appeal

55. 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 21st day of December 2009

Signed

**Gerrard Tracey
Assistant Commissioner**

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

Legal Annex

Section 42

(1) Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.

(2) 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) in respect of which such a claim could be maintained in legal proceedings.

Section 35

(1) Information held by a government department or by the National Assembly for Wales is exempt information if it relates to—

- (a) the formulation or development of government policy,
- (b) Ministerial communications,
- (c) the provision of advice by any of the Law Officers or any request for the provision of such advice, or
- (d) the operation of any Ministerial private office.

Section 1(1) provides that:

“(1) 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 17 provides that:

(1) 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.

(2) 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.

(3) 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.

(4) 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.

(5) 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.

(6) 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.

(7) A notice under subsection (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.