

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 3 March 2010**

**Public Authority:** The University of Newcastle  
**Address:** 6 Kensington Terrace  
Newcastle upon Tyne  
NE1 7RU

### Summary

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The complainant made a request to the University of Newcastle (the "University") for information set out in the project licences, issued under the Animal (Scientific Procedures) Act 1986 Act ("ASPA"), which governed the primate research at the University discussed in three named published articles. The University later clarified the scope of its request to sections 18b, 19a and 19b of the above mentioned licences. The University argued that to comply with the complainant's request would exceed the relevant cost limit and was therefore not obliged to comply with the request under section 12 of the Freedom of Information Act 2000 (the "Act"). The University also applied the exemptions contained at sections 38, 43 and 44(1)(a) of the Act in order to withhold the information. In relation to its application of the exemption contained at section 44(1)(a) of the Act, the University cited section 24(1) of the Animals (Scientific Procedures) Act 1986 as the relevant statutory bar on disclosure. The University later argued that the requested information was not held by the University. The Commissioner considers that the requested information is not held by the University, and he also considers that if it were, then the section 44(1)(a) exemption would be correctly engaged in this case. The Commissioner did not go on to consider the University's application of the provision contained at section 12 of the Act or the exemptions contained at sections 38 and 43.

### The Commissioner's Role

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

## The Request

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2. The complainant made a request to the University on 9 June 2008. The complainant asked the University to provide the following information:

“Would you please disclose the information set out in the project licences, issued under the Animal (Scientific Procedures) Act 1986, which governed the primate research at the University of Newcastle discussed in the following published articles:

*Roberts M, Delicato LS, Herrero J, Gieselmann MA, Thiele A. Attention alters spatial integration in macaque V1 in an eccentricity-dependant manner. Nature Neuroscience 2007: 10(11); 1483-91.*

*Guo K, Robertson RG, Pulgarin M, Nevado A, Panzeri S, Thiele A, Young MP. Spatio-temporal prediction and inference by V1 neurons. European Journal of Neuroscience 2007: 26(4); 1045-1054.*

*Thiele A, Delicanto LS, Roberts MJ, Gieselmann MA. A novel electrode-pipette design for simultaneous recording of extracellular spikes and iontophoretic drug application in awake behaving monkeys. Journal of Neuroscience Methods. 2006: 158(2); 207-11.*

Names (other than those of the authors) can be withheld, as can addresses. In addition, the BUAV accepts that information of a genuinely confidential nature can be withheld. Otherwise, however, the information disclosed should be as it is contained in the project licences in question”.

3. On 30 June 2008 the University responded to the complainant's request for information. The University refused to provide the complainant with the requested information. The University applied a number of exemptions to withhold the requested information. Those exemptions include section 38(1)(a) and (b) where disclosure would endanger the physical or mental health of any individual or would endanger the safety of any individual, section 43(2) where disclosure would or would be likely to prejudice the commercial interests of any person and section 44(1)(a) where disclosure is prohibited under any enactment. The University provided the complainant with its reasoning as to why these exemptions would apply and in relation to sections 38 and 43 balanced the public interest arguments in favour of maintaining the exemption and the public interest arguments in favour of disclosure. The University also applied section 12 and stated that it would exceed the £450 cost limit to comply with the request.
4. As the complainant was dissatisfied with the University's response, the complainant asked the University to conduct an internal review of its decision on 8 July 2008.

5. On 28 July 2008 the University wrote to the complainant with the result of the internal review it had carried out. The University upheld its original decision.

## The Investigation

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### Scope of the case

6. On 19 September 2008 the complainant contacted the Commissioner to complain about the way the request for information had been handled. The complainant specifically asked the Commissioner to consider whether or not section 12(1) and the exemptions contained at sections 38(1), 43(1) and 44(1)(a) of the Act had been correctly applied in this case.
7. During the course of the Commissioner's investigation the complainant refined the scope of the request to sections 18b, 19a and 19b of the project licences that were relevant to the request. The Commissioner's decision has therefore focused solely upon these sections of the relevant licences.

### Chronology

8. On 2 June 2009 the Commissioner contacted the University and asked it to provide him with a copy of the withheld information for the purposes of his investigation. The Commissioner also asked the University to provide him with any further arguments in support of its application of section 12(1) and the exemptions contained at sections 38(1), 43(1) and 44(1)(a) of the Act.
9. On 22 June 2009 the University responded to the Commissioner. The University provided the Commissioner with a copy of the withheld information, this consisted of two project licences which were relevant to the request. One licence had expired in December 2004 and the other licence did not expire until November 2009. The University provided the Commissioner with its further arguments in relation to its application of section 12(1) and the exemptions contained at sections 38(1), 43(1) and 44(1)(a) of the Act.
10. On 18 July 2009 the Commissioner wrote to the University to gain further clarification in relation to its application of the exemption contained at section 44(1)(a) of the Act.
11. On 24 July 2009 the University responded to the Commissioner in relation to his further questions surrounding its application of section 44(1)(a) of the Act.

12. Between 13 January 2010 and 19 February 2010 the Commissioner sought further clarification from the University in relation to the application of all of the exemptions in this case. During this correspondence the University also suggested that the requested information was not held by the University. Furthermore the University suggested that the complainant only wished to obtain certain sections of the relevant project licences.
13. On 10 February 2010 the Commissioner contacted the complainant to clarify the scope of the request.
14. On 18 February 2010 the complainant clarified that the scope of the request should be limited to sections 18b, 19a and 19b of the relevant licences.

## Analysis

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### Substantive Procedural Matters

#### Section 1(1)

15. Section 1(1) of the Act states 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.”*
16. The Commissioner has considered whether the University holds the requested information under section 1(1) of the Act.
17. In relation to its application of section 44(1)(a) in this case, which is discussed in detail below, the University has argued that the requested information is only held by the University's 'Named Veterinary Surgeon' or 'NVS' which is a statutory role under ASPA. It therefore argued that as the requested information was only held by the NVS in this statutory role, it was not held by the University.
18. The University has explained that project licences are held centrally by its appointed NVS in order for the NVS to carry out his or her statutory functions under ASPA. These functions are discussed in further detail under the section 44(1)(a) analysis below.
19. The Commissioner considers that if the project licences are only held by the appointed NVS at the University in order for him or her to

comply with statutory functions under ASPA, and are not held any more widely, then it could be concluded that the information was not held for the purposes of section 1.

20. The Commissioner therefore presented the University with a number of questions in order to determine whether the requested information was held more widely than the NVS within the University at the time of the request. In particular the Commissioner noted that whilst one of the licences relevant to the request had expired at the time the request was made the other relevant licence was still active at that time.
21. In response to these queries the University explained that all project licences issued under ASPA are held centrally by the NVS in order for him or her to comply with the statutory duties required in this role. It originally suggested that when a licence is live (therefore not expired) it will also be held by the project licence holder. However when a project licence has expired it will only be held by the NVS. In relation to the relevant licence which had expired in December 2004, the University explained the project licence holder had now left the University and if he had held a copy of the licence whilst it was live, the University did not have a record of its destruction.
22. In relation to the other relevant licence, this did not expire until November 2009 and therefore the Commissioner queried whether this was held by the project licence holder in addition to the NVS in June 2008 (when the request was made). The University explained that it had contacted the project licence holder who could not confirm if he had held the licence at the time of the request in June 2008. The project was ongoing at that time however the project licence holder does not know if he held a copy of the project licence. Furthermore if it was held he did not have a record of its destruction. The University explained that it was not necessary for a project licence holder to hold a copy of a project licence in order to conduct work under a licence. At the same time it explained that the University did not disallow project licences holders keeping or obtaining a copy of a licence if they so wished. The University was therefore unable to conclude whether at the time of the request the project licence holder held a copy of the other licence which was relevant to the request. The project licence holder has however confirmed that he certainly does not hold the licence now.
23. The Commissioner is mindful of the Tribunal's decision in *Bromley v the Information Commissioner and the Environment Agency (EA/2006/0072)* in which it was stated that "there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records". It was clarified in that case that the test to be applied as to whether or not information is held was not certainty but the balance of probabilities. This is therefore the test the Commissioner will apply in this case.

24. In discussing the application of the balance of probabilities test, the Tribunal stated that, "We think that its application requires us to consider a number of factors including the quality of the public authority's initial analysis of the request, the scope of the search that it decided to make on the basis of that analysis and the rigour and efficiency with which the search was then conducted. Other matters may affect our assessment at each stage, including for example, the discovery of materials elsewhere whose existence or content point to the existence of further information within the public authority which had not been brought to light. Our task is to decide, on the basis of our review of all of these factors, whether the public authority is likely to be holding relevant information beyond that which has already been disclosed." The Commissioner has therefore taken the above factors into account in determining whether or not the requested information is held on the balance of probabilities.
25. The Commissioner is also mindful of the case of *Ames v the Information Commissioner and the Cabinet Office (EA/2007/0110)*. In this case Mr Ames had requested information relating to the September 2002 "Iraq's Weapons of Mass Destruction" dossier. The Tribunal stated that the Iraq dossier was "...on any view an extremely important document and we would have expected, or hoped for, some audit trail revealing who had drafted what..." However, the Tribunal stated that the evidence of the Cabinet Office was such that it could nonetheless conclude that it did not "...think that it is so inherently unlikely that there is no such audit trail that we would be forced to conclude that there is one..." Therefore the Commissioner is mindful that even where the public may reasonably expect that information should be held, this does not necessarily mean that information is held.
26. In relation to the relevant licence which had expired at the time the request was made, the Commissioner considers that even if the project licence holder had held a copy of the licence whilst it was being worked upon (prior to expiry), on the balance of probabilities it was no longer held by the project licence holder when the request was made in June 2008 as the licence had expired almost four years previously.
27. In relation to the other relevant licence which had not expired at the time of the request the Commissioner is aware that whilst it could have been held more widely than the NVS at the time of the request the University is unable to ascertain this. Therefore without further evidence to support that it was more widely held at the time of the request, the Commissioner can only conclude, that on the balance of probabilities this licence is not held by the University. The Commissioner would however note that the balance of probabilities is finely balanced in this case and he does have concerns over the imprecise nature of the University's arguments in particular in relation to this licence.
28. The Commissioner has concluded that at the time of the request the

University did not hold the information which was relevant to the scope of the request, and therefore it is not obliged to comply with section 1(1)(b) of the Act.

29. As mentioned at paragraph 27 above the Commissioner's decision is finely balanced in this case as to whether or not the information was held by the University at the time of the request. Therefore the Commissioner has gone on to consider in the alternative the application of section 44(1)(a), which the University has argued provides a statutory bar on disclosure.

## Exemptions

### Section 44

30. Section 44(1) provides that :

"Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it-

- (a) is prohibited by or under any enactment,
- (b) is incompatible with any Community obligation, or
- (c) would constitute or be punishable as a contempt of court."

The full text of section 44 is set out within the Legal Annex at the end of this Notice.

31. In this case the University also relied upon section 44(1)(a), that disclosure of the requested information is prohibited under any enactment.
32. The University has stated that disclosure of the requested information is prohibited by section 24(1) of the ASPA which provides that:

"A person is guilty of an offence if otherwise than for the purpose of discharging his functions under this Act he discloses any information which has been obtained by him in the exercise of those functions and which he knows or has reasonable grounds for believing to have been given in confidence."

### **Would the disclosure be made in order to discharge a function under ASPA?**

33. The University has explained to the Commissioner that under its ethical review procedures, as approved by the Home Office, a project licence is submitted to a Named Veterinary Surgeon (NVS) at the University. It explained that the NVS accepts project licence information in order to discharge statutory functions under the ASPA. It also explained that the NVS is an employee of the University. It contended that if the NVA

were to disclose the information set out in the project licences requested, under the Act, disclosure would not be for the purpose of discharging his functions under the ASPA.

34. The Commissioner considers that disclosure under the Act, of the information contained within the project licences requested, would not be for the purpose of discharging the NVS's functions under the ASPA. Furthermore the Commissioner is satisfied that the NVS is a specified individual within the University who has been nominated to discharge specific statutory functions under ASPA.

**Has the information been obtained by the NVS in the exercise of a function under ASPA?**

35. As stated at paragraph 12 above the Commissioner is aware that project licences are submitted to an NVS at the University and that the NVS accepts project licence information as part of his or her function under ASPA.
36. The Commissioner notes that section 6(1) of ASPA states that, "...no place shall be specified in a project licence unless it is a place designated by a certificate issued by the Secretary of State under this Section as a scientific procedure establishment." Section 6(5) states that, "A certificate under this section shall specify – (a) a person to be responsible for the day to day care of the protected animals kept for experimental or other scientific purposes at the establishment; and (b) a veterinary surgeon or other suitably qualified person to provide advice on their health and welfare; and the same person may, if the Secretary of State thinks fit, be specified under both paragraphs of this subsection."
37. The Commissioner considers that the nominated NVS obtains project licence information in order to undertake the statutory role and exercise the functions specified at paragraph 15 above. The Commissioner considers that the NVS's statutory functions under ASPA take precedence over his or her employment at the University and therefore the NVS could only obtain the relevant project licences from individuals within the University as a result of his statutory function.
38. However the Commissioner wished to clarify whether in fact the NVS was the only person to hold the relevant project licences at the time of the request. If the requested information was held more widely within the University for example by relevant researchers or within a central database, the Commissioner does not consider that it could be said that the information was truly 'obtained' for the purposes of section 24 ASPA. However if the requested information was only held by the NVS the Commissioner considers that it would have been obtained from within the University by the NVS through his or her statutory functions under ASPA. The Commissioner therefore asked the University a number of questions in order to establish this.



39. The Commissioner asked the University whether it accepted that at some point the project licences would have been held more widely within the University than just held by the NVS. The Commissioner asked, if the University accepted this, who else would have held a copy of the project licences within the University. The University explained that access to project licences was only available through the Comparative Biology Centre (CBC) office where they are held by the NVS. It explained that the University's Ethics Committee would have had sight of the licences but that their copies of the licences are destroyed after approval has been given.
40. The Commissioner highlighted that one of the relevant project licences was no longer live at the time of the request as it expired in December 2004, but that the other relevant licence was still live as it did not expire until November 2009. The Commissioner asked the University if the NVS was the only individual to hold the project licences within the University at the time of the request both in relation to the expired and the unexpired licence. The University confirmed that the NVS was the only person to hold copies of the project licences. As stated above it originally suggested that when a licence is live (therefore not expired) it may also be held by the project licence holder. However when a project licence has expired it will only be held by the NVS.
41. In relation to the licence which had expired in December 2004, the University explained the project licence holder had now left the University and if he had held a copy of the licence whilst it was live, the University did not have a record of its destruction. In relation to the other relevant licence, which did not expire until November 2009, the University explained that it had contacted the project licence holder who could not confirm if he had held the licence at the time of the request in June 2008. The project was ongoing at that time however the project licence holder does not know if he held a copy of the project licence. Furthermore if it was held he did not have a record of its destruction. The University explained that it was not necessary for a project licence holder to hold a copy of a project licence in order to conduct work under a licence. At the same time it explained that the University did not disallow project licences holders keeping or obtaining a copy of a licence if they so wished. The University was therefore unable to conclude whether at the time of the request the project licence holder held a copy of the other licence which was relevant to the request.
42. The Commissioner asked if the project licences were held centrally within the University. The University confirmed that the only central repository for the documents was the CBS under the control of the NVS.
43. The Commissioner asked the University what its records management policy said about how project licences should be held and when project

licences should be destroyed. The University explained that its records management policy did not contain specific recommendations about how project licences should be held and when they should be destroyed.

44. Finally the Commissioner asked if there was a statutory obligation or business purpose that the relevant project licences should be held other than by the NVS. The University confirmed that there was no statutory obligation or business purpose for the relevant project licences to be held other than by the NVS.
45. Bearing in mind the University's responses set out above the Commissioner considers that in relation to the expired licence it was only held by the NVS at the time of the request. In relation to the licence which had not expired at the time of the request, as the University is uncertain whether or not this was held more widely at the time of the request, without evidence that would suggest it was held more widely, he has concluded that it was only held by the NVS. The Commissioner also considers that at the time the NVS obtained the licences he did so in pursuit of his or her statutory functions under ASPA. As stated above the Commissioner considers that the NVS statutory functions under ASPA take precedence over the NVS employment at the University and therefore the project licences were obtained by the NVS from individuals within the University.
46. Again the Commissioner would highlight his concerns with the imprecise nature of the University's arguments, in particular in relation to the licence which had not expired at the time of the request.

**Does the University know or have reasonable grounds for believing that the information was given in confidence?**

47. The University has argued that the NVS obtained the project licences either knowing or in the belief that the information contained within those licences was being provided in confidence.
48. The Commissioner is mindful of the Court of Appeal judgment in *British Union for the Abolition of Vivisection v the Home Office and the Information Commissioner (C3/2008/1141)*. In this judgment it was stated that "It is common ground, as we understand it, that in interpreting section 24 of ASPA, we must consider it in the context of the 1986 Act, and not through the spectacles of the later Act. Viewed in that perspective, we see no reason why it should not be read as meaning what it says. The section is couched in subjective terms, directed at the state of mind of the official or other person in possession of the information. It raises a simple question of fact: does he know or have reasonable grounds for believing that the information was "given in confidence". The latter words in turn direct attention to the position when the information was "given" and to the intentions of the giver at that time, either as expressed or as reasonably to be

inferred from the circumstances.”

49. Therefore the Commissioner considers that he must be satisfied that at the time the project licences which are relevant to this request were provided to the NVS, the NVS had reasonable grounds for believing that this information had been provided in confidence. In order to determine this the Commissioner has turned his attention to the intentions of the licence applicant or the “giver”. As the Commissioner does not have evidence as to the express intentions of the “giver” of the information he has looked at what can reasonably be inferred from the circumstances at the time the information was given. Therefore the dates of the licences in question are paramount to the Commissioner's decision in this case. The University has stated that there are two licences relevant to the scope of this request and that they are dated December 1999 and November 2004.
50. The Commissioner notes that it was highlighted in the above judgment that prior to October 1998, the Secretary of State provided licence applicants with a blanket guarantee that information provided in an application for a project licence under ASPA would remain confidential. As both relevant licences post-date October 1998 the licence applicant would not necessarily have expected that the information they provided in relation to the project licence application would attract a blanket guarantee of confidentiality.
51. The Commissioner is also aware that from December 2004 the Home Office established arrangements whereby it publishes on its website abstracts of applications for project licences. In the above judgement it is clarified that these abstracts take the form of summaries written by the licence applicants. As both of the relevant licences pre-date this, the Commissioner considers that the licence applicant, therefore the “giver” of the information, would not have expected that any form of summary of the project licence would be disclosed into the public domain as a matter of course.
52. Finally the Commissioner is aware that in January 2005, the Home Office included in the Guidance Notes to licence applicants advice in relation to the Act. The guidance states that “Information in this application which is not exempt from disclosure has to be provided to enquirers on request, but applicants should be aware that several exemptions may apply”. As both relevant licences pre-date January 2005, this is not something the licence applicants would have been aware of and therefore it will not be considered any further.
53. The above Court of Appeal judgment also makes clear that “On 1 July 2004, Baroness Scotland, the Minister of State, informed Parliament that the Government had decided to retain section 24 [ASPA] for the time being but that the question would be reviewed in two years time. No further review has yet taken place.” It was therefore stated that “it is clear from the material before me that a positive decision was taken by

the government to retain s.24 of ASPA alongside the provisions of Act, although other statutory restrictions were repealed to make way for a greater flow of information.”

54. In the above case it is also explained that the applicant must satisfy the Secretary of State that all of the relevant criteria under section 5 ASPA are met in order for a project licence to be granted, the judge summarised the evidence required to do this as follows: “It is clear from the evidence that those who seek licences from the Home Office for animal research will often be required to submit a great deal of detailed information beforehand which is sensitive or confidential for a variety of reasons. In particular in order to satisfy the statutory requirements, it may be necessary for applicants to include material which is commercially sensitive, and/or potentially useful to competitors, and also details of locations and addresses which may be sensitive for security reasons.”
55. The Commissioner considers that when the applicants provided information in application for the relevant project licences in this case, they were likely to have been aware that the blanket guarantee of confidentiality no longer existed. However the abstracts were not at that time being routinely published and the guidance in relation to Act for licence applicants had not been issued. In relation to the November 2004 licence the applicant would have been aware that section 24 had been affirmed in light of the Act coming into force at least for a two year period. The Commissioner considers therefore that at the time the applicants applied for both of the relevant licences the position was somewhat unclear, however, due to the sensitive nature of the information which must be submitted in order to obtain a licence, the Commissioner considers that it could have been reasonably inferred by the NVS that the intentions of the applicant were that the information provided should remain confidential. Therefore the Commissioner considers the NVS would have had reasonable grounds for believing that the information contained within the relevant project licences was given in confidence.
56. The Commissioner therefore considers in this case that all of the criteria under section 24(1) ASPA are met and therefore the exemption contained at section 44(1)(a) was correctly engaged in this case.
57. As the Commissioner considers that the exemption contained at section 44(1)(a) was correctly engaged he has not considered the University's application of section 12(1) or the exemptions contained at section 38(1) or 43(1) any further.

## **Procedural Matters**

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58. 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.”

59. The Commissioner has considered whether or not the University complied with section 10(1) of the Act.
60. As the University did not submit arguments to suggest that the information was not held until after the Commissioner had commenced his investigation, it failed to comply with section 1(1)(a) within the statutory time for compliance. The University therefore breached sections 1(1)(a) and 10(1) in its handling of this request.

### **The Decision**

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61. The Commissioner's decision is that on the balance of probabilities the requested information is not held by the University.
62. However if in the alternative it were to be determined that the information was held, the Commissioner's decision would be that the University correctly applied the exemption contained at section 44(1)(a) of the Act in order to withhold the information.
63. The Commissioner also considers that the University breached sections 1(1)(a) and 10(1) in its handling of this request.

### **Steps Required**

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64. The Commissioner requires no steps to be taken.

## Right of Appeal

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

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals  
PO Box 9300  
Arnhem House  
31 Waterloo Rd  
Leicester  
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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

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

**Dated the 3<sup>rd</sup> day of March 2010**

**Signed .....**

**Anne Jones  
Assistant Commissioner**

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

## Legal Annex

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### General Right of Access

**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”.”

### **Time for Compliance**

**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.”

### **Prohibitions on disclosure.**

**Section 44(1)** provides that –

“Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it-

- (a) is prohibited by or under any enactment,
- (b) is incompatible with any Community obligation, or
- (c) would constitute or be punishable as a contempt of court.”

**Section 44(2)** provides that –

“The duty to confirm or deny does not arise if the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) fall within any of paragraphs (a) to (c) of subsection (1).”