

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 21 December 2009

Public Authority: Leeds City Council
Address: Civic Hall
Calverley Street
Leeds
West Yorkshire
LS1 1UR

Summary

The complainant requested information held by the council concerning information it held relating to concerns it had about a credit union. The council refused the request on the basis that section 30(2) (investigations) and section 40 applied (personal data). On appeal it also chose to rely upon section 41 (information provided in confidence). The Commissioner's decision is that the council was able to apply section 41 to the information. He has not therefore gone on to consider the application of sections 30 and 40 in this Decision Notice.

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 8 November 2007 the complainant requested the following information from the council:

"I would be grateful if the council would provide the information (including copies of any recorded information) it holds on concerns regarding the management and operation of Leeds City Credit Union over the last five years."

3. The council responded on 19 December 2007. It refused the request on the grounds that sections 30 and 40 of the Act applied.
4. The complainant requested that the authority reviewed its decision on 9 January 2008.
5. On 14 February 2008 the council responded to the complainant's appeal. It stated that in addition to its reliance on sections 40 (personal data) and 30(2) (investigations), it also applied section 41 (information provided in confidence).

Background

Findings of fact

6. Credit Unions are financial co-operatives owned and controlled by their members. A Credit Union has a 'common bond' which determines who can join it. The common bond may be for people living or working in the same area, people working for the same employer or people who belong to the same association, such as a church or trade union. The Commissioner understands that Credit Unions exist, in part, to provide credit for members of the community who may find it difficult to obtain credit from high street banks and other mainstream lenders.
7. The Credit Union started life in 1987 as the Leeds City Council Employees Credit Union serving a common bond of current and retired employees. It changed its name to the Leeds City Credit Union Ltd (the 'LCCU') in 1996 and in 2001 it expanded its common bond to include everyone who lives or works in the Leeds Metropolitan District.
8. The Credit Union is regulated by the Financial Services Authority which is also responsible for monitoring its performance.
9. A series of articles have been published in the Yorkshire Post newspaper alleging mismanagement of the Credit Union. The articles referred to letters from the council to the Credit Union which appeared to suggest that the council had concerns about the Credit Union's management.

The Investigation

Scope of the case

10. On 15 February 2008 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider whether the information he requested should have been disclosed to him.

11. The Commissioner's decision is based on the facts as they stood at the time the request was received by the public authority. The Commissioner recognises that further information relating to this issue has entered the public domain subsequent to the council receiving the request. Recently the LCCU has been reported as needing an emergency cash input of £4 million due to a shortfall it has discovered in its cash reserves. It has sought this 'bail out' from the council and other government bodies. He has taken into account the fact that the LCCU recently recognised this funding issue, and that this has required a substantial input of public funds from various public bodies. He has taken this into account when reaching his decision because he understands that the funding gap existed at the time the request was responded to, even though it was not known about by the council at the time it made its decision to refuse the complainant's request.

Chronology

12. On 5 November 2008 the Commissioner wrote to the council stating that the cases had now been allocated. He asked if it wished to add any further arguments in support of its position that the information was exempt from disclosure. The council responded on 17 November 2008 stating that it did not wish to add further arguments at that time, but would be happy to clarify matters to the Commissioner if that was needed.
13. After a preliminary analysis of the complaint the Commissioner wrote to the complainant on 4 February 2009 stating that his preliminary view was that the information was likely to be exempt, and asking on that basis if he was happy to withdraw his request for a decision on that basis. The complainant replied on the 9 February 2009 providing further arguments in support of the view that the information should be disclosed. He stated that he was not willing to withdraw his request.
14. On 10 March 2009 the Commissioner wrote to the council asking for clarification relating to the claim to section 41 of the Act. The council responded providing that clarification on 12 March 2009.
15. On 17 March 2009 the Commissioner wrote again to the complainant providing a response to the complainant's further arguments and again stating that his view was likely to be that the information would be exempt.
16. The complainant responded again on the same day pointing to new allegations of funding difficulties at the LCCU together with allegations of mismanagement by the former CEO. He asked that these new events be taken into account and the preliminary decision to be reconsidered.
17. On 24 March 2009 the Commissioner responded stating that if this situation was a recent development and occurred after the council made its decision to refuse the request then he could not consider it relevant to his decision. The complainant replied stating that the recent allegations related to facts which were in existence at the time that the council made its decision, albeit that the council did not know about those facts at that time. He therefore felt that the new allegations could be

- taken into account. He asked the Commissioner to produce a Decision Notice in order that he could appeal the final decision should it not find in his favour.
18. On 1 June 2009 the complainant wrote to the Commissioner stating that in light of previous correspondence on another complaint he had made a further request for information on an associated matter in order that recent events could be taken into account for the decision on that case. He provided further correspondence between himself and the council in relation to that request. The Commissioner noted that the new request related in part to the circumstances in this request.
 19. On 11 June 2009 the Commissioner wrote to the council regarding this new complaint. Within that letter he also sought to confirm with the council if it knew whether the recent events which had come to light had been in existence at the time that it had responded to the request in this case. On 14 July 2009 the council responded, confirming that that was the case. It also provided further, additional arguments in support of its position bearing in mind these recent discoveries.

Analysis

Procedural matters

20. Section 10 (1) of the Act requires that a public authority must comply with its obligations under section 1(1) of the Act promptly, and in any event not later than the twentieth working day following the date of the receipt of the request.
21. The complainant made his first request for information on 8 November 2007 but did not receive a refusal notice until 19 December 2007. This period falls outside of the period provided in section 10 of the Act. The council therefore breached section 10(1) of the Act.
22. In its refusal notice of 19 December 2007 the council did not provide the complainant with the specific subsections of section 40 which it was relying upon in order to exempt the information. It did however indicate that section 40 was applicable.
23. Section 17(1)(b) places an obligation upon the public authority that its refusal notice '*specifies the exemption in question*'. The Commissioner's view is that the public authority is thereby required to refer to the specific part(s) of the relevant exemption(s). In this case the council referred generally to section 40 without specifying which sub-section was being applied. The Commissioner is therefore satisfied that the council's failure to stipulate the subsection in this instance is a breach of section 17(1)(b).
24. The council also claimed section 30(2). Again it did not specify which subsection it was relying upon specifically within its refusal notice, however in this instance it did make this clear by stating that the information was exempt because an investigation was carried out in order to ascertain whether any person was responsible for improper conduct and because it relates to information obtained

from confidential sources. In this instance the Commissioner has not recorded a further breach of section 17(1)(b).

25. The Council also breached section 17(1) of the Act in failing to supply a notice compliant with the requirements of that section within 20 working days.

Exemptions

Section 41

26. The council claim that the information they received from the LCCU was received in confidence, and that it is therefore exempt under section 41. Section 41(1) states:

'Information is exempt information if –

(a) it was obtained by the public authority from any other person (including another public authority), and

(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.'

27. In order for the exemption to be engaged the issues to be determined are therefore whether the information was provided to the authority by another person, and whether disclosure of the information would give rise to an actionable breach of confidence. The test of confidence set out in the judgment of Megarry J in *Coco v A N Clark (Engineers) Limited [1968] FSR 415* requires that:

- the information has the necessary 'quality of confidence' – it need not be highly sensitive, but it must not be trivial;
- the circumstances in which the information was provided gave rise to an obligation of confidence, in that a 'confider' provided information to a 'confidant' in the expectation, whether explicit or implied, that the information would only be disclosed in accordance with the wishes of the confider;
- disclosure of the information was unauthorised and would be to the detriment of the person(s) to whom the duty of confidence is owed, or cause a relevant loss of privacy; the action would not fail on grounds which provide a legal defence to a breach of a duty of confidence, for instance that disclosure would be protected by a public interest defence.

The Commissioner recognises that this is not the only test of confidence; however he considers it an appropriate one to use in this case.

28. The Commissioner does not accept that all information is held in confidence merely because the parties decide together that that will be the case. Allowing this would essentially allow parties to contract their way out of their obligations under the Act. The Commissioner has therefore considered whether the information meets the necessary criteria for a duty of confidence to apply.

29. In order to reach a decision on the application of section 41 the Commissioner has considered the nature of the information. Allegations printed in the Yorkshire Post referred to the improper or inefficient use of LCCU funds and mismanagement by the CEO. The Commissioner notes that the allegations had, in part, led the council to investigate the situation at the LCCU with a view to safeguarding the use of public money. Concerns had also been expressed privately to the council by a whistleblower and these had also led the council to investigate the situation.
30. The council states that the information which was provided to it by the LCCU was provided in confidence on the basis of its role as a concerned stakeholder in the LCCU. It also states that information was also provided to it by a whistleblower, who provided that information to it on a confidential basis.
31. The council's investigation was not specifically into any of these allegations, but was into corporate governance at the LCCU. The investigation did not therefore seek to establish the validity of the specific claims which had been made against the CEO, and the council had no statutory rights to oversee or regulate the LCCU or its management in that respect in any event. Its investigation was purely based on its role as a stakeholder in the LCCU and on the historical ties it has with the LCCU.
32. The information does address some of those allegations however, and it includes descriptions of the actions taken by specific individuals in the course of their duties at the LCCU. It includes the personal data of individuals working at the LCCU, including the allegations which were made. It also includes a general assessment of senior employees' actions at the LCCU concerning the management of its funds. The information also contains some personal data of junior employees where those employees have been affected by the actions of more senior staff at the LCCU. However the majority of the information concerns the investigation into the concerns the council had about corporate management at the LCCU, and the council's ongoing relationship with the LCCU.

Was the information obtained from another person?

33. The Commissioner recognises that not all of the documents which are held by the council which fall within the scope of this request would have been provided to it by another person. The LCCU initiated the investigation, and as part of that investigation it drafted letters and created documents. However those documents responded to, and discussed information which was provided to it by the LCCU and/or other persons. Even if an authority drafts documents itself if the information within those documents reiterates or discusses information which was obtained from another person in confidence and its disclosure would reveal that confidential information then section 41 would extend to cover it also. It is the information which must be obtained from another person, not specific documents.
34. Having considered the above the Commissioner is satisfied that the withheld information was provided to the Council by another person. Although some documents have been drafted by the council rather than by third parties, the information contained within those documents includes information which was

provided to it by the LCCU or other persons during its investigation, and all of the information therefore falls within the scope of the exemption.

Does the information have the necessary 'quality of confidence'?

35. The Commissioner has considered whether the information has the necessary quality to be confidential. He is satisfied that the information is not trivial. It specifically addresses concerns raised by the council with the LCCU about corporate governance at the credit union, and contains detailed responses to those concerns by the LCCU. It also contains information which addresses allegations laid against employees at the LCCU which encompasses their personal data.
36. The Commissioner has also considered whether the information is already in the public domain. He has borne in mind the fact that the complainant has published a number of stories in the Yorkshire Post which have been reiterated in other newspapers and online news facilities. Where information is published only in part, confidence will still protect the undisclosed parts of the information. In this case, although these stories relate to the incidents at the LCCU not all of the information is known more widely, and it retains its significance to the parties involved. The Commissioner also notes that the information held by the council deals more with the corporate governance than the published information, which deals more generally with the problems at the LCCU and with allegations relating to the CEO more particularly.
37. The Commissioner has taken into account the fact that an explanatory letter from the council to the complainant dated 19 June 2008 did provide a good overview of the situation between the parties and therefore a lot of the background information to the withheld information has already been provided to him. This letter will have confirmed much of the bare facts about the case, However this overview did not provide the level of detail which would be available from a disclosure of this information.
38. The complainant already has related information from another source. However the fact that a person discloses information in breach of a duty of confidence does not mean that a public authority is then entitled to disclose either that information, or other information which was provided to it in confidence. In addition, the Commissioner is again aware that the level of detail in the information held by the council would appear to be much greater than the complainant already has available to him.

Does the information have the necessary obligation of confidence?

39. It is clear from the information that the LCCU recognised the obligations of the council under the Freedom of Information Act, and that it was actively concerned that information it provided to the council should be held in confidence and not disclosed in response to a request. The nature of the information would also lead to the assumption between the parties that information being passed between the parties was being done on a confidential basis. It is also clear that at all times the intention of the parties was that the information provided should be held in

confidence. During the investigation the LCCU actively sought assurances from the council that it would treat information the LCCU provided to it in confidence. The Commissioner is therefore satisfied that there was an expectation or an understanding that it should be held in confidence and therefore that the necessary obligation of confidence existed. Additionally the Commissioner recognises that the information contains information from whistleblowers and that the council will also hold an obligation of confidence in respect of those individuals.

40. The Commissioner therefore recognises that the council holds the information under an obligation of confidence, that it was provided by another person to the council and that the information has the necessary quality of confidence.

Would disclosure be detrimental to any party?

41. The information the council holds concerns corporate governance within the LCCU, and specific concerns raised by a whistleblower or whistleblowers. The information held in relation to both of these matters includes details about actions taken by identifiable individuals at the LCCU. The complainant's allegations of mismanagement therefore have the potential to prove professionally embarrassing to the reputation of the LCCU and to members of its staff.
42. The council argues that some of the information would impact upon consumer confidence in the credit union. It argues that a disclosure of this information would fuel further media stories, and that this would in itself be commercially damaging to consumer confidence in the Credit Union.
43. The Commissioner is satisfied that the arguments above have merit. A disclosure of the information would have increased concerns regarding the situation at the Credit Union, potentially increasing the loss of confidence in it following the press stories published by the complainant. The council is unable to take into account the likely or proposed use of the information which would be disclosed by the complainant, however a disclosure under FOI is considered to be global. Hence the Commissioner has not taken into account the potential actions of the complainant in deciding that a disclosure would have a detrimental affect on consumer confidence in the LCCU.
44. The Commissioner also considers that a disclosure of the information in this case could prove detrimental to the LCCU in that it may be unable to be as open and frank with the council in the future if this information is disclosed. If this information were to be disclosed, the LCCU may find that it is unable to actively engage with the council at such a level in the future because it would owe a duty to its membership to protect its, (and their) interests and could not guarantee that information it provided to the council would not be disclosed. As an example, in the current situation, the LCCU may not have been able to provide as much detail as was needed by the council in order to allow it to provide it with the bail out money of £2 million. It would also be detrimental if information could not be provided to the council on a full and frank basis in order for the LCCU to agree partnership deals with it to provide additional services in particular areas.

45. The Commissioner also notes that were this information to be disclosed it may prove detrimental to the whistleblowers who provided information to the council in the first instance. If their identities were to become known it could prove to be professionally or personally embarrassing and highlight their actions in disclosing information to the council.
46. The Commissioner is therefore satisfied that a disclosure of the information would cause detriment to the parties to whom the information relates.
47. The Commissioner must therefore consider whether there would be a defence in law to a disclosure of the information. There is no suggestion that the information should be disclosed because disclosure is required by law, or that there is consent to its disclosure from the LCCU. Hence the Commissioner has considered the public interest defence to a disclosure of the information.
48. In *Derry v ICO* (EA/2006/0014) the Information Tribunal clarified that the test to be applied in deciding whether the public interest provides a defence to a breach of a duty of confidence is that the duty should be maintained unless the public interest in disclosing the information outweighs the public interest in protecting confidences.

Public interest in disclosing the information

49. The request to the council was specifically for concerns regarding the management and operation of Leeds City Credit Union over the last five years. As such, information held by the council which falls within the scope of that request would enable taxpayers and concerned members of the LCCU to better understand,
 - a) the situation between the LCCU and the council which eventually ended with direct funding by the council being ceased at that time,
 - b) a better degree of understanding of the circumstances which were reported in the Yorkshire Post, and how the council responded to those concerns, and
 - c) a clearer understanding of the steps which the council took to protect the funds and premises which it was providing to the LCCU and ensure that they were being managed appropriately.
 - d) a clearer understanding of the reasons for the council making the decision to withdraw funding from the LCCU, thereby affecting services which would otherwise have been available to the community.
50. Disclosure of the information would highlight the council's actions in ensuring that public money and premises were being managed appropriately. A disclosure of the information would show whether the council addressed, and thoroughly investigated concerns which had been expressed to it about the LCCU, and whether it adequately took responsibility for ensuring that tax payers' money and premises were being used appropriately by the LCCU. The complainant has also

argued that the investigation does not appear to have been reported to councillors and he questions the accountability of the decisions that were taken if that was in fact the case.

51. The discovery of the funding 'gap' seemingly contradicts a statement which the council made to the complainant in its letter of the 19 June 2008 that it had received satisfactory assurances from internal and external auditors of the LCCU as well as other regulatory bodies relating to the corporate governance of the LCCU. This potential contradiction lends weight to arguments in favour of disclosing the information because the council seemingly accepted the evidence and assurances which were provided to it at that time, and disclosure may highlight flaws in the council's procedures for scrutinising bodies it funds in this.
52. Although the funding gap was not known by the council at the time it made its decision to refuse the complainants request the council has since confirmed to the Commissioner that it was in existence at that time. It can therefore be taken into account by the Commissioner when making a decision on this complaint. In response to this recent crisis the council has provided £2 million emergency loan to the LCCU.
53. A disclosure of the information in this instance would highlight how the council sought to ensure that appropriate governance arrangements and safeguards were in place to ensure that the public money it provided to the LCCU would be managed appropriately, and that financial risks at the LCCU were being properly managed. It would provide a degree of clarity as to the information it had in front of it when deciding that the assurances it received were satisfactory at that time - an important fact given recent developments. It would also make clearer the events which occurred prior to the council withdrawing funding from the LCCU.
54. There is also a wider public interest in the general public being able to ascertain that governance issues were properly addressed given that recent events have required the significant input of public money in order to secure the future of the credit union. Clearly as one of the largest credit unions in the country had governance or high risk factors may have played a significant part in the current circumstances at the credit union. Additional funds provided by government bodies to bail out the LCCU divert resources away from other public functions and there is a public interest in knowing how this came about.
55. The council's letter to the complainant dated 17 June 2008 providing a large amount of background information in summary form about the investigation which the council carried out, the reasons for that investigation and other matters about which the council had had dealings with the LCCU over a number of years. In that letter a lot of the relevant information he has requested was provided to the complainant in summary form. The Commissioner notes that although the specific details of the case cannot be ascertained from this summary, it does provide some information on the reasons for the decisions and the role the council took in this situation.

Public interest in the confidences being maintained

56. In considering the public interest in disclosing the information the Commissioner has taken into account the fact that the LCCU is regulated in its business dealings by the Financial Services Authority rather than the council. The council has no powers to compel the LCCU to provide it with information to allow it to scrutinise the management of the organisation or of the actions of individual employees within that organisation. If the LCCU refused to provide information in order to satisfy the concerns of the council its means of recourse was to withdraw, or threaten to withdraw funding to the LCCU until such time as its concerns were satisfied. Given that the aim of the council in funding the LCCU is generally to benefit areas of the community, withdrawing funding would have been detrimental to the community and would therefore, in itself, be unlikely to be in the public interest, albeit that the countering public interest of protecting public funds may have been of greater weight.
57. The Commissioner notes that much of the information involves the actions of individuals, some of which relate to disciplinary issues relating to those individuals. The council claimed section 40 (personal information) for much of this information, however the Commissioner has also taken into account the nature of the information when balancing the public interest test in maintaining confidence in this instance. He recognises that there is a strong public interest in protecting the employer/employee relationship of trust and confidence and in ensuring that it is maintained rather than weakened.
58. If information is disclosed which was supplied to the council in confidence, then the degree of trust such bodies have in the council to hold the information in confidence would be damaged. Clearly if that is the case then organisations could reconsider providing sensitive employment, financial and corporate information to council's in the future. This would damage the council's ability to properly scrutinise the use its funds are being put to, and could ultimately lead the council into making a decision to withdraw funding from projects completely because of their inability to guarantee that that funding was being used appropriately.
59. In this specific instance the council had to use its position as a stakeholder with the LCCU to obtain the information it needed to assure itself that risks which had been identified were responded to, and were it not for the relationship it had engendered with the LCCU it would not have been able to gain access to the information it needed to do that. That relationship remains ongoing and is of vital importance given the recent emergency funding it has provided to the LCCU.
60. Whilst the council can refuse to fund organisations if information it requires is not accessible to it, the Commissioner considers that the councils funding of such organisations is normally intended to benefit the local community in some way, and a withdrawal of that funding would therefore itself not be in the public interest.
61. The Commissioner considers that the relationship of trust, protected by the duty of confidence, also operates in the public interest in the context of whistleblowing. If individuals could not be assured that their confidences would not be respected they would be unlikely to provide tip-offs about potential wrongdoing.

62. The Commissioner has also taken into consideration additional arguments provided by the council which he is unable to elaborate further upon within this Decision Notice.
63. The Commissioner has balanced all of the above considerations. His view is that the public interest in the information being disclosed in this case does not outweigh the public interest in confidences being maintained, section 41(1) is therefore engaged.

Section 40

64. The council also claimed that the information was exempt under section 40 of the Act. Given that the Commissioner has decided that the information is exempt under section 41 he has not gone on to consider the application of section 40 further.

Section 30

65. The council also claimed that the information was exempt as the exemption in section 30 of the Act was applicable. As the Commissioner's decision is that section 41 applies to this information he has not considered the application of section 30 further

The Decision

66. 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:
 - The authority correctly applied section 41(1) to the information.
67. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
 - The authority did not provide a response to the requestor's request of 8 November 2007 confirming that it held information relevant to the request within 20 working days. This is a breach of section 10(1) of the Act.
 - The authority did not provide a response specifically stating to the requestor which subsection of section 40 it was relying upon in order to exempt the information from disclosure. This is a breach of section 17(1)(b) of the Act.
 - The authority did not provide a refusal notice to the complainants request within 20 working days it therefore breached section 17(1) of the Act.

Steps Required

68. The Commissioner requires no steps to be taken.

Right of Appeal

69. 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

**Anne Jones
Assistant Commissioner**

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

Legal Annex

Information provided in confidence.

41. - (1) Information is exempt information if-

- (a) it was obtained by the public authority from any other person (including another public authority), and
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

(2) The duty to confirm or deny does not arise if, or to the extent that, the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) constitute an actionable breach of confidence.

Section 10

Time for compliance with request

(1) 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.

(2) Where the authority has given a fees notice to the applicant and the fee is paid 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.

(3) 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.

(4) 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.

(5) Regulations under subsection (4) may—

(a) prescribe different days in relation to different cases, and

(b) confer a discretion on the Commissioner.

(6) 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 [1971 c. 80.] Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

Section 17

Refusal of Request

(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.