

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 1 November 2010

Public Authority: The Technology Strategy Board
Address: North Star House
North Star Avenue
Swindon
SN2 1UE

Summary

The Technology Strategy Board (TSB) is responsible for the UK's publicly funded Micro and Nano Technology facilities. The TSB commissioned a strategic review of the facilities' performance and the complainant in this case requested a copy of the report compiled as a result of this review. The TSB refused to provide this report on the basis that it was exempt from disclosure by virtue of the exemptions contained at sections 43(2) and 41(1) of the Act. The Commissioner has concluded that whilst the majority of the report is exempt from disclosure on the basis of section 43(2) some remaining parts of the report are not exempt from disclosure on the basis of either exemption and these parts of the report must be disclosed.

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 Technology Strategy Board (TSB) was established in July 2007 and is a non-departmental public body, sponsored and funded by the Department for Business, Innovation and Skills. The TSB is dedicated to promoting technology-enabled innovation across the UK.
3. On its establishment, the TSB inherited responsibility for the UK's publically funded Micro and Nano Technology (MNT) facilities. Such facilities had been established between 2003 and 2007 as part of the government's MNT Manufacturing Initiative and were jointly funded by the government, Regional Development Agencies and the Developed Administrations of Wales and Scotland, with the aim that they would become self financing. The twenty-four facilities were generally built on existing university or business expertise.
4. In 2008 the TSB commissioned a strategic review of the twenty-four centres which was undertaken by Yole Développement, a market research and strategy consulting company.¹

The Request

5. The complainant submitted the following request to the TSB on 11 January 2010:

'Information requested: The strategic review of the UK's publicly-funded Micro and Nano-Technology (MNT) facilities/centres (carried out by Yole Développement, market research and strategy consulting company).

Description: The Technology Strategy Board (TSB) commissioned the aforementioned review (and report) to investigate the international competitiveness of the UK MNT facilities/centres (MNT centres) which they govern. These centres are outlined as one of the services offered by the TSB, in point 9 of their 'Freedom of Information Act Publication Scheme' document'.

6. The TSB responded on 3 February 2010 and confirmed that it held a copy of the report described in the complainant's request. However, the response went on to confirm that the TSB considered this report to

¹ A summary of the reports' aims and outcomes is available from the TSB's website [here](#).

be exempt from disclosure on the basis of section 43 because it believed that its disclosure would prejudice the ability of the various MNT centres to trade. The TSB confirmed that it had considered the public interest test and concluded that it favoured maintaining the exemption.

7. The complainant contacted the TSB on 18 February 2010 and asked for an internal review of this refusal. In asking for this review the complainant submitted detailed arguments to support his position that the exemption was not engaged and even if it was then the public interest favoured disclosure of the information he requested.
8. The TSB informed the complainant of the outcome of the review on 19 March 2010; the review upheld the application of section 43 as a basis to withhold the requested information. The review also explained that the report contained information that had been provided to the TSB by the various MNT centres in confidence and therefore such information was also exempt from disclosure in the basis of section 41 of the Act.

The Investigation

Scope of the case

9. The complainant initially contacted the Commissioner on 9 March 2010 in order to complain about the TSB's refusal of his request for information and its failure to complete the internal review that he had asked for. Following the completion of the internal review, the complainant subsequently informed the Commissioner that he was dissatisfied with the outcome of the review. In his communications to the Commissioner the complainant highlighted a number of reasons why he believed that the information he requested should be disclosed. The Commissioner has not set out these submissions here but has included them in the relevant sections of the Analysis below.

Chronology

10. The Commissioner wrote to the TSB on 24 June 2010 and asked to be provided with a copy of the report requested by the complainant along with detailed submissions to support its reliance on sections 41 and 43 as a basis to withhold this information.
11. The TSB provided the Commissioner with a detailed response, including a copy of the withheld information, on 9 August 2010.

Analysis

Exemptions

12. The TSB has argued that the entire report is exempt from disclosure on the basis of sections 43(2) and 41(1) of the Act. The Commissioner has considered the application of section 43(2) first.

Section 43(2) – commercial interests

13. Section 43(2) states 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).’

14. The Commissioner has set out below the submissions the TSB has provided to support its position that the report is exempt from disclosure on the basis of section 43(2), before summarising the complainant’s arguments and then setting out his findings with regard to the application of this exemption.

The TSB’s position

15. The TSB explained that it had embarked on the review so that it could make informed decisions regarding potential future funding for the MNT centres when their current grants come to an end. The TSB asked Yole to assess the performance and potential of the MNT centres against their European and world-wide competitors and against the state-of-the-art in their technological fields. The findings were not intended for publication and the review did not assess their performance against the grant deliverables as the TSB had a separate mechanism for doing this.
16. As the Yole report contains judgments about the future potential of the MNT centres, the TSB therefore considered that release of the report would be likely to prejudice the commercial interests of a significant number of the MNT centres. The centres are independent businesses and some of the judgments are not particularly favourable; these could cause some degree of damage to reputation/business confidence and harm their ability to find customers and trade.
17. The TSB noted that it had regular interaction with the MNT centres and dealt with many other similar companies. Consequently, as a result it was acutely aware of the critical importance of building confidence with

- clients, potential investors and partners if the centres were to have a sustainable future.
18. Furthermore, the Yole report is marked as 'commercial in confidence' and the TSB highlighted the fact that its contractual conditions, as stated in its grant letters, do not allow it to release commercially confidential information without the permission of each centre.
 19. The TSB noted that in order to determine whether disclosure of information would prejudice a commercial interest, a public authority should consult with the parties likely to be affected by any disclosure. The TSB explained that it had contacted the MNT centres and informed them of the request, and subsequently the internal review, and they were given the opportunity to provide submissions to the TSB if they believed that disclosure of the report would be likely to harm their commercial interests. The TSB confirmed that the MNT centres had verbally expressed concerns on the disclosure of the review as they were of the view that there were sufficient details in the report that they regarded as damaging. The TSB also received some written feedback from a number of centres (which was provided to the Commissioner) in which they stated that they were clearly dissatisfied with the review being disclosed and explained their reasons for this.
 20. Furthermore, the TSB argued that as the MNT centres are a relatively small technical community, should the review be released, word would quickly spread amongst centres, competitors and most significantly, potential investors which would be likely to be damaging to some centres. In addition, the centres themselves only received feedback relevant to their centres and not the full report as they compete amongst themselves in some areas.
 21. The TSB confirmed that the likelihood of prejudice occurring to the MNT centres' commercial interests which it was relying on was the lower limb of 'likely to' prejudice rather than the higher limb of 'would' prejudice.
 22. Finally, the TSB confirmed to the Commissioner that it had considered whether the report could be issued with certain sections redacted. However it explained that as the report in its entirety contained sensitive data in relation to the centres, it was not possible to separate, anonymise or redact the sensitive information without relating it back to the centres.

The complainant's position

23. The complainant submitted a number of arguments to support his position that disclosure of the report would not be likely to prejudice the interests of the MNT centres. The complainant split his submissions into counter-arguments to the reasons provided to support the application of the exemption and reasons why he believed that the assumed content of the report could be disclosed without prejudice occurring.
24. In the first half of the submissions the complainant submitted that:
25. In relation to the argument that disclosure of the report could harm the ability of the centres to compete with their competitors, the complainant suggested that the MNT centres were not meant to be in competition with each other and therefore it was not accurate for the TSB to argue that disclosure of the information to all of the centres would cause harm.
26. In relation to the argument that disclosure could prejudice the MNT centres' commercial interests by damaging their business reputations or the confidence that customers, suppliers or investors may have in them, the complainant argued that the MNT centres have been described as 'projects' by the TSB and although they are meant to generate revenue, and become self-sustaining, they are meant to be 'open-access' and in existence to support UK industry. As such the complainant suggested that the typical rules of commercial interests which apply to private organisations should not apply to MNT centres. They had after all received substantial amounts of public money to allow them to be commercial in the first instance.
27. In relation to the argument that disclosure could have a detrimental impact on its commercial revenue or threaten its ability to secure funding, the complainant argued that the MNT centres had already secured finance in the form of the original TSB grants. The other finance should come from revenue-generated income. By disclosing information on services offered and processes provided there could be a positive, rather than negative, impact on revenue generated, as potential customers will know more about their existence.
28. In the second half of his submissions the complainant argued that:
29. If the report grouped the centres into technology areas then publication of this information could only help centres gain further customers and revenue, in order to remain financially sustainable. If the customers can see where the centres are in their supply chain,

they can approach them accordingly and thus any impact on their commercial interests would be positive rather than prejudicial.

30. If the report contained judgments of which centres should have future investment, it is understandable that centres will be sensitive to any judgements about them. However, if this information was presented fairly and the point is made that this is only one point of view, i.e. Yole's, then such information would actually prove helpful for centres to benchmark themselves and improve their standing.
31. If the report contains a comparison of centres, then disclosure of such information could help the centres as they could learn from other centres which have a greater generation of income or uptake of technologies. Again, any impact on the centres' commercial interests being a positive rather than a negative one.

The Commissioner's position

32. In order for a prejudice based exemption, such as section 43(2), to be engaged the Commissioner believes that the following three criteria must be met:
 - Firstly, the actual harm which the public authority alleges would or would be likely to occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
 - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
 - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e. disclosure would be likely to result in prejudice or disclosure would result in prejudice. If the likelihood of prejudice occurring is one that is only hypothetical or remote the exemption will not be engaged.
33. In respect of the first criterion the Commissioner accepts that the prejudicial effects identified by the TSB to the MNT centres are ones that clearly fall within the scope of the exemption contained at section 43(2) of the Act. The first criterion is therefore met.
34. In respect of the second criterion, the Commissioner also accepts that disclosure of the information contained in the report which consists of

- qualitative judgments about the centres has the potential to harm the commercial interests of the MNT centres. This is because such information contains, in places, negative or critical assessments of various centres and the Commissioner accepts that given the nature of such assessments it would be more difficult for a centre to attract new customers, retain existing ones and thus compete with competitors, be they other MNT centres or other private companies.
35. The Commissioner has reached this conclusion because he believes that it is logical to argue that in an open market, potential purchasers of a particular company's products or services are less likely to do business with such a company if they have read an objective study which highlights that company's weaknesses or questions its sustainability. The Commissioner believes that a similar logic applies to the potential investors in the MNT centres.
36. With regard to the information about the centres which is of a more factual nature, e.g. details of particular customers, the Commissioner accepts that it is logical to argue that disclosure of such information could undermine the competitive position of particular centres if disclosed and thus information of this nature also passes the threshold needed to meet the second criterion. For example, if details of a particular centre's contracts with particular customers were disclosed such information (albeit top level information) could prove to be useful to that centre's competitors.
37. In reaching these conclusions the Commissioner accepts that not all of the comments contained in the report are negative ones and moreover some of the facts about the centres are ones that are arguably in the public domain. For example, brief, general descriptions about the nature of a centre's type of activities could easily be taken from a centre's website. However, having examined the report very carefully the Commissioner does not believe that the more negative and circumspect comments about the centres can be separated from the more positive ones or neutral ones. This is because of the manner in which the report is written and structured. For the same reasons, the Commissioner does not believe that more potentially prejudicial facts about the centres can be separated from those which are more anodyne in nature.
38. However, the Commissioner has established that there a number of sections of the report which do not focus on specific MNT centres themselves and moreover in his opinion such sections *can* be very easily separated from the comments about the centres. This information consists of the parts of the review which set out the objectives of the review; the parts of the report describing the

methodology of the review; and a case study in the appendix of the report on a European organisation. As this information does not contain any comments about the centres the Commissioner does not believe that the arguments submitted by the TSB are relevant to this information. That is to say, the Commissioner cannot see any causal link between disclosure of these types of information and any potential prejudice to the commercial interests of the centres.

39. With regard to the third criterion, the Commissioner has been guided on the interpretation of the phrase 'would, or would be likely to' by a number of Information Tribunal decisions. With regard to likely to prejudice, the Tribunal in *John Connor Press Associates Limited v The Information Commissioner* (EA/2005/0005) confirmed that 'the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk' (Tribunal at paragraph 15). With regard to the alternative limb of 'would prejudice', the Tribunal in *Hogan v Oxford City Council & The Information Commissioner* (EA/2005/0026 & 0030) commented that 'clearly this second limb of the test places a stronger evidential burden on the public authority to discharge' (Tribunal at paragraph 36).
40. As noted above the TSB has confirmed that it is relying on the lower threshold of 'would be likely' in respect of the prejudice that could occur to the MNT's centres following the disclosure of the report.
41. The Commissioner is prepared to accept the likelihood of prejudice occurring to the MNT centres if the information which is actually about the centres themselves (i.e. but not the information which does not meet the second criterion) was disclosed is one that is more than hypothetical and thus the exemption is engaged. The Commissioner has reached this conclusion for the following reasons:
42. Firstly, the very nature of the assessment of the centres contained in the report is one which is free and frank in nature. In the Commissioner's opinion the candid nature of the assessments makes it more likely that prejudice to the centres would be likely to occur.
43. Secondly, the majority of the centres are coming to the end of their grants and are expected to become self-sustaining. The centres are therefore trying to establish confidence with clients, potential future investors and partners in order to ensure that they can continue to operate without a grant from the government. In the Commissioner's opinion given this crucial, and potentially vulnerable, point in the MNT centres' development, disclosure of the information at the time when the request was submitted increases the likelihood of prejudice occurring to the centres.

44. Thirdly, the Commissioner recognises that the MNT centres not only face competition from other companies in the UK but also from a range of companies around the world.
45. Fourthly, the Commissioner believes that the evidence submitted to the TSB by the centres is compelling in nature and provides a clearly informed and knowledgeable insight into the likelihood of prejudice occurring if the report was disclosed.
46. In summary then, the Commissioner believes section 43(2) is engaged in respect of all parts of the report which directly discuss the performance of the centres. However, the Commissioner does not believe that the exemption is engaged in respect of the parts of the report which do not directly comment on the performance of the centres and such sections comprise the parts of the review which set out the objectives of the review; the parts of the report describing the methodology of the review; and a case study in the appendix of the report on a European organisation. (The Commissioner has considered later in this Notice whether the parts of the report that he has concluded are not exempt from disclosure on the basis of section 43(2) are exempt from disclosure on the basis of section 41(1).)
47. In reaching this conclusion, the Commissioner does not accept the complainant's argument outlined at paragraph 26 that because of the basis upon which the centres were set up the typical rules of commercial interests should not apply. Even though the centres were provided with grants and one of the intentions of the centres' establishment was to improve MNT in the UK, given that the ultimate aim of the centres is to become self-financing like any other commercial organisation, the Commissioner believes that section 43(2) is relevant to the consideration of this request. In light of this the Commissioner accepts that the centres are, in effect, in competition with each other.
48. Furthermore, although the Commissioner can understand the logic of the complainant's arguments in relation to the potentially positive, rather than negative, outcome of disclosing the information, he does not believe that they are anything more than hypothetical and/or would not sufficiently offset the prejudicial consequences of the report being disclosed.

Public interest test

49. However, section 43(2) is a qualified exemption and therefore the Commissioner must consider the public interest test at section 2(2) of the Act. This requires a consideration of whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Public interest arguments in favour of disclosing the requested information

50. The TSB accepted that there was a public interest in promoting the accountability and transparency of how public money is spent. It noted that it welcomed opportunities to learn and share lessons from previous investments so that it could improve the impact of future public investments.
51. The complainant advanced the following arguments to support his position that the public interest favoured disclosure of the report:
52. The complainant also emphasised the public interest in disclosure in order to ensure that public money had been spent effectively, noting that £40m of taxpayers' money had been provided in grants to these centres. He highlighted the fact that there was very little, if any, publicly available data or reports displaying the value that has been delivered for this level of investment.
53. The complainant noted that future government spending on MNT, as outlined in the TSB's publication *Nanoscale Technologies Strategy 2009-12*, was informed by the outcome of the Yole review. However without publication of the review the public are not in possession of an objective view of the lessons learnt from previous and existing MNT facilities.
54. Transparency of information was not only important for the public, but also for private organisations in the area of nanotechnology who need to see that such centres are not distorting the market (e.g. issues concerning state-aid rules) and how successful they are at achieving the original government purpose of providing a 'leg-up' to UK companies into the area of MNT.
55. If the report revealed that some or all of the centres had been underperforming then there was a public interest in disclosure of the report in order to reveal this failing. Conversely, disclosure of the report could reassure the public that the investments had been successful if the centres were performing well.

56. The centres want to be sustainable and disclosure of the report could allow them to learn vital lessons from other centres which have a greater generation of income or uptake of technologies. By failing to provide the centres with the report then the TSB was failing to maximise the investment made to the centres.
57. Publication of the report could also help to showcase the services available to UK businesses. The disclosure of such information can only help to stimulate wider commercial exploitation of the technology across UK businesses.

Public interest arguments in favour of maintaining the exemption

58. The TSB submitted the following arguments in favour of maintaining the exemption:
59. If it was seen to be willing to publish commercially sensitive judgments on companies it worked with and invested in, this could damage the trust third parties have in the TSB and impact on its ability to carry out its role and manage current and future investments. Such disclosures could also discourage companies from participating in research projects undertaken by the TSB.
60. Disclosure would be likely to only provide partial information with regards to the centres and therefore may not give a true reflection of the centres at this stage and this information could mislead the public.

Balance of the public interest arguments

61. In the Commissioner's opinion the argument identified by the TSB that disclosure of the report could undermine its relationships with the third parties is not relevant to the balance of the public interest in this case. This is because such an effect is not inherent in section 43(2); the purpose of this exemption is to protect a party, or parties', commercial interests, not to protect a public authority's ability to be provided with confidential information in the future. The Commissioner therefore believes that no weight should be given to this argument. In reaching this conclusion the Commissioner accepts that if the MNT centres' trust in the TSB is undermined then, over time if the centres engage with the TSB less openly and/or frequently, then this could potentially and ultimately harm the MNT centres' commercial interests. However, in the Commissioner's opinion the TSB's submissions to him with regards to why the exemption at section 43(2) is engaged do not make this argument. Rather the TSB's submissions rely solely on the harm that

would be likely to occur to the MNT centres' reputations following disclosure of the requested report.

62. The Commissioner also believes that very limited weight should be attributed to the TSB's argument that disclosure of the information could prove to be misleading. In the Commissioner's opinion in disclosing any information a public authority always has the option of disclosing further information or providing an explanatory commentary in order to ensure that the requested information is placed into some sort of context and thus reducing the risk of it being misinterpreted or misleading the public.
63. However, the Commissioner does accept that there is very strong public interest in ensuring that the commercial interests of the various MNT centres are not harmed. In general it is obviously not in the public interest for the commercial interests of private sector companies to be harmed. In the Commissioner's opinion in this case this argument attracts further weight because of the relatively vulnerable position that the MNT centres are in, i.e. a reduction in government grants as the companies move towards becoming self-financing. Furthermore, if the commercial interests of the MNT centres were harmed this could also undermine the progress that had been made in developing MNT in the UK, something which could clearly be against the public interest. Moreover, the positive effects of the public money that had already been invested in the MNT centres could also be undermined and it would clearly not be in the public interest if the best value for money was not achieved from such investments.
64. With regard to the public interest arguments in favour of disclosing the information, the Commissioner agrees that there is a strong and inherent public interest in disclosure of information in order to ensure that public authorities are transparent about, and accountable for, public money that has been spent. In this case, as the complainant has identified, the amount awarded in grants represents a significant investment of public funds which in the Commissioner's opinion adds notable weight to these arguments in favour of disclosure. The Commissioner would also agree with the complainant that these arguments attract further weight in light of the fact that the outcome of the Yole review has been used to inform the further grants that the MNT centres receive. Further the arguments that transparency could reveal poor performance of the centres or conversely re-assure the public that the centres had performed well are, in the Commissioner's opinion, also arguments deserving of weight.
65. The Commissioner also accepts that if the TSB considered the Yole report to provide an insightful and informative view of the position of

the various MNT centres then the complainant's suggestion that the MNT centres themselves may learn valuable lessons from them is not an unreasonable one. Thus some limited weight should be attributed to the suggestion that the capability of the MNT centres, as a whole, could be improved by disclosure of the report.

66. However, although the Commissioner believes that the benefits of the transparency in this case are numerous and weighty, he believes that the public interest narrowly favours maintaining the exemption. This is because of the consequences of disclosure which are likely to affect not simply the commercial interests of the various MNT centres, and thus undermine their ability to operate successfully in the future, but also because disclosure risks securing best value for money from the significant amounts of money that has already been invested in the centres and ultimately the potential of MNT in the UK.

Section 41 – information provided in confidence

67. As the Commissioner has considered that the majority of the report is exempt from disclosure on the basis of section 43(2) he has not considered whether this information is also exempt on the basis of section 41(1). However, the Commissioner has considered whether section 41(1) provides a basis upon which to withhold the information which he does not accept is exempt from disclosure on the basis of section 43(1), i.e. the parts of the review which set out the objectives of the review; the parts of the report describing the methodology of the review; and a case study in the appendix of the report on a European organisation.

68. This section states that:

'41-(1) Information is exempt information if -

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

69. Therefore for this exemption to be engaged two criteria have to be met; the public authority has to have obtained the information from a third party **and** the disclosure of that information has to constitute an actionable breach of confidence.

70. The TSB has argued that section 41(1)(a) is met because it, through Yole Développement, was in possession of confidential information obtained from the MNT centres which was then further analysed and projected in the MNT review.
71. The Commissioner has reviewed the parts of the report which he is considering in respect of section 41(1) and does not believe that they constitute information provided by the MNT centres. Rather they consist of information created by, or selected by Yole for inclusion in the report: In respect of the methodology, this simply explains how the review was undertaken and the processes followed by Yole (e.g. visits to the MNT centres; analysis against particular criteria) rather than recording the outcomes of these visits, detailed information which may have been provided by the various MNT centres or detailing how the centres may have performed against certain criteria. In respect of the objectives of the review, again this is clearly not information provided by the MNT. In respect of the case study of the particular European organisation, this appears to have been selected for inclusion in the report by Yole and appears to be based upon sources drawn from the internet. It is clearly not based on information obtained from the MNT centres.
72. Therefore the Commissioner does not accept that the TSB can rely on section 41(1) as a basis to withhold the following sections of the review: the part which sets out the objectives of the review; the parts of the report describing the methodology of the review; and a case study in the appendix of the report on a European organisation the remaining information.

Procedural Requirements

73. The right of access information is provided by section 1(1) of the Act and is in fact spilt into parts: section 1(1)(a) – the right to know whether information of the nature requested is held; and section 1(1)(b) – if held, the right to have that information provided.
74. Section 10(1) states that a public authority must comply with the requirements of section 1(1) no later than the twentieth working day following the date of receipt of the request.
75. By failing to provide the complainant with the information which the Commissioner has concluded is not exempt from disclosure the TSB breached sections 1(1)(b) and 10(1) of the Act.

The Decision

76. 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:
- The majority of the report is exempt from disclosure on the basis of section 43(2) of the Act and in all of the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
77. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- Certain sections of the report, namely the parts of the review which set out the objectives of the review; the parts of the report describing the methodology of the review; and a case study in the appendix of the report on a European organisation are not exempt from disclosure on the basis of either section 41(1) or 43(2) of the Act.
 - In failing to provide the complainant with this information the TSB breached sections 1(1)(b) and 10(1) of the Act.

Steps Required

78. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- The Commissioner requires the TSB to disclose to the complainant the parts of the review which set out the objectives of the review; the parts of the report describing the methodology of the review; and a case study in the appendix of the report on a European organisation. He has provided the TSB with a confidential annex which clarifies exactly which sections of the report need to be disclosed.
79. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

80. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

81. 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 1st day of November 2010

Signed

**Gerrard Tracey
Principal Policy Adviser**

**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.”

Effect of Exemptions

Section 2(2) provides that –

“In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that –

(a) the information is exempt information by virtue of a provision conferring absolute exemption, or

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

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.”

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."

Information provided in confidence.

Section 41(1) provides that –

"Information is exempt information if-

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

Commercial interests

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)."