

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 29 June 2011

Public Authority: Valuation Office Agency (an executive agency of HM Revenue and Customs)

Address: 3rd Floor
Wingate House
Shaftesbury Avenue
London
W1D 5BU

Summary

The complainant requested information that was used to calculate the rateable value of a named self-catering holiday cottage. The public authority refused to confirm or deny whether it held any information under sections 40(5) and 44(2). It also applied section 41(1). During the investigation of the case the public authority confirmed that it did hold information, but refused to provide details of that information under sections 40(5) and 44(2). It also relied upon sections 41(1) and 43(2) to withhold this information. In addition to this, it also withheld some information under section 31(1)(d). After investigating the case the Commissioner decided that most of the information was exempt under section 44(1)(a). However, he also decided that section 31(1)(d) was not engaged, and this information should be disclosed. Finally, he decided that the public authority had not met the requirements of sections 10 and 17.

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 Valuation Office Agency (the "VOA") is an executive agency of HM Revenue and Customs ("HMRC"). It states that its main functions are to:
 - Compile and maintain the business rating and council tax valuation lists for England and Wales.
 - Value property in England, Wales and Scotland for the purposes of taxes administered by HMRC.
 - Provide statutory and non-statutory property valuation services in England, Wales and Scotland.
 - Give policy advice to Ministers on property valuation matters.¹
3. It states that the rateable value of a business represents the open market annual rental value of a business/non-domestic property. This means the rent the property would let for on the valuation date, if it was being offered on the open market. The rateable value is then used by the relevant local authority when it calculates that business' business rates bill. The VOA's website explains that,

"For self-catering holiday accommodation we work out the rateable value based on the number of single bed spaces in the property.

The rateable value is our assessment of the annual rent a business property could be let for on the valuation date. For properties like shops, offices or warehouses we can analyse actual annual rents to reach a rateable value.

*For self-catering holiday accommodation – such as holiday cottages or apartments – annual rental evidence isn't normally available so we apply a price per bed space on each individual property, based on its type, size and location, to produce its rateable value."*²
4. During this process individual business ratepayers provide rental details to the VOA on Forms of Return.

¹ www.voa.gov.uk

² http://www.2010.voa.gov.uk/rli/static/HelpPages/English/faqs/faq116-what_does_rv_mean.html;
http://www.2010.voa.gov.uk/rli/static/HelpPages/English/help/help063-how_we_rate_holiday_cottages.html

The Request

5. The Commissioner notes that under the Act the VOA is not a public authority itself, but is actually an executive agency of HMRC which is responsible for the VOA. Therefore, the public authority in this case is actually HMRC not the VOA. However, for the sake of clarity, this decision notice refers to the VOA as if it were the public authority.
6. The complainant contacted the VOA on 7 May 2010 and requested,
"...all the documentation that was used by the Valuation Agency to calculate the rateable value on [named property] ..."
7. The VOA responded on 14 May 2010 and stated that it was applying sections 40 and 41 to the request. Specifically, it stated that it would neither confirm or deny whether any relevant information was held. It explained that the requested information, if held, would be exempt from disclosure under section 40(3)(a). Further to this, it believed that section 40(5) exempted it from its duty to confirm or deny. Finally, it also stated that the requested information was exempt under section 41(1).
8. At an unspecified date the complainant requested an internal review. The Commissioner has not been provided with a copy of this.
9. The VOA carried out an internal review and responded on 25 June 2010. It confirmed that it believed that sections 40 and 41 had been correctly applied. It also referred to sections 18(1) and 23 of the Commissioners for Revenue and Customs Act 2005, and stated that after taking this into account it believed that section 44(2) of the Freedom of Information Act applied. It argued that section 44(2) exempted it from the duty to confirm or deny whether it held any of the requested information. Finally, it also applied section 21 to a limited amount of information.

The Investigation

Scope of the case

10. On 7 July 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
11. At the beginning of the investigation the Commissioner wrote to the complainant and advised him that he only intended to consider the VOA's use of sections 40, 41 and 44. He did not intend to consider the VOA's use of section 21 unless the complainant advised him otherwise. The complainant has not stated that he wanted the VOA's use of section

21 to be investigated, and therefore the Commissioner has not considered its application of this exemption.

12. During the course of the Commissioner's investigation the VOA stated, "*...we are confirming that in principle [...] we do hold information be they [Forms of Return] or Spreadsheets.*" Therefore it was willing to confirm that it did hold information that would fall under the scope of the request. However, it still believed that it was exempt from the duty to confirm or deny the details of the information that it held. In addition to this, it sought to apply sections 31(1)(d) and 43(2) to some of the requested information. It also confirmed that it was now prepared to disclose some of the previously withheld information.
13. Although the Commissioner cannot provide details of the information that is held, he considers that this information can be grouped into four broad categories. These are as follows:
 - Information to which the VOA is relying upon section 40(5)(b)(i) and section 44(2) to refuse to confirm or deny the details of. The VOA also seeks to rely upon sections 40(2) in conjunction with 40(3)(a)(i), section 41(1) and section 43(2) to withhold this information.
 - Information withheld under section 31(1)(d).
 - Information withheld under section 21, as this information is already in the public domain.
 - Information which it is now prepared to disclose.
14. The scope of this investigation has been to consider the VOA's use of:
 - Section 40(5)(b)(i) and section 44(2) to refuse to confirm or deny the details of information it has now confirmed, in a broad sense, that it holds. In addition, its use of sections 40(2) in conjunction with 40(3)(a)(i), section 41(1) and section 43(2) to withhold this information.
 - Section 31(1)(d) to withhold some information that it has now confirmed that it holds.
15. In addition to this, the Commissioner has also referred to the information that the VOA is now prepared to disclose. This is referred to in the 'Steps Required' section of this notice.
16. Although not referred to by the complainant the Commissioner has also considered whether the VOA met with the requirements of sections 10 and 17.

Chronology

17. The VOA provided initial submissions to the Commissioner in a letter dated 5 November 2010.
18. The Commissioner wrote to the VOA on 17 January 2011 and asked it to provide additional submissions to support its use of sections 40, 41 and 44.
19. Following an exchange of correspondence, the VOA provided a substantive response in a letter dated 3 March 2011. In this letter it stated that it was now prepared to confirm in principle that it did hold information that related to either Forms of Return or relevant spreadsheets (see paragraph 12 above). It provided further arguments to support its use of sections 40, 41 and 44. Additionally, it was also relying upon sections 31(1)(d) and 43(2), and provided further arguments to support its use of these exemptions.
20. The Commissioner wrote to the VOA on 3 May 2011 and set out his understanding of its use of the exemptions (this reflected – in a more detailed form – the bullet points listed at paragraphs 13 and 14 above). In addition, he asked it to provide further arguments to support its use of section 31(1)(d).
21. On 18 May 2011 the VOA confirmed that the Commissioner had set out its use of the exemptions correctly. It also provided further submissions to support its use of section 31(1)(d).

Analysis

Exemptions

22. The Commissioner has first considered the VOA's use of section 31.

Section 31

23. The VOA has cited section 31(1)(d) in relation to some of the withheld information. Specifically, it has applied this exemption to a spreadsheet which shows information relating to Fair Maintainable Receipts for the relevant geographical area. These figures are used in the process for assessing rateable values.
24. Section 31(1)(d) states that information (which is not exempt under section 30 of the Act) is exempt if its disclosure under the Act would, or would be likely to, prejudice the assessment or collection of any tax or duty or of any imposition of a similar nature

25. This is a qualified exemption, and is therefore subject to a public interest test.
26. The full text of section 31 can be found in the legal annex attached to the end of this notice.
27. The VOA has argued that the disclosure of the information that it believes falls under this exemption would, or would be likely to, prejudice the collection or assessment of tax or duty.
28. In order to determine whether this exemption is engaged, the Commissioner has first considered whether the withheld information in question, and the potential prejudicial effects described by the VOA, would relate to the collection or assessment of tax or duty.
29. As noted above, the withheld information in question is a spreadsheet which shows information relating to Fair Maintainable Receipts for the relevant geographical area. The VOA has explained that this spreadsheet would be used in the process for assessing rateable values. Bearing this in mind, the Commissioner considers that this information relates to the collection or assessment of tax.
30. In its letter to the Commissioner dated 3 March 2011 the VOA provided arguments to support its use of this exemption. Owing to their nature, these are detailed in the confidential annex attached to the end of this notice. The Commissioner wrote to the VOA on 3 May 2011 and set out his initial view in relation to those arguments. He informed the VOA that given the limited arguments it had made, at that stage he was not convinced that the exemption engaged. He asked the VOA to provide further submissions to support its use of this exemption.
31. The VOA provided further arguments in its letter dated 18 May 2011. The Commissioner's consideration of these arguments is detailed in the confidential annex attached to the end of this notice.
32. Whilst the Commissioner is unable to comment on the specifics of the VOA's arguments in this notice (as to do so may disclose details of the withheld information), he is able to note that after considering these arguments he does not consider that the potential prejudicial effects argued by the VOA – in themselves – relate to the collection or assessment of tax.
33. Bearing this in mind, the Commissioner does not consider that the withheld information in question falls within the scope of section 31(1)(d). As such this exemption is not engaged.
34. As this exemption is not engaged, it is not necessary to go on to consider the public interest test.

35. During the investigation of this case the VOA confirmed that the only exemption that it was seeking to rely upon in relation to this information was section 31(1)(d). Therefore, the information that the VOA has only relied upon section 31(1)(d) to withhold should be disclosed.
36. The Commissioner has gone on to consider the application of section 44 to the outstanding withheld information.

Section 44

37. The relevant parts of section 44 state that,

"(1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it –

(a) is prohibited by or under any enactment,

[...]

(2) The duty to confirm or deny does not arise if the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) fall within any of paragraphs (a) to (c) of subsection (1)."

Section 44 is an absolute exemption and is therefore not subject to the public interest test

38. The full text of section 44 can be found in the legal annex attached to the end of this notice.
39. Initially the VOA relied upon section 44(2) to refuse to confirm or deny whether it held any information that would fall under the scope of the request. However (as noted at paragraph 12 above), during the investigation of the case it stated that it would now confirm 'in principle' that it held information 'be they Forms of Return or Spreadsheets'. However, it still believed that it was exempt from the duty to confirm or deny the details of some of the information that it held. Therefore, it continued to rely upon section 44(2) in relation to this information.
40. The Commissioner has first considered whether the VOA is correct to state that it is relying upon section 44(2) to refuse to confirm or deny the details of the information that it holds that would fall under the request, or whether, instead, its arguments are now more applicable to section 44(1) of the Act.
41. Section 1 of the Act places two duties on a public authority who has received a valid request for information, namely:

- a duty to confirm or deny whether it holds information of the description specified in the request, and
- a duty to communicate that information to the requestor.

The full text of section 1 can be found in the legal annex attached to the end of this notice.

42. Both of these duties are subject to various exemptions. In this instance the VOA has sought to apply section 44(2) – which provides an exemption from the duty to confirm or deny whether it holds requested information, if to do so is prohibited by enactment.
43. Bearing in mind the wording of the request – for copies of documentation that was used to calculate the rateable value of a specified property – the Commissioner considers that the (albeit late) confirmation by the VOA that it does hold information that would fall under the scope of the request (be it Forms of Return or spreadsheets) means that the VOA has now met its duty to confirm or deny whether it holds ‘information of the description specified in the request’.
44. As the VOA has now confirmed that it does hold information that would fall under the scope of the request the Commissioner considers that it no longer has to rely upon section 44(2) to refuse to disclose the details of that information as the duty to confirm or deny has now been met. Instead, he considers that its arguments are more applicable to section 44(1)(a) of the Act.
45. Therefore he has considered the VOA’s arguments by reference to section 44(1)(a) of the Act.
46. In the internal review the VOA stated that it considered that statutory prohibitions contained in the Commissioners for Revenue and Customs Act 2005 (the “CRCA”) applied to the request. It stated that it was an executive agency for HMRC, and explained that the CRCA prohibited the confirmation or denial of whether the requested information was held as:

"Section 18(1) CRCA provides that HMRC officials may not disclose information which is held in connection with a function of the HMRC. Section 23 of the CRCA provides that information relating to a person, the disclosure of which is prohibited by section 18(1), is exempt information for the purposes of section 44(1)(a) of the FOIA if its disclosure would specify the identity of the person to whom the information relates, or would enable the identity to be deduced. However, if I confirm or deny that this exemption applies then I may reveal information concerning another individual,

therefore I assert section 44(2)(a) [of the Act] and neither confirm or deny if this information is held."

47. In addition to this, the VOA has also referred the Commissioner to the effect of section 23 of the CRCA.
48. The most relevant extracts of the CRCA for the purposes of this investigation are:

"18 Confidentiality

- (1) *Revenue and Customs officials may not disclose information which is held by the Revenue and Customs in connection with a function of the Revenue and Customs.*

[...]

19 Wrongful disclosure

- (1) *A person commits an offence if he contravenes section 18(1) or 20(9) by disclosing revenue and customs information relating to a person whose identity—*

(a) is specified in the disclosure, or

(b) can be deduced from it.

[...]

23 Freedom of information

- (1) *Revenue and customs information relating to a person, the disclosure of which is prohibited by section 18(1), is exempt information by virtue of section 44(1)(a) of the Freedom of Information Act 2000 (c. 36) (prohibitions on disclosure) if its disclosure—*

(a) would specify the identity of the person to whom the information relates, or

(b) would enable the identity of such a person to be deduced.

- (2) *Except as specified in subsection (1), information the disclosure of which is prohibited by section 18(1) is not exempt information for the purposes of section 44(1)(a) of the Freedom of Information Act 2000.*

(3) In subsection (1) "revenue and customs information relating to a person" has the same meaning as in section 19".

49. The full text of the CRCA is available online at <http://www.legislation.gov.uk/ukpga/2005/11/contents>.
50. The Commissioner has previously considered the effect of sections 18 and 23 of the CRCA in relation to section 44(1)(a) in a previous case (Case Ref. FS50264926), which dealt with a request for similar information to that requested in this case. Given the provisions of sections 18 and 23 of the CRCA the Commissioner has adopted the same approach as he took in the previous case.³
51. As noted above, the effect of section 44(1)(a) is that requested information is exempt if its disclosure by the public authority holding it is prohibited under any enactment – in this case the CRCA.
52. The prohibition being applied by the VOA is section 18 of the CRCA. This states that HMRC officials may not disclose information which is held by them in connection with a function of the HMRC (given that the VOA is an executive agency of the HMRC, the Commissioner considers that the provisions of the CRCA equally apply to the VOA). Sections 23(1)(a) and (b) of the CRCA further clarifies that the information is exempt if its disclosure would specify the identity of the person to whom the information relates, or would enable the identity of the person to be deduced.
53. Whilst he is not able to detail the withheld information, the Commissioner can note the VOA's confirmation in principle that it holds information 'be they Forms of Return or Spreadsheets'. Bearing this in mind, and after considering the more detailed description of the withheld information provided to him by the VOA in the investigation of the case, the Commissioner is satisfied that the information was obtained/created by the VOA under one of its functions and can lead to the identities of the persons to whom the information relates being deduced. Section 18(1) of the CRCA is therefore engaged in respect of this information.
54. Section 18(2) of the CRCA provides some caveats to section 18(1) and highlights circumstances in which disclosure is possible. The Commissioner has considered those relevant to the information requested.

³ http://www.ico.gov.uk/~media/documents/decisionnotices/2010/FS_50264926.ashx

55. Section 18(2)(a) of the CRCA states that section 18(1) does not apply to disclosure which is made for the purposes of a function of the HMRC. However, the Commissioner considers that the term 'function' relates to powers conferred on the public authority. Therefore, it would not be correct to say that making a disclosure under section 1(1) of the Act is a 'function' of the VOA. Complying with statutory requirements (including obligations under the Act) is one of the VOA's general responsibilities as a public authority but it is not a specific or unique function of the VOA.
56. Section 18(2)(h) of the CRCA provides that section (1) does not apply to disclosure which is made with the consent of each person to whom the information relates. The Commissioner has not been provided with any evidence that the VOA had received the necessary consent(s) at the time that it received the request (section 18(2)(h) does not require the public authority itself to seek consent), and therefore he does not consider that this allows disclosure in this case.
57. Section 18(3) of the CRCA provides that the public authority is able to disclose information where disclosure is permitted under any enactment. The Commissioner does not consider that disclosure under the Act itself is appropriate, as evidenced by section 23 of the CRCA quoted above. He has not considered whether or not any other avenue of access exists to the requester as that would fall outside his remit. Therefore he does not consider that this caveat allows disclosure in this case.
58. Therefore, after considering the circumstances of this case the Commissioner finds that section 18(1) of the CRCA prohibits the disclosure of the withheld information (other than that which the VOA has only applied section 31(1)(d) of the Act to). As such, this information is exempt from disclosure by virtue of section 44 of the Act.
59. As the Commissioner has decided that this information is absolutely exempt by virtue of section 44(1) he has not found it necessary to go on to consider the other exemptions cited.

Procedural Requirements

60. Section 1(1) states 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."*

61. Section 10(1) states that:

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

62. In the refusal notice and at internal review the VOA refused to confirm or deny whether it held any information that fell under the scope of the case. However, during the investigation it changed its position, and stated that it was now prepared 'in principle' to confirm that some relevant information was held. The Commissioner considers that this confirmation should have been provided to the complainant in line with the duty at section 1(1)(a). The VOA's failure to do so therefore constitutes a breach of section 1(1)(a). Furthermore, by failing to provide this confirmation within 20 working days of the request the VOA also breached section 10(1).

63. In addition to this, as the Commissioner has decided that some of the withheld information is not exempt from disclosure under section 31(1)(d), he considers that this information should have been provided to the complainant in line with the duty at section 1(1)(b). The VOA's failure to do so therefore constitutes a breach of section 1(1)(b). Furthermore, by failing to provide this information within 20 working days of the request the public authority also breached section 10(1).

64. Section 17(1) requires a public authority, which is relying upon an exemption in order to withhold requested information, to issue a refusal notice within twenty working days 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.

65. Although the VOA informed the complainant that it was seeking to rely upon sections 40(3) and 40(5), the Commissioner notes that it did not fully specify, in either the refusal notice or the internal review, which of the conditions of sections 40(3) or 40(5) it believed were satisfied. In failing to do this, the VOA did not comply with the requirements of section 17(1)(b).

66. During the investigation of the case the VOA informed the Commissioner that it was relying upon section 31(1)(d) to withhold some of the requested information. However, it had not previously informed the complainant of this. By failing to do so, the Commissioner considers that

the VOA did not comply with the requirements of sections 17(1)(a), (b) and (c).

67. The full text of sections 1, 10 and 17 can be found in the legal annex attached to the end of this notice.

The Decision

68. The Commissioner's decision is that the VOA dealt with the following elements of the request in accordance with the requirements of the Act:

- It correctly withheld some of the requested information under section 44.

69. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- It did not deal with the request in accordance with section 1(1)(a) in so far as it did not confirm or deny whether it held any information that fell under the scope of the request.
- It did not deal with the request in accordance with section 1(1)(b) in so far as it inappropriately relied upon section 31(1)(d) to withhold some of the requested information.
- In failing to comply with sections 1(1)(a) or (b) within 20 working days, it breached section 10(1).
- The VOA also failed to meet the requirements of sections 17(1)(a), (b) and (c).

Steps Required

70. The Commissioner requires the VOA to take the following steps to ensure compliance with the Act:

- It should disclose the information that it has sought to withhold solely under section 31(1)(d).
- It should disclose the information that it stated it was now prepared to disclose in its letter to the Commissioner dated 3 March 2011.

71. The VOA must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

72. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

73. 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: 0300 1234504

Fax: 0116 249 4253

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

Website: www.informationtribunal.gov.uk

74. 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.

75. 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 29th day of June 2011

Signed

**Gerrard Tracey
Principal Policy Adviser
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Section 1

- (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 the 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.
- (4) 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.
- (5) 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).
- (6) 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”.

Section 10

- (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 paid is 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 Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”

Section 17

- (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.
- (6) 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.
- (7) A notice under section (1), (3) or (5) must –
- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
 - (b) contain particulars of the right conferred by section 50.

Section 31

- (1) 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 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."
- (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).

Section 40

- (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.
- (2) Any information to which a request for information relates is also exempt information if-
- (a) it constitutes personal data which do not fall within subsection (1), and
 - (b) either the first or the second condition below is satisfied.
- (3) The first condition is-
- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
 - (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

- (4) The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).
- (5) The duty to confirm or deny-
 - (a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and
 - (b) does not arise in relation to other information if or to the extent that either-
 - (i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of the Act were disregarded, or
 - (ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed)."
- (6) In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.
- (7) In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;

"data subject" has the same meaning as in section 1(1) of that Act;

"personal data" has the same meaning as in section 1(1) of that Act."

Section 44

- (1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it –
 - (a) is prohibited by or under any enactment,
 - (b) is incompatible with any Community obligation, or

- (c) would constitute or be punishable as a contempt of court.
- (2) The duty to confirm or deny does not arise if the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) fall within any of paragraphs (a) to (c) of subsection (1).