

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 15 October 2008

Public Authority: The National Audit Office ('NAO')
Address: 151 Buckingham Palace Road
London
SW1W 9SS

Summary

The complainant submitted a series of requests to the National Audit Office (NAO) which were mainly focused on the origins of various figures contained in a value for money report into stroke care produced by the NAO. The complainant alleged that the NAO failed to respond to a number of these requests within 20 working days and that not all of the information falling within the scope of his requests was disclosed.

The Commissioner has concluded that the NAO did not in fact hold any further information covered by the scope of most, but not all, of the requests. With regard the information that the Commissioner has established the NAO does hold but did not initially disclose to the complainant, the Commissioner has concluded that the NAO breached sections 1(1)(b) and 10(1) of the Act by failing to disclose this information within 20 working days of receiving the requests. With regard to the requests where the Commissioner has concluded that the NAO does not hold any information, the NAO breached section 1(1)(a) and 10(1) of the Act by failing to confirm or deny within 20 working days whether it held the information requested.

During the course of this investigation the NAO argued that the further information which had been identified (a set of internal memos) was exempt from disclosure on the basis of section 33. The Commissioner does not accept that section 33 is engaged in respect of the internal memos; however, during the closing stages of the Commissioner's investigation the NAO provided this information to the complainant. In failing to provide the complainant with this information within 20 workings, the NAO committed a further breach of sections 1(1)(b) and 10(1) of the Act. The public authority also failed to comply with section 17(1) by failing to provide a refusal notice citing section 33.

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. The complainant submitted ten freedom of information requests between November 2005 and September 2007. These requests focused on the report published by the NAO in November 2005 entitled 'Reducing Brain Damage: Faster access to better stroke care' and more specifically, the origins of some of the figures quoted in this report.¹
3. The Commissioner has listed these requests in annex A which is attached to this notice. The Commissioner has also indicated in this annex the dates when the NAO replied to each request.
4. Following the NAO's response to a number of these requests the complainant contacted the NAO several times to complain about the response he had received to each of his requests. However, as these correspondences are not directly relevant to the nature of the complaints raised by the complainant the Commissioner has not recorded the details of this correspondence.

The Investigation

Scope of the case

5. On 3 October 2007 the complainant contacted the Commissioner to complain about the way his requests to the NAO had been handled. The complainant noted that the NAO had breached section 10 of the Act by failing to respond to a number of his requests within 20 working days. The complainant also noted that the NAO had taken a number of months to complete its internal review of request 6. The complainant also argued that in response to a number of his requests, he had not been provided with all of the information he had requested.
6. The Commissioner wrote to the complainant on 24 January 2008 in order to clarify the nature of his complaint. The complainant subsequently contacted the Commissioner's office by telephone in order to discuss the issues that he wished the Commissioner to investigate. In addition to the NAO's failure to respond to a

¹ A copy of the report can be viewed at: http://www.nao.org.uk/publications/nao_reports/05-06/0506452.pdf

number of requests within 20 working days, the Commissioner understands that the complainant's outstanding issues of complaint can be summarised as follows:

Complaint (i)

7. Although the NAO provided a number of spreadsheets in response to requests 1 and 3(a), not all of the information about how these calculations were made, and what assumptions were relied upon, have been disclosed.

Complaint (ii)

8. In request 3(e) the complainant asked for email exchanges between Sir John Bourn's office and others in the NAO in relation to the savings suggested in the report being 'not true and accurate'. The NAO responded to this request and explained it did not hold any such emails because it did not believe the savings to be 'not true and accurate'.
9. The complainant argues that the NAO should have considered this request more broadly and considered whether it held any emails between Sir John's office and others in relation to the savings mentioned in the report.

Complaint (iii)

10. The complainant submitted a number of requests for the names of the stroke experts the NAO had previously referred to (see requests 5 and 6). However, the NAO only disclosed the name of one expert, Professor Peter Rothwell. The complainant believes that more than one expert was consulted and therefore their names should also be disclosed.

Complaint (iv)

11. Request 10 asked for correspondence between the NAO and the Department of Health ('DoH') regarding the £20m savings mentioned in the report. The request specifically asked for correspondence in relation to the fact that such savings 'were no longer agreed'. The NAO response explained that in their opinion there had not been a change in the agreement and therefore they did not hold such correspondence.
12. The complainant has argued that the NAO should have interpreted this response more broadly and considered whether it held any correspondence at all between the DoH regarding the proposed savings and whether the information should have been disclosed under the Act.

Complaint (v)

13. On 22 May 2007 the complainant requested 'all email and letter communications exchanged between the NAO and King's team between 14 December 2005 and 24 February 2006' (see request 7 in the annex).

14. The NAO responded to this request on 20 July 2007 and explained that it believed that this request was substantially similar to the complainant's request of 7 February 2007 (see request 6(c) in the annex) which asked for correspondence between NAO and King's College and LSE team namely Professor Alistair McGuire, Omer Saka and Professor Charles Wolfe who provided the NAO with the 'Economic burden of stroke in England' report.
15. The NAO initially refused request 6(c) on the basis of section 14, although it eventually replied to this request on 21 August 2007 having decided at the internal review stage that section 14 had been misapplied. This response confirmed that it did not hold any further written correspondence from Professor Alistair McGuire, Omer Saka or Professor Charles Wolfe in addition to that already disclosed to the complainant. As the decision to refuse request 6 on the basis of section 14 was reversed at the internal review stage, the Commissioner has not considered the NAO's application of section 14 in this decision notice.
16. In a letter dated 24 October 2007 the NAO also confirmed that it did not hold any further emails covered the scope of request 7.
17. The complainant has alleged that the NAO may hold further information covered by the scope of his request 7.

Complaint (vi)

18. The complainant has explained that the NAO failed to provide any response to request 9.

Chronology

19. Between January 2008 and April 2008 the Commissioner and the NAO exchanged numerous correspondences in relation to the complaints outlined above. During this period the complainant also provided the Commissioner with a number of further pieces of evidence to support his complaints. The Commissioner does not consider it necessary to outline in detail the nature of these communications here as the arguments advanced by both parties in the various pieces of correspondence are detailed in the analysis section below and in the annex attached to this notice.

Background

20. The NAO scrutinises public spending on behalf of Parliament. Its activities can be classed into two areas: firstly, certifying the accounts of all Government departments and a wide range of other public sector bodies, and secondly to report to Parliament on the economy, efficiency and effectiveness which these departments and other bodies have used their resources. This second function is fulfilled by the production and submission of 'value for money reports' to Parliament.
21. As is noted above, the complainant's requests focused on a value for money report published by the NAO in November 2005. The purpose of this report was

- to examine whether the NHS was providing effective and high quality stroke care services, and whether the DoH was managing the supporting stroke care programme well.
22. The Commissioner understands that the NAO's partnerships with a variety of organisations helped underpin the contents of the report. In particular King's College and the London School of Economics were commissioned by the NAO to undertake some economic modelling. The Intercollegiate Stroke Working Party acted as an expert reference panel for the report.
 23. In preparing its value for money audit reports the NAO checks the facts contained in the reports with the audited body(s) concerned. This process known as 'clearance' is designed to ensure that NAO value for money reports as presented to the Committee for Public Accounts ('PAC') are factually correct.

Analysis

Complaint (i)

Section 1

24. The Commissioner understands that the complainant's requests numbers 1, 3(a) and 4 were an attempt to understand how the NAO had generated various figures quoted in the report.
25. In response to request 1, the NAO contacted the complainant on 5 December 2005 and provided some explanation of the figures contained in paragraphs 10 and 13 of the report.
26. In response to request 3(a), the NAO provided the complainant with a detailed explanation on 28 March 2006 of how the figures were arrived at.
27. In response to request 4, which was submitted on 29 March 2006, the NAO provided the complainant with further information on 18 May 2006. (By failing to respond to request 4 within 20 working days the NAO breached sections 1(1)(b) and 10(1) of the Act). In this response the NAO explained that its disclosure of 28 March 2006 had simply consisted of an explanation of the underlying figures in the report, rather than the raw data because of the problems in printing and subsequently interpreting the data the NAO held in spreadsheet form. However, following the complainant's submission of request 4 the NAO disclosed the spreadsheets containing the raw data upon which the figures were based.
28. In the complainant's opinion, although these responses provide some indication of how the figures contained the report were calculated, they failed to provide a description of assumptions which were made in the process of these calculations. By failing to provide this information the complainant believes that the NAO has breached section 1 of the Act.

29. Section 1 of the Act states that:

'1(1) Any person making a request for information to a public authority is entitled –

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

30. In order to investigate this issue the Commissioner asked the NAO to explain how the calculations contained in the spreadsheet were translated into the final figures contained in the report, and in particular whether the NAO held any further recorded information which detailed this process.
31. The NAO has provided the Commissioner with a detailed explanation of the origins of all of the figures contained in paragraphs 3, 10, 22 and 1.21 of the report (i.e. the figures which were the focus of the requests 1, 3(a) and 4).
32. Having studied these submissions the Commissioner has noted that the information contained in these submissions is essentially the same information which the NAO has previously provided to the complainant, particularly in its response to request 3(a) dated 29 March 2006. The NAO also confirmed to the Commissioner that it does not hold any further information regarding the origin and assumptions underlying these various figures contained in the report.
33. Clearly, the Commissioner's role is not, and for obvious reasons cannot be, to validate the accuracy of all of the figures contained within the report. However, in order to ascertain whether any further information falling within the scope of these requests is held he has to make some judgement as to whether the information disclosed to the complainant, and subsequently provided to the Commissioner, provides a reasoned and logical explanation of the origin of the figures contained in the report. If it appears that there is no direct link between the figures disclosed by the NAO to the figures contained in the report, the Commissioner accepts that it may be logical to conclude that the NAO had at some point held further information. If it did not hold information which supports these figures, how else could they have been calculated?
34. In the Commissioner's opinion, the information disclosed by the NAO does provide a logical explanation as to how the figures contained in the report were arrived at. On this basis the Commissioner accepts that it is reasonable to conclude that the NAO would not need to have held any further information in order to generate these figures.
35. Furthermore, the Commissioner understands that the model contained in the spreadsheet provided to the complainant was a scenario based model and therefore according to the NAO, 'one needs to alter the variables to reflect appropriate assumptions in order to arrive at the figures in the report'. The NAO has explained that with regard to a number of the figures (e.g. 550 deaths in paragraph 3 and 205 patients in paragraph 10 of the report), these were simply provided to it by King's College and it does not hold the model which generated

these figures. It is the Commissioner's understanding therefore, that the various versions of the model with different variables which generated a number of the figures in the report are not held by the NAO. Rather these models were used by King's College to generate the figures, with simply the figures, rather the different models, being provided to the NAO.

36. The Commissioner does acknowledge that the complainant, who has a professional interest in this area of medicine, obviously has a far greater knowledge and experience of the issues discussed in this report. Furthermore, as the annex of requests demonstrates the complainant obviously has serious reservations as to the accuracy of the figures contained in this report. However, as the Commissioner has noted above, his role is not to reach a judgement as to the accuracy of the figures. Instead the Commissioner has to reach a decision as to whether the NAO holds any recorded information about the origins and assumptions behind these figures that has not already been disclosed to the complainant.
37. In investigating cases involving an issue where it is disputed whether information is held by a public authority, the Commissioner has been guided by the approach the Information Tribunal adopted in the case *Information Commissioner v Environment Agency (EA/2006/0072)*. In this case the Tribunal indicated that the test for establishing whether information is held by a public authority is not certainty, but rather whether on the balance of probabilities, the information is held.
38. On the basis of his analysis of the information already disclosed to the complainant, and the NAO's further explanations to the Commissioner about the sources of the figures included in the report, the Commissioner is satisfied on the balance of probabilities that the NAO does not hold any further information falling within the scope of requests 1, 3(a) and 4. However, in not providing the complainant with the information covered by requests 1 and 3(a) until the 18 May 2006 (i.e. the information disclosed in response to request 4) the Commissioner believes that that NAO breached section 1(1)(b) and section 10(1) of the Act.
39. In correspondence with the Commissioner during the course of this investigation, the complainant did acknowledge that, on the balance of probabilities, it was more likely than not that the NAO does not hold any further information about the origin of the spreadsheet assumptions used in the economic modelling in the sense that it has the figures and references in its own possession.

Section 3(2)

40. However, the complainant went on to argue that the NAO did have 'control' of the information about the origin of the spreadsheet assumptions, albeit that this information was physically held by King's College. The complainant's reasoning for this position was based upon an email sent to him by the NAO on 24 February 2006. The relevant part of this email reads:

'As the LSE and King's College undertook the economic modelling work on our behalf under a clearly defined contract and we chose what to include in

our report and how to present it, they have agreed that it would be inappropriate for them to enter into unilateral correspondence with you about the content of the report. Rather they will forward any correspondence on our report to me. I have also instructed my team, principally Jess Hudson, to cease corresponding with you and that any correspondence she receives will be handled by me. I am also copying this reply to others that you have involved and copied your emails to.

41. On the basis of this email, the complainant has argued that NAO was effectively controlling access to information which was in fact held by another body, i.e. King's College.
42. Section 3(2) of the Act takes into account situations where information may be under the control of a particular public authority, even though the public authority is not in the physical position of that information. Section 3(2) states that:

‘For the purposes of this Act, information is held by a public authority if –

 - (a) it is held by the authority, otherwise than on behalf of another person,
 - or
 - (b) it is held by another person on behalf of the authority’.
43. An obvious example where section 3(2)(b) would be relevant would be where a public authority receives a request for information which it has transferred to a private storage company. The private storage company is holding the information ‘on behalf of’ the public authority and therefore this information falls within the scope of the Act even though it is not physically in the possession of the public authority at the time of the request.
44. Such a situation is complicated, to some degree, if the other ‘person’ is also a public authority. The first public authority would still hold the information, it is just that in this case the ‘person’ holding the information on behalf of it happens to also be a public authority and therefore subject to the requirements of the Act. If the second public authority **only** holds the information on behalf of the first public authority, and thus does not hold the information for the purposes of the Act, then its duty under section 1 will be to advise the applicant that it does not hold that information. A public authority holding the information only on behalf of another public authority, in accordance with Part III of the section 45 code of practice, should also consider transferring the request or directing the applicant to the appropriate public authority. However, if either public authority receives a request and in fact both hold the information in their own right but also partly on behalf of the other public authority, both public authorities have responsibility for responding to this request.
45. However, in the Commissioner’s opinion the facts of this case are not as complicated as the last theoretical example would suggest. The NAO holds what appears to be relatively top level information relating to the assumptions and origins of the figures contained in the report. This was disclosed to the complainant in response to requests 1, 3(a) and 4. Having received this information the complainant still believed that this information did not sufficiently

explain the final figures included in the NAO's report and he raised this point with the NAO. In order to explain to the complainant that it did not hold any further information in relation to the origin of these figures, the NAO explained to the complainant that King's College had been contracted to conduct the economic modelling used to generate the figures used in the report. Therefore, if more detailed information was held in relation to the origins of these figures existed, they would be in the physical possession of King's College rather than the NAO. (As noted in paragraph 39 this is now commonly agreed by all parties).

46. However, as the preceding paragraphs makes clear physical possession of information does not determine whether a public authority in fact holds information for the purposes of the Act. Rather, it depends whether a third party is in fact holding the information 'on behalf of' the public authority – i.e. in this case was King's holding the information on behalf of the NAO?
47. In circumstances like this the Commissioner considers it useful to consider the nature of the contractual relationship between the parties as this can indicate whether information held by a third party is held on behalf of a public authority.² The NAO provided the Commissioner with a copy of the award letter in which the NAO confirmed that King's had been granted this contract along with a copy of the specification which contains the terms and conditions of the contract. In providing these documents, the NAO noted that the contract does not contain an explicit passage in relation to whether information physically held by King's in relation to this contract was fact held on behalf of the NAO, but the NAO explained that:

'...our general presumption in handling requests is that our contractors' work which supports their report reports to us is held on our behalf and so where relevant to requests we ask our contractors to search their records too.

In handling [name of complainant]'s requests for information we consulted King's College to see if they held any further information about the calculations underpinning the figures quoted in our report...They reported at the time that they held no further information and that the version of the spreadsheet containing the calculations resulting in the "550 deaths avoided" figure had not been retained. King's College have confirmed this again this week [in August 2008]'.

48. The Commissioner has therefore concluded that any information which would be held by King's that would fall within the scope of requests 1, 3(a) and 4 was, for the purpose of the Act, held by the NAO by virtue of section 3(2)(b). Consequently, with regard to the application of section 3(2)(b) of the Act, the Commissioner agrees with the complainant's argument that NAO was in a position to 'control' the information held by King's.

² For example in the decision notices FS50141015 and FS50074144 the Commissioner requested site of a contract between public authority and a particular contractor in order to determine a section 3 issue.

49. In light of the above the Commissioner has therefore considered whether King's actually holds any information falling within the scope of the requests 1, 3(a) and 4. As is clear from the quote above, the NAO asked King's to conduct two separate searches in order to locate any further information that may be held by King's which would fall within the scope of the complainant's relevant requests; one search being conducted when the NAO initially received these requests and a further search conducted in August 2008 in response to enquiries from the Commissioner. Following both searches, King's has explained that it does not hold any further information falling within the scope of the complainant's requests. That is to say, although King's held copies of the information already provided to the complainant by the NAO in response to requests 1, 3(a) and 4, it did not hold any further information which would fall within the scope of these requests.
50. On the basis of these two searches the Commissioner is satisfied that by the time of the complainant's request in November 2005 although King's still held the spreadsheets which the complainant had previously been provided with by the NAO, King's did not hold any further information detailing how the figures contained in the spreadsheets were created. Such a conclusion would of course support the Commissioner's reasoning contained in paragraphs 33 and 34; the information already disclosed to the complainant provides a logical explanation as to how the figures were arrived at and therefore it is reasonable to conclude that further information would not necessarily need to have been held in order to generate the figures in the report. Therefore, on the balance of probabilities, the Commissioner is satisfied that King's do not hold any additional information on behalf of the NAO falling within the scope of the requests 1, 3(a) and 4.

Complaint (ii)

Section 1 and section 17

51. Request 3(e) of 11 March 2006 stated:

'I would like to see email exchanges between Sir John's office and others in the NAO, and particularly Jess Hudson and Karen Taylor or their own senior managers, about the stroke report to see if he was or was not made aware that the figures in the report relating to the benefit of the stroke unit were not true and accurate'.

52. In response to this request the NAO informed the complainant that 'there is no correspondence on the subject of why the figures were "not true and accurate" since this is not the case'.
53. The complainant has argued that the NAO should have interpreted this request more broadly and considered whether it held *any* correspondence between Sir John Bourn and others in the NAO discussing the savings in the report.
54. The Commissioner has been guided in his approach to this complaint by the Information Tribunal's decision in the case *Berend v the Information Commissioner and London Borough of Richmond upon Thames (LBRT)* (EA/2006/0049 & 50) in which the complainant and public authority disputed the

meaning of the information request that had been made. The complainant intended a different interpretation of the request than was acted upon by the public authority. The Tribunal concluded that there were two objective readings of the complainant's request and whilst it did not criticise the public authority for its reading of the request, it did find it in breach of section 1 of the Act to the extent that information relating to the alternative reading of the request was not provided.

55. The Commissioner has considered both the complainant's and the NAO's interpretations of request 3(e) and in his opinion both interpretations can be correctly described as objective readings of the request.
56. In the Commissioner's opinion the NAO's interpretation of the request was a literal one with emphasis being placed on the final words of the request which highlighted the fact that the complainant considered the information being sought to be untrue and inaccurate. To the NAO then, the complainant was seeking to access correspondence relating to untrue and inaccurate figures. As the NAO believed these figures to be correct it therefore believed that it did not hold any information falling within the scope of this request. The Commissioner accepts that such an interpretation of this request is a logical and objective reading of the request (albeit that such an interpretation inevitably leads to a narrower reading of the request than the complainant's).
57. In the Commissioner's opinion the complainant's interpretation of the request is also an objective one because it is reasonable to view the request as a request for **any** correspondence between Sir John Bourn and others in the NAO about the savings detailed in the report. To reach this interpretation of the request, emphasis has to be placed on the first part of the request up to the words 'stroke report'. If one stops reading the request at this point, the request becomes:

'I would like to see email exchanges between Sir John's office and others in the NAO, and particularly Jess Hudson and Karen Taylor or their own senior managers, about the stroke report'.
58. The part of the request after this quoted section can be seen as simply indicating the complainant's apparent intentions with regard to the information he is seeking, i.e. his desire to prove that Sir John knew that the figures in the report were incorrect or that the others in the NAO had failed to inform Sir John that the figures were incorrect. In the complainant's interpretation of the request, it clearly becomes a request simply for all correspondence between Sir John and others regardless of whether this correspondence included comments as to the validity or otherwise of the figures included in the report.
59. As the Commissioner is satisfied that the request has two objective readings, the NAO was therefore under a duty to provide a response compliant with section 1(1)(a) of the Act for both interpretations of the request. With regard to the NAO's own interpretation of the request, it did confirm to the applicant that it did not hold any correspondence discussing inaccurate or incorrect information. Therefore it complied with section 1(1)(a) of the Act.

60. However, having analysed the NAO's response to this request, the Commissioner has concluded that it makes no reference to the whether or not it held correspondence between Sir John and staff at the NAO discussing the savings in the report. By failing to either confirm or deny whether is held such information the Commissioner has concluded that the NAO breached section 1(1)(a) of the Act.
61. The Commissioner has established that the NAO does hold some information that falls within the broader reading of request 3(e). This information consists of two memos sent to Sir John from Karen Taylor and one memo from Sir John to Karen Taylor.
62. In its original submissions to the Commissioner the NAO explained that it considered this information to be exempt from disclosure on the basis of the exemption contained at section 33 of the Act.
63. By failing to provide the complainant with a refusal notice at the time of dealing with this request, the Commissioner considers that the NAO also breached section 17(1) of the Act. Section 17(1) requires that when a public authority refuses access to information it must specify in a notice to the applicant the exemptions on which it is refusing to the request and why, if not clear, those exemptions apply.

Section 33(1)

64. Section 33 states that:

'33 - (1) This section applies to any public authority which has functions in relation to-

- (a) the audit of the accounts of other public authorities, or
- (b) the examination of the economy, efficiency and effectiveness with which other public authorities use their resources in discharging their functions.

(2) Information held by a public authority to which this section applies is exempt information if its disclosure would, or would be likely to, prejudice the exercise of any of the authority's functions in relation to any of the matters referred to in subsection (1).'

The NAO's position

65. The NAO has explained that the minutes in question consist of the provision of advice to the Comptroller and Auditor General (C&AG), who at the time period in question was Sir John Bourn, and his response to his study team about his unpublished audit report and progress in confirming the factual accuracy of information with the DoH. The NAO has argued that it is important for the C&AG to receive free and frank advice on how to carry out his statutory function and on the handling of discussions with clients, and be able to respond to it. In the NAO's opinion release of this type of information would be likely to inhibit the ability of

the C&AG and his staff from freely and openly discussing draft reports and client relationship issues with one another, and such a result would prejudice the NAO's audit function.

The Commissioner's position

66. Firstly, as is clear from the way the exemption is drafted, section 33, unlike other prejudice based exemptions contained in the Act, can only apply to a limited number of public authorities, i.e. those who have 'functions' in relation to:
- The audit of the accounts of other public authorities, or
 - The examination of the economy, efficiency and effectiveness with which other public authorities use their resources in discharging their functions.
67. Clearly, the NAO is a body which undertakes both of the two functions listed above, and therefore the Commissioner is satisfied that the NAO is a public authority that can rely upon section 33.
68. However, the Commissioner must also be satisfied that the exempt information in question must also relate to one of these two functions. For example, information held by the NAO in relation to it's staff canteen (should such a facility in fact exist) is not information which relates to either of the two above functions, albeit that it is information held by a public authority which clearly has audit functions.
69. Having reviewed the information in question, i.e. the copies of the internal memos, the Commissioner is satisfied that these documents were created by the NAO for the purpose of undertaking the second of the two functions listed above. That is to say, the report examined the methods by which the DoH and wider health service provided treatment and rehabilitation services to the people suffering from strokes.
70. The Commissioner's guidance on section 33 of the Act suggests that there are two broad types of prejudice that may arise through disclosure of information by an auditor. Firstly, there may be prejudice to a particular audit process. In such a scenario the question of timing is likely to be vital to assessing the level of prejudice. For example, the release of information about an ongoing exercise may well be likely to cause prejudice, for instance where a draft report may contain inaccuracies or provisional recommendations. By contrast, where an exercise has been completed and a final audit report has been published, it would be difficult to see how there would be prejudice to that particular exercise.
71. Secondly, there may also be a more general level of prejudice to the audit function. For example, if the release of information supplied in confidence or on a voluntarily basis to an auditor were to discourage cooperation with the auditor in the future, it may be reasonable to argue prejudice. Similarly, while there would be unlikely to be prejudice in the release of information about standard audit methodologies, the release of information about other techniques might cause prejudice if it were to reduce the likely effectiveness of those techniques in the future.

72. As is clear from the NAO's submissions which are summarised in paragraph 66, it is the second type of prejudice argument outlined in the Commissioner's guidance, rather than the first, that the NAO has argued will be likely occur if this information is disclosed.
73. The Commissioner has been guided on the interpretation of the phrase 'would, or would be likely to' be a number of Information Tribunal decisions. With regard to likely to prejudice, the Tribunal in *John Connor Press Associates Limited v The Information Commissioner (EA/2005/0005)* confirmed that 'the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk' (Tribunal at paragraph 15). With regard to the alternative limb of 'would prejudice', the Tribunal in *Hogan v Oxford City Council & The Information Commissioner (EA/2005/0026 & 0030)* commented that 'clearly this second limb of the test places a stronger evidential burden on the public authority to discharge' (Tribunal at paragraph 36).
74. With regard to the arguments outlined by the NAO, the Commissioner accepts that free and frank discussion between colleagues at the NAO, and in particular between the C&AG and his staff are key to the NAO being able to effectively carry out its audit functions. If information detailing free and frank discussions were to be routinely disclosed the Commissioner accepts that the C&AG and his staff *may* be dissuaded from engaging in candid written discussions on key issues such as draft reports and client relationship issues.
75. However, having reviewed the memos in question the Commissioner is not satisfied that they can be correctly described as containing free and frank advice; in fact that the minutes contain nothing more than one would expect from such a scenario. This is to say, the type of discussion and feedback that one would expect the head of an organisation to give on a project that is in the very latter stages of being completed. (The final version of the report was published on 16 November 2005 and the memos date from October 2005). The issues that the memos focus on are top level, procedural and non-controversial issues rather than issues of particular sensitivity or controversy. In the Commissioner's opinion for discussions to be correctly described as free and frank there has to be an element of candour or outspokenness to the debate which in the information contained in these minutes is not present. That is not to say that the issues discussed are ones that are necessarily minor or trivial, it is simply that they are not free and frank discussions of such issues.
76. In summary, the Commissioner is not satisfied that the information contained in the minutes is of a sufficiently free and frank nature that their disclosure would be likely to inhibit truly free and frank discussion in the future. On this basis the Commissioner is not satisfied that the likelihood of harm following disclosure of this information the NAO audit functions is one that is anything more than hypothetical and certainly not one that can be correctly described as real and significant. Consequently, the exemption contained at section 33(2) of the Act is not engaged.
77. During the closing stages of his investigation the Commissioner outlined to the NAO his position that the three internal memos were not exempt on the basis of

section 33(2) for the reasons outlined above. Having reviewed the Commissioner's arguments the NAO explained that it accepted that in this case the disclosure of the internal memos would not be likely to prejudice its audit functions. Consequently the NAO agreed to disclose the internal memos to the complainant. By incorrectly relying on exemption which did not apply and thus not providing the complainant with information he had requested, the Commissioner has concluded the NAO breached section 1(1)(b) of the Act

Complaint (iii)

Section 1(1)

78. In order to investigate the complainant's allegation that the NAO in fact consulted more than one stroke expert, the Commissioner asked the NAO to outline the process by which experts were consulted in relation to the review process alluded to in the requests of 10 May 2006 and 7 February 2007.
79. The NAO explained that a number of stroke experts were consulted as part of the preparation of the report. As set out in the methodology of the report, the NAO consulted Omer Saka and colleagues at King's College and the London School of Economics and Political Science in relation to the calculation of the cost of strokes to the NHS and wider economy. The NAO also noted that the Intercollegiate Stroke Working Party acted as a reference panel for the study and the names of the four of these panel members are listed in the appendix of the report.
80. With regard to the request of 10 May 2006 the NAO confirmed to the Commissioner that the two experts who had been consulted were Charles Wolfe (King's College) and Alistair McGuire (LSE) and that this information had been communicated to the complainant on 26 June 2006. (By failing to respond to this request within 20 working days the Commissioner believes that the NAO breached sections 1(1)(b) and 10(1) of the Act)
81. With regard to the request of 7 February 2007, the NAO has explained that it consulted with the King's team, the LSE team and Professor Peter Rothwell in relation to this process of checking the calculation of 550 deaths mentioned in the report. However, the NAO has explained that its records only note the consultation with Professor Rothwell rather than any of the other parties who sat on the reference panel.
82. The Commissioner understands that the NAO has searched its records for information that would fall within the scope of these requests and that no further recorded information detailed discussions with experts other than that already disclosed to the complainant has been located. In the Commissioner's opinion the NAO's records in relation to this issue are organised and clear, for example, the NAO has been able to provide the ICO with a detailed chronology of the complainant's correspondence with the NAO over a two year period along with an explanation of the actions the NAO took in relation to this correspondence. In the Commissioner's opinion it is unlikely that the NAO would have misplaced or lost correspondence regarding further discussions with the stroke experts. Therefore,

the Commissioner is satisfied that on the balance of probabilities the NAO has provided the complainant with all of the information it holds falling within requests 5 and 6 and in doing so has complied with section 1(1)(a) of the Act.

Complaint (iv)

Section 1(1), Section 10 and Section 16

83. Request 10 of 18 September 2007 asked:

'Please can you also provide written documentation exchanged between NAO and Department of Health confirming that the £20 million savings from thrombolysis and early carotid surgery recommendations as estimated by the King's / NAO economic research modelling work were no longer agreed so as to support the answer made by Sir John Bourn the Edward Leigh question at the Public Accounts Commissioner hearing on 27 February'.

84. The NAO responded to this request on 24 October 2007 (and by failing to respond within 20 working days breached section 1(1)(a) and 10(1) of the Act) with the following answer:

'I can confirm that it was not the C&AG's [Sir John Bourn's] intention, when he gave evidence to the Public Accounts Commissioner on 27 February 2007 on the nature of the NAO's financial impacts figures, to imply that he no longer agreed with the efficiency savings attributed to the recommendations regarding changes to treatment regimes, which were set out in his earlier stroke report. He was illustrating that the NAO's work was not skewed towards identifying financial impacts. He explained that the recommendations in the stroke report were made with a view to improving treatment. The savings referred to in his report derived from the economic modelling of the potential impact of these changes in the treatment regime. In saying that "there is no financial payoff" the C&AG meant that although the changes might save lives, the NAO did not attribute a financial value to the lives saved. As you will appreciate this answer means that we hold no emails or other exchanges of written documentation with the Department [of Health] confirming that there was no longer agreement on the savings figures arising from the economic modelling carried out for the C&AG's stroke report'.

85. The complainant has argued that the NAO should have interpreted this request more broadly and considered whether in fact it held any correspondence between it and the DoH regarding the savings in the report.

86. Clearly, this complaint has obvious similarities with complaint (ii) and the Commissioner has again been guided by the LBRT Tribunal cases cited above in considering this complaint. In contrast to request 3(e), the Commissioner does not believe that request 10 has two objective readings. Rather the meaning of request 10 is clear; the complainant wanted correspondence between the NAO

and the DoH discussing the fact that figures contained in the report were no longer agreed. In the Commissioner's opinion request 10 does not have the ambiguity that request 3(e) poses.

87. Furthermore, in the Commissioner's opinion whilst the wording of request 10 is based on the complainant's view about the meaning of Sir John's comments to the PAC there is only one objective reading of the request. The complainant in framing request 10 is clearly under the impression that the NAO and DoH no longer agreed on the accuracy of the figures contained in the report. As the above quotes make clear, the complainant formed this impression on the basis of his interpretation of Sir John's comments to the PAC. As the NAO response makes clear Sir John's intention was not that the figures were no longer agreed and that to infer such an interpretation from the PAC transcript would be incorrect. The Commissioner has also reviewed the transcript in question and is satisfied that it is reasonable to conclude that Sir John did not mean that the NAO and the DoH no longer agreed the figures contained in the report.
88. Consequently, unlike complaint (ii), this does not relate to situation where there are two objective readings of a request rather there is only one objective reading of this request, albeit that the basis of the request is worded in a subjective fashion. The Commissioner accepts that it could be argued that the NAO should have, under its duty at section 16 of the Act, clarified with the complainant what information he was seeking in response to request 10. However, in the Commissioner's opinion such a duty was not engaged; the NAO were aware of what information the complainant was seeking access to, i.e. correspondence discussing the now disputed savings, but as this correspondence did not exist, the NAO confirmed this fact and therefore complied with section 1(1)(a). Basically, the NAO were clear as to what the request was and did not need under section 1(3) of the Act to seek any clarification from the complainant. Moreover, even if the NAO were under a duty in responding to request 10 to provide advice and assistance, in the Commissioner's opinion the NAO's letter of 24 October 2007 essentially fulfils this aim. This letter provides a detailed explanation as to why in the NAO's opinion such information is not held.
89. During the course of the Commissioner's investigation, he asked the NAO to confirm whether it did in fact hold any further information falling within the scope of the complainant's wider interpretation of request 10. The Commissioner understands that the NAO holds a number of emails and correspondences exchanged between it and the DoH in relation to the report and that this correspondence was generated as part of the routine clearance process between the two authorities. The NAO has explained that it considers this correspondence, with the exception of one document which has now been disclosed to the complainant, to be exempt from disclosure on the basis of section 33 of the Act.
90. However, as the Commissioner has concluded that the complainant has not actually requested this correspondence, in terms of a strict application of the Act the NAO were not under an obligation to comply with section 1(1) of the Act. Consequently, in relation to this specific issue, the Commissioner has not received a valid complaint under section 50 of the Act and thus cannot include a

formal conclusion in the body of a decision notice as the applicability or otherwise of the exemption contained at section 33(2).

Complaint (v)

Section 1(1)

91. In order to investigate complaint (v) the Commissioner initially asked the NAO to explain why it considered the requests of 7 February 2007 and 22 May 2007 to be effectively asking for the same information. The Commissioner also asked the NAO to provide a schedule of all of the correspondence it held falling within the scope of both of these requests. (The Commissioner notes that the NAO did not respond to the 22 May 2007 request until 20 July 2007 and therefore breached section 10(1) of the Act).
92. In response, the NAO explained that the complainant's request of 7 February 2007 was for correspondence between the NAO and Professor Alistair MacGuire, Omer Saka and Professor Charles Wolfe. The complainant's request of 22 May 2007 asked for all correspondence between the NAO and the King's team between 14 December 2005 and 24 February 2006. The NAO explained that as Omer Saka and Professor Charles Wolfe were the only members of the King's College team that the NAO corresponded with in relation to the report, it considered the second request to be covered by the first request.
93. The NAO also informed the Commissioner that the only piece of correspondence that the NAO held falling within the scope of the requests was an email dated 30 January 2006 from Omer Saka at King's to Jess Hudson at the NAO. The Commissioner has established that this email had not been previously provided to the complainant, but during the course of the Commissioner's investigation this was disclosed to the complainant. By failing to disclose this email to the complainant within 20 working days of either request the Commissioner has concluded that the NAO breached section 1(1)(b) and section 10(1) of the Act.
94. Having reviewed the email of 30 January 2006, the Commissioner contacted the NAO again because the contents of the email implied that Jess Hudson (or indeed another member of the NAO) may have contacted the King's team at some point in January or February 2006. The relevant section of the email reads:

'Dear [name of complainant]

As we have said before, the figures and calculation were done by the Health Economics team from Kings and LSE and were reviewed and cleared by the DoH economists also. I understand that you want them to reply to you but I'm afraid that as your issue is with their work there is little I can do, since they are, after all, independent. I have emailed them with a remainder that you continue to have concerns and are awaiting their reply. Hopefully they will respond'
95. The Commissioner suggested to the NAO that if such an email was sent to King's it would fall within the scope of the complainant's request.

96. In response to the Commissioner's further enquires the NAO explained that it had undertaken further searches in order to locate correspondence falling within the scope of the above requests, including the email referred to in the above quote, but it had not located any further information.
97. The NAO explained that this search encompassed:
- a review of the entire NAO electronic records management system, which covers all of the records relating to the study and report, and all the folders containing correspondence between the NAO and the complainant;
 - a review of all e-mails held in personal areas by Karen Taylor, Alex Scharaschkin and Jess Hudson who were the NAO employees primarily involved in the production of the report; and
 - a review of all of the paper files relating to the complainant's correspondence with the NAO.
98. The NAO also noted that its records management procedures were designed to ensure that it retained all the records that it needed to support its audit opinions and conclusions. Moreover, it was not normal practice to retain emails referred to in the quoted email above and it is possible that if Jess Hudson did contact King's this contact was made over the telephone.
99. As outlined above, the test that the Commissioner applies in considering cases where information is not held, but a complainant argues that the information is held, is one of probability rather than certainty. In light of the searches that the NAO has now conducted, i.e. looking in all relevant areas for relevant correspondence and conducting these searches more than once, in the Commissioner's opinion it is reasonable to conclude that on the balance of probabilities the NAO does not hold any further information falling within the scope of these requests.

Complaint (vi)

Section 1(1) and Section 10

100. The NAO has explained to the Commissioner that it **did** receive request 9 which requested the source of certain figures in the spreadsheet model that had previously been provided to the complainant. However, the NAO explained that it did not consider this correspondence a request for information, but rather a request for an explanation it did not need to provide a response compliant with section 1(1) of the Act. The NAO has explained that since it had terminated non-FOI correspondence with the complainant in June 2006, it did not contact the complainant following receipt of this letter.
101. In the Commissioner's opinion, request 9, which is quoted below for ease of reference is a valid request under the Act:

'Please can you state the exact origin of: (1) the 0.3 assumption in box B6;
(2) the 0.8 assumption in box B7?'

'Please can you state the exact origin of the 0.22 assumption in box B7?'

102. This request clearly asks for information concerning the origin of two assumptions in the spreadsheet. Whilst the Commissioner acknowledges that prior to this request the NAO and complainant had been in correspondence regarding the origins of assumptions relating to figures contained in the report, the origins the complainant was seeking in this request were not in fact ones that he had previously sought. Therefore the Commissioner does not consider that the NAO's argument that request 9 was simply seeking clarification on a number of issues that had already been dealt with. This conclusion is supported by the fact that during the course of the Commissioner's investigation that the NAO located further information, not previously provided to the complainant, which explained the origins of the respective figures quoted in request 9. In any case the NAO had a duty to respond to a request for information under section 1(1) confirming and denying whether the information is held and to provide that information or to issue a refusal notice under section 17 setting out its reliance on an exemption from that duty. Further under section 1(2) a public authority is not under an obligation to comply with section 1(1) subject to the provision set out in section 14(2) of the Act pertaining to repeated requests for information. Had the NAO believed that all recorded information caught by the scope of the complainant's request had been previously provided to the complainant it could have applied section 14 of the Act. This requested information has now been disclosed to the complainant.
103. By failing to provide this information to the complainant until the Commissioner's intervention the Commissioner believes that the NAO breached section 1(1)(a) and (b) of the Act in addition to section 10(1) of the Act.

The Decision

104. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- The Commissioner is satisfied that the NAO has now disclosed all of the information falling within the scope of the requests 1, 3(a), 4, 5, 6, and 10.
 - The Commissioner has also concluded that information held by King's College that falls within the scope of requests 1, 3(a) and 4 is held on behalf of the NAO by virtue of section 3(2)(b).
105. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- Breached sections 1(1)(b) and 10(1) in failing to provide information falling within the scope of requests 1 and 3(a) within 20 working days.

- Breached section 17(1) by failing to provide a refusal notice citing section 33 in response to request 3(e) and as this exemption did not apply also breached section 1(1)(b) in failing to initially disclose this information.
- Breached sections 1(1)(b) and 10(1) in failing to provide information falling within the scope of request 4 within 20 working days.
- Breached sections 1(1)(b) and 10(1) in failing to provide information falling within the scope of request 5 within 20 working days.
- Breached sections 1(1)(b) and 10(1) in failing to provide information falling within the scope of request 7 within 20 working days.
- Breached sections 1(1)(a), 1(1)(b) and 10(1) in failing to provide information falling within the scope of request 9 within 20 working days.
- Breached sections 1(1)(a) and 10(1) in failing to confirm or deny within 20 working days whether it held information falling within the scope of request 10.

Steps Required

106. In light of the fact that the complainant has now been provided with the three internal memos between Sir John Bourn and Karen Taylor covered by request number 3(e), the Commissioner does not require the NAO to take any steps.

Other matters

107. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters:
108. The complainant submitted request 6 on 7 February 2007. On 7 March 2007 the NAO refused this request on the basis of section 14(1). On 12 April 2007 the complainant formally asked the NAO to conduct an internal review into its decision to refuse request 6 on the basis of section 14(1). The NAO did not inform the complainant of the outcome of the internal review until 21 August 2007.
109. The Commissioner's awareness guidance on internal reviews comments on the time it should take a public authority to complete an internal review.³ The guidance suggests that in most cases 20 working days will be sufficient to conduct a review and even in more complicated and involved cases the time taken should not exceed 40 working days.

3

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/foi_guidance_practice_guidance_5.pdf

110. Clearly by taking five months to complete this internal review the NAO did not meet the deadlines recommended in the Commissioner's guidance. In correspondence with the Commissioner the NAO explained that conducting the internal involved a complete review of all of the complainant's correspondence, not just the specific request that had been refused on the basis of section 14. Furthermore, the NAO explained that as senior managers had been involved in the decision to initially refuse the request on the basis of section 14, the only person in a position to conduct the review was the then Deputy Comptroller and Auditor General, and the time he could devote to this issue was inevitably limited.
111. The Commissioner does acknowledge the mitigating factors advanced by the NAO and ultimately does note that the internal review reversed the initial decision to refuse this request. However, in conducting the internal reviews in the future the Commissioner expects the NAO to comply with his guidance and ensure that these reviews are conducted in a more timely fashion and within 20 working days, or in exceptional cases 40 working days. If the NAO's current procedures for handling requests cannot accommodate such a timescale then the Commissioner recommends that it be reviewed.
112. In correspondence with the Commissioner the complainant raised concerns about the NAO's decision to initially rely on section 14 to refuse request 6. The complainant has suggested that the NAO deliberately cited section 14 with the intention of concealing information from him. As the decision to refuse request 6 on the basis of section 14 was reversed at the internal review stage, the Commissioner has not considered the NAO's application of section 14 in this decision notice. However, the Commissioner wishes to make clear that he has not considered any evidence to suggest that the NAO deliberately cited section 14 in order to conceal or delay disclosure of information requested by the complainant.

Right of Appeal

113. 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 15 day of October 2008

Signed

**Nicole Duncan
Head of FOI Complaints**

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

Annex A

Summary of requests and NAO's responses

Summary of requests and dates submitted	Date & summary of response
<p>Request 1: 21 Nov 2005 – request stating: 'I would be interested in knowing how the figures in paragraphs 10 and 13 [of the report] were arrived at'.</p>	<p>5 Dec 2005 – NAO provide some explanation of figures.</p>
<p>Request 2: 21 Feb 2006 - request asking to know who was responsible for checking the details in case study 4 in the report or the workings of the UCL/LSE savings re: thrombolysis.</p>	<p>24 Feb 2006 – response sent.</p>
<p>Request 3: 1 March 2006 – five part request:</p> <p>(a) details of the underpinning calculations for each and every single figure in those paragraphs above can now be produced.</p> <p>(b) Correspondence between Professor Christopher Bladin (and any others at Boxhill Hospital Australia) with NAO to support claims that Bladin had edited the text himself.</p> <p>(c) Correspondence between Gosford Hospital and NAO underpinning the details produced in the study.</p> <p>(d) 'in the 24 February email Karen Taylor also mentioned that the Department agreed the 9% was the standard that could and should be aspired to for thrombolysis. Please can I see written documentation to confirm this.'</p> <p>(e) 'I would like to see email exchanges between Sir John's office and others in the NAO...about the stroke report to see if he was or was not made aware that the figures in the report relating to the benefit of the stroke unit were not true and accurate'.</p>	<p>28 March 2006 – response sent.</p>
<p>Request 4: 29 March 2006 – complaint to NAO that not all information re: request 1 in previous box was provided.</p>	<p>18 May 2006 - NAO provide further info in response to request 3(a). Explain that initially in letter</p>

	<p>of 28 March it simply provided an explanation of the calculations underlying each figure because of the difficulties in printing out information and interpreting it. Now, following your complainant of 29 March NAO supplied 'spreadsheets underpinning the calculations that you requested relating to the report'.</p>
<p>Request 5: 10 May 2006 – two requests:</p> <p>(a) I would be grateful if you could reveal to me the names of “our stroke experts” who checked the calculation and supported “our use of the 9% RRR”.</p> <p>(b) ‘please provide me with the email or other correspondence to prove that the “stroke experts” referred to in the Annex were contacted and that they did indeed recheck the calculation in the Annex’.</p>	<p>26 June 2006 – response sent.</p>
<p>Request 6: 7 February 2007 – requests for:</p> <p>(a) names of stroke experts consulted by NAO as Sir John suggested to Paul Truswell MP.</p> <p>(b) Also see written correspondence of these exchanges.</p> <p>(c) Correspondence NAO received from experts at Kings & LSE who provided the NAO with is ‘Economic burden of stroke in England’ report that informed the figures in the NAO report.</p>	<p>7 March 2007 – NAO refuse 7 Feb request on basis of s14.</p> <p>21 August 2007 - outcome of internal review regarding refusal of s14 request of 7 Feb issued. Internal review concludes that s14 was applied incorrectly and therefore NAO include response to 7 February request. Confirm name one expert (Prof. Peter Rothwell). Confirm that ‘there was no further written correspondence from Prof. Alistair McGuire, Omer Saka or Prof Charles Wolfe).</p>
<p>Request 7: 22 May 2007 – Request stating: ‘please can you forward me copies of all email</p>	<p>20 July 2007 - NAO say that request of 22 May is</p>

<p>and letter communications exchanged between the NAO and King's team between 14 December 2005 and 24 February 2006'.</p>	<p>similar that of the 7 Feb which they refused on basis of section 14. Suggests that nothing will be done about the 22 May request as the internal review regarding 7 Feb request is still ongoing.</p> <p>However, provide copy of draft report which was requested in 22 June request.</p>
<p>Request 8: 22 June 2007 - for 'draft copies of the "Reducing Brain Damage: Faster access to better stroke care'</p>	<p>20 July 2007 – see above box.</p>
<p>Request 9: 20 July 2007 - new request for origins of particular figures in spreadsheet.</p>	
<p>Request 10: 18 September 2007 Query raised with NAO why request for emails covering period Dec 2005 and Feb 2006 have not been disclosed – is reason that the request are being refused on the basis that they are considered vexatious (section 14).</p> <p>Also new request submitted: 'please can you also provide written documentation exchanged between NAO and Department of Health confirming that the £20 million savings...were no longer agreed so as to support the answer made by Sir John Bourn the Edward Leigh question at the Public Accounts Commissioner hearing on 27 February'.</p>	<p>24 October 2007</p> <p>NAO confirm that not relying on s14 to refuse request re correspondence; in fact all info has been disclosed.</p> <p>Also, explain that in their opinion there was <u>not</u> a change in agreement and therefore they do not hold info falling within the scope of the request for info exchanged between NAO and DoH.</p>

Legal Annex

The Freedom of Information Act 2000

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 2(1) provides that –

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

(a) the provision confers absolute exemption, or

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

section 1(1)(a) does not apply.”

Section 2(2) provides that –

“In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that –

- (a) the information is exempt information by virtue of a provision conferring absolute exemption, or
- (b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information”

Section 3(2) provides that –

“For the purposes of this Act, information is held by a public authority if –

- (a) it is held by the authority, otherwise than on behalf of another person,
or
- (b) it is held by another person on behalf of the authority.”

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 14(1) provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious”

Section 16(1) provides that -

“It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it”.

Section 33(1) provides that –

“This section applies to any public authority which has functions in relation to-

- (a) the audit of the accounts of other public authorities, or
- (b) the examination of the economy, efficiency and effectiveness with which other public authorities use their resources in discharging their functions.”

Section 33(2) provides that –

“Information held by a public authority to which this section applies is exempt information if its disclosure would, or would be likely to, prejudice the exercise of

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any of the authority's functions in relation to any of the matters referred to in subsection (1)."