

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 27 February 2008

Public Authority: British Broadcasting Corporation (BBC)
Address: MC3 D1
Media Centre
Media Village
210 Wood Lane
London
W12 7TQ

Summary

The complainant requested from the BBC the total cost of the Castaway programme. The BBC refused to provide this information on the basis that it was held for the purposes of journalism, art or literature. Having considered the circumstances of the case the Commissioner has concluded that the BBC has misapplied the Schedule 1 derogation and that this information falls within the Act. During the Commissioner's investigation the BBC argued, without prejudice to its position on the derogation, that the requested information was exempt on the basis of section 43 of the Act. The Commissioner has concluded that the requested information is exempt from disclosure on the basis of section 43 and that the public interest favours maintaining this exemption.

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"). In the particular circumstances of this complaint, this duty also includes making a formal decision on whether the BBC is a public authority. This Notice sets out his decision.

The Request

2. On the 14 May 2007 the complainant advised that she made the following request for information to the BBC

"Could you please tell me the total cost of the Castaway programme."

3. The BBC responded on 15 May 2007 informing her that the information requested is not covered by the Act. The BBC explained that it and other public service broadcasters are covered by the Act only in respect of information held for purposes 'other than those of journalism, art or literature'. The BBC stated that it was not therefore obliged to supply information held for the purposes of creating the BBC's output or information that supports or is closely associated with these creative activities. The BBC explained that it does not offer internal reviews when the information requested is not covered by the Act; however, it did provide the complainant with details of how to complain to the Information Commissioner.
4. On 25 May 2007 the complainant requested a review of this decision specifically querying the BBC's broad interpretation of 'other than those of journalism, art or literature.'
5. On 25 May 2007 the BBC responded explaining to the complainant in more detail why it does not wish to provide details of programme costs but maintaining its position that the requested information is not covered by the Act.

The Investigation

Scope of the case

6. On 29 May 2007 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider if the information requested was held for 'purposes other than those of journalism, art or literature.'

Chronology

7. On 28 August 2007 the Commissioner began his investigation by writing to the BBC. In this letter the Commissioner outlined his position regarding the application of the derogation to certain classes of information and invited the BBC to provide more detail regarding its application of the derogation. The Commissioner also asked the BBC, without prejudice, to provide alternative arguments for withholding the information under the Act.
8. The BBC provided a full response to the issues raised in this letter on 26 November 2007. The BBC provided to the Commissioner a detailed explanation regarding its application of the derogation to the withheld information and, without prejudice to its position on the derogation, its arguments for relying on the exemption at sections 43 and 41 of the Act.

Findings of fact

9. The information requested was for the total cost to date of the Castaway programme. The BBC explained that the only cost to the BBC was the total fee

paid to Lion Television, the independent production company who produced Castaway for the BBC.

Analysis

Procedural matters: The Schedule 1 derogation

10. Part VI of Schedule 1 of the Act states that the BBC is a public authority 'in respect of information held for purposes other than journalism, art and literature'. This is commonly referred to as the Schedule 1 derogation. Similar provision exists in relation to Channel 4 and S4C – as a group these organisations are called public service broadcasters (PSBs).
11. In order to determine the purpose for which information is held the Commissioner will apply a dominant purpose test. This means that where information is held for a number of purposes he will weigh these purposes against each other to determine the dominant purpose for which that information is held.
12. In this case the requested information that the BBC considers to be covered by the derogation is the amount paid to Lion Television for the production of the Castaway programme.

The BBC's view

13. The BBC believes that the Schedule 1 derogation applies broadly and therefore its scope includes information such as programme content but also extends to include multi-purpose information, such as financial information related to the cost of programme making. The BBC argue that although this financial information is not in itself journalism, art or literature, this financial information is part of the production process and therefore has an obvious impact on creativity.
14. In support of this view the BBC cite three sources:
 - (a) The Commissioner's view in his Provisional Decision in the case of *Sugar v Information Commissioner*, EA/2005/0032 that this sort of budgetary information deals with the 'sustenance...of the creative journalistic purpose that the designation is meant to protect'.
 - (b) Evidence given by Mr Richard Sambrook, Director of News at the BBC, in relation to appeal EA/2005/0032 to the Information Tribunal. He stated that:

'Questions about how you make (various) selections or the resources that are available to make selections, might be characterised on the one hand as management, but they are absolutely core to journalism and determine both the quality, nature and character of journalism.'

- (c) A letter from the Home Office to the Department for Culture Media and Sport of 13 January 2000 which states:

'the Government has sought to ensure that...including them [the public service broadcasters] in the Bill does not place them at a commercial disadvantage to their commercial rivals. The Bill therefore provides that the inclusion of the public service broadcasters does not relate to information held for journalistic, artistic or literary purposes.'

15. In summary, the BBC's position is that the talent cost and in-house production cost information is not held for purposes other than journalism, art of literature and therefore is outside the scope of the Act.

The Commissioner's view

16. The Commissioner has noted the arguments put forward by the BBC.
17. In the Commissioner's view the purpose of the derogation is to protect journalistic, artistic and literary integrity and to preserve a "creative space" in which programme makers can continue their core activities free from outside interference.
18. The Commissioner accepts that the requested information (programme costs) supports the creation of programme content. It is self evident that in the majority of cases some form of financial support is necessary to produce programme content. The BBC and the Commissioner agree on this point and as such he has not considered it further.
19. However, the Commissioner's view is that the requested information is also held by the BBC for operational purposes in **addition** to being held for journalistic, literary and artistic purposes. The Commissioner believes that financial information serves a number of direct purposes; for example, it is used to budget, monitor expenditure, identify opportunities to improve efficiency, and to comply with legal obligations.
20. In the particular circumstances of this case, the Commissioner has found it useful to understand the Royal Charter which constitutes the BBC when considering these purposes. It should be noted that the Royal Charter in existence on the date of the complainant's request for information (14 May 2007) was the 2006 new Royal Charter which came into force on 1 January 2006 known as the 2006 Charter. Prior to this the Royal Charter ran from 1 May 1996 to 31 December 2006 and is known as the 1996 Charter.
21. The Commissioner has noted the following provisions of the 1996 Charter:
- Article 7(1)(b) states that it shall be the functions of the Governors to "satisfy themselves that all the activities of [the BBC] are carried out in accordance...with the highest standards of probity, propriety and value for money in the use of the Licence Revenue and moneys paid..."

- Article 18(1) states that the BBC's accounts shall be audited annually. Article 18(2) provides that the BBC *"shall...prepare an Annual Report...and attach thereto an Account or Accounts of the Income and Expenditure of the Corporation and...shall include in such Report such information relating to its finance, administration and its work generally..."*
22. The 2006 Charter has similar provisions to the 1996 charter albeit with a new structure to reflect changes in corporate governance, via the BBC Trust, and the formalisation of the Executive Board as the executive body of the BBC with responsibility for the functions listed in paragraph 38 of the 2006 Charter; notably these include the operational management of the BBC, and the conduct of the BBC's operational financial affairs.
23. Under the 2006 Charter, the BBC Trust is the guardian of the licence fee revenue and the public interest. To fulfil this role the Commissioner understands the general functions of the BBC to include the following:
- (i) assessing the performance of the Executive Board in delivering the BBC's services and activities and holding the Executive Board to account for its performance;
 - (ii) representing the interests of licence fee payers and exercising rigorous stewardship of public money; and
 - (iii) to ensure that the Executive Board conducts the BBC's operational financial affairs in a manner best designed to ensure value for money.
24. Therefore the Commissioner believes that, as a result of the Charter, the BBC holds financial information to enable:
- (i) the Governors (and now BBC Trust) to perform their role as 'guardians' under the Royal Charter by assessing the performance of the Executive Board; and
 - (ii) the Executive Board to manage the BBC's financial and operational affairs in a manner best designed to ensure value for money.
25. People costs and in-house programme costs constitute financial information and therefore serves a number of purposes in addition to that accepted by both the BBC and the Commissioner, i.e. that it supports the creation of programme content.
26. Where information is held for a number of purposes the Commissioner's approach is to consider whether the dominant purpose for holding that information is a purpose specified in the Schedule 1 derogation.
27. In this case the cost of the Castaway information served the following purposes:
- (i) It supported the delivery of programme content.

- (ii) It enabled the BBC to monitor its expenditure against its agreed budget for that year.
 - (iii) It enables the BBC to predict with some certainty the future costs of programming;
 - (iv) It enables the BBC to predict with some certainty the future costs of producing programmes in-house.
 - (v) It contributed to meeting the BBC's obligations to publish annual accounts.
 - (vi) It contributed to the ability of the Governors (now the BBC Trust) and the Executive Board to perform their respective functions and operational duties under the Royal Charter.
28. The final factor which the Commissioner has weighed, in coming to a decision on whether the derogation applies, is whether the amount paid to an independent production company (IPC) to produce a programme is a creative decision.
29. A creative decision would relate to the inception, planning and delivery of new content. For example, the decision to use presenter X instead of presenter Y would tend to be a creative decision, based on the reputation and standing of the entertainer in the industry, but the determination of the level of remuneration for presenter X or Y would not be characterised as a creative decision.
30. As such, the Commissioner does not consider that the requested information constitutes a creative decision.
31. After carefully balancing these competing purposes, the Commissioner finds that the requested information was, or was more likely to have been, held by the BBC for predominantly operational purposes (including financial, management and administrative purposes) and not for journalism, literature or art. As a result, Schedule 1 is not applicable to in-house programme costs and talent costs information and the BBC is a public authority with regard to this information.

Exemption: Section 43 'Commercial Interests'

32. Section 43(2) states that information is exempt if its disclosure would, or would be likely, to prejudice the commercial interests of any person.
33. The BBC provided arguments to support its assertion that disclosure of the amount paid to the Lion Television to produce the Castaway programme would, or would be likely, to prejudice its commercial interests.
34. First the BBC argue that disclosure of the fee paid by the BBC will have the effect of providing the BBC's competitors with valuable pricing information about the value of the rights to these type of programmes. This disclosure of information could have the effect of distorting the market for independently produced programmes, increasing the likelihood of the BBC's competitors coordinating their bids against the BBC for those programmes.
35. The BBC describes the market for IPCs as fiercely competitive with a high premium on quality and original ideas due to their scarcity. Where original, high quality ideas become available on the market the BBC maintain that a bidding

war between rival broadcasters ensues and the loser in such a bidding war will have difficulty replacing the goods, i.e. the TV programme.

36. The BBC maintain that despite its status as a public corporation when commissioning goods from IPCs they operate in a wholly competitive market place within which they must compete with other broadcasters, commercial radio, print media and competitors in new and emerging technology, such as Google. The contention is that a level playing field exists in this sector already. It should be noted here that generally the BBC commissions programmes independently via a separate division of the production unit and as such there will frequently be competition between IPCs productions and in-house productions for a commission.
37. Further to this, the BBC contend that information about the fees paid to IPCs is not widely known, i.e. those directly involved in negotiating and bidding for individual deals either at the BBC or an IPC would be privy to the fees agreed and paid but this circle is small and an IPC would not know what another IPC received as a fee, nor would the BBC be aware of the fee in bidding wars that they lose. The BBC state that in-house production staff would not be privy to bid information from IPCs.
38. The BBC acknowledge that occasional and sporadic disclosures of the fees do occur in breach of confidentiality provisions within the relevant contracts. However the BBC go on to state that if disclosures of this sort were to be institutionalised via the Freedom of Information Act (i.e. become the norm) this would reduce the uncertainty that currently exists about the fees paid in previous auctions won by the BBC and therefore reduce the uncertainty of competitors engaging in future bidding wars.
39. The BBC publish tariff ranges on their website www.bbc.co.uk/commissioning/tv/business/tariffs.shtml. However the BBC contend there is a key difference between this information and actual fee paid to a particular IPC. If the actual fee were disclosed this would provide the level of detail necessary for a competitor to counter-bid in order to poach a particular programme.
40. The BBC claim that the effect of the contentions above is that, were disclosure to occur, an informational asymmetry would be created. Due to this informational asymmetry it would be possible for competitors in the market for IPCs services to gain an advantage when bidding for these services by reference to the previous bidding patterns of the BBC in relation to services of a similar nature.
41. Even when successful in a bidding war, despite the disparity in information available, the BBC contend that they would be at a commercial disadvantage as their bid could have been artificially inflated by a competitor's knowledge of their previous behaviour when bidding for similar services. The BBCs principal competitors are not subject to the Act hence the disparity in information available.
42. This argument bears similarity to those put forward in relation to prejudice in the Information Tribunal appeal EA/2005/0005 *John Connor Press Associates v The*

Information Commissioner, insofar as the National Maritime Museum contended that the disclosure of financial information relating to the commission of a work of art would prejudice the commercial interest of the museum. The prejudice claim arose from the fact that the Museum's bargaining position would be compromised if other artists were aware of the commission's value in this case. The Information Tribunal decided that prejudice might occur in cases of this type but that this would depend on the nature of the information and the degree of similarity between the transactions.

43. Having considered the circumstances of this request carefully, the Commissioner is of the view that future transactions would be very similar and the information in question key to the BBC's goal of obtaining value for money.
44. Therefore, in the Commissioner's view this argument has merit and he is satisfied that prejudice is likely. Key to arriving at this view is the fact that the auctions for a specific commission can not be viewed as a one-off; the BBC may commission one series of *Castaway* and then subsequently bid for a further series, if the BBC's bid price for the original series was known by rival bidders they would then be in a position to outbid the BBC and as described above, artificially inflate the winning bid.
45. It follows that similar series may be commissioned by the BBC. It is impossible to state with great certainty the details of the series which the BBC may bid for in this scenario as the situation is to an extent hypothetical, but the BBC has obligations within its Statement of Programme Policy which require certain amounts of air time to be filled by productions from either IPCs, regional IPCs, regional commissioned programmes and so forth. In the Commissioner's estimation it is likely that similar productions will be commissioned by the BBC whether this similarity is based on the content (i.e. reality / survival series), the IPC (i.e. Lion Television), the regulatory framework (i.e. quotas for broadcast hours) or a combination of these factors. For example, the BBC could bid for another reality based series from Lion Television which although different to *Castaway* bears sufficient similarity to make bidding information about *Castaway* useful to third parties, such as ITV, Sky or Channel 5.
46. In addition to the BBC's contention that disclosure of the fee paid to Lion Television would have a prejudicial effect on the BBC relative to its commercial rivals, the BBC also contend that its relationship with IPCs would be prejudiced. The premise for this argument is that IPCs have bargaining power, i.e. they own a scarce product in a competitive, bidding, market place.
47. Given that this is the context within which the BBC bids for programmes they argue that if IPCs were aware of the minimum level of funds available previously for a particular type of programme they will have an incentive to price beyond that level when previously they may have priced below it.
48. The BBC provides the following detail about the nature of negotiations between IPCs and broadcasters:

- In each individually negotiated deal, both sides have strengths and weaknesses to their bargaining positions.
 - The broadcaster will know the size of the budget in question, how much can be spent on filling a particular slot/purchasing the rights to a particular programme for a specific period of time and how important that particular programme is to scheduling.
 - The IPC will know its deal history for that and similar programmes and how much it needs the particular engagement.
 - Both parties will typically know the experience of the relevant IPC, the nature of the programme sought and the length of engagement.
 - Although this does not lead to an exact symmetry of available information there is normally an equality of bargaining position.
 - Where an IPC gains knowledge of what another IPC has gained in respect of a particular production, a disparity in bargaining positions emerges. The IPC having comparably better information than the broadcaster and is likely to use this to price higher for its programmes.
49. In the Commissioner's view this model supports the BBC's contention that prejudice to their commercial interest would be a likely outcome of information disclosures of this type.
50. Were information about successful bids to be released the BBC would be at a disadvantage to IPCs because they would not be able to obtain information about IPCs financial relationship with other broadcasters, except Channel 4 and S4C.
51. The Commissioner is satisfied that disclosure of the information would, or would be likely to prejudice the commercial interest of the BBC.

Public Interest Test

52. Section 43 is a qualified exemption and the Commissioner must therefore go on to consider if the public interest in maintaining the exemption outweighs the public interest in disclosure of the requested information.
53. The BBC advances three broad public interest arguments in favour of the maintenance of the exemption. These are as follows:
- (i) *There is a clear public interest in ensuring the BBC is able to provide quality programming and value for money in respect of its use of the license fee. Both these objectives will be threatened if a presumption is created in favour of the general disclosure of information relating to license deals...*
 - (ii) *...there is little public interest in the disclosure of licence deal information as this information only enables the public to take an informed view of whether the BBC is contracting with IPCs on a competitive basis if it is in the possession of licence deal information relating to commercial broadcasters. Since this information is not publicly available, information relating to the BBC is of little use.*

(iii) ...the general public interest in the transparency and accountability of the BBC in respect of its use of the license fee is served by a broad range of oversight mechanisms, internal and external. These include the oversight of the BBC Trust, the responsibilities of which include commissioning value for money investigations into specific areas of BBC activity (Article 24(2) (i) of the Charter), the Executive Board, the responsibilities of which include conducting the BBC's operational affairs in a manner best designed to ensure value for money (article 38(1)(h) of the Charter), Ofcom and the fair trading regime and competition law in general. Indeed ... certain limited information on expenditure is provided in the Annual Report. Disclosure beyond this threatens to pose considerable harm to the BBC's commercial interests, without offering a proportionate benefit to the public.'

54. In the Commissioner's view there are three public interest factors in favour of disclosure:

- there is a general public interest in facilitating accountability and transparency in the way public money is spent;
- there is a public interest in furthering the public's understanding of, and participation in, public debate on a topic;
- there is a public interest in facilitating accountability and transparency of public authorities for their decisions;

55. The Commissioner's view is that although there is a strong interest in understanding the way in which public money is spent it is not clear that disclosure in this case would be of significant benefit to the public. In order for information of this nature to be of great value to the public they would require access to information about the costs to other broadcasters of commissioning similar content. Other public service broadcasters are subject to the Act, specifically Channel 4 and S4C, but the remainder of the broadcasting industry is not. It is possible for the public to form subjective views about the quality of a programme and therefore whether the money was well spent by, for example, combining it with publicly available information about viewing figures. However without information about other broadcaster's programme costs the requested information is of less value to the public as a whole; however it would have a particular value within the industry potentially exposing the BBC to commercial prejudice as identified above. The prejudice to the BBC's commercial interests is a significant factor in favour of maintaining the exemption.

56. The cost of programmes broadcast by public service broadcasters (PSBs), and particularly the BBC, is of interest to the public and would aid their understanding of the industry and the difficulties that PSBs face in winning and retaining quality programming. The increased transparency would reinforce trust in the BBC as an organisation with robust controls on the way that public money is spent. However these controls are evident anyway. The BBC has a variety of mechanisms which seek to ensure value for money and high quality, for example the Window of Creative Competition is a mechanism that ensures 25% of BBC broadcasts are produced by the independent sector, and that a further 25 % of broadcasts are

opened to competition between the private sector and the BBCs in-house production divisions. The Trust (formerly the Board of Governors) has oversight of the way the BBC seeks to meet its corporate objectives providing a further level of scrutiny internally. In addition the BBC is subject to the normal fair trading regime that operates in the UK.

57. As regards transparency in the decision-making process, the Commissioner does not consider that, in the circumstances of this case, this factor carries great weight; there is already a significant amount of information in the public domain about the commissioning process and fees paid by the BBC to independent production companies. Broadly indicative tariffs are published on the BBCs website.
58. Having weighed these factors the Commissioner's view is that the balance of the public interest favours maintaining the exemption under section 43 and that therefore the requested information should not be released. Overall there are real benefits from increased transparency and accountability. But these are outweighed by the damage that disclosure would be likely to cause to the BBC's commercial interests, it being more difficult to maintain quality and more expensive to procure quality. Arguably these are similar factors to those affecting other public authorities which procure goods and services in a competitive environment, for example local government and the procurement of waste management services, but such comparisons are superficial. A local authority inviting tenders for waste management services could obtain similar information about other local authorities' operations in this area and competitors for services (i.e. other local authorities) would be subject to the same disclosure provisions unlike the BBC.
59. On this basis the Commissioner is satisfied that the requested information is exempt from disclosure under section 43. As the Commissioner has found that the information is exempt under section 43 there is no requirement for the Commissioner to go on to consider section 41.

Procedural matters: Section 17 'Refusal of Request'

60. Section 17(1) states that a public authority which is relying on a claim that the information is exempt, must, within the time for complying issue a refusal notice which:
 - (a) states the fact that information is exempt,
 - (b) specifies the exemption in question, and
 - (c) states why the exemption applies.
61. The refusal notice of the 15 May 2007 did not explain which exemption the BBC considered applied to the request information. Technically this is in breach of the requirements of section 17 of the Act.

The Decision

62. The Commissioner's decision is that the BBC failed to deal with the following elements of the request in accordance with the Act:
- i. The requested information is held by the BBC for purposes other than those of journalism, art and literature. Therefore the BBC has not dealt with the complainant's request in accordance with Part 1 of the Act in that it failed to comply with its obligations under section 1(1).
 - ii. The BBC breached section 17 of the Act because it failed to provide a refusal notice explaining why it believed the requested information to be exempt on the basis of section 43 of the Act.
63. However, the Commissioner has decided that the following aspects of the request were dealt with in accordance with the Act:
- i. The information covered by the request is exempt from disclosure under section 43 of the Act.

Steps Required

64. The Commissioner requires no steps to be taken.

Right of Appeal

65. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
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 served.

Dated the 27th day of February 2008

Signed

**Anne Jones
Assistant Commissioner**

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

Legal Annex

General Right of Access

Section 1(1) provides that -

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

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

Section 1(2) provides that -

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

Section 1(3) provides that –

“Where a public authority –

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”

Section 1(4) provides that –

“The information –

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”

Section 1(5) provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

Section 1(6) provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.”

Refusal of Request

Section 17(1) provides that -

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

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

Section 17(2) states –

“Where–

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-
 - (i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
 - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and
- (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.”

Section 17(3) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

- (a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

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

Section 17(4) provides that -

“A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

Section 17(5) provides that –

“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.”

Section 17(6) provides that –

“Subsection (5) does not apply where –

- (a) the public authority is relying on a claim that section 14 applies,
- (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
- (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.”

Section 17(7) provides that –

“A notice under section (1), (3) or (5) must –

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (b) contain particulars of the right conferred by section 50.”

Commercial interests.

Section 43(1) provides that –

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

Section 43(2) provides that –

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

Section 43(3) provides that –

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