

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 23 October 2008

Public Authority: Vehicle & Operator Services Agency
Address: 4th Floor Berkeley House
Croydon Street
Bristol
BS5 0DA

Summary

The complainant requested the full details of 22 non-safety recalls which were recorded on the public authority's database in 2006. The public authority withheld the information by virtue of the exemptions contained in sections 41 and 43(2) of the Act. After considering the case, the Commissioner found that neither of the exemptions were engaged and ordered the public authority to disclose the requested information. He also found the public authority in breach of sections 1(1)(b), 17(1) and 17(3) of the Act.

The Commissioner's Role

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

The Request

2. On 6 September 2006 the complainant wrote to the public authority alleging that 71 of the vehicle recalls which had been registered in 2006 did not appear on the public authority's website as is customary. On the basis of this allegation he requested the following information:

'.....details of these (recalls)....i.e. minimum of make and model, defect and remedy.'

3. On 8 September 2006 the public authority wrote back with the following statement in response:

'At the time of your request, 44 had not been launched, 5 were deleted because of an error by the manufacturers (the recall was withdrawn with VOSA

agreement) and 22, whilst registered on our database, are considered to be 'non safety' recalls.....'

4. On 9 September 2006 the complainant made a request for;
'....full details of all 22 non safety recalls recorded on your database this year.'
5. The complainant made a further request on 21 September 2006 for;
'.....response rates for each individual closed recall for the last 4 years.'
6. The public authority combined his requests and provided a single response in a letter dated 24 November 2006 after twice notifying the complainant of an extension to the times by which it originally planned to have responded. These earlier letters dated 26 September and 30 October 2006 did not cite the exemptions the public authority wished to rely on but simply indicated that it needed to extend the time limit for responding to his request for information of 6 September 2006. It explained that this extra time was required in order to make a decision regarding the public interest. The complainant therefore did not receive a refusal notice in respect of his requests of 9 and 21 September 2006 until 24 November 2006.
7. The information requested on 6 and 9 September were respectively withheld by virtue of the exemptions contained in sections 21, 22 (in relation to the 44 recalls), 41, and 43(2) of the Act. The information requested on 21 September 2006 was however withheld by virtue of the exemption contained in section 12.
8. On 26 November 2006 the complainant appealed the public authority's decision. On 18 December 2006 the public authority explained to the complainant it was upholding the original decision.

The Investigation

Scope of the case

9. On 03 January 2007 the complainant contacted the Commissioner to complain about the way his request for information had been handled. Specifically, in relation to the non safety recalls, he stated, *'From the Keeper data supplied by the DVLA, manufacturers now contact vehicle owners about the non-code recall- surely any confidentiality of the data is now lost, as the vehicle manufacturers themselves are now releasing this information to keepers of the vehicles.'*
10. In relation to the response rates for individual closed recalls, he explained that the recall number, number of vehicles affected, number of vehicles repaired and percentage response rate would *'.....allow me to compare actual figures recorded to those published...'*

11. As a result of subsequent events which are outlined in the paragraphs below, the Commissioner restricted his review to the public authority's decision to withhold the 22 non-safety recalls by virtue of the exemptions contained in sections 41 and 43(2) of the Act.

Chronology

12. The Commissioner first wrote to the public authority on 10 March 2008. He asked the public authority firstly to confirm whether the 44 recalls withheld under section 22 had now been launched. Secondly, in relation to the response rates for individual recalls withheld under section 12, he asked the public authority to provide a breakdown estimate of the costs it would incur in complying with this aspect of the request. In accordance with the fees regulations¹, the Commissioner requested a breakdown which was to include the cost it expected to incur in;
 - determining whether it holds the information (if relevant),
 - locating the information or a document which may contain the information
 - retrieving the information or a document which may contain the information and
 - extracting the information from a document containing it.
13. Thirdly, the Commissioner requested copies of the full details of the 22 non-safety recalls which were withheld under sections 41 and 43. Specifically in relation to section 41, the Commissioner asked the public authority to provide documentary evidence imposing a duty of confidentiality on it in respect of the 22 non-safety recalls. In addition, the Commissioner also asked the public authority to consider whether the information in question possesses the necessary quality of confidence in light of the fact that the recall information held in this regard is made available to vehicle keepers who have been affected by the recall without any indication that a duty of confidentiality is imposed on them.
14. The Commissioner also asked the public authority to provide a clear and detailed explanation as well as empirical evidence if possible to demonstrate that disclosing the details of the 22 non-safety recalls 'would' or 'would be likely to' prejudice the commercial interests of the relevant car manufacturers.

Sections 21 and 22

15. The public authority responded on 7 April 2008. It confirmed that the 44 recalls withheld by virtue of sections 21 and 22 of the Act had now been launched on its website. On 14 May 2008, the complainant confirmed to the Commissioner that he could now access the recalls in question. The Commissioner has expressed some concern as to how these exemptions were applied in the 'Other Matters' section of this Notice.

¹ Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004

Section 41

16. In relation to section 41, the only evidence the public authority provided to demonstrate that a duty of confidentiality exists in respect of details of the 22 non-safety recalls were copies of the responses it received from the manufacturers as a result of the enquiries it made pursuant to the request for this information. It did however argue that although not usually explicitly stated, confidentiality obligations are implied because the very nature of non-code recalls is that the information being provided is confidential and not to be published. According to the public authority, unlike safety recalls, under the Code of Practice on vehicle safety defects², manufacturers are not required to inform the public authority about non-safety defects in their vehicles.

Section 43(2)

17. In relation to section 43(2), the public authority argued that disclosing the details of the 22 non-safety recalls would be likely to prejudice the commercial interests of the relevant manufacturers because their reputations could be undermined and damaged. In its view, *'if information about non-code recalls were to be made public; people might mistakenly worry unnecessary about a non-code recall, incorrectly believing it to be about a safety defect with a particular vehicle type, or they might simply form an incorrect judgement about the competence of a manufacturer to build a fault-free vehicle.'*
18. The public authority also provided the Commissioner with the public interest factors it considered before concluding the exemption should be maintained. The relevant factors against disclosure are outlined below:
- The information held was provided voluntarily and in confidence to VOSA by various producers who would question and challenge its disclosure as an actionable breach of confidence.
 - Disclosing the information could undermine and/or damage the reputation of the producer if it were to be made public.
 - People would worry unnecessarily about a non- Code recall incorrectly believing it to be a safety defect with a particular vehicle type.
 - People might form an incorrect judgement about the competence of a producer to build a satisfactory vehicle.
 - The release of the information would hinder the legitimate work of the public authority's vehicle safety branch in that producers would not cooperate with the voluntary provision of preventative action information if the confidentiality surrounding the provision of the information was to be ignored. It is information which is necessary for the public authority as the recognised Enforcement Authority under the terms of the Code of Practice on Vehicle Safety Defects and General Product Safety Regulations 2005 to hold as part of its enforcement function and its responsibility to monitor the products within the UK automotive sector market.

² issued under the General Product Safety Regulations 2005

19. On 28 April 2008 the Commissioner was provided with the information held in relation to the 22 non-safety recalls.

Section 12

20. In relation to section 12, the public authority stated that there are *'approximately 750 records to analyse plus hard copy files, many of which are archived...'* and that it took an average of 15 minutes to *'analyse the data and any correspondence that was received after the closed date...'* from three randomly selected recalls. It then concluded it would take 181 hours to obtain the information requested. At a cost of £25 per hour, this would cost £4525, well in excess of the cost limit.
21. On 2 May 2008, the Commissioner referred the public authority to a 2006 press release on its website (last viewed on 02 May 2008) which provided the total response rates for all recalls closed in 2005;

<http://www.vosa.gov.uk/vosacorp/newsandevents/pressreleases/2006pressreleases/29-09-06checkvehiclessafetyrecallsarvosagovuk.htm>
22. The relevant paragraph specifically stated;

'In 2005, 228 recall campaigns were registered with VOSA, affecting 1.9 million vehicles. The current response rate stands at 91.47%, but VOSA, along with the vehicle producers, is keen still to improve upon this figure. The good news is, it couldn't be easier to check for yourself online.'
23. The Commissioner asked the public authority to clarify why it would exceed the appropriate limit to comply with the complainant's request since presumably the base data used to arrive at the total annual figures would have already been collated and should therefore be easily accessible.
24. He also asked the public authority to provide him with three randomly selected individual recalls with an accompanying explanation about the process and length of time it took to retrieve them.
25. On 13 May 2008 the public authority provided the Commissioner with copies of three randomly selected individual recalls. It explained that it would take 7.5 days in total to produce the response rates for 732 recalls (confirmed as the actual number of recalls within the period requested).
26. As part of the process it would have to undertake to comply with the request, the public authority explained it would initially run a search on the system to produce the results for all the recalls that closed since the beginning of the database. To refine the results to show only the recalls that closed in a financial year would require another programme, both of these steps should take approximately 20 minutes. The latter search would produce; *'(the) recall reference number, date of closure, number of affected vehicles, and numbers completed at formal closure for reporting purposes.'*

27. Dissatisfied with how the public authority had applied the cost limit to this aspect of the complainant's request, the Commissioner wrote back to the public authority on this point. He explained that from the breakdown of the cost, as well as the three randomly selected recalls provided, it was difficult to accept the appropriate cost limit would hinder the public authority from complying with the request or at least from disclosing information which could be used to calculate the response rates.
28. In a series of correspondence afterwards, the Commissioner was informed amongst other things that the public authority generally does not retain the response rates for individual recalls used in calculating the annual recall figures, but it does hold the individual response rates for 2006/07 individual recalls which were retained after the complainant's request.
29. On 11 June 2008 after the Commissioner had made it clear that the factual findings did not support the application of section 12 to this aspect of the complainant's request, the public authority agreed to disclose the following:

'recall number, number of vehicles, number of vehicles recalled at time of closure (in respect of the) individual recalls from September 2002 to 31 March 2006..' to enable the complainant to calculate response rates (percentage figures), and

'response rates for individual recalls from 1 April 2006 to end of September 2006.'
30. On 16 July 2008, the public authority provided the Commissioner's office with copies of the information (as highlighted above) it had sent to the complainant in response to his requests for response rates, and also confirmed that since they were sent by email on 19 June 2008, it had not received any further queries from the complainant in this regard.
31. As previously stated, in light of the fact that the complainant had now been supplied with the information requested in two parts of his request, the Commissioner's investigation set out to review what remained outstanding, that is the public authority's decision to withhold the information relating to the 22 non-safety recalls as requested by the complainant in his letter of 9 September 2006.

Analysis

Procedural Matters

32. The Commissioner notes the public authority initially responded on 6 September 2006. It did not address the complainant's request under the Act but instead offered the complainant a chance to discuss his request informally.
33. However, the Commissioner notes that in a letter dated 8 September 2006, the complainant made it clear he wanted his request addressed under the Act.
34. The Commissioner therefore considers the public authority's failure to cite the exemptions it was relying on to withhold the information requested until the

letter of 24 November 2006 as a breach of section 17(1) of the Act because it was issued after 20 working days.

35. He also finds the public authority in breach of section 17(3)(b) for failing to determine the public interest test within a reasonable period.
36. A full text of section 17 is available in the Legal Annex at the end of this Notice

Exemptions

Section 41

37. Information is exempt from disclosure under section 41(1) of the Act if it was obtained by the public authority from another person and disclosure of it to the public by the public authority holding it would constitute a breach of confidence actionable by that or any other person.
38. A full text of section 41 is available in the Legal Annex at the end of this notice.
39. There are two components to this exemption; the information must have been obtained by the public authority from another person, and its disclosure would give rise to an actionable breach of confidence. A person may be an individual, a company, a local authority, or any other legal entity. The exemption does not cover information generated by the public authority but may cover such information to the extent that it was generated from confidential information provided by a third party, and disclosing it would also reveal the confidential material provided by the third party.
40. As noted from the facts provided by the public authority, recall information is generally provided by the manufacturers. It also clear from the manufacturer's letters that details of the 22 non-safety recalls in question were provided by the relevant manufacturers to the public authority. The information was therefore obtained by the public authority from another person.
41. Whether or not a breach of confidence is itself actionable is dependant on a number of factors which were referred to by Megarry J in *Coco v A N Clark (Engineers) Limited* (1968) FSR 415 (*Coco v Clark*) and cited by the Information Tribunal (Tribunal) in *Bluck v The Information Commissioner & Epsom St. Helier University NHS Trust* (EA/2006/0090). According to Megarry J:

'...three elements are normally required, if apart from contract, a case of breach of confidence is to succeed. First, the information itself must have the necessary quality of confidence about it. secondly, that information must have been imparted in circumstances importing an obligation of confidence. Thirdly, there must be an unauthorised use of the information to the detriment of the party communicating it...' (See paragraph 7 of the Tribunal's decision).

42. The Commissioner therefore first considered whether the details of the 22 non-safety recalls possess the necessary quality of confidence which may rise to an actionable breach of confidence in the event that they are disclosed.
43. Information will have the necessary quality of confidence if it is not otherwise accessible. In other words, it is not already in the public domain. According to Megarry J in *Coco v Clark*, '*However confidential the circumstances of communication, there can be no breach of confidence in revealing something to others which is already common knowledge.*'
44. As the Commissioner understands it, non-safety recalls are used as a medium to inform vehicle keepers of what may be classed as up to date safety related information as a preventative measure. The public authority explained in its letter to the complainant of 8 September 2006 that non-safety recalls are recalls where '*there is no evidence whatsoever that a safety defect has occurred, however, a manufacturer wishes to inform keepers, for example of a change in the vehicle handbook...*' It further added; '*VOSA is quite happy to support these preventative actions, which may lead to a safety issue if ignored, and authorise release of keeper information to the manufacturer.*'
45. The Commissioner notes that the information provided in respect of the 22 non-safety recalls include each vehicle brand and the concern associated with the different models which formed the basis of the recall. In some cases, up to five different models of a brand of vehicle were involved in the recall. He also notes from the responses sent to the public authority by the manufacturers that one manufacturer did not object to the disclosure of the details pertaining to its recall.
46. The Commissioner recognises that determining the confidential nature of any information would usually depend on its specific contents rather than a generalisation as to whether all information of that nature possesses the necessary quality of confidence. However, in his view the main issue here is whether or not disseminating the details of the 22 non-safety recalls in question has essentially stripped them of any appearance of confidentiality.
47. There are approximately 34 different models of 22 vehicle brands involved in the non-safety recalls in question. Therefore, the details in respect of each recall could potentially be available to thousands of vehicle keepers. As noted above, the public authority has not provided any evidence to suggest that these keepers are under a duty of confidentiality not to disclose this information to third parties. Indeed, there is no suggestion that they would be liable to an actionable breach of confidence in the event of such disclosure.
48. In conclusion, as the Commissioner is not persuaded that the details of the 22 non-safety recalls in question possess the necessary quality of confidence for a case of breach of confidence to succeed, he has not gone on to consider the two other constituent elements. The Commissioner is therefore satisfied that the exemption contained in section 41(1) of the Act is not engaged in this instance.

Section 43

49. Information is exempt from disclosure under section 43(2) if its disclosure would, or would be likely to, prejudice the commercial interests of any person.
50. A full text of section 43 is available in the Legal Annex at the end of this notice.
51. The test in order for this exemption to apply is whether or not the commercial interests of a third party or the public authority would or would be likely to be prejudiced by disclosure.
52. According to the public authority, the manufacturers consider the requested information commercially sensitive and the letters from the manufacturers explaining this were provided to the Commissioner's office. Therefore, in its view, disclosing the information requested would be likely to prejudice the commercial interests of the manufacturers concerned because it could undermine and damage their reputations. Essentially the public authority's argument (as stated in paragraph 18) is centred round the possibility that on viewing the requested information, the public could form an incorrect opinion about a manufacturer which may in turn have a detrimental effect on its commercial revenue and also weaken its position in a competitive environment.
53. In the Commissioner's view, 'would prejudice' places a much stronger evidential burden on the public authority, and the possibility of prejudice must be at least more probable than not. On the other hand, 'would be likely to prejudice' means that the possibility of prejudice should be real and significant, and certainly more than remote.
54. With regard to the likelihood of prejudice, the Tribunal noted in *John Connor Press Associates Ltd v Information Commissioner (EA/2005/0005)* that '*the chance of prejudice being suffered should be more than a hypothetical possibility, there must be real and significant risk.*' (See paragraph 15). In other words, the risk of prejudice need not be more likely than not, but must be substantially more than remote.
55. Having viewed the spreadsheet containing the information requested, the Commissioner accepts that at first sight (without any explanation as to the context in which it is held), it may create an incorrect impression in relation to specific vehicle brands and the relevant models. The use of certain terminology to describe the concern(s) associated with particularly sensitive parts of a vehicle could understandably trigger a certain degree of anxiety.
56. However, as noted above, the Commissioner understands there are specific reasons as to why these recalls are referred to as non-safety recalls. In his view, while it is virtually impossible to totally eliminate any potential prejudice to the commercial interests of some of the affected manufacturers, an appropriate explanation as to how the requested information should be viewed from the body (in this case the public authority) which is entrusted with the responsibility for '*improving the roadworthiness standards of vehicles*' would have a significant effect on the public's reaction.

57. In the Commissioner's view therefore, the likelihood of prejudice to the commercial interests of the manufacturers if the requested information were to be disclosed would be remote in light of the context in which the information was provided as well as the regulatory functions of the public authority.
58. He has therefore concluded section 43(2) is not engaged in this instance as he is not persuaded by the arguments provided to demonstrate the likelihood of prejudice. The Commissioner was guided in this regard by the Tribunal's statement in *Hogan v Oxford City Council (EA/2005/0026)*. According to the Tribunal, '*An evidential burden rests with the decision maker to be able to show that some causal relationship exists between the potential disclosure and the prejudice.*' (See paragraph 30). The Commissioner considers the public authority has been unable to discharge this burden satisfactorily.
59. Nevertheless, the Commissioner considers it appropriate in this case to address the authority's view that disclosing the requested information would hinder the work of the public authority's vehicle safety branch because manufacturers would no longer voluntarily provide information on non-safety concerns.
60. In his view, because some non-safety concerns have the potential to develop into safety concerns, manufacturers who need to investigate or conduct further research would be expected to contact the public authority to authorise the disclosure of the details of the vehicle keepers. Where the non-safety concern has no potential whatsoever to develop into a safety issue, then it is also potentially detrimental to the commercial interests of the manufacturers if vehicle keepers are not informed. It is evidently in the best interests of manufacturers to resolve non-safety concerns. In any event, the Commissioner's decision is based solely on the merits of each individual case.

The Decision

61. The Commissioner's decision is that the public authority did not deal with the requests for information in accordance with the Act. He finds that:
- The public authority breached section 17(1) because it issued its refusal notice late.
 - The public authority also breached section 17(3)(b) for failing to complete the public interest test within a reasonable period.
 - The public authority breached section 1(1)(b) because it failed to disclose the requested information by incorrectly applying the exemptions contained in sections 41 and 43(2).

Steps Required

62. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

- Disclose full details of the 22 non-safety recalls recorded on its database in 2006
63. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Other matters

64. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
65. On 22 February 2007, the Commissioner issued guidance on the time limits for considering the public interest test (PIT). This recommended that public authorities should aim to respond fully to all requests within 20 working days. Although it suggested that it may be reasonable to take longer where the public interest considerations are exceptionally complex, the guidance stated that in no case should the total time exceed 40 working days. Whilst he recognises that the consideration of the public interest test in this case took place before the publication of his guidance on the matter, the Commissioner remains concerned about the delay in communicating the outcome of the request to the complainant as in his opinion, the public interest considerations arising were not exceptionally complex.
66. The Commissioner is also concerned that within its refusal notice of the 24 November 2006, the public authority sought to rely on sections 21, 22, 41 and 43 of the Act, without clearly explaining which elements of the information requested each exemption applied to. In the Commissioner's opinion, this suggests that the public authority did not properly consider all of the relevant facts before applying the exemptions. The Commissioner would like to take this opportunity to explain that he expects public authorities to carefully consider the requirements of each exemption before withholding information by virtue of that exemption.
67. In *Bellamy v the Information Commissioner and the DTI (EA/2005/0023)*, the Tribunal clarified that only relevant public interest considerations could be taken into account when considering whether the requested information should be disclosed (See Paragraph 5). Essentially, a public authority is only entitled to rely on the particular public interest necessarily inherent in the exemption or exemptions relied upon. The Commissioner is of the opinion that in this case, the public authority sought to rely on generic public interest considerations rather than those relevant to the exemption itself. The Commissioner would like to make it clear that he does not consider such an approach to be conversant with good practice.
68. The Commissioner's Good Practice and Enforcement Team have been made aware of the concerns arising from this case. In line with the FOI Enforcement Strategy, this team will consider whether further action is appropriate.

Failure to comply

69. 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

70. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 23rd day of October 2008

Signed

**Anne Jones
Assistant Commissioner**

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

LEGAL ANNEX

Exemption where cost of compliance exceeds appropriate limit

Section 12(1) provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

Section 12(2) provides that –

“Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.”

Section 12(3) provides that –

“In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.”

Section 12(4) provides that –

“The secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

- (a) by one person, or
- (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.”

Section 12(5) – provides that

“The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are estimated.

Refusal of Request

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 -

- (a) states that fact,
- (b) specifies the exemption in question, and

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

Section 17(2) states –

“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.”

Section 17(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.”

Section 17(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.

Section 17(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.”

Section 17(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.”

Section 17(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.”

Information provided in confidence.

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.”

Section 41(2) provides that –

“The duty to confirm or deny does not arise if, or to the extent that, the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) constitute an actionable breach of confidence.”

Commercial interests.

Section 43(1) provides that –

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

Section 43(2) provides that –

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

Section 43(3) provides that –

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

Information Accessible by other Means

Section 21(1) provides that –

“Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.”

Section 21(2) provides that –

“For the purposes of subsection (1)-

- (a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and
- (b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.”

Section 21(3) provides that –

“For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.”

Information intended for future publication

Section 22(1) provides that –

“Information is exempt information if-

- (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),
- (b) the information was already held with a view to such publication at the time when the request for information was made, and
- (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).”

Section 22(2) provides that –

“The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which falls within subsection (1).”