

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 2 September 2009

Public Authority: Metropolitan Police Service
Address: Public Access Office
20th Floor Empress State Building
Lillie Road
London
SW6 1TR

Summary

The complainant requested a borough breakdown of the number of sex and race discrimination cases and details about them. The public authority had already provided the global numbers but said that it could not provide this borough breakdown. It originally relied on section 12(1) for some elements and section 40(2) for others. During the Commissioner's investigation, the public authority withdrew its application of section 12(1) and applied section 40(2) to all the elements it continued to withhold. It said that it did not hold some information and provided its reasons. The Commissioner has considered the application of section 40(2) and has determined that he agrees with the application of it in this case. He is also content on the balance of probabilities that the public authority does not hold the information that it has denied holding. He has however found breaches of section 17(1) in issuing a section 12(1) notice incorrectly and section 17(1)(b) and (c) in failing to apply section 40(2) and failing to explain why within the twenty day statutory timescale. He requires no remedial steps to be taken in this case.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

Background

2. The complainant has made a series of requests for information concerning the numbers of race and sex discrimination cases within the MPS. The Commissioner

is only considering her latest request for information and how the public authority has dealt with it.

3. He does note however that the following information has been provided on 18 November 2008 to the complainant, so is now in the public domain:
 - The force wide figures for Fairness at Work cases in relation to the number of racial and sexual discrimination cases.
 - The number of Employment Tribunal cases force wide by year that had racial or sexual harassment elements within them.
 - The results of those Employment Tribunal cases that have been completed and the number that had not been resolved at the time of the request.
 - A breakdown of the money paid out in relation to these Employment Tribunal cases for the years 2004/2005, 2005/2006, 2006/2007 and 2007/2008.
4. The complainant has also been provided with information relating to complaints handled by the Directorate of Professional Standards.

The Request

5. On 16 January 2009 the public authority confirmed by email the receipt of a new request for information from the complainant. It was for a breakdown by borough for the following eight questions:

'Racial Discrimination'

1. *'The number of employment tribunal cases, fairness at work reports and /or any other recorded instances (excluding conduct matters) where any officer or member of the police staff has brought a case against the MPS relating to racial harassment or any contravention of race laws.'*
2. *The number of the above matters that have been completed or are pending completion.*
3. *The number of the above that have been found in favour of the complainant or the MPS.*
4. *Details of any compensation, whether by settlement or tribunal finding, that has been paid by the MPS in relation to the mentioned Employment Tribunal cases?*

'Sexual Discrimination'

5. *'The number of employment tribunal cases, fairness at work reports and /or any other recorded instances (excluding conduct matters) where any officer or*

member of the police staff has brought a case against the MPS relating to sexual discrimination or any contravention of sex laws.

6. *The number of the above matters that have been completed or are pending completion.*
 7. *The number of the above that have been found in favour of the complainant or the MPS.*
 8. *Details of any compensation, whether by settlement or tribunal finding, that has been paid by the MPS in relation to the mentioned Employment Tribunal cases?'*
6. On 28 January 2009 the public authority conducted an internal review into the handling of all of the complainant's previous requests about the figures. It said that it was varying its original determination. Firstly it apologised for the delays that had been experienced up to now.
7. Its position was as follows:

In relation to Employment Tribunal hearings:

- For questions 1, 2, 4, 5, 6 and 8. It confirmed that it did hold this information but that it was withholding it. This is because it believed that section 40(2) applied to this information. It said that it believed that the release of the information would contravene the first data protection principle. It said that it believed that the fundamental rights and freedoms of the data subject were paramount and that it did not want to compromise the data subjects' Article 8 rights under the Human Rights Act.
- For questions 3 and 7 it confirmed that it did hold the information but could not provide it within the costs limit and applied section 12(1) to this part of the request.

In relation to Fairness at Work cases:

- For questions 1, 2, 5 and 6. It confirmed that the information was held but that it could not be provided within the costs limit and applied section 12(1) to this part of the request.
 - For questions 3 and 7 it confirmed that it did not hold the information. This is because the process was to find resolution and was not based on a 'fault' analysis to find in favour of an individual. Similarly it did not hold information for questions 4 and 8 for the same reason.
8. After the Commissioner's intervention the public authority conducted a second internal review into the handling of this request and communicated its verdict on 5 August 2009. It varied its position as follows.

In relation to Fairness at Work cases:

- For questions 1, 2, 5 and 6. It confirmed that the information could be generated within the costs limit, but that it felt that section 40(2) applied to these numbers.
9. It also provided clarification that there were only three internal areas for it to search for recorded information for the reporting of allegations of racial and sexual harassment. They were Employment Tribunals, Fairness at Work processes, and via the conduct process. The complainant had excluded the conduct process from her request and it informed the complainant that there are no other relevant areas for it to search for information held which would be caught by her request. The Commissioner is noting this detail as it is necessary to understand that there is no other relevant source of recorded information.
10. On 17 August 2009 it also explained to the Commissioner that in relation to Employment Tribunal cases:
- For questions 3 and 7 it confirmed that the information could be generated within the costs limit, but that it felt that section 40(2) applied to these numbers too.
11. It provided a new refusal notice about these elements to the complainant on 21 August 2009 and provided the Commissioner with a copy of it.

The Investigation

Scope of the case

12. On 2 February 2009 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant provided the Commissioner with a copy of an email postdating the internal review that expressed her dissatisfaction with it. This mentioned:
- She did not accept that the borough level count could be classed as personal information and felt it was information that could be disclosed while protecting the privacy of the individuals.
 - She said that the Commissioner's guidelines outline that information about individuals acting in their official work capacity should be released when to do so would be in the public interest.
 - She was very concerned about the delays that she had experienced in the processing of her earlier requests for information.
13. During the course of the Commissioner's investigation the following matters were resolved informally and therefore these are not addressed in this Notice:

- The public authority withdrew its reliance on section 12(1) and therefore the Commissioner has not considered it.
 - The Commissioner has not considered whether there are other sources of complaints resolution (excluding conduct) that are held that are relevant to the request because the complainant accepts that there are not.
14. On 6 August 2009 the Commissioner wrote to the complainant to establish the scope of his investigation. He said that he proposed to consider the following three areas:
- (i) *Whether there is any recorded information held for part 3, 4, 7 and 8 for the Fairness at Work cases.*
 - (ii) *Whether section 40(2) was correctly applied for the Employment Tribunal figures by borough level for questions 1 to 8.*
 - (iii) *Whether section 40(2) was correctly applied for the Fairness at Work cases by borough level for questions 1, 2, 5 and 6 (and parts 4 and 8, should information be held).*
15. On 13 August 2009 the complainant agreed to the scope of her case to be only these three areas. For clarity, the Commissioner will refer to these areas as parts 1 to 3 of the scope for the remainder of this notice.

Chronology

16. On 15 June 2009 the Commissioner spoke to the public authority. He asked for it to provide him with the withheld information. On 18 June 2009 the public authority wrote to the Commissioner to ask him to assist it in finding the relevant documentation for this case. On the same day the Commissioner provided the public authority with the documentation he had.
17. On 9 July 2009 the Commissioner spoke again to the public authority. He asked it to send him a copy of the withheld information in relation to Employment Tribunal cases. He consolidated what he asked for in an email and he received this information the next day.
18. On 21 July 2009 the Commissioner spoke to the public authority again. He informed the public authority that after further consideration he was still missing some relevant documents in order to understand the evolution of the request. He asked the public authority to provide him with all the documentation it had in relation to its handling of the requests and to specify its position in relation to a number of areas where it was unclear, including the Fairness at Work reports. He also asked for its arguments about why it was applying section 12(1) in this case.
19. On 3 August 2009 the Commissioner chased the public authority and asked about the issues that he wanted it to consider. He received some of the documents that he asked for. On 5 August 2009 the public authority informed him that it was incorrect in applying section 12(1) in this case and was instead relying

- on section 40(2) in relation to the information that it had previously withheld under that exclusion. It provided the Commissioner with a copy of some more of the withheld information.
20. Also on 5 August 2009 the Commissioner asked the public authority to issue a new refusal notice reflecting its new position to the complainant. It did this on the same day. He also asked for it to clarify its position about the global figures for Fairness at Work cases.
 21. On 6 August 2009 the public authority provided the Commissioner with written confirmation that this information was released to the complainant on 18 November 2008.
 22. Also on 6 August 2009 the Commissioner wrote to the complainant. He explained the scope of his investigation and the new position of the MPS. He explained his preliminary view on the application of section 40(2) having considered the withheld information and sought the views of the complainant as to how they wished the case to progress.
 23. On 13 August 2009 the complainant responded to the Commissioner's letter. She agreed to the scope of the investigation, but expressed dissatisfaction at the nature of the investigation conducted so far. She also provided her arguments about why she did not feel that it was possible to identify individuals from the numbers alone and said that she wished the investigation to continue. The Commissioner responded on the same day. The complainant then replied and said the Commissioner's additional explanation had dealt with her concerns about the nature of his investigation, although she still wanted a Decision Notice to be issued.
 24. On 14 August 2009 the Commissioner made a further enquiry with the public authority about parts 3 and 7 in relation to Employment Tribunal outcomes. On 21 August 2009 the public authority issued a new refusal notice about these elements and provided a copy of it to the Commissioner.

Analysis

Substantive procedural matters

Is further relevant recorded information held?

25. The Commissioner has taken forward part 1 of his scope as laid out in paragraph 14 of this notice (elements 3, 4, 7 and 8 in relation to the Fitness at Work cases) and has investigated whether relevant recorded information is held in respect to it. In investigating cases involving a disagreement as to whether or not information is in fact held by a public authority, the Commissioner has been guided by the approach adopted by the Information Tribunal in the case of *Linda Bromley & Others and Information Commissioner v Environment Agency* (EA/2006/0072). In this case the Tribunal indicated that the test for establishing

whether information was held by a public authority was not certainty, but rather whether on a balance of probabilities, the information is held.

26. In this case the Commissioner is content that the explanation of the process correctly reflects the Fairness at Work procedure and that it is reasonable to suppose that information about outcomes is not recorded in this case.
27. The Commissioner has considered the objectives of the Fairness at Work procedure and accepts that these objectives do not require blame to be placed on one of the parties.
28. The Commissioner has therefore determined that on the balance of probabilities the public authority was correct that it does not hold information about the outcomes because this does not exist. This analysis applies to all four parts.

Exemption

Section 40(2)

29. The outstanding parts of this investigation are parts 2 and 3 as laid out in the scope in paragraph 14 of this notice. In both cases the public authority has relied on section 40(2). The Commissioner has reproduced these two parts for ease of reference:
 1. *Whether section 40(2) was correctly applied for the Employment Tribunal figures by borough level for questions 1 to 8 [Part 2].*
 2. *Whether section 40(2) was correctly applied for the Fairness at Work cases by borough level for questions 1, 2, 5 and 6 [Part 3] (as information for 4 and 8 is not held).*
30. The public authority has argued that disclosure of the numbers would involve disclosing the personal data of the individuals who made the complaints as the numbers are so small that individuals are identifiable. It then stated that it believed that it would contravene one of the data protection principles of the Data Protection Act 1998 ("DPA"). As such it would be exempt from disclosure under section 40(2) by virtue of section 40(3)(a)(i). Section 40 is set out in full in a Legal Annex to this notice.
31. The complainant has argued that individuals cannot be identified from the information that she has requested and that she only wanted the numbers of cases and no further sensitive information about them. The complainant has also argued that in the event that the information is personal data the nature of the information and the format of it means that the release of the information would not be unfair.
32. The public authority's main arguments centred on the application of the first data protection principle. It believes that disclosure of the personal data in question would be unfair and would not satisfy one of the conditions for processing listed in Schedule 2 of DPA.

33. In analysing the application of section 40(2), the Commissioner therefore considered a) whether the information in question was personal data and b) whether disclosure of the personal data under the Act would contravene the first data protection principle.

Is the information personal data?

34. Personal data is defined in section 1 of DPA as data

“which relate to a living individual who can be identified from those data or those and other information in the possession of or which is likely to come into the possession of the data controller and includes expressions of opinions about the individual and indications of the intentions of any other person in respect of that individual”.

35. In this case whether the numbers in this context would be the personal data of any living individual was contentious and the arguments of each side were considered in detail by the Commissioner.

36. When considering whether the information is personal data, the Commissioner had regard to his own published guidance: “Determining what is personal data” which can be accessed at:

http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/personal_data_flowchart_v1_with_preface001.pdf

37. From his guidance there are two questions that need to be answered in the affirmative when deciding whether the information, if disclosed to the public, would constitute the personal data of individuals:

- (i) *Can a living individual be identified from the data, or, from the data and other information in the possession of, or likely to come into the possession of, the members of the public?*
- (ii) *Does the data 'relate to' the identifiable living individual, whether in personal or family life, business or profession?*

38. It is clear that statistical information relating to the nature of complaints made and the success of complainants, if linked to identifiable individuals, is the personal data of those complainants. The question to be determined is whether a living individual can be identified from this specific data if the information is disclosed to the public.

39. The Commissioner considers that truly anonymised data is not personal data and thus there is no need to consider the application of the data protection principles. The Commissioner consider that even where the data controller holds the additional 'identifying' information, this does not prevent them from anonymising that information to the extent that it would be possible to identify any living individual from that information alone and thus would no longer be personal data. The test of whether information is truly anonymised is whether a member of the public could identify the individuals by cross-referencing the data with information

or knowledge already available to the public. This approach is supported by paragraphs 24 and 25 of Lord Hope's judgement in the House of Lords' case of the Common Services Agency v Scottish Information Commissioner (2008) UKHL 47,

"..Rendering data anonymous in such a way that the individual to whom the information from which they are derived refers is no longer identifiable would enable the information to be released without having to apply the principles of [data] protection."

40. The Commissioner does not consider that the withheld information in this case to be truly anonymous. His reasons for this view are that the withheld information consists of very small numbers and within the limited population of each department it is possible to link individuals to outcomes. Therefore revealing whether there were complaints made and in particular whether they were successful or not would be likely to reveal information that can be tied to a specific individual and would therefore constitute a release of personal data. He believes that this information could be used with widely available other sources (including the internet) to identify the name of the complainants and this confirms his view that the information is the personal data of those individuals. Additionally the Commissioner believes that it is likely to be widely known amongst the MPS staff who has, or is likely to have grievances about racial discrimination matters. This coupled with the withheld information is likely to reveal whether those individuals were involved in formal proceedings and the outcome of those proceedings.
41. In the light of the above, the Commissioner is therefore satisfied that the numbers of individuals which are contained within the withheld information constitute those individuals' personal data. The Commissioner then considered whether disclosure would contravene the first data protection principle.

Would disclosure contravene the first data protection principle?

42. The first data protection principle has two main components and, in cases involving sensitive personal data, there is an additional component. These are as follows:
- requirement to process all personal data fairly and lawfully;
 - requirement to satisfy at least one DPA Schedule 2 condition for processing of all personal data;

43. Both requirements must be satisfied to ensure compliance with the first data protection principle. If even one requirement cannot be satisfied, processing will not be in accordance with the first data principle.

Would disclosure be fair and lawful?

44. It is important to note that any disclosure under this Act is disclosure to the public at large and not just to the complainant. If the public authority is prepared to disclose the requested information to the complainant under the Act it should be prepared to disclose the same information to any other person who asks for it.

The Tribunal in the case of *Guardian & Brooke v The Information Commissioner & the BBC* (EA/2006/0011 and EA/2006/0013) (following *Hogan and Oxford City Council v The Information Commissioner* (EA/2005/0026 and EA/2005/0030)) confirmed that, “Disclosure under FOIA is effectively an unlimited disclosure to the public as a whole, without conditions” (paragraph 52):

http://www.informationtribunal.gov.uk/Documents/decisions/guardiannews_HBrooke_v_infocomm.pdf.

45. In considering whether disclosure of this information would be unfair and therefore contravene the requirements of the first data protection principle, the Commissioner has taken the following factors into account:
- The individuals’ reasonable expectation of what would happen to their personal data;
 - Whether this expectation would be reduced by any accompanying expectation that this sort of information would be available;
 - Whether the information in the public domain reduces the expectation of privacy in this case;
 - Whether disclosure would cause any unnecessary or unjustified damage or distress to the individuals and whether the individuals have refused to consent to disclosure; and
 - Legitimate interests of the public in knowing about what the process that is in force is and the necessity for the public to have confidence that the MPS can identify the severity and scope of problems, where they exist and deal with them.
46. The public authority stated that disclosure of the withheld information would be unfair to the data subjects. It does not think that the data subjects would have had a reasonable expectation of the withheld information being released in this case. Instead there was an expectation of confidentiality and privacy. The Commissioner having considered the information itself and its nature is convinced that the reasonable expectations are a persuasive factor in indicating that the release of this information would be unfair.
47. As the complainant has stated, the Commissioner’s guidance on the application of section 40 suggests that when considering what information third parties should expect to have disclosed about them, a distinction should be drawn as to whether the information relates to the third party’s public or private lives. Although the guidance acknowledges that there are no hard and fast rules it states that:
- ‘Information which is about the home or family life of an individual, his or her personal finances, or consists of personal references, is likely to deserve protection. By contrast, information which is about someone acting in an official or work capacity should normally be provided on request unless there is some risk to the individual concerned.’*

48. On the basis of this guidance the Commissioner considers that public sector employees should expect some information about their roles and the decisions they take to be disclosed under the Act. The information requested in this case however is not within this class of information. Instead the Commissioner believes that this information would be expected to be withheld as it connects intimately to those individuals' private lives.
49. The Commissioner has considered whether there would be an accompanying expectation that this sort of information would be made available. The Commissioner believes that there is a fair expectation that force wide figures would be available along with the cost to the public purse. This would identify the scope and severity of the issues at the public authority and the numbers would be large enough to ensure that no individual can be directly identified.
50. The Commissioner has considered whether the information in the public domain would make the disclosure of these figures more likely to be fair. The Commissioner notes that the global figures have been made available. The Commissioner also notes that a number of individuals have chosen to make their complaint public and there is considerable public exposure in some of those cases. However the Commissioner does not believe that this enhances the fairness for those who have elected for their issue to remain private. The Commissioner believes that the release of this information could have the potential to affect their future employment prospects and career choices. The information in the public domain does not therefore enhance the fairness of disclosure in this case.
51. The Commissioner has considered the submissions of the public authority in detail and in particular whether it felt that the release of the information would cause unnecessary or unjustified damage or distress to the individuals involved. Having considered the nature of the information the Commissioner is satisfied that the release of it could potentially cause unnecessary and unjustified damage and distress to the individuals in this case.
52. In finally considering the legitimate interests of the public, the Commissioner notes that the public authority has released information about the number of cases force wide and the outcomes, including the financial cost of them. The Commissioner appreciates that it is important that the public authority can be seen to be taking transparent action when issues become apparent but does not see this factor as favouring further disclosure to the extent that it would outweigh the individuals' privacy interest in this case.
53. In considering how the factors balance, the Commissioner has come to the conclusion that the disclosure of the requested information would be unfair to the data subjects. The central reason for this conclusion is that the legitimate expectations of the individual are that the information would not be provided and the overriding of these expectations cannot be justified in this case. As the release of the information would be unfair, the first data protection principle would be contravened and the information therefore engages the section 40(2) exemption.

54. As the Commissioner has found that disclosure would be unfair and therefore in breach of the first data protection principle there is no need to consider whether the release would also be unlawful, or if the processing of the personal data would meet one of the conditions of Schedule 2 of the DPA.
55. The Commissioner therefore upholds the public authority's application of section 40(2) [by virtue of section 40(3)(a)(i)] in relation to both parts 2 and 3 of the scope of this case.

Procedural Requirements

56. The public authority initially applied section 12(1) incorrectly to elements 3 and 7 of part 2 and 1, 2, 5 and 6 of part 3 of the scope of this case.
57. It therefore incorrectly issued a refusal notice under section 17(5) in relation to those parts of the request. The Commissioner therefore finds a breach of 17(1) in relation to those elements as it failed to issue a complaint refusal notice within the statutory time limit (twenty working days).
58. The Commissioner also finds breaches of 17(1)(b) and 17(1)(c) in the public authority failed to state which exemption it was applying and why it was doing so to elements 3 and 7 of part 2 and elements 1, 2, 5 and 6 of part 3 of the scope of this case, within the statutory time limit.

The Decision

59. 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 Commissioner supports the public authority's determination that it did not hold relevant recorded information for part 1 of the scope.
 - Section 40(2) (by virtue of section 40(3)(a)(i)) was applied correctly to parts 2 and 3 of the scope.

However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- The Commissioner has found a breach of section 17(1) in failing to issue a valid refusal notice for elements 3 and 7 of part 2 and elements 1, 2, 5 and 6 of part 3 of the scope of this case within the statutory time limit.
- The Commissioner has also found breaches of sections 17(1)(b) and 17(1)(c) in the late application of section 40(2) to those elements.

Steps Required

60. The Commissioner requires no steps to be taken.

Right of Appeal

61. 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 2nd day of September 2009

Signed

**David Smith
Deputy Commissioner**

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

Legal Annex

The Freedom of Information Act 2000

Section 1 - General right of access to information held by public authorities

(1) Any person making a request for information to a public authority is entitled—

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

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

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

(3) 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 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.

...

Section 12 – Exemption where cost for compliance exceeds the appropriate limit

(1) 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.

(2) 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.

(3) 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.

(4) 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.

(5) 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 to be estimated.

Section 17(1) – 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.'

Section 40 – Personal information

(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

(2) Any information to which a request for information relates is also exempt information if—

- (a) it constitutes personal data which do not fall within subsection (1), and

- (b) either the first or the second condition below is satisfied.

(3) The first condition is—

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the [1998 c. 29.] Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene—

- (i) any of the data protection principles, or

- (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the [1998 c. 29.] Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

(4) The second condition is that by virtue of any provision of Part IV of the [1998 c. 29.] Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).

(5) The duty to confirm or deny—

(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and

(b) does not arise in relation to other information if or to the extent that either—

(i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the [1998 c. 29.] Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or

(ii) by virtue of any provision of Part IV of the [1998 c. 29.] Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).

(6) In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the [1998 c. 29.] Data Protection Act 1998 shall be disregarded.

(7) In this section—

- “the data protection principles” means the principles set out in Part I of Schedule 1 to the [1998 c. 29.] Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;
- “data subject” has the same meaning as in section 1(1) of that Act;
- “personal data” has the same meaning as in section 1(1) of that Act.

Data Protection Act 1998

Section 1 - Basic interpretative provisions

(1) In this Act, unless the context otherwise requires—

- “data” means information which—

(a)

is being processed by means of equipment operating automatically in response to instructions given for that purpose,

(b)

is recorded with the intention that it should be processed by means of such equipment,

(c)

is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system, or

(d)

does not fall within paragraph (a), (b) or (c) but forms part of an accessible record as defined by section 68;

- “data controller” means, subject to subsection (4), a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed;
 - “data processor”, in relation to personal data, means any person (other than an employee of the data controller) who processes the data on behalf of the data controller;
 - “data subject” means an individual who is the subject of personal data;
 - “personal data” means data which relate to a living individual who can be identified—
 - (a) from those data, or
 - (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;
 - “processing”, in relation to information or data, means obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data, including—
 - (a) organisation, adaptation or alteration of the information or data,
 - (b) retrieval, consultation or use of the information or data,
 - (c) disclosure of the information or data by transmission, dissemination or otherwise making available, or
 - (d) alignment, combination, blocking, erasure or destruction of the information or data;
 - “relevant filing system” means any set of information relating to individuals to the extent that, although the information is not processed by means of equipment operating automatically in response to instructions given for that purpose, the set is structured, either by reference to individuals or by reference to criteria relating to individuals, in such a way that specific information relating to a particular individual is readily accessible.
- (2) In this Act, unless the context otherwise requires—
- (a) “obtaining” or “recording”, in relation to personal data, includes obtaining or recording the information to be contained in the data, and
 - (b) “using” or “disclosing”, in relation to personal data, includes using or disclosing the information contained in the data.
- (3) In determining for the purposes of this Act whether any information is recorded with the intention—
- (a) that it should be processed by means of equipment operating automatically in response to instructions given for that purpose, or

(b) that it should form part of a relevant filing system,

it is immaterial that it is intended to be so processed or to form part of such a system only after being transferred to a country or territory outside the European Economic Area.

(4) Where personal data are processed only for purposes for which they are required by or under any enactment to be processed, the person on whom the obligation to process the data is imposed by or under that enactment is for the purposes of this Act the data controller.