

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 6 May 2010

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

Summary

In September 2007, the complainant requested a copy of the 2006 report of the Office of the Surveillance Commissioner's (OSC) Inspection Report relating to the BBC. The complainant also requested a copy of the OSC's covering letter and the BBC response to the report. The public authority provided the complainant with the information requested but withheld some of the information under the provisions of section 31 (the Law enforcement exemption), section 40 (personal data) and section 42 (legal professional privilege) of the Freedom of Information Act 2000 (the Act). The Commissioner found that the public authority correctly applied sections 31(1) (a) and 42(1) to the withheld information, however the Commissioner found that the BBC had breached section 10(1) of the Act in responding to the complainant's request outside the statutory time limit.

The Commissioner's Role

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

The Request

2. On 4 September 2007, the complainant emailed the BBC with the following information request:

"I understand that the BBC is subject to inspections by the Office of Surveillance Commissioners [the OSC]. With respect to the latest inspection report, I would like to request a copy of:

1. The OSC's covering letter,
 2. The report's conclusions,
 3. The report's recommendation,
 4. If possible, a full copy of the report, and
 5. Your response to the OSC,"
3. On 5 October 2007, the public authority responded to the request. In relation to questions 1 – 4 the BBC enclosed a copy of the OSC covering letter and a redacted copy of the OSC report citing sections 31 (1)(a), (b), (d) and (g) of the Act on the basis that disclosure would be likely to prejudice the prevention or detection of crime, the apprehension or prosecution of offenders, the collection of the licence fee and the BBC's ability to discharge its public functions in respect of such matters. In relation to question 5, the BBC enclosed a redacted version of their response to the OSC citing section 42 of the Act (legal professional privilege). The Commissioner notes that the BBC also withheld some information on the basis of section 40 of the Act (personal information) but failed to advise the complainant of this fact.
4. On 6 October 2007, the complainant requested the public authority to conduct an internal review of its decision to withhold certain information.
5. On 31 October 2007, the internal review was completed and upheld the original decision.

The Investigation

Scope of the case

6. On 4 January 2008, the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
1. the complainant did not believe that the BBC had demonstrated that the public interest lay in withholding all or parts of the report.

2. the complainant did not accept that the exemptions under sections 31 and 42 had been correctly applied
7. The complainant advised he did not wish to pursue the BBC's application of section 40 (personal information) to some of the withheld information. Therefore the information withheld under this exemption is not addressed in this Notice:

Chronology

8. Regrettably the Commissioner was unable to commence his investigation in this case until August 2009, owing to the large volume of complaints under consideration.
9. The Commissioner wrote to the BBC on 5 August 2009 and asked a number of detailed questions in relation to its application of the exemptions. The Commissioner also requested a copy of the withheld information.
10. On 8 September 2009, the Commissioner sought the outstanding response from the BBC.
11. On 3 February 2010, the Commissioner served an Information Notice on the BBC under section 51 of the Act, as it had still not provided him with a response to his letter of 5 August 2009.
12. On 26 February 2010, the public authority provided the Commissioner with the information he had requested.

Findings of fact

13. The OSC is not a public authority and is therefore not subject to this Act.
14. According to its website, the OSC's aim is to:

"provide effective and efficient oversight of the conduct of covert surveillance and covert human intelligence sources by public authorities in accordance with:

- *Part 111 of the 1997 Act [the Police Act 1997]*
- *Parts ii and iii of RIPA [Regulation of Investigatory Powers Act 2000]."*

15. Covert surveillance activities are summarised and explained on the OSC's website¹ as follows:

"Covert activities

Part II of the RIPA and RIP(S)A put covert surveillance on a statutory basis enabling the public authorities identified in the legislation, to carry out such operations without breaching human rights.

They identify three categories of covert activity:

1 Intrusive surveillance

This is covert and carried out in relation to anything taking place on any residential premises or in any private vehicle. It involves a person on the premises or in the vehicle, or is carried out by a surveillance device. Except in cases of urgency, it requires a Commissioner's approval to be notified to the authorising officer before it can take effect. The power is available to the same law enforcement agencies as under the 1997 Act.

2 Directed surveillance

This is covert but not intrusive (and not an immediate response to events) but undertaken for a specific investigation or operation in a way likely to obtain private information about a person. It must be necessary and proportionate to what it seeks to achieve and may be used by the wide range of authorities identified in the legislation.

3 Covert Human Intelligence Sources (CHIS)

The use or conduct of someone who establishes or maintains a personal or other relationship with a person for the covert purpose of obtaining information. The authorising officer must be satisfied that the authorisation is necessary, that the conduct authorised is proportionate to what is sought to be achieved and that arrangements for the overall management and control of the individual are in force. CHIS may be used by the wide range of authorities identified in the legislation.

Authorisations for directed surveillance and CHIS do not have to be notified to Commissioners but must be available for review when Commissioners, Assistant Commissioners and Inspectors visit the various authorities."

16. The BBC has confirmed to the Commissioner that the OSC report which is the subject of this complaint includes the following types of information:

¹ http://www.surveillancecommissioners.gov.uk/about_covert.html

- Information detailing the number of authorisations granted under the Regulation of Investigatory Powers Act for the use of equipment in 2006,
- The process undertaken when investigating unlicensed premises, and
- Information about detection equipment.

Analysis

Exemptions

Section 31 – Law Enforcement

17. The BBC cited the following four provisions of section 31 as its basis for refusing to provide the withheld information:
 - Section 31(1)(a) - where disclosure would or would be likely to, prejudice the prevention or detection of crime
 - Section 31(1)(b) - where disclosure would or would be likely to, prejudice the apprehension or prosecution of offenders
 - Section 31 (1)(d) - where disclosure would or would be likely to, prejudice the assessment or collection of any tax or duty or of any imposition of a similar nature; and
 - Section 31(1)(g) - where disclosure would or would be likely to, prejudice the exercise by any public authority of its functions for any of the purposes specified in subsection (2).
18. The Commissioner has concluded that the most practical way to assess this case is to focus first on section 31(1)(a). Where he finds that section 31(1)(a) is not applicable, he will consider the other subsections considered by the BBC.
19. When considering the application of a prejudice-based exemption, the Commissioner adopts the three step process laid out in the Information Tribunal case of *Hogan v the ICO and Oxford City Council* (EA/2005/0026 and 0030):

"The application of the 'prejudice' test should be considered as involving a numbers of steps. First, there is a need to identify the applicable interest(s) within the relevant exemption.....Second, the nature of 'prejudice' being claimed must be consideredA third step for the decision-maker concerns the likelihood of occurrence of prejudice" (paragraphs 28 to 34).

Step 1 – relevant applicable interests

20. In the case of the exemption under section 31(1)(a), the relevant applicable interest is the prevention or detection of crime.

Step 2 – nature of the prejudice

21. When considering the nature of the prejudice, the Commissioner has considered the Tribunal's further comments in *Hogan* (paragraph 30):

"An evidential burden rests with the decision maker to be able to show that some causal relationship exists between the potential disclosure and the prejudice and that the prejudice is, as Lord Falconer of Thoronton has stated, "real, actual or of substance" (Hansard HL, Vol. 162, April 20, 2000, col. 827). If the public authority is unable to discharge this burden satisfactorily, reliance on 'prejudice' should be rejected. There is therefore effectively a de minimis threshold which must be met."

22. Therefore, the Commissioner takes the view that, for the exemption to be engaged, the disclosure of the information must have a causal effect on the applicable interest, this effect must be detrimental or damaging in some way, and the detriment must be more than insignificant or trivial.
23. If he concludes that there is a causal relationship between potential disclosure and the prejudice outlined in the exemptions *and* he concludes that the prejudice that could arise is not insignificant and is not trivial, the Commissioner will then consider the question of likelihood. In doing so, he will consider the information itself and the arguments put forward by the BBC in this regard.

Step 3 – standard of proof

24. It is not clear from the BBC's submissions whether it is arguing that prejudice would arise or whether it is arguing that it would be likely to arise. It set out both options in its refusal notice and in its internal review however, in its letter to the Commissioner dated 26 February 2010, it advised "the BBC maintains its position that the information at issue is exempt....as disclosure **would be likely** to prejudice...".
25. Where the public authority has claimed that disclosure is only **likely** to give rise to the relevant prejudice then, in accordance with the Tribunal's decision in the case of *John Connor Press Associates Limited v The Information Commissioner* (EA/2005/0005), "*the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk*". Where the public

authority has claimed that disclosure **would** give rise to the relevant prejudice then the Tribunal has ruled, in the *Hogan* case, that there is a stronger evidential burden on the public authority, and the prejudice must be at least more probable than not.

26. In *McIntyre v The Information Commissioner and the Ministry of Defence* (EA/2007/0068), which involved the application of the section 36 exemption, the Tribunal specified which standard of proof should apply when the level of prejudice was not designated by the public authority's qualified person:

"Parliament still intended that the reasonableness of the opinion should be assessed by the Commissioner but in the absence of designation as to level of prejudice that the lower threshold of prejudice applies, unless there is other clear evidence that it should be at the higher level."

27. Having considered the lack of clarity on the BBC's part, the Commissioner has decided that he will consider whether the lower threshold "would be likely to" applies.

Evidence of likely prejudice

28. In *Hogan* the Tribunal referred to the "evidential burden that rested with the decision maker to be able to show that some causal relationship exists between the potential disclosure and the prejudice". However, in *England v ICO and London Borough of Bexley* (EA/2006/0060 & 0066) the Tribunal stated that it was impossible to provide:

"evidence of the causal link between the disclosure of the list [of empty properties] and the prevention of crime. That is a speculative task, and as all parties have accepted there is no evidence of exactly what would happen on disclosure, it is necessary to extrapolate from the evidence available to come to the conclusion about what is likely".

29. Taking into account *Hogan* and other adjudications of the Tribunal, the Commissioner takes the view that, although unsupported speculation or opinion will not be taken as evidence of the nature or likelihood of prejudice neither can it be expected that public authorities must prove that something definitely will happen if the information in question is disclosed. Whilst there will always be some extrapolation from the evidence available, the Commissioner expects the public authority to be able to provide some evidence (not just unsupported opinion) to extrapolate from.

30. The Commissioner has accordingly assessed the weight of the BBC's arguments based on the three step test outlined above.

The public authority's submissions

31. In its submissions of 5 October 2007 and 26 February 2010, the BBC commented on the type of information at issue arguing it was exempt as it could be used by a person to evade the television licence fee.
32. The BBC's position is that it has a duty to enforce the television licensing system and that to do so it was essential to maintain effective deterrents against television licence non-compliance. Disclosing details of deterrents such as detection methodologies and enforcement strategies would be likely to have a negative impact on the authority's ability to prevent and detect licence fee evasion, collect the licence fee and on its ability to discharge its public functions in respect of such matters.
33. The Commissioner accepts that covert surveillance is a useful tool in the prevention or detection of crime and as noted covert surveillance covers a range of activities. The nature of covert surveillance depends on the investigator or in the case of the BBC, the monitoring officer achieving and maintaining a tactical advantage over those who intend to break the law - in this case by evading the television licence fee. Any action, including disclosure of information which puts at risk this tactical advantage, could in the Commissioner's view, give rise to a variety of significant and non-trivial outcomes, adversely affecting the BBC's ability to prevent or detect crime. The Commissioner also accepts that watching TV without a valid licence is a criminal offence.
34. Applying the model of the three step process outlined above, the Commissioner focussed his attention on matters which relate to the interest applicable in the exemption, namely the prevention or detection of crime. He has concluded there is a causal link between the disclosure of information related to authorisations granted under RIPA, investigative processes and information about detection equipment and the prevention or detection of crime.
35. Having identified the applicable interests and having accepted that disclosure of tactical and operational information about surveillance activities could, theoretically, give rise to a prejudicial effect on this interest, the Commissioner went on to consider whether disclosure of the withheld information would be likely to result in this outcome.

36. The Commissioner has examined the withheld information in this case and has considered whether disclosure of that information would adversely affect the BBC's ability to prevent or detect criminal activity. Having reviewed the information, the Commissioner accepts that disclosure would be likely to give rise to prejudice to the prevention and detection of crime.
37. The Commissioner considers that the withheld information, in the context of television licensing, is extremely sensitive and he is satisfied that disclosure would be likely to undermine the tactical advantage and ability of the BBC's monitoring officers to effectively use covert surveillance. The Commissioner is therefore satisfied that the information in question engages the exemption at section 31(1)(a).
38. Having concluded that the withheld information engaged this exemption, the Commissioner went on to consider whether the public interest in maintaining the exemption outweighed the public interest in disclosure.

Public interest arguments in favour of disclosing the requested information

39. In its letter to the Commissioner, the BBC acknowledged that disclosure of information about the use of RIPA, investigatory processes and covert detection equipment may demonstrate to the general public that the BBC is exercising its functions in a fair and impartial way, and that people will not be unfairly subjected to detection. This is particularly important as the use of covert activities can have an impact on a person's privacy. Releasing the information would reinforce the legitimacy of the process that BBC undertakes and provide the public with some assurances about how appropriately the detection equipment is used.
40. The BBC also acknowledged that disclosure would help ensure public funds are being appropriately applied by ensuring the TV licensing system is being effectively and efficiently run and ensuring value for money is being obtained.
41. In its correspondence with the complainant, the BBC acknowledged the complainant's view that the public "has few opportunities to judge whether activities under RIPA carried out in its name are being executed properly ... and there is a strong public interest in ensuring that the BBC is acting within the law...".
42. In its correspondence with the complainant, the BBC argued that the public interest is best served by the fact that the OSC as an independent body monitors the BBC's compliance with legislation

regarding detection. The BBC has also a number of policies in place to ensure it is compliant with the legislation, including a RIPA audit. The BBC argued that there are already sufficient safeguards in place to ensure that TV licensing is exercising its functions appropriately and proportionately and that people are not being unfairly subjected to detection. The BBC also explained that it is required to satisfy the National Audit Office (NAO) as to the value for money of the collection enforcement arrangements and is accountable for the economy, efficiency and effectiveness of such arrangements. The Commissioner notes the BBC's points, they do not diminish the relevance of the public interest factors in favour of disclosure but they indicate that relevant systems of scrutiny are in place; the public interest in disclosure would be higher if these systems were not in place or there was cogent evidence that the systems were not functioning adequately.

43. In that same correspondence, the BBC noted the complainant's comments that the BBC had faced repeated criticism from the members of the public and MPs over tactics it employed in TV licensing enforcement which in the complainant's view strengthened the argument for disclosure. The BBC however, was unclear as to what tactics the complainant was referring to. The Commissioner presumes the complaint's point is suggesting that there has been public debate as to whether use of RIPA is disproportionate, when considering the nature of the crime. The Commissioner acknowledges that there has been a general public debate on TV licensing enforcement, of which RIPA is a component. This is therefore a valid factor in favour of disclosure.

Public interest arguments in favour of maintaining the exemption

44. The BBC argued that releasing the information would have a negative effect on the public interest of licence fee payers and adversely affect the value for money which is being obtained in two key ways:
- The BBC would receive less of the allocated licence fee to use to fulfil its public purpose; and
 - The BBC would need to spend more of the licence fee on additional enforcement measures.
45. Finally the BBC argue that it is in the public interest that the TV licensing system is efficiently run. The BBC has reduced the cost of collection from 6.2% of the total licence fee collected in 1991/2, when it took over from the Home Office, to 4.1% for the financial year 2006/07. According to the BBC this demonstrates that the TV licensing systems are being efficiently run. A key part of this success has been

the use of detection equipment as a significant deterrent to prevent and detect licence fee evasion.

Balance of the public interest arguments

46. The Commissioner considers that it is in the public interest that the BBC's ability to do so is not prejudiced through licence fee evasion and there is a strong public interest in protecting the licence fee payer from the impact of crime in the form described.
47. The Commissioner considers that it is in the public interest to ensure the BBC can carry out its enforcement activities effectively. The Commissioner accepts that one way this can be achieved is through the use of deterrents including covert surveillance which encompasses RIPA authorisations, investigation processes and the use of detection equipment. If the details of the use and deployment of such activities are made public it would be likely to have a negative impact on the BBC's ability to prevent and detect licence fee evasion. The Commissioner accepts that without an effective deterrent, licence fee evasion would increase, which would be to the detriment of the majority of the public who comply with TV licensing requirements. The Commissioner accords significant weight to maintaining the exemption.
48. Whilst the Commissioner acknowledges a number of relevant public interest factors in favour of disclosure, he has only accorded them limited weight, he has made this finding having considered the content of the information and the context in which the current RIPA system operates, acknowledging the fact that there is an independent monitoring mechanism in place.
49. For these reasons, the Commissioner finds that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
50. As the Commissioner has found that the information requested is exempt under section 31(1)(a), he is not required to consider the application of sections 31(1)(b), (d) and (g) to the same information.

Section 42(1) – legal professional privilege

51. Section 42(1) of the Act provides that information is exempt from disclosure if a claim to legal professional privilege could be maintained in legal proceedings. There are two types of privilege, legal advice privilege and litigation privilege. Legal professional privilege protects confidential communications between professional legal advisers (including an in-house legal adviser) and clients from being disclosed.

52. The common law principle of legal professional privilege protects the confidentiality of communications between a lawyer and client. It has been described by the Information Tribunal in the case of *Bellamy v the Information Commissioner and the DTI* [Appeal no EA/2009/0070] as:

"a set of rules or principles which are designed to protect the confidentiality of legal or legally related communications and exchanges between the client and his, her or its lawyers, as well as exchanges which contain or refer to legal advice which might be imparted to the client, and even exchanges between the clients and [third] parties if such communication or exchanges come into being for the purpose of preparing for litigation."
(paragraph 9)

53. The BBC has applied the section 42(1) exemption to three paragraphs of information contained within the letter from the BBC Head of Revenue Management responding to the OSC's report as well as three sentences from the OSC report, claiming that the information constituted legal advice relating to RIPA. The complainant had expressed the view that the information redacted may be a matter of policy. Having examined the information in question the Commissioner is satisfied that it falls within the terms of litigation advice, in that the relevant communications fall within the categories as set out in *Bellamy*.
54. Having satisfied himself that the dominant purpose of all the communications being withheld related to the provision of legal advice, the Commissioner went on to consider whether there were any circumstances in which privilege may be considered to have been waived or lost. The BBC has advised the Commissioner that TV licensing requested this advice from a lawyer within their own legal team. The advice was provided to a limited number of people with TV licensing along with a summary to OSC for the purposes of its investigation. The advice was not disseminated any further. The BBC advised it was not prepared to waive privilege because of the perceived negative impact disclosure would have on their enforcement activities. The Commissioner has not seen any evidence to suggest that the BBC has waived privilege in this case.
55. For the reasons set out above, the Commissioner is satisfied that the exemption under section 42(1) is engaged. Section 42(1) is, however, a qualified exemption and therefore the Commissioner has considered whether, in all the circumstances of the case, the public interest in

maintaining the exemption outweighs the public interest in disclosing the information.

Public interest arguments in favour of disclosing the information

56. In its letter to the Commissioner, the BBC acknowledged there is a public interest in reassuring the public that the BBC is detecting television receivers lawfully, and as such, is acting appropriately and proportionately. The Commissioner is of the view that there is generally a legitimate public interest in disclosing information which will help determine whether or not a public authority has acted appropriately.

Public interest arguments in favour of maintaining the exemption

57. The BBC notes the Commissioner's consideration of the public interest in his guidance on section 42² which states:

"The general public interest inherent in the exemption will always be strong due to the importance of the principle behind legal professional privilege: safeguarding openness in all communications between client and lawyer to ensure access to full and frank legal advice, which in turn is fundamental to the administration of justice. The tribunal recognised this in Bellamy v Information Commissioner (EA/2005/0023; 4 April 2006), where it said: "there is a strong element of public interest inbuilt into the privilege itself. At least equally strong countervailing considerations would need to be adduced to override that inbuilt public interest".

58. The BBC maintained that it operates in a regulated environment and its decisions and actions must be taken in a fully informed legal context. In addition, the BBC requires legal advice for the effective performance of its operations and that advice must be given by lawyers who are fully informed about the factual background of its operations.
59. The Commissioner is mindful of the fact that, generally speaking, legal advisers must be able to present a full and candid account of their advice – including the strengths and weaknesses of the client's position.
60. The Commissioner has also considered the question of what constitutes "live" legal advice. This definition very much depends on the specific circumstances as in some cases, advice can remain relevant for a long

² The Exemption for legal professional privilege (Version 2 11 November 2008)

time, whilst in others it may be less relevant where legislation and case law have changed rapidly. For example, in *Kessler v Information Commissioner and HMRC* (EA/2007/0043), advice which was weeks old was described as “relatively recent” whilst in *Kitchener v Information Commissioner and Derby City Council* (EA/2006/0044), advice which was 6 years old was described as “still relatively recent” whereas in *Mersey Tunnel Users Association v Information Commissioner and Merseytravel* (EA/2007/0052), advice which was over 10 years old was considered “not recent”. In this particular case the legal advice dated from May 2006, so was under two years old at the time DCSF conducted its internal review.

Balance of the public interest

61. In reaching his decision the Commissioner has carefully considered the great deal of weight that is placed on the right of the BBC to protect advice it receives and holds which is subject to the doctrine of legal professional privilege. However, while it will sometimes be appropriate to overturn legal professional privilege where weighty public interest factors favour disclosure, there remains a strong public interest in protecting the confidentiality of legal advice. The Commissioner is of the view that public authorities need to be able to rely on legal professional privilege as a mechanism to help ensure that they are able to obtain accurate and relevant legal advice. This is particularly relevant in the case at hand, where the BBC are engaged in ongoing investigations into non-compliance therefore the advice in this case remains live and relevant.
62. Having considered all the arguments, the Commissioner finds that, in all the circumstances of this case, the public interest in maintaining the exemption under section 42(1) outweighs the public interest in disclosure of the information.

Procedural Requirements

Section 10(1): time for compliance

63. Section 10(1) of the Act states that a public authority must comply with section 1(1) promptly and in any event not later than the twenty working days after the request has been received. In this case, the complainant submitted his request on 4 September 2007 and the BBC provided some information in its response of 5 October 2007. This was outside the twenty day time limit.
64. In light of the above the Commissioner finds that the BBC breached section 10(1) of the Act in responding outside the time limit.

The Decision

65. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- The BBC correctly withheld some information under section 31(1)(a) of the Act
 - The BBC correctly withheld some information under section 42(1) of the Act
66. However, the Commissioner has also decided that the BBC breached section 10(1) of the Act in responding outside the time limit.

Steps Required

67. The Commissioner requires no steps to be taken.

Right of Appeal

68. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

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

Website: www.informationtribunal.gov.uk

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 6th day of May 2010

Signed

**Steve Wood
Head of Policy Delivery**

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

Legal Annex

Time for compliance with request

Section 10 provides that:

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

(2) Where the authority has given a fees notice to the applicant and the fee is paid in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.

(3) If, and to the extent that—

(a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or

(b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.

(4) The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with, the regulations.

(5) Regulations under subsection (4) may—

(a) prescribe different days in relation to different cases, and

(b) confer a discretion on the Commissioner.

(6) In this section—

“the date of receipt” means—

(a)

the day on which the public authority receives the request for information, or

(b)

if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the [1971 c. 80.] Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

Law Enforcement

Section 31(1) provides that:

Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders,
- (c) the administration of justice,
- (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,
- (e) the operation of the immigration controls,
- (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,
- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),
- (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
- (i) any inquiry held under the [1976 c. 14.] Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.

Section 31(2) provides that:

(2) The purposes referred to in subsection (1)(g) to (i) are—

- (a) the purpose of ascertaining whether any person has failed to comply with the law,

- (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,
 - (c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,
 - (d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on,
 - (e) the purpose of ascertaining the cause of an accident,
 - (f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration,
 - (g) the purpose of protecting the property of charities from loss or misapplication,
 - (h) the purpose of recovering the property of charities,
 - (i) the purpose of securing the health, safety and welfare of persons at work, and
 - (j) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work.
- (3) 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 any of the matters mentioned in subsection (1).

Legal Professional Privilege

Section 42(1) provides that:

(1) Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.

Section 42(2) provides that:

(2) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) in respect of which such a claim could be maintained in legal proceedings.