

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 26 November 2009

Public Authority: Arts Council England
Address: 14 Great Peter Street
London
SW1P 3NQ

Summary

The complainant requested five categories of information in order to obtain evidence that would assist him in his ongoing complaint. The public authority responded that it believed that the request was vexatious and that section 14 applied and it upheld its position in its internal review. The Commissioner has considered this case and believes that one element constituted the complainant's personal data and should have been considered separately under the Data Protection Act. In relation to the other elements, he has considered the application of section 14(1) and finds that it was applied correctly in this case.

The Commissioner's Role

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

Background

2. The complainant requested a grant from the public authority. The public authority allowed the grant, subject to a special condition that there was a public performance of the work, a concerto, for which the grant was awarded. The complainant felt that this condition was unreasonable and that the handling of his case was discriminatory. He appealed through the public authority's complaint procedure.

3. An independent investigation was then conducted. The 'independent reviewer's report' was issued on 6 August 2008. There were three aspects that were investigated:
 1. that the special condition was unreasonable;
 2. that there were various delays; and
 3. his treatment amounted to unfair discrimination.
4. In relation to the first point, the public authority stated that it was reasonable to regard the composition of the concerto as the main focus of the activity and that it was usual to require confirmed public performances of funded commissions to ensure public benefit and value for money. It did not accept that the condition was discriminatory. But it accepted there had been delays and agreed to withdraw the condition in the interests of resolving the complaint and moving forward. The report stated that it had not acted improperly in imposing this special condition, but that it should have made its literature more clear.
5. In relation to the second point, the independent review found that there was unreasonable delay in replying to the complainant's acceptance letter and further delay because the terms of the special condition were not stated clearly. There was then a two month delay in providing a full copy of the assessment of his application. There was delay in starting the complaints process and central parts of the complaint were not adequately considered (this was that the condition of public performance was inhibitive to the purpose of his project that was professional development). However, it explained that these delays were not an egregious delay given the nature and complexity of the correspondence. It recommended that the public authority reconsiders the record of the purpose and classification of the complainant's activity and makes a payment of £500 and to take additional administrative measures to prevent some of these problems in future.
6. In relation to the third point, the report stated that it felt that the public authority had failed to communicate clearly to the complainant which could have been seen as hostile. The report said that it was beyond its scope to make a definitive verdict. However, it stated that the complainant had not made out the case that he was treated unfairly on grounds of race.
7. The complainant also complained to the National Audit Office about the public authority. It carried out an investigation spending a number of days at the public authority in September 2008 and it did not find that the public authority's procedures were inadequate.
8. The complainant has subsequently begun legal proceedings against the public authority on the basis that he believed that it had breached the Race Relations Act. The public authority defends these claims and the request was generated within the context of these proceedings.

The Request

9. The public authority is specified as being subject to the Act in Part VI of Schedule One.
10. On 22 December 2008 the complainant requested the following information in accordance with section 1(1) of the Act:

"In relation to my claims about ACE's contravention of the Race Relations Act, please provide the following without undue delay (eg., within a month):

1. A true copy of the hard copy of the unaltered G10 full assessment report for my proposal/application ref. no. G8155623.

This ought to have been provided in response to my request of 10 December 2007, but only incomplete excerpts or altered versions or a summary version have so far been provided.

2. The 10 consecutive successful proposals & applications (from individuals) to ACE's South West office for a Grant for the arts in the art form Music, in reverse chronological order from 3 October 2007, together with their respective

- * G10 full assessment reports and*
- * offer letters.*

"Successful" refers to grants which received an offer of funding. The dates referred to are those of the offer letter.

3. Reviews of all stage 3 ACE complaints - excepting mine - issued by an Independent Complaints Reviewer during 2008, together with ACE's letter of response to each review.

4. A statement of whether or not, for each of the ACE contracts bearing grant nos. 7424505 and 9929763, each of the following documents exists:

- a) call for tenders, or equivalent.*
- b) tenders other than those submitted by the awardee*
- c) contract performance information or equivalent reports containing outcome measures*
- d) audit and verification processes specified for these contracts by ACE, and corresponding reports*
- e) external assessment reports of the number of people in England whose knowledge, understanding and practice of the arts was developed and improved as a result of these contracts*
- f) assessment reports referring to any Race Equality considerations which were taken into account before awarding the contracts*

5. A statement of how many tenders were received for the substantial further contract recently awarded to the awardee specified in point 4 above.

Points 4 and 5 ought to have been answered by October 2008.”

11. On 23 December 2008 the public authority acknowledged the request and identified it as a request under the Act.
12. On 19 January 2009 the public authority issued its response to the complainant. It stated that:

'I am writing in response to your request for information dated 22 December 2008 ... regarding our response to your questionnaire issued under section 65 of the Race Relations Act 1976.

We consider that your request for information of 22 December 2008 is vexatious. As such, we are refusing this request under section 14 of the Freedom of Information Act 2000.'

It also explained that he could go to the Commissioner if he was dissatisfied with this verdict.

13. On 28 April 2009 the complainant expressed his dissatisfaction at the handling of his request for information:

'On 22/12/08 I wrote to you requesting certain information, as given in the attached letter. On 23/12/08 I was informed that ACE would provide the information within 20 working days. On 20/01/09 I received a letter from ACE stating that ACE was refusing my request under section 14 of the FOIA because the request 'is vexatious'. No explanation whatsoever was given for taking this view.

I am therefore making this complaint and request you to review what has happened. .. In order to put things right, I would like [the public authority] to provide me with the information requested...'

14. On 14 May 2009 the complainant chased up his internal review and was told that the public authority was not inclined to respond to him further. It cited an email dated 9 September 2008 that stated:

'Over the past few months, we have received an inordinately and frankly, overwhelming volume of correspondence from you, containing numerous statements, demands, questions and requests for information. You have exhausted our complaints process culminating in a 40-page report from the Independent Complaints Reviewer and significant follow up action on our part including the payment to you of £500 [the Commissioner notes that this paragraph could have been clearer].

Your RRA section 65 is another voluminous document, and I consider that we ought to respond to it (despite the fact that much of it is a rehashing of your complaint and the matters dealt with therein). Your further and related correspondence, which covers substantially the same grounds, is not

helpful. We have done a great deal to meet your demands, requests for information etc. We are however, not obliged to respond to correspondence where it becomes vexatious. I consider, on the basis of the history of that matter, and the somewhat incessant repetitive and circular nature of your correspondence, that we have already reached that point as a matter of law.

We will not be responding to further correspondence from you on these matters. As previously advised, you will have our response on the section 65 questionnaire, but we cannot expend our charitable resources unnecessarily by continually responding to related correspondence which is vexatious.'

The Investigation

Scope of the case

15. On 4 June 2009 the complainant contacted the Commissioner to complain about the way his request for information dated 22 December 2008 had been handled. The complainant specifically asked the Commissioner to consider the following points:
 - That there was no evidence that the public authority had taken the request seriously in this case. In particular the refusal notice lacks any reasons as to why the request is vexatious.
 - That he is able to prove through previous correspondence that he has gone out of his way to assist the public authority in dealing with his request; explaining that he has previously only asked if such documents exist.
 - That he believes that the information requested was embarrassing for the public authority and this is why it refuses to provide it.
 - That he believes that the information requested would have been provided to anyone else and that the reason it has been refused is because he is the requestor.
16. The Commissioner has determined that the information relevant for part 1 of the request, if held, would be the complainant's own personal data. He therefore believes that this element of the request should have been considered to be a Subject Access Request (SAR) under section 7 of the Data Protection Act (the 'DPA') He has not therefore considered any arguments that relate to this part of the request directly when assessing the application of section 14(1) to the remainder. Further comment about the treatment of this part of the request can be located in the 'Other Matters' part of this Notice. The Commissioner will only consider the application of section 14(1) to elements 2-5 of the original request.

Chronology

17. On 13 August 2009 the Commissioner wrote to the public authority to ask for it to provide detailed arguments about its position. On 20 August 2009 the Commissioner wrote to the complainant to confirm the scope of his investigation.
18. On 25 August 2009 the complainant explained that he was content with the scope being the request dated 22 December 2009, corrected an error in the Commissioner's letter and provided further evidence.
19. On 17 September 2009 the Commissioner telephoned the public authority to ask for a response to be provided to his letter dated 13 August 2009. The public authority informed him that it had not been received. The Commissioner emailed a new copy of the letter to it and agreed to allow twenty more working days.
20. On 14 October 2009 the public authority provided the Commissioner with its arguments about why it felt the request was vexatious. It explained the background of the request and explained why that it felt that all five parts of his guidance were relevant in this case.

Analysis

Substantive Procedural Matters

21. Section 14(1) is an exclusion that provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious”.
22. When assessing vexatiousness the Commissioner adopts the view of the Information Tribunal (the ‘Tribunal’) decision in *Ahilathirunayagam v Information Commissioner’s Office* (EA/2006/0070) (paragraph 32); that it must be given its ordinary meaning so would be likely to cause distress or irritation. The enquiry is based on objective standards. This has been reaffirmed by the Tribunal in *Gowers v Information Tribunal and London Camden Borough Council* (EA/2007/0114) (paragraph 27). The Commissioner has developed a more detailed test in accordance with his guidance but it is important to understand that it has developed from these general principles and these guide him in applying his test.
23. The Commissioner wishes to comment about the point that was made by the complainant about the Act being applicant blind and the fact that he is the requestor should not be relevant. The Commissioner endorses the Tribunal’s consideration of this point in *Mr J Welsh v the Information Commissioner* (EA/2007/0088) (paragraph 21) where it stated:

‘In most cases, the vexatious nature of a request will only emerge after considering the request in its context and background. As part of that context, the

identity of the requester and past dealings with the public authority can be taken into account. When considering section 14, the general principles of FOIA that the identity of the requester is irrelevant, and that FOIA is purpose blind, cannot apply. Identity and purpose can be very relevant in determining whether a request is vexatious. It follows that it is possible for a request to be valid if made by one person, but vexatious if made by another; valid if made to one person, vexatious if made to another.'

24. The Commissioner has therefore taken into account the complainant's previous interaction with the public authority when determining whether the request can be correctly characterised as vexatious. This means that even if the request appears reasonable in isolation, it may be vexatious when considered in context.
25. The Commissioner has issued Awareness Guidance 22 as a tool to assist in the consideration of what constitutes a vexatious request. This guidance explains that for a request to be deemed vexatious the Commissioner will consider the context and history of the request as well as the strengths and weaknesses of both parties' arguments in relation to some or all of the following five factors to reach a reasoned conclusion as to whether a reasonable public authority could refuse to comply with the request on the grounds that it is vexatious:
 - (1) whether compliance would create a significant burden in terms of expense and distraction;
 - (2) whether the request is designed to cause disruption or annoyance;
 - (3) whether the request has the effect of harassing the public authority or its staff;
 - (4) whether the request can otherwise fairly be characterised as obsessive; and
 - (5) whether the request has any serious purpose or value.
26. When considering the public authority's reliance upon section 14(1), the Commissioner has had regard to the Information Tribunal's decision in *Mr J Welsh v the Information Commissioner* (EA/ 2007/0088)(at paragraph 26). In that case, the Tribunal spoke of the consequences of determining a request vexatious. It pointed out that these are not as serious as those of finding vexatious conduct in other contexts and therefore the threshold for vexatious requests need not be set too high.
27. The public authority has indicated in its arguments to the Commissioner that they believe that all five factors are satisfied by this request and this led it to the conclusion that this request was vexatious. The Commissioner has looked at each of these factors in turn.

Does the request constitute a significant burden in terms of expense and distraction?

28. When considering this element of his test the Commissioner endorses the Tribunal's approach in *Welsh* (in paragraph 27). It stated that whether a request constitutes a significant burden is

“...not just a question of financial resources but also includes issues of diversion and distraction from other work...”

29. The Commissioner therefore expects a public authority to show that complying with the request would cause a significant burden both in terms of costs and also diverting staff away from their core functions.
30. The Tribunal in the case of *Gowers v the Information & London Borough of Camden* (EA/2007/0114) emphasised that previous requests received may be a relevant factor:

‘...that in considering whether a request is vexatious, the number of previous requests and the demands they place on the public authority’s time and resources may be a relevant factor’ (paragraph 70 of its decision).

31. It is also necessary for the Commissioner to take into account the complainant’s previous interaction with the public authority when making a determination of whether the request represents a significant burden to a public authority as noted above. This means that even if the request does not impose a significant burden when considered in isolation, it may do so when considered in context.
32. The public authority asked for the Commissioner to take into account the following arguments which the Commissioner considers to be relevant to the burden of the request:
- The public authority had responded to over a hundred emails from the complainant about the overall issue (the grant).
 - That the substantive issue has already been independently investigated twice by outside bodies, who found in the public authority’s favour about the matter that is being pursued. In particular, it told the Commissioner that the National Audit Office had already checked all the relevant files and emails and found nothing ‘untoward’.
 - That the public authority has also responded in accordance with its obligations under the Race Relations Act to a 65 page questionnaire from the complainant.
 - That the public authority is also defending an action about this matter in legal proceedings.
33. The public authority explained that it believed that parts 2 -5 were causing a burden to its staff. For parts 4 and 5 it explained that it published all of its policies, procedures and tenders on its website and that they have been considered to be compliant with both the Office of Government Commerce rules and the European Union procurement rules. It argued that to provide the same documents as are available would also cause unnecessary expense.

34. When considering the facts the Commissioner is satisfied that a great deal of the public authority's time has already been spent dealing with previous requests and with complainant's associated correspondence. The substantive issues have already been considered in two independent investigations and the request of 22 December 2008 was covering the same issues. Taken in the context of the hours spent dealing with the previous requests and the resulting distraction from the public authority's core charitable purpose the Commissioner considers that to comply with the request of 22 December 2008 would impose a significant burden in terms of both expense and distraction.
35. The Commissioner has considered the reasoning in the Tribunal decision of *Coggins v Information Commissioner* [EA/2007/0130] about what constitutes 'a significant administrative burden' and is satisfied that the overlapping requests in this case if dealt with without utilising section 14(1) would have contributed to a 'significant distraction from its core functions' (paragraph 27 of its decision).
36. The Commissioner has also considered in this determination the approach of the Information Tribunal in *Betts v The Information Commissioner* (EA/2007/0109), where the Tribunal indicated that it would be reasonable for the public authority to consider its past dealings with the complainant, particularly in relation to its experience of answering one request which would likely lead to still further requests. This had the effect of perpetuating the requests and adding to the burden placed on the authority's resources. The Tribunal said:
- '...it may have been a simple matter to send the information requested in January 2007, experience showed that this was extremely likely to lead to further correspondence, further requests and in all likelihood complaints against individual officers. It was a reasonable conclusion for the Council to reach that compliance with this request would most likely entail a significant burden in terms of resources.'*
37. The Commissioner has examined the pattern of the requests and is also satisfied that this was what was happening in this case.
38. Assessing all the circumstances of the case the Commissioner has found that the particular request would impose a significant burden in terms of expense and distraction for the reasons outlined above. He therefore finds in favour of the public authority on this factor. The Commissioner finds that this is a significant factor in favour of applying section 14(1).

Was the request designed to cause annoyance and disruption?

39. The public authority explained that due to the general disagreement about the grant it appeared to it that the complainant was making multiple requests with the intent to cause annoyance and disruption.
40. The Commissioner has considered the evidence that has been presented and is not convinced by the public authority's arguments in respect to this factor. The Commissioner believes that the complainant genuine intent is to prove, or obtain

evidence that disproves, that the public authority complied with the Race Relations Act.

41. The Commissioner therefore believes that this factor does not support the application of section 14(1) in this case.

Did the request have the effect of harassing the public authority or its staff?

42. The complainant contends that there is no evidence of any of his requests harassing the public authority or its staff and in fact he presented evidence of some of his emails attempting to mitigate the burden experienced by allowing the public authority extra time and informing it that it need only confirm whether not information was held in previous requests.
43. The public authority claimed that the volume of previous correspondence and its nature led to its staff being harassed unnecessarily. The public authority pointed to some distress experienced by its staff as a result of the previous requests. It showed the Commissioner an internal email dated 5 September 2008 that represented the opinions of its staff at that time. He has considered this evidence and regards it as showing real distress.
44. The Commissioner notes that the tone of the correspondence remains cordial in all instances. It appears that it is the accusations of the complaint that have caused distress in this instance rather than the correspondence alone. The Commissioner accepts it was not the intention of the complainant to cause distress in this case.
45. However, the Commissioner is satisfied that the request in its context did have the effect of harassing the public authority. The Commissioner has considered the Tribunal decision in *Ahilathirunayagam v Information Commissioner's Office and London Metropolitan University* (EA/2006/0070) and its view of what made a request have the effect of harassing the public authority (at paragraph 32):

(iv) The background history between the Appellant and the [public authority] ...and the fact that the request, viewed as a whole, appeared to us to be intended simply to reopen issues which had been disputed several times before

46. The Commissioner believes that taking into consideration the context of the request and the fact the complaint has been investigated by two independent bodies, the request implies he is attempting to reopen issues that have already been dealt with in the appropriate channels and therefore this has the effect of harassing the authority. The Commissioner therefore believes that this factor also supports the application of section 14(1) in this case.

Can the request be characterised as obsessive?

47. The public authority indicated that given the volume, frequency and nature of the requests and correspondence, the fact that the same complaint had already been investigated by two independent bodies, it believed that this request was obsessive.

48. During his investigation the Commissioner invited the public authority to expand on its arguments in relation to this factor. The public authority indicated that it felt that the requests followed a similar theme, mainly concerning the process leading to the special condition in the grant and the subsequent delays, and that this issue had already been considered twice.
49. In addition it informed the Commissioner that it had responded in detail to a 65 page questionnaire on this very matter and that the nature of this request meant that it could be seen as an obsessive.
50. The Commissioner accepts that at times there is a thin line between obsession and persistence and each case should be determined on its own facts. In this case, the Commissioner considers that the nature of the request falls within the definition of obsession, as there is evidence that the matters related to the information requested by the complainant have been considered by other bodies and further information has been provided where necessary for the legal process. Further information may also be made available should the court feel it necessary through the separate process of disclosure.
51. He therefore believes the public authority was correct in characterising this request as obsessive and finds in favour of the public authority on this factor.

Did the request have value and/or a serious purpose?

52. The complainant argued his request has value and a serious purpose since full answers will provide additional evidence to enable him to go to court.
53. The public authority believes that this issue has already been considered in two forums and that the request has no further value as the issues that the complainant is concerned about have been addressed in them.
54. In addition the public authority has already provided the complainant with an answer to his questionnaire which is the requirement imposed on it by law.
55. Further the public authority informed the Commissioner that for parts 4 and 5 there was no value as the information that it uses in terms of policies and procedures are published as a matter of course.
56. In balancing the arguments, the Commissioner believes that the request does have a serious purpose but does not have value in the circumstances. He believes the issues raised have already been considered before and it is disproportionate in the circumstances to continue in this instance. He has considered the context of the request and the fact is that the grant is a discretionary grant of public money, that the public authority's role is to administer it and it gave the complainant the grant in this instance, albeit with some delay. He accordingly finds in favour of the public authority on this factor.

Could a reasonable public authority refuse to comply with the request on the grounds that it is vexatious?

57. On the basis of the circumstances of this case, the Commissioner finds that a reasonable public authority would find the complainant's request of 22 December 2008 vexatious. In arriving at this decision, the Commissioner has had regard to the Information Tribunal's decision in *Mr J Welsh v the Information Commissioner* [EA/ 2007/0088], where the Tribunal commented that the threshold for vexatious requests need not be set too high. He notes that it is not necessary for every factor to be made out from his guidance. In this case he has found four factors are satisfied in this case. The Commissioner's decision in this case therefore rests on the complainant's request causing a significant burden, whilst having limited value in the circumstances, having the effect of harassing the public authority and being obsessive.

Procedural Requirements

58. One specific issue which the complainant asked the Commissioner to consider was that the refusal notice lacked any reasons as to why the request was considered to be vexatious. Section 17(5) of the Act 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. "

59. In its refusal notice of 19 January 2009, which was issued within the statutory time for compliance, the public authority stated that it was refusing the request under section 14 of the Freedom of Information Act 2000. The Commissioner therefore finds that the public authority complied with section 17(5) of the Act, and does not accept the complainant's contention that the lack of explanation was evidence of the public authority's failure to consider the request properly.

The Decision

60. 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:
- *It has correctly applied section 14(1) to the four outstanding elements of the request for information dated 22 December 2008 that were not the complainant's personal data.*
 - *It complied with section 17(5) by citing section 14 within its refusal notice.*

Steps Required

61. The Commissioner requires no steps to be taken.

Other matters

62. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
63. Section 7 of the DPA gives an individual the right to request copies of personal data held about them – this is referred to as a right of Subject Access. As the information being sought was in fact the complainant's personal data this request should have been dealt with as a subject access request rather than a request under the Act. The Commissioner encourages public authorities to consider requests under the correct regime in the first instance. In the Commissioner's opinion responsibility for applying exemptions and determining whether a request should be considered under the Act or the DPA rests with the public authority and not the requestor.
64. Under section 42 of the DPA the Commissioner can make an assessment of the public authority's compliance with the DPA. An assessment under section 42 of the DPA is a separate legal process than that under section 50 of the FOI Act. The Commissioner is in the process of undertaking such an assessment in respect of the public authority's handling of this request and will communicate the outcome of this assessment to the complainant in due course.

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 26th day of November 2009

Signed

**Lisa Adshead
Senior FOI Policy Manager**

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

Legal Annex

Section 1

General right of access to information held by public authorities

Section 1 of the Act provides that:

- (1) Any person making a request for information to a public authority is entitled—
 - (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to him.
- (2) Subsection (1) has effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.
- (3) Where a public authority—
 - (a) reasonably requires further information in order to identify and locate the information requested, and
 - (b) has informed the applicant of that requirement,the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.

Section 14

Vexatious or repeated requests

Section 14 of the Act provides that:

- (1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
- (2) Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

Section 17

Refusal of Request

Section 17 of the Act provides that:

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

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

(2) Where—

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

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

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

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

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

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

Section 40(1)

Personal Data

(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.