

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 29 June 2011

**Public Authority:** Cabinet Office  
**Address:** 70 Whitehall  
London  
SW1A 2AS

### Summary

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The complainant requested information about the undertaking given by the then leader of the opposition concerning Lord Ashcroft's nomination for a peerage. The public authority refused the request, citing the exemptions provided by the following sections of the Act: 37(1)(b) (information relating to the conferring by the Crown of any honour or dignity), 40(2) (personal information) and 41(1) (information provided in confidence). In relation to some of the information, the Commissioner finds that section 37(1)(b) was applied correctly. However, in relation to the remainder of the information, the conclusion of the Commissioner is that section 37(1)(b) is engaged, but that this information should be disclosed in the public interest, and that the exemptions provided by sections 40(2) and 41(1) are not engaged. The public authority is required to disclose this information.

### 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.

### The Request

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2. The complainant made the following information request on 29 March 2010:

*"Please would you let me know in writing if you hold information of the following description:*

*Information concerning the undertaking given by the Leader of the Opposition, then William Hague, supporting the conditions laid down for Michael Ashcroft to take his seat in the House of Lords.*

*This request is based on a letter dated May 19 2000 from Sir Anthony Merifield, the Ceremonial Officer, to Peter Bradley MP. Sir Anthony wrote: "The conditions were clearly set out in the Press Notice and have been supported by an undertaking from the Conservative Party Leader who proposed Mr Ashcroft for an appointment to the House of Lords."*

*I would like a copy of the information and would prefer for it to be sent by email if possible."*

3. The response to this request was dated 28 April 2010. It was confirmed that information falling within the scope of the request was held, but the request was refused. In relation to two documents, the public authority cited the exemption provided by section 21(1) (information reasonably accessible by other means) of the Act on the basis that these documents were available on the website of the Public Administration Select Committee. In relation to the remainder of the information falling within the scope of the request, the public authority cited the exemptions provided by sections 37(1)(b) (information relating to the conferring by the Crown of any honour or dignity) and 41 (information provided in confidence) of the Act. The refusal notice did not cite a subsection of section 41 and gave no explanation as to why this exemption was believed to be engaged.
4. The complainant responded on the same date and requested an internal review. The public authority responded with the outcome of the internal review on 27 May 2010. The conclusion of this review was that the citing of sections 37(1)(b) and 41 was upheld. Again no subsection from section 41 was specified and, although further explanation was given at this stage as to why this exemption was believed to be engaged than was given in the refusal notice, this still was not set out clearly.

## **The Investigation**

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### **Scope of the case**

5. The complainant contacted the Commissioner's office in connection with this case on 28 May 2010. At this stage the complainant indicated that he did not agree with the grounds given by the public authority for the refusal of his request.

6. It was later clarified with the complainant that he did not wish the scope of this case to cover the citing of section 21(1). The application of that exemption is not, therefore, covered in the analysis in this Notice.
7. When discerning the meaning of a request, the approach taken by the Commissioner, and that which should be taken by public authorities, is that it should be read objectively. This is in line with the approach taken by the Information Tribunal in the case *Berend v the ICO & London Borough of Richmond upon Thames* (EA/2006/0049 and 50) in which it stated:

*"the request should be read objectively. The request is applicant and motive blind and as such public authorities are not expected to go behind the phrasing of the request"* (paragraph 46)
8. This is particularly important where, as in this case, the requester's intention as to the information that they wished to access may not be clear. In this case the Commissioner's objective reading of the request is that the complainant sought information detailing and evidencing the undertaking given by the then Leader of the Opposition about then Mr Ashcroft's nomination for a peerage.
9. The public authority initially supplied to the Commissioner's office the withheld information based upon a broader reading of this request. After the Commissioner advised the public authority of his reading of the request as set out above, the public authority stated that it agreed with this reading of the request and supplied to the Commissioner's office a schedule listing which of the documents previously supplied it now considered to be within the scope of the request. The public authority will note that some of the documents listed on the schedule setting out which documents should be disclosed it had identified as outside the scope of the request. This is because, in relation to a small number of documents, the Commissioner disagrees that these are not within the scope of the request and he further considers that these should be disclosed.

## **Chronology**

10. The Commissioner's office contacted the public authority in connection with this case on 19 January 2011. The public authority was asked to respond with a copy of the withheld information and with any further representations that it wished to provide concerning the citing of sections 37(1)(b) and 41(1).
11. The Commissioner's office received copies of the withheld information on 7 February 2011. Prior to receiving a full response to the letter of 19 January 2011, the Commissioner contacted the public authority to advise that his investigation would be based on the objective reading of

the request set out above at paragraph 8. The public authority was asked to respond confirming whether the information provided to the Commissioner's office previously constituted all that falling within the scope of that reading of the request.

12. The public authority responded substantively with their representations on the exemptions on 29 March 2011. A further response was provided on 6 April 2011, in which the public authority specified the information that it considered to be within the scope of the objective reading of the request set out above.

## Background

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13. A press release was issued on 31 March 2000 announcing the award of a life peerage to Michael Ashcroft (now Lord Ashcroft). A 'note for editors' was also issued with the press which stated:

*"In order to meet the requirements for a Working Peer, Mr Michael Ashcroft has given his clear and unequivocal assurance that he will take up permanent residence in the United Kingdom again before the end of the calendar year. He would be introduced into the House of Lords only after taking up that residence. These undertakings have been endorsed by the Leader of the Conservative Party and conveyed to the Prime Minister – and to the Political Honours Scrutiny Committee."*

## Analysis

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### Exemptions

#### Section 37

14. The public authority has cited the exemption provided by section 37(1)(b). This provides that any information that relates to the conferring by the Crown of any honour or dignity is exempt. This is a class based exemption, meaning that if the information conforms to the class described in this section, it is exempt. Consideration of this exemption is a two stage process; first the exemption must be engaged as a result of the information conforming to the class described in section 37(1)(b). Secondly, this exemption is qualified by the public interest test, which means that even if the information is exempt it must nevertheless be disclosed if the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure.

15. Covering first whether the exemption is engaged, the Commissioner has examined the information in question and is satisfied that it does relate to the conferring of an honour by the Crown. The exemption provided by section 37(1)(b) is, therefore, engaged in relation to that information.

### **The public interest**

16. Having found that the exemption is engaged, it is necessary to go on to consider the public interest test. Covering first those arguments that favour maintenance of the exemption, the Commissioner considers that a factor in favour of disclosure is that it would provide a degree of further transparency and accountability in the honours system both in general and in this particular case. He believes that significant weight should be given to this factor. He notes that working peers have a public role, enjoy privileged positions and are not accountable to the electorate. He also considers that disclosure of the requested information would provide the public with greater understanding of the issues surrounding the award of Lord Ashcroft's peerage and, more generally, of the honours system operating at the time of that award.
17. Questions about the undertaking and whether or not it had been fulfilled have been asked prior to and since the complainant's request. A number of statements have been made by prominent members of the major UK political parties concerning the domiciliary requirements of peers and MPs. Disclosure of the requested information would not only enable the public to have greater understanding of the issues surrounding the award of Lord Ashcroft's peerage, but would also inform the wider debate public debate about the honours system.
18. The public authority has argued that sufficient information relating to the award of a peerage to Lord Ashcroft has been disclosed previously. Disclosure of the requested information is therefore not necessary and not in the public interest. However the Commissioner considers that, if a public interest exists in the disclosure of information relating to a particular subject, it will extend to all the information that relates to that subject. The Commissioner considers that this applies particularly to the subject matter in this case, given the degree of controversy.
19. Turning to those arguments that favour maintenance of the exemption, the public authority argues that all those who contribute to the Honours process do so in the expectation that the record of their contributions will remain confidential. The Commissioner accepts that that applies here and he accepts that this is a valid factor in favour of maintenance of the exemption. However, it is not the case that this factor is necessarily conclusive in establishing that the public interest favours the maintenance of the exemption. Instead, this factor must be weighed alongside the other factors favouring maintenance of the exemption,

and against those favouring disclosure of the information, when considering where the balance of the public interest factors lies.

20. The Commissioner accepts that the honours system relies to a large extent on the provision of confidential information about nominees. In consequence very little information about those nominees enters the public domain. The Commissioner considers that the maintenance of confidentiality, and the trust in the honours system which flows from it, underpins the exemption provided by section 37(1)(b) of the Act.
21. Nevertheless Parliament determined that this exemption should not be absolute and it is subject to the public interest test. In most cases, awards of honours or dignities are straightforward and free of controversy. Then there will be a greater likelihood that the balance of the public interest will favour maintaining the exemption. However, the present case is clearly distinguishable from the majority of awards. Here, it is known that the initial nomination was rejected. Subsequently, there was a requirement by the Political Honours Scrutiny Committee not only that an undertaking concerning residency in the United Kingdom should be given, but also that the fact of that requirement be placed into the public domain.
22. These circumstances demonstrate that this case was not straightforward or free of controversy. This has an impact on the balance of the public interest.
23. The public authority has acknowledged that there is a public interest in disclosure of information relating to the process of awarding honours. The Commissioner agrees. Furthermore, he considers that some of the information here reveals important information about the process surrounding the award of this honour and specifically the reliance on the undertaking. The Commissioner considers that there is a strong public interest in disclosure of this information.

### **Conclusion**

24. The Commissioner has reached a split decision in this case. In relation to the information that casts light on the process surrounding the undertaking and the awarding of this honour the conclusion of this Notice is that this information should be disclosed. The Commissioner believes that the substantial public interest in understanding more about the process relating to the awarding of this particular honour and about the honours system more widely means that the public interest in the maintenance of the exemption in relation to this information does not outweigh the public interest in disclosure.
25. In relation to the remaining information, however, the Commissioner does not believe that the public interest in disclosure is as strong. He



therefore finds that the factors relating to the usual confidentiality of the honours system apply and are not weighed by factors specific to the circumstances. Therefore the balance of the public interest is in favour of maintaining the exemption. The specific information that should be disclosed by the public authority is identified in an annex with the version of this Notice sent to the public authority.

26. The withholding of some of the information which the Commissioner has now concluded should be disclosed has been upheld in a previous decision notice issued by the Commissioner. In relation to this information, the Commissioner would note that, as in all cases, his decision is based upon the circumstances that applied at the time of the complainant's request. The passage of time and the fact that some related information had been put into the public domain meant that circumstances had changed. This has affected the Commissioner's view of where the balance of the public interest lies in this case.

## **Section 40**

27. The public authority has cited section 40(2), which it is necessary to consider in relation to the information which the Commissioner has concluded should be disclosed in the public interest despite falling within the exemption at section 37(1)(b). Section 40(2) provides an exemption for information that constitutes the personal information of any individual other than the requester, the disclosure of which would be in breach of any of the data protection principles. This section is set out in full in the attached legal annex, as are all other sections of the Act referred to in this Notice. Consideration of this exemption is a two stage process; first the information in question must constitute the personal data of an individual aside from the requester and, secondly, disclosure of this personal data must be in breach of at least one of the data protection principles.
28. Covering first whether this information constitutes the personal data of any individual other than the requester, the public authority has argued that this information constitutes the personal data of both Lord Ashcroft and of other named individuals. Section 1(1) of the Data Protection Act 1998 (DPA) defines personal data as data that relates to a living individual who is identifiable from that information. The Commissioner considers it clear that the entirety of the information in question here relates to Lord Ashcroft and that Lord Ashcroft is also identifiable through that information. In relation to the other individuals, the Commissioner accepts that some of the content relates to those identifiable individuals. The Commissioner finds, therefore, that the entirety of the content of this information is the personal data of Lord Ashcroft and that parts of the content of this information are the personal data of other named individuals.

29. Turning to whether disclosure of this personal data would be in breach of any of the data protection principles, the Commissioner has focussed here on the first data protection principle, which states that personal data shall be processed fairly and lawfully. Consideration of the first data protection principle is itself a two stage process. First, disclosure must be in general fair. Secondly, at least one of the conditions set out in DPA Schedule 2 must be met in order for the processing of personal data inherent in disclosure to be considered fair.
30. As to whether disclosure would be in general fair, in a previous Decision Notice the Commissioner drew a distinction between personal data relating to Lord Ashcroft in an official capacity, and other personal data<sup>1</sup>:

*"The conferring of a working peerage enables the holder to sit in the House of Lords and be an active member of the United Kingdom's legislature. Such membership of the House of Lords is by appointment, not by election. Membership cannot be removed by electoral defeat but is for life. The Commissioner believes that membership of the House of Lords carries with it important rights, privileges and responsibilities. He therefore considers that the requested information can be properly characterised as being Lord Ashcroft's personal data but fundamentally relating to his public role.*

*The distinction between personal data relating to a person's private life and a person's public life, leads the Commissioner to conclude that Lord Ashcroft's interests should not be considered as the first and paramount consideration. The Commissioner considers that the information requested by the complainant is inextricably linked to Lord Ashcroft's nomination for a public role and cannot be considered as being 'private' in this context."*

31. For similar reasons, the Commissioner also concludes in this case that disclosure would not be, in general, unfair to Lord Ashcroft.
32. The other individuals identified within this information are members of the Political Honours Scrutiny Committee or officials involved in the process recorded within this information in various capacities. Where personal data relates to the subject in a professional capacity, the view of the Commissioner is that it is significantly less likely to be unfair to

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[http://www.ico.gov.uk/~media/documents/decisionnotices/2010/FS\\_50197952.ashx](http://www.ico.gov.uk/~media/documents/decisionnotices/2010/FS_50197952.ashx)



disclose this information than would be the case in relation to information that relates to the private life of the subject. The information in question relates to these individuals solely in their professional capacity. The public authority has argued that this information records the views and opinions of these individuals and thus disclosure would be unfair. To the extent that the information does record views and opinions, these would be expressed from a professional standpoint and would comment on the issue to which the information relates. These would not be views or opinions expressed on personal matters. The Commissioner also considers it notable that the names of officials have not been redacted from information previously disclosed that related to the same subject matter. Given the nature of this personal data, the Commissioner does not believe that disclosure of this would be unfair to the data subjects.

33. Having concluded that disclosure of this information would not be in general unfair, the next step is to consider if any condition in DPA Schedule 2 would be fulfilled through the disclosure of this information. The Commissioner has focussed here on the sixth condition, which requires two issues to be considered:
  - a) Whether the disclosure of the requested information was necessary for the legitimate interests of the recipient (the general public), and,
  - b) Whether, even if the disclosure was necessary, it would nevertheless cause unwarranted prejudice to the rights and freedoms of the data subject.
34. On the issue of the legitimate interests of the public, the view of the Commissioner is the same at that set out above when considering the balance of the public interest in relation to section 37(1)(b); disclosure of the requested information would not only enable the public to have greater understanding of the award of Lord Ashcroft's peerage, it would also allow the public to participate in the wider debate in an informed way.
35. As to whether disclosure would cause unwarranted prejudice to Lord Ashcroft or any of the other subjects, the Commissioner does not believe that substantial prejudice would result to the officials named within this information as a result of disclosure. In relation to Lord Ashcroft, the view of the Commissioner is that the level of public interest in this information means that any prejudice that may occur through disclosure would not be unwarranted. The sixth condition in DPA Schedule 2 would, therefore, be fulfilled in relation to the disclosure of this information.

36. Having found that disclosure of this information would not be unfair and that one of the conditions for fair processing specified in DPA Schedule 2 would be fulfilled through disclosure of this information, the overall conclusion of the Commissioner is that the exemption provided by section 40(2) is not engaged.

## Section 41

37. The public authority has argued that all of the requested information is also exempt from disclosure on the basis of section 41(1) of the Act. This exemption has been considered in relation to the information which the Commissioner believes is not exempt from disclosure on the basis of sections 37(1)(b) and 40(2).

38. Section 41(1) states that:

‘Information is exempt information if -

- (a) it was obtained by the public authority from any other person (including another public authority), and
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.’

39. Therefore for this exemption to be engaged two criteria have to be met; the public authority has to have obtained the information from a third party **and** the disclosure of that information has to constitute an actionable breach of confidence.

40. With regard to section 41(1)(b), in most cases the approach adopted by the Commissioner in assessing whether disclosure would constitute an actionable breach of confidence is to follow the test of confidence set out in *Coco v A N Clark (Engineering) Ltd* [1968] FSR 415 (the *Coco* test).

41. This judgment suggested that the following three limbed test should be considered in order to determine if information was confidential:

- Whether the information had the necessary quality of confidence;
- Whether the information was imparted in circumstances importing an obligation of confidence; and
- Whether an unauthorised use of the information would result in detriment to the confider.

42. However, further case law has argued that where the information is of a personal nature it is not necessary to establish whether the confider will suffer a detriment as a result of disclosure.

Was the information obtained from a third party?

43. The Commissioner has carefully examined the information he believes is not exempt from disclosure on the basis of sections 37(1)(b) and 40(2). This consists of communications generated by the public authority. The public authority has argued that the content of these communications include content supplied to it in confidence. Although this information comprises communications generated by the public authority the Commissioner accepts that these documents do sufficiently reveal the content of communications previously received by the public authority to meet the requirements of section 41(1)(a).

Does the information have the necessary 'quality of confidence'?

44. The Commissioner believes that information will have the necessary quality of confidence if it is not otherwise accessible to the requestor, is more than trivial and is of importance to the confider. Information will not have the necessary quality of confidence if it is already in the public domain.
45. The public authority has argued that given the nature of the honours system it is clear that the withheld information has an inherent quality of confidence about it. Having considered the information about the verification of the undertaking the Commissioner agrees with this view point: it is clear that information is more than trivial given its content and the reasons why it was provided to the public authority, and moreover that it is of importance to the confider regardless of who the particular confider was. The Commissioner is also satisfied that although certain information about Lord Ashcroft's peerage is now in the public domain, he accepts that these particular pieces of the withheld information are not.

Does the information have the necessary obligation of confidence?

46. The Commissioner recognises that an obligation of confidentiality may be expressed explicitly or implicitly. Whether or not there is an implied obligation of confidence may depend on the nature of the information itself, and/or the relationship between the parties.
47. The public authority has again argued that given the nature of the honours process the committee members and departmental officials would have expected their views regarding Lord Ashcroft's nomination to be kept confidential. Again, given the nature of the process the Commissioner is prepared to accept this argument.

Would disclosure be detrimental to any party?

48. The public authority, whilst noting that it was not necessary to show any detriment, argued that disclosure of withheld information would still be detrimental both to those who provided the information and to those who are the subject of the information. The Commissioner is prepared to accept that disclosure could be determined prejudicial for the reasons described by the public authority.

Would disclosure of the confidential information be actionable?

49. Although section 41 of the Act is an absolute exemption and thus not subject to the public interest test contained at section 2 of the Act, the common law concept of confidence suggests that a breach of confidence will not be actionable in circumstances where a public authority can rely on a public interest defence. The Commissioner must therefore consider whether the public interest in disclosing the information overrides the duty of confidence that is owed.
50. The public authority explained that the public interest in maintaining confidentiality in the circumstances of this case mirrored those in respect of section 37(1)(b). That is to say confidentiality is a central tenet of the honours nominations process because it enables those responsible for considering the nominations in order to ensure that nominations are properly and effectively scrutinised. It is essential that third parties from whom information is obtained are able to provide full and frank contributions in the knowledge that these will be treated in confidence. If this were not the case the public authority argued that contributors would be reluctant to provide information or to provide candid views and thus the quality of scrutiny process would be affected.
51. The Commissioner accepts that there is weighty public interest in maintaining confidences. Furthermore, the Commissioner accepts that the honours system operates on the provision of confidential information concerning nominees. It would clearly not be in the public interest for those persons making nominations to do so without a reasonable expectation that the information they provided in candour would be treated with a significant degree of confidence. Similarly it is in the public interest that nominees are subject to the necessary degree of scrutiny to ensure their suitability for the important role they will play. Nevertheless, the Commissioner believes that in the particular circumstances of this case the public interest would be better served by disclosure of additional information relating to the undertaking given by Lord Ashcroft. In this respect the Commissioner considers that disclosure of simply this information would not result in the undermining

of confidentiality of the honours process for the reasons discussed above. That is to say, the particular circumstances of Lord Ashcroft's nomination can be clearly distinguished from other nominations and furthermore the information which the Commissioner is ordering disclosure of does not include greater disclosure of the committee's considerations of the merits of Lord Ashcroft's nomination.

## **Procedural Requirements**

### **Sections 1 and 10**

52. In failing to disclose within 20 working days of receipt of the request information which the Commissioner has now concluded should have been disclosed, the public authority did not comply with the requirements of sections 1(1)(b) and 10(1).

### **Section 17**

53. In failing to specify which subsection of section 41 it was relying on and in failing to adequately explain why this exemption was believed to be engaged, the public authority did not comply with the requirements of sections 17(1)(b) and (c).

## **The Decision**

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54. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act in that it applied the exemptions provided by sections 37(1)(b), 40(2) and 41(1) incorrectly in relation to some of the information falling within the scope of the request and, in so doing, breached the requirements of sections 1(1)(b) and 10(1). In relation to the remainder of the information, the conclusion of the Commissioner is that the exemption provided by section 37(1)(b) was applied correctly. The Commissioner also finds that the public authority failed to comply with the procedural requirements of sections 17(1)(b) and 17(1)(c) in its handling of the request.

## **Steps Required**

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55. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- Disclose the information which the Commissioner has concluded was not exempt under section 40(2) or section 41(1) and in relation to which the public interest in maintaining the exemption under section 37(1)(b) does not outweigh the public interest in disclosure. This

information is specified in a schedule provided to the public authority with this Notice.

56. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

### **Failure to comply**

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



## Right of Appeal

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58. 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)

59. 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.

60. 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 29<sup>th</sup> day of June 2011**

**Signed .....**

**Graham Smith  
Deputy Commissioner  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire**

Reference: FS50314921

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## Legal Annex

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### **Section 1(1) provides that -**

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

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him."

### **Section 10(1) provides that –**

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

### **Section 17(1) provides that -**

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

- (c) states that fact,
- (d) specifies the exemption in question, and
- (e) states (if that would not otherwise be apparent) why the exemption applies."

### **Section 37(1) provides that –**

"Information is exempt information if it relates to-

- (a) communications with Her Majesty, with other members of the Royal Family or with the Royal Household, or
- (b) the conferring by the Crown of any honour or dignity."

### **Section 40(2) provides that –**

"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."

**Section 41(1) provides that –**

"Information is exempt information if-

- (a) it was obtained by the public authority from any other person  
(including another public authority), and
- (b) the disclosure of the information to the public (otherwise than  
under this Act) by the public authority holding it would constitute  
a breach of confidence actionable by that or any other person."