

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 16 August 2011

Public Authority: Tower Hamlets Homes
Address: Jack Dash House
2 Lawn House Close
Marsh Wall
London
E14 9YQ

Summary

The complainant asked the Tower Hamlets Homes (the "public authority") to provide information relating to its technical services. The public authority provided some information but maintained that further information was exempt by virtue of section 21 of the Freedom of Information Act 2000 (the "Act"), being already available to the complainant. It also advised that some information was not held. During the investigation the public authority sought to aggregate this request with two other requests made by the complainant thereby exempting all three by virtue of section 12 (cost of compliance would exceed the appropriate limit). It also sought to introduce section 44 (prohibitions on disclosure). The Commissioner's decision is that the information was not exempt by virtue of section 21 and that the public authority was incorrect to claim some information was not held. He further finds that the public authority was not able to aggregate the requests, it could not apply section 12 and, also, that it could not rely on section 44. The public authority's handling of the request also resulted in breaches of certain procedural requirements of the Act as identified in this Notice.

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. Tower Hamlets Homes is an Arms Length Management Organisation (ALMO) and a local authority controlled company owned solely by London Borough of Tower Hamlets. As set out in the Commissioner's guidance on publicly owned companies, ALMOs are public authorities for the purposes of the Act under section 6(2)(b).
3. The complainant made three requests to the public authority which resulted in complaints to the Commissioner. All three requests were made via the '*Whatdotheyknow*' website and can be followed through these links:
 - http://www.whatdotheyknow.com/request/20089_service_charges_costs#incoming-119959
 - http://www.whatdotheyknow.com/request/20089_service_charges_management#incoming-119976
 - http://www.whatdotheyknow.com/request/20089_service_charges_technical#comment-15007

This case relates to the top request.

4. The complainant has also made reference to a publication provided by Tower Hamlets Homes entitled "*Leasehold Focus*" dated September 2009. This is available online via the following link:
 - <http://www.towerhamletshomes.org.uk/PDF/12182%20LH%20Focus%20Service%20Charge%20web.pdf>
5. This publication states:

"Every year Tower Hamlets Homes estimates how much the service is going to cost you at the start of the

financial year. You pay for services in advance as part of the agreement you have with the Council, your landlord. We will then bill or credit you the difference between that estimated cost and the actual cost of delivering those services before the end of the following September. Information on the actual cost is presented in your service charge certificate.

Your "actual" service charge is your exact share of the costs for services we delivered to you during the period of 1st April 2008 to 31st March 2009".

The request

6. On 27 February 2010 the complainant made the following information request via the 'WhatDoTheyKnow' website:

"With respect to the 2008/9 Service Charge actuals, I would be grateful if you could provide some more detailed information.

I request:

a. Full and comprehensive breakdown of all actual costs (2008/9) incurred for the provision of services.

b. Annual budget review appraisal of the housing management cost centres.

c. Details of market testing carried out in 2008/9 to ensure best value...

Please provide tables, particularly very big ones, (such as the breakdown requested in (a) above) in an electronic format that preserves both the machine-readable and human readable information. Tables, for example, could be in XML, CSV, or Open Document spreadsheet formats. This should also take less time for you to prepare: you presumably already have the information on computers".

7. On 2 March 2010 the public authority acknowledged the request.
8. On 26 July 2010 the public authority provided a joint response to all three of the complainant's requests. In respect of this request, it advised him that part (a) of the request was exempt by virtue of section 21 of the Act, i.e. that the information was already available to leaseholders for inspection up to 6 months after the accounts are prepared. It provided a table of information in respect of part (b) of the request, which also served as a reply to one of the other information requests. It also provided a brief statement in respect of part (c) of the request.
9. On 9 September 2010 the complainant sought an internal review. He advised that section 21 did not apply to part (a) as the information was not available, that the information provided in relation to (b) was not what he had asked for, and that the response to part (c) was incomplete.
10. On 12 October 2010 the public authority provided its internal review. It upheld its position in respect of part (a). In respect of parts (b) and (c) it stated that it held no information, although it did make reference to 'confidential' benchmarking reports in respect of part (c).

The investigation

Scope of the case

11. On 28 November 2010 the complainant contacted the Commissioner to complain about the way all three of his information requests had been handled.
12. On commencing his investigation the Commissioner clarified, in respect of this case, that he wished to have the following points considered:
 - part (a) - lack of assistance / advice, the information supposedly being already available;
 - part (b) - lack of assistance / advice, no suggestion of what may be held;
 - part (c) - reference to 'confidentiality'; and
 - timeliness.

13. In respect of part (c) of the request the Commissioner notes that in its internal review the public authority advised the complainant as follows:

"In the [earlier] response [name removed] stated that THH had undertaken benchmarking. He should have confirmed that there was no market testing. THH is part of a benchmarking group which includes ALMOs [Arms Length Management Organisation] in the London and South area as well as a benchmarking group for London housing providers and a national one (Housemark). The benchmarking clubs provide an opportunity for housing providers to compare themselves against similar organisations on various measures including administration charges. Unfortunately for the purposes of your enquiry it is a term of the membership that the benchmarking reports remain confidential to the members of the benchmarking club and THH are therefore unable to supply a copy. There were no phone surveys or survey reports so there are no documents to disclose".

14. In his complaint to the Commissioner concerning part (c) of his request the complainant stated:

"THH seems to be claiming a section 41 defence. This would only apply if they would suffer and lose a prosecution.... I argue that the public's right to know how they benchmark their prices is not something that belongs to THH to give away to another organisation, particularly an organisation comprised of other public authorities with similar FoI obligations".

15. It is the Commissioner's view that the actual request was for "details of market testing", which is something which the public authority has indicated was not carried out. Having advised the complainant that it did not carry out any market testing it went on to advise him what activity it had undertaken, i.e. benchmarking. The Commissioner considers that this is the public authority providing the complainant with advice and assistance, as required under section 16 of the Act. If the complainant wishes to access this 'benchmarking' information then he will need to make a separate request for it as it falls outside the scope of his original request. The Commissioner will therefore not further consider this element

of the complaint, i.e. the public authority's response to part (c) of the request.

Chronology

16. On 27 April 2011 the Commissioner commenced his investigation. He sought clarification from the complainant which was provided on 11 May 2011.
17. On 12 May 2011 the Commissioner commenced his enquiries with the public authority.
18. On 17 June 2011 an interim response was sent. Within this response it advised:

"The Council should have aggregated these three requests into a single request. Clearly 18 hours effort would not have been sufficient to cover the elements of [the complainant's] request which was to provide every contributing piece of information that made up the service charge bills for every Tower Hamlets Homes leaseholder. Given the established process whereby individuals can query their accounts, it is clear that [the complainant's] request is excessive".

19. In response to this the Commissioner advised that it might be possible to aggregate the requests but that in order to consider this he would require a detailed breakdown to demonstrate how the cost limit would be exceeded.
20. On 22 June 2011 a substantive reply was received. In this the public authority made the following points:

"... It could be viewed that [the complainant] in asking for this information is attempting to circumvent the procedure inherent in the Common and Leasehold Reform Act 2002. We would, therefore, welcome your assessment of the (admittedly late) applicability of Section 44 to this request.

Moreover [sic], given the aggregation of this request, and the fact that to provide the information for all repairs incurred by THH in a prepared format would involve querying some 20,000 records (even on the basis of 1 minute per request) would cost over £8300 based on 333 hours effort (20,000/60) we would like to

apply the late application of Section 12, and refuse all 3 requests based on costs”.

Analysis

Substantive procedural matters

Section 1 – general right of access

Part (b) of the request

21. 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”.*

22. In this case, the Commissioner has considered whether the public authority has complied with section 1(1)(a) of the Act in stating that it did not hold any information relating to this part of the request. In order to do this the Commissioner has considered whether any information is held by the public authority.

23. The Commissioner is mindful of the Tribunal’s decision in *Bromley v the Information Commissioner and the Environment Agency (EA/2006/0072)* in which it was stated that *“there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority’s records”*. It was clarified in that case that the test to be applied as to whether or not information was held is not certainty but the balance of probabilities. Therefore, this is the test that the Commissioner will apply in this case.

24. In discussing the application of the balance of probabilities test in the above case, the Tribunal stated that:

“We think that its application requires us to consider a number of factors including the quality of the public authority’s initial analysis of the request, the scope of

the search that it decided to make on the basis of that analysis and the rigour and efficiency with which the search was then conducted. Other matters may affect our assessment at each stage, including for example, the discovery of materials elsewhere whose existence or content point to the existence of further information within the public authority which had not been brought to light. Our task is to decide, on the basis of our review of all of these factors, whether the public authority is likely to be holding relevant information beyond that which has already been disclosed."

25. The Commissioner has therefore taken this into account in determining on the balance of probabilities whether or not the requested information was held.
26. The Commissioner notes that the public authority initially provided some information which it believed to answer the request. When seeking an internal review the complainant stated:

"The answer to (b) appraised nothing and reviewed nothing. It was not the requested annual budget review appraisal. Please supply the information requested."

27. At internal review stage the public authority then advised that it was unable to provide any further information based on the wording which the complainant had used as it had no such 'report'.

Conclusion

28. In coming to a conclusion in this case the Commissioner has taken into account the explanation provided by the public authority as well as the wording of the actual request. Whilst it may well be the case that the public authority does not have a specific 'report' which would serve to answer the complainant's request, it does not explore whether the request may be met from other information which it holds. It states itself that it should have sought clarification from the complainant – something which it again failed to do. Based on the lack of clarification of what is required by the complainant the Commissioner cannot agree that the public authority holds no further information about this part of the request and he therefore concludes that the public authority breached section 1 of the Act.

Section 12 – cost of compliance exceeds the appropriate limit

29. Section 12(1) provides a costs threshold for the Act. As long as the public authority can prove that its estimate of the work required to answer the request for information is reasonable and exceeds the statutory limit, then it is not required to provide any information in respect of the request. The Information Tribunal in *Quinn v Information Commissioner & Home Office* (EA/2006/0010) explained this point in this way:

“The fact that the rules drafted pursuant to s.12 have the effect of defining what is a reasonable search and the amount of time and money that a public authority are expected to expend in order to fulfil their obligations under the Act, serves as a guillotine which prevent the burden on the public authority from becoming too onerous under the Act”.

30. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the “Regulations”) provide that the cost limit for local authorities is £450. This must be calculated at a rate of £25 per hour, providing an effective time limit of 18 hours. If a public authority estimates that complying with a request would exceed 18 hours, or £450, section 12(1) provides that the request may be refused.
31. Section 12(1) is not a qualified exemption, so it has no public interest component to be considered. This means that the cost limit can be relied upon irrespective of whether the public interest would have favoured disclosure of the information.
32. The Commissioner must determine whether he believes that the estimate provided by the public authority was reasonable. The issue of what constitutes a reasonable estimate was considered in the Information Tribunal case of *Alasdair Roberts v Information Commissioner* (EA/2008/0050) and the Commissioner endorses the following points made by the Tribunal at paragraphs 9-13 of the decision:
- *“Only an estimate is required”* (i.e. not a precise calculation);
 - the costs estimate must be reasonable and only based on those activities described in regulation 4(3);

- time spent considering exemptions or redactions cannot be taken into account;
 - the determination of a reasonable estimate can only be considered on a case-by-case basis; and
 - any estimate should be *"sensible, realistic and supported by cogent evidence"*.
33. The above extract references regulation 4(3) of the Regulations, which state that the only activities that are allowed to be considered are those which are:
- (a) determining whether the public authority holds the information;
 - (b) locating the information, or a document which may contain the information;
 - (c) retrieving the information, or a document which may contain the information; and
 - (d) extracting the information from a document containing it.
34. As stated in paragraphs 17 and 19 above, the public authority claimed a late reliance upon section 12 of the Act during the Commissioner's investigation covering part (a) of this request. It did not apprise the complainant accordingly.
35. As stated above, any estimate that the cost limit is exceeded needs to be supported by cogent evidence. For the Commissioner to agree that the cost limit is exceeded on an aggregated basis he would need to see evidence that the aggregated requests are for the same or similar information, were received by the public authority within a 60 working day period, and that the estimated cost of compliance exceeds the £450 limit.
36. Alternatively, for the Commissioner to agree that section 12 of the Act is engaged (on the basis that the cost of compliance is exceeded in determining, locating, retrieving and extracting the information for the remaining element of the request alone), he would need to see a detailed breakdown of this estimate for each activity and for this to be supported by cogent evidence.
37. After implying that it would seek to aggregate the cost for compliance with all three requests made by the complainant the public authority was advised by the Commissioner that if it wished to do so he would require a detailed breakdown to demonstrate how the cost limit would be exceeded (see paragraphs 17 and 18 above). The Commissioner has not

been furnished with such detail or evidence. Whilst he notes that the requests were all submitted within a short timeframe and all related in some way to Service Charge Actuals, and that there was therefore some possibility that they could be aggregated, the only brief breakdown provided by the public authority refers to its ability to provide the information about 'repairs' in a 'prepared format', which was not a common theme throughout the requests.

38. Therefore, concerning the public authority's claim that the cost limit is exceeded on an aggregated basis, the Commissioner cannot make any judgement on whether the cost limit is exceeded in this case on this basis because he has not been furnished with the necessary evidence that is required to demonstrate that section 12 applies in this way.
39. Furthermore, the public authority has not provided any details to support whether the cost to determine if it holds the information, and to locate, retrieve and extract it, would exceed the cost limit. Again, the Commissioner cannot make any assessment on whether section 12 of the Act applies in this way as the public authority has failed to provide sufficient evidence to support this.
40. For the reasons explained above, the Commissioner has concluded that the public authority's cost estimate and how this was arrived at is not reasonable, realistic or supported by cogent evidence. He has therefore concluded that section 12 of the Act does not apply in this case.

Section 16 – duty to provide advice and assistance

41. Section 16(1) provides an obligation for a public authority to provide advice and assistance to a person making a request, so far as it would be reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in a particular case if it has conformed with the provisions in the section 45 Code of Practice in relation to the provision of advice and assistance in that case.

Part (a) of the request

42. Whenever the cost limit has been applied, the Commissioner must consider whether it would be possible for the public authority to provide advice and assistance to enable the complainant to submit a new information request without attracting the costs limit in accordance with paragraph 14 of the Code. If a public authority provides an indication of what,

if any, information could be provided within the costs limit it will have complied with the requirements of the Code of Practice and therefore section 16(1) of the Act.

43. Although section 12 of the Act was claimed late by the public authority in this case, the Commissioner notes that the complainant was not informed of this late application in respect of this complaint. He was not provided with any details regarding the application of the cost limit and therefore not provided with any advice and assistance to enable him to consider submitting a new request for information which would not attract the cost limit.
44. The Commissioner considers the public authority should have explained clearly to the complainant exactly what additional information it holds, addressing the remaining element of his request and what information it felt it could provide, if any, within the cost limit prescribed by the Act. As it failed to do so, the Commissioner finds the public authority in breach of section 16(1) of the Act.

Part (b) of the request

45. As part of his complaint the complainant has asked the Commissioner to consider whether the public authority has provided adequate advice and assistance in respect of part (b) of the request.
46. In its internal review the public authority advised the complainant:

"It would appear that the officers dealing with your request were not clear what you were asking for and should have asked you for clarification. If you are asking for a copy of a report detailing the appraisal and review of the housing management cost centre then such a document does not exist".

47. This is a closed statement by the public authority. It does not suggest to the complainant what sort of information it may hold or invite a further line of enquiry. The Commissioner considers the public authority should have explained clearly to the complainant exactly what additional information it holds, if anything, which may assist with this element of his request. As it failed to do so, the Commissioner finds it in breach of section 16(1) of the Act.

Section 21 – information accessible to applicant by other means

48. This has been cited in respect of part (a) of the request.
49. Section 21 of the Act states that information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information. It is an absolute exemption; therefore, no public interest test is required.
50. It is the Commissioner's view that the relevant consideration in relation to section 21 is whether the requested information is reasonably accessible to the complainant. For the exemption to be engaged the Commissioner must be satisfied that:
- the complainant has already found the information; or
 - the public authority is able to direct the complainant precisely to the requested information, i.e. it must be reasonably specific about where the information is held so that the complainant can find it without difficulty.
51. The public authority advised the complainant that, at the time of his request, as a leaseholder he was able to inspect the accounts for his particular residence. It further advised that he was not able to access the information for any of the other residences which formed part of his information request.
52. It went on to explain to the Commissioner as follows:

“... leaseholders are sent final account documents and summaries in accordance with the Commonhold and Leasehold Reform Act 2002 (CLARA), which updated the Landlord & Tenant Act of 1985. Between them and in conjunction with the various Housing Acts these Act covers much of leasehold management and provides in different sections instructions on what can and cannot be provided, plus deadlines.

The following link takes you to S154 of CLARA which explains about providing leaseholders with documentary evidence when the final accounts are issued.

<http://www.legislation.gov.uk/ukpga/2002/15/section/154>

However, to summarise, our leaseholders are charged on estimated accounts which are actualised into final accounts after the financial year (1st April to 31st March) has ended, and we have 6 months after 31st March in which to issue these final accounts.

If a leaseholders [sic] (known as a tenant under the legislation) wants to view documents they must notify us in writing within 6 months of receiving the final accounts. Please see the section summarised below:

- (1) A tenant may by notice in writing require the landlord—
 - (a) to afford him reasonable facilities for inspecting accounts, receipts or other documents relevant to the matters which must be dealt with in a statement of account required to be supplied to him under section 21 and for taking copies of or extracts from them, or*
 - (b) to take copies of or extracts from any such accounts, receipts or other documents and either send them to him or afford him reasonable facilities for collecting them (as he specifies).**
- (2) If the tenant is represented by a recognised tenants' association and he consents, the notice may be served by the secretary of the association instead of by the tenant (and in that case any requirement imposed by it is to afford reasonable facilities, or to send copies or extracts, to the secretary)".*

53. It further apprised the Commissioner that, after 6 months:

"There is no obligation for us to provide any date [sic] after that date. However, in order to provide a reasonable service to our leaseholders we generally do provide such information after that 6 month period".

54. And, when asked whether the information would be available to a member of the public to inspect he was advised:

"No. These are charges specific to the individual leaseholders block and estates and relate to charges made to them".

55. Access under the Act is person and purpose blind. Therefore, there can be no stipulation on disclosure to specified individuals, i.e. a leaseholder in this particular case. Therefore, the Commissioner finds that section 21 is clearly not engaged in relation to this information.

Exemptions

Section 44 – prohibitions on disclosure

56. During the course of the Commissioner's investigation the public authority also sought to rely on section 44 of the Act. The public authority did not state which subsection it was seeking to rely on but it is clear to the Commissioner that it intended to rely on section 44(1)(a), which states that information is exempt if its disclosure by the public authority holding it is prohibited by or under any enactment. This is commonly known as a statutory bar to disclosure.
57. As previously stated, the Commissioner is investigating three separate complaints from the complainant. It is not clear whether the public authority was seeking to rely on section 44(1)(a) in relation to all of the requests, but he will first consider the relevant part of that request which is being addressed in this Decision Notice.

Part (a) of the request

58. The only reference made to this exemption by the public authority is contained in paragraph 19 above. The Commissioner believes it is pertinent to consider whether or not this exemption is applicable as he would not knowingly order disclosure of information which is barred from disclosure by statute.
59. The public authority has implied that the provisions of the Commonhold and Leasehold Reform Act 2002, as cited by it at paragraph 43 above, provide a statutory bar from disclosure. It has not explained how it believes this bar applies.
60. Having considered the relevant part of the legislation cited by the public authority the Commissioner concludes that its intention is to afford tenants an absolute right to inspect information within a limited time frame of six months. However, it does not include any statutory bar on disclosure to parties within its text, neither does it make any reference

to the Act. It is therefore the Commissioner's view that the public authority is not able to rely on this legislation to prevent disclosure under the Act.

Procedural requirements

Sections 1(1) and 10(1) - time for compliance

61. Section 10(1) provides 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. Section 1(1) provides that:
"Any person making a request for information to a public authority is entitled –
(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
(b) if that is the case, to have that information communicated to him."
63. The Commissioner finds that the public authority breached section 10(1) by failing to inform the complainant whether or not it held the requested information within 20 working days of the request. In incorrectly denying that it held information it breached section 1(1)(a).

Section 17(1) - refusal of request

64. Section 17(1) of the Act provides that:
"A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which –
(a) states that fact,
(b) specifies the exemption in question, and
(c) states (if that would not otherwise be apparent) why the exemption applies."

65. In failing to provide a valid refusal notice within the statutory time limit, the public authority breached section 17(1).

The Decision

66. The Commissioner's decision is that the public authority did not deal with the following elements of the request in accordance with the Act:
- it breached section 1(1)(a) in failing to properly inform the complainant whether it holds information;
 - it breached section 10(1) by failing to inform the complainant whether or not it held the requested information within 20 working days of receiving the request;
 - it breached section 17(1) by failing to provide a valid refusal notice within the statutory time limit;
 - it breached section 16(1) of the Act by failing to provide advice and assistance;
 - it inappropriately relied on section 12 of the Act;
 - it inappropriately relied on section 44(1) of the Act.

Steps required

67. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act.

Part (a) of the request

- The public authority should reconsider this element of the complainant's request under the Act. It should either release the requested information, or issue a further refusal to the complainant in accordance with section 17 of the Act detailing why this information cannot be released.

Part (b) of the request

- The public authority should provide further advice and assistance to the complainant in order to ascertain whether it holds any information which may satisfy his request.

68. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

69. 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

70. 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

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 16th day of August 2011

Signed

**Jon Manners
Group Manager**

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

Legal annex

Section 12 - cost of compliance exceeds appropriate limit

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

Section 16 - duty to provide advice and assistance

- (1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.
- (2) Any public authority which, in relation to the provision of advice and assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.

Section 21 - information accessible by other means

- (1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.
- (2) For the purposes of subsection (1)-
- (a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and
 - (b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.
- (3) For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.

Section 44 – prohibitions on disclosure

- (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 c