

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 19 November 2007

Public Authority: Royal Mail Group PLC
Address: 148 Old Street
London
EC1V 9HQ

Summary

The complainant made a request for several pieces of information to Royal Mail Group PLC ("Royal Mail"). This was treated as a request under the Freedom of Information Act 2000 (the "Act"). Royal Mail provided some information relating to the request. However it refused to provide a large proportion of the information requested, stating that section 12 applied as it believed that to comply with the request would exceed the appropriate limit. It also withheld some information under section 43(2), stating that it believed that the disclosure of this information would prejudice its commercial interests. During the course of the investigation Royal Mail informed the Commissioner that it did not actually hold the information it had previously cited section 12 in connection with, and that it had cited this section in error. After considering the information provided the Commissioner is satisfied that Royal Mail does not hold this information. However, the Commissioner decided that Royal mail had not acted in compliance with section 1 of the Act, as it had failed to inform the complainant that it did not hold the information it had previously cited section 12 for. Therefore the Commissioner decided that it had failed in its duty to confirm or deny whether it held the information in question. In relation to the information withheld under section 43 the Commissioner decided that the exemption was engaged in that the disclosure of the information would, or would be likely to, prejudice Royal Mail's commercial interests. However after considering the circumstances of the case the Commissioner decided that the public interest in maintaining the exemption did not outweigh the public interest in disclosing the information. Therefore the Commissioner requires this information to be disclosed.

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 Act. This Notice sets out his decision.

The Request

2. On 2 March 2006 the complainant requested the following information:
- (1) How many applications were made to Track and Trace deliveries across all relevant products on the web and on phone?
 - (2) How many resulted in a positive tracking?
 - (3) How many resulted in an inability to track?
 - (4) How many pieces of Track and Trace mail that were the result of follow up inquiries both online and by phone resulted in lost post? Bear in mind, it is the number that relates to those who made actual follow up inquiries of the service.
 - (5) How many of those that were the result of Track and Trace follow up inquiries resulted in a delivery delay of over 3 working days?
 - (6) How many pieces of mail sent under Track and Trace were lost? That is the total number, not just those that were the result of follow up inquiries.
 - (7) How many pieces of mail sent under Track and Trace resulted in a delivery delay of over 3 working days?
 - (8) How many of those that did not result in a positive location of mail through inquiries of Track and Trace were the result of a procedural failure by staff?
 - (9) How many of those that did not result in a positive location of mail through Track and Trace were the result of technical problems?

This information was requested for the periods April 2004 to December 2004, and April 2005 to December 2005.

3. Royal Mail responded to this request in an email on 30 March 2006. It provided some information relating to request (7). However, in relation to requests (1) – (5) and (8) – (9) it refused to provide this information, stating that,

“...we don't hold the majority of information you've asked for in an easily accessible format. Though we do maintain data for the Track and Trace service, it would take significant analyses and manipulation to extract the information requested. To do this would exceed the appropriate fees limit set out in the Freedom of Information Act, and therefore we consider this to be exempt under Section 12 of the Act.”

4. In relation to request (6) Royal Mail informed the complainant that,

“We do submit a detailed report to Postcomm and Postwatch that includes more specific information on estimates of lost mail, but disclosing this level of information to the public, especially where our competitors are not themselves obliged to disclose similar information, would prejudice our commercial interests. We therefore consider this to be exempt under section 43 of the Freedom of Information Act.”

5. Royal Mail informed the complainant that after considering the public interest test, it believed that the public interest in maintaining the exemption outweighed the

- public interest in disclosure. It informed the complainant of his right to appeal, and provided the contact details of the Commissioner.
6. Royal Mail received an appeal from the complainant on 31 March 2006.
 7. On 10 May 2006 the complainant emailed the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider whether the refusal by Royal Mail to provide the information requested was appropriate.
 8. The Commissioner advised the complainant to await the outcome of the internal review.
 9. Royal Mail conducted an internal review and responded on 12 May 2006. It upheld the decision to withhold the information in question under section 43(2), and informed the complainant of his right to complain to the Commissioner.
 10. On 16 June 2006 the complainant provided the Commissioner with a copy of the internal review.

The Investigation

Scope of the case

11. The complainant specifically asked the Commissioner to consider the refusal by Royal Mail to provide the information requested under section 43 of the Act.
12. The Commissioner has also considered whether Royal Mail has complied with its duty to confirm or deny, under section 1 of the Act.
13. As Royal Mail provided some information in relation to request (7) and as the complainant has not raised any issue with this response, the Commissioner has not considered this aspect of the case any further.

Chronology

14. The Commissioner wrote to Royal Mail on 19 October 2006 and requested further information in connection with the complaint.
15. Royal Mail responded on 30 November 2006 and provided the information requested. It informed the Commissioner that it held transit and delivery data in relation to Special Delivery items which showed:
 - The arrival at the Outward Mail Centre, time and date.
 - The time and date of leaving the Outward Mail Centre.
 - Which Inward Mail Centre the item was sent to.
 - The Inward Mail Centre the item arrived at, the time and date it arrived.
 - The time and date it left the Inward Mail Centre.

- The Delivery Unit it was sent to, the time and date it arrived.
- The time and date it was allocated to a walk.
- The time and date confirmation of delivery was made on the system by the Delivery Unit, or if the item was undeliverable.

However it went on to inform him that it did not hold the information listed in requests (1) – (5) and (8) – (9). It explained that any telephone calls made to the customer service department in relation to Track and Trace items would be classed as a 'general enquiry' rather than as specifically being in relation to Track and Trace. It also explained that it did not record numbers of customers who used its website to track their item.

16. In relation to request (6) Royal Mail informed the Commissioner that although it did not hold the specific information requested it did submit an annual report to Postcomm (the independent regulator for the postal services market), which gave details of the estimated losses of Special Delivery items (although it should be noted that not all Track and Trace items are Special Delivery items). Royal Mail informed the Commissioner that it was withholding this document under section 43(2) and provided arguments to support the use of this exemption. For ease of reference this document will be referred to as the "Condition 8 Report" throughout this Notice. The Commissioner is satisfied that the Condition 8 Report is the 'detailed report' referred to by Royal Mail in the refusal notice (see paragraph 4 above). Royal Mail confirmed that it was withholding this information under section 43(2) of the Act.
17. By way of background the Condition 8 Report is a requirement of the Licence under which Royal Mail operates, which was granted to it by Postcomm on 23 March 2001 (amended on 1 April 2003, 2 November 2005 and 25 May 2006). Condition 8 of the Licence deals with protecting the integrity of mail, and requires (amongst other things) Royal Mail to submit an annual report to Postcomm and Postwatch regarding, "(a) the number of (or where precise numbers are not known, reasonable estimates of the numbers of) Code Postal Packets during the relevant year which were lost, stolen, damaged or interfered with; and (b) details of any trends, patterns or other notable features (such as above average incident levels at certain premises) in relation to the incidence of loss or theft of, damage to, or interference with, Code Postal Packets." Code postal packets are defined in the Licence as a postal packet conveyed pursuant to a Licence.¹
18. The Commissioner wrote to Royal Mail on 16 July 2007 and asked it to provide him with a copy of the information withheld under section 43. He noted that although Royal Mail had informed him that it did not hold any information relating to requests (1) – (5) and (8) – (9), in its email to the complainant dated 30 March 2006 it had stated that it did not hold it in an easily accessible format and had cited section 12 of the Act. Therefore the Commissioner informed Royal Mail that he sought to establish the facts behind these conflicting statements, and he asked it to clarify whether it held information relating to these requests or not.

¹ http://www.psc.gov.uk/postcomm/live/royal-mail-standards-and-prices/Royal_Mail_Licence_May_2006.pdf, page 39.

19. Royal Mail responded to this letter on 3 August 2007. In response to the Commissioner's questions about whether it held any information relating to requests (1) – (5) and (8) – (9) it advised:

“When processing the original request our FOI unit was advised that to produce answers to the questions raised would require bespoke technical analyses of raw data held on Track and Trace items. The estimated cost of this was:

- One business analyst to work on the requirements for two days at £700 per day (that is £1400 to determine what data could be generated).
- IT Service Provider development costs are then estimated at £10k.

It was on this basis that our original refusal notice referred to Section 12. In reviewing the case, we confirmed that Royal Mail does not currently produce any reports or hold information that answer [the complainant's] questions, other than as advised to you in my letter of 30 November 2006. We do hold raw data on the transit and delivery of all Track and Trace items...and it was thought that through technical analyses it may have been possible to cross reference this with customer information or website logs in order to generate partial answers to some of [the complainant's] questions.

Without commissioning a technical expert to investigate the feasibility of this, we cannot say what information could be created and to what extent this would answer the questions raised, However, we can say that this information does not currently exist (other than as advised), and could only potentially be created at significant expense and then with no guarantee of success. The probability is also that it could not be created retrospectively.”

20. In addition to this Royal Mail provided the Commissioner with a copy of the Condition 8 Report, as well as further arguments supporting its use of section 43(2). It referred to a previous Decision Notice (FS50088494) in which the Commissioner did not uphold its use of section 43(2)², and noted that the circumstances between the two cases were different as, “the data requested in this case are national rather than regional figures of loss, for a product that has been open to competition for many years, and similar information has not been published by Royal Mail, Postcomm or any of Royal Mail's competitors.”
21. The Commissioner wrote to Royal Mail again on 15 August 2007 in order to clarify further its position in regard to the information subject to requests (1) – (5) and (8) – (9). He stated that he believed that Royal Mail's position was that it did not hold detailed reports or statistics relating to these requests; that it did, however, hold a mass or raw data about the transit and delivery of Track and

² In FS50088494 the complainant requested information about the number of complaints made to a Royal Mail delivery office over a specific time, details of how many of those complaints had been investigated, and what action was taken as a result. Royal Mail withheld this information under section 43(2), arguing that release would prejudice its commercial interests. It also sought to rely on section 12 in regard to the second part of the request. The Commissioner upheld the use of section 12, but did not uphold the use of section 43(2). Consequently he ordered the disclosure of the information requested in the first part of the request.

Trace items; that this data was not easily accessible; and the cost of establishing whether it could provide the information requested, from the mass of raw data, would be above the 'appropriate limit'. He asked Royal Mail to confirm whether this was its position and, if so, to provide further details of the costs estimate. If this was not Royal Mail's position he asked it to clarify what its position was.

22. Royal Mail responded on 20 September 2007 and stated that, in hindsight, the original application of section 12 in its refusal notice was incorrect, as it did not hold the information requested at (1) – (5) and (8) – (9). It informed the Commissioner that telephone requests to its Customer Services Department for tracking information were not routinely logged, and those that were logged would be classed as a 'general enquiry,' rather than as relating to a track and trace item. It also stated that its website only recorded the number of hits to the site and not the number of searches or the outcomes of those searches. It apologised for any confusion its previous responses may have caused and, by way of an explanation as to its contradictory statements, it said that upon receiving the original request it had taken advice that the cost of producing this information would exceed the appropriate limit. However, having now considered this further it had realised that this advice was actually relating to the cost of setting up future systems in order to capture and analyse this kind of information, not for any information relating to enquiries which had already been made by its customers. Royal Mail pointed out that these systems could not be put in place retrospectively.
23. The Commissioner responded on 25 September 2007 and acknowledged receipt of this letter. In relation to the information that had been withheld under section 43 he noted Royal Mail's statement that it had faced open competition for the delivery of Special Delivery items for many years, and asked Royal Mail to provide further information in order to support this statement.
24. Royal Mail provided a substantive response in a letter dated 15 October 2007.

Analysis

25. As Royal Mail has informed the Commissioner that some of the information requested by the complainant is not held, and that some of the information requested is withheld under section 43, the Commissioner has looked at each of these issues in turn.

Requests (1) – (5) and (8) – (9)

26. Royal Mail has informed the Commissioner that it does not hold the information specified in these requests.

Section 1

27. Section 1(1) of the Act 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.”

28. Section (1)(6) of the Act states that:

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.

- 29. The Commissioner has considered whether Royal Mail has complied with its duty, under section 1, to confirm or deny whether it holds the information requested in these requests.
- 30. In the email to the complainant dated 30 March 2006 Royal Mail informed the complainant that it did hold the information, although it was not in an easily accessible format, and that it therefore believed that it was exempt from disclosure under section 12. However, Royal Mail has confirmed to the Commissioner that it does not hold the information requested in these requests, and that section 12 was cited in error. The Commissioner has not been provided with any evidence to indicate that Royal Mail has informed the complainant of this.
- 31. Therefore the Commissioner believes that Royal Mail has not complied with its duty to confirm or deny whether it holds the information requested in these requests.
- 32. The Commissioner has gone on to consider whether Royal Mail holds the information requested in these requests. The requests all centre around the number of customer enquiries made by telephone calls, or through its website, made to Royal Mail over a particular period of time in relation to Track and Trace deliveries. Therefore the Commissioner accepts that if Royal Mail does not hold information about the number of customer enquiries, about the delivery of Track and Trace items, it would be unable to answer any of these requests.
- 33. Royal Mail has informed the Commissioner that it does not record the details of any enquiries made to its website, and that any telephone enquiries would be classed and recorded as a general enquiry, rather than as specifically about the delivery of a track and trace item (see paragraphs 15 and 22).
- 34. Further to this the Commissioner notes that during the investigation of this case there has been some confusion as to whether Royal Mail does hold this information, and he further notes that Royal Mail initially claimed section 12 in relation to this information (an exemption it subsequently dropped). However, in its letter to the Commissioner dated 20 September 2007 Royal Mail apologised for this confusion, and provided an explanation as to why it had occurred.

35. Having considered the responses from Royal Mail, and in particular its letter to him dated 20 September 2007, the Commissioner is satisfied that Royal Mail does not hold the information subject to requests (1) – (5) and (8) – (9).
36. The full text of section 1 can be found in the legal annex at the end of this Notice.

Section 12

37. As Royal Mail has now stated that it believes this was claimed in error, the Commissioner has not gone on to consider the application of this exemption.

Request (6)

Section 43

38. Section 43(2) provides an exemption from disclosure for information which would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).
39. The full text of section 43 can be found in the Legal Annex at the end of this Notice.
40. The Commissioner accepts that Royal Mail is a publicly owned company which is engaged in commercial activities and that the information requested relates to those activities. Therefore he believes that the information in question falls within the scope of the exemption.
41. For this exemption to be engaged disclosure would have to prejudice, or be likely to prejudice, the commercial interests of Royal Mail. Therefore the Commissioner has initially considered whether the disclosure of this information would prejudice, or be likely to prejudice, the commercial interests of Royal Mail.
42. In its letter to the Commissioner dated 30 November 2006 Royal Mail argued that the disclosure of the Condition 8 Report would prejudice its commercial interests as it would involve the release of more detailed performance data than that already published, and this information could be easily used by its business competitors in order to give them an unfair advantage. It stated that it was competing in an increasingly competitive market, and that this was particularly so in relation to Special Delivery and express services which had been open to full competition for some time. It pointed out that its business rivals are not subject to the Act, and therefore disclosure of this information would be prejudicial, as its competitors would be able to use this information to win business by undermining confidence in Royal Mail's service.
43. During the course of the case Royal Mail argued that as the terms of its Licence did not allow it to cut prices in order to attract business, it relied on its brand reputation and quality of service to win and keep new business, and therefore the disclosure of this information would be used by its competitors to damage this reputation, prejudicing its commercial interests.

44. Royal Mail also argued that damage to its reputation would also prejudice (or be likely to prejudice) its commercial interests in regard to its private customers as well, as they could turn to electronic and other forms of communication if customer confidence in Royal Mail was undermined in this way.
45. Finally, it argued that disclosure would damage its reputation as, “while in reality the estimates of loss represent only a tiny fraction of mail sent by Special Delivery, the figures themselves could readily be taken out of context and presented as having more significance than they do, damaging the perception of Royal Mail in the eyes of many people.”
46. In order to look at the question of prejudice the Commissioner has considered whether Royal Mail faced open competition in the Special Delivery market at the time of the request. Therefore during the course of the case he requested that Royal Mail provide him with further information to support the claim that it had faced open competition in the Special Delivery market for some considerable time.
47. Royal Mail informed the Commissioner that the Special Delivery / guaranteed next day delivery market was particularly competitive and that:
- Operators do not require licences in order to operate guaranteed delivery or courier services, and indeed there are no regulatory requirements to be met for other operators entering or leaving this market.
 - Direct competition came from several large distribution companies plus hundreds of local/niche carriers.
 - These services fell outside of the formal postal monopoly, which only applied to the delivery of items priced below £1. There had therefore been full unregulated competition in this market for many years, prior to the introduction of the Postal Services Act 2000.
48. After considering this information the Commissioner is satisfied that Royal Mail was facing open competition in the Special Delivery market at the time of the request.
49. In reaching a decision on the question of prejudice the Commissioner has been mindful of the test of ‘likely to prejudice’ as enunciated by Mr Justice Mundy in the case of *R (on the application of Lord) V Secretary of State for the Home Office [2003] EWHC 2073*, and followed by the Information Tribunal in the case of *John Connor Press Associates Limited V The Information Commissioner*, where the Tribunal interpreted the expression ‘likely to prejudice’ within the context of the section 43 exemption as meaning that the chance of prejudice being suffered should be more than hypothetical or a remote possibility, that there must have been a real and significant risk. The Tribunal in that case indicated that the degree of risk must be such that there ‘may very well’ be prejudice.³
50. Bearing this in mind the Commissioner accepts that the disclosure of the Condition 8 Report would be likely to prejudice Royal Mail’s commercial interests

³ Information Tribunal EA/2005/0005.

as he is persuaded that Royal Mail faced open competition in this sector of the postal market at the time of the request, and that its business rivals would have been able to use this information to prejudice its commercial interests. Therefore he believes that the exemption is engaged.

51. As section 43 is a qualified exemption the Commissioner has gone on to consider the public interest test in relation to the application of this exemption in this case. Specifically, he has considered whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Public interest – in favour of maintaining the exemption

52. In considering the public interest factors in favour of maintaining the exemption the Commissioner has considered the arguments put forward by Royal Mail.
53. Royal Mail has stated that as it is a publicly owned company there is a strong public interest in its commercial viability and financial wellbeing, and has referred the Commissioner to the arguments it has presented in regard to the prejudice that it believes disclosure would, or would be likely to, cause (see paragraphs 42 – 47 above). The Commissioner believes Royal Mail has therefore argued that it is in the public interest to avoid this prejudice by upholding the exemption.
54. It has also argued that there is a public interest in allowing fair competition in the postal market by letting it operate on a level playing field, having a 'parity of treatment' with business competitors (who are not themselves subject to the provisions of the Act), and by allowing normal market forces to take effect. It believes that the disclosure of this information would undermine this by prejudicing its commercial interests and giving its business rivals an unfair advantage.
55. Finally Royal Mail has argued that disclosure would be against the public interest as, "having to publish this data could also have a detrimental effect on the reporting and sharing of information with our industry regulator." However, as the Condition 8 Report is a condition of Royal Mail's Licence, the Commissioner is not persuaded by this argument.

Public interest – in favour of disclosing the information

56. There is a presumption running through the Act that openness is, in itself, to be regarded as in the public interest. In addition to this the Commissioner has also been mindful of the strong public interest in openness, transparency, public understanding and accountability, in relation to the activities of public authorities.
57. The Commissioner has gone on to consider these generic public interest issues in reference to the individual circumstances of this case. In particular he has noted that in February 2006 (less than one month before the request was received) Postcomm proposed a financial penalty of £11.38 million for Royal Mail for its failure to implement sufficient procedures to protect the mail, as required in

condition 8 of its Licence.⁴ The proposed penalty was based on a review of Royal Mail's mail security procedures carried out by Postcomm between August 2004 and May 2005, and was highly critical of these procedures. A report of this review, entitled "Royal Mail's Mail Integrity Procedures" was published by Postcomm in February 2006, and the story was reported in the national press and media.⁵

58. The Commissioner believes that furthering the understanding of and participation in the public debate of issues of the day is a strong public interest factor in favour of disclosure. In this instance, as the request was received shortly after Postcomm proposed a large fine in relation to inadequate security provisions, the Commissioner believes that at the time of the request questions regarding the reliability of Royal Mail's security provisions and the security of the mail service were issues of the day. The Commissioner strongly believes that information about the estimates of loss of Special Delivery items could help inform the public debate on these issues, and by doing so, increase public knowledge on the subject.
59. Royal Mail has acknowledged that there is a public interest in its performance and accountability, but has argued that these public interest factors have already been satisfied by the performance information it already publishes.
60. Given the exceptional circumstances of this case, as listed at paragraph 57 above, the Commissioner is not persuaded by this argument. At the time of the request a very large fine had been proposed because of inadequate security provisions, and the Commissioner believes that in these particular circumstances the public interest in accountability would not have been satisfied by the reports Royal Mail made to Postcomm which were not put into the public domain. He does believe, however, that the disclosure of relevant information such as estimates of loss of Special Delivery items would go towards satisfying this factor.
61. The Commissioner also believes that the actions of Postcomm would have called into question Royal Mail's performance in relation to the security of mail, and that the disclosure of this information would help inform any public debate and increase the public understanding of this performance.
62. During the course of the investigation Royal Mail argued that if the withheld information were to be released it could easily be taken out of context, and that this would therefore not help to inform the public (or increase public understanding) in these issues. It wrote that, "while in reality the estimates of loss represent only a tiny fraction of mail sent by Special Delivery, the figures themselves could readily be taken out of context and presented as having more

⁴ Condition 8 (2)(a) requires Royal Mail to "establish and maintain mail protection procedures for the purposes of...minimising the exposure of postal packets conveyed by Royal Mail to the risk of loss, theft, damage or interference." A press release by Postcomm regarding the proposed fine can be viewed at: www.psc.gov.uk/news-and-events/news-releases/2006/postcomm-proposes-penalties-of-11-7m-on-royal-mail-for-failures-in-customer-service.html.

⁵ The report is available at: www.psc.gov.uk/postcomm/live/policy-and-consultations/consultations/licensing--royal-mail--quality-of-service/Mail_Integrity_Report_FINAL_10-2-06.pdf.

- significance than they do, damaging the perception of Royal Mail in the eyes of many people.” However, the Commissioner is not persuaded by this argument as he believes that Royal Mail could take steps to put this information into context.
63. The Commissioner also believes that it is in the public interest to increase public understanding as to whether Postcomm’s actions in proposing a large fine of £11.38 million on a publicly owned company was justified. He believes that the disclosure of estimates of loss of special delivery items would assist the public in reaching an informed conclusion about this.
64. The Commissioner has noted Royal Mail’s argument (as set out in paragraph 53) that as a publicly owned company there is a strong public interest in its commercial viability and wellbeing, that it has a strong reliance on its brand reputation and quality of service, and that therefore it is in the public interest to protect this reputation from prejudice.
65. The Commissioner is not persuaded by this argument, and does not believe that it should lead him to conclude that it is in the public interest for the information to be withheld. Indeed, he believes that in the cause of openness, accountability and transparency, allowing the public to have an informed debate about the reputation and quality of service of Royal Mail is in the public interest, and he feels that the disclosure of the withheld information would help to inform that debate.
66. The Commissioner believes that this argument is strengthened by the large fine that had been proposed by Postcomm shortly before the request was made, the publication of the report of the review, and the subsequent media attention. He believes that these factors would have already brought issues surrounding Royal Mail’s reputation and the security of its services into the public eye, and he believes that it is reasonable to assume that this would have led to questions being raised as to whether Royal Mail’s reputation was deserved. The Commissioner believes that disclosure of this information would assist the public in reaching an informed decision on this matter, and determining whether the reputation is deserved. Given the importance of the security of the mail services the Commissioner finds this a compelling argument.
67. The Commissioner again notes Royal Mail’s comments that the withheld information could easily be taken out of context and would not add to this debate. However, he reiterates his view that Royal Mail could take steps to put this information into context.
68. In conclusion the Commissioner has considered the competing public interest arguments, as set out above. He has considered all the public interest arguments Royal Mail has presented in favour of maintaining the exemption. However, he believes that in all the circumstances of the case, the public interest in disclosing the Condition 8 Report is not outweighed by the public interest in maintaining the exemption, and that therefore this information should be disclosed.

The Decision

69. The Commissioner's decision is that Royal Mail did not deal with the request for information in accordance with the Act in that:

Royal Mail acted in breach of section 1 of the Act in that it did not inform the complainant that it did not hold the information requested in requests (1) – (5) and (8) – (9).

Royal Mail incorrectly withheld the Condition 8 Report under section 43(2).

Steps Required

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

The requested information should be disclosed to the complainant within 35 calendar days of the date of this Notice

Failure to comply

71. 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

72. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

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

Dated the 19th day of November 2007

Signed

**Richard Thomas
Information Commissioner**

**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 43

- (1)** Information is exempt information if it constitutes a trade secret.
- (2)** Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).
- (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 the interests mentioned in subsection (2).