

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 4 August 2009

Public Authority: HM Revenue and Customs
Address: 4th Floor
100 Parliament Street
London
SW1A 2BQ

Summary

The complainant asked to be given the gross and net values of a specified estate, calculated by reference to any corrective accounts filed by the personal representatives of that estate. Her Majesty's Revenue and Customs (HMRC) refused to confirm or deny whether it held the requested information, relying on the provisions of sections 44 (Prohibitions on disclosure) and 40 (Personal data) of the Act. HMRC reviewed its decision and determined that the request should be refused in reliance of section 14(2) (Repeated requests). HMRC asserted that the complainant's new request was for information that is 'substantially similar' to the information sought by an earlier request. It also pointed out that the Information Commissioner had already issued a Decision Notice in the previous case (FS50081722) in which he found that the information was exempt.

The Commissioner has considered the submissions of both parties and has determined that HMRC's application of section 14(2) was incorrect. However the Commissioner has determined that HMRC is not obliged to comply with section 1(1)(a) of the Act by virtue of section 44(2). The Commissioner has also decided that HMRC did not comply with section 17(5) of the Act by failing to provide a refusal notice compliant with that section within twenty working days of receipt of the request.

The Commissioner's Role

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

The Request

2. On 18 January 2008 the complainant made the following request in relation to the estate of an individual 'Mr M' who died on 2 May 1991:

'A grant of probate was made to [Messrs 'X' and 'Y'].

Pursuant to Section 1 Freedom of Information Act 2000, we request the same information as appears in the grant of probate, i.e. the gross and net values of the estate, but calculated by reference to the information supplied by the personal representatives in each corrective account that was filed. We also request the date of the corrective accounts to which the respective gross and net values correspond.'

3. HMRC responded to the complainant's request on 20 February 2008. It refused to confirm whether it holds information relevant to the request and in support of this position cited sections 44(1)(a) and 44(2) of the Act. HMRC held that section 44(1)(a) is engaged by virtue of sections 18(1) and 23 of the Commissioners for Revenue and Customs Act 2005 (CRCA). Additionally HMRC considered that section 40(3) of the Freedom of Information Act also applied to the requested information.
4. On 24 April 2008 the complainant wrote to HMRC requesting a review of its decision not to provide the information he had requested. The complainant's letter detailed a number of arguments in rebuttal of HMRC's application of sections 44 and 40.
5. HMRC concluded its review and wrote to the complainant again on 24 June 2008. HMRC did not confirm its previous application of sections 44 and 40; rather, it decided to apply section 14(2) of the Act to the request. It pointed out that the request was the same, or substantially similar to, a previous request which the Commissioner had dealt with in his Decision Notice of 19 December 2007 (FS50081722). In that case, the following request was made by a limited legal partnership and later transferred to the complainant's firm of solicitors and parliamentary agents:

'In accordance with [the deceased's] will, a grant of probate was made to [Messrs X and Y] on 4 December 1991... we should be obliged if you would provide a copy of the information provided to the Inland Revenue in respect of [the deceased's] estate. In particular, we request a copy of the Inland Revenue Account for [the deceased's] estate, together with copies of the corrective accounts filed'.

The Investigation

Scope of the case

6. On 8 July 2008 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
- 'Disclosure of the information requested was not prohibited by section 18(1) CRCA because section 18(1) was, according to section 18(3), subject to any other enactment permitting disclosure and it was our submission that disclosure of the information requested was indeed permitted by another enactment. He also submitted that the provision in section 18(2)(h) which permits disclosure with the consent of the persons concerned might apply.
 - The requested information was not personal data within the meaning of section 40 FOIA and, even if it was, its disclosure would not contravene any of the data protection principles and therefore the first condition in section 40(3) FOIA was not satisfied.'
 - The basis for treating the request as a repeated request within the meaning of section 14(2) is wrong because:
 - (a) The original request was made by a different 'person' (a different solicitors' firm).
 - (b) HMRC is wrong to assert that the information requested on 18 January 2008 is a subset of the information requested by the first legal partnership.
 - (c) HMRC is wrong to assert that it complied with the first request at the date when the Decision Notice in FS50081722 was issued, i.e. 19 December 2007, and that a reasonable interval had not elapsed before the second request on 18 January 2008.
 - (d) The new request is not substantially similar to the original request and was limited in scope to take into account the grounds on which the Information Commissioner rejected the complaints against HMRC's refusal of that request.
 - (e) HMRC did not in fact comply with the first request.
 - (f) If HMRC was to be taken as having complied with the first request, such compliance cannot be sensibly treated as the date of the Decision Notice of 19 December 2007, given the time for compliance provided by section 10 of the Act.
 - (g) HMRC failed to comply with its obligation under the section 45 Code of Practice¹ to conduct a fair and thorough review. This is because HMRC failed to address the arguments raised in the complainant's

¹ Section 45 code of Practice on the discharge of public authorities' functions under Part I of the Freedom of Information Act 2000.

request for an internal review which were made in rebuttal of the application of sections 44 and 40.

7. As it is a matter which falls outside the scope of the Act, the complainant's assertion at point (g) above has not been addressed within this notice, The Commissioner has however commented on point (g) in the 'Other Matters' section.

Chronology

8. The Commissioner wrote to HMRC on 2 February 2009 making enquiries concerning the application of sections 44, 40 and 14 of the Act.
9. HMRC provided its response to the Commissioner's enquiries on 13 March 2009.
10. On 1 April 2009 the complainant wrote to the Commissioner seeking the opportunity to provide further representation in support of his complaint.
11. The Commissioner spoke with the complainant on 16 April 2009. He confirmed that HMRC had sent him its response to his enquiries. He also gave the complainant an outline of the questions put to HMRC and an indication of the arguments advanced in support of its application of sections 14, 40 and 44. The complainant was invited to make further representations in support of his complaint.
12. The complainant wrote to the Commissioner on 15 May 2009 in response to the Commissioner's telephone call above.
13. The Commissioner spoke with HMRC on 18 May and 21 May 2009. He made further enquiries concerning the net and gross values of an estate which appear on a grant of probate, and also whether the information requested by the complainant or the circumstances of the case had changed in the intervening period between this request and the request dealt with in FS50081722. The complainant made further representations to the Commissioner on 28 July 2009.

Findings of fact

14. The personal representatives of an estate must apply to the probate registry for a grant of probate. This is a legal instrument which enables the personal representatives to deal with the estate according to the deceased's will or the intestacy rules.
15. Before a grant of probate is made, the executors must file an inheritance tax return and pay any tax which is due. If inheritance tax is payable, form IHT400 (formerly IHT200) is sent to HMRC. Form IHT400 is not sent to the probate registry.
16. Personal representatives are obliged to check the accuracy of any account delivered to HMRC and to give notification of any amendments or corrections.

- HMRC then calculate the amount of inheritance tax payable by reference to the Inheritance Tax Account and the amendments or corrections disclosed.
17. When executors apply for a grant of probate, they must attach a different form, IHT421 (previously Form D18). This is a summary of the value of the estate passing by will or intestacy. When the grant of probate is made the gross and net values reported on Form IHT421 are stated on the grant.
 18. The grant of probate becomes a public record and is available under section 125 of the Supreme Court Act 1981.
 19. Where there are subsequent changes to the tax position which reveal a change in the asset values of the estate, as a result of an HMRC investigation or through the corrective accounts being filed, there is no obligation on either HMRC or the personal representatives to notify the Probate Office. The finalised estate accounts are for the benefit of the beneficiaries of the estate, rather than the Probate Office, and are a means of ensuring that all assets and expenses have been accounted for. HMRC does not send the finalised accounts to the Probate Office.

Analysis

Procedural matters

Section 17 – Refusal of request

20. Section 17(5) of the Act provides that –
 - (a) *'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.'*
21. By failing to inform the complainant of its application of section 14(2) within twenty working days, the Commissioner finds that HMRC breached section 17(5) of the Act.

Section 14 – Repeated requests

22. HMRC's decision after its internal review was that section 14(2) applied to the complainant's request. The Commissioner has addressed the application of that section first because where requests are deemed to be vexatious there is simply no need to comply with section 1(1) and the question of whether or not an exemption has been correctly applied does not arise.

Section 14(2) provides that –

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

23. HMRC's review of its decision concluded that the substantive request in this case is for information which is part of the information sought by the complainant in his request of 23 May 2005. HMRC pointed out that this was the subject of the Commissioner's decision in FS50081722. Here the Commissioner had determined that the information was exempt from disclosure under the exemption provided by section 40 of the Act.
24. HMRC asserts that the complainant's request in this case is, in the complainant's words, for 'much more limited information'. Therefore, by implication, the complainant acknowledges that this request is similar to the previous request, albeit reduced to a subset of the information.
25. HMRC point out that the Commissioner issued his Decision Notice in FS50081722 on 19 December 2007 and that the complainant made his request on 18 January 2008. In HMRC's view this does not represent a reasonable time period to have elapsed between the compliance with the first request, taken by HMRC to be the issuing of the previous Decision Notice, and the submission of the second request.
26. The complainant raised a number of points in rebuttal of HMRC's application of section 14(2) of the Act. These are listed at points (a) to (g) above.
27. The Commissioner's approach to section 14(2) can be found in his Awareness Guidance on vexatious and repeated requests². The guidance states that a request can be refused as a repeated request if:
 - it is made by the same person as in the previous request;
 - it is identical or substantially similar to the previous request; and
 - no reasonable time has elapsed since the previous request.
28. The first point concerns the different identities of the requestors in this and the former case. The Commissioner is clear that section 14(2) will be attracted where there are subsequent similar requests made by the same person. The first request (FS50081722) was made on 23 May 2005 by a legal partnership acting on behalf of an unnamed third party. On 6 September 2006 a second firm of solicitors and parliamentary agents took over the handling of that request. The Commissioner's Decision Notice in FS50081722 was therefore served on the solicitors and parliamentary agents. The request made in this case, on 18 January 2008, was made by the same legal partnership which finally dealt with

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http://www.ico.gov.uk/upload/documents/library/freedom_of_information/practical_application/awareness_guidance_22_vexatious_and_repeated_requests_final.pdf

the first request. For the purpose of this notice the Commissioner has adopted the definition of 'person' as set out in the Interpretation Act 1978, that is:

"Person" includes a body of persons corporate or unincorporate.

29. The Commissioner has therefore determined that the two requests were made by the same person.
30. The complainant's second point concerns whether the information sought by the second request can be considered as a subset of the information sought by the first request. In other words; is the information the same or substantially similar to that sought by the first request?
31. The Commissioner accepts that the request of 23 May 2005 is broader than the request made on 18 January 2008. For the purpose of this notice the Commissioner has considered the following element of the first request; *'We request a copy of the Inland Revenue Account for [the deceased's] estate, together with copies of the corrective accounts filed',* against, *'We request the same information as appears in the grant of probate, i.e. the gross and net values of the estate, but calculated by reference to the information supplied by the personal representatives in each corrective account filed'.*
32. The Commissioner finds that the two requests are not substantially similar. This is because the complainant sought to significantly reduce the scope of the second request in an attempt to accommodate the concerns of the public authority in terms of the exemption previously applied. If the Commissioner was to consider the current request as being substantially similar, this would significantly limit the ability of applicants to make refined requests.
33. For the reasons stated above at paragraph 32, the Commissioner finds that HMRC incorrectly applied section 14(2). The Commissioner has therefore gone on to consider HMRC's application of sections 44(1)(a) and 44(2) of the Act.

Exemptions

Section 44 – Prohibitions on disclosure

34. Section 44 provides 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”.
35. Section 44 is an absolute exemption and is therefore not subject to the public interest test provided by section 2(1)(b).
36. HMRC assert that there is no obligation to comply with section 1(1)(a) of the Act in this case by virtue of section 44(2) which states that,

“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)”.

It asserts that if it were to confirm or deny whether the requested information were held this would result in the disclosure of information that falls within section 18(1) of the Commissioners for Revenue and Customs Act 2005 (“CRCA”) and which is exempt by virtue of section 44(2) of the Act.

37. Section 18(1) CRCA prohibits the disclosure by any HMRC official of any information held by HMRC in connection with a function of HMRC. If further asserts that the information sought, if held, would be information held for the purposes of inheritance tax, the administration of which is a function of HMRC.
38. Section 23(1) CRCA provides that information relating to a person, the disclosure of which is prohibited under section 18(1) CRCA, is exempt information for the purposes of section 44(1)(a) of the Freedom of Information Act, if its disclosure would specify the identity of the person of whom the information relates, or would enable the identity to be deduced.
39. The Commissioner is satisfied that the information, if held, would be held by HMRC in connection with one of its functions. He is also satisfied that confirming or denying in this case would result in the disclosure of information relating to a person and that it would identify the person or persons to whom it relates, namely the personal representatives of the estate of Mr ‘M’.
40. Section 18(1) CRCA is subject to a number of exceptions provided by section 18(2) and 18(3) CRCA. HMRC’s view is that sections 18(2) and 18(3) do not affect the interaction of section 18(1) and 23 of the CRCA so as to negate the application of section 44 of the Act. Rather it stands outside of the Act and its affect is that HMRC may, on a discretionary basis, disclose information it holds.
41. The Commissioner understands that HMRC’s reasoning for this position is that section 23 of the CRCA makes no mention of section 18(2) and 18(3) and the conditions which are noted. In HMRC’s view, if Parliament had intended for section 23 of the CRCA to take account of sections 18(2) and 18(3) exceptions it would have said so.
42. The Commissioner disagrees with HMRC’s position that sections 18(2) and 18(3) of the CRCA do not affect the interaction of section 18(1) and 23 of the CRCA. Rather the Commissioner believes that it is not possible to determine whether or not section 18(1) is engaged without reference to sections 18(2) or 18(3). In the case of *Mr Andrew John Allison v Information Commissioner and HMRC (EA/2007/0089)* the Information Tribunal considered a case involving section 18 of the CRCA and agreed with the Commissioner interpretation of the statutory bar. It commented on this issue at paragraph 65.
43. In this case the complainant argues that section 18(1) of the CRCA does not apply and therefore neither does section 44(2) of the Act for two reasons, firstly because section 18(2)(h) may apply. This states that section 18(1) does not apply

to a disclosure which is made with the consent of each person to whom the information relates. Secondly he has claims that section 18(3) applies in this case. This states that section 18(1) applies subject to any other enactment permitting disclosure. The Commissioner will return to this argument below but will deal first with the complainant's argument in relation to section 18(2)(h).

44. When considering section 18(2)(h) the key question is whether consent from the relevant parties to a disclosure under the Act had been provided at the date of the request. The complainant has not supplied evidence that such consent had been obtained but has suggested that HMRC should have considered seeking it. In the Commissioner's view section 18(2)(h) does not impose any obligation on HMRC to seek consent. This view was upheld by the Information Tribunal in the *Allison* case mentioned above at paragraph 23. In view of this the Commissioner does not consider that section 18(2)(h) applies in this case.
45. The Commissioner notes that in the *Allison* case mentioned above the issue considered was the interaction between sections 18(1) and 18(2) of the CRCA. However, he is satisfied that the same principle applies where section 18(3) is at issue because that subsection makes the provisions of section 18(1) subject to any other enactment which permits disclosure of information. Therefore he believes that he must consider whether section 18(3) applies before he can conclude that HMRC was not under a duty to comply with section 1(1)(a) of the Act in this instance.
46. In this case, the complainant drew the Commissioner's attention to the enactment which provides for the gross and net values of an estate to be made public, as being the enactment relevant for the purposes of section 18(3). He argues that section 124 of the Supreme Court Act 1981 (SCA) can be interpreted as permitting confirmation or denial and, if it is held disclosure of the requested information and that therefore the material cannot be exempt by virtue of section 18(1) of the CRCA.
47. Section 124 SCA provides that –

“All original wills and other documents which are under the control of the High Court in the Principal Registry or in any district probate registry shall be deposited and preserved in such places as the Lord Chancellor may direct; and any wills or other documents so deposited shall, subject to the control of the High Court and to probate rules, be open to inspection.”

48. HMRC makes the following points in relation section 124 SCA:
 - The provision relates to specific documents; not to information of a certain description.
 - The information sought by the complainant is not information that is open to public inspection by virtue of it being contained within a grant of probate.
 - Section 124 SCA cannot be read as imposing any kind of obligation or permission on HMRC.

- HMRC does not hold 'original wills' or 'other documents' which are under the control of the probate registry, so therefore it cannot be obliged to deposit them anywhere.
- Section 124 SCA does not remove the duty of confidentiality imposed by section 18(1) CRCA, nor does it state, in general terms, that no obligation of confidentiality shall apply to prevent disclosure.

49. The complainant made a number of representations to the Commissioner during the course of his investigation of the complaint. In particular he argued that in cases where the original net and gross values of an estate are found to be incorrect and it is necessary to engage with HMRC to correct them section 124 should be interpreted purposively to permit publication of the same class of data that is originally published and made available via the grant of probate. The Commissioner understands that the complainant also seeks to argue that this section can be interpreted as permitting confirmation or denial of whether the requested information is in fact held by HMRC. Expanding upon this argument the complainant explained that:

“unless HMRC publish the correct information with regard the gross and net values of the estate, members of the public who make application to the Probate Registry will be misled by being supplied the information that was contained in the original account. By definition, corrective accounts having been filed, the public authorities concerned will know this information (i.e. the information contained in the original estate account) to be wrong. It cannot be in the public interest for incorrect information to be disseminated by public authorities in circumstances where those authorities are in possession of correct and up-to-date information. The public interest in the publication of the gross and net values of an estate (together with the will) derives from its role in preventing fraud. A personal representative knows that the information supplied when filing the estate account will be subject scrutiny. This acts as a deterrent against concealment of assets from the Revenue or potential beneficiaries. If however it were possible to evade this safeguard by filing an estate account with incorrect information as to the gross and net values (to be published) followed by a corrective account (where the revised gross and net values are not to be published), this has the perverse effect of encouraging abuse and potential fraud.”

“... HMRC’s case was that the purpose of section 124 was the protection of beneficiaries, so they could not be defrauded by the concealment of assets intended by the testator to be inherited by them; but, nevertheless, section 124 did not authorise the publication of any correction to the figures contained in the original grant of probate.”

“The very purpose of section 124 is to prevent beneficiaries from being denied the very information that would assist in alerting them to the possibility that an intended inheritance is being unlawfully concealed from them.”

50. The Commissioner is sympathetic to opinions expressed by the complainant. However he must consider what section 124 of the SCA provides for and in this case he agrees that the arguments put forward by HMRC correctly reflect the position in law and represent its obligations under the law.
51. The Commissioner therefore finds that the information, if held, would attract the prohibition on disclosure provided by section 18(1) CRCA and therefore would engage section 44(1)(a) of the Act. Moreover he accepts that HMRC is entitled to refuse to confirm or deny that whether information within the scope of the request is held. This is because he is satisfied that the confirmation or denial that would have to be given in order to comply with section 1(1)(a) of the Act would result in the disclosure of information that falls within section 44(1)(a). In this case confirming or denying whether the requested information is held would reveal to the public something about the tax affairs of the personal representatives of Mr M (who are named in the request), specifically whether or not they had been engaged with HMRC to correct the gross and net values of the estate. Consequently simply confirming or denying whether the information is held would fall within sections 18(1) and 23(1) of the CRCA and thus by virtue of sections 44(1)(a) and 44(2) of the Act HMRC is not obliged to comply with section 1(1)(a).
52. In view of his decision concerning section 44, the Commissioner has not gone on to consider the application of section 40 which was also applied by HMRC.

The Decision

53. The Commissioner's decision is that HMRC incorrectly applied section 14(2) of the Act to the complainant's request.
54. The Commissioner has also decided that HMRC did not comply with section 17(5) of the Act, by failing to inform the complainant, within the time for complying with a request that it was relying on section 14(2).
55. The Commissioner finds that HMRC was not obliged to comply with section 1(1)(a) by virtue of sections 44(1)(a) and 44(2).

Steps Required

56. The Commissioner requires no steps to be taken.

Other matters

57. Although they do not form part of this Decision Notice the Commissioner wishes to comment on the complainant's assertion that HMRC failed to conduct a fair and thorough review of its handling of his request.

58. The Commissioner has found that HMRC incorrectly applied section 14(2) at the point when it conducted its internal review. He accepts that HMRC did not provide further rationale for its previous application of sections 44 and 40.
59. The Commissioner is nevertheless satisfied that the internal review was in accordance with section VI of the Code of Practice³. The paragraphs of relevance to this case state that:
- “39. The complaints procedure should provide a fair and thorough review of handling issues and of decisions taken pursuant to the Act, including decisions taken about where the public interest lies in respect of exempt information. It should enable a fresh decision to be taken on a reconsideration of all the factors relevant to the issue. Complaints procedures should be as clear and simple as possible. They should encourage a prompt determination of the complaint.”
- “46. Where the outcome of a complaint is that an initial decision to withhold information is upheld, or is otherwise in the authority's favour, the applicant should be informed of his or her right to apply to the Commissioner, and be given details of how to make an application, for a decision on whether the request for information has been dealt with in accordance with the requirements of Part I of the Act.”
60. The Commissioner is satisfied that HMRC undertook its internal review in accordance with the Code of Practice. He is drawn to this conclusion because HMRC did not simply uphold its earlier decision; it arrived at an entirely new decision; it was no longer relying on the provisions of sections 40 and 44, therefore HMRC was not obliged to offer any rationale why these sections did or did not apply.

³ <http://www.justice.gov.uk/guidance/foi-code-of-practice.htm>

Right of Appeal

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

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

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

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

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

Dated the 4th day of August 2009

Signed

**Jo Pedder
Senior Policy Manager
Information Commissioner's Office
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Cheshire
SK9 5AF**

Legal Annex

The Freedom of Information Act 2000

General Right of Access

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.”

Time for Compliance

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.”

Section 10(2) provides that –

“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.”

Vexatious or Repeated Requests

Section 14(1) provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious”

Section 14(2) provides that –

“Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with a previous request and the making of the current request.”

Refusal of Request

Section 17(5) provides that -

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

Section 17(7) provides that –

“A notice under subsection (1), (3) or (5) must –

- (a) contain particulars of any procedures provided by the public authority for dealing with complaints about the handing 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.”

Personal information.

Section 40(1) provides that –

“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.”

Section 40(2) provides that –

“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.”

Section 40(3) provides that –

“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.”

Prohibitions on disclosure.

Section 44(1) provides that –

“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.”

Section 44(2) provides that –

“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).”

The Commissioners for Revenue and Customs Act 2005

Section 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.
- (2) But subsection (1) does not apply to a disclosure—
 - (a) which—
 - (i) is made for the purposes of a function of the Revenue and Customs, and
 - (ii) does not contravene any restriction imposed by the Commissioners,
 - (b) which is made in accordance with section 20 or 21,
 - (c) which is made for the purposes of civil proceedings (whether or not within the United Kingdom) relating to a matter in respect of which the Revenue and Customs have functions,
 - (d) which is made for the purposes of a criminal investigation or criminal proceedings (whether or not within the United Kingdom) relating to a matter in respect of which the Revenue and Customs have functions,
 - (e) which is made in pursuance of an order of a court,

(f) which is made to Her Majesty's Inspectors of Constabulary, the Scottish inspectors or the Northern Ireland inspectors for the purpose of an inspection by virtue of section 27,

(g) which is made to the Independent Police Complaints Commission, or a person acting on its behalf, for the purpose of the exercise of a function by virtue of section 28, or

(h) which is made with the consent of each person to whom the information relates.

- (3) Subsection (1) is subject to any other enactment permitting disclosure.

Section 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.

Section 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.