

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 9 November 2009

Public Authority: Royal Mail Group PLC
Address: 148 Old Street
London
EC1V 9HQ

Summary

The complainant made a request under the Freedom of Information Act 2000 (the 'Act') to the Royal Mail for information relating to Post Offices in Norfolk. The Royal Mail refused the complainant's request as it stated that some of the information requested was exempt from disclosure by virtue of section 43(2) of the Act. The Royal Mail confirmed that the remainder of the information requested was not held under section 1(1)(a) of the Act. The Commissioner has reviewed the withheld information and has decided that section 43(2) was not correctly engaged in this case. The Commissioner considers that the remainder of the requested information is not held under section 1(1)(a) of the Act. Furthermore the Commissioner considers that the Royal Mail breached section 1(1)(b) and section 10(1) in the handling of this 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. On 22 May 2008 the complainant made a request for the following information:-
 - i. A list of which Post Office branches in Norfolk are profitable and those which receive a public subsidy to maintain them; and
 - ii. The amount of public subsidy that each of the non-profitable branches receive on an annual basis.

3. On 12 June 2008 the Royal Mail responded to the complainant's request for information. In relation to point i of the request it stated that the information requested was held. However it stated that whilst the profitability of Post Office branches may be of interest to the general public it felt that profitability is commercially sensitive. It therefore applied the exemption contained at section 43(2) of the Act, which relates to likely prejudice to commercial interests, to withhold the information. It stated that the public interest favoured withholding the information in this case. It stated that if the information were released it would adversely affect a sub postmaster's business. It stated that an example of this would be if a sub postmaster wished to sell their business. It explained that a branch not included in a list of profitable Post Office branches would by default be considered unprofitable. It explained that a sub postmaster could find the value of their business severely reduced and may find great difficulty in selling. It clarified that although a branch may not be profitable to Post Office Limited it may be profitable to the sub postmaster.
4. In relation to the information requested at point ii of the request it stated that the network subsidy payment is not broken down to area or branch level, therefore it was unable to provide the breakdown of information requested. The complainant was however provided with a link which detailed subsidy granted to Post Office Limited as a whole in 2003 (and associated terms) which relate to the periods up to and including the 2006/2007 financial year. A link was also provided for the current period at the time of the request.
5. As the complainant was dissatisfied with the response he had received he requested an internal review to be carried out.
6. On 22 August 2008 the Royal Mail wrote to the complainant with the result of the internal review it had carried out. The Royal Mail upheld its decision to withhold the information requested at point i of the request in reliance upon the section 43(2) exemption. In relation to point ii of the request it confirmed that the information was not held.

The Investigation

Scope of the case

7. On 29 September 2008 the complainant made a formal complaint to the Information Commissioner's Office (ICO) about the way his request for information had been handled. The complainant asked the Commissioner to consider whether the Royal Mail had correctly applied the section 43(2) exemption in relation to point i of the request. The Complainant also asked the Commissioner to consider whether the Royal Mail held any recorded information relevant to point ii of his

request.

Chronology

8. On 25 June 2009 the Commissioner wrote to the Royal Mail and asked it to provide him with a copy of the withheld information for the purposes of his investigation. The Commissioner also asked the Royal Mail to provide any arguments it wished to rely upon in support of its application of section 43(2).
9. On 27 July 2009 the Royal Mail wrote to the Commissioner to provide its further arguments in support of its application of section 43(2) of the Act. It also provided the Commissioner with a copy of the withheld information.
10. On 18 September 2009 the Commissioner wrote to the Royal Mail in order to obtain its submissions to support its conclusion that no information was held relevant to point ii of the request.

Analysis

Substantive Procedural Matters

11. Section 1(1) of the Act states 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.”
12. The Commissioner has considered whether the Royal Mail has complied with section 1(1)(a) of the Act by stating that it did not hold the information requested at point ii of the request. In order to do this the Commissioner has considered whether this information is held by the Royal Mail.
13. The Royal Mail explained that the annual network subsidy is in place to assist Post Office Limited in meeting its costs in the running of the unprofitable parts of the network, enabling essential services such as cash and banking facilities, pensions and benefits and bill payments, to be provided on a nationwide basis. It clarified that the subsidy is a payment to Post Office Limited, and is not received by individual branches.
14. The Royal Mail therefore stated that it does not hold any recorded

information relevant to the scope of point ii of the request, nor had it ever held this information. It clarified that there is no business need for the information to be broken down as requested by the complainant nor is there any statutory requirement which obliges Royal Mail to hold the information in this way.

15. Finally Royal Mail stated that information is held in relation to the annual network subsidy and it explained that it has provided the complainant with advice and assistance in this regard.
16. The Commissioner is mindful of the Tribunal's decision in *Bromley v the Information Commissioner and the Environment Agency (EA/2006/0072)* in which it was stated that "there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records". It was clarified in that case that the test to be applied as to whether or not information is held was not certainty but the balance of probabilities. This is therefore the test the Commissioner will apply in this case.
17. In discussing the application of the balance of probabilities test, the Tribunal stated that, "We think that its application requires us to consider a number of factors including the quality of the public authority's initial analysis of the request, the scope of the search that it decided to make on the basis of that analysis and the rigour and efficiency with which the search was then conducted. Other matters may affect our assessment at each stage, including for example, the discovery of materials elsewhere whose existence or content point to the existence of further information within the public authority which had not been brought to light. Our task is to decide, on the basis of our review of all of these factors, whether the public authority is likely to be holding relevant information beyond that which has already been disclosed." The Commissioner has therefore taken this into account in determining whether or not the requested information is held on the balance of probabilities.
18. The Commissioner is also mindful of the case of *Ames v the Information Commissioner and the Cabinet Office (EA/2007/0110)*. In this case Mr Ames had requested information relating to the September 2002 "Iraq's Weapons of Mass Destruction" dossier. The Tribunal stated that the Iraq dossier was "...on any view an extremely important document and we would have expected, or hoped for, some audit trail revealing who had drafted what..." However, the Tribunal stated that the evidence of the Cabinet Office was such that it could nonetheless conclude that it did not "...think that it is so inherently unlikely that there is no such audit trail that we would be forced to conclude that there is one..." Therefore the Commissioner is mindful that even where the public may reasonably expect that information should be held this does not necessitate that information is held.
19. In coming to a conclusion upon this case the Commissioner has taken

into account the explanation provided by the Royal Mail as well as the Tribunal decisions highlighted above. The Commissioner considers that on the balance of probabilities the information requested at point ii of the request is not held by the Royal Mail.

Exemptions

Section 43(2)

20. Section 43(2) provides an exemption from disclosure of information which would or would be likely to, prejudice the commercial interests of any person (including the public authority holding it). This is a qualified exemption, and is therefore subject to the public interest test.
21. In this case the Royal Mail has stated that disclosure of the requested information would be likely to prejudice the commercial interests of Post Office Limited as well as the sub postmasters who operate the relevant branches. The threshold to prove would be likely to prejudice is lower than if the Royal Mail had claimed that the commercial interests would be prejudiced. In dealing with the issue of the likelihood of prejudice, the Commissioner notes that in the case of *John Connor Press Associates Limited v The Information Commissioner* (EA/2005/0005), the Information Tribunal confirmed that “the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk” (paragraph 15). He has viewed this as meaning that the risk of prejudice need not be more likely than not, but must be substantially more than remote.
22. In order to determine whether the exemption is engaged the Commissioner has first considered whether the prejudice claimed relates to the commercial interests of Post Office Limited as well as the sub postmasters’.
23. The term ‘commercial interests’ is not defined in the Act. However the Commissioner has considered his awareness guidance on the application of section 43. This comments that,

“...a commercial interest relates to a person’s ability to participate competitively in a commercial activity, i.e. the purchase and sale of goods or services. “
24. The Commissioner has also noted guidance issued by the Scottish Information Commissioner in relation to commercial interests and section 33(1)(b) of the FOI (Scotland) Act 2002. This guidance states that,

“...commercial interests will specifically relate to any commercial trading activity it undertakes, e.g. the ongoing sale and purchase of goods and services, commonly for the purpose of revenue generation. Such activity will normally take place within a competitive environment.”

25. In the case of FS50122723, the Commissioner accepted that the public authority engages in commercial activities. In other words, although it is principally funded by tax payers, like private companies, it operates within a competitive communications market and there are therefore aspects of its operations which have to be protected from unfair competition. Its unique position does however pose some challenging questions in relation to its application of section 43(2) of the Act.
26. The Commissioner is mindful of the Tribunal's decision in Hogan v Oxford City Council EA/2005/0026 EA/2005/0030 in which it was commented that, "Second the nature of the 'prejudice' being claimed must be considered. An evidential burden rests with the decision maker to be able to show that some causal relationship exists between the potential disclosure and prejudice and the prejudice is, as Lord Falconer of Thoronton has stated "real, actual or of substance" (Hansard HL (VOL. 162, April 20, 2000, col. 827). If the public authority is unable to discharge this burden satisfactorily, reliance on 'prejudice' should be rejected." The Commissioner has therefore sought to determine whether the prejudice claimed by Royal Mail is "real, actual or of substance".
27. The Royal Mail has argued that both the Post Office Limited's and the sub postmasters' commercial interests would be likely to be prejudiced.
28. The Royal Mail has argued that Post Office Limited's commercial interests relate to its ability to participate competitively in a commercial activity. It has suggested that if the information requested were disclosed it would be likely to prejudice its commercial interests as the information may be utilised by Post Office Limited's competitors, allowing them to identify opportunities and target their own business activities accordingly. It argued that this may weaken Post Offices Limited's position in a competitive environment as it would reveal market sensitive information which may be useful to competitors. It has argued that this would be likely to prejudice Post Office Limited's commercial interests. Furthermore it suggested that disclosure may also lead customers to look for alternative means to access services offered by the Post Office in anticipation of closures if branches do not appear on the profitable list. It has again argued that this would be likely to prejudice the commercial interests of Post Office Limited.
29. The Royal Mail has also argued that the sub postmaster's commercial interests relate to the profitability of their respective branches as well as the potential saleability of a particular Post Office as a business. It has suggested that if the information were disclosed it would be likely to prejudice those commercial interests as it may reduce the profitability of particular Post Office branches as well as reducing the value of a sub postmaster's business upon sale.

30. Finally it argued that if disclosure not only reduced the value of a Post Office branch but made it difficult to secure a purchaser, this may lead to enforced closures where a replacement sub postmaster could not be found. It suggested that this would be likely to prejudice the commercial interests of Post Office Limited.
31. The information requested is a list of Post Offices which Post Office Limited deems profitable. The Commissioner considers that Post Office Limited operates in a competitive market and the prejudice claimed is that Post Office Limited's competitors may use the requested information to gain a commercial advantage over Post Office Limited and that customers may seek other means of accessing services offered by the Post Office in anticipation of closures if branches do not appear on the profitable list. The Commissioner is of the view that the prejudice claimed does relate to Post Office Limited's ability to participate competitively in the market within which it operates. The Commissioner therefore considers that the prejudice claimed does relate to Post Office Limited's commercial interests. Furthermore the Commissioner considers that the profitability of a particular Post Office branch as well as the value upon sale would relate to the sub postmaster's commercial interests. The Commissioner considers that the prejudice claimed does relate to the sub postmaster's commercial interests. Finally the Commissioner considers that if another result of disclosure may be that some branches may face enforced closure if a replacement sub postmaster could not be found this again he is satisfied that the possibility of enforced closures does relate to the commercial interests of Post Office Limited.
32. The Commissioner therefore went on to consider how any prejudice to Post Office Limited's commercial interests and the sub postmaster's commercial interests would be likely to be caused by the disclosure of the requested information.
33. In support of its use of this exemption Royal Mail has stated that in relation to Post Office Limited's commercial interests, although it did not have any examples of such prejudice occurring (because information of the type requested had never been released) it did believe that this information would be useful to its competitors. It explained that the commercial market in which Post Office branches operate is extremely competitive as almost all of the services offered by Post Office branches face open competition. It explained that these services include financial services such as money transfer, bill payment, insurance, banking and investment facilities and currency exchange, Telecoms services such as Homephone and Broadband as well as stationary products. It explained that Post Office Limited owns only a few of the products and services it provides at its branches, it clarified that the vast majority are owned by its clients and commercial partners. It explained that these products face competition from the traditional high street and the internet. It explained that competing products to most of the financial services offered by Post Office Limited

are available through high street banks or again via the internet, and alternative bill payment or top up and pre-pay services are offered by many newsagents or local stores.

34. It referred the Commissioner to a previous decision notice issued under reference FS50066054. It explained that in this decision notice the Commissioner agreed that disclosure of commercially sensitive information relating to a particular Post Office branch may prejudice the Post Office Limited and others commercial interests, particularly in light of the fact that Post Office Limited's direct competitors are not under a similar duty to disclose such information. It explained that the Commissioner acknowledged that Post Office Limited "essentially operates as a commercial venture within a competitive environment". It suggested that although the information requested was different in that case it believed the same considerations were applicable to the disclosure of a list of branches in Norfolk which were profitable to Post Office Limited.
35. The Royal Mail has also argued that customers may seek other means of accessing services offered by the Post Office in anticipation of closures if branches do not appear on the profitable list which would prejudice its commercial interests. It explained that it was aware of situations where particular Post Office branches have begun to lose customers at the beginning of a consultation exercise to propose a possible closure. It explained that sub postmasters had reported that their customers looked for alternative ways to conduct their business through banks, the internet or travelling to other branches. It stated that this would indicate that by damaging the reputation of a branch by implying that it is unprofitable to Post Office Limited could have a similar impact and change the way customers use a specific branch. It argued that this would prejudice the commercial interests of Post Office Limited as well as the sub postmasters of the branches who do not appear on the profitable list.
36. Finally the Royal Mail argued that when a sub postmaster is ready to realise his investment in a business with an associated Post Office branch, for example when he reaches retirement, the whole business is advertised on the open market. It explained that if a potential purchaser were to become aware that a particular branch is unprofitable (because it is not listed as profitable), it may be dismissed as an investment opportunity without considering the detail relating to the individual profitability of the business. It suggested that a sub postmaster could therefore find the value of their business severely reduced. The Royal Mail highlighted that the list could be misinterpreted, as a Post Office branch which is not profitable to Post Office Limited may still be profitable to the individual sub-postmaster. In wider terms it explained that this could lead to a depressed market for Post Office branches, which could in turn damage Post Office Limited's ability to properly resource the network and may lead to a series of forced closures where no sub postmaster can be found to replace a retiring sub

postmaster. It suggested that this would be likely to prejudice Post Office Limited's commercial interests.

37. In this case whilst the Commissioner does consider that Post Office Limited does operate within a competitive environment in relation to the services it has highlighted, he does not consider that the risk of causing prejudice to these services has been shown to be "real, actual or significant" by release of the list of profitable Post Office branches in this case. The Commissioner does not consider that it has been demonstrated how a list of names of the branches that Post Office Limited considers profitable would provide its competitors with any significant commercial advantage. The Commissioner accepts that competition to provide the services highlighted is substantial however the Royal Mail has not provided any significant evidence that release of the requested information may weaken the position of the Post Office Limited, as it has not provided any submissions as to how it believes its competitors would be likely to use the information to gain any advantage.
38. In relation to the decision notice highlighted by the Royal Mail issued under case reference FS50066054, the Commissioner considers that the information in that case was different to the information in this case. In case reference FS50066054 the request related to a mystery shopper survey and was for detailed information surrounding strategies, goods and services. Although the principles of that case may apply in this case the likelihood of prejudice occurring is dependant on the particular circumstances of each individual case and the information involved.
39. Furthermore the Commissioner does not consider that the risk of customers seeking alternative means of accessing the services which are provided by Post Office Limited elsewhere has been shown to be "real, actual or significant" if the list of profitable Post Offices were disclosed. Although the Royal Mail has identified a link between a consultation on the potential closure of particular Post Office branches and a list of profitable (and by implication non-profitable) branches it has not provided sufficient explanation of why it considers the two situations to be directly comparable and to be likely to result in the same affect on customer behaviour.. In the former scenario it is obvious that there is a real potential that a branch could be closed. However in the latter scenario there is no suggestion that a branch that does not appear on the list of profitable Post Offices will inevitably end up being considered for closure. Whilst the Commissioner accepts the consultation example as evidence of likely customer behaviour where it is known for a fact that a branch is being considered for closure, he is has not been given sufficient reason to accept it as evidence of customer behaviour prior to this point. He notes that whilst it is possible that customers would react to the disclosure of the information in question in the way suggested by the Royal Mail, it is also possible that customers would not take any action until they knew for certain that the

branch was actively being considered for closure. It is also possible that if local communities interpreted the information as suggesting a threat of closure they might increase their usage of the branch, in an attempt to minimise this threat. Without submissions from the Royal Mail explaining why the two situations are directly comparable, or evidence about customer behaviour prior to a consultation being announced the Commissioner is unable to conclude that the likelihood of the prejudice to Post Office's commercial interests occurring is real actual and of substance.

40. In relation to the potential damage to the saleability of certain Post Office branches having a prejudicial effect on both Post Office Limited's and the sub post masters commercial interests, the Commissioner again does not consider that the suggested risk posed by disclosure has been demonstrated to be "real, actual or significant". The Royal Mail has highlighted that simply because a Post Office branch is not deemed profitable to Post Office Limited does not necessarily mean that a branch is not profitable to the sub postmaster. This explanation could be released alongside the list of profitable Post Office branches to put it into some context and would go some way to relieving some of the concerns raised. Furthermore the Commissioner does not consider that the list of deemed profitable Post Office branches is the only information potential buyers would consider when considering a decision of the magnitude of purchasing a new business. In relation to the prejudice to the Post Office Limited, Royal Mail has also not provided any arguments as to how the closure of unprofitable post offices would be likely to damage Post Office Limited's commercial interests. Taking into account the above, the Commissioner is unable to conclude that that this prejudice to Post Office's and the sub postmasters commercial interests is likely to occur..
41. In reaching his conclusion, the Commissioner has been mindful of the Tribunal decision in the case of *Derry City Council v the Information Commissioner EA/2006/0014*. In this case the Council argued that the commercial interests of a third party, Ryanair, would be likely to be prejudiced if the requested information were disclosed. The Council did not ask Ryanair for its views as to whether it believed its commercial interests would be likely to be prejudiced nor did Ryanair present any evidence to the Tribunal. The arguments put forward by the Council to the Commissioner as well as to the Tribunal were based upon the Council's thoughts on the point and not on representations made by Ryanair. In the absence of any evidence from Ryanair the Tribunal stated that it was unable to conclude that Ryanair's commercial interests would be likely to be prejudiced. The Commissioner acknowledges that the approach taken by the Tribunal may not be appropriate in every case and therefore public authorities may sometimes have to formulate its arguments based on its prior knowledge of a third party's concerns rather than directly contacting a third party. In this case the Commissioner considers that because of the nature of the Royal Mail's business, and its relationship with the

third parties concerned, the Royal Mail is well placed to have prior knowledge of the concerns of both Post Office Limited and the sub postmasters. This is in contrast to the situation in the Derry Council case, where the Council was unlikely to have had such knowledge about the business and concerns of Ryanair. Whilst direct evidence from the third parties in this case might, depending upon its content, have strengthened the Royal Mail's case the Commissioner has not rejected the Royal Mail's evidence on this basis.

42. Upon the evidence provided by the Royal Mail the Commissioner is unable to conclude that Post Office Limited's commercial interests or the sub postmaster's commercial interests would be likely to be prejudiced by disclosure of the requested information. On this basis the Commissioner has decided that the section 43(2) exemption is not engaged and considers the withheld information should be disclosed. He has therefore not gone on to consider the public interest test in this case.
43. The full text of section 43 can be found in the Legal Annex at the end of this Notice.

Procedural Requirements

Section 1(1)

44. Section 1(1) of the Act 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.”

45. The Commissioner has considered whether the Royal Mail has complied with section 1(1) (b) of the Act.
46. As the Commissioner considers that the Royal Mail incorrectly applied the section 43(2) exemption in order to withhold the information requested at point i of the request, it has breached section 1(1)(b) of the Act by failing to communicate the information to the complainant in response to the request.

Section 10(1)

47. Section 10(1) of the Act 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.”

48. The Commissioner has considered whether or not the Royal Mail complied with section 10(1) of the Act.
49. As the Royal Mail did not provide the requested information to the complainant within the statutory time for compliance because it incorrectly applied the section 43(2) exemption, the Commissioner considers that it breached section 10(1) of the Act in relation to its obligation under section 1(1)(b).

The Decision

50. The Commissioner’s decision is that the Royal Mail dealt with part ii of the complainant’s request in accordance with the requirements of the Act.
51. However he has also decided that the Royal Mail incorrectly applied the section 43(2) exemption to point i of the requested information.
52. As the Royal Mail incorrectly applied the section 43(2) exemption it breached section 1(1)(b) as it failed to provide the complainant with the requested information.
53. As the Royal Mail did not provide the complainant with the requested information within the statutory time for compliance it breached section 10(1) of the Act.

Steps Required

54. The Commissioner requires the Royal Mail to disclose the information requested at point i of the request to the complainant.
55. The Royal Mail must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

56. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

57. 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 9th day of November 2009

Signed

**Lisa Adshead
Senior Policy Manager**

**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.”

Commercial interests.

Section 43(1) provides that –

“Information is exempt information if it constitutes a trade secret.”

Section 43(2) provides that –

“Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).”

Section 43(3) provides that –

“The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the interests mentioned in subsection (2).”