

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 24 September 2009

Public Authority: Department for Transport
Address: Great Minster House
76 Marsham Street
London
SW1P 4DR

Summary

The complainant made a request under the Freedom of Information Act 2000 (the "Act") to the Department for Transport (DfT) for information relating to the exact salaries and latest bonuses of each Chief Executive of an agency of the DfT and for the Permanent Secretary. The DfT explained that some of the information requested was publicly available. It explained that the 2007-2008 annual reports of the DfT and the relevant agencies contain salary information relating to the individuals concerned within a £5,000 band. The complainant was directed to this information. The exact salaries for 2007-2008 were refused under the exemption contained at section 40(2) of the Act along with the exact salary information for 2008-2009 and bonus information. The Commissioner considers that the DfT correctly applied the section 40(2) exemption to withhold the information relating to the exact salaries and bonuses of the individuals concerned. However the Commissioner considers that the DfT did not explicitly confirm whether or not it held the bonus information within the statutory time for compliance and therefore breached section 1(1)(a) of the Act. As the DfT did not comply with its obligations under section 1(1)(a) of the Act within the statutory time for compliance it also breached section 10(1) of the Act. Finally in relation to the bonus information, as the DfT did not explain why and under which exemption this information could not be disclosed prior to the Commissioner's investigation, it breached section 17(1)(a)(b) and (c) of the Act.

The Commissioner's Role

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

The Request

2. The complainant made a request on 10 March 2009 to the DfT. The complainant asked the DfT to provide the following information:-

“For each Chief Executive of an agency in DfT and for the Permanent Secretary:

- (a) what is their current basic salary;
- (b) what was the size of their last bonus.
- (c) what was their salary in 2008 before that year's pay increase was paid. “

The complainant asked for the information to be provided in electronic format.

3. On 21 April 2009 the DfT responded to the complainant's request for information. The DfT explained that information on senior remuneration is included in the DfT's publications, those being the Annual Report, the Resource Accounts and the Agency Reports and Accounts. It explained that these documents provide information about the Permanent Secretary and Agency Chief Executives' remuneration. It provided the complainant with links to these documents for the year 2007-08 and explained that a paper copy could be provided on request. It explained that these documents were the most up to date Annual Reports available and that the 2008/09 Annual Reports were not completed.
4. The DfT explained that more precise current salary information was being withheld under the exemption contained at section 40(2) and 40(3) of the Act as this information constituted personal data, the disclosure of which would breach the first data protection principle under schedule 1 of the Data Protection Act 1998.
5. As the complainant was dissatisfied with the response he had received, on 21 April 2009 he asked the DfT to carry out an internal review.
6. On 27 May 2009 the DfT wrote to the complainant with the result of the internal review it had carried out. The DfT explained that in accordance with its duty under section 16 of the Act to provide advice and assistance, it had referred the complainant to the most recent completed annual remuneration reports of the central department and all of its agencies. It clarified that in accordance with the Information Commissioner's guidance on the disclosure of salaries, the pay scales published are narrowed to the nearest £5,000.
7. The DfT confirmed that the precise salary information requested would constitute the personal data of identifiable individuals and would fall within the scope of the exemption contained at section 40 of the Act. It

explained that disclosure would breach the first data protection principle under schedule 1 of the Data Protection Act 1998. It explained that the disclosure of exact salaries would amount to an unwarranted intrusion into the individuals' privacy and personal affairs, and that no exceptional circumstances had been identified to warrant closer scrutiny of these individuals' salaries.

The Investigation

Scope of the case

8. As the complainant was dissatisfied with the result of the internal review carried out by the DfT he made a formal complaint to the Information Commissioner's Office (ICO) on 1 June 2009.
9. The Commissioner has therefore considered whether or not the DfT answered the complainant's request in accordance with all of its obligations under the Act and whether it correctly applied the exemption contained at section 40(2) of the Act in withholding the requested information.

Chronology

10. On 16 July 2009 the Commissioner wrote to the DfT to ask for further arguments in support of its application of section 40(2) to withhold the requested information.
11. On 5 August 2009 the DfT responded to the Commissioner. It explained that salary details within a £5,000 band are disclosed in the DfT's and its agency's annual reports. It provided further arguments as to why exact salary information was exempt under section 40(2).
12. On 7 August 2009 the Commissioner contacted the complainant in relation to parts (b) and (c) of his request for the exact salary information. The Commissioner directed the complainant to his Guidance on when salaries should be disclosed. This can be accessed at the following link:

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/practical_application/salaries_v1.pdf
13. The Commissioner explained that it is reasonable for public authorities to disclose salary information within a £5,000 band unless any of the exceptional circumstances listed in that Guidance can be established. The Commissioner noted that from the information in his possession he was not aware that any of the exceptional circumstances existed in this case.

14. On 13 August 2009 the complainant contacted the Commissioner and suggested that two of the exceptional circumstances were present in this case. He provided an explanation in relation to this.
15. On 14 August 2009 the Commissioner contacted the complainant to discuss his suggestions relating to the possible exceptional circumstances which he believed could be met in this case. The complainant provided further arguments as to why he believed one of the exceptional circumstances in particular could be met.
16. On 15 August 2009 the Commissioner contacted the DfT to explain that the complainant's request included a request for the "size of their last bonus". The Commissioner was concerned that this had not been dealt with within the DfT's responses. The Commissioner therefore asked whether the Chief Executives of the agencies of the DfT and the Permanent Secretary had received bonuses. The Commissioner explained that if they had and if the DfT did not wish to disclose this particular information to the complainant it would need to explain which exemption(s) would be applicable and why. Furthermore the Commissioner explained that he understood that the DfT provided links to the complainant to access the 2007-08 annual reports which contain salary information relating to the relevant individuals within a £5,000 band. The Commissioner explained that he was also aware that at the time of the request the 2008-09 annual reports were in preparation. Notwithstanding that the 2008-09 reports were in preparation he asked whether the DfT held the salary information for this period and therefore whether it could be provided to the complainant within a £5,000 band.
17. On 19 August 2009 the DfT wrote to the Commissioner and explained that bonus payments were included within the overall figures contained in the annual reports within a £5,000 band. Therefore it believed that it had dealt with this part of the request. In relation to the 2008-2009 salary information the DfT explained that this information was held and that the 2008-09 annual reports were now complete which contained the salary information within a £5,000 band. It explained that these reports were due to be published on the DfT's website shortly.
18. On 20 August 2009 the Commissioner wrote again to the DfT to explain that the request was for the "size of their last bonus" and was therefore for a broken down figure of the latest bonus of the individuals concerned rather than for this to be aggregated with the salary. Therefore the Commissioner explained that this part of the request had not been dealt with adequately.
19. On 21 August 2009 the DfT wrote to the Commissioner and explained that bonus payments are individually negotiated based upon performance and will differ from year to year. Where an individual is entitled to a bonus payment the Department will hold separate details

of what it has paid. When paid, this figure together with the gross salary figure will be included as the whole 'salary' in the £5000 range as defined in the published Annual Report & Accounts. It confirmed that for 2008/09 not all senior managers that fall into the scope of the request received a bonus payment. It explained that it wished to withhold the specific bonus information on reliance of the exemption contained at section 40(2) by virtue of section 40(3) of the Act. It explained that this was because it considered that disclosure would contravene the first data protection principle as it would be unfair to release details of who had and who had not received a bonus payment and the size of any such bonus payment made. It clarified that by publishing this information it could also be seen as an indication of performance. It explained that the individuals concerned have an expectation that their performance and any resulting bonus will not be made public.

Analysis

Exemptions

Section 40(2)

20. Section 40(2) of the Act provides an exemption for information that constitutes the personal data of third parties:

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

(a) it constitutes personal data which do not fall within subsection (1), and

(b) either the first or the second condition below is satisfied.”

21. Section 40(3)(a)(i) of the Act states that:

“The first condition is-

(a) 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-

(i) any of the data protection principles, or

(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress),”

22. The full text of section 40 can be found in the legal annex attached to

this decision notice.

23. In this case the DfT has argued that the exact salary information and latest bonus information of the Chief Executives of the agencies of the DfT and the Permanent Secretary constitute the personal data of those individuals and is therefore exempt under section 40(2) of the Act by virtue of section 40(3)(a)(i) as to release the information would breach the data protection principles. The DfT has provided the complainant with the relevant individuals' salaries within a £5,000 band for 2007-2008 and these figures for 2008-2009 will shortly be published by the DfT. It has explained that these figures within a £5,000 band for both 2007-2008 and 2008-2009 would include any bonus payments received. The complainant does not believe that this satisfied his request and wishes to obtain the exact salary details and bonus information of the individuals concerned.
24. In order to reach a view on the DfT's arguments the Commissioner has first considered whether the withheld information is the personal data of a third party. Section 1 of the DPA defines personal data as information which relates to a living individual who can be identified:
 - from that data, or
 - from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.
25. In this instance the information is the exact salaries and latest bonus amounts of the Chief Executives of the agencies of the DfT and the Permanent Secretary. This is information which relates to living individuals who can be identified. Therefore the Commissioner considers that the withheld information in this case does constitute the personal data of the Chief Executives of the agencies of the DfT and the Permanent Secretary.
26. Such information is exempt if either of the conditions set out in sections 40(3) and 40(4) of the Act are met. The relevant condition in this case is at section 40(3)(a)(i) of the Act and is where disclosure would breach any of the data protection principles. The DfT has argued that disclosure of the personal data would breach the first data protection principle, which states that "Personal data shall be processed fairly and lawfully". Furthermore at least one of the conditions in Schedule 2 should be met.
27. In reaching a decision as to whether disclosure of the requested information would contravene the first data protection principle the Commissioner is mindful of his Guidance on when salaries should be released which is referenced earlier in this Notice. The Commissioner has specifically considered the following:

Likely Expectation of the Data Subject

28. The DfT has argued that whilst the individuals concerned had an expectation, given their senior positions, that information about their earnings within a £5,000 band would be made publicly available, they did not have an expectation that the amount of their exact salaries would be disclosed.
29. The Commissioner notes that his Guidance on this issue states that “Those who are paid from the public purse should expect some information about their salaries to be made public. However, salary information also relates to their personal financial circumstances and this deserves some protection. You should carefully consider a number of factors before deciding to release exact salaries.”
30. Those factors are:
 - Should the individual expect their role to be subject to public scrutiny?
 - Should the individual reasonably expect that their salary could be released in response to an FOI request?
 - Would it be intrusive to release an exact salary, or to give the salary to within a smaller range than the advertised band?
31. The Commissioner has taken the above into account when assessing the reasonable expectations of the individuals concerned. The Commissioner considers that due to the seniority of the individuals in this case they would expect their role and salary to be subject to public scrutiny. Indeed the DfT has confirmed that the individuals involved do expect their role and particularly their salaries to be subject to public scrutiny. Furthermore, again, due to the seniority of the individuals involved in this case, the Commissioner considers that they would expect that not only would some salary details be disclosed in response to an FOI request but also that some salary details would be routinely published. The DfT has explained that it routinely publishes salary details within a £5,000 band and that this is the information the individuals concerned would expect to be disclosed. Therefore the Commissioner considers that the individuals concerned would not expect exact salary details to be disclosed and that this would support the DfT's arguments that it would be intrusive to release this exact salary information.
32. In relation to the exact figure of the latest bonus paid to the relevant individuals if indeed such a bonus has been paid, the DfT argued that the individuals concerned have an expectation that their performance and any resulting bonus will not be made public. The Commissioner is mindful of his decision in case reference FS50178463 in which he stated that “...there is a strong expectation of privacy attached to 'Human Resources' information that relates so directly to individual performance. He also appreciates that the individuals have been

consulted and do not wish this expectation to be overridden, which suggests that disclosure is likely to be unfair". The Commissioner is similarly aware in this case that the relevant individuals have refused consent to disclosure. In the Decision Notice referred to above the Commissioner also stated that, "When considering the situation the Commissioner must consider the dual effect of releasing the individual bonus payments. Firstly it would show to the world those who had received bonus payments and public money; but equally it would expose those who had not received bonus payments due to potential issues with their performance". Bearing the DfT's arguments in mind and the Commissioner's previous Decision Notice highlighted above the Commissioner does not consider that the relevant individuals would have expected the fact that they had or had not received a bonus to be disclosed nor the exact amount of bonus if indeed one had been paid.

The Legitimate Public Interest

33. The DfT has argued that the legitimate interests of the public are adequately met by publishing salary details within £5,000 bands. It explained that it did not believe that further disclosure would be necessary to serve the public interest. Furthermore it explained that it believed that disclosure of exact salary details would be unwarranted by reason of prejudice to the rights and legitimate interests of the data subjects in maintaining a degree of privacy in terms of their exact salary details.
34. The Commissioner is again mindful of his Guidance in relation to this issue. In particular the Guidance states that "Disclosure should only be to the extent necessary to fulfil a legitimate public interest. This may involve narrowing down advertised scales, for example to the nearest £5,000. Only in exceptional circumstances is disclosure of exact pay likely to be justified." The Guidance also states that "Only in exceptional circumstances will disclosure of an exact salary be appropriate. Where there are additional public interest factors, this may mean that disclosure of the precise salary is necessary and may outweigh any detriment to the individual concerned. This could arise where:
 - there are current controversies or credible allegations;
 - there is a lack of safeguards against corruption;
 - normal procedures have not been followed;
 - the individual in question is paid significantly more than the usual salary for their post; or,
 - the individual or individuals concerned have significant control over setting their own or other's salaries."
35. As the Commissioner was not aware that any of the exceptional circumstances listed above could be met in this case he asked the complainant whether he had evidence that any of the exceptional circumstances could be met.

36. The complainant suggested that two of the exceptional circumstances were present in this case. He explained that the first circumstance he believed was met was that there were current controversies. He explained that there was substantial media coverage relating to “fat cat” salaries and bonuses. Therefore he argued that there is especial continuing interest and controversy over those senior managers whose pay is funded by the tax payer. He explained that the Chief Executives and the Permanent Secretary are senior managers whose wages are funded by the tax payer. He argued that there is speculation that a civil service wide pay freeze will be imposed. He suggested that all of the main political parties have discussed the issue of civil service wage constraint. He suggested that in the past such restraint had not applied to senior management. Therefore he concluded that without knowing the exact salaries of these senior managers it would not be possible to determine whether they will be or are being treated in the same way as their more junior staff. He argued that whether restraint is for all or just the worst paid is a matter of great controversy.
37. The complainant explained that the second exceptional circumstance he believed was met was that the individuals concerned have significant control over others’ salaries. The complainant argued that in an employment tribunal case the DfT relied upon the argument that each DfT agency is wholly autonomous in matters of pay and operational matters. Given the DfT’s position in that case he suggested that the Chief Executives of those agencies are in charge of pay and therefore have significant control over other’s salaries. The complainant continued that the DfT is split into eight bargaining units. Seven of these are DfT agencies, each of which is headed by a Chief Executive. The eighth bargaining unit is called the DfT(C) and is headed by the Permanent Secretary. He explained that in analogy to this, the DfT argue that the DfT(C) also sets its own pay rates. Therefore he concluded that the Permanent Secretary also has significant control over other’s salaries.
38. The Commissioner considers that in relation to the complainant’s first suggestion that there are current controversies, this is a general issue which affects the whole of the civil service. It is not something which is particular or exclusive to the DfT and its agencies. The Commissioner considers that for there to be the potential for the exceptional circumstance to be met the current controversy would have to relate specifically to the individuals whom the request related to. In relation to the complainant’s second suggestion regarding control over others’ salaries, the Commissioner is aware that many public sector organisations have control over salaries within funding constraints and other parameters. He explained that the fact that the DfT and its agencies have control over the setting of salaries is not on its own exceptional. However if there was evidence that the DfT or its agencies and in particular the individuals concerned in this case had deviated from the required parameters in the setting of salaries than this may

amount to an exceptional circumstance. The Commissioner has not however been provided with evidence of this in this case.

39. The Commissioner considers that the exceptional circumstances listed in his Guidance have not been met in this case and therefore it would not warrant disclosure of the exact salaries.
40. In relation to the exact figure of the latest bonus paid to the relevant individuals if indeed such a bonus has been paid, the DfT again argued that the legitimate interests of the public are adequately met by publishing salary details within £5,000 bands which would include any bonus payments made. Again the Commissioner is mindful of his decision in case reference FS50178463 in which he stated that, “Finally, in considering the legitimate interests of the public, the Commissioner notes that the public authority has released the total amount paid to all the Senior Post Holders. The release of this figure has gone some way to account for the public money that has been spent in giving bonuses. It ensures that the amount, while not directly present in the accounts, is available for the public to contemplate, debate and scrutinise.” In this case overall salaries, which include bonus payments if made, have been provided to the complainant within a £5,000 band. This provides the public with an overall picture of the amount of public money being spent on the salaries of the individual’s concerned which includes bonus payments if made. The overall salary of the individuals involved, including bonus payments if made, have been made available and are therefore open to public scrutiny.
41. In this case the Commissioner considers that the legitimate expectations of the individuals concerned have been clearly set, and as the disclosures made in this case goes some way to meeting the legitimate interests of the public, the overriding of the legitimate expectations of those concerned cannot be justified. The Commissioner therefore concludes that disclosure of the exact salaries, whether bonus payments had been made and exact bonus payments if made, relating to the individuals concerned, would be unfair and therefore the section 40(2) exemption was correctly applied in this case.

Procedural Requirements

Section 1(1)(a)

42. Section 1(1) of the Act 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, ...”

43. The Commissioner has considered whether the DfT has complied with section 1(1) (a) of the Act in particular in relation to point (a) of the request which relates to the latest bonus payments made to the individuals concerned.
44. The Commissioner considers that the DfT did not expressly state whether or not it held the information requested relating to bonus payments within its refusal notice or within its internal review. During the Commissioner's investigation the DfT explained that the salary figures within a £5,000 band included any bonus payments made. The DfT did not however make this clear to the complainant within the statutory time for compliance. The Commissioner therefore considers the DfT breached section 1(1)(a) in its handling of this part of the request.

Section 10(1)

45. 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.”

46. The Commissioner has considered whether or not the DfT complied with section 10(1) of the Act.
47. As the DfT did not comply with its obligations under section 1(1)(a) within the statutory time for compliance, it breached section 10(1) in its handling of the request.

Section 17(1)

48. Section 17(1) states 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.”*

49. The Commissioner has considered whether the DfT has complied with section 17(1)(a), (b) and (c) of the Act.

50. In this case the DfT did not expressly confirm whether it held the information requested at point (a) of the request relating to bonuses. The Commissioner does not therefore consider that the DfT clearly stated that it was relying upon an exemption in relation to the information relevant to this part of the request nor did it clearly explain which exemption it was relying upon and why.
51. The Commissioner therefore considers that the DfT breached section 17(1)(a)(b) and (c) in relation to point (a) of the request relating to the bonus information.

The Decision

52. The Commissioner's decision is that the DfT correctly applied section 40(2) in order to withhold the requested information.
53. The Commissioner does however consider that the DfT breached section 1(1)(a), section 10(1) and section 17(1)(a)(b) and (c) in its handling of part (a) of the request for the bonus information.

Steps Required

54. The Commissioner requires no steps to be taken.

Right of Appeal

55. 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 24th day of September 2009

Signed

**David Smith
Deputy Commissioner**

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

Legal Annex

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.”

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 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.”

Section 17(3) provides that -

“A public authority which, in relation to any request for information, is to

any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

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

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.”

Section 17(4) provides that -

“A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

Section 17(5) provides that –

“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.”

Section 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.”

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-

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

Section 40(3) provides that –

“The first condition is-

- (a) 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-
 - (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) 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-

- (a) 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

- (b) does not arise in relation to other information if or to the extent that either-
 - (i) 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 that Act were disregarded, or
 - (ii) 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.