

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 28 July 2009

Public Authority: Ministry of Justice
Address: 102 Petty France
London
SW1H 9AJ

Summary

The complainant requested a list of companies having contracts with 10 named prisons for inmates to carry out paid work for them. He also wanted to know the nature of the work and the value of each contract.

The public authority released information in respect of the majority of contractors but withheld the remainder citing sections 43(2) of the Act. As some concerns also related to health and safety issues the Commissioner has also considered the application of section 38, although this was not cited by the public authority.

The Commissioner's decision is that the exemptions at section 43(2) and 38(1) are not engaged. The complaint is therefore upheld and the Commissioner requires the information to be disclosed.

The Commissioner further finds that the public authority breached sections 1(1)(b), 10(3) and 17(3).

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 January 2006 the public authority received the following request for information about 10 named prisons:

"I am writing to make a request for information under the Freedom of Information Act. I would like a list of all the limited companies which currently have contracts for prisoners to carry out paid work at the following prisons/IRCs [Immigration Removal Centre]:

*HMP Acklington
HMP Bristol
HMP Brixton
HMP Dartmoor
HMP Durham
HMP/YOI Feltham
HMP Ford
HMP Leyhill
IRC Lindholme
HMYOI Swinfen Hall*

"I would also like to know the nature of the work and how much the contract is worth."

3. On 25 January the public authority advised the complainant that his request may exceed the appropriate limit and it invited him to narrow the scope.
4. On 6 February the complainant responded to the public authority. He expressed surprise at his request exceeding the limit as he believed it to be straightforward. He further clarified:

"I am interested in obtaining a list of all the limited companies which have contracts for prisoners to carry out paid work at the 10 prisons / IRCs I listed, plus a brief description of the work and how much the contract is worth (£x over 1 year, or £y over 3 years, for example)."

"If you believe that my request for information about these 10 prisons / IRCs will exceed the time limit, could you advise me on the number 10 [sic] prisons / IRCs that you would be able to process within the limit?"

5. On 21 February 2006 the public authority responded to the complainant. It advised him that it was considering the application of the exemption at section 43, and required further time to undertake a public interest test. It also advised him that it was still considering the appropriate limit regarding provision that, where two or more requests for information are received either from one person or different persons who appear to be acting in concert, the costs of the request can be aggregated. It advised him that it aimed to respond in full by 20 March 2006.
6. On 17 March 2006 the public authority wrote to the complainant to advise him that it was unable to meet its deadline of 20 March 2006 but expected to be able to respond by 20 April 2006. On 18 April it extended the deadline to 20 May 2006. On 19 May 2006 it was extended to 12 June 2006. On 12 June 2006 it was extended to 12 July 2006. On 12 July 2006 it was extended to 11 August 2006. On 11 August 2006 it was extended to 11 September 2006.

7. On 8 September 2006 the public authority made a partial disclosure to the complainant. It stated that the remaining information was either not held or was exempt under section 43(2).
8. On 12 September 2006 the complainant appealed this refusal and asked for an internal review. This was acknowledged on 18 September 2006.
9. On 2 April 2007 the complainant telephoned the public authority to ask for an update regarding his internal review. On 3 April he was advised that a target date of 11 May 2007 had been set for the response.
10. On 10 May 2007 the public authority wrote to the complainant to advise that it would not be able to respond by 11 May 2007, as previously advised, and estimated a further delay until 21 June 2007.
11. On 14 May 2007 the complainant wrote to the Commissioner regarding the amount of time his response was taking. As a result of this the Commissioner wrote to the public authority, on the same day, to say that he was going to investigate its non-compliance. On 30 May 2007 the public authority advised the Commissioner that it would respond to the complainant by 21 June 2007, as previously advised.
12. On 20 June 2007 the public authority advised the Commissioner that it had written to the complainant with the result of its internal review, which upheld its original refusal.

The Investigation

Scope of the case

13. On 25 June 2007 the complainant contacted the Commissioner to complain about the public authority's decision to refuse to disclose the information he had requested in respect of 4 of the prisons. He also raised concerns in respect of the length of time the public authority had taken to respond to both his original request and his request for an internal review.

Chronology

14. On 16 February 2009 the Commissioner wrote to the complainant to advise him that he had commenced his investigation. He also sought confirmation regarding the scope of the complaint which was agreed by the complainant on the same day.
15. On 17 February 2009 the Commissioner raised queries with the public authority. A response was received on the same day.

16. On 26 February 2009 the Commissioner raised further queries with the public authority. A reply was chased on 23 March 2009 and a response was received on 25 March 2009.
17. Further queries and responses were made with the public authority during March and April 2009.

Findings of fact

18. As part of his investigation the Commissioner undertook background research using the internet.
19. According to Her Majesty's Prison Service website, <http://www.hmprisonservice.gov.uk/abouttheservice/prisonindustries/>, Prison Industries has the following statement of purpose:

"The aim of the Prison Industries is to occupy prisoners in out of cell activity and wherever possible to help them gain skills, qualifications and work experience to improve their employment prospects upon release. The management of industries must weigh the true costs and benefits to the organisation and constantly strive for greater efficiency in providing developmental opportunities for prisoners."

20. The above website also advises that:

"There are over 300 workshops employing around 10,000 prisoners each week day in a range of disciplines including producing goods for the internal market, including complex and challenging production tasks such as clothing, window frames, woodwork, office furniture manufacturing, plastic injection moulding, printing, light engineering and laundries."

21. The website also advises that 'contract services' work is undertaken for commercial customers which ranges from filling mail-shot envelopes to assembling electrical components. It states that the Prison Service is always looking for partnerships with the private sector and that:

"Prison Industries is generating partnerships with commercial and voluntary organisations to reduce re-offending by developing employment opportunities for prisoners who have gained skills, experience and qualifications whilst working in Prison Industry workshops."

22. The Prison Reform Trust produced a document in May 2007 which drew together many facts cited in earlier reports (it can be found online at: <http://www.prisonreformtrust.org.uk/temp/FactfilespMaysp2007spFinal.pdf>). Although this overarching report was not available at the time of the request, the comments cited below, taken from this report, were available:

“Overall there are around 24,000 work places for prisoners across the estate in workshops, catering, cleaning, land based activities and day release programmes - the majority is low grade menial work.¹”

“40% of the 10,000 prisoners who work across these industries work for ‘contract services’ and are producing goods and services for an external, commercial market.²”

23. As part of his investigation the Commissioner contacted Her Majesty's Prison Service Procurement section. This was to ascertain whether or not there were any confidentiality clauses or restrictions within the wording of the contracts for those engaging in the services of prison inmates. No such clauses were found.
24. The Commissioner also considered the views of a body which is against the use of prison labour - Campaign Against Prison Slavery (<http://www.againstprisonslavery.org/index.html>) and some articles published by <https://www1.indymedia.org.uk> .

Analysis

Procedural matters

25. A full text of the relevant provisions of the Act referred to in this section is contained within the legal annex to this Notice.

Sections 1 & 10 – General right of access and time for compliance

26. The Commissioner has decided that the withheld information should have been disclosed. Therefore, by not providing the requested information to the complainant within 20 working days of the request, the public authority breached section 10(3). By not providing it to the complainant by the time of the completion of the internal review, it breached section 1(1)(b).

Section 17 – Refusal of request

27. Section 17(1) of the Act requires that, where a public authority is relying on a claim that an exemption in Part II of the Act is applicable to the information requested, it should in its refusal notice:
 - (a) state that fact,
 - (b) specify the exemption in question,
 - (c) state why the exemption applies.
28. The public authority extended the 20 working day deadline for dealing with this request by stating that it was considering the public interest in respect of the exemption at section 43 of the Act and regulation 5 of the Freedom of Information

¹ House of Commons, Home Affairs Committee, Rehabilitation of Prisoners, First Report of Session 2004-2005

² ‘Service on the verge of industrial revolution’ Prison Service News, September, 2003

and Data Protection (Appropriate Limit and Fees) Regulation 2004 (the “fees regulations”). In respect of section 43, the Commissioner accepts that this is permissible under the Act. However, this is not the case in respect of the Fees Regulations which do not permit any time extension as there is no public interest to be considered. However, in relation to the latter, the Commissioner notes that this was not subsequently relied on so it has not been further considered.

29. Having considered the public interest, if the final decision is to withhold the requested information then a second notice must then be issued providing the reasons for the decision on the public interest. Under the terms of section 17(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.
30. In this case, the complainant made his request on 12 January 2006. The public authority asked for this to be clarified or limited on 25 January 2006. Following the complainant’s assertion on 6 February 2006 that his request was straightforward, the public authority wrote again on 21 February stating that it required an extension until 20 March 2006 in order to consider the public interest. After several further extensions, as covered in paragraph 5 above, a response was eventually sent on 8 September 2006. 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 delay of almost 8 months which the public authority took to deal with the matter was not a reasonable timescale, which constitutes a breach of section 17(3) of the Act.

Exemption

Section 43 – Commercial interests

31. Section 43(2) of the Act exempts information if its disclosure either would, or would be likely to, prejudice the commercial interests of any person (including those of the public authority holding it.)
32. In this case, the public authority argued that disclosure would be likely to prejudice its own commercial interests and also those of some of its contractors. The Commissioner accepts that the information, as it concerns the provision of paid employment for prison inmates, relates to the commercial activities of both parties and therefore falls within the scope of this exemption.
33. The Commissioner then went on to consider the likelihood that the release of the information would have been likely to prejudice the commercial interests of any party.

The Commercial interests of the Public Authority

34. In its refusal notice the public authority stated that:

“Disclosure of this information would make it less likely that companies, or individuals would provide the department with commercially sensitive information in the future and consequently undermine the ability of the department / agency to fulfil its role.”

“In the case of these companies it has been considered that the public interest was best served by withholding the information and not jeopardizing the relationship between the firm and HMPS [Her Majesty's Prison Service].”

35. In its internal review it expanded these arguments and stated:

“... there is a near certainty of loss of revenue to NOMS whose earnings from the commercial sector are significant and consequent loss of benefit to public funds, loss of opportunities for prisoners to engage in meaningful employment and acquisition of work skills and better prospects on release.”

36. In one particular case, the public authority has provided evidence from one of its prison establishments which shows what the detriment would be were it to lose a particular contract. The contractor apparently threatened to withdraw from its contract were the information requested to be made available. However, whilst the Commissioner may have accepted that the detriment would indeed occur were this contract to be withdrawn, the public authority, unfortunately, cannot locate the contractor's actual correspondence. The Commissioner cannot therefore assess any further comments which the contractor may also have provided and any threat cannot be substantiated.

The Commercial interests of the contractors

37. In the view of the Commissioner, those contracting with public authorities must expect a somewhat robust approach to the issue of commercial sensitivity. As he recorded in his Decision Notice FS50063478, which dealt with another case in which the section 43 exemption had been asserted:

“The Commissioner is of the view that those who engage in commercial activity with the public sector must expect that there may be a greater degree of openness about the details of those activities than had previously been the case prior to the Act coming into force.”

38. Furthermore, when considering prejudice to a third party's commercial interests the Commissioner considers that the public authority must have evidence that this does in fact represent or reflect the view of the third party. The public authority cannot speculate in this respect; the prejudice must be based on evidence provided by the third party, whether during the time for compliance with a specific request or as a result of prior consultation, and the relevant arguments are those made by the third party itself.

39. This stance was established by the Information Tribunal in the case of *Derry City Council v The Information Commissioner* (EA/2006/0014). In that case the public authority had claimed that releasing the requested information would prejudice the commercial interests of a third party with which it had a commercial relationship, and the Commissioner had considered the public authority's arguments in this respect. The third party was not represented at the Tribunal or joined in to the proceedings. The Tribunal decided to disregard the third party's commercial interests when reaching its decision on the grounds that the public authority could not expound them on behalf of the third party:

'Although, therefore, we can imagine that an airline might well have good reasons to fear that the disclosure of its commercial contracts might prejudice its commercial interests, we are not prepared to speculate whether those fears may have any justification in relation to the specific facts of this case. In the absence of any evidence on the point, therefore, we are unable to conclude that [the third party's] commercial interests would be likely to be prejudiced'.

40. On receipt of the request, the public authority contacted all those contractors which were subject to the information requested, to seek their views. Where no objections were raised the information was disclosed. Those who objected to disclosure have their views reflected in the arguments below.

41. In its internal review the public authority stated:

"... the likely consequences of the identification of companies holding contracts with prisons will include loss of business, lay-offs of workers, becoming the subjects of campaigns against the use of prison labour and adverse publicity, all of which we feel would prejudice commercial interests, as has happened in other cases."

42. Concerns were expressed by one contractor that disclosure would place it at a commercial disadvantage as it would allow its customers and competitors alike to see both its costs and volumes. It went on to say that if such information were disclosed that it may reconsider its placement of future contracts. However, the Commissioner finds that this argument fails. It would not be possible to ascertain either costs or volumes from an annual contract value in isolation.

43. A further argument was provided that a contractor's customers did not know that it was utilising prison workers. Concerns were raised that, if this were known, it considered that it was *possible* that its customers would not be happy and would take their business elsewhere. However, no further evidence was provided to suggest that the likelihood of this occurring was anything more than possible.

44. This argument was backed up with a further claim that, if the information were released, it may have to cease providing work for prisoners which could force it to make its own redundancies. However, the Commissioner also notes that specific mention was made as to the value of working with the prison because the lower labour costs gave the contractor a "*competitive advantage*" because it enabled it to manufacture its product utilising lower costs than its competitors. He does not

- therefore consider that it is likely that a contractor would be willing to forego such an advantage.
45. Reference was made to serious threats and activities being undertaken by groups actively against the use of prison labour. A specific example was provided as evidence and the Commissioner therefore investigated the validity of this claim. He noted that, prior to the time of the request, some 'targeting' against a company was evident, however, he further noted that it did not appear to have resulted in anything more than a leafleting campaign or the publishing of a number of unfavourable articles about that company's use of prison labour. The Commissioner does not therefore accept the contractor's view that providing the information would, or would be likely to, result in a loss of business.
 46. In dealing with the issue of the likelihood of prejudice, the Commissioner notes that, in the case of *John Connor Press Associates Limited v The Information Commissioner* [EA/2005/0005], the Information Tribunal's decision confirmed that "*the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk*" (paragraph 15). He has viewed this as meaning that the risk of prejudice need not be more likely than not, but must be substantially more than remote.
 47. He has also taken into account the view of the Tribunal, in the same case, that it accepted that "*the commercial interests of a public authority might be prejudiced if certain information in relation to one transaction were to become available to a counterparty in negotiations on a subsequent transaction*" (paragraph 15). However, the Tribunal noted that certain factors should be considered in such cases, stating that whether or not prejudice was likely "*would depend on the nature of the information and the degree of similarity between the two transactions*" (paragraph 15).
 48. In relation to the above Tribunal view, the Commissioner notes that yearly contract amounts are requested. No actual comparison between contracts or contractors is possible as the volume of work undertaken is neither quantified nor requested. Commercial interests cannot therefore be prejudiced by way of comparison.
 49. The Commissioner notes the public authority's argument that disclosure "*would make it less likely that companies would provide the department [i.e. the public authority] with commercially sensitive information in the future*". He does not consider that the name of a company, the type of work undertaken and the value of an annual contract can amount to a description of being "*commercially sensitive*". It would not be possible to adduce anything of a sensitive nature from the information requested. The number of inmates employed, their hours of work and the volumes of work being done remain unknown. Additionally, the majority of the companies concerned raised no objection to disclosure of the information. If its nature had truly been "*commercially sensitive*" then the Commissioner believes that more concerns would have been raised by other contractors.
 50. The public authority has also argued above that there is a "*near certainty*" of loss of revenue. However, the Commissioner has not seen any evidence to persuade

him that this would, or would be likely to, be the case. The majority of contractors raised no objections to disclosure so, presumably, will continue to engage the services of the public authority. Of those who objected to disclosure, the Commissioner has not had sight of any actual evidence where the contractor states that they will withdraw from future contracts if the information were to be released.

51. The Commissioner acknowledges that there is a common concern amongst public authorities about the impact that the disclosure of information may have on their relationships with contractors. However, he believes that commercial organisations which wish to enter contracts with the public sector should now be aware and understand that, as a result of the Act, there will be a greater degree of public scrutiny of these contracts compared with those in the private sector. He does not therefore believe that disclosure of the information in question would unduly affect the relationships between the public authority and the contractor, as potential disclosure should be accepted, and the requested information is either not commercially sensitive anyway or is information that contractors must now expect to be liable to disclosure.
52. The public authority has also argued that: *“the likely consequences of the identification of companies holding contracts with prisons will include loss of business”*. In respect of the public authority's own business interests, as mentioned above, the Commissioner believes that contractors should by now already be aware that contracts which they enter into with a public authority may well enter the public domain by way of the Act. He again notes that the majority of contractors have not objected to the information being disclosed. In any case, the public authority should endeavour to inform any current or potential contractor that this may be the case and he does not therefore accept an argument that the public authority itself may lose business as a result of disclosure.
53. The Commissioner further notes that contractors have also argued that the low labour costs associated with prison workers allows them to maintain a *“competitive advantage”* and he therefore believes that they are unlikely to be willing to forego this advantage. However, as the costs and volumes of work are not part of the request then it is impossible to gauge the levels of any such competition from the isolated annual figures.
54. In respect of the contractors' own business interests, the Commissioner notes that only a small number of contractors referred to potential loss of business as a reason for non-disclosure of the information requested. One such argument was that the contractor's own customers were unaware of their use of prisoners to undertake work and the contractor's perception was that they could lose such custom, or potential customers, if this were known, with a possible knock-on effect of having to make redundancies. Whilst the Commissioner accepts these concerns he notes that other contractors have agreed to disclosure. Each contractor must make its own decision regarding what it chooses to advise its own customers. When dealing with a public authority it must also be aware that such information may well be considered as disclosable under the Act and that it would need viable arguments to prevent such disclosure - especially in order to single itself out from other contractors who opt to disclose in the same

circumstances. In this instance, the Commissioner is not persuaded by the arguments given.

55. A further argument was made by a contractor that, if customers were aware that prisoners were doing this work on its behalf, they could be by-passed and the customer could then approach the prison directly. This could therefore result in a loss of business for the contractor. However, the same contractor also commented that its own customers were aware of its use of prisoners. In view of this the Commissioner does not accept the argument.
56. Reference has also been made to 'other cases' where prejudice has resulted as a result of an association with the prison workforce being placed in the public domain. As previously mentioned above, the Commissioner is aware of some 'negative' publications having been made along with leafleting and picketing of a well-known retailer. However, other companies have also used their involvement with prisoners in a 'positive' way and have readily publicised their involvement. The Commissioner does not therefore agree that such association has any real and significant risk of prejudicing a company's commercial interests.
57. The Commissioner has not, in his view, been provided with sufficient evidence to support the application of section 43(2) to the information which has been withheld concerning either the commercial interests of the public authority itself or its contractors. He is not persuaded by the public authority's argument that disclosure of this information would have any of the prejudicial effects cited. He has therefore decided that the exemption was not engaged.

Section 38 – Health and Safety

58. The Commissioner is aware that although the public authority considered this exemption it eventually chose not to rely on it. However, when assessing such circumstances the Commissioner must carefully consider his obligations as a public authority under the Human Rights Act 1998 (HRA), which prevent him acting incompatibly with rights protected by the HRA. Such rights could include health and safety matters which are covered under the exemption at section 38. In light of several arguments raised by a contractor, the Commissioner has decided to use his discretion and consider its application in this case.
59. Section 38(1) provides that information is exempt information if its disclosure under this Act would, or would be likely to, (a) endanger the physical or mental health of any individual or (b) endanger the safety of any individual.
60. It is the Commissioner's view that where a public authority has not specified the level of prejudice, or in this case endangerment, at which an exemption has been engaged, the lower threshold of "likely to endanger" should be applied, unless there is clear evidence that it should be the higher level. In the absence of any such evidence, he has therefore applied the lower threshold in this case.
61. In dealing with the issue of whether disclosure would have been likely to endanger the physical health, mental health or safety of any individual, the Commissioner notes the comments of the Information Tribunal in the case of

John Connor Press Associates Limited v The Information Commissioner (EA/2005/0005). Whilst this decision related to the likelihood of prejudice to commercial interests, the Commissioner believes that the test is equally applicable to assessing the likelihood of endangerment under section 38. In its decision the Information Tribunal confirmed that *“the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk”* (paragraph 15). The Commissioner has viewed this as meaning that the risk of prejudice or endangerment need not be more likely than not, but must be substantially more than remote.

62. In support of its concerns regarding health and safety issues the contractor advised the public authority that it had concerns about any association which could lead to it being targeted in the same way as a named party. It referred to concerns that its staff may be put at risk and its property could be targeted or damaged.
63. Whilst the Commissioner understands that a contractor has a duty of care to its staff and notes its concerns, he can find no evidence to support its stance that its staff may be put at risk by disclosure of the information requested in this case in particular, or by public knowledge of its involvement with prison labour in general. Although there is information available on-line to suggest that a well known retailer was targeted by parties who were against the association they claimed it had with prison workers, there is nothing to suggest that any harm or damage was done to its staff. There were a number of demonstrations, along with picketing and leafleting, and although it appears that some persons were ‘moved on’ by the police the Commissioner can find nothing to suggest that there was any further action than this.
64. For the reasons set out in the paragraphs above, the Commissioner finds that in the specific circumstances of this case, coupled with the knowledge that other contractors did not raise similar concerns, the exemption is not engaged, since there is no evidence that the relevant prejudice was substantially more likely than a remote possibility

The Decision

65. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act.
66. The public authority breached section 17(3) by delaying its refusal notice beyond a reasonable time to consider the public interest.
67. The public authority inappropriately withheld the requested information under section 43(2). In doing so it breached sections 1(1)(b) and 10(3).

Steps Required

68. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- The requested information should be released to the complainant.
69. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Other Matters

70. The Commissioner would like to extend his thanks to staff in Her Majesty's Prison Service Procurement section who provided helpful advice and assistance during his investigation.
71. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

Time for Internal Review

72. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information. As he has made clear in his *'Good Practice Guidance No 5'*, published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that 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 in no case should the time taken exceed 40 working days. Whilst he recognises that in this case, the delay occurred before the publication of his guidance on the matter, the Commissioner remains concerned that it took over 190 working days for an internal review to be completed.
73. In accordance with his powers under section 48(1), the Commissioner has previously issued a Practice Recommendation to the public authority which identified excessive time for public interest considerations and for internal reviews as areas of concern³.

³ Practice recommendation (ICO reference: FPR0179447) issued 10 March 2008; viewable on the ICO's website here:

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/notices/noms_s45_pr_final_4_mar_08.pdf

Failure to Comply

74. 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

75. 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 28th day of July 2009

Signed

**Gerrard Tracey
Assistant Commissioner**

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

Legal annex

Section 1 provides that -

- (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.
- (2) Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.
- (3) 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.
- (4) 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.
- (5) 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).
- (6) 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 provides that -

- (1) 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.
- (2) 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
- (3) 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.'
- (4) 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.
- (5) Regulations under subsection (4) may –

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

(6) 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(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 38 provides that:

- (1) Information is exempt information if its disclosure under this Act would, or would be likely to-
 - (a) endanger the physical or mental health of any individual, or
 - (b) endanger the safety of any individual.
- (2) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, have either of the effects mentioned in subsection (1).

Section 43 provides that –

- (1) Information is exempt information if it constitutes a trade secret.
- (2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).
- (3) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the interests mentioned in subsection (2).