

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 16 August 2010

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

Summary

The complainant requested the minutes of any meetings held by the Secretary of State for Transport, Lord Adonis, leading to and pertaining to the nationalisation and reorganisation of the East Coast Main Line. Although most of the information was disclosed, some information was withheld under sections 40(2), 40(3)(a)(i), and 43(2). After investigating the case the Commissioner decided that the Department for Transport was correct to rely upon these exemptions in order to withhold the outstanding information. However, the Commissioner found that the DfT did not meet the requirements of section 17.

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.

Background

2. The East Coast Main Line rail franchise was awarded to National Express Group PLC in 2007. The franchise was operated by NXEC Trains Limited, a subsidiary of National Express Group PLC. On 1 July 2009 the Secretary of State for Transport, Lord Adonis, announced that

the Government had decided to temporarily re-nationalise the franchise.¹ Consequently the franchise ended in November 2009 and the running of the franchise was passed to a publicly owned company.

The Request

3. The complainant contacted the Department for Transport (the "DfT") by email on 17 July 2009 and requested the following information under the Act:

"Minutes of meetings held by Transport Secretary Lord Andrew Adonis leading to and pertaining to the nationalisation and reorganisation of the East Coast Main Line including:

- a) The rationale for holding the line in public ownership;
- b) The length of time the line is to be held in public ownership;
- c) The rationale for holding the line in public ownership for that period of time;
- d) The circumstances under which the line would be privatized ahead of schedule and the reasoning behind this; and
- e) The circumstances under which the line will be privatized behind schedule and the reasoning behind this;
- f) The nature of compromises offered by National Express Group Plc in which they could continue holding the line and the precise reasons why those compromises were rejected;
- g) The nature of the compromises offered to National Express Group Plc in which they could continue holding the line and the precise reasons why those compromises were rejected;
- h) The circumstances under which National Express Group PLC could have retained the East Coast Franchise;
- i) The names of companies who have subsequently made approaches for the line;
- j) The details of the offers made by those companies including the length of contract and fee;
- k) The reason those offers were temporarily rejected;
- l) The names of all people, other than Elaine Holt approached to act as executives for the new line while it is held in public ownership and the names of people who accepted roles and what those roles are;

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<http://webarchive.nationalarchives.gov.uk/+/http://www.dft.gov.uk/press/speechesstatements/statements/eastcoastfranchise>

- m) The budget allocated to the new line while it is in public ownership;
 - n) The nature and cost of new investments and other measures agreed upon to make the line more attractive to its new owners should it be privatized.
 - o) The circumstances under which National Express Group Plc would lose the franchise of its other two lines."
4. The DfT responded in a letter dated 5 August 2009. It confirmed that it held information that fell under the scope of the request, but refused to disclose this information, stating that it was exempt from disclosure under section 43(2) of the Act.
5. The complainant wrote to the DfT on 18 September 2009 and requested an internal review of this decision.
6. The DfT acknowledged this request for an internal review in a letter dated 15 October 2009. The DfT sent a further letter to the complainant on 9 November 2009 in which it apologised for the delay in carrying out the internal review.
7. The DfT carried out the internal review, and wrote to the complainant on 23 December 2009. It informed the complainant that after carrying out the review it had decided that its previous blanket approach to the application of section 43(2) was incorrect, and therefore some of the previously withheld information could be disclosed. However, it also believed that the remaining information had been correctly withheld under section 43(2).

The Investigation

Scope of the case

8. The complainant initially contacted the Commissioner on 24 November 2009 to complain about the way that his complaint had been handled, and the fact that (at that time) the DfT had not carried out an internal review. The Commissioner wrote to the DfT on 10 December 2009 regarding this matter. The DfT carried out an internal review and wrote to the complainant on 23 December 2010 (as detailed in the previous paragraph).
9. The complainant wrote to the Commissioner again on 29 January 2010 to complain about the outcome of the internal review. Specifically he

complained about the DfT's continued use of section 43(2) to withhold the redacted sections of the minutes in question.

10. Following an initial letter from the Commissioner the DfT provided him with a copy of the withheld information. After the case was assigned to a case officer it was noted that some additional information had been redacted – specifically the name of the author of the minutes, along with their telephone extension number. The Commissioner wrote to the complainant on 3 June 2010 and set out the intended scope of the complaint – namely the redactions made under section 43(2) of the minutes for the meetings of 9 and 26 June 2009. The Commissioner also noted that the name of the author of the minutes, along with their telephone extension number had been redacted from the minutes. He asked the complainant whether he also wished to complain about this additional redaction.
11. The complainant contacted the Commissioner in an email received on 7 June 2010 and confirmed that he also wished to complain about the DfT's redaction of the name and telephone extension number of the author of the minutes.
12. Therefore the scope of this case has been to investigate:
 - The DfT's use of section 43(2) to withhold the redacted passages from the minutes of the meetings of 9 and 26 June 2009.
 - The DfT's refusal to disclose the name and telephone number of the author of those minutes.
13. The Commissioner has also considered whether the DfT met with the requirements of section 17.

Chronology

14. In response to a preliminary letter from the Commissioner, on 14 April 2010 the DfT provided some initial submissions to support its use of section 43(2), together with a copy of the withheld information.
15. The Commissioner wrote to the DfT in an email dated 3 June 2010 and asked the DfT to provide further submissions to support its use of section 43(2). Further to this, in an additional email dated 10 June 2010 he informed the DfT that the complainant also wished to complain about the redaction of the name of the author of the minutes, along with their telephone extension. He noted that although the DfT had not quoted an exemption for this redaction, he queried whether it was relying upon sections 40(2) and 40(3)(a)(i) in order to withhold

this information. If so, he asked the DfT to provide further submissions to support its use of this exemption.

16. The DfT wrote to the Commissioner in a letter dated 9 July 2010. It provided further submissions to support its use of sections 40(2), 40(3)(a)(i) and 43(2).

Analysis

17. The Commissioner has considered the DfT's use of the exemptions in turn.

Exemptions

Section 40

18. Section 40(2) provides an exemption for information which is the personal data of an individual other than the applicant, and where one of the conditions listed in sections 40(3) or 40(4) is satisfied.
19. In this case the condition in question is contained in section 40(3)(a)(i), which applies where the disclosure of the information to any member of the public would contravene any of the data protection principles. In this case the DfT has stated that the disclosure of the name of the author of the minutes, together with their extension number, would be unfair and would therefore be in breach of the first principle of the Data Protection Act 1998 (the "DPA").
20. In order to establish whether this exemption has been correctly applied the Commissioner has first looked at whether the withheld information constitutes the personal data of a third party.
21. Section 1 of the DPA defines personal data as data which relate 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.
22. In this case the complainant has suggested that the withheld information in question is not the personal data of the individual concerned.

23. In reaching a view on this the Commissioner has been mindful of the views of the Tribunal in *DBERR v ICO & Friends of the Earth* [EA/2007/0072] which discussed whether the names of civil servants and lobbyists recorded in the minutes of meetings amounted to the personal data of those individuals. The Tribunal found that,

“...in relation to the facts in this case that the names of individuals attending meetings which are part of the Disputed Information are personal data. This is because the individuals listed as attendees in the minutes and elsewhere in the Disputed Information will have biographical significance for the individual in that they record his/her employer’s name, whereabouts at a particular time and that he/she took part in a meeting with a government department which would be of personal career or business significance.”²

24. Bearing these comments in mind, the Commissioner believes that the name of the author of the minutes, together with their extension number, amounts to that individual’s personal data.

25. The Commissioner has gone on to consider whether the disclosure of this information would be in breach of the principles of the DPA. In particular the Commissioner has considered whether the disclosure of this information would be in breach of the first data protection principle.

26. The first principle provides 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.”

27. The Commissioner has first considered whether the disclosure of the withheld information would be fair.

28. In considering whether disclosure of the withheld information would be fair the Commissioner has taken the following factors into account:

- the individual’s reasonable expectations of what would happen to their information;
- the seniority of the individual;

² EA/2007/0072, para 91.

- whether disclosure would cause any unnecessary or unjustified damage or distress to the individual; and
 - the legitimate interests of the public in seeing the withheld information.
29. The Commissioner is mindful that he has issued guidance which gives advice to public authorities on when the names of staff, officials, elected representatives or third parties acting in a professional capacity should be released in response to an access request. The key point to consider when disclosing names is to consider whether it would be fair in all the circumstances to identify an individual. The presumption is in favour of protecting privacy, so the release of personal information will in most cases only be fair if there is a genuine reason to disclose that information. The Commissioner is of the view that public authorities should consider the following:
- The public authority should identify the legitimate interests which a member of the public might have in the information. These may not be the same as, or limited to, any interest expressed by the particular requester, although any arguments they put forward should be considered.
 - The public authority should consider whether the names add to the value of the information, or whether the interests would be fully met by providing information with the names redacted.
 - The public authority should decide whether the benefits of disclosure are proportionate to any potential harm, distress or intrusion to the individuals named.
30. In this case the DfT has confirmed that the individual identified as the author of the minutes was a junior member of private office staff. The Commissioner is satisfied that junior officials would be unlikely to expect that their names would be disclosed into the public domain. Given that junior staff are less likely to be accountable for decisions taken by a public authority, the Commissioner considers that the benefit to the public of disclosing this information is minimal. Rather, the Commissioner is of the view that disclosure of the names of junior staff would be likely to draw undue attention to these individuals. Therefore the Commissioner concludes that disclosure of the name and extension number of this junior member of staff would be unfair and would breach the first data protection principle.
31. Therefore the Commissioner believes that this information is exempt from disclosure under sections 40(2) and 40(3)(a)(i).
32. The full text of section 40 can be found in the Legal Annex attached to the end of this Notice.

Section 43

33. Section 43(2) states that information is exempt information if its disclosure under the Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it). This is a qualified exemption, and is therefore subject to the public interest test.
34. The full text of section 43 can be found in the Legal Annex at the end of this Notice.
35. In the refusal notice the DfT stated that it believed that disclosure would prejudice its own commercial interests, and those of National Express Group PLC. At internal review it referred to 'would or would be likely to'. However, in its letter to the Commissioner dated 9 July 2010 it stated that it believed that the disclosure of the withheld information would be likely to prejudice its own commercial interests, and those of National Express Group PLC.
36. Therefore the Commissioner has considered the application of this exemption on the basis that the DfT believes that disclosure would be likely to prejudice its own commercial interests and those of National Express Group PLC.
37. The Commissioner has first considered whether the withheld information, and the potential prejudicial effects described by the DfT, would relate to commercial interests.
38. The withheld information consists of extracts from the minutes of two meetings where the Secretary of State for Transport met with senior representatives of National Express Group PLC to discuss the East Coast Main Line rail franchise. Although the Commissioner cannot disclose the contents of this withheld information, having examined it he believes that it is commercially sensitive information relating to National Express Group PLC. As such, the Commissioner is satisfied that this information relates to commercial interests. Furthermore, after considering the DfT arguments the Commissioner is satisfied that the potential prejudicial effects would relate to the commercial interests of the DfT and National Express Group PLC. Therefore he is satisfied that the withheld information falls within the scope of the exemption.
39. Next the Commissioner has to consider whether the disclosure of this information would prejudice, or be likely to prejudice, the commercial interests of the DfT and National Express Group PLC.

40. As noted above, after considering the DfT's submissions to him the Commissioner believes that the DfT has argued that the disclosure of the redacted sections of the minutes would be likely to prejudice its own commercial interests, and those of National Express Group PLC.
41. The Commissioner has first considered whether the disclosure of the withheld information would be likely to prejudice the commercial interests of National Express Group PLC.
42. In reaching a decision on the question of the likelihood of prejudice the Commissioner has been mindful of the test of 'likely to prejudice' as enunciated by Mr Justice Mundy in the case of *R (on the application of Lord) V Secretary of State for the Home Office [2003] EWHC 2073*, and followed by the Tribunal in the case of *John Connor Press Associates Limited v ICO [EA/2005/0005]*, where the Tribunal interpreted the expression 'likely to prejudice' within the context of the section 43 exemption as meaning that, "the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk."³
43. In reaching a decision on the likelihood of prejudice the Commissioner also believes that the public authority should be able show some causal link between the potential disclosure of the withheld information and the prejudice it has argued is likely to occur.

Prejudice to the commercial interests of the third party

44. In cases where a public authority argues that disclosure of the requested information would or would be likely to prejudice a third party the Commissioner is guided by the views of the Tribunal in *Derry City Council v ICO [EA/2006/0014]*. In this case the Council argued that the commercial interests of a third party, Ryanair, would be likely to be prejudiced if the requested information were disclosed. The Council did not ask Ryanair for its views as to whether it believed its commercial interests would be likely to be prejudiced nor did Ryanair present any evidence to the Tribunal. The arguments put forward by the Council to the Commissioner as well as to the Tribunal were based upon the Council's thoughts on the point and not on representations made by Ryanair. In the absence of any evidence from Ryanair the Tribunal stated that it was unable to conclude that Ryanair's commercial interests would be likely to be prejudiced.⁴

³ EA/2005/0005, para 15.

⁴ EA/2006/0014, para 24.

45. The Commissioner acknowledges that the approach taken by the Tribunal may not be appropriate in every case and therefore public authorities may sometimes have to formulate their arguments based on their prior knowledge of a third party's concerns rather than directly contacting a third party. However the Commissioner still expects a public authority to provide evidence that these arguments genuinely reflect the concerns of the third party involved rather than merely speculate about the prejudice that may be caused to the third party.
46. After considering the information provided to him during the course of his investigation, the Commissioner is satisfied that the DfT has consulted with National Express Group PLC, and that the arguments it has submitted in relation to the potential prejudice reflect the concerns of that company.
47. The DfT has argued that the disclosure of the redacted sections of the minutes would be likely to prejudice the commercial interests of National Express Group PLC because this information was highly commercially sensitive and related to the company's "wider business". Disclosure of this information would be likely to:
- impact National Express Group PLC's business reputation;
 - weaken its position in negotiations with third party suppliers;
 - undermine its commercial position in the market;
 - impact the confidence of customers, suppliers and stakeholders in the company; and
 - have an impact on its commercial revenue and/or threaten its ability to secure finance.
48. In reaching a view on these arguments the Commissioner has considered the withheld information in detail. As noted above, the redacted passages contain commercially sensitive information relating to National Express Group PLC. In reaching this view the Commissioner has noted the context of these minutes. The minutes record two meetings between the Secretary of State for Transport (Lord Adonis) and senior executives from National Express Group PLC. Having considered the details of the minutes (including the sections disclosed to the complainant) the Commissioner believes that they represent a robust discussion regarding the future of the East Coast Main Line franchise. Having considered this information the Commissioner is satisfied that this information does relate to the company's "wider business".
49. In considering the sensitivity of the withheld information the Commissioner has been particularly mindful of the timing of the request. The minutes record meetings that took place on 9 and 26 June

2009. The request was made by the complainant on 17 July 2009. Therefore the Commissioner believes that the information redacted from these minutes was relatively recent at the time of the request.

50. Therefore, bearing in mind the test of prejudice as outlined at paragraphs 42 and 43 above, and taking into account the above factors, the Commissioner is persuaded that the disclosure of the withheld information at the time of the request would have been likely to prejudice the commercial interests of National Express Group PLC.
51. The Commissioner has gone on to consider whether the public interest in disclosing the withheld information is outweighed by the public interest in maintaining the exemption.

Public interest arguments in favour of disclosing the requested information

52. The Commissioner recognises the public interest in promoting openness, transparency, public understanding and accountability in relation to the activities of public authorities.
53. This case focuses on the decision to renationalise the East Coast Main Line, and the request was made shortly after the announcement that that decision had been taken (see paragraph 2 above). The Commissioner is satisfied that these were unusual circumstances affecting a major rail franchise, and that therefore this was a matter of significant public debate at the time of the request. Given the number of passengers using this rail franchise, and the potential effect that this decision may have had both on public expenditure and income, the Commissioner believes that this decision had at least the potential to affect (directly or indirectly) large numbers of people. Therefore the Commissioner believes that there is a strong public interest in increasing the public understanding of the reasons behind this decision, and informing the public debate on this subject.

Public interest arguments in favour of maintaining the exemption

54. In considering the public interest arguments in favour of maintaining the exemption the Commissioner has been mindful of his conclusions that disclosure of the withheld information would have been likely to cause prejudice to the commercial interests of National Express Group PLC. He believes that there is a strong public interest in avoiding unwarranted prejudice to the commercial interests of third parties. As noted above, having considered the redacted passages from the minutes, the Commissioner is satisfied that this information is

commercially sensitive, in particular given the fact that the information records comments that were made in meetings between the Secretary of State for Transport and senior executives from National Express Group PLC, less than two months before the request was made.

Balance of the public interest arguments

55. In balancing the public interest arguments in this case the Commissioner has been particularly mindful that he has found that disclosure of the withheld information would be likely to cause prejudice to the commercial interests of a third party (National Express Group PLC).
56. Whilst the Commissioner believes that the arguments in favour of accountability and transparency are strong in this case, this has to be weighed against the public interest in avoiding any unwarranted prejudice to the commercial interests of a private company. In this case, and as noted above, the minutes of the meetings in question record frank comments made during a meeting between the Secretary of State for Transport and senior executives from National Express Group PLC. Although he cannot comment on the contents of the redacted passages, as noted above the Commissioner believes that this information was highly commercially sensitive to National Express Group PLC. This is particularly the case given the fact that the request for information was made less than 2 months after these meetings, and therefore the redacted information was relatively recent. The Commissioner believes that the argument that it is in the public interest to avoid such an unwarranted prejudice is particularly weighty.
57. The Commissioner notes that in a letter dated 29 January 2010 the complainant stated that he believed that the DfT had given insufficient weight to the public interest in disclosure, "especially given the time that had lapsed since the relevant meetings occurred." Although the complainant did not elaborate on this comment, the Commissioner believes that the complainant was querying the sensitivity of the information that had been redacted from the minutes. If the Commissioner were to accept this argument, then the weight given to the commercial sensitivity of the withheld information due to its age at the time of the request would be reduced.
58. However, the Commissioner respectfully disagrees with the complainant on this point and believes that consideration of the exemptions and public interest test should be based on the circumstances as they existed at the time of the request (or at least by the time of the refusal). The Commissioner believes that this is in line with the views of the Tribunal in *DBERR v ICO & the Friends of the*

Earth [EA/2007/0072], in which the Tribunal stated that, “the timing of the application of the [public interest] test is at the date of the request or at least by the time of the compliance with ss.10 and 17 FOIA.”⁵ Therefore the Commissioner has had to consider the public interest arguments against disclosing commercially sensitive information on the basis that this information related to meetings that had taken place less than two months before the request was made.

59. After considering all of the above points the Commissioner has decided that the public interest in disclosure is outweighed by the public interest in maintaining the exemption. Therefore the withheld information should not be disclosed.
60. As the Commissioner has decided that the information should be withheld because of the prejudicial effect to the commercial interests of National Express Group PLC he has not gone on to consider the DfT’s arguments in relation to its own commercial interests.

Procedural Requirements

Section 17

61. The Commissioner has considered whether the DfT has complied with its obligations under section 17(1).
62. Section 17(1) requires a public authority, which is relying upon an exemption in order to withhold requested information, to issue a refusal 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.
63. During the course of the investigation the DfT sought to rely upon sections 40(2) and 40(3)(a)(i) to withhold some of the information that fell under the request. However, it did not cite this exemption in the refusal notice or the internal review. For this reason the Commissioner believes that the DfT did not comply with the requirements of section 17(1).
64. The full text of section 17 can be found in the Legal Annex at the end of this Notice.

⁵ EA/2007/0072, para 110.

The Decision

65. The Commissioner's decision is that the DfT dealt with the request in accordance with the requirements of the Act in that it correctly relied upon sections 40(2), 40(3)(a)(i) and 43(2) to withhold the information in question.
66. However, the Commissioner has also decided that the DfT failed to meet the requirements of section 17(1) in that it failed to notify the complainant that it was seeking to rely upon sections 40(2) and 40(3)(a)(i) to withhold some of the requested information.

Steps Required

67. The Commissioner requires no steps to be taken.

Other matters

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

Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his *'Good Practice Guidance No 5'*, published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner is concerned that in this case, it took over 60 working days for an internal review to be completed, despite the publication of his guidance on the matter.

Right of Appeal

69. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

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 sent.

Dated the 16th day of August 2010

Signed

**David Smith
Deputy Commissioner**

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

Legal Annex

Section 17

- (1) 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.
- (2) 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.
- (3) 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.
- (4) 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.
- (5) 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.
- (6) 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.
- (7) 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.

Section 40

- (1) 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.
- (2) 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.
- (3) 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.
- (4) 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).
- (5) 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).
- (6) 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.
- (7) 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.

Section 43

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