

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 17 May 2010

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

Summary

The complainant made a request about information 'leaks' and outcomes of related disciplinary action which occurred within the Home Office ("the public authority") during 2007. This included information about a specific incident which appeared in the press.

The public authority originally sought to neither confirm nor deny that it held any information under section 31(3) and 36(3). During the Commissioner's investigation, some information was disclosed, some was found to be not held and some further information was accepted by the complainant as being properly exempt. Consequently, section 31(3) no longer applied to any withheld information.

The Commissioner's decision is to uphold the exemption at section 36(3) in relation to any remaining information which may or may not be held.

The public authority's handling of the request resulted in procedural breaches of sections 1(1), 10(1), 17(1) and 17(3).

The complaint is partly upheld.

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 request partly concerns a letter from the Home Secretary to the Chancellor of the Exchequer which was allegedly 'leaked' to the press. Part of the letter, and the corresponding newspaper article, can be viewed online via this link:

<http://www.telegraph.co.uk/news/uknews/1571579/Police-want-right-to-strike-after-pay-deal.html>

The request

3. On 6 December 2007 the complainant emailed the following request to the public authority:

"Under the FOI Act I would like to know how many documents have been leaked to the press from the Home Office during 2007. In particular, I would also like to know:

1. *how many disciplinary investigations were conducted;*
2. *what disciplinary proceedings were instigated (types of discipline offences);*
3. *how many disciplinary hearings were conducted;*
4. *what types of hearing were conducted;*
5. *how many people were disciplined (with a breakdown of type and if successful or not);*
6. *what sanctions were given for each type of discipline offence; and*
7. *how many people lost their jobs as a consequence (broken down by resignations and dismissals).*

I would also like to know:

8. *how many criminal matters were referred to the police for investigation;*
9. *how many investigations were conducted;*
10. *what the suspected offences were;*
11. *how many prosecutions took place together with their outcomes (e.g. conviction / acquittal broken down by offence proved and sanction applied);*
12. *how many investigations are currently in progress, i.e. not yet finalised;*

13. *what the seniority of staff investigated was, e.g. junior clerk, administrator, manager, senior manager, junior minister, minister, etc.*

Regarding the leaked document about police pay (the document dated 30.11.07 from Jacqui Smith to Alistair Dowling[sic]) that appeared on the Telegraph's web site I would like to know the following:

14. *Is it an authentic document;*
15. *What time and date was it signed;*
16. *What security measures were applied to this restricted document;*
17. *Has an investigation been started and who is the contact person;*
18. *When did your department become aware of the leak; and*
19. *What action did you take to prevent publication."*

4. Having received no acknowledgement or other reply the complainant chased a response on 15 December 2007. He received an automated reply on 17 December 2007 stating that his email had been: *"deleted without being read on Mon, 17 Dec 2007"*. He queried this on the same day.
5. On 2 January 2008 the public authority wrote to acknowledge both pieces of correspondence. It said it had been having problems with its public enquiries email address. It advised that the deadline for a response was 9 January 2008 and it hoped to respond by this date.
6. On 10 January 2008, outside the statutory time for responding, the public authority advised the complainant that it was considering the exemption at section 31 and required time to undertake a public interest test.
7. On 27 February 2008 the public authority advised that it was still considering its response. It said that it aimed to respond by 7 March 2008.
8. On 11 March 2008 the public authority sent a response. However, according to a further letter from the complainant dated 17 April 2008, this appears to have been in draft form (the Commissioner has not had sight of a copy). As a result of the complainant's letter of 17 April 2006, the public authority re-sent a substantive refusal letter on 22 April 2008. In this refusal, it stated that parts 1 to 13 and 17 of the request were exempt under section 31(3) of the Act and that the remaining information was exempt under section 36(3). Both of these exemptions neither confirm nor deny whether information is held.

9. On 22 April 2008 the complainant sought an internal review. Having had no acknowledgement or reply he chased a response on 28 May 2008, 13 June 2008 and twice on 24 June 2008.
10. In an email dated 25 June 2008 the public authority advised the complainant that it had emailed him on 29 May 2008, 13 June 2008 and 18 June 2008. It offered to send these emails to the complainant in the post if he would provide an address. On 1 July 2008 the complainant advised that he had received the email dated 18 June 2008.
11. On 16 July 2008 the public authority advised that its internal review was ongoing. It gave an estimated reply date of 13 August 2008. On 13 August 2008 it wrote again to extend this to 11 September 2008. On 10 September 2008 it sent out its internal review. It maintained its original position.

The investigation

Scope of the case

12. On 9 December 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:
 - the failure to comply with deadlines;
 - the total time taken; and
 - the outcome – no information provided whatsoever.
13. During the course of the Commissioner's investigation the following matters were resolved informally and therefore these are not addressed in this Notice:
 - revised responses to parts 1 to 13 of the request were accepted by the complainant.
14. In respect of the complainant's opening sentence, i.e. "*I would like to know how many documents have been leaked to the press from the Home Office during 2007*", which had previously been overlooked, the public authority advised the complainant during the investigation that: "*it is not possible to know how many documents were leaked to the press from the Home Office during 2007*". The complainant was not happy with this response and said that the public authority should

record such leaks. However, the Commissioner advised him that he believed its response was adequate. The complainant responded by saying:

"The Home Office claims not to know how many leaks there were to the press. This may be correct in totality, but they are duty bound to record security breaches ... Therefore they must record those that they become aware of. They must have this information otherwise they are failing to comply with requirements to record such breaches."

15. The Commissioner responded that the complainant had not requested this information, rather he had specifically asked for the number of documents leaked to the press which is what the Commissioner therefore needed to consider. He advised the complainant that, if he required different information, he would need to make a new request. However the complainant did not accept the Commissioner's view.
16. The Commissioner has considered this further in the "Procedural requirements" section of this Notice.
17. The complainant also raised an issue about the "Independence" of the "qualified person". The Commissioner has commented about this in "Other matters" at the end of this Notice.
18. During a late stage of his investigation, the Commissioner raised a specific query regarding part 17 of the request, this being the only remaining part of the request to which the exemption at section 31(3) was being applied. He asked the public authority whether or not it would actually have commenced an investigation at so early a stage as the information request was made on the day after the alleged leak to the press. It subsequently confirmed that, at that time, no investigation had commenced. It advised the Commissioner that he was able to confirm this to the complainant, which he did. This explanation was accepted by the complainant and, consequently, this part of the request is removed from the scope of the investigation.
19. To clarify, the Commissioner will therefore consider the public authority's response to that part of the request contained in the opening sentence, and whether or not the public authority was correct to neither confirm nor deny that it holds any information in respect of parts 14 to 16, 18 and 19 of the request.

Chronology

20. On 6 August 2009 the Commissioner commenced his investigation. He asked the complainant to confirm that he still required a response in respect of all parts of his request.
21. On 20 August 2009 the complainant confirmed that he wanted all parts of his request considered.
22. On 25 August 2009 the Commissioner commenced his investigation with the public authority. On the same day he also updated the complainant and clarified with him that, at this stage, he was only seeking to decide whether or not the public authority was correct in maintaining a neither confirm nor deny stance in respect of all the withheld information.
23. Following correspondence with the Commissioner, the public authority made a further submission to the complainant on 15 October 2009. It provided further arguments to support its position in respect of parts 1 to 7 of the request and also provided a response in respect of parts 8 to 13.
24. On 22 October 2009 the complainant contacted the Commissioner with his views regarding this latest letter and advised him that he accepted parts of the latest response. His correspondence included further information requests and he also sought to amend part of his original request.
25. On 27 October 2009 the Commissioner responded to the complainant. He advised the complainant that he could not consider new requests as these had not yet been put to the public authority, nor could he change an existing request, and that the complainant would need to make new requests to the public authority for this information. The Commissioner also asked the complainant to confirm those parts of the request which he still wished to have investigated; the complainant did so by return.
26. On 29 October 2009 the Commissioner updated the public authority regarding the complainant's position.
27. Following consultation with the public authority, it made a further submission to the complainant on 20 November 2009 in respect of part 3 of his request. The complainant subsequently advised that he required a more detailed response as the information given did not fulfil his request.
28. On 12 January 2010 the public authority again wrote to the complainant (the correspondence was dated 21 December 2009 but

was not sent on that date). It advised that to comply with the more detailed request would exceed the appropriate limit and it explained the reasons why.

29. On 13 January 2010 the Commissioner contacted the complainant for his views. On 20 January 2010 the complainant responded and accepted the public authority's position regarding part 3 of his request.
30. On 17 March 2010 the Commissioner raised further queries with the public authority regarding the commencement of any investigation it had made into the alleged leak to the press. On 30 March 2010, with the consent of the public authority, the Commissioner advised the complainant that, at the time of his request, no information was held regarding part 17 of his request. The complainant accepted this response.

Analysis

Exemption

Section 36 – prejudice to effective conduct of public affairs

31. For clarity, the Commissioner would like to confirm that this exemption is being considered in respect of parts 14 to 16, 18 and 19 of the request.

32. Section 36(3) provides that:

"The duty to confirm or deny does not arise in relation to information to which this section applies (or would apply if held by the public authority) if, or to the extent that, in the reasonable opinion of a qualified person, compliance with section 1(1)(a) would, or would be likely to, have any of the effects mentioned in subsection (2)".

33. The public authority has stated that the relevant part of subsection (2) is (c):

*"Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of information under this Act- ...
(c) would otherwise prejudice, or would be likely to otherwise prejudice, the effective conduct of public affairs".*

34. This exemption at 36(3) is also qualified by the public interest, meaning that confirmation or denial should be provided if the public interest falls in favour of this.

35. The public authority advised the complainant that:

"Section 36(3) excludes a public authority from its duty to confirm or deny whether information relating to a request is or is not held, where to do so could prejudice the effective conduct of public affairs. In this respect, the department believes that compliance with 1(1)(a) of the Act would otherwise prejudice, or would be likely to prejudice, the effective conduct of public affairs in the context of the exemption contained at section 36(2)(c)".

36. It went on to further explain to him that:

"If the department were to comply with Section 1(1)(a) of the Act in this instance the effect would be demonstrably prejudicial to the effective conduct of public affairs. If the department were to confirm that the information requested was held the authenticity of the document would be confirmed. If this were the case, the perpetrator/s of the leak would be able to profit still further from their already illicit gains. Such an outcome may encourage them or other individuals to undertake further breaches of information security.

Conversely, if the department were to confirm that the requested information was not held it would have the effect of inadvertently confirming that the document in question was not genuine. This would effectively prejudice HM Government's well established policy of "no comment" with regard to alleged leaks. If we were to confirm in future instances that information was not held, it could be inferred that documents regarding which neither confirm nor deny responses were made in future, were in fact genuine".

37. The public authority confirmed to the Commissioner during his investigation that its stance was that, if it confirmed or denied that it held any information, prejudice *would* result.

38. The test that the Commissioner applies when considering whether prejudice *would* result is that, whilst it would not be possible to prove that prejudice would occur beyond any doubt whatsoever, it must be at least more probable than not.

39. Information can only be exempt under section 36 if, in the reasonable opinion of a qualified person, disclosure would, or would be likely to lead to the relevant adverse consequences. In order to establish

whether the exemption has been applied correctly the Commissioner must:

- establish that an opinion was given;
 - ascertain who the qualified person was;
 - ascertain when the opinion was given; and
 - consider whether the opinion was objectively reasonable and reasonably arrived at.
40. During the course of the investigation the Commissioner asked the public authority for details of the decision taken by the qualified person, in order to allow him to ascertain that an opinion was given and also that it was given by an appropriate person at an appropriate time.
41. The public authority clarified to the Commissioner that it submitted its arguments to a qualified person prior to its original refusal, and to a different qualified person prior to its internal review. The public authority clarified that it is its usual practice at internal review stage to ask a qualified person to re-assess the decision that section 36 applies. The public authority confirmed to the Commissioner that Meg Hillier gave her opinion on 10 March 2008 and Vernon Coaker gave his on 9 September 2008. The Commissioner is satisfied that both Ministers are an appropriate 'qualified person' as laid down in section 36(5) of the Act.
42. The Commissioner's view is, if a reasonable opinion has been given by the qualified person by the time of completion of the internal review, then section 36 will be taken to be engaged. He notes that both opinions were given prior to the responses being sent out and they are therefore both timely.
43. It is usual practice for the Commissioner to confirm that the qualified person has actually viewed the withheld information; however, this practice is inappropriate in this particular case. This is because the act of verifying that the qualified person actually saw the information would confirm its existence, thereby defeating the purpose of the exemption.
44. Having viewed the submission given to the qualified person at internal review stage, the Commissioner is satisfied that the opinion was objectively reasonable and reasonably arrived at.

The public interest

45. Having concluded that the exemption is engaged, it is necessary to go on to consider whether the public interest favours the maintenance of

this exemption. In coming to this conclusion, the Commissioner has taken into account the factors cited by both the complainant and the public authority, as well as the general public interest in transparency.

46. The position of the public authority is that confirmation as to whether or not information is held would also act as confirmation that that information either had or had not actually been 'leaked' to the press. For the purposes of his analysis of the balance of the public interest, the Commissioner accepts that confirmation or denial would have the result predicted by the public authority.
47. When considering whether the public interest in maintaining the exemption outweighs the public interest in disclosure the Commissioner recognises that there are competing public interest arguments. He has gone on to consider these arguments in turn.

Public interest arguments in favour of maintaining the duty to confirm or deny

48. The public authority has provided the following arguments in favour of confirming or denying whether or not it holds any information:
- the general public interest favouring transparency and openness in government;
 - a presumption of disclosure in most cases;
 - increased transparency leading to a greater accountability of public officials and an increased level of public understanding and engagement with the process of government;
 - confirming or denying the authenticity of the document would confirm the veracity of the various media stories that appeared.
49. It also stated:

"There is a general public interest in knowing about the security of Government information, and knowing whether or not information that has appeared in the public domain is genuinely Government information. This can provide useful context to media stories, for example".

50. The complainant has also stated to the Commissioner that:

"There are serious procedural failures and mismanagement here which cause alarm to me. This kind of leak could be made by anyone from a junior employee right the way through to senior civil servants either with or without ministerial knowledge. Justice must be seen to be done and the public interest requires that

processes are in place to prevent such leaks, to protect information and to discipline or prosecute leakers”.

Public interest arguments in favour of maintaining the exclusion of the duty to confirm or deny

51. The public authority has provided the following argument against confirming or denying whether or not it holds any information:

“There is a general policy on not commenting on alleged leaks and thereby confirming whether or not a document is authentic. In cases where there had been a leak, if we were to confirm the authenticity of the document this would benefit the person who had leaked the document and any other person who had improperly obtained it. Confirming or denying whether this information is held could reveal the reliability (or otherwise) of a source, or give further information that could be of use to someone who would wish to illicitly obtain Government information”.

52. It also suggested that if authenticity of the document were confirmed this would enable the perpetrator to: *“profit still further from their already illicit gains”*, and that: *“such an outcome may encourage them or other individuals to undertake further breaches of security”*.

53. The public authority also referred to the Government’s protective marking system which indicates that a document marked as ‘Restricted’ (as is the case with the leaked document which appeared in the press) should: *“be handled and reproduced only by persons with authorised access to the information they contain”*. It also stated that there is a strong public interest in *“ensuring the security and integrity of confidential information”*. Whilst the Commissioner accepts these comments he does not believe that they have any particular bearing on this case so he has not further considered them.

Balance of the public interest arguments

54. The Commissioner agrees that the public interest arguments of transparency, openness and accountability are strong arguments in this case and he affords them considerable weight. He also accepts that confirming or denying the authenticity of the document would confirm the veracity of the various media stories that appeared and may encourage further debate about either security within the public authority itself if the ‘leaked document’ were found to be genuine, or accountability of the media if it were found to be false.

55. However, the Commissioner also recognises the strong countervailing arguments given by the public authority in this case. He understands that the public authority has a 'general policy' that it does not comment on alleged leaks and whether or not they are genuine. He accepts that this is a stance which needs to be maintained rigorously if it is to be effective, i.e. if the public authority always confirmed when leaked documents were 'false' then by not confirming when they were 'genuine' that fact would be self-evident. However, the Commissioner notes that such a position of applying a 'blanket exemption' to the duty to neither confirm nor deny is not permissible under the Act.
56. The Commissioner further notes that the 'leaked document' is dated 30 November 2007 and the newspaper article in which it appeared is dated 5 December 2007. The document was therefore published only one day prior to the request being made, i.e. 6 December 2007. In view of the date of the document, and the date it was published, the alleged leak itself must necessarily have been immediately prior to the request, making the confirmation, or otherwise, of its veracity particularly poignant. The Commissioner believes that the timing of the request in this case is of particular significance and this adds substantially to the prejudice that would be caused if the public authority were to confirm or deny any information about the leaked document.
57. If the public authority were to confirm that it holds information, thereby confirming the authenticity of the leaked document, then the person or persons who had leaked the information would in all likelihood be encouraged to leak further documents. The newspaper which had revealed the document would be able to confirm its authenticity and may seek to encourage the same source to leak further documents. This could also encourage other members of staff to undertake similar activities if they believed that the public authority may well confirm the validity of divulged information.
58. Conversely, by denying that it holds any information the public authority would be confirming that the leaked document was in fact not genuine. Whilst this may appear to be a 'positive' result, it would have the effect of creating the assumption that 'false documents' will be confirmed by the public authority which could set a harmful precedent thereby undermining its general policy to not comment on alleged leaks.
59. The conclusion of the Commissioner is that the public interest in the maintenance of the exemption outweighs the public interest in disclosure in this case, with significant emphasis being placed on the timing of the request. Whilst he accepts that there are arguments in support of confirming or denying whether the document about which

information is sought is 'genuine', he finds the public authority's position more persuasive in that, although it obviously cannot be proven, it is more probable than not that prejudice would occur. The complaint is not upheld.

Procedural Requirements

60. The full text of the relevant sections below can be found in the legal annex at the end of this Notice.

Section 1 – general right of access

61. 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".

62. The opening part of the complainant's request asked: *"I would like to know how many documents have been leaked to the press from the Home Office during 2007"*. Although the public authority initially failed to provide any response to this part of the request, during the investigation it advised the complainant that:

"It is not possible to know how many documents were leaked to the press from the Home Office during 2007".

63. The Commissioner considered this to be a reasonable response, i.e. that it would not be possible to know how many documents would have been leaked. However, the complainant believed that the public authority should have provided an alternative response to his request. He stated to the Commissioner that:

"I did not say 'exactly' how many I just asked 'how many'. I don't think I should be expected to know if they know all or some, therefore I cannot expect to get the wording exactly right".

64. He continued:

"They cannot say they don't know if what they do know is that it is any figure between zero and whatever figure they are aware of. Their reply is a nonsense, but the logic of their reply is plain for all to see and doesn't need interpretation or opinion. They know a figure. Give it. They don't know the precise, actual figure so they can't give that figure, but they can give what they know".

65. It is the Commissioner's view that the public authority was correct in advising the complainant that it would not be possible to know the number of documents concerned. It may never become aware of a leak if it does not appear in the press and it is unlikely to be aware of accurate numbers of documents concerned even when information is leaked into the public domain. The request is clearly worded and does not require any further clarification and, as the complainant himself states above: *"they don't know the precise figure"*. Therefore the Commissioner does not require any further response from the public authority in respect of this part of the request. His view is that it does not hold this information.
66. However, in failing to respond to this part of the request the public authority breached section 1(1)(a) of the Act.

Section 10 – time for compliance

Section 17 – refusal of request

67. The complainant submitted his request on 6 December 2007. The public authority sought to extend the 20 working day time limit for responding in order to consider the public interest on 10 January 2008. However, this response was outside the statutory time for compliance as sent down in section 10(1).
68. By failing to refuse to confirm or deny that it held information within 20 working days the public authority breached section 10(1). By failing to issue an initial refusal notice within that time limit the public authority also breached section 17(1).
69. It is the Commissioner's view that public authorities should aim to respond fully to all requests within 20 working days¹, although he also accepts that it may be reasonable to extend this time line to consider the public interest. However, even where the Commissioner accepts that it may be reasonable to extend the time limit, it is his view that in no case should the total time taken exceed 40 working days. Therefore, in failing to issue a final refusal notice within 40 working days, the public authority breached section 17(3).

¹http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/foi_god_practice_guidance_4.pdf

The Decision

70. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act in its application of section 36(3) to parts of the request.
71. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- By failing to respond to the opening part of the request it breached section 1(1)(a);
 - by failing to refuse to confirm or deny that it held information within 20 working days it breached section 10(1);
 - by failing to issue a timely refusal notice it breached section 17(1);
 - by failing to issue a final refusal notice within a reasonable time the public authority breached section 17(3).

Steps required

72. The Commissioner requires no steps to be taken.

Other matters

73. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.
74. The complainant expressed concern that the qualified person who gave his opinion prior to the internal review was later appointed to the position of Policing Minister. He suggested that his opinion may therefore not have been independent.
75. The "qualified person" is defined within section 36(5) of the Act. In respect of the Home Office this is covered under paragraph (a), namely:
- "in relation to information held by a government department in the charge of a Minister of the Crown, means any Minister of the Crown".*
76. The qualified person clearly falls within this remit, as indeed did the Minister who gave her opinion prior to the issuing of the refusal notice. It is not within the Commissioner's remit to comment as to whether or

not the public authority should have selected a different Minister (although he would here mention that, on both occasions, the Minister in question was the "duty Minister" at that time so it would appear that they were the likely choice). The only requirement the Commissioner can consider in this case is that the opinion is sought from a "Minister of the Crown", which cannot be disputed.

Time for internal review

77. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his 'Good Practice Guidance No 5', published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner is concerned that in this case, it appears to have taken over 95 working days for an internal review to be completed.

Right of Appeal

78. 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 sent.

Dated the 17th day of May 2010

Signed

**Anne Jones
Assistant Commissioner**

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

Legal Annex

Section 1 – general right of access

(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.

(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.

(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.

(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.

(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).

(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”.

Section 2 – effect of the exemptions

(1) provides that –

Where any provision of Part II states that the duty to confirm or deny does not arise in relation to any information, the effect of the provision is that where either-

- (a) the provision confers absolute exemption, or
- (b) 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 public authority holds the information.

Section 10 – time for compliance

(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.

(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.

(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.

(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.

(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.

(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.

Section 17 – refusal of request

(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.

(2) provides that –

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) 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.

(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.

(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.

(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.

(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.

Section 31 – law enforcement

(1) provides that -

Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders

(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 any of the matters mentioned in subsection (1).

Section 36 – prejudice to effective conduct of public affairs

(2) provides that-

Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of information under this Act- ...

(c) would otherwise prejudice, or would be likely to otherwise prejudice, the effective conduct of public affairs.

(3) provides that-

The duty to confirm or deny does not arise in relation to information to which this section applies (or would apply if held by the public authority) if, or to the extent that, in the reasonable opinion of a qualified person, compliance with section 1(1)(a) would, or would be likely to, have any of the effects mentioned in subsection (2).