

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 22 April 2009

Public Authority: British Broadcasting Corporation (BBC)
Address: 2252 White City
201 Wood Lane
London
W12 7TS

Summary

The complainant requested information from the BBC on the amount of money it received between 1997 and 2007 from the use of premium rate phone lines. The BBC refused to provide this information on the basis that it was held for the purpose of journalism, art or literature. During the course of the investigation the BBC also sought to rely on section 12 of the Act.

The Commissioner has found that the BBC were not obliged to comply with the request by virtue of section 12(2) of the Act, as to establish if the information is held would exceed the appropriate cost limit. The Commissioner has also found that the BBC breached the requirements of sections 17(5) 'refusal of a request', 1(1) and 10(1).

The Commissioner requires the BBC to contact the complainant in order to refine his request in line with its duty under section 16 of the Act (duty to provide advice and assistance).

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. The complainant has advised that on 28 February 2007 he made the following request for information to the British Broadcasting Corporation (BBC):

“Since 1997, the amount of money received by the BBC from premium rate phone lines used by viewers and / or listeners, including a programme by programme breakdown, and information on where that money went.”

3. The BBC responded on 6 March 2007. It advised that *“the Corporation and other public service broadcasters are covered by this legislation only in respect of information held for ‘purposes other than those of journalism, art or literature’.* *This derogation effectively excludes information held for the purposes of creating the BBC’s output or information that supports, and/or is closely associated with, these creative activities”.* Consequently, the complainant was informed that the BBC is not obliged to supply information held for the purposes of creating its output (i.e. its programmes) or information that supports and is closely associated with these creative activities. The BBC informed the complainant that it does not offer an internal review when the information requested is not covered by the Act.

The Investigation

Scope of the case

4. On 7 March 2007 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 that his request only concerns information about the amount of money received by the BBC and not to journalism, art or literature.

Chronology

5. The Commissioner began his investigation on 10 March 2008 by writing to the BBC requesting a copy of the withheld information, for further explanation regarding the application of the derogation, and without prejudice, additional arguments under the Act to support withholding the requested information.
6. The BBC responded on 15 May 2008 explaining that a report had just been published on 9 May 2008 entitled *“The BBC’s Trust’s conclusions on the economic aspects of the use of Premium Rate Services by the BBC. Including a report by PricewaterhouseCoopers on the Economic Aspects of Premium Rate Services.”* The BBC stated that the report was comprehensive and answered some of the questions asked by the complainant such as an approximate amount of money the BBC had gathered by the use of premium rate services for a select period and where the money was distributed. The report only focused on 2005-2007. The BBC stated that it would be checking with the complainant if he wished to review the report to see if it satisfied his request. In the meantime the BBC indicated that it would be drafting a full response to the questions raised by the Commissioner in his letter dated 10 March 2008.
7. The BBC wrote to the complainant, as above, on 16 May 2008. In its letter the BBC informed the complainant that PricewaterhouseCoopers (PWC) had found that it was only able to look at Premium Rate Services (PRS) between April 2005

and March 2007 due to the time involved in collating the material for review. The PWC report noted that there was no single database containing all the information and no single point of contact for PRS use within the BBC. In light of this, the BBC informed the complainant that it was likely that although it was maintaining its position that the information is outside of the scope of the Act, it would exceed the cost limit set out in section 12 of the Act to comply with the request. The BBC also asked the complainant if he would be willing to withdraw his complaint.

8. The BBC wrote to the Commissioner on 20 May 2008 informing the Commissioner that the complainant had informed the BBC that he would not be withdrawing his complaint following receipt of the report. The BBC stated that the complainant had offered to amend his request so that it would be less likely to exceed the cost limit but that the BBC had felt that at the late stage of the request it would be easier to deal with the request as it is.
9. The Commissioner responded on the same day asking if the BBC could give an indication as to when it might be likely to be able to respond in full. The BBC responded stating it should be able to respond by 13 June 2008.
10. The Commissioner wrote again on 3 June 2008 asking for a further update. The BBC responded on 5 June 2008 stating they hoped to be able to respond soon.
11. The BBC responded on 30 October 2008 providing the Commissioner with more arguments to support its reliance on the derogation. In the alternative the BBC explained that for the information requested between 1997 and 2007 it was seeking to rely on section 12 of the Act to withhold the information and for the information relating to 2005 - 2007, as referenced in the PWC report, it was not yet in a position to respond and would reply further shortly.
12. The BBC responded on 7 November 2008 providing the Commissioner with the information withheld for the period 2005-2007. The BBC explained that it was only seeking to rely on the derogation to withhold the information for this period.

Findings of fact

13. PRS refers to any service provided over a telephone line for which an additional charge is added to the caller's phone bill. It is a means of handling a very high volume of calls, and offers functionality, such as vote counting, that would not be available using calls at national rates. PRS is used by broadcasters to provide services such as voting, competitions and charitable fundraising.
14. The BBC's Editorial Guidelines state that no programme can use PRS interactivity with the aim of making a profit (unless for charity). Unless the PRS has been specifically set up to raise money for BBC charitable appeals, then any money obtained through premium rate interactivity is apportioned between the PRS service providers used for the BBC and the phone network carrying the service. All premium rate charges which are not specifically designed to raise money for charity have to be set up at the lowest viable tariff to help ensure the PRS interactivity does not make a profit. However, on limited occasions a small

- amount of incidental money could be generated because it cannot be guaranteed that no incidental money would ever be generated while using PRS.
15. To try and ensure that the generation of any incidental money was not factored into any editorial decision made by the BBC, the BBC historically had a policy in place which only allowed a maximum of 30 % of any incidental money to go back to the BBC, the remaining 70% would be retained by the BBC's third party premium rate service provider. Any incidental amount passed back to the BBC was prohibited from going back to the individual programme, but was provided to the overall production department.
 16. The information request is for "*the amount of money received by the BBC from premium-rate phone lines*". During the course of the investigation the Commissioner established that the major provider of premium rate interactivity to the BBC was Audiocall, a company wholly owned by BBC Worldwide. BBC Worldwide is a commercial subsidiary of the BBC and is not subject to the Act by virtue of section 6(1) (b) (ii) of the Act. The BBC therefore does not hold Audiocall's revenue information, nor does Audiocall hold revenue information on behalf of the BBC.
 17. The request is for the amount of money received by the BBC from premium rate phone-in lines. Whilst the BBC explained that it is prohibited from using premium rate interactivity with the intention of making a profit, it also explained that it is possible that there will have been instances in the period requested where some incidental money was generated by its use and passed back to the BBC.
 18. The withheld information is therefore the amount of 'incidental' money passed back to the BBC in the period 1997 to 28 February 2007, the programmes this came from, and where the money went. The BBC are relying on section 12(2) for the period 1997 to 2007 as to establish if the information is held would exceed the appropriate cost limit.

Analysis

Jurisdiction

19. Section 3 of the Freedom of Information Act 2000 states:

"3. – (1) In this Act "public authority" means –
(b).... any body...which –
(i) is listed in Schedule 1....."

The entry in relation to the BBC at Schedule 1, Part VI reads:

"The British Broadcasting Corporation, in respect of information held for purposes other than those of journalism, art or literature"

Section 7 of the FOIA states:

“7. – (1) Where a public authority is listed in Schedule 1 only in relation to information of a specified description, nothing in Parts I to V of this Act applies to any other information held by the authority”.

The BBC have argued that the construction of sections 3, 7 and Schedule means that the BBC is not a public authority where they do not hold the requested information or where they hold the information for the purposes of journalism, art or literature. Consequently, the Commissioner would not have jurisdiction to issue a decision notice given the wording of s.50.

20. This issue has been considered by the House of Lords in the case of *Sugar v BBC*¹ (the decision was promulgated during the Commissioner's investigation). By a majority of 3:2, the Lords found in favour of the Appellant, Mr Sugar, in concluding that the Commissioner does have jurisdiction to issue decision notices regardless of whether the information is derogated or not. The Commissioner adopts the reasoning set out by Lord Hope at paragraphs 54 and 55 where he said:

“54. Section 7(1) says that where a public authority is listed in Schedule 1 only in relation to information of a specified description, nothing in Parts I to V of the Act applies to any other information held by the authority. What it does not say is that, in that case, the authority is a hybrid – a “public authority” within the meaning of the Act for some of the information that it holds and not a “public authority” for the rest. The technique which it uses is a different one. Taking the words of the subsection exactly as one finds them, what it says is that nothing in Parts I to V of the Act applies to any other “information” held by “the authority”. This approach indicates that, despite the qualification that appears against its name in Schedule 1, the body is a public authority within the meaning of the Act for all its purposes. That, in effect, is what section 3(1) of the Act provides when it says what “public authority” means “in this Act”. The exception in section 7(1) does not qualify the meaning of “public authority” in section 3(1). It is directed to the information that the authority holds on the assumption that, but for its provisions, Parts I to V would apply because the holder of the information is a public authority.”

55.The question whether or not Parts I to V apply to the information to which the person making the request under section 1(1) seeks access depends on the way the public authority is listed. If its listing is unqualified, Parts I to V apply to all the information that it holds. If it is listed only in relation to information of a specified description, only information that falls within the specified description is subject to the right of access that Part I provides. But it is nevertheless, for all the purposes of the Act, a public authority”.

21. Therefore, the Commissioner has jurisdiction to issue a decision notice on the grounds that the BBC remains a public authority, whether or not it holds the

¹ *Sugar v BBC* [2009] UKHL 9

requested information and whether or not the requested information is derogated. However, where the BBC does not hold the requested information or where the information is derogated, the Commissioner considers that the BBC has no obligations to comply with Parts I to V in respect of that information.

22. In circumstances where the BBC state the information is not held, or (as is the case here) that to determine whether or not the information is held would exceed the cost limit, the Commissioner will first reach a decision on this before proceeding to consider whether or not any information held is held for the purpose of journalism art or literature.
23. The focus of the Commissioner's investigation in this case has therefore been to determine whether the BBC were correct to rely on section 12(2) as to establish whether or not the information is held would exceed the appropriate limit.

Procedural Matters

24. Section 1(1) provides that any person making a request for information to a public authority is entitled to (a) be informed in writing by public authority whether it holds information of the description specified and (b) if that is the case to have that information communicated to him.

Section 17 'Refusal of a request'

25. 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.
26. Section 17(5) states that a public authority, which in relation to any request for information is relying on a claim that section 12 applies must, within the time for complying issue a refusal notice stating that fact.
27. The refusal notice of 6 March 2007 did not explain which exemptions the BBC considered applied to the requested information. This is in breach of the requirements of section 17(5) of the Act.

Exemption: Section 12 'Cost Limit'

28. Section 12(1) of the Act does not oblige a public authority to comply with the requirements of section 1(1) (b) if the authority estimates the cost of complying with the request would exceed the appropriate limit. Section 12(2) of the Act states that a public authority is not obliged to comply with the requirements of section 1(1) (a) if to do so would exceed the cost limit.

29. The BBC have explained that it would be unable to determine whether it holds the information requested for the period 1997-2005 as to do so would exceed the appropriate cost limit. Although the BBC have, during the course of the investigation located the information for the period 2005-2007, this was not available at the time of the request. This information was only located as part of the PWC investigation and report which, as detailed below (para 34), in itself took in excess of 18 hours work.
30. The Appropriate Limit and Fees Regulations 2004 set a limit of £450, the equivalent of 18 hours work at an hourly rate of £25, to the cost of complying with a request for all public authorities subject to the Act listed in Schedule 1 Part VI. In estimating the cost of complying a public authority can take the following into account:
- determining whether it holds the information requested,
 - locating the information or documents containing the information,
 - retrieving such information or documents, and
 - extracting the information from the document containing it.

The Regulations state: *'any of the costs which a public authority takes into account are attributable to the time which persons undertaking any of the activities mentioned in paragraph (3) on behalf of the authority are expected to spend on those activities, those costs are to be estimated at a rate of £25 per person per hour'*.

31. The BBC explained that the producers of individual BBC programmes would determine whether they would use premium rate interactivity and which provider they would use. There was and is no central database within the BBC which holds the information and there was no requirement on production departments to retain records on any incidental amounts received as a result of premium rate interactivity.
32. However, the BBC explained that as the compliance process around competitions, voting and awards and the use of premium rate interactivity has strengthened, it has held information about incidental amounts in order to ensure editorial compliance with guidelines. This is a recent requirement which has only been in place since late 2007 and it is unlikely that the BBC retained this information previously (prior to 2007). Whilst the BBC does have the information for the last two years (2005 to 2007), this information was not available at the time of the request and for those years there were only two instances where incidental amounts of money were generated and passed to the BBC from its premium rate phone provider (in accordance with policy). The BBC state that in order to look for the requested information it would need to audit all programmes since 1997 to determine which ones used premium rate interactivity. It would then need to go through each production area to determine whether they retained any records on any incidental amounts generated through premium rate interactivity and how this money was distributed.
33. The BBC argue that the fact that there is a policy set up to specifically avoid the generation of money from premium rate interactivity, indicates that there would be

very few instances where incidental amounts would have been passed to the BBC and that it is unlikely that it would have retained any information on this back to 1997. The BBC state it would be a time consuming task to even look for the requested information between 1997 and 2007 and would considerably exceed the fees limit.

34. To support this assertion the BBC have relied on the findings of the PWC report. The PWC report covered the period 2005 to 2007 (hence the BBC holds the information for this period); the report took six months to complete. The Commissioner notes that the main focus of this report was the use of PRS and the economics at the BBC, whilst the report goes into more detail than the information requested by the complainant he accepts, having viewed the report, that much of the time spent compiling the report involved establishing the details on money generated by PRS. At paragraph 1.4 of the report PWC note:

“We found no single database containing information relating to BBC’s use of PRS and no apparent single point of contact for PRS use across the BBC. We therefore approached a range of parties within the BBC and brought together data from a variety of sources. We obtained data relating to 46 PRS services used in the period [between] April 2005 and March 2006 (during which the information suggests that at least 325 PRS services were used by the BBC). To the best of our knowledge, the remaining 300 or so PRS services in each year operated on a small scale.....”

The Commissioner notes that although this report had a different purpose it was an independent report and provides quite strong evidence supporting the use of section 12.

35. The PWC report acknowledged that there were two scenarios for the use of premium rate interactivity; one where there was no intention of making a profit and one where the money raised was intended for charity. The PWC report showed that the BBC set tariffs low on PRS with the intention that no money was raised. Where the money was intended for a specific charity, this money was sent directly to the charity from the premium rate provider. However, it found that residual revenue may additionally arise in the context of PRS where the call rate set covers more than the cost for PRS use, despite the rate not specifically being set in order to raise money for charity. The PWC report explained that this revenue would be retained by the service provider and some used to make a donation to charity or passed to the production department. In the report PWC only found three cases in the period examined where residual revenue was generated. Of these three, two amounts were passed back to the BBC and the third the money generated was sent directly to a charity.
36. Audiocall told PWC for the report that it determines *“at the outset whether there will be any revenue available out of its revenue share to be paid to the programme (this is on a bespoke basis depending upon costs); if Audiocall pay such revenue it will be at 30% of new costs. BBC Editorial Policy allows the programme to receive up to 30%.”* Of this scenario the PWC report found only two examples where the 30% had been paid back to the BBC.

37. The Commissioner accepts that, given the findings of the PWC report, it would take the BBC more than 18 hours to establish if the information requested is held. The PWC report established that between April 2005 and March 2007 there were 340 examples of PRS use by the BBC across a range of BBC divisions including: children's, sports, daytime, factual and entertainment; to analyse this period alone took PWC 6 months. The Commissioner accepts that as there is no central database and no single person who was responsible for monitoring PRS use for the period 1997- 2007 and that for the BBC to go through all of its programmes, establish which used PRS and then establish if any incidental revenue was generated and passed to the BBC would exceed the cost limit.
38. The Commissioner must also focus on whether the BBC was obliged to comply with the entire request, not broken down into time periods covered by the request. The Commissioner therefore finds that with regard to entire request (the information for 1997 – 2007) section 12(2) is engaged as to establish if the information is held would exceed the cost limit. Although, as detailed above, the BBC do now know they hold the information for the period 2005-2007, its existence was not known at the time of the request and it now cannot be used to narrow the consideration of the cost limit under 12(2) to only cover 1997-2005.

Section 16 'Duty to provide advice and assistance'

39. Section 16(1) of the Act provides public authorities with a duty to provide advice and assistance. Where a public authority has relied on section 12 of the Act the Commissioner expects the public authority to go back to the complainant and ask them to refine their request in order to bring it within the cost limit. This is because the section 45 Code of Practice states that where an authority is not obliged to comply with a request for information because, under section 12(1) the cost of complying would exceed the appropriate limit the authority should consider providing an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or re-focussing their request, information may be able to be supplied for a lower, or no, fee. The Commissioner finds that this aspect of the Code will also cover scenarios related to section 12(2) of the Act.
40. At paragraph 92 of the House of Lords decision in the Sugar Appeal, Lord Neuberger of Abbotsbury stated that:

“In many cases, the request or preliminary enquiry may be framed in a general or imprecise way so that it is not clear whether the information is or will be excluded. In such cases, it appears to me that, even on the BBC's construction, the authority could not be expected to take a view one way or the other at once: that would be unrealistic, and it could be unfair on the applicant or the authority or on both. In such cases, it appears to me that, on any view, section 16 would apply and the authority would have to provide advice and assistance at least until it was in a position to decide, whether, in its view, the information sought was excluded. “

41. The BBC's position in this case, is that it is unable to determine whether or not it holds the information as to do so would exceed the cost limit. The Commissioner considers the BBC has a duty under section 16, in line with the section 45 code of practice to assist the complainant in refining his request in order to bring it within the cost limit.
42. During the course of the investigation the BBC wrote to the complaint informing him that to comply with the request would be likely to exceed the cost limit under section 12 of the Act. The complainant responded and offered to amend this request so that it would be less likely to be exempt under section 12 of the Act. However, the BBC declined his offer due to the "late stage" of the Commissioner's investigation. The Commissioner considers that the BBC failed to provide adequate advice and assistance (in line with the section 45 Code) and therefore breached the requirements of section 16(1)..

The Decision

43. The Commissioner's decision is that the BBC failed to deal with the following elements of the complainant's request in accordance with the Act:
 - i. The BBC breached the requirements of section 16(1) in failing to provide advice and assistance.
 - ii. The BBC breached section 17(5) of the Act because it failed to provide a refusal notice stating which provision under section 12 or 14 it believed applied to the request.
44. However, the Commissioner has decided that the following aspect of the request was dealt with in accordance with the Act:
 - i. The BBC was not obliged to comply with the complainant's request by virtue of section 12(2) of the Act.

Steps Required

45. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
 - i. In line with its duty contained at section 16 of the Act, the BBC should contact the complainant promptly and in any event no later than 35 calendar days from date of this Notice and provide further advice and assistance as outlined in paragraph 39 in order to assist the complainant in refining his request.

Failure to comply

46. 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.

Other Matters

47. The Commissioner would like to note that he wrote to the BBC on 10 March 2008 and he did not receive a substantive response from the BBC until 30 October 2008 eight months after his initial letter. Whilst there is no statutory time limit in the Act for responding to the Commissioner's queries, he does not consider that the time taken by the BBC in this case is acceptable.
48. The Commissioner would also like to alert the Complainant to the fact that even if he is successful in making a further refined request that does not engage section 12(2) of the Act and the BBC confirms it holds information relevant to the request the BBC may seek to maintain a position that the information is held for purposes of art, journalism or literature and therefore parts I to V of the Act do not apply. The Commissioner will consider expediting further complaints stemming from this one, as he acknowledges the delay the complainant has already experienced.

Right of Appeal

48. 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 22nd day of April 2009

Signed

**Steve Wood
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”.”

Exemption where cost of compliance exceeds appropriate limit

Section 12(1) provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

Section 12(2) provides that –

“Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.”

Section 12(3) provides that –

“In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.”

Section 12(4) provides that –

“The secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

- (a) by one person, or
- (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.”

Section 12(5) – provides that

“The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are estimated.

Duty to provide Advice and Assistance

Section 16(1) provides that -

“It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it”.

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.”