

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 3 December 2008

Public Authority: Central Office of Information
Address: Hercules House
Hercules Road
London
SE1 7DU

Summary

The complainant contacted the Commissioner to complain about the Central Office of Information's (COI) handling of his request for information relating to its evaluation of assessments of reprographics service providers. The complainant appealed against the withholding of some of this information under section 43 of the Act (Commercial interests); and the assertion that no further information beyond this was held. The Commissioner investigated the case and decided that section 43 was appropriately engaged and that the balance of the public interest favours the maintenance of the exemption. He is also satisfied that no further information was held by COI which falls within the scope of request at the time it was submitted. However, in its handling of the request, the Commissioner found the COI to have breached a number of procedural provisions of the Act under section 1 (General right of access to information held by public authorities) and section 17 (Refusal of request).

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

Request 1

2. On 16 January 2007 the complainant wrote to the Central Office of Information (COI) to request the following:

“paper copies of all information... (including all internal and external correspondence, meeting minutes, memoranda and any other relevant material) pertaining to the following issues:

1. COI policy (including decision process used in arriving at such policy) in relation to the use of a preferred suppliers' list for reprographics between 1989 and 1995;
 2. Selection of the preferred suppliers for the preferred suppliers' list 1993;
 3. Consultations made by the COI with the Advertising Pre-Press Association (APPA) between 1989 and 1995;
 4. Communications between the COI and Cabinet Office in relation to the COI consultations with the APPA described under point 3 above;
 5. Consultations between the COI and members of the reprographics industry between 1989 and 1995;
 6. Whether [named individual] is currently employed by the COI and his position;
 7. Whether [named individual] is currently employed by the COI, his current position and the date he joined the COI.”
3. The COI responded to the complainant on 9 February 2007. In respect of each element for the request, it provided the following details:
1. No information on COI policy with regard to “a preferred suppliers list” is available for the period 1989 to 1993. From 1993 COI policy was in line with European Union procurement directives.
 2. A preferred suppliers list was not in existence in 1993; after this EU procurement directives were followed with regard to selection of all suppliers.
 3. No written correspondence is held in relation to consultations between COI and the Advertising Pre-Press Association (APPA) between 1989 and 1995.
 4. No written correspondence is held regarding communications between COI and Cabinet Office described in point 3.
 5. No information is held regarding consultations between COI and members of the reprographics industry for the period between 1989 and 1995.
 6. [Named individual] is no longer an employee at the COI.
 7. [Named individual] joined COI in 1989 and took responsibility for Press Production in 1992. He is currently the Deputy Director of Media and Advertising at the COI.

Request 2

4. On 15 March 2007 the complainant wrote to the Central Office of Information (COI) to request the following:

“paper copies of all information...(including all internal and external correspondence, meeting minutes, memoranda and any other relevant material) pertaining to the following issues:

8. The composition of the committee responsible for independent evaluation of assessments of reprographics service providers between 2000 and 2007.
 9. The decisions of the committee responsible for independent evaluation of assessments of reprographics service providers between 2000 and 2007.
 10. The composition of the committee responsible for ratifying decisions to appoint preferred suppliers of reprographics services to the preferred suppliers' list between 2000 and 2007.
 11. The decisions of the committee responsible for ratifying decisions to appoint preferred suppliers of reprographics services to the preferred suppliers' list between 2000 and 2007.
 12. Correspondence between Mr [named individual] of the COI / Acting Chief Executive and Mr [named individual] of the Cabinet Office / Director Corporate Service between 2001 and 2007.
 13. Correspondence between Mr [named individual] of the COI / Acting Chief Executive and Mr [named individual] CB of the Cabinet Office / Director General GICS between 2001 and 2007.”
5. The COI responded to the complainant on 12 April 2007. It provided two Pre-Press Roster evaluation forms for the complainant's former company (of which he was chairman at the time of the evaluation) and “a copy of the Pre-Press Roster scoring sheet for 2005 to cover points 8 to 11” of the request. It also informed the complainant that no information for the previous roster in 2001 is held and “no other information with regard to the request is held by COI”.
6. The Commissioner notes that the Pre-Press Roster scoring sheet provided to the complainant listed all the companies tendering to provide reprographics services, together with the criteria on which they were assessed. However, scoring information was only included for the complainant's former company.
7. In response to the submission of 12 April 2007, the complainant wrote to the COI on 23 April 2007. He explained that one of the Pre Press Roster Evaluation Sheets was unsigned and asked for the name of the second evaluator. He also asked for “the names of the Committee responsible for ratifying the decision, as requested”.

8. The COI responded to the complainant on 18 May 2007. It informed him of the identities of the second evaluator in the Pre Press Evaluation Sheet and the two people responsible for ratifying the decision.
9. On 30 July 2007, the complainant wrote to the COI to request an internal review of its handling of his request. In his request, the complainant put forward the following points:
 - The COI should have provided pre-press roster evaluation sheets, and completed the pre-press roster for the other reprographics providers. Without this background information to provide context, the evaluations are meaningless.
 - It is difficult to believe that there was no internal correspondence within the COI pertaining to the evaluations, which should have been provided in response to the request for *“all information (including all internal and external correspondence, meeting minutes, memoranda and any other relevant material) pertaining to the decisions of the committee responsible for the independent evaluation of assessments of reprographics service providers between 2000 and 2007”*.
 - Requests contained within the request of 15 March 2007 have largely been ignored.
10. On 28 August 2007, the COI wrote to the complainant to inform him of the outcome of its internal review. It stated the following:
 - For each of the 13 points raised in the requests of 16 January 2007 and 15 March 2007, it is felt that each has been answered as fully and comprehensively as it could be with regard to the information that is held.
 - Pre Press Evaluation Sheets for [the complainant's former company] and a list of companies considered for Pre Press Roster were provided. To release information relating to other companies that applied may compromise their commercial position and as such is exempt under section 43 of the Act (Commercial Interests).
 - It is satisfied that no request for information has been ignored and that any information available has been provided.

The Investigation

Scope of the case

11. On 26 October 2007 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
12. Having studied the correspondence provided to him and the nature of the complainant's concerns about the COI, the Commissioner decided to focus his

investigation on the COI's handling of the complainant's request of 15 March 2007 and, specifically, upon the following points:

- i. The withholding of information relating to other companies under section 43 of the Act;
- ii. The assertion that no further information falling within the scope of the complainant's request is held; and
- iii. The conformity of the COI's refusal notice with section 17 of the Act.

Chronology

13. On 18 April 2008, the Commissioner wrote to the COI to request the following information for the purposes of his investigation:
 - i. Copies of all the information withheld from the complainant (which should include internal and external correspondence, meeting minutes, memoranda and other relevant material which fall within the scope of the subject matter of the request and not, therefore, restricted to the Pre-Press Roster Evaluation forms for other companies);
 - ii. Full justification about the application of the section 43 exemption, including analysis of the public interest test;
 - iii. An explanation as to why the full Pre-Press Roster Evaluation forms for other companies and other types of information relating to other companies were not referred to in the refusal notice of 12 April 2007; and
 - iv. Confirmation as to whether the COI response of 18 May 2007 fulfils the complainant's request for details of the composition of the committees referred to in the request of 15 March 2007.
14. The COI responded to the Commissioner on 19 May 2008. It provided a copy of the Pre Press Roster with full markings for all companies held by the COI and stated that "all other documentation, rather than withheld, is simply not in existence anymore". In its letter, the COI also put forward the following explanation:

"With regard to our application of the section 43 exemption, we fully appreciate the need to consider the public interest test but it is important to balance this with COI's ability to operate as a "Trading Fund" and as such COI is responsible for generating the majority of its income. Release of confidential supplier information to a competitor, such as criteria and roster marking scores, may compromise a supplier's ability to compete in the open market. This may affect our ability to provide value for money to client departments and ultimately the public itself. There was however a genuine oversight on our part in our response to the complainant dated 15th March but one that was rectified in the later response dated 18th May 2007."
15. In relation to part iv of the Commissioner's letter of 18 April 2008, the COI subsequently confirmed that its response to the complainant of 18 May 2007 was "fully answered in terms of the two people who marked the evaluation and the names of the committee".

16. In relation to the COI's submission to the complainant of 19 May 2007, the Commissioner enquired as to why Pre-Press Roster Evaluation forms for the complainant's former company were disclosed to him, but such forms for each of the other companies were not supplied to the Commissioner in response to his letter of 18 April 2008. The COI confirmed to the Commissioner that this information is held but it did not consider sending them to him in its submission of 19 May 2008. The Commissioner informed him that he would require sight of this information and anything else it had withheld from the complainant. Pre-Press Roster Evaluation forms withheld under section 43 were subsequently sent to the Commissioner on 20 June 2008 and consisted of 26 Pre-Press Roster Evaluation forms relating to 14 other companies.
17. In order to reach a decision on the case, the Commissioner judged that there remained a number of outstanding issues which he needed to address before he would be able to reach a decision on the case. He considered that this would be achieved by obtaining responses to the following requests, which he put to COI in a letter dated 8 August 2008:
- i. An elaboration on the statement, provided to the Commissioner, that "all other documentation, rather than withheld, is simply not in existence anymore". Specifically, confirmation of why COI no longer requires possession of the information; when the information ceased to be in existence and what happened to it; and details of the scope and nature of the documents which are no longer held. In addition, any evidence to support the assertion that this information is no longer held, such as a relevant retention policy or a record of destruction/disposal.
 - ii. Confirmation as to whether, at the time of the request, any of the companies referred to in the withheld information no longer existed.
 - iii. Further details regarding the commercial prejudice to suppliers which is likely to occur were the withheld information to be released, specifically in relation to:
 - An explanation of the preferred suppliers' list, the inclusion on which the companies were bidding in this case;
 - Whether release of this information would discourage companies from participating in such an exercise with COI in future and, if this is believed to be the case, why companies' concerns about prejudice to their commercial interests would outweigh the value placed on attaining inclusion on the preferred suppliers' list; and
 - Details of costs to the public purse from the reprographics services provided by companies on the preferred suppliers' list.
18. The COI responded to the Commissioner on 22 August 2008. The Commissioner considered the following points it made to be of relevance (which are directly reproduced here):
- i. "The COI has a retention policy for documentation of 2 years, except for financial information which is 7 years. In terms of the specific information

- [relating to] the 2005 framework, this would not be held following the selection of companies for it, other than for reasons of evaluation. Information on companies that no longer exist would not be kept by COI for the same reason. [The Commissioner understands this to mean that the COI cannot confirm whether any of the companies referred to in the information no longer existed at the time of the request.]
- ii. COI has not operated a preferred suppliers list since 1993. Framework agreements in accordance with EU procurement directives which ensure fair and open competition are used. Restricted procedures to protect the commercial position of any company applying to these frameworks, including that of [the complainant's former company] are always adhered to.
 - iii. [The disclosure of] evaluation documentation providing opinion on companies against certain criteria specified when applying for any framework may in fact give an unfair advantage to others, either when applying for contracts in the future.
 - iv. For information, COI currently has over 800 suppliers listed.
 - v. A concern for COI would be the possible effect on its commercial position as a Trading Fund and its need to generate the majority of its income. COI is annually set ministerial targets on efficiency, quality and finance and must ensure a break even position at the end of each financial year.
 - vi. Ultimately the COI aim is to ensure value for money. The total spend in relation to the Press Production Service Framework for the last financial year was £1,011,996, of which COI negotiated a 25% saving to the public purse because of its position within in the market. This supports the view that the application of the commercial interest exemption is indeed in the public interest in this instance.
 - vii. COI strives to maintain its role as a centre of excellence for government communication. To this end it is subject to continual review, both internally and externally. Examples include its own Internal Audit department, Audit and Risk Committee, internal benchmarking, the National Audit Office, the creation of the Government Strategic Advisory Board, previous quinquennial and Phillis reviews."
19. The COI subsequently confirmed to the Commissioner that, within the time span in the complainant's request, "no other pre-Press Roster took place outside of the ones specified" (2001 and 2005). It also provided an extract from its procurement documentation which it considered to be specific to this case:
- "b) Retain For 2 Years From Framework Agreements Award
- Press notice(s) and trade press advertisements
 - PQQs from unsuccessful applicants (together with any correspondence with them)"

Findings of fact

20. The Central Office of Information (COI) is the UK Government's marketing and communications agency. It is a Non-Ministerial Department, an Executive Agency and a Trading Fund, and recovers its costs from the other Departments, Executive Agencies and publicly funded bodies which use its services.

21. A Trading Fund is a UK Government department, or an executive agency or part of the department, which has been established as such by means of a Trading Fund Order made under the Government Trading Funds Act 1973. One may only be set up where more than 50 per cent of the trading fund's revenue will consist of receipts in respect of goods and services provided by the trading fund. The significance of a trading fund is that it has standing authority under the 1973 Act to use its receipts to meet its outgoings.

22. The 'Pre-Press Roster Evaluation forms' were used to record the COI's assessments of each company taking part in the tendering exercise for the provision of reprographics services. Each form contained evaluators' comments and notes for each company. They also included individual company scores and other markings in relation to each of the following criteria (directly reproduced below from the form's template):

Mandatory Requirements (pre-marking) – tick or cross placed next to each

All necessary information provided?

Company large enough to meet our requirements?

Availability of services meets mandatory requirement?

Indemnity insurance in place?

Facilities (current & future plans) meet minimum requirements?

Disaster contingency plans meet minimum requirements?

Evaluation Criteria and weighting – mark out of ten placed next to each

1. Company Capabilities – including expertise, experience and facilities (3.50)

2. Staff Expertise and Experience (3.50)

3. Quality control systems – including disaster recovery (3.50)

4. Client list – including relevance to rostered advertising agencies (2.00)

5. Size of company – including turnover and staff numbers (1.50)

6. Company ethos – how well it matches our needs (1.00)

23. The following criteria are also included in the forms (again, directly reproduced below), although no scores were provided in the documents in relation to any of the companies:

Mandatory Requirements (post-marking and short-listed agencies only)

Financially sound based in D&B reports?

Indemnity insurance at or above minimum level?

Company willing to accept offered rates?

24. The score and weighted score in relation to each of the evaluation criteria for each company, and by reference to each evaluator, consists of the information redacted from the Pre-Press Roster. This also included the percentage overall score for each company by reference to each evaluator.

Analysis

Procedural matters

Section 1 – General right of access to information held by public authorities

25. 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, and
(b) if that is the case, to have that information communicated to him.”

26. The COI's response to the complainant of 12 April 2007 provided him with Pre-Press Roster Evaluation forms for his own company and a copy of the Pre-Press Roster scoring sheet for 2005. However, it did not inform the complainant that scores for other companies had been redacted from the scoring sheet, nor did it inform him that it also held evaluation forms for the other companies. This information clearly falls into the scope of the complainant's request; therefore, in stating to the complainant that, aside from the information supplied to him, “no further information with regard to the request is held by COI”, the COI breached section 1(1)(a) of the Act.

27. In relation to all the other documentation requested by the complainant, the Commissioner is satisfied that, on the balance of probabilities, no further information was held by COI, which goes beyond that referred to in the previous paragraph, at the time the request was made. The Commissioner reached this conclusion following receipt of the COI's letter of 22 August 2008 (see paragraph 18 above); the extract from its procurement documentation, which specifies document retention requirements ; and the assurance provided in relation to the dates of rosters falling within the time span of the complainant's request. The Commissioner is aware of no business need for the COI to retain any of this documentation and is satisfied that he has been provided with an entirely plausible account of why no further information was held.

Section 17 – Refusal of request

28. Under section 17(1) of the Act, if a public authority wishes to rely upon an exemption to withhold information, it must, within twenty working days of a request, issued the applicant with 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.

29. The Commissioner notes that the complainant was not informed that information was being withheld from him under section 43 (Commercial interests) until the

outcome of the COI's internal review on 28 August 2007. The length of time taken to issue the complainant with this notification therefore constitutes a breach of section 17(1).

30. Section 43 is a qualified exemption, which means that it may only be used to withhold information where the public interest in maintaining the exemption outweighs that in the disclosure of the information. In the outcome of the internal review, when the complainant was formally notified that information was withheld under section 43, he was informed why the COI believed the information to engage the exemption. However, no mention was made of the public interest or of the COI's reasoning as to why it favours the maintenance of the exemption in this case. This constitutes a breach of section 17(1)(c) and section 17(3)(b).

Exemption

Section 43 – Commercial Interests

31. The Commissioner proceeded to assess the COI's application of section 43 to withhold information falling within the scope of the complainant's request. As a result of his analysis, the Commissioner concluded that this information consists of scores relating to other companies which were redacted from the Pre-Press Roster scoring sheet and the evaluation forms for the other companies, together with written comments on each of the companies.
32. The Commissioner considers the information supplied to the complainant regarding COI's assessment of his former company to constitute a discretionary disclosure outside the Act. This is because it was only supplied to the complainant as it related (at the time the information was produced) to his own company. As a result, the information cannot be said to have been placed by COI into the 'public domain', which is what all disclosures under the Act must constitute. Therefore, when information is disclosed under the Act, the identity and circumstances of the applicant must not be taken into account by a public authority; this was not the case here. The Commissioner therefore disregarded the disclosure of this information for the purposes of his investigation of whether the remaining information was correctly withheld under section 43.
33. From the COI's reasoning, the Commissioner understands its reliance of section 43 to relate to section 43(2), which provides that: "Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it)".
34. The COI failed to specify the level of prejudice at which the exemption has been engaged. It is the Commissioner's view that in such cases the lower threshold of "likely to prejudice" should be considered when investigating a public authority's application of a prejudice-based exemption such as section 43, unless there is clear evidence that it should be the higher level. In this case, the Commissioner does not consider the COI to have provided strong enough evidence to demonstrate that release of the withheld information *would* be prejudicial to any

person's commercial interests. The Commissioner therefore focused his analysis on whether he considers the lower threshold to be met in this case.

35. Having assessed the nature and content of the withheld information, the Commissioner is satisfied that it engages section 43(2). This is because he believes that release of this information would be likely to prejudice the commercial interests of both the COI and the companies to which the information relates for the following reasons:
- i. The information contains markings, from which the views of the evaluators can clearly be deduced, relating to key aspects of the businesses. It also contains the evaluators' comments and notes on the businesses, much of which can be considered commercially sensitive.
 - ii. The Commissioner believes that the prospect of disclosure of such information would not easily dissuade companies from bidding from lucrative contacts. However, in this case, the Commissioner is of the view that the release of these assessments would be likely put many of these companies at a commercial disadvantage. This is because some of the information contains negative views and markings on the operation and services of these businesses which would, if released, be likely to affect their reputation amongst other customers and potential customers, in addition to the confidence those customers may have in those companies. Therefore, although the Commissioner does not believe that disclosure would be likely to hinder these companies from bidding for such contracts, he does consider that, in relation to other prospective customers, it would be likely to affect their chances of competing on a level playing field, and therefore be likely to prejudice their commercial interests.
 - iii. The Commissioner does believe, however, that release of this information would be likely to reduce the amount of information some companies tendering for business would be willing to supply to COI in similar exercises in the future. This would be likely to prejudice the COI's own commercial interests and would be likely to reduce its ability to reach fully informed decisions for which it is confident that value for money to client departments and ultimately the public itself can be provided.
 - iv. The importance and credibility of the COI in respect of tendering for these kinds of services is such that this information would be likely to be seen as a reliable indicator of the nature of the businesses discussed. This increases the likelihood that the commercial interests of those rated poorly would be likely to be adversely impacted were the information to be released as rivals would be able to claim a commercial advantage. This is also likely to be the case as the particular business activity to which services are being tendered takes place in a competitive environment, and release would therefore be likely to affect these companies' ability to compete in this market.
 - v. The Commissioner considered whether the COI should instead have released the markings of companies scored highly across the board as

such a release would not be likely to affect the commercial interests of those companies. However, he concluded that this would be likely to prejudice the commercial interests of the remaining companies as it would be obvious that they were judged inferior. Therefore, he is satisfied that section 43(2) is engaged in relation to the information about all the companies considered.

36. However, section 43 is a qualified exemption and therefore subject to section 2(2)(b) of the Act, which states that this exemption can only be maintained in respect of information where “in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information”. The Commissioner therefore proceeded to decide whether the balance of the public interest test under section 43 favours the disclosure of the withheld information.
37. The Commissioner considered the following public interest factors to be of relevance in this case:

In favour of disclosure

- i. Facilitating the accountability and transparency of public authorities for decisions taken by them, in this case through the disclosure of key information to explain COI’s decisions in relation to the tendering exercise to which the information relates.
- ii. Facilitating accountability and transparency in the spending of public money, especially given that the total spent in relation to this service alone in the last financial year was significant.
- iii. Providing more meaningful feedback to unsuccessful companies in the tender to enable them to:
 - Assist in challenging the decision(s) taken;
 - Understand the reasons for not being recruited;
 - Provide evidence as to how they could improve; and
 - Enable them to understand how they compared to rivals.
- iv. The information relates to assessments of the companies at the time the tendering process was carried out rather than a current analysis of those businesses. Furthermore, the evaluations only relate to the companies in the context of the tendering process carried out which had, by the time of the request, been completed.

In favour of the maintenance of the exemption

- i. The public interest in the transparency, accountability and promoting understanding of the COI’s decision making process has already been furthered by the release of the criteria and weightings used and the names of the companies assessed. This is also the case as a result of the wide-ranging scrutiny across Government to which COI is subjected in respect of this activity.

- ii. It is important that COI continues to attract a variety of tenders and that COI is able to assess them in as much depth as possible so as to ensure it can obtain the most effective and efficient use of public money. It is also important that the COI's ability to attract its funding, namely through engaging in commercial activities, is not reduced. The Commissioner accepts that this would be likely to be undermined by the release of the withheld information in this case. This is because he believes that companies would be likely to reduce the amount of information they provide when bidding for contracts of this nature, and that COI staff may be less likely to comprehensively assess each company, were such information to be released.
 - iii. The Commissioner does not detect from the information any misuse of public money or other failings on behalf of the COI in its conduct in the evaluation process to which the information refers.
 - iv. At the time of the complainant's request, the information could still reasonably be considered relevant in terms of those companies' commercial standing and interests.
 - v. There is a public interest in maintaining a competitive environment in business. Releasing information which would be likely to place certain companies at a commercial disadvantage which would be, in this case for the reasons stated earlier, likely to undermine this objective by adversely affecting their ability to compete in the open market.
38. The Commissioner concluded that, in this case, the public interest in maintaining the exemption under section 43 narrowly outweighs that in the disclosure of the information. Specifically, he believes this to be the case as a result of the harm likely to be caused by the disclosure of this information to the ability of the COI to carry out its functions and raise revenue, together with the damage likely to be caused to the commercial interests of some of the companies assessed. The Commissioner believes that this is such that the public interest in disclosing this information, which he considers to carry particular weight in respect of the accountability and transparency of the COI's activities, is outweighed by those commercial interest public interest factors favouring the maintenance of the exemption.

The Decision

39. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- i. Application of section 43(2) (Commercial interests) to withhold from the complainant the remaining information held.
40. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- i. Breach of section 1(1)(a) in not confirming to the complainant in the refusal notice the full scope of the information held in relation to his request.
 - ii. Breach of section 17(1) (Refusal of request) in not informing the complainant in its refusal notice that information was being withheld under the section 43 exemption.
 - iii. Breach of sections 17(1)(c) and 17(3)(b) in not informing the complainant of how the balance of the public interest under section 43 favours the maintenance of the exemption.

Steps Required

41. The Commissioner requires no steps to be taken.

Right of Appeal

42. 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

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 3rd day of December 2008

Signed

**Anne Jones
Assistant 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”.”

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.”

Commercial interests.

Section 43(1) provides that –

“Information is exempt information if it constitutes a trade secret.”

Section 43(2) provides that –

“Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).”

Section 43(3) provides that –

“The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the interests mentioned in subsection (2).”