

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 16 November 2011

Public Authority: The Cabinet Office
Address: Admiralty Arch
London
SW1A 2WH

Summary

The complainant requested information about meetings and external correspondence involving Mark Harper, Minister for political and constitutional reform, on the subject of the proposed statutory register of lobbyists. The Cabinet Office initially refused to disclose the information relying on section 22(1) and section 35(1)(a). It later claimed a reliance on sections 40(2), 41(1)(a) and 21(1) and withdrew its reliance on section 35(1)(a). The Commissioner finds that the Cabinet Office was incorrect to rely on section 41(1)(a) and 40(2) in respect of some of the information. He also found that Section 21(1) was applied incorrectly. The Commissioner finds that the Cabinet Office also failed to comply with section 17(1)(a), (b) and (c). The Commissioner requires the Cabinet Office to disclose certain information indicated in this notice.

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 4 August 2010 the complainant requested the following information from the Cabinet Office:

'This is an FOI request for details about meetings and external correspondence that Mark Harper, minister for political and

constitutional reform, has had with regard to the proposed statutory register of lobbyists.

Specifically please include details of correspondence (emails, letters) and details of meetings (agendas, dates, minutes) between Mark Harper and external parties'.

3. On 2 September 2010 the Cabinet Office wrote to the complainant and confirmed that they did hold the information but that, in respect of the first aspect of the request (for details of meetings), the information was exempt under section 22(1) (information intended for future publication). In respect of the second aspect of the request, for details of external correspondence, the Cabinet Office told the complainant that this information was exempt under section 35(1)(a) of the Act as it believed that the public interest in withholding the information outweighed the public interest in disclosing it.
4. On 8 November 2010 the complainant wrote to the Cabinet Office and requested an internal review of its decision.
5. On 24 December 2010 the Cabinet Office wrote to the complainant acknowledging receipt of the request for an internal review.
6. The complainant contacted the Cabinet Office on several occasions in February and March 2011 as she had still not received the internal review.

The Investigation

Scope of the case

7. On 8 March 2011 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant informed the Commissioner that she had not received a response to her request for an internal review and specifically asked the Commissioner to consider that it had been seven months since her original request for information to the Cabinet Office and four months since her request for an internal review.
8. On 12 April 2011 the Commissioner wrote to the Cabinet Office to confirm that he had received a complaint from the complainant.
9. On 21 April 2011, and before the case had been allocated to a case officer, the complainant informed the Commissioner that she had received a letter from the Cabinet Office dated 20 April 2011 with the outcome of its internal review. It told the complainant that it believed

that the cited exemptions at section 22(1) and section 35(1)(a) had been applied correctly.

10. The complainant told the Commissioner that she was unhappy with the internal review response and asked the Commissioner to consider the following.

- In respect of the Cabinet Office reliance on section 22(1):

'Given that the information previously withheld under section 22 – details of meetings – has since been published, this explanation is wholly unnecessary.'

- In respect of the Cabinet Office reliance on section 35(1)(a):

'No details of the review process are given and there is no explanation of why it has been withheld beyond that the exemption was "correctly applied and that the balance of the public interest was fully considered"

The withheld information relates to correspondence between the CO Minister Mark Harper and external organisations with an interest in a Coalition pledge to introduce transparency regulations for lobbyists, namely a statutory register of lobbyists'.

Chronology

11. On numerous occasions the Commissioner asked the Cabinet Office to provide him with a copy of the withheld information together with additional information and arguments about its handling of the request and its reliance on the cited exemptions. The Commissioner told the Cabinet Office that without this information he could not proceed with his investigation.

12. On 12 August 2011 the Cabinet Office informed the Commissioner that it was now dropping its reliance on section 35(1)(a) and was instead making a late reliance on section 41(1) in respect of most of the information and section 40(2) in respect of some of the information. It also told the Commissioner that it was relying on section 21(1) in respect of two pieces of information. The Cabinet Office provided the Commissioner with a copy of the withheld information together with a schedule detailing which piece of information was being withheld under which specific exemption – but it did not provide any arguments. The Cabinet Office told the Commissioner that it would provide a separate submission detailing its arguments in support of the new exemptions claimed by 17 August 2011.

13. On 23 August the Cabinet Office provided the Commissioner with information in support of its late reliance on sections 41(1), 40(2), and 21(2) and the exemptions applied to each specific piece of withheld information. At this point the Commissioner asked the Cabinet Office to confirm that it did not hold any information other than that provided to him. The Cabinet Office confirmed that it held no other information within the scope of the request.
14. The Commissioner told the Cabinet Office to inform the complainant about its late reliance on the new and different exemptions to those originally cited in its refusal notice of 21 September 2010 and internal review response of 20 April 2011.
15. As the Cabinet Office has dropped its reliance on section 35(1)(a) it has not been included within the scope of the Commissioner's investigation.
16. In respect of the Cabinet Office's initial reliance on section 22(1) to the first part of the request for details of meetings, the Commissioner has not included this within the scope of his investigation as the complainant has stated that the information has now been published and does not form part of the complaint.
17. Therefore the scope of the Commissioner's investigation is to establish whether the Cabinet Office was correct to rely on sections 21(1), 41(1)(a) and 40(2) in relation to the withheld information in respect of the second part of the request (for details of external correspondence).
18. The documents withheld are listed in annex A below.

Analysis

Section 41 – Information provided in confidence

19. Section 41(1) provides that -

'Information is exempt information if-

(a) it was obtained by the public authority from any other person (including another public authority), and

(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.'

20. Therefore, for this exemption to be engaged two criteria have to be met; the public authority has to have obtained the information from a third

party and the disclosure of that information has to constitute an actionable breach of confidence.

21. The Cabinet Office argued that six pieces of the withheld information are exempt from disclosure on the basis of section 41(1). For the purposes of this Notice the six pieces of information are identified as documents A, B, C, E, F and G.
22. In considering the Cabinet Office reliance on section 41(1), the Commissioner has also considered the three stage test as set out in *Coco v Clark* to determine if the disclosure of information would be a breach of confidence:
 - whether the information had the necessary quality of confidence;
 - whether the information was imparted in circumstances importing an obligation of confidence; and
 - whether an unauthorised use of the information would result in detriment to the confider. The courts have found that detriment is not a prerequisite of an actionable breach of confidence in certain cases and an invasion of an individual's privacy can be viewed as a detriment in its own right.

Was the information provided by a third party?

23. The Cabinet Office argued that the information was provided by various third parties and therefore meets this test.
24. The Commissioner has inspected the withheld information and agrees that each originates from various third parties including members of the public and Members of Parliament and other organisations.

Does the information have the necessary quality of confidence?

25. The Commissioner believes that information will have the necessary quality of confidence if it is not otherwise accessible to the public, is more than trivial and is of importance to the confider. Information will not have the necessary quality of confidence if it is already in the public domain.
26. The Commissioner has considered the withheld information, specifically the three emails (B, F and G), which were prompted by a campaign group asking members to express views to their MPs on a matter of public debate on the subject of transparency in lobbying. The Commissioner finds that if the name and contact details of the constituents were removed the emails would not have the necessary

quality of confidence. The Commissioner accepts that the MPs' covering letters have the necessary quality of confidence.

27. The Commissioner accepts that the other documents – A, C and E have the necessary quality of confidence

Does the information have the necessary obligation of confidence?

28. The Commissioner recognises that an obligation of confidentiality may be expressed explicitly or implicitly. Whether or not there is an implied obligation of confidence may depend on the nature of the information itself, or the relationship between the parties. The Commissioner accepts that when a constituent corresponds with their MP there is a generally implied confidence and this will follow for when information is passed on to a government department by an MP.
29. The Commissioner finds that that there was expectation of confidence for the constituents' emails, in terms of revealing that they had written to their MP using the wording from the campaign website. However if the name and contact details are removed the remaining information would not carry an expectation of confidence.
30. In relation to documents A, C and E, the Commissioner does not accept the argument that there is a necessary obligation of confidence. The Cabinet Office has not supplied convincing arguments about why there would be an express or implied duty of confidence. In reaching this conclusion the Commissioner has considered the contents of the documents and the nature of the information. In reaching this decision the Commissioner has drawn on the approach taken by the Information Tribunal in *DEBRR v Information Commissioner and Friends of the Earth (EA/2007/0072)*.
31. Of the MPs' letters attached to the three emails (B, F and G) referring the issues to the Minister, all but one do not include the name of the constituent or the subject of the email, but are simply covering letters accompanying the email. For this reason, the Commissioner does not accept that the letters in B and G carry an expectation of confidentiality. Letter F carries an expectation of confidentiality in terms of the name and contact details of the constituent.

Would disclosure be detrimental to the provider?

32. The Commissioner has gone on to consider the detriment question in respect of the information that has met the first two parts of the test. The Cabinet Office argued that the disclosure of the information between constituents and their MPs would be detrimental to the constituents as it would be an intrusion upon their privacy. It told the Commissioner that disclosure would undermine the trust between MPs and their

constituents if it became known that communications between parties was not confidential. The Cabinet Office also argued that there would be a detrimental effect on the relationship between MPs, Ministers and constituents or organisations if the letter was disclosed as that relationship is implicitly confidential and is an important part of constitutional arrangements.

33. The Commissioner has considered the disclosure of the contact details in letter F, emails B, F and G - as this information is personal information it is not strictly necessary to establish detriment. However, he finds that it would be detrimental if the names and contact details were disclosed.

Would disclosure of the confidential information be actionable?

34. Although section 41 of the Act is an absolute exemption and not subject to the public interest test contained at section 2 of the Act, the common law concept of confidence suggests that a breach of confidence will not be actionable in circumstances where a public authority can rely on a public interest defence. The Commissioner must consider whether the public interest in disclosing the information overrides the duty of confidence that is owed. The Commissioner has considered the disclosure of names and contact details in letter F, emails B, F and G
35. The Cabinet Office argued that the public interest in disclosure is insufficient to override the public interest in maintaining the duty of confidence. It argued that whilst there was a political interest in the development of policy relating to a register of lobbyists, it did not consider that this could be defined as a hotly-fought public debate to which the withheld information could not make a significant contribution. It argued that none of the information revealed a crime or danger to public safety and that the protection of the confidence between parties able to provide views to an authority demonstrated sufficient reason to withhold the information.
36. The Commissioner accepts that there is not a sufficient public interest defence to override the duty of confidence for this specific information. However, the Commissioner does not agree with the Cabinet Office that the public interest factors it has listed are the only ones capable of overcoming a duty of confidence. The Commissioner has concluded that disclosure of the names and contact details in letter F, emails B, F and G would be an actionable breach of confidence.
37. In conclusion under section 41:
- Emails B, F, G - section 41 does not apply if they are disclosed with names and contact details removed.

- Letters B, F, G – section 41 does not apply if the name and contact details are removed from letter F.
- Letters A, C and E – section 41 does not apply

Section 40 – personal data

38. The Cabinet Office also argued that three emails (identified as documents B, F and G) from constituents to MPs were exempt from disclosure on the basis of section 40(2) as well as section 41.
39. Section 40(2) of the Act states that personal data is exempt if its disclosure would breach any of the data protection principles contained within the Data Protection Act 1998.
40. For section 40(2) to be engaged the information being withheld has to constitute 'personal data' which is defined by the DPA as:

'...data which relate to a living individual who can be identified

a) from those data, or

b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual.'

41. The Cabinet Office argued that the three emails constitute the personal data of those individuals. Having reviewed the withheld information in detail the Commissioner agrees with the Cabinet Office's assessment as to why some of the information constitutes personal data as defined by the DPA – such as the names, addresses and email addresses of the individuals. However, having had sight of the information he does not accept that all of the information constitutes personal data.
42. The Cabinet Office argued that disclosure of the withheld information would be unfair and thus breach the first data protection principle which states that:

'Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.'

43. In deciding whether disclosure of personal data would be unfair, and thus breach the first data protection principle, the Commissioner takes into account a range of factors including the reasonable expectations of the individual in terms of what would happen to their personal data, the (detrimental) consequences of disclosing the information, and any legitimate interests in disclosure.
44. In relation to reasonable expectations, such expectations could be shaped by:
- what the public authority may have told them about what would happen to their personal data;
 - their general expectations of privacy, including the effect of Article 8 ECHR;
 - the nature or content of the information itself;
 - the circumstances in which the personal data was obtained;
 - particular circumstances of the case, e.g. established custom or practice within the public authority; and
 - whether the individual consented to their personal data being disclosed or conversely whether they explicitly refused.
45. In terms of consequences, the Commissioner may take into account:
- whether information of the nature requested is already in the public domain; and if so
 - the source of such a disclosure; and
 - even if the information has previously been in the public domain, whether the passage of time means that disclosure now could still cause damage or distress.
46. Furthermore, notwithstanding the data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling legitimate interest in disclosure.
47. In considering 'legitimate interests', such interests can include broad general principles of accountability and transparency for their own sakes as well as case-specific interests. In balancing these legitimate interests with the rights of the data subject, it is also important to consider a proportionate approach – it may still be possible to meet the legitimate

interest by only disclosing some of the requested information rather than viewing the disclosure as an all-or-nothing matter.

48. The Cabinet Office argued that the three individuals, in writing to their MPs, would have a reasonable expectation that their personal data would not be disclosed in part.
49. The Commissioner, having considered the content of the information, has determined that the personal information (name, address and email address) can be easily redacted from the emails and that the remaining information does not contain any personal information that could be connected with other information to identify any living person. The Commissioner finds that the individuals would have had a reasonable expectation that their name and contact details would not have been made public if they wrote to their MP. Given this expectation disclosure would be a significant intrusion into their private correspondence. There is not a strong legitimate interest in revealing the names of the constituents who wrote to their MP. The Commissioner finds that disclosure of the names and contact details would be unfair and would breach the first data protection principle.
50. The Commissioner has therefore determined that section 40(2) is engaged in relation to the the names, addresses and email addresses in the three emails and letters identified as B, F and G.

Section 21(1) – Information accessible by other means

51. Section 21(1) provides that information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information
52. As already stated the Cabinet Office is relying on section 21(1) in respect of two pieces of information within the scope of the second part of the request for details of external correspondence: a press release attached to a letter dated 8 June 2010, and an email dated 25 June 2010. The two documents are identified on the table in Annex A of this Notice as A and D. The Commissioner notes that the Cabinet Office did not include its reliance on this exemption in its refusal notice.
53. The Commissioner accepts that information is reasonably accessible if the public authority:
 - knows that the applicant has already found the information; or
 - is able to precisely direct the applicant to the information. In this case the public authority has to be reasonably specific to ensure it is found without difficulty and not hidden within a mass of other information.

54. The Cabinet Office told the Commissioner that the two pieces of information were reasonably accessible to the complainant and comprised a copy of a press release and an email dated 25 June 2010 which the complainant was 'copied' into. However, the Commissioner notes that the Cabinet Office did not inform the Complainant about this information at the time that the refusal notice was issued and that this exemption was only later applied. Therefore, the complainant is unaware of the scope of that information or where to find it
55. In this respect the Commissioner finds that the Cabinet Office has failed to comply with section 21(1) as it has not precisely directed the applicant to the information and has not been specific in identifying the information.

Procedural Matters

Refusal Notice

56. 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."

57. The Cabinet Office initially issued its refusal notice on 21 September 2010 in which it relied on sections 35(1)(a) and 22(1). This was followed by its internal review on 20 April 2011 in which it maintained its reliance on those sections.
58. On 12 August 2011 the Cabinet Office withdrew its reliance on section 35(1)(a) and instead claimed a late reliance on entirely different exemptions, sections 41(1), 40(2) and 21(1). The Cabinet Office did not inform the complainant by way of a revised refusal notice of the late reliance of the different exemptions to those originally claimed or provide any explanation.
59. In failing to inform the complainant about its reliance on new and different exemptions or its reasons why, the Commissioner finds that the Cabinet Office breached section 17(1)(b) and (c) of the Act.

The Decision

60. The Cabinet Office incorrectly withheld information, a breach of sections 1(1)(b) and 10(1) of the Act. The Commissioner requires it to disclose that information.
61. It also breached section 17(1)(c) by failing to direct the requestor to the precise location of two documents (A and D), and section 17(1)(b) and (c) in failing to specify and explain the exemptions upon which it eventually relied.
62. The Cabinet Office appropriately withheld some information by reference to section 41(1) and 40(2).

Steps Required

63. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act.
64. The Cabinet Office must disclose the letters and emails identified in this Notice as A, B, C, D E, F and G but redact names, addresses and email addresses from emails B, F, G and letter F. The documents are listed in annex A below.
65. The public authority must take the required steps within 35 calendar days of the date of this Notice.

Failure to comply

66. 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.

Other matters

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

Internal review

68. The Commissioner notes that the complainant complained about the length of time taken for the public authority to carry out its internal

review. The Commissioner is aware that the request for an internal review was made on 8 November 2010 but that the internal review was not completed until 20 April 2011, some five months later.

69. Part VI of the Act's 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, and that the procedure should encourage a prompt decision. As he has made clear in his 'Good Practice Guidance No 5', 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 or, in exceptional circumstances, 40 working days. In this case the public authority exceeded these timeframes. The Commissioner does not believe that any exceptional circumstances existed to justify that delay, and he therefore wishes to register his view that the public authority fell short of the standards of good practice by failing to complete its internal review within a reasonable timescale, and in failing to provide an update to the complainant when it overran the revised timescale. He would like to take this opportunity to remind the public authority of the expected standards in this regard.

Right of Appeal

70. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

71. 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.

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

Signed

Steve Wood
Head of Policy Delivery
Information Commissioner's Office
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Water Lane
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SK9 5AF

Annex A

Item No.	Page	Document	Exemption
A	1-3	Letter (1 page) and attached press release (2 pages)	Letter is section 41(1), attached press release is section 21(1)
B	4-5	Letter (1 page) and enclosure email (1 page)	Letter is section 41(1), enclosure is section 41(1) and section 40(2)
C	6-7	Letter (2 pages)	Section 41(1)
D	8	Email (1 page)	Section 21(1)
E	9	Letter (1 page)	Section 41(1)
F	10-11	Letter (1 page) and enclosure email (1 page)	Letter is section 41(1); enclosure is section 41(1) and section 40(2)
G	12-13	Letter (1 page) and enclosure email (1 page)	Letter is section 41(1), enclosure is section 41(1) and section 40(2)

Legal Annex

General Right of Access

Section 1(1) provides that -

"Any person making a request for information to a public authority is entitled –

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

Section 2(3) provides that –

"For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption –

- (a) section 21
- (b) section 23
- (c) section 32
- (d) section 34
- (e) section 36 so far as relating to information held by the House of Commons or the House of Lords
- (f) in section 40 –
 - (i) subsection (1), and
 - (ii) subsection (2) so far as relating to cases where the first condition referred to in that subsection is satisfied by virtue of subsection (3)(a)(i) or (b) of that section,
 - (iii) section 41, and
 - (iv) section 44"

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."

Refusal of Request

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 (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 17(6) provides that –

"Subsection (5) does not apply where –

(a) the public authority is relying on a claim that section 14 applies,

(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and

(c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request."

Section 17(7) provides that –

"A notice under section (1), (3) or (5) must –

(a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and

(b) contain particulars of the right conferred by section 50."

Information Accessible by other Means

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)-

(c) information may be reasonably accessible to the applicant even though it is accessible only on payment, and

(d) 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."

Information provided in confidence.

Section 41(1) provides that –

“Information is exempt information if-

- (e) it was obtained by the public authority from any other person (including another public authority), and
- (f) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.”

Section 41(2) provides that –

“The duty to confirm or deny does not arise if, or to the extent that, the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) constitute an actionable breach of confidence.”

Personal information.

Section 40(1) provides that –

“Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.”

Section 40(2) provides that –

“Any information to which a request for information relates is also exempt information if-

- (g) it constitutes personal data which do not fall within subsection (1), and
- (h) either the first or the second condition below is satisfied.”

Section 40(3) provides that –

“The first condition is-

- (i) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-

1. any of the data protection principles, or

2. section 10 of that Act (right to prevent processing likely to cause damage or distress), and

(j) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded."

Section 40(4) provides that –

"The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data)."

Section 40(5) provides that –

"The duty to confirm or deny-

(k) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and

(l) does not arise in relation to other information if or to the extent that either-

3. the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of the Act were disregarded, or

4. by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed)."

Section 40(6) provides that –

"In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded."

Section 40(7) provides that –

"In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;

"data subject" has the same meaning as in section 1(1) of that Act;

"personal data" has the same meaning as in section 1(1) of that Act."