

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 21 October 2010

Public Authority: Cabinet Office
Address: 70 Whitehall
London
SW1A 2AS

Summary

The complainant made a freedom of information request to the Cabinet Office for information relating to individuals who were offered but refused to accept an honour in the period 1935 – 1948. The public authority initially refused the request by relying on section 12(1) (Appropriate limit), section 37(1)(b) (Conferring by the Crown of any honour or dignity) and section 40(2) (Personal information). During the course of the Commissioner's investigation it withdrew its reliance on section 12(1) and section 37(1)(b) but also introduced section 41 (Information provided in confidence) as a new exemption on which it sought to rely. The Commissioner has considered the complaint and has concluded that, given its age, some of the information will relate to individuals who are now deceased. The Commissioner found that this information is neither exempt under section 40(2) nor section 41. The Commissioner found that information which relates to individuals who are alive is exempt under section 40(2) of the Act. The Commissioner now requires the public authority to disclose to the complainant, within 35 calendar days, information which relates to individuals who are deceased.

The Commissioner's Role

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

The Request

2. On 21 June 2009 the complainant made a freedom of information request to the public authority. The request read as follows:

"Can the Cabinet Office provide a list of individuals who were offered but refused an honour (of any description) between 1935 and 1948? In each case can you name the individual, specify the honour offered and the date the offer was made. Please provide details of every rejection even if some of the individuals subsequently accepted an honour at a later date.

Can you please provide all correspondence with the individuals concerned? This will include any letters of rejection still held by the Cabinet Office or the appropriate body."

3. The public authority responded to the request on 20 July 2009 when it confirmed that it held information falling within the scope of the request. However, it explained that the information was being withheld under the exemptions in section 37(1)(b), section 40 and seemingly section 12 as well. For section 37 the public authority outlined its reasons for concluding that the public interest in maintaining the exemption outweighed the public interest in disclosure. For section 40 the public authority explained that disclosure of the information 'could cause unnecessary or unjustified distress or damage to the people whom the information is about or their families.'
4. The public authority acknowledged that the information was over 60 years old but said that it had no way of knowing whether the people concerned were alive or deceased. In apparent reference to section 12, the Cabinet Office said that to ascertain this fact would exceed the appropriate limit of £600 for government departments.
5. On 22 July the complainant asked the Cabinet Office to undertake an internal review of its handling of his request. In particular the complainant said that he did not accept its application of sections 12 and 37(1)(b) of the Act and argued that the disclosure of such historical information would be unlikely to undermine the Honours system. As regards section 40, the complainant said that given the age of the information it was unlikely that this exemption would apply because personal data is defined as information relating to a living individual where as in this case it was likely that many of the individuals concerned would be deceased. The complainant also suggested that the public authority cross reference the names against the publication *Who Was Who* for a definitive list of death dates.

6. The Cabinet Office presented the findings of its internal review on 14 August 2010 at which point it upheld its earlier decision to refuse the request.

The Investigation

Scope of the case

7. On 22 August 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the public authority's decision to refuse his request under section 37(1)(b), section 40(2) and section 12(1) of the Act.
8. During the course of the Commissioner's investigation the public authority acknowledged that section 37(1)(b) and section 12(1) did not apply to the complainant's request. Therefore the Commissioner has not carried out an analysis of these sections in this decision notice. However, the public authority introduced the section 41 exemption during the course of the investigation and so the Commissioner has also considered whether this exemption would apply.

Chronology

9. On 25 March 2010 the Commissioner wrote to the public authority with details of the complaint and asked to be provided with a copy of the information falling within the scope of the request. The Commissioner also queried the exemptions relied on by the public authority to refuse the request. For section 37(1)(b) the Commissioner directed the public authority to section 63(3) of the Act which he explained removed the section 37(1)(b) exemption for information over 60 years old. Given the date range in the complainant's request the Commissioner suggested that it would be unlikely that section 37(1)(b) would apply in this case. Therefore the Commissioner suggested that the public authority may wish to reconsider its application of this exemption.
10. As regards the application of section 40 the Commissioner said that the public authority appears to be relying on section 40(2) on the grounds that the information constitutes the personal data of someone other than the applicant and disclosure would contravene one of the data protection principles or section 10 of the Data Protection Act 1998 (DPA 1998). The Commissioner asked the public authority to confirm the basis on which section 40 was being applied. The Commissioner also

suggested that given the age and nature of the information it was possible that some of the individuals whose names featured in the information would be deceased. The Commissioner said that if the complainant wished to maintain its reliance on section 40 it would need to demonstrate that the individuals concerned were still alive.

11. The Commissioner went on to say that it appeared to him that the public authority was relying on section 12 of the Act because the cost of determining whether the individuals to whom the information relates are alive or deceased, for the purposes of applying section 40, would exceed the appropriate limit. The Commissioner explained that as this was not an activity listed in regulation 4(3) of *The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004* ("the fees regulations") it could not form part of any estimate of the costs it would expect to incur in complying with the request. The Commissioner added that it had always been clearly understood that the charging regime does not allow a public authority to take into account for these purposes the cost of considering whether requested information is exempt. Therefore, the Commissioner suggested that the public authority also reconsider its application of section 12.
12. On 30 April 2010 the public authority telephoned a member of the Commissioner's staff to discuss the case. At this point the public authority said that it agreed with the points made in the Commissioner's letter and that it planned to disclose the requested information. It said that it would contact the Commissioner's office in the following week to confirm that the information would be released.
13. Having heard nothing further, a member of the Commissioner's staff telephoned the public authority on 16 June 2010 to ask that it provide him with a response to his letter of 25 March 2010 as a matter of urgency. At this point the public authority explained that whilst it was initially minded to release the requested information, it was now considering making the case that the information was exempt from disclosure. It said that it would contact the Commissioner again to confirm how it intended to respond to the complaint.
14. Having once more heard nothing further, a member of the Commissioner's staff again telephoned the public authority to ask that it respond to his letter of 25 March 2010. The public authority now confirmed that despite initially indicating that it would release the requested information it now intended to make the case that the information was exempt from disclosure. The public authority said that within the next 2 days it would provide the Commissioner with written

representations in support of its position that the information was exempt.

15. As of 26 July 2010 the Commissioner had not received a response to his letter and so issued the public authority with an Information Notice under section 51 of the Act. The notice required the public authority to provide the Commissioner, within 30 days, the following information:
 - A copy of the information falling within the scope of the request.
 - A full explanation of why any exemption on which the public authority is seeking to rely applies to the requested information.
 - In the event that the public authority seeks to rely on an exemption not listed in section 2(3) of the Act, it shall provide the Commissioner with its reasons for concluding that the public interest in maintaining the exemption outweighs the public interest in disclosure.
 - In the event that the public authority seeks to rely on the exemption in section 40(2) of the Act, it shall confirm that the individual(s) concerned are not deceased.
16. On 23 August 2010 the public authority responded to the Information Notice and provided the Commissioner with a copy of the requested information which was a list of the names of individuals who had refused an honour, the type of honour and the year in which the honour was refused. It explained that no further information was held.
17. The public authority accepted that, for the reasons outlined by the Commissioner in his letter of 25 March 2010, section 37(1)(b) and section 12 would not apply in this case and it confirmed that it no longer wished to rely on the exemptions. However, it said that it considered that section 40(2) still applied. It acknowledged that given the age of the information it was likely that many of the individuals would be deceased, however, it said that it could not be sure of this. It also said that it believed that the exemption in section 41(1) of the Act, which provides for an exemption for information provided in confidence, could be applied in the circumstances. It explained that in its view a duty of confidence is owed to the individuals who declined the honour.

Analysis

18. A full text of the relevant provisions of the Act which are referred to in this section are contained within a legal annex.

Exemptions

Section 40(2) – Personal Information

19. The public authority has explained that it is relying on section 40(2) of the Act which provides that information shall not be disclosed if it constitutes the personal data of someone other than the applicant and if its disclosure would satisfy one of two conditions. In this case the relevant condition is the first condition which is that disclosure would contravene any of the data protection principles in the DPA 1998. The public authority has argued that disclosure would prejudice the first data protection principle which requires that data be processed fairly and lawfully.

Is the information Personal data?

20. The first issue to consider is whether the requested information constitutes personal data. Personal data is defined in the DPA 1998 as:
- “...data which relate to a living individual who can be identified-
- (a) from those data, or
 - (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,
- and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.”
21. The information clearly relates to named individuals who can be identified and is personal to them. The Commissioner accepts that the information will be personal data if it can be demonstrated that the individual to whom the information relates is a living individual.
22. However, because personal data is limited to living individuals section 40 cannot be applied in the case of individuals who are deceased. The public authority has explained that it finds itself in a difficult position as it is unable to establish if the individuals concerned are alive or deceased. Of course, if an individual’s date of birth is known it will be possible to work out their age and then make an assumption on the

likelihood of that individual still being alive. In its response to the Commissioner the public authority used the example of the National Archives who it said disclose personal data 100 years after an individual's date of birth. However, the public authority has said that its problem is that it does not know the date of birth of the individuals whose names feature in the requested information. Indeed, no biographical information is known about the individuals beyond their name and the particular honour they declined to accept.

23. The Commissioner accepts that responding to a request like this presents the public authority with a number of problems and he considers that the public authority is correct to assume in the first instance that an individual is alive unless it can otherwise be shown that he or she is deceased. The problem the Commissioner has in investigating this complaint is that even a cursory glance of the requested information reveals the names of individuals where it is objectively common knowledge that that particular individual is no longer alive. Given the nature of the request it is inevitable that a lot of the individuals will have been public figures and so in certain cases it will be possible to determine, if not at first glance then at least after a little research, whether they are alive or deceased. In light of this the Commissioner believes that in this particular case it is not sufficient for the public authority to rely on section 40(2) of the Act to withhold all of the names featured in the information without making any attempts to determine whether the individual is still alive.
24. Instead, where the public authority can demonstrate that the information relates to a living individual or else it is not possible to establish an individual's identity or whether they are deceased, after taking reasonable steps to do so, the Commissioner will accept that the information is personal data. Where the information relates to an individual who is deceased the information will not be personal data and therefore section 40(2) is not engaged.

Fairness

25. In respect of the names of individuals who are alive, the Commissioner has gone on to consider whether disclosure of the information would contravene the first data protection principle which requires that personal data be processed fairly and lawfully. In considering the fairness of disclosure the Commissioner has taken into account the following factors:
 - The expectations of the individuals at the time of the request (and anything which would change their reasonable expectations up to the time of the request)

- The possible consequences of disclosure
 - Nature and content of the information
26. The public authority has explained that information about those recommended for an honour is held in confidence and that the proceedings of the committee who consider those recommendations are also confidential. Therefore the Commissioner is of the view that the individuals concerned would at the time have reasonably expected that their decision not to accept a particular honour would not be revealed.
27. As regards the consequences of disclosure the Commissioner is conscious that there is still a great deal of interest in the honours system and it is likely that disclosure could lead to unwanted attention and scrutiny of the decision not to accept an honour in certain cases. Whilst the passage of time means that the consequences of disclosure may be less severe than if the information had been disclosed nearer to the point at which the honour had been refused, in some cases it may also be unfair to disclose something from their distant past. With this in mind the Commissioner has conducted a balancing exercise; balancing the rights and freedoms of the data subjects against the public interest in disclosure. This is because it may still be fair to disclose information if it can be argued that there is a more compelling public interest in disclosure.
28. On the one hand the Commissioner has found that the individuals would have a reasonable and legitimate expectation that the information would not be disclosed. In the case of some of the individuals disclosure may also have adverse consequences in terms of intrusion into their private lives although for the most part this is likely to have been reduced with the passing of time. On the other hand, Commissioner is of the view that there is no strong public interest in disclosure, notwithstanding the general public interest in promoting transparency. It is useful here to make the distinction between what is in the public interest and what is merely of interest to the public. The Commissioner's view is that any public interest lies in promoting openness and aiding public understanding of the process by which honours are awarded. However, in this case the only information held is the names of the individuals who refused an honour and the particular honour that was offered. No doubt the public may be excited or interested to learn the names of public figures who refused an honour but it is difficult to see what public interest this would serve. In light of this the Commissioner finds that disclosure of information relating to any individuals who are still alive would not be fair and

would therefore contravene the first data protection principle. Consequently, the Commissioner has decided that section 40(2) is engaged in respect of the information relating to any individuals who are still alive.

A reasonable approach

29. The Commissioner has given a lot of thought to what would have been the appropriate way for the public authority to respond to the complainant's request and has taken into account the likelihood of it being able to identify whether an individual is deceased or not and the burden that would be imposed on it in terms of time and effort. Having done so, the Commissioner considers that when applying the section 40 exemption in this case the public authority should be expected to take reasonable steps to determine whether each named individual is alive or deceased.

30. In this case the withheld information includes the names of approximately 350 individuals. Having reviewed the names the Commissioner finds that they can be broadly separated into the following three categories and this has informed his thinking when deciding on what steps it would be reasonable to expect the public authority to take when applying section 40.

- Individuals where it is objectively common knowledge that they are deceased

(As the Commissioner explained at paragraph 21, many of the individuals were public figures, some of whom are well known to be no longer alive.)

- Individuals whose names are sufficiently unique that a public authority could reasonably be expected to identify them after some research and establish if they are now deceased.
- Individuals whose names are not sufficiently unique to allow them to be identified or to establish if they are deceased, to any reasonable degree of certainty.

31. Where it is objectively common knowledge that the individual is deceased then clearly it will take little or no time to confirm that this is indeed the case. Equally, it would take very little time to realise that, without further biographical information, a common name, e.g. "John Smith" is not sufficiently unique to identify the individual concerned. However, the Commissioner considers that a great many of the individuals' names are sufficiently unique that it would be possible to

identify that individual. For instance, a first name, middle initials and surname together with details of any honours they already possess should allow that person to be identified after a little research. Internet based resources such as Google and Wikipedia will of course make this an easier task than may once have been the case.

32. The Commissioner has also considered how long the public authority should be expected to take to research whether an individual is deceased or not. In doing so the Commissioner has taken into account the appropriate limit under section 12 of the Act. Whilst a public authority is not bound by the appropriate limit the Commissioner considers that it is a useful guide when determining how much time it would be reasonable to expect the public authority to spend in determining if an exemption applies. The Fees Regulations set the appropriate limit at £600 for central government departments which is to be calculated at the rate of £25 per hour. This equates to 24 hours of staff time.
33. In this case, if the public authority were to spend 5 minutes researching whether an individual was alive or deceased for each of the approximately 350 names featured in the requested information the time taken would exceed 29 hours. However, given that for some of the names it will be obvious at first glance, as noted at paragraph 26 above, that this will not be necessary. Therefore it is likely that the total amount of time spent by the public authority will not exceed 24 hours. The Commissioner would stress that his decision on the steps that should be taken by the public authority is based solely on the circumstances of this case. In similar requests it may be reasonable for a public authority to spend more or less time establishing if individuals are alive or deceased, depending on the nature of the requested information.

Section 41 – Information provided in confidence

34. When responding to the Commissioner the public authority said that it believed that section 41 could also be applied to the requested information. Mindful of his obligations under article 8 of the Human Rights Act 1998, the right to respect for private and family life, the Commissioner has decided to accept this exemption despite it being applied late by the public authority. The Commissioner will consider section 41 only in relation to the names of individuals who are deceased. In the case of living individuals the Commissioner has already decided that section 40(2) is engaged.

35. Section 41(1) provides that information is exempt if it was obtained by the public authority from any other person and disclosure of the information would constitute an actionable breach of confidence.
36. The first issue to consider is whether the information was obtained from another person. The Commissioner's view is that the public authority could only ever have obtained the information by being contacted by the individual to whom an honour was awarded and then being informed that they wished to decline the honour. The Commissioner is satisfied that this amounts to information obtained from another person for the purposes of section 41.
37. The most commonly cited test of an actionable breach of confidence is that provided by *Coco v Clark*.¹ Under this test a successful breach of confidence requires the following elements to be demonstrated:
- The information must have the necessary quality of confidence,
 - There must be an obligation of confidence
 - There must be an unauthorised use of that information to the detriment of the confider.
38. Later in that judgement doubt was expressed that an element of detriment is required in every case and indeed subsequent case law has kept open the question of detriment. The Commissioner accepts that it will not always be necessary to establish a detriment if an action for breach of confidence is to succeed. In particular, where the information is personal the Commissioner's approach is that there is no need for a specific detriment to be identified. However, he does not consider the issue of detriment to be crucial in this case.

The necessary quality of confidence?

39. Information can be said to have the necessary quality of confidence if it is not otherwise accessible and is more than trivial. Firstly, the Commissioner should say that he is not aware of any of the information being in the public domain. Whilst it is a possibility that some of the individuals concerned may have publicised the fact that they had declined a particular honour, it would seem far more likely that on the whole such information will not previously have been made public.
40. It is generally accepted that, since the law does not concern itself with trivialities, information which is trivial will not have the necessary

¹ *Coco v A N Clark (Engineers) Limited* [1968] FSR 415

quality of confidence. In considering this point the Commissioner is mindful of the findings of the Information Tribunal in a case where it considered the quality of confidence and concluded that:

"Information cannot be said to be trivial if it is of importance to the person whose privacy has been infringed."²

41. In this case the public authority has argued that the information has the necessary quality of confidence because there may have been personal or sensitive considerations surrounding the reasons for the refusal which the individual or their families would expect to remain confidential. Given that the information is personal to the individuals concerned, the Commissioner considers that they would have considered the information to be important and worthy of its confidence being protected. Therefore the Commissioner is satisfied that the information has the necessary quality of confidence.

An obligation of confidence?

42. The public authority argues that an obligation of confidence exists as information on honours is held in confidence. It does not say whether or not the individuals in this case were given explicit assurances of confidentiality but in any event the Commissioner considers that they would in all likelihood have implicitly understood that when they declined an honour the information would be held confidentially, given the sensitivity surrounding the honours system, not least the sensitivity surrounding the refusal of an honour.
43. The main issue to consider here is whether the obligation of confidence owed to the individuals concerned would survive their death. The public authority contends that a duty of confidence may still be enforceable after the death of the individual to whom the confidence was owed. It refers to the decision of the Tribunal in *Bluck v Epsom and St Helier* in support of its position. In that case the Tribunal found that the medical records of a deceased patient were held in confidence and that this confidence survived that particular individual's death. It stated that:

"In these circumstances we conclude that a duty of confidence is capable of surviving death of the confider and that in the circumstances of this case it does survive."³
44. However, it should be remembered that the Tribunal reached its view based on the particular circumstances of that case. The Commissioner

² S v Information Commissioner and General Register Office [EA/2006/003], para. 36.

³ *Bluck v The Information Commissioner and Epsom & St Helier University Hospitals NHS Trusts* [EA/2006/0090], para. 21.

does not consider himself to be bound by that decision since the Tribunal found that the obligation of confidence survived in part due to the fundamental importance of confidentiality in the doctor / patient relationship which ensures that patients feel able to talk openly to their doctors about their health problems. It was accepted that patients would not expect their medical records to be disclosed even after their death. The Commissioner is not convinced that in this case the individuals to whom the information relates would have the same expectations. Neither does he believe that the information has the same sensitivity or relevance to the deceased as a person's medical records.

45. Whilst he accepts in principle that an obligation of confidence is capable of surviving the death of the person to whom the confidence is owed, he is of the view that this will depend on the nature of that confidence and that it is likely that such cases will be limited to very sensitive information covered by a very obvious and strict obligation of confidence – such as medical records. The Commissioner is also mindful of the fact that the information in this case is limited to the name of a person who declined an honour and the type of honour offered. It does not discuss the reasons for the refusal.
46. For the reasons given above, the Commissioner has decided that a duty of confidence would not survive the death of the individuals who are now deceased. As this element of the test of confidence is not satisfied it follows that an action of breach of confidence would not, on the balance of probabilities, succeed. Given that the test of confidence is not satisfied it is not necessary to consider whether the disclosure would constitute an actionable breach of confidence. Consequently the Commissioner has decided that section 41 is not engaged in respect of the relevant information concerning individuals who are deceased.

Procedural Requirements

Section 17(1) – Refusal of a request

47. Where a public authority refuses a request for information section 17(1) of the Act requires it to provide the applicant with a notice, within the time for complying with section 1(1), which states that fact, specifies which exemption applies and states why the exemption applies. In this case the public authority refused the complainant's request on 21 July 2009 when it informed him that the section 12(1), section 37(1)(b) and section 40 were being applied. For section 40 it failed to inform the complainant that the specific subsection on which it was seeking to rely was section 40(2). Furthermore, it was only during the course of the Commissioner investigation that it confirmed that it

was applying section 40(2) because disclosure would breach the first data protection principle. Therefore, the public authority breached section 17(1)(b) by failing to properly cite its reliance on section 40(2) and breached section 17(1)(c) of the Act by failing to properly explain why this exemption applied.

48. The public authority only introduced its reliance on section 41 of the Act during the course of the Commissioner's investigation and in response to the Information Notice issued under section 51 of the Act. Therefore, by failing to inform the complainant that it was relying on section 41 of the Act, within 20 working days of receiving the request, the public authority breached section 17(1) of the Act.

Section 10 – Time for compliance

49. The Commissioner has decided that the information falling within the scope of the request which relates to a deceased individual is neither exempt under section 40(2) nor section 41 of the Act. Therefore, by failing to disclose this information to the complainant the public authority breached section 1(1)(b) of the Act. By failing to disclose the information within 20 working days the public authority also breached section 10(1) of the Act.

The Decision

50. 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 public authority dealt with the request in accordance with the Act to the extent that it correctly applied section 40(2) to the information which relates to living individuals.
51. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- The public authority breached section 1(1)(b) of the Act by incorrectly applying section 40(2) to the information which relates to individuals who are deceased.
 - The public authority breached section 1(1)(b) of the Act by incorrectly applying section 41 to the information which relates to individuals who are deceased.

- The public authority breached section 10(1) of the Act by failing to disclose the information which relates to the individuals who are deceased within 20 working days of receiving the request.
- The public authority breached section 17(1)(b) of the Act by failing to properly cite its reliance on section 40(2).
- The public authority breached section 17(1)(c) of the Act by failing to properly explain why section 40(2) applied.
- The public authority breached section 17(1) of the Act by failing to inform the complainant that it was relying on section 41 within 20 working days of receiving the request.

Steps Required

52. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- The public authority shall disclose to the complainant the information falling within the scope of the request which relates to individuals who are deceased.
 - Where it is not obvious if an individual is deceased the public authority shall be expected to spend up to 5 minutes researching this. If the public authority cannot reasonably determine whether an individual is alive or deceased it shall be assumed that they are alive.
53. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

54. 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

55. 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 21st day of October 2010

Signed

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

Legal Annex

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 10(1) provides that –

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

Section 17(1) provides that -

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

(a) states that fact,

(b) specifies the exemption in question, and

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

Section 40(2) provides that –

"Any information to which a request for information relates is also exempt information if-

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

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

Section 40(3) provides that –

“The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.”

Section 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.”