

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 13 July 2011

Public Authority: The School Food Trust
Address: 2 St Paul's Place
125 Norfolk Street
Sheffield
S1 2JF

Summary

The complainant requested information provided to the public authority from local authorities regarding the average cost of ingredients for primary school meals in 2008 – 2009. The public authority withheld this information under section 36(2)(c). During the course of the investigation the public authority informed the Commissioner that it was now prepared to disclose some of the previously withheld information. However, it did not confirm that this disclosure was made. The Commissioner decided that this information was not exempt from disclosure, and should therefore be disclosed. The public authority continued to rely upon section 36(2)(c) in relation to the remaining withheld information. The Commissioner decided that the remaining withheld information was exempt from disclosure under section 36(2)(c). The Commissioner also decided that the public authority did not meet with the requirements of sections 10, 17(3) and 17(5).

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 School Food Trust (the "Trust") is an independent body with the remit of transforming school food and food skills. It was set up in 2005 by the then Department for Education and Skills (replaced by

Department for Children, Schools and Families, and subsequently by the current Department for Education) to promote the education and health of children and young people by improving the quality of food supplied and consumed in schools.

3. The Trust's website states that its four main objectives are to:
 - a. Ensure all schools meet the food based and nutrient based standards for lunch and non-lunch food.
 - b. Increase the take up of school meals.
 - c. Reduce diet-related inequalities in childhood through food education and school based initiatives.
 - d. Improve food skills through food education, and school and community initiatives.¹

The Request

4. The complainant wrote to the Trust on 9 November 2009 and requested the following information,

"In your previous annual surveys of school dinners you have reported the average cost of ingredients used in primary school meals as 52 p (05/06), 57p (06/07) and 61p (07/08). What was the comparable figure for 08/09?

Please also provide me with a list of local authorities with the amount each council said it spent on ingredients for each primary school meal."

5. The Trust responded in an email dated 2 December 2009, and refused to provide the details of individual local authority responses on the basis that this information was exempt under section 36(2)(c) of the Act. It stated that disclosure of this information,

"...could have an inhibiting effect on data collection and so would prejudice our ability to offer an effective service or to meet our wider objectives."

6. The complainant wrote to the Trust on 21 December 2009 and requested an internal review. He stated,

¹ <http://www.schoolfoodtrust.org.uk/about-us/about-the-trust>

"You have the average amount spent by councils on the cost of ingredients for school dinners for primary school aged children. To have this average you have to have the individual council figures. This is the data I want.

You have refused to supply me with it stating S.36. I cannot agree with your use of the exemption. Firstly I do not accept that it is engaged. Secondly even if it were engaged the public interest would favour disclosure. Thirdly, my understanding of S.36 is a 'qualified person' within the authority has to make the decision to withhold the information. You have not explained how this process has been complied with."

7. The Trust carried out an internal review, and responded to the complainant on 24 August 2010. It informed the complainant that it still believed that this information was exempt from disclosure under section 36(2)(c), and also provided further details as to the qualified person's reasoning behind the application of this exemption.

The Investigation

Scope of the case

8. On 2 September 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. In particular he complained about the Trust's use of section 36(2)(c).
9. Therefore the scope of this case has been to consider whether the Trust was correct to rely upon section 36(2)(c) to withhold the information provided to it by local authorities, i.e. the amount each spent on ingredients for primary school meals in 2008 – 2009.
10. During the course of the investigation the Trust informed the Commissioner that it was now prepared to disclose some of the previously withheld information to the complainant. However, despite being asked to confirm that this had been done, the Trust did not state that this disclosure had been made. Therefore the Commissioner considers that although the Trust no longer seeks to withhold this information and is now prepared to disclose it, it has not done so. Therefore, the Commissioner considers that this information still falls within the scope of this case.

Chronology

11. Following an initial email on 29 October 2010, the Trust wrote to the Commissioner on 29 November 2010 and provided him with a copy of

the withheld information. It also informed the Commissioner that it now believed that the withheld information was statistical information, and therefore the provisions of section 36(4) applied to this information. It also provided further arguments as to why the information was exempt under section 36(2)(c).

12. The Commissioner wrote to the complainant on 18 January 2011 and informed him that the scope of the case would be to consider whether the Trust was correct to withhold the details of the local authority responses under section 36(2)(c). He also explained that the withheld information was statistical for the purposes of section 36(4).
13. The Commissioner wrote to the Trust on the same day and asked it for some clarification in relation to the withheld information. He also asked it for further submissions to support its use of section 36(2)(c).
14. Having received no response, the Commissioner wrote to the Trust again on 24 February 2011. He informed the Trust that unless he received a response by no later than 14 March 2011 he would consider issuing an information notice under section 51 of the Act.
15. The Trust provided a response on 14 March 2011. It provided the Commissioner with the clarification he had requested, and also additional submissions in regard to its use of section 36(2)(c). In addition to this, it informed him that it was now prepared to disclose some of the previously withheld information. Specifically, it was prepared to disclose the withheld information provided by local authorities who had not objected to the disclosure of this information.
16. The Commissioner emailed the Trust on 15 March 2011 and asked it to disclose this information to the complainant. On 23 March 2011 the Commissioner contacted the Trust again, and asked it to confirm whether it has disclosed this information. However despite this, he received no response. Finally, the Commissioner emailed the public authority on 11 April 2011 and asked it to confirm whether it had disclosed the information to the complainant, or whether it would be doing so imminently. If he did not receive a response by the following day he would proceed on the basis that although the Trust no longer sought to withhold this information and was now prepared to disclose it, it had not done so. A formal decision on this point would reflect this, would find that the Trust no longer believed this information was exempt from disclosure, and would order the information to be disclosed. The Commissioner received no response to this email.

Findings of fact

17. During the investigation of this case the Commissioner considered the Trust's status in relation to the Act. After corresponding with the Trust's

sponsoring department, the Department for Education, the Commissioner is satisfied that the Trust is (for the purposes of the Act) a 'publicly-owned company'. As such, the Trust comes under the provisions of the Act by virtue of section 6.

Analysis

Exemptions

Section 36

18. The Trust has relied upon section 36(2)(c) to withhold the information in question.
19. During the investigation of the case the Trust informed the Commissioner that it was now prepared to disclose some of the previously withheld information – specifically where local authorities had not specifically requested that the information they had provided should be withheld. Therefore the Commissioner considers that the Trust no longer seeks to apply section 36 to:
 - a. information about the cost of ingredients for primary school meals where the local authority had not objected to the disclosure of this information, and
 - b. the names of the local authorities who did not provide the Trust with any information about the costs of ingredients for primary school meals.
20. Therefore the following analysis of the Trust's analysis of section 36 will focus solely on its use of this exemption in order to withhold the costs of ingredients for primary school meals where the providing local authorities objected to the further disclosure of this information. This is referred to as the 'outstanding withheld information'.
21. As noted above, during the course of the investigation it informed the Commissioner that it believed that the withheld information was statistical, and as such the provisions of section 36(4) also applied.
22. Section 36(2)(c) states that,

“Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act-

[...]

(c) *would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs."*

23. Section 36(4) states that,

"In relation to statistical information, subsections (2) and (3) shall have effect with the omission of the words "in the reasonable opinion of the qualified person"."

24. Therefore, if the information in question is statistical information, under section 36(4) the reasonable opinion of the qualified person is not needed for section 36(2) to be engaged.

25. The full text of section 36 is available in the Legal Annex at the end of this Notice.

26. The Commissioner has first considered whether the outstanding withheld information is statistical.

27. In reaching a view on whether the outstanding withheld information was statistical, the Commissioner has been guided by the definition set out in the guidance issued by the Ministry of Justice, and relied upon by the Tribunal in *DWP v ICO* [EA2006/0040].² This states that,

"Statistical information used to provide an informed background to government policy and decision making or in ministerial communications will usually be founded upon the outcomes of mathematical operations performed on a sample of observations or some other factual information. The scientific study of facts and other observations allows descriptive approximations, estimates, summaries, projections, descriptions of relationships between observations, or outcomes of mathematical models, and so on, to be derived.

A distinguishing feature of statistical information is that it is founded to at least some degree on accepted scientific or mathematical principles. Statistical information is therefore distinguished by being (i) derived from some recorded or repeatable methodology, and (ii) qualified by some explicit or implied measures of quality, integrity, and relevance.

This should not imply that the term 'statistical information' only applies to where standards of methodology and relevant measures are particularly high. What distinguishes statistical information is

² <http://www.justice.gov.uk/guidance/docs/foi-exemption-s35.pdf>; EA/2006/0040, paras 20 and 77

that the limitations of the methodology, and the relevant measures of quality, and so on, allow for a rational assessment of the validity of the information used as an informed background to the formulation and development of government policy."

28. From this definition it is clear that statistical information is the product of some form of mathematical or scientific analysis of facts and figures. A distinction could be drawn between the analysis and the actual facts upon which it is based. However the Commissioner has adopted a more pragmatic approach which includes both the facts that are fed into the scientific model and the model itself, as well as the product of that analysis, as all being statistical information.
29. In this case the outstanding withheld information consists of factual information provided by local authorities, showing how much each spent on the ingredients for primary school meals. This information was intended to be used for (amongst other things) the Trust's 'Annual Survey of take up of school meals in England'. This included statistical information on the costs of school meals and percentage increases in ingredients costs.³ Bearing this in mind the Commissioner is satisfied that the outstanding withheld information is statistical information.
30. The Commissioner has gone on to consider whether this exemption is engaged. In order to do so, and because of the effect of section 36(4), he has considered whether the prejudice argued by the Trust would, or would be likely to, occur.
31. In this case the Trust has not clarified whether it believes that prejudice would, or would be likely to, occur were the information in question to be disclosed.
32. The Commissioner has first considered whether the prejudice argued by the Trust would be likely to occur.
33. In this instance the Trust has argued that if the outstanding withheld information was disclosed, some local authorities would not provide it with similar information in the future. It has explained that it was commissioned by the Government in order to advise it on school food and to work with local authorities and schools to improve school food in England. As part of this function, it obtains data through an annual survey of local authorities on such things as the take up of school dinners, and the costs of ingredients (the information which is the focus of this case). The Trust has explained that,

³ <http://www.schoolfoodtrust.org.uk/school-cooks-caterers/reports/fourth-annual-survey-of-take-up-of-school-meals-in-england>

"The data gathered through the Annual Survey, which this data forms a part, is used to plan the Trust's strategy for working with Local Authorities to achieve Government Policy and Strategy on School Food."

34. Although local authorities are compelled to provide the Trust with some information (e.g. the take up of school meals), some information is provided on a voluntary basis. Crucially, the information that is provided on a voluntary basis includes the information that is the focus of this case.

35. The Trust has explained that when it obtains this information it asks the local authority whether it is willing for this information to be shared, and that some are not willing for this information to be shared. It has pointed out that although all local authorities responded to the compulsory questions, only just over half provided information on the costs of ingredients, and that,

"...some of these Local Authorities will only supply the information to us on the basis of confidentiality and so it is not only the ingredient costs that are at risk of not being made available in future but other key planning data that these Authorities supply on a voluntary basis."

36. The Trust has argued that were local authorities to stop providing it with information for its Annual Survey (other than that which they are compelled to provide) this would be likely to inhibit the efficiency of the delivery of its services.

37. In reaching a view on the application of this exemption the Commissioner has first considered whether the potential prejudice argued by the Trust relates to the interest identified in the exemption – i.e. if the prejudice were to occur, would this prejudice relate to the effective conduct of public affairs?

38. In this instance the Commissioner is satisfied that the ability of the Trust to carry out its functions falls within the definition of the conduct of public affairs. Therefore any prejudice to the ability of the Trust to carry out its functions would be prejudicial to the effective conduct of public affairs. As such, the Commissioner is satisfied that the potential prejudice argued by the Trust relates to the interest identified in the exemption.

39. The Commissioner has gone on to consider whether the Trust has shown that a causal relationship exists between the potential disclosure of the withheld information and the interest which the exemption is designed to protect. He has also considered whether the resultant prejudice would be real, actual or of substance.

40. In this instance the Trust has argued that were the outstanding withheld information to be disclosed, it is likely that some local authorities would not provide it with this information, and other 'key planning data', again in the future. This would inhibit its ability to carry out its functions, as this information is used to plan its strategy for working with local authorities in order to achieve government policies and targets on school food.
41. Bearing in mind the Trust's main objectives (see paragraph 3 above), the Commissioner is satisfied that the withheld information provides it with key planning information. If local authorities were to stop providing the Trust with this, and other information, in the future, the Commissioner is satisfied that this would be likely to have a prejudicial effect on its abilities to fulfil its objectives, and therefore carry out its functions. The Commissioner is therefore satisfied that there is a causal relationship between the potential disclosure of the withheld information and prejudice to the effective conduct of public affairs. Furthermore he is satisfied that the resultant prejudice (if it were to occur) would be real and of substance.
42. The Commissioner has gone on to consider whether the prejudice argued by the Trust is likely to occur.
43. 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."⁴
44. In this instance, and as noted above, the Trust has stated that some local authorities are unwilling to provide information about the cost of ingredients for school meals unless this information is treated as being provided in confidence. Furthermore, some local authorities have indicated that they are unwilling for the Trust to share this information, and it is the information provided by these authorities which the Trust continues to withhold. Therefore if the information provided by these local authorities were to be disclosed, it is highly likely that those same local authorities would be unwilling to provide this information voluntarily (or other information) to the Trust in the future.

⁴ EA/2005/0005, para 15

45. Bearing in mind the fact that the Trust does not have the power to compel local authorities to provide this information, and given the already relatively low response rate by local authorities in relation to the provision of this information (see paragraph 35 above), the Commissioner is satisfied that the specified prejudice would be likely to occur if the outstanding withheld information were to be disclosed. Therefore the exemption is engaged.
46. Section 36 is a qualified exemption, and is therefore subject to a public interest test. The Commissioner has first considered the public interest in disclosing the outstanding withheld information.

Public interest arguments in favour of disclosing the requested information

47. The Commissioner recognises that there is a public interest in openness and accountability. In particular, he is satisfied that there is a public interest in increasing transparency in the spending of public money by public authorities – which the outstanding withheld information directly relates to.
48. The Commissioner also notes that issues surrounding school meals, and the quality of the ingredients used in those meals, have been a matter of considerable public debate over the last few years. He is therefore satisfied that the information showing the average spend of local authorities on those ingredients, would be of great assistance in further informing that debate. This would be in the public interest.

Public interest arguments in favour of maintaining the exemption

49. The Trust has argued that allowing it to carry out its functions effectively is in the public interest. It has expanded upon this by stating that,

"The key public interest is the effective use of public funding and future benefits that can be gained from the efficient delivery of healthy School Food, particularly in relation to attainment and future costs to the Health Service."

50. It has also argued that,

"The benefits of non disclosure are that the Trust can deliver much more cost effectively and target support to [local authorities] to meet their individual needs. This will result in future benefits in relation to attainment at school and the cost to The National Health Service of managing weight related illness. These last two factors have been weighted significantly and far outweigh any benefit that the public can gain through disclosure."

Balance of the public interest arguments

51. In his letter to the Commissioner the complainant argued that,
- “If I asked the individual councils how much they spent on school meals and the figures that they had supplied to the [Trust] they would have to release the information. It should be no different for [the Trust].”*
52. Whilst the Commissioner has some sympathy with this statement, in reaching a view on this case he has to consider the disclosure of this information from a public authority who has obtained it from other public authorities – not from the originating authorities who generated this information in the first place. Therefore he has had to consider the particular circumstances of the case, which are represented by the Trust’s arguments in support of the engagement of section 36(2)(c) and the public interest in maintaining this exemption.
53. He considers that there are strong public interest factors in favour of the disclosure of this information. In particular, he finds the public interest factors in increasing the transparency of the spending of public money, and in further informing the public debate on the quality of school meals, particularly weighty. However, these have to be balanced against the public interest factors in favour of maintaining the exemption.
54. In particular, the public interest in disclosure has to be balanced against the public interest in avoiding the prejudice as set out in section 36(2)(c). In this instance, the main argument in favour of maintaining the exemption is that the disclosure of the withheld information would be likely to inhibit the Trust from carrying out its functions. He again notes that local authorities are not compelled to provide the withheld information to the Trust, and that some have specifically refused to consent to this information being shared. He also notes that the number of local authorities who did not provide the Trust with the information requested in this case was quite high. Therefore, he is satisfied that the chances of some local authorities not providing this information to the Trust in the future, were the withheld information to be disclosed, are quite high.
55. When considering what weight to give to the public interest in avoiding the likely prejudice to the Trust’s functions, the Commissioner has again noted the Trust’s main objectives (as listed at paragraph 3 above). Given these, he is satisfied that there is a significant public interest in allowing the Trust to carry out its functions and work towards these objectives. Whilst the Commissioner readily acknowledges that the Trust does not have the power to compel local authorities to provide it with this information, and already appears to have only limited success in

obtaining it from local authorities (see paragraph 35 above), he finds the argument against avoiding any further unnecessary inhibition to that information gathering process (and consequently avoiding prejudice to the Trust carrying out its functions) particularly weighty.

56. In addition to this, in relation to the public interest argument in favour of increasing openness and accountability, and further informing the public debate on the quality of school meals, the Commissioner notes that the Trust already publishes some statistical information about the average cost of ingredients for school meals in its Annual Surveys.⁵ Whilst the Commissioner acknowledges that this published information does not include specific details relating to the spending of individual local authorities, he considers that it does go some way to satisfying this public interest factor.
57. The Commissioner recognises that the public interest factors in this case are compelling both for and against disclosure. However, he has noted, in particular, the strength of the public interest in avoiding unnecessary prejudice to the effective conduct of the Trust's functions. This public interest factor is particularly weighty given the Trust's main objectives in carrying out these functions, and in the likelihood in some local authorities refusing to provide it with similar information in the future. Furthermore he considers that the information already put into the public domain by the Trust goes some way towards satisfying the public interest in favour of disclosure. Bearing this in mind, and having taken into account all of the above factors, the Commissioner has concluded that the public interest in maintaining the exemption outweighs the public interest in disclosure.
58. Therefore, the Commissioner is satisfied that the outstanding withheld information is exempt from disclosure under section 36(2)(c).

Procedural Requirements

59. Section 1(1) states 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."

⁵ <http://www.schoolfoodtrust.org.uk/research/surveys-and-monitoring#annualsurvey>

60. Section 10(1) states 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."

61. During the course of the case the Trust stated that it did not believe that some of the previously withheld information was, in fact, exempt from disclosure. The Trust should have disclosed this information to the complainant in line with the duty at section 1(1)(b). The Trust's failure to do so therefore constitutes a breach of section 1(1)(b). Furthermore, by failing to provide this information within 20 working days of the request the Trust also breached section 10(1).

62. Section 17(1) states that,

"A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies."

63. Section 17(3) states 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."

64. In this case the Trust failed to set out, in either the refusal notice or the internal review, its consideration of the public interest test in relation to section 36(2)(c). By failing to do so, it failed to meet the requirements of section 17(3).
65. Section 17(7) states 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."*
66. In this case the refusal notice issued by the Trust did not contain any details of the complainant's right to request an internal review. In addition to this, neither the refusal notice nor the internal review informed the complainant of his right to make a complaint to the Commissioner. In failing to do either of these things, the Trust failed to meet the requirements of section 17(7).
67. The full text of sections 1, 10 and 17 can be found in the legal annex at the end of this Notice.

The Decision

68. The Commissioner's decision is that the Trust dealt with the following elements of the request in accordance with the requirements of the Act in that:
- It correctly relied upon section 36(2)(c) to withhold the information in question where the local authorities concerned had objected to the disclosure of the information they had provided regarding the cost of ingredients for primary school meals for 2008/2009.
69. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- The Trust did not disclose certain information that it had stated that it was now prepared to disclose, namely
 - information about the cost of ingredients for primary school meals where the local authority had not objected to the disclosure of this information, and

- the names of the local authorities who did not provide the Trust with any information about the costs of ingredients for primary school meals.

By failing to disclose this information the Commissioner considers that the Trust failed to meet the requirements of sections 1 and 10.

- By failing to detail its carrying out of the public interest test to the complainant, the Trust failed to meet the requirements of section 17(3)
- By failing to inform the complainant of his right to request an internal review, and his right to make a complaint to the Commissioner, the Trust failed to meet the requirements of section 17(7).

Steps Required

70. The Commissioner requires the Trust to take the following steps to ensure compliance with the Act:

Disclose the previously withheld information where local authorities had not specifically requested that the information they had provided should be withheld. Therefore the Commissioner considers that the Trust should disclose:

- a. information about the cost of ingredients for primary school meals where the local authority had not objected to the disclosure of this information, and
- b. the names of the local authorities who did not provide the Trust with any information about the costs of ingredients for primary school meals.

This information should relate to the financial year 2008/2009.

71. The Trust must take the steps required by this notice within 35 calendar days of the date of this notice.

Right of Appeal

72. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

73. 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.
74. 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 13th day of July 2011

Signed

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

Legal Annex

Section 1

- (1) 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.
- (2) Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.
- (3) 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.
- (4) 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.
- (5) 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).
- (6) 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”.

Section 10

- (1) 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.
- (2) Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.
- (3) If, and to the extent that –
 - (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
 - (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.
- (4) The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.
- (5) Regulations under subsection (4) may –
 - (a) prescribe different days in relation to different cases, and
 - (b) confer a discretion on the Commissioner.
- (6) In this section –

“the date of receipt” means –

 - (a) the day on which the public authority receives the request for information, or
 - (b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”

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 36

- (1) This section applies to-
- (a) information which is held by a government department or by the National Assembly for Wales and is not exempt information by virtue of section 35, and
 - (b) information which is held by any other public authority.

- (2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act-
- (a) would, or would be likely to, prejudice-
 - (i) the maintenance of the convention of the collective responsibility of Ministers of the Crown, or
 - (ii) the work of the Executive Committee of the Northern Ireland Assembly, or
 - (iii) the work of the executive committee of the National Assembly for Wales,
 - (b) would, or would be likely to, inhibit-
 - (i) the free and frank provision of advice, or
 - (ii) the free and frank exchange of views for the purposes of deliberation, or
 - (c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.
- (3) The duty to confirm or deny does not arise in relation to information to which this section applies (or would apply if held by the public authority) if, or to the extent that, in the reasonable opinion of a qualified person, compliance with section 1(1)(a) would, or would be likely to, have any of the effects mentioned in subsection (2).
- (4) In relation to statistical information, subsections (2) and (3) shall have effect with the omission of the words "in the reasonable opinion of a qualified person".
- (5) In subsections (2) and (3) "qualified person"-
- (a) in relation to information held by a government department in the charge of a Minister of the Crown, means any Minister of the Crown,
 - (b) in relation to information held by a Northern Ireland department, means the Northern Ireland Minister in charge of the department,
 - (c) in relation to information held by any other government department, means the commissioners or other person in charge of that department,

- (d) in relation to information held by the House of Commons, means the Speaker of that House,
- (e) in relation to information held by the House of Lords, means the Clerk of the Parliaments,
- (f) in relation to information held by the Northern Ireland Assembly, means the Presiding Officer,
- (g) in relation to information held by the National Assembly for Wales, means the Assembly First Secretary,
- (h) in relation to information held by any Welsh public authority other than the Auditor General for Wales, means-
 - (i) the public authority, or
 - (ii) any officer or employee of the authority authorised by the Assembly First Secretary,
- (i) in relation to information held by the National Audit Office, means the Comptroller and Auditor General,
- (j) in relation to information held by the Northern Ireland Audit Office, means the Comptroller and Auditor General for Northern Ireland,
- (k) in relation to information held by the Auditor General for Wales, means the Auditor General for Wales,
- (l) in relation to information held by any Northern Ireland public authority other than the Northern Ireland Audit Office, means-
 - (i) the public authority, or
 - (ii) any officer or employee of the authority authorised by the First Minister and deputy First Minister in Northern Ireland acting jointly,
- (m) in relation to information held by the Greater London Authority, means the Mayor of London,
- (n) in relation to information held by a functional body within the meaning of the Greater London Authority Act 1999, means the chairman of that functional body, and
- (o) in relation to information held by any public authority not falling within any of paragraphs (a) to (n), means-

- (i) a Minister of the Crown,
 - (ii) the public authority, if authorised for the purposes of this section by a Minister of the Crown, or
 - (iii) any officer or employee of the public authority who is authorised for the purposes of this section by a Minister of the Crown.
- (6) Any authorisation for the purposes of this section-
- (a) may relate to a specified person or to persons falling within a specified class,
 - (b) may be general or limited to particular classes of case, and
 - (c) may be granted subject to conditions.
- (7) A certificate signed by the qualified person referred to in subsection (5)(d) or (e) above certifying that in his reasonable opinion-
- (a) disclosure of information held by either House of Parliament, or
 - (b) compliance with section 1(1)(a) by either House, would, or would be likely to, have any of the effects mentioned in subsection (2) shall be conclusive evidence of that fact.