

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date 30 April 2009

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

### Summary

---

The complainant asked the Cabinet Office for '*Information concerning the operation which resulted in the raid of a house in Lansdown Road, Forest Gate, London, on June 2 2006*'. The Cabinet Office replied that the exemptions, under sections 23(5) and 24(2) of the Act, from the duty to confirm or deny whether information was held, applied in this case, and it extended the time limit in order to consider the public interest test in respect of section 24(2). It subsequently refused to confirm nor deny that it held the requested information, referring to sections 23(5) and 24(2), but referred the complainant to five responses on its website which the Prime Minister had given to journalists in respect of the raid. It upheld its decision at internal review. During the course of the Commissioner's investigation the Cabinet Office disclosed some information to the complainant, but stated that, under the provisions of sections 23(5) and 24(2) of the Act, it was neither confirming nor denying whether any further information was held.

The Commissioner decided that, having extended the time limit to consider the public interest test, the Cabinet Office did not provide its assessment of the public interest test within a reasonable timescale, which constitutes a breach of section 17(3) of the Act. The Cabinet Office also breached section 17(3)(b), in that its refusal notice failed to state adequately the reasons for claiming that the public interest in refusing to confirm or deny under sections 23(5) and 24(2) outweighed the public interest in disclosing the requested information. The Cabinet Office was in breach of section 1(1)(b) of the Act in failing to disclose information that was not exempt until after the complainant had approached the Commissioner. In addition, since the Cabinet Office failed to provide the information within the statutory time limit, it also breached section 10(1) of the Act. In failing to confirm or deny that it held information falling within the request, the Cabinet Office also breached section 1(1)(a) of the Act, and in failing to provide that confirmation or denial within the statutory time limit it breached section 10(1). The Commissioner required the Cabinet Office to confirm or deny whether it holds further information that falls within the request and, in respect of any held information, to disclose it (in full or part) or withhold it by reference to an appropriate exemption.

## The Commissioner's Role

---

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

## The Request

---

2. On 12 June 2006 the complainant requested from the Cabinet Office the following:

*'Information concerning the operation which resulted in the raid of a house in Lansdown Road, Forest Gate, London, on June 2 2006'.*

3. The Cabinet Office acknowledged the request on 13 June 2006. It explained on 11 July 2006 that the exemptions, under sections 23(5) and 24(2) of the Act, from the duty to confirm or deny whether information was held, applied in this case. Section 24(2) was subject to the public interest test, and the Cabinet Office stated that it required an additional 20 working days in order to reach a decision in that regard.
4. The Cabinet Office sent a further email on 9 August stating that it had not yet concluded its consideration of the public interest test, but hoped to respond by 18 August.
5. On 18 August 2006 the Cabinet Office issued a refusal notice. It apologised for the delay in providing a substantive reply. It refused to confirm nor deny that it held the requested information, referring to sections 23(5) and 24(2) of the Act. It stated that *'To confirm or deny could, in itself, provide information about current operations to safeguard national security'*. In relation to the substance of the public interest test, it limited its explanation to the statement: *'There is a very strong public interest in safeguarding national security. This interest will only be overridden in exceptional circumstances'*. It referred the complainant to five responses which the Prime Minister had given to journalists regarding the raid, website links to which it cited. It referred him to his right to ask for an internal review, and to apply to the Information Commissioner.
6. The complainant requested an internal review on 18 August 2006.
7. The Cabinet Office sent its internal review decision to the complainant on 3 October 2006. It stated that the original decision had been upheld, and referred the complainant to the Commissioner.

## The Investigation

---

### Scope of the case

8. On 12 October 2006 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He expressed his view that it was *'absurd and an abuse of the Act'* for the Cabinet Office to refuse to confirm or deny that it held the information when it was obvious that it did, since the raid had been in the public eye and the Prime Minister would not have been able to respond to questions about it had the Cabinet Office held no information.

### Chronology

9. The Commissioner wrote to the complainant and the Cabinet Office on 10 October 2007. He asked the Cabinet Office to provide information about a number of issues.
10. The Commissioner sent a reminder on 14 November 2007. The Cabinet Office did not respond.
11. On 30 November 2007 the Commissioner informed the Cabinet Office that he intended to issue an Information Notice on 7 December 2007 requiring production of the information which he had earlier requested.
12. The Cabinet Office emailed a response to the Commissioner on 7 December 2007. It stated that it was maintaining its neither confirm nor deny response to the complainant; and that it was neither confirming nor denying to the Commissioner that it held any of the information requested by the complainant. It provided a copy of its letter to the complainant dated 11 July 2006, as requested by the Commissioner.
13. On 8 January 2008 the Commissioner issued an Information Notice under section 51 of the Act, requiring the Cabinet Office to provide certain specified information.
14. A representative of the Commissioner held a meeting with the Cabinet Office on 23 January 2008.
15. The Commissioner made further enquiries of the Cabinet Office on 17 June 2008.
16. The Cabinet Office replied on 24 June 2008.
17. The Commissioner's representative attended the Cabinet Office again on 13 August 2008.
18. The Commissioner then wrote to the Cabinet Office on 18 August 2008.
19. He sent a chasing letter on 2 October 2008.

20. He sent a further chasing letter on 16 October 2008.
21. The Cabinet Office wrote to the Commissioner on 8 December 2008. It provided a copy letter dated 5 December 2008 which it had sent to the complainant. In this letter it stated that, following discussions with the Commissioner, it had reviewed its previous response to the request and was now confirming that it held some information relating to the request. It attached an Annex of information which it was now disclosing. It stated that, under the provisions of sections 23(5) and 24(2) of the Act, it was neither confirming nor denying whether it held further information relevant to the request. It provided an analysis of the public interest in maintaining the exclusion of the duty to confirm or deny in respect of section 24..

### Findings of fact

22. The following is an extract from a press briefing on 13 June 2006 concerning the Forest Gate operation from the Prime Minister's Official Spokesman, which is available on the 10 Downing Street website.

*'Asked if the Prime Minister still backed the Police 101% after the statements today of the individuals arrested in Forest Gate, the Prime Minister's Official Spokesman (PMOS) said that that the Prime Minister's view had not changed. As he had said yesterday, if the police and the security agencies had failed to act on the intelligence they had received then people would have, quite rightly, been critical....*

*Put to him that there was a suggestion that the police had made their move 48 hours late due to a disagreement with MI5, the PMOS said that he didn't comment on operational matters, furthermore there was an IPCC investigation on going which he wouldn't pre-empt in any case. Asked if we were considering having a review of operational protocol in light of this, the PMOS said that, as people were aware, there was an ongoing process of review on all such matters...*

*Asked to comment on disagreements between the police and the security services, the PMOS said that, as he said yesterday, reports about these disagreements were simply wrong...*

*Asked if the Government and authorities were acknowledging that in retrospect this intelligence had not been accurate, the PMOS said that the bottom line in all of this was a recognition that intelligence was an art-form where you could not be 100% right all the time....'*

23. On the website of the Independent Police Complainants Commission (IPCC) there is a press release dated 13 February 2007 addressing the report which the IPCC had issued as a result of its investigation into complaints about aspects of the Forest Gate operation.

*'The Independent Police Complaints Commission (IPCC) has concluded its inquiries into complaints from the occupants of two houses raided by counter-terrorist police in Forest Gate, East London last June (2006). The*

*investigations, known as Forest Gate 2 and Forest Gate 3, looked at over 150 complaints from the 11 members of the two households. These ranged from complaints about the operation itself, to allegations of assault and complaints about treatment in custody. The key findings were:*

- *A small number of complaints, involving treatment in custody, were upheld. An officer has received a written warning for one allegation of neglect.*
- *Although the intelligence was subsequently found to be wrong, we accept that at the time the police had no choice but to act on it.*
- *There was a deep and understandable sense of grievance felt by all those affected by what was a terrifying experience. The police tactics adopted were indeed forceful and aggressive, but this was inevitable given the threat the police genuinely believed they faced.*
- *The police could and should have changed their response much sooner once in control of the situation.*
- *People not arrested at the scene should not have been taken to a police station, which caused unnecessary anxiety and confusion.'*

24. The Commissioner has concluded on the basis of this, applying the test of the balance of probabilities, that, at the time of the complainant's request and during the internal review process, the Cabinet Office was in possession of information which fell within the terms of the request, and that the fact that it did was in the public domain.

## Analysis

---

### Procedural matters

#### *Delay in considering the public interest test*

25. 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.'*

However, section 17(2) provides that a public authority may extend the time limit where it is still considering the public interest after 20 working days, as long as certain measures are taken. Where any additional time beyond the initial 20 working days is required, the public authority must still serve a 'refusal notice' under section 17 of the Act within 20 working days of a request even in those cases where it is relying on a qualified exemption and has not yet completed the public interest test; 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. If the final decision is to withhold the requested information, a second notice must then be issued providing the reasons for the decision on the public interest. 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 in the Commissioner's view the total time taken should in no case exceed 40 working days.
27. In this case, the request was made on 12 June 2006. The Cabinet Office acknowledged the request on 13 June 2006 and stated that it required an additional 20 working days in order to address the public interest test. In the event it actually provided its explanation of the public interest test on 18 August 2006, 49 working days later.
28. The Commissioner recognises that this case was dealt with prior to the issuing of his *'Good Practice Guidance No 4'* in February 2007. However, he considers that the 49 working days which the Cabinet Office took to deal with the matter was not a reasonable timescale, particularly in light of the cursory nature of the eventual explanation. He takes the view that the Cabinet Office therefore breached section 17(3) of the Act, which provides that a public authority which is relying on a claim that the public interest in maintaining the exemption outweighs the public interest in disclosing the information 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...'*

#### *Inadequate explanation of the public interest*

29. The Commissioner also takes the view that, in this case, the Cabinet Office failed adequately to explain to the complainant how the two exemptions applied to the requested information. In its refusal notice of 18 August 2006 the Cabinet Office limited its explanation of the public interest to the statement: *'There is a very strong public interest in safeguarding national security. This interest will only be overridden in exceptional circumstances'*. The Commissioner does not consider that this statement explained the reasons for claiming that the public interest in favour of maintaining section 24(2) outweighed the public interest in confirming or denying whether the requested information was held, since no attempt at all was made to identify and weigh up the effect of the relevant factors. The Commissioner has therefore concluded that the Cabinet Office acted in breach of section 17(3)(a) of the Act.

### *Late disclosure of information*

30. On 8 December 2008 the Cabinet Office informed the Commissioner that it held information *'to which no exemption applies'*, which it had therefore released to the complainant. Since this information was not exempt it should have been disclosed to the complainant within the statutory time limit following his initial request. 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.'*

The Commissioner therefore takes the view that the Cabinet Office breached section 1(1)(b) of the Act in failing to provide the information until after the complainant had approached the Commissioner. In addition, since the Cabinet Office failed to provide the information within the statutory time limit, it also breached section 10(1) of the Act.

### **Exemptions – the duty to confirm or deny**

31. 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. The wording of the request for information will have a bearing on whether a public authority should confirm or deny that it holds the information.

32. The general principles governing the Commissioner's approach to neither confirm nor deny cases is set out in his *Freedom of Information Act Awareness Guidance No 21*:

- where information is or is not held, but falls or would fall within an absolute exemption such as section 23, the public authority should consider in the

particular case whether the effect of the exemption in fact relieves it of the duty to confirm or deny;

- where information is or is not held, but falls or would fall within a class-based qualified exemption such as section 24, the public authority should consider in the particular case whether confirming or denying that the information was held would fall within the relevant class, and also apply the public interest test;
- where information is not held, but would be disclosable if it were held, the public authority must inform the applicant that it does not hold it;
- where the existence of the information is already in the public domain a refusal to confirm or deny is not appropriate.

33. A refusal to confirm or deny is therefore not appropriate in cases where the existence of the information is already in the public domain. As explained in the *'Findings of fact'* section above, the Commissioner has decided that relevant information was indeed in the public domain at the time of the complainant's request. Furthermore, the Cabinet Office's refusal notice dated 18 August 2006 referred the complainant to responses of the Prime Minister which related to the requested information. Finally, the Commissioner notes that, during the course of his investigation, the Cabinet Office advised on 8 December 2008 that it was now confirming to the complainant that it held some relevant information, which it was disclosing. However, it continued to neither confirm nor deny whether it held any further information relevant to the request.
34. In the circumstances, the Commissioner considers that the appropriate response would have been for the Cabinet Office to have confirmed at the outset that it held information relevant to the request, and then to have either disclosed it (in full or part) or applied an exemption.
35. The Commissioner does not consider that it will usually be appropriate for a public authority to deal with a freedom of information request by disclosing information, and then refusing to confirm or deny whether any further information is held. When the relevant exemptions are contained in sections 23(5) and 24(2), that approach would only be justified where to confirm or deny the holding of further information would itself *'involve the disclosure of any information... which was directly or indirectly supplied to the public authority by, or relates to, any of the [relevant] bodies'*, and/or where refusing to confirm or deny *'is required for the purpose of safeguarding national security'*. The Commissioner does not consider that the Cabinet Office has demonstrated that either of these consequences would follow from confirmation or denial in this case, particularly since the fact that there was a security operation is in the public domain, as is the fact that the Cabinet Office holds information relating to it. Accordingly, he now requires the Cabinet Office to confirm or deny whether it holds further information and, in respect of any held information, to disclose it (in full or part) or withhold it by reference to an appropriate exemption.
36. In failing to confirm or deny that it holds information falling within the request, the Commissioner considers that the Cabinet Office breached section 1(1)(a) of the



Act. In failing to provide that confirmation or denial within the statutory time limit it also breached section 10(1).

## The Decision

---

37. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act. Having extended the time limit to consider the public interest test, the Cabinet Office did not provide its assessment of the public interest test within a reasonable timescale, which constitutes a breach of section 17(3) of the Act. The Cabinet Office also breached section 17(3)(b), in that its refusal notice failed to state adequately the reasons for claiming that the public interest in refusing to confirm or deny under sections 23(5) and 24(2) outweighed the public interest in disclosing the requested information.
38. The Cabinet Office breached section 1(1)(b) of the Act in failing to disclose information that was not exempt until after the complainant had approached the Commissioner. In addition, since the Cabinet Office failed to provide the information within the statutory time limit, it also breached section 10(1) of the Act.
39. In failing to confirm or deny that it held information falling within the request, the Cabinet Office also breached section 1(1)(a) of the Act, and in failing to provide that confirmation or denial within the statutory time limit it breached section 10(1).
40. The Commissioner requires the Cabinet Office to confirm or deny whether it holds further information and, in respect of any held information, to disclose it (in full or part) or withhold it by reference to an appropriate exemption.

## Steps Required

---

41. The Commissioner requires the Cabinet Office to take the following steps to ensure compliance with the Act:
  - to confirm or deny whether it holds further information that falls within the request and, in respect of any held information, to disclose it (in full or part) or withhold it by reference to an appropriate exemption.
42. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

## Other matters

---

43. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.

### *Internal review delay*

44. There is no timescale laid down in the Act for a public authority to complete an internal review. However, as he has made clear in his 'Good Practice Guidance No 5', the Commissioner considers that these internal reviews should be completed as promptly as possible. In the absence of exceptional circumstances, a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer, but the total time taken should not exceed 40 working days, and as a matter of good practice the public authority should explain to the requester why more time is needed.
45. In this case the complainant's internal review request was made on 18 August 2006 and the Cabinet Office provided its internal review decision on 3 October 2006. It therefore took 31 working days to complete the review. The Commissioner recognises that the Cabinet Office's internal review in this case was conducted prior to the issuing of the 'Good Practice Guidance No 5' in February 2007. However, he does not believe that any exceptional circumstances existed in this case to justify that delay, and he therefore wishes to register his view that the Cabinet Office fell short of the standards of good practice in failing to complete its internal review within a reasonable timescale.

### *Internal review not fair and thorough*

46. Paragraph 39 of the section 45 Code of Practice encourages authorities to provide a fair and thorough review of matters, including a fresh look at the application of exemptions:

*'The complaints procedure should provide a fair and thorough review of handling issues and of decisions taken pursuant to the Act, including decisions taken about where the public interest lies in respect of exempt information. It should enable a fresh decision to be taken on a reconsideration of all the factors relevant to the issue. Complaints procedures should be as clear and simple as possible. They should encourage a prompt determination of the complaint.'*

47. In this case the substantive part of the internal review merely stated:

*'Having carefully considered your request and all the circumstances of the case, I uphold the original decision.'*

The outcome of the review, as communicated to the complainant, was therefore very limited and did not demonstrate that a full reconsideration of the relevant factors had taken place. The Commissioner therefore takes the view that this

internal review was inadequate, since there is no evidence that it was fair and thorough. The Commissioner therefore advises that the Cabinet Office ensure that future internal reviews are carried out in accordance with the guidelines in the section 45 Code of Practice and communicated in full.

## **Failure to comply**

---

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

## Right of Appeal

---

49. 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).

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 30<sup>th</sup> day of April 2009**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

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

## Legal Annex

**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) 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 21(1)** provides that -

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

**Section 21(2)** provides that -

'For the purposes of subsection (1)-

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

**Section 21(3)** provides that -

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

**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).'

## National Security

**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.'