

## **Freedom of Information Act 2000 (Section 50)**

### **Decision Notice**

**Date: 17 February 2011**

**Public Authority:** The National Patient Safety Agency  
**Address:** 4-8 Maple Street  
London  
W1T 5HD

### **Summary**

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The complainant requested a considerable amount of information about the public authority's recommendation not to extend his appointment as an unpaid volunteer beyond a five year term.

The public authority provided some information and withheld other information. The complainant referred three items to the Commissioner. The public authority's position was that it did not hold any further relevant recorded information for the first item and that it was entitled to withhold the last two.

During the course of the Commissioner's investigation the public authority disclosed all the recorded information it held for the last two items. The Commissioner did not consider them further.

For the first item, the Commissioner has determined (after further information was disclosed) that the public authority did not hold any further relevant recorded information at the date of the request. He therefore upholds the public authority's position. He did find some procedural breaches of the Act, but requires no remedial steps to be taken.

### **The Commissioner's Role**

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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

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2. The National Patient Safety Agency is a Special Health Authority established by the Secretary of State under the National Health Service Act 1977, by the National Patient Safety Agency (Establishment and Constitution) Order 2001. It is a public authority under the Act because it is covered by paragraph 38 of Schedule One. It will be referred to as 'the public authority' for the remainder of this Notice.
3. The complainant was an unpaid volunteer lay member of his local research ethics committee (REC) and was appointed by the Strategic Health Authority (SHA) to this role. The decision to appoint somebody to a REC sits with the SHA, as do decisions to renew appointments. Any appointment letter is issued and signed by the SHA. The SHA decided not to renew his appointment after an original five year term and the complainant was dissatisfied about this. The normal route of complaint is to appeal to the SHA itself and the complainant did make an appeal to the SHA.
4. The National Research Ethics Service (NRES) is a division within the public authority. Part of NRES' responsibilities relate to providing an advisory and operational support role to strategic health authorities in making decisions about the membership of RECs. In addition, it provides national systems to support the work of RECs.
5. The Commissioner's understanding of the correspondence that preceded his request for information (that involved NRES) is as follows:
  - The SHA wrote to NRES to explain why it was not going to renew the appointment of the complainant and asked for advice about it.
  - NRES wrote to the SHA to explain that given its concerns it would not recommend that the appointment of the complainant was renewed.
  - The complainant wrote to NRES to explain that he disagreed with the SHA's verdict. NRES explained that the decision was for the SHA to make and given what the SHA believes, its advice was not to renew the appointment of the complainant. It also provided the complainant with the information that the SHA provided to it.
  - The complainant wrote to NRES to ask that its position be reviewed. NRES wrote to the complainant to provide its review.

- The complainant wrote to a NRES Director on 8 February 2010. He explained that the decision by the SHA was unfair and that he had made a number of 'appeals' to NRES that he believed were not treated correctly. The Commissioner understands that he wanted NRES to review how it handled his 'appeal'.
  - On 1 March 2010, the NRES Director concluded that its involvement was appropriately managed and that the decisions had been explained and reviewed correctly.
6. For clarity, the SHA has the power to appoint people to serve on RECs. NRES can provide advice to the SHA, but the SHA need not abide by that advice. In this case the SHA did not want to renew the appointment and NRES did not recommend that it should vary its decision.
7. After the request, the public authority reviewed the situation again. An Employment Tribunal claim was filed and withdrawn. Finally, the complainant submitted further requests for information about this matter to both the SHA and the public authority.

## The Request

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8. On 14 April 2010 the complainant requested the following information to be provided in accordance with the Act (the Commissioner has renumbered the requests to enable clarity in this Notice):

*'Further to your letter of the 1<sup>st</sup> March [the letter noted above]... I request information on the following:*

- 1.** *The information you [the NRES Director] used to demonstrate that NRES acted reasonably in reaching its decision.*
- 2.** *The NHS guidance or regulation with their relevant contents referred to in arriving at the decision and in guiding NRES in its collaboration with the SHA.*
- 3.** *The full transcript for the training for the Charing Skills course.*
- 4.** *The powers of the REC Chair over the last five years.*
- 5.** *A synopsis of the annual training undertaken by REC*

*members as experts or as lay over the last five years.'*

9. The public authority issued its response on 27 April 2010:
  1. It explained that it believed that the complainant had already received copies of this information, but provided them again.
  2. It detailed the guidelines that were used and explained that the complainant could find them on its website. The guidelines it referenced were:
    - a) The Governance Arrangement for NHS REC (GafREC) July 2001; and
    - b) NRES Standard Operating Procedures (SOPs) Version 4 April 2009.
  3. It explained that the content was developed with an external consultant who has copyright in the material and that it would not be provided. It did not specify an appropriate exemption to withhold this information.
  4. It explained that the powers were outlined in the guidelines (in part 2) and also in the job description which was provided.
  5. It provided high level data and explained that the provision of other information would cost too much.
10. On 3 May 2010 the complainant replied and explained that in his view a misunderstanding had occurred. He addressed each request in turn:
  1. He explained that he wanted all the recorded information that was considered and that the information he had received so far was incomplete.
  2. He explained that he had asked for the specific guidelines considered in that particular decision, instead of general guidelines.
  3. For request 3, he made a further request:
    - 6.** *'The name and address of the training consultant.'*
  4. For request 4, he made a new request:
    - 7.** *'Provide NRES information on whether the Chairing*

*Skills Course makes reference to any disciplinary powers held by the Chair, and on information on disciplinary powers allocated to the Chair by NRES or NPSA.'*

5. For request 5, he narrowed his request:

**5(i)** *'Please provide information used by NRES additional to the SHA terms and conditions regarding NRES policy or practice affecting the number or type of training sessions thought proper for lay or expert members.'*

11. On 5 May 2010 the public authority issued a response. The response was issued by the person that considered the case and contained the following information:

1. There was no further recorded information and explained how the decision was made.
2. There was no further recorded information and explained how the decision was made.
6. The information could not be provided because the public authority believed this would be a breach of data protection (section 40(2)).
7. It provided the complainant with the information. It explained that the role of the chair in relation to members is not specifically covered in the Chair training course.
- 5(i) It explained that the policy was to ensure that at least one day of training was done per year, or self directed learning was undertaken. It explained that the self assessment tool can be found on the NRES website.

12. On 8 May 2010 the complainant requested an internal review. On 11 May 2010 the public authority explained that it was not clear what the complainant wanted it to review, but that it believed it had met the requirements of the Act.

## The Investigation

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### Scope of the case

13. On 17 May 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled, noting that he wanted to appeal the decision of the public authority to refuse to disclose '*certain information*' to him.
14. On 6 August 2010 the complainant agreed with the Commissioner's proposed scope of this investigation. This was for him to determine:
  - (1) Whether further relevant recorded information is held for requests **1** and **2**, and if so, whether it can be provided under the Act;
  - (2) Whether the information covered in request **3** is held, and if so, whether it should be provided under the Act; and
  - (3) Whether the information covered in request **6** can be correctly withheld under section 40(2), or whether it can be provided to the public.
15. During the course of the Commissioner's investigation each of these matters were either progressed or resolved informally:
  - (1) The public authority provided the '*Research Governance Framework for Health and Social Care*' (that the Commissioner identified as being relevant to request **2**) to the complainant on 27 September 2010 (progressing element 1 of the scope).
  - (2) The information that was held that was covered by request **3** was provided to the complainant on 7 September 2010 (resolving element two of the scope).
  - (3) The information covered by request **6** was disclosed and was also provided to the complainant on 7 September 2010 (resolving element three of the scope).
16. Therefore the only substantive issue outstanding is element one of the scope agreed on 6 August 2010 (that is, whether further relevant recorded information is held for requests **1** and **2**, and if so, whether it can be provided under the Act). This Decision Notice addresses that matter and considers any procedural breaches of the Act.

## **Chronology**

17. On 16 July 2010 the Commissioner wrote to the public authority and the complainant. He asked the public authority to provide him with the information it had withheld and its arguments about why. On 29 July 2010 he received its response.
18. On 3 August 2010 the Commissioner wrote to the complainant explaining the elements he believed were outstanding. At the same time, he took the opportunity to provide paper versions of the information the public authority referenced on its website. He also asked for further arguments as to why the complainant believed further relevant recorded information was held in relation to element one of the scope.
19. On 6 August 2010 the complainant confirmed he was content with the scope of the investigation and explained why he believed more information was held. The Commissioner acknowledged this letter on 12 August 2010.
20. On 13 August 2010 the Commissioner made detailed enquiries of the public authority. He focussed on whether further information was held in respect of element one, what information was held in relation to the other elements and whether the exemptions could be applied to this information. On 20 August 2010 the Commissioner provided an update to the complainant.
21. On 7 September 2010 the public authority responded to the Commissioner's enquiries. It provided answers in respect of element one. It also explained that it had reconsidered its position in respect of the last two elements and, on the same day, sent the information it held in respect of these elements to the complainant. On 15 September 2010 the Commissioner wrote to the complainant and confirmed that he regarded elements two and three as being resolved.
22. On 16 and 22 September 2010 the Commissioner made further enquiries of the public authority, to which it responded.
23. He also received further submissions from the complainant on 4 January 2011.

## Analysis

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### Substantive Procedural Matters

*Did the public authority hold further relevant recorded information that is relevant to the request for information?*

24. Section 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.
25. It follows that it is necessary for information to be held in a recorded form at the date of the request for it to be subject to the Act.
26. It is important to note the standard of proof that the Commissioner uses to determine whether relevant recorded information is held. In *Linda Bromley & Others v Information Commissioner and Environment Agency* [EA/2006/0072] ('Bromley'), the Information Tribunal confirmed that the test for establishing whether information was held by a public authority was not one of certainty, but rather the balance of probabilities. The standard of proof has been recently confirmed by the Tribunal decision of *Innes v Information Commissioner* [EA/2009/0046].
27. He has also been assisted by the Tribunal's explanation of the application of the 'balance of probabilities' test in *Bromley*. To determine whether information is held requires a consideration of a number of factors, including the quality of the public authority's final analysis of the request, the scope of the search it made on the basis of that analysis, the rigour and efficiency with which the search was then conducted and any other relevant reasons offered by the public authority to explain why the information is not held.
28. The Commissioner has applied this test to this case and has also considered the arguments of both sides.
29. The complainant has argued that further recorded information must be held because:

*'From the way the substantive matter between the NRES and me developed in the eight months [sic] period from July 2009 to Mar 2010 when my concern was raised through their administrative hierarchy it seems to me most unlikely that NRES*



*correspondence with me reflects accurately the record of the internal dynamic.'*

30. He also provided the Commissioner with further arguments about why he believed the public authority should hold further relevant recorded information on 4 January 2011.
31. The public authority has provided the Commissioner with detailed submissions. The Commissioner will break these arguments into the factors identified in paragraph 27 when conducting the following analysis.
32. However, it is useful to firstly subdivide requests **1** and **2** into three categories that can then be considered in turn:
  - 'Category one' – this relates to the first request and concerns the information considered in the review procedure of the complainant's case conducted by the NRES Director on 1 March 2010;
  - 'Category two' – this relates to the first component of the second request that asks for the guidelines that were used by the NRES Director in making their decision on 1 March 2010; and
  - 'Category three' – this relates to the second component of the second request, that is, the guidelines that relate to the relationship between the SHA and the NRES.

### **Category one (the information requested in request one)**

*The quality of the public authority's final analysis of the request.*

33. The Commissioner is satisfied that the public authority correctly understood what was being requested in respect of this category. It confirmed in writing its understanding of the request and the Commissioner is satisfied that it is the only objective reading of the request. The request is for information that was considered in the review procedure that enabled the conclusion announced on 1 March 2010 to be reached.

*The scope of the search it made on the basis of that analysis and the rigour and efficiency of that search*

34. The public authority explained that it believed that all of the relevant recorded information was contained within the complainant's file. This

was because the review procedure consisted of it considering the complainant's file. It had provided everything within the file and did not conduct further searches because the individual that did the review knew that nothing else existed.

35. It explained its file was limited because the SHA is the appointing authority, not the public authority. It explained that its file had adequate information for its needs.

*Other reasons offered by the public authority to explain why the information is not held*

36. The public authority explained that the NRES Director manages routine business through regular telephone updates and direct line reports. It explained that the NRES Director was aware of challenges made by the complainant against the decision to not renew his appointment. It explained that the review of the recommendation (that had already been reviewed by the Deputy and Head of Operations) did not require it to generate further documentation or activity beyond a simple check of the existing paperwork.
37. It also explained that the complainant had been advised of the recommendation to not renew and the letter clearly explained that he was free to reapply. It was not, in the public authority's view, an issue that required extensive further review and it did not generate further information. The only requirement was to review the existing paperwork in this case. The public authority had also asked the NRES Director what she considered and this adds further weight to the position that it holds no further relevant recorded information.

*Conclusion*

38. It is important to reiterate that the Act does not require a public authority to generate new information that it does not hold at the date of the request. The only requirement is to consider what relevant recorded information was held at the date of the request and to consider providing it.
39. After careful consideration, the Commissioner has concluded that on the balance of probabilities the public authority holds no further relevant recorded information relating to this request for information. He finds that the general practice of the public authority and the way that it holds records supports this conclusion. He considers that the complainant's contrary arguments are not supported by the evidence.

**Category two (the information requested in the first component of request two)**

*The quality of the public authority's final analysis of the request*

40. The Commissioner is satisfied that the public authority correctly understood what was being requested, that is, the guidelines the NRES Director used in making the decision announced on 1 March 2010.

*The scope of the search it made on the basis of that analysis and the rigour and efficiency of that search*

41. The public authority explained that the main guidelines that it used at the material time were:

- (1) The Governance Arrangement for NHS REC (GafREC) July 2001; and
- (2) NRES Standard Operating Procedures (SOPs) Version 4 April 2009.

42. The Commissioner wrote to the public authority to clarify whether the above were the only guidelines used in the relevant decision. He noted that the public authority used the word 'main' and therefore it was apparent that further guidelines may be held.

43. The public authority explained that it was certain that there were no other guidelines used in the decision. It explained that the guidelines covered the situation that it was asked to adjudicate. It explained that it did not require any other information in respect of an issue that was a relatively simple review of the papers.

44. It explained that the decision was made within its normal course of business and that further guidelines did not need to be searched for because they were not used in the decision. It explained that in its view it was a simple matter and that there would be no further information held that meets the complainant's expectations.

*Other reasons offered by the public authority to explain why the information is not held*

45. The Commissioner has considered the guidelines that have already been provided to the complainant. He is satisfied that they are comprehensive working documents that provide a considered framework about how to conduct its business.

46. The Commissioner has also received confirmation that the public authority holds no specific guidelines for the complainant's specific case or cases of its type.
47. The Commissioner is satisfied that there is no business reason to hold any further guidance about this matter and has received confirmation from the relevant Director that no further information was used.
48. Finally, the Commissioner is satisfied that the NRES would be responsible itself for writing any additional operational guidance and therefore would know if there was any.

### *Conclusion*

49. After careful consideration, the Commissioner has concluded that on the balance of probabilities, there is no further relevant recorded information held by the public authority in respect of this request for information. He considers that the complainant's contrary arguments are not supported by the evidence.

### **Category three (the information requested in the second component of request two)**

#### *The quality of the public authority's final analysis of the request*

50. The Commissioner is satisfied that this part of the request could potentially be wider than the information defined as category two information. This is because it concerns the guidelines that designate the relationship between the SHA and the NRES and is not limited to guidelines that relate to the handling of the complainant's original complaint, the result of which was communicated on 1 March 2010.
51. The Commissioner asked the public authority to provide separate additional submissions in respect to this category of information. He also identified that the '*Research Governance Framework for Health and Social Care*' should have been provided to the complainant under this request. This was then disclosed on 27 September 2010. The public authority has argued that the reference to this document in the GafREC was enough, but the Commissioner does not agree that this was so.
52. The Commissioner has considered the information contained within the three sets of guidance that have been provided:
  - (1) The Governance Arrangement for NHS REC (GafREC) July 2001- this sets out the duties of the NRES and explains its

duties in relation to establishing, supporting and monitoring them. The particularly relevant part is section B;

- (2) NRES Standard Operating Procedures (SOPs) Version 4 April 2009 – this explains in detail how RECs are to operate and the respective roles of the SHAs and the NRES within them; and
- (3) The Research Governance Framework for Health and Social Care.

53. The Commissioner knows that the complainant has these three sets of guidance as they were provided during the course of his investigation.
54. In addition, the Commissioner has considered all the correspondence that has passed between the public authority (NPSA including NRES) and the complainant between July 2009 and March 2010. This is to be certain to understand the complainant's submissions. He has also considered the terms and conditions of appointment of REC members.
55. The Commissioner believes that the relationship between the NRES and the SHA is partially explained in the GafREC which says:
  - SHAs are accountable for the establishment, support, training and monitoring of RECs (4.2);
  - SHAs are also responsible for the budget of the RECs (4.3);
  - RECs are not accountable in any way to NHS Trusts (4.5);
  - RECs are not in any way to be considered management arms of the NHS organisation and are advisory committees to them (4.6);
  - SHAs are responsible for providing the education and training of the REC members (4.10);
  - SHAs are responsible for providing the administrative services required by the REC (4.12);
  - SHAs have legal liability for the REC members in the course of their duties (4.14);
  - SHAs are responsible for appointing members to the REC committees (5.2);

- Members should be appointed for fixed terms, such as five years (5.10); and
  - SHAs are responsible to ensure a rotating system for membership to enable continuity (5.11).
56. There is also further information about their respective roles in the SOP, which explains:
- The Department of Health has authorised the NRES to coordinate the development of operational systems for RECs, including systems to enable the RECS to comply with the Clinical Trials Regulations. This role includes the development of a national set of standard operating procedures and the provision of operational advice and assistance (paragraph 4);
  - Any REC must make standing orders and adopt standing operating procedures. These procedures are subject to the approval of the United Kingdom Ethics Committee Authority (UKECA). The adoption of the NREC standards will lead to expected UKECA approval and any other procedures will require the Director of NRES to be notified to enable review by UKECA (paragraph 7);
  - All RECs adopting the SOPs will be expected to comply fully. The compliance will be monitored through REC Operational Managers (paragraph 11); and
  - The system of accreditation of RECs developed by NRES Head Office is based on GafREC and the SOPs (Ibid).
57. The Commissioner also asked the public authority to provide the complainant with the '*Research Governance Framework for Health and Social Care*', which was mentioned in the GafREC and which contained the following relevant information.
- The RECs must be independent when formulating advice on the ethics of research and neither the Department of Health nor NHS bodies are entitled to interfere with their decisions (3.12.4);
  - The SHA must have systems to appoint members to RECs, to support them and monitor their performance (Ibid); and
  - The SHA are to monitor their compliance with research criteria through self assessment (5.7).

*Other reasons offered by the public authority to explain why the information is not held*

58. The Commissioner notes that there is little direct information about the cooperation between the SHA and NRES within the three sets of guidance.
59. The public authority has explained that until the complainant challenged the failure to renew his appointment it was not aware of any challenge in respect of this matter previously.
60. It explained that its relationship with the SHA has grown organically and that at the date of the request there was no formal guidance arrangement that explained the accountabilities and derogated responsibilities on both the SHA and NRES. It met with nominated leads and DoH once or twice a year to agree best practices for managing associated ongoing responsibilities. However, it held no relevant recorded information that constitutes guidelines that designate the relationship between the SHA and the NRES.
61. It explained that it was in the process of developing detailed criteria; but that the publication of those criteria was delayed first by the General Election and now by the proposed abolition of both the NPSA and all of the SHAs.
62. It also explained that it was waiting for an ongoing review by the Academy of Medical Sciences since it is likely to make further recommendations on the future hosting arrangements for NRES.
63. The public authority provided further detail by explaining that it appreciated that it did not hold a policy at the date of the request and that because it did not hold a policy, it now had reason to develop a new one. It explained that it was responsible for developing the policy and so knew it held no recorded information at the date of the request.

*Conclusion*

64. After careful consideration, the Commissioner has concluded that on the balance of probabilities, there is no further relevant recorded information held by the public authority in respect of this request for information. He considers that the complainant's contrary arguments are not supported by the evidence. He notes that the complainant appears to misunderstand that the SHA has clear responsibility for appointments and that NRES has no control over the SHA in respect of this matter.

## **Procedural Requirements**

65. The Commissioner has not considered the timeliness of the disclosure of the information held for elements two and three because he has not adjudicated on whether or not the exemptions were applied correctly. He has not adjudicated on this matter because the information was disclosed during the course of his investigation. However, he has noted that some procedural requirements have not been satisfied and the remainder of this Notice addresses this point.

### *Section 1(1)(a)*

66. The public authority failed to recognise that the '*Research Governance Framework for Health and Social Care*' was relevant to the complainant's request before the Commissioner's intervention. Its failure to confirm that it was held was a breach of section 1(1)(a).

### *Section 1(1)(b)*

67. The public authority failed to provide the '*Research Governance Framework for Health and Social Care*' before the Commissioner's intervention. Its failure to provide relevant recorded information that it held is a breach of section 1(1)(b). However, the Commissioner requires no further remedial steps to be taken as this information has now been provided.

### *Section 10(1)*

68. The public authority failed to confirm it held or provide the '*Research Governance Framework for Health and Social Care*' in twenty working days and therefore breached section 10(1).

### *Section 17(1)*

69. Section 17(1) requires that a public authority issues a valid refusal notice in twenty working days in the event that it is relying on an exemption. In this case the public authority explained that it was withholding the information that it held in respect to element two, but did not specify a relevant exemption. This was a breach of section 17(1).



## The Decision

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70. 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:

- *It is correct that it did not hold any further relevant recorded information (that was not found during this investigation) that was covered by request one or two at the date 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:

- *It breached section 1(1)(a) because it did not confirm that it held one piece of information that was relevant to the request;*
- *It breached section 1(1)(b) because it failed to provide that information;*
- *It breached section 10(1) because it failed to comply with the request within twenty working days; and*
- *It failed to specify a relevant exemption when withholding information, in breach of section 17(1).*

## Steps Required

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72. The Commissioner requires no steps to be taken because the only relevant recorded information that was held has now been provided to the complainant.

## Right of Appeal

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73. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://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 17<sup>th</sup> day of February 2011**

**Signed .....**

**Faye Spencer  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

### \* 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.

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

(5) Regulations under subsection (4) may—

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

(b) confer a discretion on the Commissioner.

(6) In this section—

- “the date of receipt” means—

(a)

the day on which the public authority receives the request for information, or

(b)

if later, the day on which it receives the information referred to in section 1(3);

- “working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the [1971 c. 80.] Banking and Financial Dealings Act 1971 in any part of the United Kingdom

## **Section 17 - Refusal of request**

(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which—

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies.

(2) Where—

(a) in relation to any request for information, a public authority is, as respects any information, relying on a claim—

(i) that any provision of Part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or

(ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and

(b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.

(3) A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming—

(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

(4) A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

(5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

(6) Subsection (5) does not apply where—

(a) the public authority is relying on a claim that section 14 applies,

(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and

(c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.

(7) A notice under subsection (1), (3) or (5) must—

(a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and

(b) contain particulars of the right conferred by section 50.