

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

18 December 2008

**Public Authority:** Cabinet Office  
**Address:** Admiralty Arch  
North Entrance  
The Mall, London  
SW1A 2WH

### Summary

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The complainant asked the public authority for *'any JIC [Joint Intelligence Committee] or related reports or documents concerning nuclear weapons and the 1967 and 1973 middle east wars'*, particularly whether the *'JIC looked at the chances that the Six Day War and Yom Kippur War could lead to nuclear exchanges either by the superpowers or strikes by Israel'* and including *'estimates of capabilities and intentions'*. The public authority extended the timescale in order to consider the public interest test, before withholding the information under sections 23(1), 24(1) and 27(1)(a) of the Freedom of Information Act 2000 ('the Act'). The Commissioner decided that the public authority had legitimately withheld the requested information under the cited sections. However, he considered that, in failing to confirm within 20 working days that it held the requested information, it had breached section 10(1) of the Act; in failing to cite in its initial refusal notice the exemptions which it subsequently relied upon it had breached section 17(1); and, in considering the public interest test, it had also failed to address the public interest test within a reasonable timescale in breach of section 17(3). It also failed to specify the relevant paragraph of section 27(1) which applied, in breach of section 17(1)(b).

### 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. On 9 July 2006 the complainant requested from the Cabinet Office:

*'any JIC [Joint Intelligence Committee] or related reports or documents concerning nuclear weapons and the 1967 and 1973 middle east wars. In particular I am interested in whether JIC looked at the chances that the Six Day War and Yom Kippur War could lead to nuclear exchanges either by the superpowers or strikes by Israel. I am looking for papers produced either in the run up to the Six Day War in 1967, during or immediately after and likewise for Yom Kippur War in 1973. I am interested in both estimates of capabilities and intentions.'*

3. The Cabinet Office acknowledged receipt of the request on 11 July 2006.
4. On 6 September 2006 it informed the complainant that the request raised complicated public interest issues which it needed more time to resolve. It indicated that it was unlikely to be able to provide a definitive reply before 6 October 2006.
5. The Cabinet Office wrote again on 10 November 2006. It stated that it did hold information relevant to the request, but it was being withheld by reference to the exemptions under sections 23(1), 24(1) and 27(1) of the Act. It noted that sections 24 and 27 were qualified exemptions and that it was therefore necessary to consider the public interest test, but it claimed that under section 17(4) of the Act:

*'we are not obliged to give a statement of the reasons why an exemption applies, and why the public interest remains in favour of nondisclosure, as such a statement would itself include exempt information'.*

Its analysis of the public interest was limited to the statement:

*'In all the circumstances of this case we have concluded that the public interest in maintaining the exemption outweighs the public interest in disclosure.'*

It informed the complainant of his right to request an internal review and to complain to the Commissioner.

6. The complainant requested an internal review on 1 January 2007. He pointed out that it was difficult for him to make an argument when the Cabinet Office had failed to provide any reasons for its decision, but he noted that the requested information related to events of 33 and 40 years previously.
7. The Cabinet Office provided its internal review decision on 6 February 2007. It claimed that its original response had:

*'relied upon the exemption in section 17(4) of the...Act which provides an exemption from the duty to state why exemptions apply, and why the public interest remains in favour of non-disclosure, when such a statement would itself include exempt information. On further reflection I have decided that we can provide some explanation without releasing exempt information.'*

In favour of releasing the information it noted that the subject of the request had been a matter of longstanding debate and comment, and also that there was a general presumption of openness when considering any request. On the other hand, it identified an overriding requirement to protect the national security of the United Kingdom and a secondary requirement to protect against damaging relations with other countries. It concluded that the balance of the public interest favoured maintaining the cited exemptions. It advised the complainant of his right to complain to the Commissioner.

## The Investigation

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### Scope of the case

8. On 13 February 2007 the complainant wrote to the Commissioner to object to the Cabinet Office's decision not to release the requested information.

### Chronology

9. The Commissioner wrote to the complainant and the Cabinet Office on 10 January 2008. He asked the Cabinet Office to provide him with the withheld information and to comment on various issues.
10. On 16 February 2008 the complainant provided the Commissioner with some relevant information which was publicly available, including a Joint Intelligence Committee report dated 31 January 1969 concerning Israeli nuclear capability.
11. The Commissioner wrote a reminder to the Cabinet Office on 25 February 2008.
12. He sent a further reminder on 14 March 2008.
13. On 28 March 2008 he informed the Cabinet Office that, unless a response was forthcoming by 4 April 2008, he intended to issue an Information Notice.
14. On 4 April 2008 the Cabinet Office forwarded some copy correspondence to the Commissioner and provided its comments. It stated that some of the information could only be viewed on site at its own offices.
15. A representative of the Commissioner viewed the withheld information at the Cabinet Office on 4 June 2008.

16. The Cabinet Office wrote to the Commissioner on 4 June 2008 with comments about its application of section 23.
17. On 11 June 2008 the Commissioner asked for further clarification.
18. He emailed a reminder on 11 July 2008.
19. The Cabinet Office replied on the same day with the requested clarification.

## Analysis

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### Procedural matters

#### *Delay in confirming information held*

20. The complainant objected that the Cabinet Office had failed to issue its original refusal notice within the statutory timescale of 20 working days.
21. Section 1(1) of the Act states:

*'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 1(1) therefore creates two obligations on the public authority: the duty to confirm or deny to the applicant whether the information is held, and the duty to communicate the information to the applicant. Where the public interest test is appropriate it should be applied to both duties separately, and the outcome of each may differ.

22. Section 10(1) of the Act 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.'*

The Commissioner has provided guidance on this issue in his *'Good Practice Guidance No 4'*. A response may take the form of the supply of the requested information, confirmation that the information is not held, a formal refusal or an indication that additional time is required to consider the public interest in relation to specific exemptions.

23. In this case the complainant made his request on 9 July 2006. Although the Cabinet Office sent a prompt acknowledgement of the request, it did not issue its first refusal notice (extending the time limit in order to consider the public interest test) until 6 September 2006. It therefore took 42 working days to respond to the information request. Furthermore, it did not confirm that it held the requested information until its second refusal notice dated 10 November 2006, some 89 working days after the request had been made. The Commissioner recognises that the Cabinet Office's refusal notice in this case was conducted prior to the issuing of his 'Good Practice Guidance No 4' in February 2007, in which he provided advice to public authorities on relevant timescales. However, he notes that the 42 working days which the Cabinet Office took to issue the first refusal notice, and the 89 working days which it took to issue the second, were clearly in breach of the statutory timescale. Accordingly, the Commissioner finds that, in failing to confirm or deny whether it held the requested information within the statutory timescale, the Cabinet Office breached the requirements of section 10(1) of the Act.

#### *Delay in citing exemptions*

24. Section 17(1) of the Act 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.'*

The Cabinet Office did not mention any exemptions in this case until its second refusal notice, dated 10 November 2006, some 89 working days after the request had been made. Although it rectified the failure to cite exemptions in that second refusal notice, the Commissioner takes the view that it breached its obligations to provide the relevant details within the statutory time limit, which constituted a breach of section 17(1).

#### *Delay in considering PIT following extension*

25. On 6 September 2006 the Cabinet Office informed the complainant that it needed more time to assess the public interest test and was unlikely to be able to provide a definitive reply before 6 October 2006. In the event it did not write again until 10 November 2006 when it stated that it had concluded that the public interest test favoured maintaining the exemptions under sections 24 and 27. Section 17(2) allows a public authority to extend the statutory time limit where it is still considering the public interest after 20 working days, as long as

certain measures are taken: it must serve a refusal notice within 20 working days of the request; state the exemption(s) being relied on and, if not apparent, the reasons why they apply; and give an estimate of the time by which the final decision will be reached.

26. In this case the Cabinet Office failed to issue the initial refusal notice within 20 working days or state the exemptions being relied on, as addressed above. It provided an initial time estimate of 6 October 2006, but failed to update it subsequently when the timescale was exceeded.
27. The Commissioner notes that the Cabinet Office subsequently provided the required details in a refusal notice dated 10 November 2006. Under the terms of section 10(3) of the Act, this second notice need not be issued *'until such time as is reasonable in the circumstances'*. As the Commissioner has explained in his *'Good Practice Guidance 4'*, public authorities should aim to conduct the public interest test within 20 working days; in cases where the public interest considerations are exceptionally complex it may be reasonable to take longer, but should in no case exceed 40 working days.
28. In this case, the initial refusal notice advising the complainant that the Cabinet Office was extending the time limit was issued on 6 September 2006, and its second refusal notice providing its assessment of the public interest test was sent on 10 November 2006. The time taken to conduct the public interest test was therefore 47 working days from the date on which the Cabinet Office extended the time limit and 89 working days from the date on which the request was made. The Commissioner takes the view that the Cabinet Office therefore failed to address the public interest test within a reasonable timescale, in breach of section 17(3) of the Act.

#### *Refusal to explain public interest test*

29. In relation to its obligations in respect of the public interest test, the Cabinet Office informed the complainant in its letter of 10 November 2006 that under section 17(4) of the Act it was not obliged to explain the application of the exemptions or its assessment of the public interest test because to do so would disclose exempt information. Its analysis of the public interest was accordingly limited to the statement:

*'In all the circumstances of this case we have concluded that the public interest in maintaining the exemption outweighs the public interest in disclosure.'*

30. Section 17(4) of the Act states:

*'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.'*

Having considered the nature of the request (for Joint Intelligence Committee or related reports or documents concerning capabilities and intentions concerning

nuclear weapons in the 1967 and 1973 Middle East wars) and the explanation of the public interest test which has been provided to him, the Commissioner takes the view that the Cabinet Office could have provided, without disclosing information which was exempt, a more detailed explanation of its assessment of the public interest test than it did.

31. However, he notes that in its internal review decision of 6 February 2007 the Cabinet Office reconsidered its response and decided that it could in fact provide some further explanation without releasing exempt information. According to the Information Tribunal in the case of *McIntyre v Information Commissioner & Ministry of Defence* (EA/2007/0068), the Act:

*'encourages or rather requires that an internal review must be requested before the Commissioner investigates a complaint under s50. Parliament clearly intended that a public authority should have the opportunity to review its refusal notice and if it got it wrong to be able to correct that decision before a complaint is made.'*

In the circumstances, the Commissioner takes the view that, in giving the further explanation to the complainant at the internal review stage, the Cabinet Office complied with its obligation to explain its assessment of the public interest test, albeit belatedly.

### **Exemption – section 23(1)**

32. The Cabinet Office claimed that section 23(1) of the Act applied to some of the information which it held. Section 23(1) states:

*'Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).'*

33. The Commissioner is prepared, in limited circumstances, to accept the assurance of a senior official that information withheld under section 23(1) has indeed been supplied by or is related to security bodies specified in section 23(3). He will only do so where the official occupies a position in relation to the security bodies which allows them genuinely to validate the provenance of the information, and where the official is independent of the public authority's process for dealing with freedom of information requests. For completeness, it should be noted that the Commissioner retains the power to serve an Information Notice under section 51 where he considers it appropriate and it remains open to the public authority to obtain, in appropriate cases, a conclusive ministerial certificate under section 23(2).
34. The Commissioner is satisfied that the Director of Security and Intelligence in the Cabinet Office occupied such a position in this case. Accordingly, he has concluded that the information to which the Cabinet Office applied section 23(1) did indeed engage that exemption. Since section 23(1) is an absolute exemption, there is no public interest test.

## Exemption – section 27(1)(a)

35. In relation to the remaining information the Cabinet Office claimed that sections 24(1) and 27(1) applied. Section 27(1) of the Act provides that:

*'Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice-*

*(a) relations between the United Kingdom and any other State...'*

### *Prejudice test*

36. To engage the section 27(1)(a) exemption it is necessary for the public authority to demonstrate that disclosure of the information would, or would be likely to, cause some relevant prejudice.

37. In *Hogan v Oxford City Council & The Information Commissioner* (EA/2005/0026, EA/2005/0030), the Tribunal stated that the *'evidential burden rests with the decision maker to be able to show that some causal relationship exists between the potential disclosure and the prejudice'*. Accordingly, unsupported speculation or opinion will not be taken as evidence of the likelihood of prejudice, although the Tribunal has also indicated that public authorities do not need to prove that something will happen if the information in question is disclosed. Therefore, while there will always be some extrapolation from the evidence available, the public authority must be able to provide some evidence (not just unsupported opinion) from which to extrapolate. The standard of proof will be higher for the 'would' than the 'would be likely' test.

38. Where a public authority has claimed that disclosure is only **likely** to give rise to the relevant prejudice then, in accordance with the Tribunal's decision in the case of *John Connor Press Associates Limited v The Information Commissioner* (EA/2005/0005), *'the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk'*. Where the public authority has claimed that disclosure **would** give rise to the relevant prejudice then the Tribunal has ruled, in the case of *Hogan v Oxford City Council & The information Commissioner* (EA/2005/0026, EA/2005/0030), that there is a much stronger evidential burden on the public authority, and the prejudice must be at least more probable than not.

39. The Commissioner takes the view that, where the level of prejudice has not been specified by the public authority then the lower threshold should be used unless there is clear evidence that the higher level should apply. In *McIntyre v The Information Commissioner and the Ministry of Defence* (EA/2007/0068), which involved the application of the section 36 exemption, the Tribunal specified which standard of proof should apply when the level of prejudice was not designated by the public authority's qualified person:

*'Parliament still intended that the reasonableness of the opinion should be assessed by the Commissioner but in the absence of designation as to*



*level of prejudice that the lower threshold of prejudice applies, unless there is other clear evidence that it should be at the higher level.'*

40. In this case, the Cabinet Office claimed in its letter to the Commissioner of 4 April 2008 that disclosure of this information *'would have a significant and damaging impact on the UK's bilateral relationship with Israel'*. The Commissioner has therefore taken the view that the higher standard of proof applied to the Cabinet Office's argument. For the exemption to be engaged it is therefore necessary that the potential prejudice from disclosure can be demonstrated to be at least more probable than not.

41. The Cabinet Office noted that the issue of Israel's nuclear status remained hugely sensitive, even in light of the passage of time, and it identified the prejudice which it considered would ensue from disclosure of the requested information:

*'Any publicly available assessment by the UK government of Israel's strategic approach to its security, would be extremely damaging for the bilateral relationship between the United Kingdom and Israel.'*

It claimed that *'the continued effective conduct of international relations depends upon maintaining trust and confidence between governments'*. The failure to maintain this trust and confidence would seriously hamper the United Kingdom government's ability to protect and promote United Kingdom interests, seriously damage the bilateral relationship between the United Kingdom and Israel, and reduce the government's *'ability to protect and promote UK interests both in Israel and in the wider region'*, including advancing the Middle East peace process.

42. Representatives of the Commissioner have viewed the information which the Cabinet Office withheld by reference to section 27(1)(a). The Commissioner is satisfied that, having regard to the context of the current international situation and the likely impact that revealing this information would have on UK relations with Israel, the Middle East peace process and other nations in the region, it is at least more probable than not that disclosure of the information would prejudice the United Kingdom's relations with Israel and other states.

#### *Public interest test*

43. Since section 27 is a qualified exemption it is subject to a public interest test under section (2)(2)(b) of the Act. This favours disclosure unless, *'in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure of the information'*.

44. The Cabinet Office gave its assessment of the public interest test in its internal review letter of 6 February 2007. In favour of disclosing the information it acknowledged that this was a matter of longstanding debate and comment, and that there was a general presumption in favour of openness. On the other hand, however, it claimed that there was an *'overriding requirement to protect the national security of the UK and a secondary requirement to protect against*

*damaging relations with other countries'*, notwithstanding the passage of time in this case. It took the view that the public interest in maintaining the exemptions under sections 24(1) and 27(1) therefore outweighed the public interest in disclosure.

45. Having considered the information which was withheld by reference to section 27(1), the Commissioner believes that there is a significant public interest in understanding an important historical aspect of an issue that is still publicly debated today, and that disclosure of the requested information would considerably assist in facilitating public understanding and debate about that issue. On the other hand, he accepts that in the context of the current international situation disclosure would be likely to create severe prejudice to the United Kingdom's relations with Israel, the Middle East peace process and other states in the region, thereby damaging the United Kingdom's international relations. He is also mindful of the knock-on effect which damage to the United Kingdom's international relations is likely to have on its national security. Having considered all of these factors, he has concluded that the balance of the public interest falls on the side of maintaining the exemption under section 27(1)(a). Accordingly, he has decided that the Cabinet Office was justified in withholding all of the information to which it applied the section 27(1)(a) exemption.
46. The Commissioner notes that section 17(1)(b) of the Act places an obligation upon the public authority that its refusal notice *'specifies the exemption in question'*. The Commissioner's view is that the public authority is thereby required to refer to the specific part(s) of the relevant exemption(s). In this case the Cabinet Office's refusal notice and internal review decision referred to section 27(1) without specifying the relevant paragraph which was being applied (ie paragraph (a)). The Commissioner has therefore decided that the Cabinet Office was in breach of section 17(1)(b) of the Act.

### **Exemption – section 24(1)**

47. The Cabinet Office also withheld information by reference to the exemption in section 24(1). This states:

*'Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security.'*

48. The Commissioner takes the view that for exemption to be *'required'* in order to safeguard national security, the requested information must relate to national security, and there must be evidence that its disclosure would cause specific and real threats to national security. Furthermore, the Commissioner considers that there must be a pressing need for the information to be exempt.
49. In the case of *Baker v the Information Commissioner and the Cabinet Office* (EA/2006/0045) the Information Tribunal noted that it was unable to find an exhaustive definition of 'national security' in either statute or judicial decisions, but it referred to a House of Lords decision (*Secretary of State for the Home*

*Department v Rehman* [2001] UKHL 47; [2003] 1 AC 153) which made a number of observations on the issue, including that:

- 'national security' means the security of the United Kingdom and its people; and
- the interests of national security are not limited to action by an individual which can be said to be 'targeted at' the United Kingdom, its system of government or its people.

50. In this case, having considered the withheld information and the Cabinet Office's comments the Commissioner is satisfied that retention of the information is indeed 'required to safeguard' national security. His reason for taking this view is that the prejudice to the United Kingdom's relations with the other states mentioned earlier in this Decision Notice (in respect of the section 27 exemption) which would occur should the information be disclosed would also be damaging to national security. The information therefore has the necessary quality to fall within the definition of section 24(1).

#### *Public interest test*

51. As a qualified exemption section 24 is subject to the public interest test under section (2)(2)(b) of the Act. The Cabinet Office gave the same assessment of the public interest for both section 27(1)(a) and section 24(1). Having considered the information, the Commissioner has concluded that the importance of safeguarding national security, which would be compromised by the severe prejudice to the United Kingdom's relations with the other states which disclosure would create, means that the balance of the public interest falls on the side of maintaining the exemption under section 24(1). Accordingly, the Commissioner has decided that the Cabinet Office was justified in withholding the information to which section 24(1) was applied.

## **The Decision**

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52. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act. In failing to confirm that it held the requested information within 20 working days, the Cabinet Office breached section 10(1) of the Act. In failing to cite in its initial refusal notice the exemptions which it subsequently relied upon the Cabinet Office breached its obligations to provide the relevant details within the statutory time limit, which constituted a breach of section 17(1). In considering the public interest test, the Cabinet Office failed to update its initial time estimate, in breach of section 17(2); it also failed to address the public interest test within a reasonable timescale, in breach of section 17(3) of the Act.

## Steps Required

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53. The Commissioner requires no steps to be taken.

## Right of Appeal

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54. 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](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 served.

**Dated the 18<sup>th</sup> day of December 2008**

**Signed .....**

**Steve Wood  
Assistant Commissioner**

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

## 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 1(2)** provides that -

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

**Section 1(3)** provides that –

‘Where a public authority –

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.’

**Section 1(4)** provides that –

‘The information –

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.’

**Section 1(5)** provides that –

‘A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).’

**Section 1(6)** provides that –

‘In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as ‘the duty to confirm or deny’.’

**Section 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 10(2)** provides that –

‘Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.’

**Section 10(3)** provides that –

‘If, and to the extent that –

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.’

**Section 10(4)** provides that –

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

**Section 10(5)** provides that –

‘Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.’

**Section 10(6)** provides that –

‘In this section –

‘the date of receipt’ means –

- (a) the day on which the public authority receives the request for information, or
- (b)
- (c) if later, the day on which it receives the information referred to in section 1(3);

‘working day’ means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.’

**Section 17(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 23(1)** provides that –

'Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).'

**Section 23(2)** provides that –

'A certificate signed by a Minister of the Crown certifying that the information to which it applies was directly or indirectly supplied by, or relates to, any of the bodies specified in subsection (3) shall, subject to section 60, be conclusive evidence of that fact.'

**Section 23(3)** provides that –

'The bodies referred to in subsections (1) and (2) are-

- (a) the Security Service,
- (b) the Secret Intelligence Service,
- (c) the Government Communications Headquarters,
- (d) the special forces,
- (e) the Tribunal established under section 65 of the Regulation of Investigatory Powers Act 2000,
- (f) the Tribunal established under section 7 of the Interception of Communications Act 1985,
- (g) the Tribunal established under section 5 of the Security Service Act 1989,
- (h) the Tribunal established under section 9 of the Intelligence Services Act 1994,
- (i) the Security Vetting Appeals Panel,
- (j) the Security Commission,
- (k) the National Criminal Intelligence Service, and
- (l) the Service Authority for the National Criminal Intelligence Service.'

**Section 23(4)** provides that –

'In subsection (3)(c) 'the Government Communications Headquarters' includes any unit or part of a unit of the armed forces of the Crown which is for the time being required by the Secretary of State to assist the Government Communications Headquarters in carrying out its functions.'

**Section 23(5)** 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 was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).'

**Section 24(1)** provides that –

'Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security.'

**Section 24(2)** provides that –

'The duty to confirm or deny does not arise if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of safeguarding national security.'

**Section 24(3)** provides that –

'A certificate signed by a Minister of the Crown certifying that exemption from section 1(1)(b), or from section 1(1)(a) and (b), is, or at any time was, required for the purpose of safeguarding national security shall, subject to section 60, be conclusive evidence of that fact.'

**Section 24(4)** provides that –

‘A certificate under subsection (3) may identify the information to which it applies by means of a general description and may be expressed to have prospective effect.’

**Section 27(1)** provides that –

‘Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) relations between the United Kingdom and any other State,
- (b) relations between the United Kingdom and any international organisation or international court,
- (c) the interests of the United Kingdom abroad, or
- (d) the promotion or protection by the United Kingdom of its interests abroad.’

**Section 27(2)** provides that –

‘Information is also exempt information if it is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court.’

**Section 27(3)** provides that –

‘For the purposes of this section, any information obtained from a State, organisation or court is confidential at any time while the terms on which it was obtained require it to be held in confidence or while the circumstances in which it was obtained make it reasonable for the State, organisation or court to expect that it will be so held.’