

## **Freedom of Information Act 2000 (Section 50)**

### **Decision Notice**

**Date: 8 April 2010**

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

### **Summary**

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The complainant made a request to Royal Mail for the minutes of the Stamp Advisory Committee (the "SAC"). Royal Mail withheld the minutes of the SAC under sections 36(2)(b)(i) and 36(2)(c). After investigating the case the Commissioner decided that the information was correctly withheld under section 36(2)(b)(i). However, the Commissioner also decided that Royal Mail did not meet the requirements of section 17(3).

### **The Commissioner's Role**

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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

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2. The complainant initially contacted Royal Mail in an email dated 7 November 2008 and made the following request under the Act:

“In relation to the sets of stamps that were approved by the Stamp Advisory Committee for release in 2005 how many other themes were placed before the committee for potential release in 2005 that were declined. Please give the title of each theme that was vetoed and a brief description of what was to appear on each stamp in that theme. Please also provide me with any copy of any document which shows why the committee were against that particular theme.”

By way of background the SAC advises Royal Mail on stamp issuing policy. Royal Mail selects the subject of upcoming stamp issues and appoints designers to draw up a variety of different possible design for each issue. The SAC then reviews the possible design and advises Royal Mail which they think is the best. The SAC's recommendations are not binding on Royal Mail, nor does it select new subjects for stamp issues. The SAC is drawn from all walks of life but includes particularly designers, Royal Mail representatives and a British Government representative.<sup>1</sup>

3. Royal Mail responded in an email dated 5 December 2008. It informed the complainant that it did not hold information of the nature he had requested. It stated that,

“Each year Royal Mail receives many hundreds of requests for possible stamps. Royal Mail issues stamps based on anniversaries in multiples of 50 years (e.g. centenaries) and to mark major national events. From the very large number of subjects suggested by the criteria, Royal Mail researches subjects in order to come to a short list for the creation of the stamp programme. Royal Mail commissions designers to develop visuals interpretations of each subject.

Royal Mail has an approval process for the development of the design of stamp issues, and this includes the

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<sup>1</sup> [http://en.wikipedia.org/wiki/Stamp\\_Advisory\\_Committee](http://en.wikipedia.org/wiki/Stamp_Advisory_Committee)

Stamp Advisory Committee (SAC). The SAC considers designs presented to it and provides advice as to suitability and design standards."

4. The complainant emailed Royal Mail on 9 January 2009 and acknowledged this response. However, he noted that this did not really answer his question, and submitted a revised request,

"What I want to see is those designs that did not make it through to be stamps and the remarks made by the SAC in relation to those failed designs and any improvements/modifications it made in relation to those designs that were approved."
5. Royal Mail emailed the complainant on 9 February 2009, and confirmed that it held information that fell within the scope of this revised request. However, it informed him that it was still considering the public interest test, in relation to section 36. It estimated that it would be able to respond by 23 February 2009.
6. Royal Mail did not contact the complainant again until 1 April 2009. It confirmed that the relevant advice and commentary of the SAC was recorded in the SAC minutes, and that the designs for 2005 stamps had been considered at a number of meetings in 2003 and 2004. However, it informed the complainant that it believed that this information was exempt under section 36. It provided further arguments to support its use of this exemption, and submissions as to why it believed that the public interest in maintaining the exemption outweighed the public interest in disclosure. It also confirmed that some unadopted stamps artwork was held by the British Postal Museum and Archive, and provided the complainant with the contact details of this.
7. The complainant contacted Royal Mail on 7 April 2009 and requested an internal review of its decision to apply section 36.
8. Royal Mail carried out an internal review and responded in a letter dated 10 June 2009. It upheld its use of section 36 to withhold the minutes of the SAC, stating that it believed that disclosure would inhibit the free and frank provision of advice, the free and frank exchange of views for the purposes of deliberation, or would otherwise prejudice the effective conduct of public affairs. It also confirmed that it did hold

visual records of designs presented to the SAC in 2003 and 2004. However, it stated that to identify the relevant visual material which was considered at the SAC meetings that fell under the scope of the request, would exceed the appropriate limit – and therefore it was not required to comply with the request by virtue of section 12(1) of the Act. Finally, it informed the complainant of his right to complain to the Commissioner.

## **The Investigation**

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### **Scope of the case**

9. The complainant contacted the Commissioner on 26 June 2009 to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider Royal Mail's use of section 36.
10. The Commissioner wrote to the complainant on 21 August 2009 and informed him that he intended to focus his investigation on Royal Mail's use of section 36 to withhold the relevant minutes of the SAC, where it discussed potential stamp designs for 2005. The complainant emailed the Commissioner on 21 August 2009 and agreed with the intended scope of the case.
11. During the course of the Commissioner's investigation Royal Mail disclosed some of the previously withheld information. Specifically it disclosed all of the relevant SAC minutes, except for the names of the designers whose designs were not chosen, and the comments of the SAC members. Therefore the Commissioner has not considered these sections of the minutes any further.
12. Further to this, during the course of the investigation Royal Mail sought to rely upon section 40 to withhold the names of designers whose designs did not make it through to be stamps. In an email dated 13 November 2009 the complainant informed the Commissioner that he did not wish to complain about this, and consequently this information has not been considered any further in this case.
13. Therefore the focus of this case is the outstanding information from the minutes of the SAC where it discussed potential stamp designs for 2005 which has been withheld by Royal

Mail under sections 36(2)(b)(i) and 36(2)(c) – except for the names of designers whose designs did not become stamps.

14. Although not referred to by the complainant, the Commissioner has also considered Royal Mail's compliance with the requirements of section 17 of the Act.

## **Chronology**

15. The Commissioner wrote to Royal Mail on 21 August 2009 and requested a copy of the withheld information. He also asked it for further submissions to support its use of section 36, and to confirm which parts of this exemption it was seeking to rely upon.
16. Royal Mail wrote to the Commissioner on 5 October 2009 and provided a copy of the withheld information, together with its submissions to support its use of sections 36(2)(b)(i) and 36(2)(c). It also informed him that it now believed that section 40(2) applied to the names of the designers whose stamp designs had not been selected. Finally, it informed him that after reconsidering the circumstances of the case it was now prepared to disclose some of the previously withheld information.
17. The Commissioner wrote to Royal Mail on 15 October 2009 and asked it to confirm whether it had now disclosed the sections of the previously withheld information that it had now identified for disclosure. Royal Mail wrote to the Commissioner on 28 October 2009 and confirmed that it had.
18. Following an exchange of emails on 13 November 2009 the complainant informed the Commissioner that he did not wish to challenge Royal Mail's use of section 40 to withhold the names of designers. Consequently the Commissioner did not go on to consider this exemption any further.
19. Following an exchange of communications, Royal Mail provided further information to the Commissioner in a letter dated 19 February 2010, and an email dated 4 March 2010. This information provided further evidence in relation to the identity of the qualified person, and the submissions that had been provided to the qualified person when he had considered the application of section 36.

## Analysis

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### Exemptions

#### Section 36

20. In this case Royal Mail has relied upon sections 36(2)(b)(i) and 36(2)(c) to withhold the outstanding information.

21. The relevant parts of section 36(2) state that,

“Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act-

(b) would, or would be likely to, inhibit-

(i) the free and frank provision of advice, or

[...]

(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.”

This is a qualified exemption, and is therefore subject to the public interest test.

22. The full text of section 36 is available in the Legal Annex at the end of this Notice.

23. The Commissioner has first considered the application of section 36(2)(b)(i).

24. Information can only be exempt under section 36 if, in the reasonable opinion of a qualified person, disclosure would, or would be likely to lead to the above adverse consequences. In order to establish whether the exemption has been applied correctly the Commissioner must:

- establish that an opinion was given;
- ascertain that it was given by a qualified person;
- ascertain when the opinion was given; and,
- consider whether the opinion was objectively reasonable and reasonably arrived at.

If the Commissioner decides that the exemption is engaged he must then go on to consider whether the public interest in maintaining the exemption outweighs the public interest in disclosure.

25. The Commissioner has been guided by the Tribunal's decision in *Guardian & Brooke v ICO & the BBC* [EA/2006/0011 & EA/2006/0013] which indicated that the reasonable opinion is limited to the degree of likelihood that inhibition or prejudice may occur and thus, "does not necessarily imply any particular view as to the *severity* or *extent* of such inhibition [or prejudice] or the *frequency* with which it will or may occur, save that it will not be so trivial, minor or occasional as to be insignificant."<sup>2</sup> Therefore, in the Commissioner's opinion this means that when assessing the reasonableness of an opinion the Commissioner is restricted, focusing on the likelihood of that inhibition or harm occurring, rather than making an assessment as to the severity, extent and frequency of prejudice or inhibition caused by disclosure.
26. During the course of the investigation the Commissioner asked Royal Mail for details of the decision taken by the qualified person, in order for him to ascertain that an opinion was given and also that it was given by an appropriate person at an appropriate time.
27. Royal Mail has advised that the decision to apply sections 36(2)(b)(i) and 36(2)(c) was made by the Company Secretary on 31 March 2009. This was after Royal Mail's letter dated 9 February 2009 in which it explained to the complainant that the section 36 exemption was engaged. The fact that the opinion was not obtained prior to the exemption being cited as a basis for refusal represents a flaw in the process followed to apply section 36. However, it was remedied prior to the letter to the complainant dated 1 April 2009 and by the completion of the internal review.
28. Royal Mail has explained that the Company Secretary is the qualified person for the purposes of section 36. Section 36(5) of the Act describes a 'qualified person' for the purpose of applying this exemption. The provisions of Section 36(5)(o)(ii) and (iii) are relevant in this case. A qualified person may be the public authority itself or any of its employees if so authorised by a Minister. Although not specifically listed on the Ministry of Justice's website (the relevant page is now

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<sup>2</sup> EA/2006/0011 & EA/2006/0013, para 91.



archived) as the qualified person (no one is actually so designated), the Commissioner accepts that the Company Secretary was the qualified person at the time of the request.

29. Royal Mail has informed the Commissioner that, prior to making his decision to apply section 36, the qualified person was provided with the following:

- a copy of the request,
- an outline of section 36,
- an outline of the information held to which section 36 might apply,
- a copy of the requested information,
- guidance on the case law on section 36,
- extracts from the Commissioner's guidance, and
- arguments as to why section 36 might be engaged.

Further to this, Royal Mail has also provided the Commissioner with a copy of this submission.

30. Royal Mail has also provided the Commissioner with some details of the factors that were taken into account by the qualified person in reaching his opinion.

31. In relation to the application of section 36(2)(b)(i) the qualified person took into account the role of the SAC, and the fact that the minutes of its meetings are recorded on the understanding that discussions are held in confidence. The minutes are by nature detailed, and clearly set out the SAC member's opinions on stamp designs. In reaching his decision on the application of this exemption the qualified person considered that,

"...if comments of the SAC members were placed into the public domain, this would be likely to inhibit the SAC members' ability to be candid in their views on various designs. This could lead to Royal Mail not being provided with the best advice possible as to the stamp programme and design to adopt, as SAC members may not express their true opinions because of concerns that the information may be placed in the public domain."

32. Bearing these submissions in mind, the Commissioner is satisfied that the qualified person only took into account relevant factors when reaching their opinion. Furthermore he is satisfied that the substance of the requested information is not such that the qualified person could not reach a



reasonable opinion that the exemption was engaged. Whilst he has identified a flaw in the application of section 36, the Commissioner notes that this was remedied prior to completion of the internal review. In view of all of the above he is satisfied that the qualified person's opinion was reasonably arrived at.

33. The next steps for the Commissioner are to consider whether the qualified person's opinion was a reasonable one, and whether the public interest in favour of maintaining the exemptions outweighs the public interest in disclosure.
34. The basis for the qualified person's opinion, under section 36(2)(b)(i), is that such disclosure would be likely to inhibit the SAC's members' ability to be candid in their views about stamp designs in the future. Therefore disclosure would be likely to inhibit the free and frank provision of advice.
35. Having considered the circumstances in which the opinion was given, the contents of the withheld information to which it relates and the context in which the material was created, the Commissioner is of the view that the opinion of the qualified person is a reasonable one in substance.
36. The Commissioner has gone on to consider the public interest test.
37. In reaching a view on the public interest the Commissioner has noted the comments of the Tribunal in *Guardian & Brooke v ICO & the BBC*, which held that the application of the public interest test in section 36 cases entails a consideration of the following factors:
  - (a) The lower the likelihood is shown to be that the free and frank exchange of views would be inhibited, the lower the chance that the balance of the public interest will favour maintaining the exemption.
  - (b) Since the public interest in maintaining the exemption must be assessed in all the circumstances of the case, the public authority is not permitted to maintain a blanket refusal in relation to the type of information sought. The authority may have a general policy that the public interest is likely to be in favour of maintaining the exemption in respect of a specific type of information, but any such policy must be flexibly

applied, with genuine consideration being given to the circumstances of the particular request.

- (c) The passage of time since the creation of the information may have an important bearing on the balancing exercise. As a rule, the public interest in maintaining the exemption will diminish over time.
- (d) In considering factors that militate against disclosure, the focus should be on the particular interest that the exemption is designed to protect, in this case the free and frank provision of advice and the effective conduct of public affairs.
- (e) While the public interest considerations in the exemption from disclosure are narrowly conceived, the public interest considerations in favour of disclosure are broad ranging and operate at different levels of abstraction from the subject matter of the exemption. Disclosure of information serves the general public interest in the promotion of better government through transparency, accountability, public debate, better public understanding of decisions, and informed and meaningful participation by the public in the democratic process.<sup>3</sup>

However, the Tribunal qualified the first of these tests, (a), by stating that it was for the qualified person to decide whether prejudice was likely, and thereby whether the exemption was engaged. However, in making a decision on the balance of the public interest, the Tribunal (and therefore the Commissioner) would need to make a decision as to the severity, frequency, or extent of any prejudice that would or might occur.

### **Public interest arguments in favour of disclosing the requested information**

- 38. Royal Mail has recognised that there is a public interest in the design and production of stamps.
- 39. The complainant has also argued that there is a public interest in favour of disclosing the withheld information, although he has not provided any specific arguments in support of this point.

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<sup>3</sup> EA/2006/0011 & EA/2006/0013, para 87.

40. The Commissioner recognises the general public interests in promoting openness, transparency and accountability in relation to public bodies and decisions made by those bodies.
41. The Commissioner believes that there is a public interest in increasing public understanding of the process by which stamp themes are chosen, for example in understanding what issues were considered in deciding the themes for a particular year, and whether any potentially controversial themes were rejected and why. However, the minutes of the SAC relate, instead, to the designs which were under consideration, once the themes for 2005 had already been chosen – they do not relate to the selection process of the themes themselves. Therefore the withheld information in this case does not serve that public interest. In addition to this, the Commissioner is not aware of any particular controversy in relation to the stamp designs that were chosen for issue in 2005.
42. The Commissioner recognises that there is a public interest in openness and accountability. Disclosure of the requested information would arguably provide additional evidence of the rigour of the design selection process and further public understanding of why some designs were not selected. However he notes that Royal Mail has now disclosed some of the SAC minutes – which do include some details of the designs that were under consideration (and were not chosen), and some references as to why some of those designs were not recommended by the SAC. Therefore he does not consider that the arguments in favour of disclosure are of significant weight in relation to the remaining withheld information in this case.

### **Public interest arguments in favour of maintaining the exemptions**

43. In relation to section 36(2)(b)(i) Royal Mail has argued that it relies upon the free and frank provision of expert advice from the SAC members. It has explained that the SAC advises Royal Mail on the designs relating to the stamp programme. Once a list of themes has been chosen the SAC looks at specific design proposals and prepares a short list of designs to be selected. If the withheld information were disclosed it believes that this would be likely to inhibit the SAC members' ability to be candid in their views on various stamp designs. This would be against the public interest as it would inhibit Royal Mail's ability to select the best designs for its stamp programme.

44. The Commissioner believes that there is a public interest in public authorities being able to make fully informed decisions. He believes that in order for a fully informed decision to be made, a public authority should be able to seek expert advice (in this case many of the SAC members are designers or stamp experts) and for that advice to be provided in a free and frank manner. In this instance, given the high profile of stamp designs for Royal Mail, the Commissioner believes that it is in the public interest to preserve its ability to make fully informed choices in relation to the selection of those stamp designs.

### **Balance of the public interest arguments**

45. In considering the balance of the public interest in relation to section 36(2)(b)(i) the Commissioner has again considered the nature of the withheld information. He notes that the views of the SAC members recorded in the minutes are of a free, frank and robust nature, and do relate to specific designs which have been produced by specific designers. The Commissioner also notes that Royal Mail has stated that the minutes of the SAC meetings are recorded on the understanding of the parties involved that discussions are held in confidence. Given the free and frank nature of the comments of the SAC members (as recorded in the minutes) the Commissioner is persuaded that, were the withheld information to be disclosed, it would be likely to have an inhibitory effect on the free and frank provision of advice.
46. As he has noted at paragraph 37 above, in making a decision on the balance of the public interest, the Commissioner will take into account the severity, frequency, or extent of any prejudice that would or might occur. In this instance the Commissioner is persuaded by Royal Mail's arguments around the inhibitory effect on SAC members' advice in the future. In reaching a view on the weight to give this public interest factor the Commissioner has considered the frequency with which it is likely to occur in the future. As the SAC meets on a regular basis he believes that this prejudice would be likely to occur fairly frequently. As noted at paragraph 44 above, the Commissioner believes that given the high profile of stamp designs for Royal Mail, it is in the public interest to preserve its ability to make fully informed choices in relation to the selection of those stamp designs. Any unwarranted prejudice to this, by disclosure of the SAC minutes causing an inhibitory effect, would not be in the public interest.

47. In balancing these factors against the public interest in disclosure the Commissioner has been mindful of the points he has made at paragraphs 38 to 42 above, in favour of disclosure.
48. However, as noted at paragraph 42 above, the Commissioner is not persuaded that the arguments in favour of disclosure have significant weight in relation to the remaining withheld information. In particular he has noted that he is unaware of any particular controversy surrounding the stamp designs that were chosen for issue in 2005, and that the complainant has not provided any specific arguments as to why the disclosure of the withheld information would be in the public interest.
49. Therefore, after balancing the public interest factors, the Commissioner believes that the public interest in maintaining section 36(2)(b)(i) outweighs the public interest in disclosing this information. Therefore he believes that all of the outstanding information should be withheld under this exemption.
50. As he has come to the conclusion that all of the outstanding information should be withheld under section 36(2)(b)(i), the Commissioner has not gone on to consider the application of section 36(2)(c).

### **Procedural Requirements**

51. Section 10(1) of the Act 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."

However, section 17(2) provides that a public authority may extend the time limit where it is still considering the public interest after 20 working days, as long as certain measures are taken. Where any additional time beyond the initial 20 working days is required, the public authority must still serve a 'refusal notice' under section 17 of the Act within 20 working days of a request even in those cases where it is relying on a qualified exemption and has not yet completed the public interest test; state the exemption(s) being relied on and, if not apparent, the reasons why they apply; and give an estimate of the time by which the final decision will be reached.

52. If the final decision is to withhold the requested information, a second notice must then be issued providing the reasons for the decision on the public interest. Under the terms of section 10(3) of the Act, this second notice need not be issued *'until such time as is reasonable in the circumstances'*. As the Commissioner has explained in his *'Good Practice Guidance 4'*, public authorities should aim to conduct the public interest test within 20 working days. In cases where the public interest considerations are exceptionally complex it may be reasonable to take longer but in the Commissioner's view the total time taken should in no case exceed 40 working days.
53. In this case, the request was made on 9 January 2009. Royal Mail acknowledged the request on 9 February 2009 and stated that it required additional time in order to consider the public interest test in relation to section 36. It informed the complainant that it intended to respond by 23 February 2009. In the event it actually provided its explanation of the public interest test on 1 April 2009, 57 working days later.
54. The Commissioner considers that the 57 working days which Royal Mail took to deal with the matter was not a reasonable timescale. He takes the view that Royal Mail therefore breached section 17(3) of the Act, which provides that a public authority which is relying on a claim that the public interest in maintaining the exemption outweighs the public interest in disclosing the information must:
- "...either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming –
- (a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information..."
55. The full texts of sections 10 and 17 can be found in the Legal Annex at the end of this Notice.

## **The Decision**

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56. The Commissioner's decision is that Royal Mail dealt with the request for information in accordance with the Act in that it correctly withheld the outstanding information under section 36(2)(b)(i).

However, the Commissioner has also decided that Royal Mail failed to meet the requirements of section 17(3) of the Act.

## **Steps Required**

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57. The Commissioner requires no steps to be taken.

## **Other matters**

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58. 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 approximately 43 working days for an internal review to be completed.



## Right of Appeal

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59. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://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 8<sup>th</sup> day of April 2010**

**Signed .....**

**Jo Pedder  
Group Manager**

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

## Legal Annex

### Section 10

- (1) Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
- (2) Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.
- (3) If, and to the extent that –
  - (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
  - (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.
- (4) The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.
- (5) Regulations under subsection (4) may –
  - (a) prescribe different days in relation to different cases,and
  - (b) confer a discretion on the Commissioner.
- (6) In this section –

“the date of receipt” means –

- (a) the day on which the public authority receives the request for information, or
- (b) if later, the day on which it receives the information referred to in section 1(3);

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

## **Section 17**

- (1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -
    - (a) states that fact,
    - (b) specifies the exemption in question, and
    - (c) states (if that would not otherwise be apparent) why the exemption applies.
  - (2) Where—
    - (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim—
      - (i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
      - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and
    - (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,
- the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.

- (3) A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -
  - (a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or
  - (b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
- (4) A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.
- (5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.
- (6) Subsection (5) does not apply where –
  - (a) the public authority is relying on a claim that section 14 applies,
  - (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
  - (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.
- (7) A notice under section (1), (3) or (5) must –
  - (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and

- (b) contain particulars of the right conferred by section 50.

### **Section 36**

- (1) This section applies to-
  - (a) information which is held by a government department or by the National Assembly for Wales and is not exempt information by virtue of section 35, and
  - (b) information which is held by any other public authority.
- (2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act-
  - (a) would, or would be likely to, prejudice-
    - (i) the maintenance of the convention of the collective responsibility of Ministers of the Crown, or
    - (ii) the work of the Executive Committee of the Northern Ireland Assembly, or
    - (iii) the work of the executive committee of the National Assembly for Wales,
  - (b) would, or would be likely to, inhibit-
    - (i) the free and frank provision of advice, or
    - (ii) the free and frank exchange of views for the purposes of deliberation, or
  - (c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.
- (3) The duty to confirm or deny does not arise in relation to information to which this section applies (or would apply if held by the public authority) if, or to the extent that, in the reasonable opinion of a qualified person, compliance with section 1(1)(a) would, or would be likely to, have any of the effects mentioned in subsection (2).
- (4) In relation to statistical information, subsections (2) and (3) shall have effect with the omission of the words "in the reasonable opinion of a qualified person".
- (5) In subsections (2) and (3) "qualified person"-

- (a) in relation to information held by a government department in the charge of a Minister of the Crown, means any Minister of the Crown,
- (b) in relation to information held by a Northern Ireland department, means the Northern Ireland Minister in charge of the department,
- (c) in relation to information held by any other government department, means the commissioners or other person in charge of that department,
- (d) in relation to information held by the House of Commons, means the Speaker of that House,
- (e) in relation to information held by the House of Lords, means the Clerk of the Parliaments,
- (f) in relation to information held by the Northern Ireland Assembly, means the Presiding Officer,
- (g) in relation to information held by the National Assembly for Wales, means the Assembly First Secretary,
- (h) in relation to information held by any Welsh public authority other than the Auditor General for Wales, means-
  - (i) the public authority, or
  - (ii) any officer or employee of the authority authorised by the Assembly First Secretary,
- (i) in relation to information held by the National Audit Office, means the Comptroller and Auditor General,
- (j) in relation to information held by the Northern Ireland Audit Office, means the Comptroller and Auditor General for Northern Ireland,
- (k) in relation to information held by the Auditor General for Wales, means the Auditor General for Wales,
- (l) in relation to information held by any Northern Ireland public authority other than the Northern Ireland Audit Office, means-
  - (i) the public authority, or
  - (ii) any officer or employee of the authority authorised by the First Minister and deputy First Minister in Northern Ireland acting jointly,
- (m) in relation to information held by the Greater London Authority, means the Mayor of London,
- (n) in relation to information held by a functional body within the meaning of the Greater London Authority Act 1999, means the chairman of that functional body, and
- (o) in relation to information held by any public authority not falling within any of paragraphs (a) to (n), means-
  - (i) a Minister of the Crown,
  - (ii) the public authority, if authorised for the purposes of this section by a Minister of the Crown, or

- (iii) any officer or employee of the public authority who is authorised for the purposes of this section by a Minister of the Crown.
  
- (6) Any authorisation for the purposes of this section-
  - (a) may relate to a specified person or to persons falling within a specified class,
  - (b) may be general or limited to particular classes of case,  
and
  - (c) may be granted subject to conditions.
  
- (7) A certificate signed by the qualified person referred to in subsection (5)(d) or (e) above certifying that in his reasonable opinion-
  - (a) disclosure of information held by either House of Parliament, or
  - (b) compliance with section 1(1)(a) by either House,  
would, or would be likely to, have any of the effects mentioned in subsection (2) shall be conclusive evidence of that fact.