

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 1 December 2009

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

Summary

The complainant requested recent performance figures for first and second class mail. Specifically he was seeking figures which showed actual delivery times. Royal Mail confirmed that it held this information, but withheld it under section 43(2). During the investigation of the case the complainant confirmed that he was seeking access to figures for the 2007/08 financial year. After investigating the case the Commissioner decided that although section 43(2) was engaged, the public interest in maintaining the exemption did not outweigh the public interest in disclosure. Therefore the information should be disclosed. In addition to this, the Commissioner also found that Royal Mail did not meet the requirements of sections 1(1)(b) or 10(1).

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. The complainant emailed Royal Mail on 26 November 2008 and requested the following information:

"1. A set of recent documents that explain the mail process from end-to-end: collection to delivery. I am particularly interested in any documents that explain the difference between 1st and 2nd class mail, i.e. what exactly in the process makes 2nd class mail take longer?"

2. A set of recent performance figures for 1st and 2nd class mail. Here I am looking for figures that expose the actual delivery times, rather than comparison against performance targets, e.g. How many 2nd class letters are delivered within 1 day, within 2 days, within 3 days, etc? Plus the same for 1st class mail (standard letters). Ideally, I would like results broken down by month so that I can see any variances that occurs throughout the year.

3. Please also supply any document that explains your method for measuring performance as in (2).

As you can see, I am looking for information that will help me assess the comparative value of 1st and 2nd class mail.”

3. Royal Mail responded in an email dated 24 December 2008 and provided information in relation to parts 1 and 3 of the request. It also confirmed that it held information that fell under the scope of part 2 of the request, and directed him to some information on its website about the performance of its first and second class services. It went on to state that,

“You requested data showing the proportion of letters delivered within 1, 2 and 3 days each month...we consider this more detailed, unpublished data to be commercially sensitive and therefore exempt from disclosure under Section 43...We believe that this information would be likely to be utilised by Royal Mail’s competitors who could use this data to gain detailed understanding of Royal Mail’s current performance and to promote their own services to business customers and the public.”

It then provided further arguments to support its use of this exemption. It also provided arguments as to why it believed that the public interest in maintaining the exemption outweighed the public interest in disclosure.

4. The complainant emailed Royal Mail on the same day. In relation to its responses to parts 1 and 3 of his request he stated that he was happy with the information that had been provided. However, he noted that he would be asking for an internal review in relation to its response to part 2 of the request.

5. The complainant emailed Royal Mail on 30 December 2008 and asked for an internal review in relation to its response to part 2 of the request. In relation to the scope of this part of his request he stated that,

“For clarity, the information I am requesting is a recent set of detailed performance figures for 1st and 2nd class standard UK mail (i.e. normal-sized letters from postboxes). In particular, I am looking for actual delivery times, rather than comparison against targets. My original request gave the example of letters delivered within “1 day, 2 days, 3 days, etc”. Please be clear that I wish this figure to rise to however many days that you record, and the results to be quoted separately for 1st and 2nd class deliveries.”

He stated that he did not believe that this information was commercially sensitive, as it merely added more detail to information that was already available. He also

noted that he was unsure how other providers would be able to exploit it without publishing comparable data themselves. He also argued that Royal Mail enjoyed a dominant market position, and that the vast majority of consumers have no alternative provider. In relation to public interest he argued that it is in the public interest to understand the true performance of the letter delivery service, and in allowing the public to make a more informed choice over their stamps.

6. Royal Mail carried out an internal review and responded in an email dated 3 April 2009. It confirmed that it held figures, “broken down by each period of the 2008/09 financial year which set out the proportion of 1st and 2nd Class items that are delivered on Day B, C, D, E, F, G or later (G+) etc – with Day B being the day after posting, Day C being the second day after posting, and so on.” In relation to the complainant’s arguments it commented that it believed that the withheld information was much more detailed than the performance data already in the public domain, and that therefore it was possible that competitors could make use of the withheld information in negative marketing or negotiations with business customers. In relation to the complainant’s comments about it enjoying a ‘dominant market position’ it argued that,

“...the relevant performance data relates to 1st and 2nd Class Stamped and Meter items which would include bulk and business customers in addition to members of the public using the service for ‘social mail’. It is important to understand the commercial nature of the market Royal Mail operates in. Since January 2006, the UK mail market has been fully liberalised. Competitors are now able to offer customers full end-to-end service for collection, sorting and delivery of their mail. These companies compete directly with Royal Mail to provide services to business customers.”

7. In addition to this, Royal Mail also informed the complainant that it had considered further factors in relation to the likelihood of potential prejudice to its commercial interests, but that it could not detail those factors, as to do so might itself cause such prejudice. It informed him that it was entitled to do so under section 17(4) of the Act. After taking into account all these factors, it informed him that it believed that section 43(2) was engaged in relation to the withheld information. Finally, it provided the complainant with further submissions as to why it believed that the public interest in maintaining the exemption outweighed the public interest in disclosure.

The Investigation

Scope of the case

8. The complainant contacted the Commissioner on 6 April 2009 to complain about the way part 2 of his request had been handled. The complainant noted that his request was for ordinary domestic letters, but that Royal Mail’s response to him had referred to bulk mail, which he wished to omit if possible. He stated that, “I am interested only in 1st and 2nd class letters that I could post from a postbox myself.”

9. During the course of the investigation the Commissioner corresponded with the complainant as to the scope of this case. In particular he noted that the request had referred to, "recent performance figures", but had not specified the time period for which he was seeking relevant performance data. After several emails the complainant agreed that the relevant time period would be for the financial year April 2007 to March 2008 (see paragraph 15 below). Therefore the Commissioner has focused his investigation on the relevant performance data for this period, and Royal Mail's use of section 43(2) in relation to this information.

Chronology

10. The Commissioner contacted the complainant on 16 June 2009 and informed him that his complaint was under investigation. He noted the complainant's comments about bulk mail, and informed him that he would ask Royal Mail whether the withheld information was held in such a way as to differentiate between ordinary domestic letters and other types of mail that could also be sent by first and second class. If Royal Mail could differentiate between the two types of mail, he would focus his investigation on the domestic mail referred to by the complainant. Otherwise the investigation would focus on the detailed performance data that Royal Mail did hold in relation to first and second class mail.
11. The Commissioner also noted that the original request referred to 'recent' performance figures – but had not specified the period he was seeking information for. He noted that in the internal review Royal Mail had confirmed that it held detailed performance data, "broken down by each period of the 2008/09 financial year..." Given this, he informed the complainant that his investigation would focus on information relating to this period, and Royal Mail's use of section 43(2) to withhold this information.
12. On the same day the Commissioner wrote to Royal Mail and asked it to provide him with a copy of the withheld information, together with its submissions to support its use of section 43(2). He reiterated the complainant's point that, if possible, he only sought access to performance information in relation to 'ordinary domestic letters', and asked it to confirm whether this was possible.
13. The complainant emailed the Commissioner on 17 June 2009 and stated that, "if Royal Mail does not hold data broken down month by month, then I would at least like a set of figures that excludes, and includes, the busy Christmas period."
14. Royal Mail wrote to the Commissioner in a letter dated 15 July 2009, and provided detailed performance information relating to the 2008/09 financial year – however, as the request had been made in November 2008, this information only covered the period April to October 2008. It confirmed that the relevant performance data that it held covered first and second class Stamped and Meter items, and that this included information relating to normal first and second class letters. It explained that Meter items are 'franked' mail items, which had been franked by business customers. It explained that it is not possible to differentiate between 'ordinary domestic letters' and first and second class Meter items because these items are handled and delivered together as part of the 1st and 2nd

class mail services. It also provided detailed submissions to support its use of section 43(2).

15. There followed a series of emails between the Commissioner and the complainant regarding the period which his request related to. As a result of these emails, on 4 August 2009, the complainant confirmed that the correct period was for the financial year April 2007 to March 2008.
16. On 4 August 2009 the Commissioner emailed Royal Mail and informed it that the period in question was April 2007 to March 2008. He asked to be provided with a copy of the relevant performance data relating to this period. In addition to this, the Commissioner noted that in the internal review Royal Mail had stated,

“...the relevant performance data relates to 1st and 2nd Class Stamped and Meter items which would include bulk and business customers in addition to members of the public using the service for ‘social mail’.”

In reference to this he noted that Royal Mail's Quarterly Quality of Service Reports differentiated between Retail first and second class, and Bulk first and second class. Given the apparent disparity between its arguments at internal review and the contents of the above reports, the Commissioner asked Royal Mail to confirm whether the performance data for first and second class mail, for the period in question, included bulk mail.

17. Royal Mail responded on 3 September 2009, and provided a copy of the performance data for first and second class Stamped and Meter mail for the period April 2007 to March 2008. In relation to the Commissioner's request for clarification as to whether this information included bulk mail or not, it informed him that it did not. It stated that the information related to stamped first and second class mail, and also to Meter mail. It also explained that Meter mail includes mail sent by business customers who use franking machines. These are used by large corporate companies, government organisations and universities, as well as small and medium size businesses and sole traders.

Analysis

Exemptions

Section 43

18. Section 43(2) states that information is exempt information if its disclosure under the Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it). This is a qualified exemption, and is therefore subject to the public interest test.
19. The full text of section 43 can be found in the Legal Annex at the end of this Notice.

20. In this case Royal Mail has argued that the disclosure of the withheld information would be likely to prejudice its own commercial interests.
21. The Commissioner has first considered whether the withheld information, and the potential prejudicial effects described by Royal Mail, would relate to its own commercial interests. In addition to the points argued by Royal Mail in the refusal notice and the internal review – and expanded upon in its correspondence with the Commissioner – it has also provided the Commissioner with submissions to support its use of the exemption which it believes that, due to the nature of those submissions, cannot be put into the public domain. Therefore these submissions and the Commissioner's consideration of them are recorded in the Confidential Annex to this Notice.
22. The withheld information consists of performance data relating to first and second class mail delivery. The Commissioner is therefore satisfied that this information relates to the commercial interests of Royal Mail. Furthermore, after considering Royal Mail's arguments (as detailed below and in the Confidential Annex) the Commissioner is satisfied that the potential prejudicial effects would relate to Royal Mail's commercial interests. Therefore he believes that the withheld information falls within the scope of the exemption.
23. However, for this exemption to be engaged disclosure would have to prejudice, or be likely to prejudice, the commercial interests of Royal Mail. In this case Royal Mail has argued that prejudice would be likely.
24. In reaching a decision on the question of the likelihood 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 Tribunal in the case of *John Connor Press Associates Limited v ICO* [EA/2005/0005], 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 a hypothetical possibility; there must have been a real and significant risk."¹
25. In reaching a decision on the likelihood of prejudice the Commissioner also believes that the public authority should be able show some causal link between the potential disclosure of the withheld information and the prejudice it has argued is likely to occur.
26. The Commissioner has gone on to consider Royal Mail's arguments which it has made in support of its use of section 43(2). He has first considered the arguments made in its correspondence with the complainant (and expanded upon in its letter to the Commissioner dated 15 July 2009). He has then gone on to consider the additional arguments made by Royal Mail in the above letter. However (as noted above), due to the nature of these additional submissions the details of his consideration of these submissions are listed at paragraphs 1 to 4 of the Confidential Annex.

¹ EA/2005/0005, para 15.

27. Royal Mail has pointed out that it is operating in a fully liberalised postal market, with significant competition. Were the withheld information to be disclosed, it is likely that its competitors would use this information in order to damage customer confidence in it by creating a negative impression of its service, either by negative publicity, sales pitches or advertising. In order to support this argument Royal Mail provided the Commissioner with examples that it believes shows how its competitors have used performance data as a tool to win business by damaging customer confidence in its services. Any damage to customer confidence is likely to prejudice its commercial interests as,

"Customers have alternative choices to using Royal Mail, and negative perceptions... (even if inaccurate) could spur customers to use an alternative. In the market in which Royal Mail now operates, low advocacy rates and negative perceptions of the service are highly likely to impact on the use of Royal Mail's services."

28. It has gone on to state that it is at a clear commercial disadvantage, as none of its competitors is required to publish similar performance data. If this information were disclosed, customers would not be able to assess its performance against those of its competitors and, therefore, disclosure would distort customers' perception, as they have no reference points against which they can compare the information.
29. It has pointed out that the withheld information relates to some business mail, as well as 'social mail', as some of its business customers also use first and second class services (see paragraph 17 above).
30. The Commissioner is not convinced by this argument. Whilst he accepts that Royal Mail is operating in a highly competitive market he is not convinced that the disclosure of the withheld information would be of much use by its competitors, given what performance data is already disclosed in the Quarterly Quality of Service Reports which are available online.² These show what percentage of retail first and second class mail has been delivered in a particular quarter within the standard delivery times. These also show similar performance information in relation to individual postcode areas. Whilst the Commissioner accepts that the withheld information is a more detailed breakdown of this performance data (i.e. what percentage of mail has been delivered 1 day after collection, 2 days after collection, etc) he has not been persuaded that the level of detail is that much greater as to allow its competitors to damage its reputation in the significant way argued by Royal Mail. In reaching this view that Commissioner has also been mindful of the evidence provided by Royal Mail which it argues shows how competitors use performance data against it. Having considered this evidence, the Commissioner notes that it all appears to be links to stories already appearing in the media, which its competitor has provided hyperlinks to. It has not provided him with evidence that its competitors actively use the performance data published in the Quarterly reports in order to damage Royal Mail's commercial reputation, and in turn potentially influencing customer choice.

² <http://www.royalmailgroup.com/portal/rmg/content1?catId=23300505&mediaId=23700533>

31. The Commissioner has gone on to consider the additional arguments made by Royal Mail in the above letter. However, as noted above, due to the nature of these additional submissions the details of his consideration are listed at paragraphs 1 to 4 of the Confidential Annex.
32. After considering Royal Mail's arguments, as detailed in the confidential annex, the Commissioner is persuaded that the disclosure of the withheld information would be likely to prejudice the commercial interests of Royal Mail. He has therefore gone on to consider whether the public interest in disclosing the withheld information is outweighed by the public interest in maintaining the exemption.

Public interest arguments in favour of disclosing the requested information

33. 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.
34. The Commissioner has gone on to consider these generic public interest issues in reference to the individual circumstances of this case.
35. The complainant has argued that there is a public interest in increasing public understanding of the true performance of Royal Mail's service. He has noted that the current published performance figures, "do not allow for a proper comparison between the two classes of delivery (e.g. is 2nd class mail really 3 times slower than 1st class?)." He has argued that disclosure would increase public confidence that their letters are being delivered on time. Finally, he has argued that disclosure would allow the public to make a more informed consumer choice over which type of stamp to purchase.
36. The Commissioner agrees that disclosure would increase public understanding of Royal Mail's performance. The performance data currently published in the Quarterly Quality of Service Reports shows what percentage of mail is being delivered in a particular quarter to the standard delivery times (and by a process of elimination, what percentage is not delivered to this standard time). The withheld information gives a more detailed breakdown of this – showing on a monthly basis how long it has taken to deliver mail by the first day after collection, second day after collection, and so on. The Commissioner believes that this gives a much more accurate picture of performance, and would allow the public to reach a more informed view of exactly how long it has taken Royal Mail to deliver mail in any given month. In addition to this, the Commissioner also notes that the withheld information breaks this performance data down into monthly figures (rather than quarterly). Again, the Commissioner believes that this would allow the public to reach a more informed view on Royal Mail performance, taking into account factors which might affect monthly performance, such as holiday periods.
37. In addition to this, the Commissioner also believes that there is a public interest in allowing the public to make an informed choice as to the services offered by a public authority.

Public interest arguments in favour of maintaining the exemption

38. 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 be likely to cause (see paragraphs 27 to 30 above, and paragraphs 1 to 4 of the Confidential Annex). Royal Mail has argued that it is in the public interest to avoid this prejudice by upholding the exemption.
39. It has argued that it is not in the public interest to risk damaging public confidence in mail services unnecessarily, adding that,

“As Royal Mail’s competitors are not required to publish equivalent information, releasing this data would not allow customers to make a more informed choice about the postal operator or service they wish to use.”

40. 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.

Balance of the public interest arguments

41. In balancing the public interest arguments the Commissioner has noted Royal Mail’s argument (as set out in paragraph 38) that as a publicly owned company there is a strong public interest in its commercial viability and wellbeing, and in maintaining a level playing field with its competitors. Whilst the Commissioner recognises this public interest argument, in balancing the public interest arguments he has to take into consideration whether he believes that the disclosure of the withheld information in this case would cause any significant damage to Royal Mail’s commercial viability and financial wellbeing.
42. As noted above, the Commissioner has not been persuaded by Royal Mail’s argument that its competitors would be likely to use the withheld information in order to damage customer confidence in it by creating a negative impression of its service. In addition to this, he also notes the comments he has made at paragraphs 5 to 8 of the Confidential Annex. These are in relation to the arguments given by Royal Mail which are detailed at paragraphs 1 to 4 of the Confidential Annex.
43. In reaching a view on the balance of the public interest the Commissioner has again taken into account the nature of the withheld information. Whilst he accepts that this performance data is more detailed than that already published in the Quarterly Quality of Service Reports, he is not persuaded that it is that much more detailed, in order to make it of a substantially higher commercial sensitivity than that information already in the public domain. Whilst he acknowledges Royal Mail’s argument that the public interest in openness and accountability is

somewhat met by the performance data it publishes in the Quarterly Reports, he believes that the withheld information increases public understanding of its performance by giving a more detailed breakdown of delivery times on a monthly basis.

44. In addition to this, the Commissioner has also been mindful of the arguments he has listed in favour of disclosure, as listed at paragraphs 33 to 37 above.
45. After considering these points, and bearing in mind the Act's presumption of disclosure, the Commissioner has decided that the public interest in disclosure is not outweighed by the public interest in maintaining the exemption. Therefore the withheld information should be disclosed.

Procedural Requirements

46. 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.”

47. Section 10(1) of the Act states that

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

48. As the Commissioner has decided that the withheld information is not exempt from disclosure under section 43(2) he believes that this information should have been provided to the complainant in line with the duty at section 1(1)(b). Royal Mail's failure to do so therefore constitutes a breach of section 1(1)(b). Furthermore, by failing to provide this information within 20 working days of the request Royal Mail also breached section 10(1).
49. The full texts of sections 1 and 10 can be found in the Legal Annex at the end of this Notice.

The Decision

50. The Commissioner's decision is that Royal Mail did not deal with the request for information in accordance with the Act in that:
- It did not deal with the request for information in accordance with section 1(1)(b) of the Act as it inappropriately relied upon section 43(2) to withhold the

requested information. In failing to comply with the requirements of section 1(1)(b) within 20 working days it also breached section 10(1).

Steps Required

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

The withheld information, i.e. the performance data for first and second class mail relating to the 2007/08 financial year (as provided to the Commissioner in the email of 3 September 2009), should be disclosed to the complainant.

52. Royal Mail must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

53. 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.

Other matters

54. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
55. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his 'Good Practice Guidance No 5', published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner is concerned that in this case, it took over 60 working days for an internal review to be completed, despite the publication of his guidance on the matter.

Right of Appeal

56. 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 1st day of December 2009

Signed

**Graham Smith
Deputy 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 10

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

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

(3) If, and to the extent that –

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

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

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

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

(5) Regulations under subsection (4) may –

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

(b) confer a discretion on the Commissioner.

(6) In this section –
“the date of receipt” means –

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

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

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

Section 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).