

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 19 October 2009

Public Authority: The Home Office
Address: 2 Marsham Street
London
SW1P 4DF

Summary

The complainant wrote to the Identity and Passport Service, an executive agency of the Home Office, requesting to know the number of possible ways to compromise the integrity or security of the proposed National Identity Scheme. The Home Office responded that it did not hold the information.

The Commissioner does not accept the Home Office's argument that the number requested by the complainant is not held. Having considered whether or not complying with the request goes beyond a reasonable exercise of judgement, in his view it is not plausible to maintain that no information within the scope of the request is held by the Identity and Passport Service. However, the Commissioner finds that, in this case, even if the scope was reduced, the retrieval exercise that would be required to comply with the request would lead to the cost exemption being engaged.

By claiming that it did not hold the information requested, the Commissioner finds the Home Office breached section 1(1)(a) of the Act. The Home Office also committed procedural breaches of the legislation under sections 10(1) and 16(1) in its 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.

The Request

2. The complainant wrote to the Identity and Passport Service (IPS) (an executive agency of the Home Office responsible for issuing UK passports and ID cards) on

13 December 2007. He requested to know *'the number of ways in which it is known to be possible to compromise the integrity or security of the proposed National Identity Card scheme'*.

3. The Home Office responded on 18 January 2008, advising that the information was exempt from disclosure by virtue of section 31(1)(a) and (e) as it was not in the public interest to disclose the Identity and Passport Service's strategies or tactics for dealing with fraud.
4. The complainant requested an internal review on 19 January 2008. He pointed out that he was not asking for 'strategies or tactics'. He confirmed: *'I would simply like to know the number of ways of breaching the system that IPS is already aware of (I do not wish to know what they are)'*.
5. The Home Office responded on 7 March 2008. It apologised for misreading the complainant's original request and therefore incorrectly citing the exemption at section 31(1)(a) and (e). It confirmed the Identity and Passport Service did not hold the information requested.

The Investigation

Scope of the case

6. On 28 March 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 the following points:
 - that the Identity and Passport Service (IPS) misread his request, both at the initial stage and at internal review;
 - that it was simply impossible for the IPS not to have the information that he actually requested.
7. During the course of the Commissioner's investigation, the complainant was asked to clarify his request. His response was treated as a new, separate, request and the Commissioner has addressed both requests in this Notice.

Chronology

8. The Commissioner wrote to the Home Office on 8 October 2008 asking it to explain the steps it had taken to ascertain what information was held at the time of the request. The Commissioner also asked the Home Office to provide him with information about the National Identity Scheme including details of any reviews that have been carried out to assess the integrity / security of the scheme. He questioned whether, if the information was held within an electronic database, it could be located, retrieved and extracted within the appropriate limit.

9. The Home Office responded on 6 November 2008. While acknowledging the Department '*will hold information relating to actions taken to maintain the scheme's security and integrity*', it went on to explain its rationale for advising the complainant that it did not hold the information he requested.
10. The Home Office argued that, given the level of skill and judgement required to search all the relevant records, '*it is our opinion that the requested information is not held for the purposes of the Act and would need to be created*'. It argued that creating the information would '*significantly exceed the cost limit*'. The Home Office also raised the matter of the interpretation of the request.
11. The Commissioner wrote to the Home Office on 17 November 2008 asking for clarification of its response.
12. The Commissioner telephoned the Home Office on 21 November 2008 to discuss the issue it had raised regarding the interpretation of the request and to remind the public authority of its duty under section 16 of the Act to provide advice and assistance.
13. Following the Commissioner's intervention, the Home Office wrote to the complainant on 12 December 2008 offering him the opportunity to clarify the scope of his request. The Home Office referred to particular areas of the request where clarification would be helpful, explaining that clarification of these areas '*will assist us in narrowing the scope of your request and locating any information we may have*'.
14. The complainant responded on 12 December 2008, confirming that he was requesting:

'the number of ways in which it is possible to compromise the integrity or security of the proposed National Identity Scheme that are -

 - (a) currently being addressed*
 - (b) will be addressed in the future*
 - (c) have been addressed already*
 - (d) have not been addressed, are not being addressed and are not currently planned to be addressed*'.
15. The Home Office responded on 15 January 2009 advising the complainant that it was treating his refined request as a new request. It also confirmed that, following his clarification, it did not hold the information requested. It explained that the Act only requires it to provide information which is held in a retrievable, permanent recorded format and that it does not require a public authority to create information in response to a particular request.

16. The Home Office stated that, to provide the complainant with the information he requested, it would need to create the information. It advised him that this task would significantly exceed the cost limit specified in section 12 of the Freedom of Information Act as it would involve a detailed search of all records relating to the integrity and security of the National Identity Scheme (NIS). The Home Office also informed the complainant the task would need to be undertaken by staff with a significant degree of relevant skills and judgement. The Home Office advised the complainant that it was copying its response to the Commissioner.
17. The Commissioner used his discretion to progress the complaint without requiring the Home Office to conduct an internal review in relation to the new request. He therefore wrote to the Home Office on 26 January 2009 asking it to clarify the basis of its refusal and to provide further evidence in support of its claim that a search would exceed the cost limit.
18. The Home Office responded on 10 February 2009. It said that, on receiving the complainant's clarification, '*it was noted that rather than reducing the scope of the request, his message in fact served to significantly increase it*'. The Home Office provided a detailed response to the Commissioner's questions of 26 January 2009, reiterating that while it held information relating to the integrity and security of the NIS, this did not translate to holding information regarding the number of ways in which the National Identity Scheme could be compromised.
19. The complainant wrote to the Commissioner on 25 February 2009 informing him that he was not satisfied with the Home Office's response dated 15 January 2009.
20. The Commissioner wrote to the Home Office on 18 February 2009 in relation to its argument that it did not hold the information requested. In particular, the Commissioner asked the Home Office to comment on whether there was any information within the scope of the request that would be immediately apparent to a lay person and would not require the involvement of staff with expert knowledge. The Home Office was asked to confirm whether or not there were instances of recorded information that obviously identify ways to compromise the system.
21. The Home Office responded on 4 March 2009, providing a full response to the Commissioner's questions.
22. The Commissioner wrote to the Home Office on 12 March 2009 requesting an explanation of reporting arrangements concerning the security of the National Identity Scheme. The Home Office replied on 23 April 2009.

Background information

23. The National Identity Scheme is a system of personal identification for adults living in the UK. Its cornerstone is the introduction of national ID cards for UK and European Economic Area (EEA) residents over the age of 16. The scheme is supported by legislation, including the Identity Cards Act which received Royal Assent on 31 March 2006. The scheme will be delivered collaboratively by a wide range of government departments (including the Identity and Passport Service,

the Foreign and Commonwealth Office, the UK Border Agency and the Department for Work and Pensions), businesses and other organisations.

Analysis

Procedural matters

Section 16 – Advice and Guidance

24. Section 16(1) provides that:

'It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.'

Section 16(2) provides that

'Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.'

25. The Commissioner wishes to remind the Home Office that Part II of the section 45 Code of Practice sets out some practices which it would be desirable to follow in relation to the provision of advice and assistance.

26. Paragraphs 8 to 11 of the section 45 code deal with “clarifying the request” and relate specifically to circumstances where a public authority needs more detail to enable it to identify and locate the information sought. Paragraph 8 says that public authorities are entitled to ask for more detail *if needed* to enable them to identify and locate the information sought.

27. The Commissioner’s guidance on the subject of interpreting requests advises that, where the meaning of a request is unclear and can be read in more than one way, the public authority should contact the complainant for clarification of his request.

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/practical_application/interpreting_a_request_v1.pdf

28. In this case the problem appears to have been that the Home Office initially misread the request and was then unclear as to what the complainant meant when he requested to know the number of ways ‘in which it is known to be possible’ to compromise the scheme.

29. Taking into account the broad nature of the complainant's request in this case, the Commissioner takes the view that if the Home Office required clarification from the complainant in order to identify and locate the information sought, it should have referred back to him in order to clarify the request. Further, it is the Commissioner's view that best practice would suggest that, if the reasons the complainant put forward for requesting an internal review raised doubt over the scope of his request, the Home Office should have contacted him at that stage to clarify his request.
30. Accordingly, the Commissioner finds that the Home Office breached its duty under section 16 of the Act to provide the complainant with advice and assistance.
31. The Commissioner notes that, following his intervention, the Home Office contacted the complainant in line with its duty to provide advice and assistance.

Section 10 – Time for Compliance

32. Section 10 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.'

A response may take the form of the supply of the requested information, confirmation that the information is not held, a formal refusal or an indication that additional time is required to consider the public interest in relation to specific exemptions.

33. In this case, the complainant made his first request on 13 December 2007 but the Home Office did not provide him with a response until 18 January 2008. It therefore took the Home Office 23 working days to respond to the information request. The Commissioner notes that the 23 working days which the Home Office took to issue its response was clearly in breach of the statutory timescale.
34. Accordingly, the Commissioner finds that the Home Office failed to comply with the time limit set out in section 10(1) in respect of the complainant's request.

Section 1 – General Right of Access

35. The complainant has argued that:

'It is simply impossible for the Identity and Passport Service not to have the information that I actually did request. Either they know of ways to compromise security, or they do not. If they do, then they must therefore know of x ways to do this. If they do not, then they know of zero ways, which means they still know of the number of ways – zero.'

36. Section 1(1) of the Act creates a general right of access to information held by public authorities. Section 1(1) of the Act states:

'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.'

37. Section 84 of the Act defines information for these purposes as *information recorded in any form*.

38. Accordingly, the focus of the Commissioner's investigation has been on whether or not the information requested is held for the purposes of the Act and not on the question of whether or not the Home Office should be expected to know the number requested by the complainant.

39. The Home Office has advised the Commissioner that an extensive amount of work has been, and continues to be, undertaken to ensure the security of the National Identity Scheme. The Commissioner notes that the Home Office acknowledges it holds:

'information relating to the integrity and security of the National Identity Scheme (including the National Identity Register) and measures taken to protect that integrity and security and mitigate any risks'.

40. Throughout this investigation, the Home Office's position has been that although it holds information relevant to the integrity and security of the National Identity Scheme in general, it does not hold the information requested in either the original or the clarified version of the request. It has argued that in order to provide a response to the complainant, the information would need to be created and that the task of creating the information requested would need to be undertaken *'by staff with a significant degree of relevant skills and judgement'*. Further, it has advised that creating the information would significantly exceed the cost limit specified in section 12(1) of the Act. In support of its argument, it has referenced the Information Tribunal case of *Johnson v Information Commissioner and the Ministry of Justice* (EA/2006/0085).

41. In considering this matter, the Commissioner has addressed the following questions:

- Is the information 'held' by the Home Office?
- If it is held, is the Home Office relieved of its obligations to comply with the request because to do so would exceed the limits set out at section 12 of the Act?

Is the information, or any part of it, held by the Home Office?

42. The Home Office has explained that, while the Identity and Passport Service holds information relating to the security and integrity of the National Identity Scheme, it does not record the specific number of known ways to compromise the integrity or security of the system.
43. As this calculation has not already been done, the issue the Commissioner has addressed is whether or not, at the time the request was made, the Home Office held information within the scope of the request in such a way as to be able to respond to the complainant without creating new information.
44. The Home Office has confirmed that information relating to the security and integrity of the National Identity Scheme is held both electronically and manually but not in the form of a central list. It has advised that while it may be possible to perform a part electronic search on some of the records held, ultimately a wider manual search would be required to produce a final number.
45. The Commissioner notes that, while the Act does not require public authorities to create information, there is a difference between extracting or compiling existing information and creating new information. The Commissioner has recently issued guidance on this subject:

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/information_from_original_sources_v1.pdf

Can the information be extracted or compiled from existing information?

46. In this case, the Commissioner has considered it appropriate to look at whether or not the request can be complied with either by the manipulation of information held in files or by extracting information from an electronic database. In his view, the simple manipulation of information on record would not normally amount to the creation of new information. It would be presenting information in a different form from that in which it is held.
47. In relation to electronic databases, it is the Commissioner's view that, by their very nature, they are designed to make use of information recorded in them. The Commissioner considers that all information held in electronic databases is held for the purposes of the Act.
48. The Commissioner accepts that requests for calculations and totals may involve complex queries to be run against information held electronically. However, his view is that the complexity of the query made of an electronic database is not a factor to take into account in deciding whether or not information is held.
49. The Commissioner asked the Home Office to explain the process involved in providing a response to the complainant. In addressing this point, the Home Office has provided detailed responses to the Commissioner's questions about the manner and extent of the searches, including database searches, it would need to undertake in order to comply with the request.

Is the information implicit in the information held?

50. Guided by the Information Tribunal decision in the case of *Home Office v Information Commissioner* (EA/2008/0027), the Commissioner's approach is that a public authority holds the requested information where it is implicit in the information held. In relation to this issue, the Tribunal said:

'thus the fact that the total number of permits is not recorded anywhere as a number is in our view irrelevant, the number is implicit in the records....'

51. The Home Office has argued that the number requested by the complainant is not implicit in the records held by the Identity and Passport Service. Instead, it has argued that the information is so complex it would take a specialist to determine whether or not an element constituted a possible compromise of integrity or security.

Simple collation or skill and judgement required?

52. In regard to the Home Office's argument, the Commissioner has considered whether or not the steps needed to get from the retrieved information to the information requested involve a simple collation of data or require the application of skill and judgement. His approach is that even where a public authority holds the raw data to answer requests, there will be some requests that go beyond a reasonable exercise of judgement.
53. The Home Office has argued that while it may be possible for someone without specific expertise in the scheme to identify broad areas relating to the security of the scheme, it does not consider it possible for a lay person to identify a definite 'way' to compromise the scheme. It therefore argues that the level of skill and judgement required to comply with the request is such that it does not hold the information requested by the complainant.
54. In considering this matter, the Commissioner has taken account of the Tribunal ruling in *Johnson v Information Commissioner and the Ministry of Justice* (EA/2006/0085) that what amounts to a simple rather than a complex calculation depends on the level of skill and judgement required to carry out the task. The Commissioner applies the same approach to the test of skill and judgement regardless of whether the information is held in manual or electronic files.
55. In order to establish whether the request can be complied with by way of a simple calculation, the Commissioner asked the Home Office to provide further evidence, including the level of judgement required, in support of its claim that the task would need to be undertaken by staff with the relevant skills and judgement. In particular, he asked the Home Office if there is any information that is readily available that can be counted and that would be immediately apparent to a lay person.
56. The Home Office explained that work undertaken to ensure the integrity and security of the scheme would have been completed by individuals with a high

level of expertise in such matters. It has argued that the staff required to conduct the relevant searches would therefore need to be experienced enough to differentiate what might constitute a way to compromise the scheme and consequently what needs to be included in the calculation required to comply with the request.

57. As a result, the Home Office's view is that the creation of a number in response to the complainant's request could not be achieved by a simple search through the retrieved information and a tallying up of retrievals. Instead, any attempt to establish the number requested by the complainant would necessarily involve those staff with the skill and judgement to be able to ascertain what a 'compromise' would look like.
58. While he would accept this argument for a purely technical system, the Commissioner has taken into account the significance and wide ranging scope of the National Identity Scheme as well as the broad nature of the complainant's request when considering the circumstances of this case.
59. The Commissioner accepts that, due to the nature of the Scheme, there are areas of the system which necessarily involve staff with specific expertise in the security of the system. The Commissioner therefore considers that, in respect of some of the raw data, the manipulation required in order to comply with the request would require complex judgement, involving the application of specialist knowledge. He accepts this would be to such an extent that it would amount to the creation of new information not already held. However, he is not persuaded that all the information within the scope of the request concerns specialist topics and therefore does not accept that all the raw data would require someone with expertise to make a complex judgement in order to comply with the request.
60. He notes that, in relation to the security of information, the Scheme is described by the Home Office as providing 'the highest levels of protection through personnel security, physical security and legislative protection as well as technical security and controls'. He therefore considers it unreasonable to maintain that all the information regarding the Scheme is of a technical nature.
61. The Commissioner also considers that, even though significant and unique in its entirety, the Scheme necessarily embodies elements of standard IT projects and therefore the concept of compromise would be expressed in some places. He therefore finds it reasonable to conclude, in this case, that some information will be held.
62. As a result, by claiming that it did not hold the information, the Commissioner finds the Home Office breached section 1(1)(a) of the Act.

Would complying with the request exceed the cost limits in section 12?

63. The Commissioner has gone on to address the question of whether, in relation to the information it holds, the Home Office could comply with the request within the appropriate limit.

64. Section 12 of the Act does not oblige a public authority to comply with a request if the authority estimates the cost of complying with the request would exceed the appropriate limit. Full details of the section can be found in the legal annex of this notice.
65. In accordance with the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations'), the only activities which an authority can take account of when determining the costs it reasonably expects to incur in relation to the request are:
- (a) determining whether it holds the information;
 - (b) locating the information or a document which may contain the information;
 - (c) retrieving the information or a document which may contain the information;
 - (d) extracting the information from a document containing it.
66. The Home Office has argued that even if the Identity and Passport Service were able to produce a figure, the creation of the number would significantly exceed the cost limit. In support of this argument, the Home Office has explained that identification and consideration of potential compromises to the integrity and security of the proposed Scheme could have taken place at any time during the life of the Scheme's development and could have arisen in a broad range of circumstances.
67. The Commissioner understands that the National Identity Scheme is being delivered by a significant number of projects and sub-projects within the Identity and Passport Service with information held in a large number of locations and on a multitude of subjects. The Commissioner also accepts that the wording of the request is such that it covers a range of components of the Identity and Passport Service. He notes that, following his intervention, the complainant was contacted with a view to him narrowing the scope but that he failed to do so.
68. The Home Office has argued that, due to the wide ranging nature of the complainant's request, and consequently the variety of keywords with which a search could be undertaken, such a search would inevitably result in the retrieval of a significant amount of material. In order to comply with the request, this material would then need to be checked thoroughly and a decision taken as to which parts of the retrieved information were relevant to the request.
69. The Home Office has estimated that this process would cost at least £4,400 but could be considerably more. The Home Office has provided the Commissioner with a breakdown showing how it arrived at this figure, together with its reasons for advising that it could be exceeded.
70. The Home Office has also argued that even if it were possible to conduct a search query, it could not be expected to provide a reliable figure in response to the request within the cost limit.
71. In this respect, the Commissioner notes that the Act gives a right to information held, not to information which is accurate. In his view, a public authority is able,

when responding to a request, to explain that its response does not represent the total number known. The fact that information retrieved in a query may not be accurate is not sufficient in defending the position that the information is not held.

72. The Commissioner considers that, although the Home Office holds information from which it could calculate a number in response to the complainant's request in respect of the information it holds, the retrieval exercise it would be required to undertake to retrieve all the documents from which to calculate the requested number would exceed the appropriate limit. Accordingly, he finds the cost exemption engaged.

Exemption

73. The Commissioner notes that the Home Office initially refused the request citing the exemptions at section 31(1)(a) and (e) of the Act. However, he notes that, at the time of the internal review, the Home Office apologised to the complainant for incorrectly citing the exemption and informed him instead that the information was not held.

The Decision

74. The Commissioner does not accept the Home Office's argument that the number requested by the complainant is not held. Having considered whether or not complying with the request goes beyond a reasonable exercise of judgement, in his view it is not plausible to maintain that no information is held by the Identity and Passport Service. However, the Commissioner accepts that, in this case, even if the scope was reduced, the retrieval exercise that would be required to comply with the request would lead to the cost exemption being engaged.
75. The Commissioner's decision is therefore that the public authority did not deal with the request for information in accordance with the Act and breached s1(1)(a) by denying at the internal review stage that it held any information. It also breached section 10(1) by failing to respond within the statutory 20 working day time limit. Further, it failed to provide adequate advice and assistance and therefore breached its obligations under section 16(1).

Steps Required

76. The Commissioner requires no steps to be taken.

Right of Appeal

77. 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 19th day of October 2009

Signed

**Steve Wood
Assistant Commissioner**

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

Legal Annex

General Right of Access

Section 1(1) provides that -

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

Section 1(2) provides that -

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

Section 1(3) provides that –

“Where a public authority –

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”

Section 1(4) provides that –

“The information –

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”

Section 1(5) provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

Section 1(6) provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.”

Time for Compliance

Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

Section 10(2) provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.”

Section 10(3) provides that –

“If, and to the extent that –

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

Section 10(4) provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

Section 10(5) provides that –

“Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.”

Section 10(6) provides that –

“In this section –

“the date of receipt” means –

- (a) the day on which the public authority receives the request for information, or
- (b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”

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.

Duty to provide Advice and Assistance

Section 16(1) provides that -

“It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it”.

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.”