

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 10 December 2009

Public Authority: Commissioner of the Metropolitan Police Service
Address: New Scotland Yard
Broadway
London
SW1H 0BG

Summary

The complainant requested any information held by the public authority as to how a plot to hijack passenger planes and fly them into targets in London had, as disclosed in a statement made by the President of the United States, been averted as a result of information gathered by the US Central Intelligence Agency. The public authority refused to confirm or deny (NCND) whether it held information falling within the scope of this request and cited the exemptions provided by sections 23(5) (information relating to, or supplied by, security bodies), 24(2) (national security), 27(4)(b) (confidential information obtained from a state other than the UK, an international organisation or an international court), 31(3) (prejudice to law enforcement) and 38(2) (endangerment to health and safety). The Commissioner concludes that none of the exemptions cited by the public authority are engaged for NCND purposes. The public authority is required to provide to the complainant confirmation or denial of whether information falling within the scope of the request is held. Any information that is held should either be disclosed to the complainant or the public authority should issue a refusal notice valid for the purposes of section 17(1). The Commissioner also finds that the public authority failed to comply with the requirements of sections 17(1)(c) and 17(3)(a) through its handling 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. The complainant requested the following information on 18 July 2007:

“Information about how a plot to hijack and fly passenger planes into Heathrow and Canary Wharf was foiled using information from the Central Intelligence Agency’s programme to detain suspected terrorists in undisclosed locations outside the United States.

This request is based on the public remarks by President Bush on September 6 2006:

‘These are some of the plots that have been stopped because of the information of this vital program. Terrorists held in CIA custody have also provided information that helped stop a planned strike on US Marines at Camp Lemonier in Djibouti – they were going to use an explosive laden water tanker. They helped stop a planned attack on the US Consulate in Karachi using car bombs and motorcycle bombs, and they helped stop a plot to hijack passenger planes and fly them into Heathrow or the Canary Wharf in London.’”

3. The public authority responded to this on 2 August 2007 and refused to confirm or deny whether it held information falling within the scope of this request. The public authority cited sections 23(5) (information supplied by, or relating to, bodies dealing with security matters), 24(2) (national security), 27(4) (international relations), 31(3) (law enforcement), 38(2) (health and safety) and 40(5) (personal information).
4. The public authority gave no explanation of its reasoning as to why these exemptions were engaged. Neither, in connection with sections 24(2), 27(4), 31(3) and 38(2) did the public authority state why it believed that the public interest favoured the maintenance of these exemptions.
5. The complainant responded on 8 August 2007 and requested that the public authority carry out an internal review of its handling of the request. The complainant believed that the statement made by the President of the United States quoted within the request constituted a confirmation that the information does exist. The complainant also believed that a strong public interest existed in favour of disclosure of the information requested given the controversy surrounding the practice of ‘extraordinary rendition’.
6. The public authority responded with the outcome to the review on 18 September 2007. The refusal was upheld. Again the public authority gave no explanation of its reasoning for why the exemptions cited were engaged, or, where relevant, why the public interest favoured the maintenance of those exemptions. The public authority did state that it did not agree with the suggestion of the complainant that the statement referred to in the request gave any indication of whether it would hold information falling within the scope of the request.

The Investigation

Scope of the case

7. The complainant contacted the Commissioner on 20 September 2007. The complainant indicated that he did not agree with the refusal of his request and wished the Commissioner to review this.

Chronology

8. Regrettably, there was a considerable delay before the Commissioner commenced his investigation into the complaint. This was due to a considerable backlog of complaints under the Act which had accrued at the Commissioner's office. The Commissioner contacted the public authority 3 February 2009. The background to the complaint was set out and the public authority was asked to respond with further explanation for its refusal of the request.
9. It was also noted that neither the refusal notice nor the internal review response had given any explanation for the exemptions cited. The public authority was asked to confirm if its stance was that section 17(4) applied in that to provide an explanation as to why the exemptions cited were believed to be engaged would, in itself, involve the disclosure of exempt information.
10. The public authority responded initially on 18 March 2009. In this response the public authority stated that its stance was not that section 17(4) applied. It also stated that it no longer maintained that the exemption provided by section 40(5) was engaged.
11. In relation to the other exemptions cited, the public authority did not provide an adequate explanation of its reasoning. The Commissioner contacted the public authority again on 30 March 2009 and repeated the questions from his previous letter. The public authority was advised that it would be necessary for it to address individually and in detail why each exemption cited was believed to be engaged and, where relevant, why the balance of the public interest favoured the maintenance of that exemption.
12. The public authority responded on 1 May 2009 providing a fuller explanation. In connection with sections 23(5) and 24(2) the public authority stated that its stance was that both of these exemptions were engaged. The public authority did not, however, explain how confirmation or denial would constitute disclosure of information relating to or supplied by any of bodies specified in section 23(3). Neither did they indicate that they believed it to be self-evident.
13. On section 27, the public authority specified section 27(4)(b). The public authority did not, however, explain how compliance with section 1(1)(a) would involve the disclosure of confidential information provided to it by a state other than the UK, or from an international organisation or international court. Instead the public authority described prejudice that it believed would result through disclosure, despite prejudice not being relevant to this class based exemption. The public

authority went on to confirm that it believed that the public interest favoured the maintenance of this exemption.

14. In connection with section 31(3), the public authority specified that it believed prejudice would be likely to occur to the processes described in sections 31(1)(a) (the prevention or detection of crime), 31(1)(b) (the apprehension or prosecution of offenders) and 31(1)(c) (the administration of justice). The arguments of the public authority here were the same as those employed in connection with section 24(2): essentially that confirmation or denial would make it more difficult for the public authority to take counter terrorist action and that terrorist groups would be likely to respond to the confirmation or denial in a manner prejudicial to the processes set out in sections 31(1)(a), (b) and (c). The public authority believed that the compromise to the provision of intelligence to it likely to result through confirmation or denial meant that the public interest in the maintenance of this exemption outweighed the public interest in disclosure.
15. Similar arguments were again employed by the public authority in connection with section 38(2). The public authority stated that it believed that both sections 38(1)(a) and (b) were relevant, indicating that its stance was that both health and safety would be likely to be endangered through confirmation or denial. The position of the public authority was that terrorist attacks, which would endanger health and safety, would be more likely as a result of confirmation or denial. The public authority believed that the public interest in avoiding this likely endangerment to health and safety outweighed the public interest in disclosure.

Analysis

Procedural matters

Section 17

16. At neither the refusal notice nor internal review stage did the public authority explain why it believed that the exemptions cited were engaged. In so doing the public authority failed to comply with the requirement of section 17(1)(c).
17. At neither the refusal notice nor internal review stage did the public authority set out, where this was required, why it believed that the public interest in the maintenance of the exemptions outweighed the public interest in disclosure. In so doing, the public authority failed to comply with the requirement of section 17(3)(a).

Exemption

Section 23

18. The public authority cited section 23(5). This provides an exemption from the duty imposed by section 1(1)(a) where to confirm or deny would involve the disclosure of information supplied to the public authority by, or that relates to, any of the

security bodies specified in section 23(3).

19. The Commissioner has accepted that citing 23(5) and 24(2) in conjunction where either of these exemptions is engaged may be an appropriate approach in order to obscure the involvement (or non-involvement) of any security body. The Information Tribunal supported this approach in *Baker v the Information Commissioner and the Cabinet Office* (EA/2006/0045).
20. In correspondence with the public authority the Commissioner referred to the convention of citing 23(5) and 24(2) in conjunction and asked the public authority to be specific as to which of these exemptions were engaged. The response from the public authority was that it was not merely following the convention of citing sections 23(5) and 24(2) in conjunction, rather its position was that both of these exemptions were engaged. However, no argument was advanced as to how confirmation or denial would disclose information within the class specified in section 23(5). Neither was it argued that the relevance of section 23(5) was self-evident. Where sections 23(5) and 24(2) have been cited in conjunction, rather than because both of these exemptions are believed to be engaged, they would be addressed in conjunction in a Decision Notice in order to avoid disclosing through the Notice which of these exemptions the public authority believes to be engaged. In this case, however, as the public authority believes that both of these exemptions are engaged, they are covered separately.
21. The stance of the public authority here appears to be that the exemption provided by section 23(5) is engaged as a consequence of section 24(2) being engaged, rather than because confirmation or denial would lead to disclosure of information covered by this class based exemption. On this point the public authority should note that the implication of the convention of citing 23(5) and 24(2) in conjunction is not that where either of these exemptions is engaged the other is automatically also engaged. Rather it is that where either 23(5) or 24(2) is engaged, the other exemption should consistently also be cited, not because the other exemption is also engaged, but in order to obscure the involvement or otherwise of any security body.
22. The Commissioner has concluded that he is unable to accept that the exemption provided by section 23(5) is engaged. This conclusion is based on the absence of an explanation from the public authority as to how compliance with section 1(1)(a) would involve the disclosure of information falling within the class specified in section 23(5).

Section 24

23. Section 24(2) provides an exemption from the duty to confirm or deny imposed by section 1(1)(a) where this is required for the purpose of safeguarding national security. This exemption is also qualified by the public interest. This means that confirmation or denial should be provided if the public interest favours this despite the requirements of safeguarding national security.
24. The first step in considering whether this exemption is engaged is to establish what the wording of the exemption is referring to. The exemption will only be

engaged where it is *required* for the purpose of safeguarding national security. The approach of the Commissioner is that *required* in this context means reasonably necessary. It is not sufficient for the information sought simply to relate to national security; there must be a clear basis for arguing that disclosure would have an adverse effect on national security before the exemption is engaged.

25. On the issue of the meaning of *national security*, the Commissioner has followed the approach taken by the Information Tribunal in the case *Baker v the Information Commissioner and the Cabinet Office* (EA/2006/0045). The Tribunal noted that it had been unable to find an exhaustive definition of national security, but referred to a House of Lords decision (*Secretary of State for the Home Department v Rehman* [2001] UKHL 47; [2003] 1 AC 153), which made the following observations on this issue:

“(i) ‘national security’ means the ‘security of the United Kingdom and its people’ (para 50 per Lord Hoffman);

(ii) the interests of national security are not limited to action by an individual which can be said to be ‘targeted at’ the UK, its system of government or its people (para 15 per Lord Slynn);

(iii) the protection of democracy and the legal and constitutional systems of the state is part of national security as well as military defence (para 16 per Lord Slynn);

(iv) ‘action against a foreign state may be capable indirectly of affecting the security of the United Kingdom’ (para 16-17 Lord Slynn): and

(v) ‘reciprocal co-operation between the United Kingdom and other states in combating international terrorism is capable of promoting the United Kingdom’s national security’ (para 17 Lord Slynn).”

26. The public authority stated that it believed exemption from the duty to confirm or deny was necessary for the maintenance of national security due to the information that would otherwise be disclosed to the terrorist group that planned the attack referred to in the request. The public authority believed that denial would reveal to this group that it is not under investigation by the public authority and so it would continue its activities unabated. Alternatively, if the public authority confirmed that it did hold information, this would reveal to the terrorist group that it was under investigation leading it to take action to evade this investigation. Either way, the reaction of the terrorist group to this information would be counter to national security.

27. The public authority believed that a wider prejudice to national security would also result through setting a precedent by confirming or denying in this case. The public authority believed that neither confirming nor denying after setting a precedent for denying where no information was held would indicate that information is held and that the same after confirming would indicate that no information is held. This would enable terrorist groups that are the subject of

- future requests to respond to this knowledge accordingly and in a manner counter to national security.
28. The public authority also suggested that a wider prejudice could result through confirmation or denial revealing the success, or otherwise, of its intelligence gathering. The public authority believed that confirmation would reveal that it had successfully gathered intelligence about the alleged plot and that this would lead to terrorist groups taking additional steps to avoid intelligence gathering by the public authority. Alternatively, the public authority believed that denial would reveal that it had not gathered intelligence about the alleged plot and that this would provide encouragement to terrorist groups. Either way, the public authority believed that the response of terrorist groups to this knowledge would be counter to national security.
 29. The public authority further believed that confirmation or denial would disrupt the flow of information to itself and other law enforcement agencies from foreign intelligence agencies. Its stance was that this would result through a loss of confidence on the part of foreign intelligence agencies that information provided by them to UK agencies would remain confidential. On the issue of the balance of the public interest, the public authority had concluded that the public interest in safeguarding national security outweighed any public interest in disclosure.
 30. In suggesting that confirmation or denial would reveal information about investigations to the terrorist group that planned the attack referred to in the request and to other groups, the public authority is effectively suggesting that confirmation or denial would increase the risk of terrorist attacks.
 31. Considering the issues in this case, the Commissioner obviously accepts that any terrorist attack on the people of the UK would be counter to national security and that this argument from the public authority is relevant to this exemption.
 32. Turning to the second argument advanced by the public authority, that confirmation or denial could disrupt the flow of foreign intelligence to it, point (v) of the House of Lords decision is directly relevant in that it is specific that international cooperation in combating international terrorism can promote national security. The Commissioner accepts, in line with the direction provided by the House of Lords decision, that this argument is also relevant to the exemption.
 33. The next step to consider is whether the arguments advanced by the public authority suggest that confirmation or denial would have an adverse effect on national security and therefore that the exemption is required for the purpose of safeguarding national security. It is important to note here that the issue is not whether international terrorism already represents a specific and real threat to national security; rather it is whether a further threat would arise through the confirmation or denial in question. This could include worsening the existing threat from international terrorism.
 34. The Commissioner is not convinced that the threshold for this exemption to be engaged imposed by the word *required* is reached. The reasons for this are as

- follows. The first argument of the public authority is based on the impact it believes confirmation or denial would have on the behaviour of any terrorist group that may have planned the alleged foiled attack referred to in the request and of other groups by revealing whether or not an investigation had been carried out into this alleged attack and the associated terrorist group by the public authority. The public authority has argued that the impact of this upon the behaviour of terrorist groups would be counter to national security.
35. Assuming for the purposes of this analysis that confirmation would reveal that the public authority had carried out an investigation into this alleged planned attack and that denial would reveal the reverse, the first step is to consider what impact this newly acquired knowledge would have on any terrorist group that planned the alleged attack, and on any other terrorist group. Covering firstly the terrorist group responsible for the alleged foiled attack, the Commissioner considers that the statement made by the President of the United States that is referred to in the request makes it clear that any such group was the subject of an investigation. Any alteration in the behaviour of the group as a result of it becoming aware that it was the subject of an investigation would have occurred prior to the request, presumably at the time that the alleged attack was foiled. The Commissioner does not accept that a confirmation or denial in response to this request would lead to any alteration in the behaviour of this group that had not already occurred as a result of it becoming aware of the investigation referred to in the statement by the US President.
 36. Covering secondly the suggestion that other terrorist groups would alter their behaviour as a result of confirmation or denial, the first argument of the public authority relies on what it believes would be a precedent set for confirmation or denial that would apply where similar requests are made in future. The Commissioner believes that this concern could have been dealt with by the public authority making clear that it was prepared to confirm or deny in this case due to the publicity already generated as a result of the statement made by the US President and the subsequent media coverage, but that this should not be taken as setting a precedent for confirmation or denial where there has not been a similar level of publicity. The Commissioner does not, therefore, accept, that confirmation or denial in this case would have unavoidably set a precedent that would apply if similar requests were made in future.
 37. The second argument of the public authority about wider prejudice concerned what it believed would be revealed about its intelligence gathering through confirmation or denial. However, the context of the request is the public statement made by the then US President. That statement does not identify the public authority but an American agency, the C.I.A. Therefore the Commissioner does not accept that confirmation or denial, in the circumstances of this particular case, would reveal anything significant about the public authority's own intelligence gathering activities. It follows that the Commissioner does not accept that confirmation or denial in this case would lead to any alteration in the behaviour of terrorist groups on the basis of anything revealed about the intelligence gathering of the public authority.
 38. Turning to the suggestion made by the public authority that the provision of

foreign intelligence about international terrorism could be disrupted through confirmation or denial, for this argument to be convincing it would be necessary for it not to have already been widely publicised that a foreign intelligence agency had located information about this plot. In this case it is clear from the quote in the request that this was not the case. Therefore the Commissioner does not accept that confirmation or denial of whether the public authority holds information about this alleged plot would of itself disrupt the flow of intelligence in future.

39. The Commissioner's conclusion on section 24(2) is that exemption from the duty to confirm or deny imposed by section 1(1)(a) is not required for the purpose of safeguarding national security. This is based on the conclusion that it is not credible to suggest that either any terrorist group responsible for the alleged plot referred to in the request, or other terrorist groups, would alter their behaviour as a result of confirmation or denial in this case; and that it would not disrupt the flow of foreign intelligence to the public authority or more generally. As this conclusion has been reached at this stage and the exemption is not engaged for NCND purposes, it has not been necessary to go on to consider the balance of the public interest.

Section 27

40. Section 27(4)(b) provides an exemption from the duty to confirm or deny where to do so would involve the disclosure of any confidential information obtained from a State other than the UK, or from an international organisation or international court. This is a class based exemption; if confirmation or denial would disclose information that conforms to the class described, the exemption is engaged. This exemption is subject to the public interest. This means that the information should be disclosed if the public interest favours this regardless of how clear it is that the information conforms to the class specified.
41. As referred to above at paragraph 13, instead of describing how confirmation or denial would involve the disclosure of information falling within this class, the public authority described the prejudice it believed would result from disclosure. Prejudice is not relevant to the question of whether section 27(4)(b) is engaged.
42. In the absence of any indication from the public authority as to how confirmation or denial would disclose information conforming to the class described in this exemption, the Commissioner concludes that this exemption is not engaged. As this conclusion has been reached, it has not been necessary to go on to consider the balance of the public interest.

Section 31

43. Section 31(3) provides an exemption from the duty to confirm or deny where to do so *would*, or *would be likely* to, prejudice any of the matters mentioned in section 31(1). This exemption is also qualified by the public interest, meaning that confirmation or denial should be provided if the public interest favours this despite the prejudice that would, or would be likely to, result from it.
44. The public authority has specified that it believes that prejudice *would be likely* to

result through confirmation or denial. The test that the Commissioner applies when considering whether prejudice would be likely is that the possibility of this must be real and significant and more than hypothetical or remote. This is in line with the approach taken by the Information Tribunal in *John Connor Press Associates Limited v the Information Commissioner* (EA/2005/0005) in which it stated:

“Likely connotes a degree of probability that there is a very significant and weighty chance of prejudice to the identified public interests. The degree of risk must be such that there ‘may very well’ be prejudice to those interests, even if the risk falls short of being more probable than not.” (paragraph 15)

45. The public authority has specified sections 31(1)(a) (the prevention or detection of crime), 31(1)(b) (the apprehension or prosecution of offenders) and 31(1)(c) (the administration of justice) as those matters it believes would be likely to be prejudiced through confirmation or denial. It has employed the same arguments here as when arguing that section 24(2) is engaged.
46. The Commissioner would accept that some of these arguments are relevant to section 31(1)(a) in that, if the consequences which the public authority suggests would flow from confirmation or denial did come about, this would be likely to prejudice the prevention and detection of crime. These arguments are also relevant to section 31(1)(b) in that the results predicted by the public authority would be likely to prejudice the apprehension and prosecution of offenders.
47. However, it is not clear how these arguments are relevant to section 31(1)(c). The Commissioner’s guidance on this exemption states the following:

“This covers a wide variety of matters that surround any type of judicial body and its administrative support. It will include the administrative arrangements of the courts and tribunals, the appointment of magistrates and judges and the requirement to conduct proceedings fairly. It will cover arrangements for the care of witnesses, the transport of defendants in custody and the service and execution of process and orders in civil cases. Consideration of the many Administration of Justice Acts gives an indication of the size of the area this covers.”

48. The suggestion of the public authority appears to be that this exemption is significantly wider than this in that it covers the entire process from the commission of a crime to conviction of the perpetrator. The Commissioner considers that the key word in this exemption is the *administration* of justice. This exemption relates to the administrative processes of the judicial system, not the detection or investigation of criminal activity. The exemption is not applicable in this case.
49. Turning to the merits of these arguments, without repeating the analysis given above in connection with section 24(2), the Commissioner does not accept that the consequences of confirmation or denial suggested by the public authority would be likely to occur. The Commissioner reaches the same conclusion in respect of the deployment of these arguments in support of the application of the

exemptions under section 31(1)(a) and (b) and does not believe that the likelihood of confirmation or denial resulting in prejudice to the prevention or detection of crime or the apprehension or prosecution of offenders is real and significant.

50. The conclusion of the Commissioner is that the exemption provided by section 31(3) is not engaged. This conclusion has been reached on the basis that the arguments advanced by the public authority as to why the alleged prejudice would be likely as a result of confirmation or denial have not been made out, in the same way that they have not been made out to justify the application of section 24(2) in this case. As this conclusion has been reached it has not been necessary to go on to consider the balance of the public interest.

Section 38

51. Section 38(2) provides an exemption from the duty to confirm or deny if to do so would, or would be likely to, endanger the physical or mental health and / or the safety of any individual. This exemption is also subject to the public interest test.
52. The public authority has specified that its stance is that prejudice *would be likely* to result in this case. The test applied here by the Commissioner is as stated above at paragraph 43; that is, that the possibility of prejudice occurring must be real and significant.
53. Prior to considering the merits of the arguments from the public authority it is necessary to establish whether its stance is that disclosure would be likely to result in endangerment to health, or safety, or both. It is also necessary to establish to whom endangerment would be likely to result. The public authority has specified that its stance is that both health and safety would be likely to be endangered through disclosure. In terms of to whom this endangerment would be likely to result, the stance of the public authority is essentially that confirmation or denial would increase the likelihood of terrorist attacks. The subject of the endangerment would, therefore, be any potential victim of a terrorist attack.
54. The argument advanced by the public authority in connection with this exemption is effectively the combined implication of the arguments advanced in connection with section 24(2), which is that confirmation or denial would be likely to lead to an increased likelihood of a terrorist attack. That endangerment to health and safety would be likely to result through a successful terrorist attack cannot be disputed. The argument advanced by the public authority is, therefore, relevant to this exemption.
55. As to the merit of this argument, the Commissioner would refer again to the analysis given in connection with section 24(2). The prejudice arguments advanced by the public authority in connection with that exemption are not sufficient to engage the section 38 exemption. As the Commissioner has found those arguments insufficient, he also does not accept the suggestion that the likely consequence of confirmation or denial would be an increased likelihood of terrorist attacks.

56. The Commissioner concludes that the likelihood of endangerment to health and safety resulting through confirmation or denial is not real and significant. The exemption provided by section 38(2) is not, therefore, engaged. It has not been necessary, therefore, to go on to consider the balance of the public interest.

The Decision

57. The Commissioner's decision is that the public authority did not deal with the request in accordance with the Act in that it failed to comply with the requirement of section 1(1)(a) on the basis of the exemptions provided by sections 23(5), 24(2), 27(4)(b), 31(3) and 38(2), none of which are engaged. The Commissioner also finds that the public authority failed to comply with the requirements of sections 17(1)(c) and 17(3)(a) as covered above at paragraphs 16 and 17.

Steps Required

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

- provide to the complainant confirmation or denial of whether any information falling within the scope of his request is held;
- for any information that is held, this should either be disclosed to the complainant, or a refusal notice which is valid for the purposes of section 17(1) should be provided.

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

Failure to comply

60. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Other matters

61. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.
62. When giving the outcome to the internal review, the public authority gave no explanation for this outcome. Paragraph 39 of the section 45 Code of Practice states the following:

“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.”

63. The internal review response from the public authority did not reflect that a reconsideration of the request conforming to the description above took place. The Commissioner would advise the public authority that a response giving the outcome to an internal review should state the extent to which the reasons for the initial refusal have been upheld and should reflect that there has been a genuine reconsideration of the request.

64. The Commissioner's published guidance on internal reviews states that a review should be conducted within 20 working days, unless there are exceptional circumstances, in which case the review period may be extended to 40 working days. In this case the Commissioner notes that there appeared to be no exceptional circumstances, but that the public authority failed to provide the outcome to the review within 20 working days. The public authority should ensure that internal reviews are carried out promptly in future.

Right of Appeal

65. 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 10th 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

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.'

Section 17

Section 17(1) provides that -

'A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies.'

Section 17(3) provides that -

'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.'

Section 23

Section 23(3) provides that –

'The bodies referred to in subsections (1) and (2) are-

- (a) *the Security Service,*
- (b) *the Secret Intelligence Service,*
- (c) *the Government Communications Headquarters,*
- (d) *the special forces,*
- (e) *the Tribunal established under section 65 of the Regulation of Investigatory Powers Act 2000,*
- (f) *the Tribunal established under section 7 of the Interception of Communications Act 1985,*
- (g) *the Tribunal established under section 5 of the Security Service Act 1989,*
- (h) *the Tribunal established under section 9 of the Intelligence Services Act 1994,*
- (i) *the Security Vetting Appeals Panel,*
- (j) *the Security Commission,*
- (k) *the National Criminal Intelligence Service, and*
- (l) *the Service Authority for the National Criminal Intelligence Service.'*

Section 23(5) provides that –

'The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).'

Section 24

Section 24(2) provides that –

'The duty to confirm or deny does not arise if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of safeguarding national security.'

Section 27

Section 27(4) provides that –

'The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a)-

- (a) *would, or would be likely to, prejudice any of the matters mentioned in subsection (1), or*
- (b) *would involve the disclosure of any information (whether or not already recorded) which is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court.'*

Section 31

Section 31(1) provides that –

'Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) *the prevention or detection of crime,*
- (b) *the apprehension or prosecution of offenders,*
- (c) *the administration of justice,*
- (d) *the assessment or collection of any tax or duty or of any imposition of a similar nature,*
- (e) *the operation of the immigration controls,*
- (f) *the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,*
- (g) *the exercise by any public authority of its functions for any of the purposes specified in subsection (2),*
- (h) *any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or*
- (i) *any inquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.'*

Section 31(3) provides that –

'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 any of the matters mentioned in subsection (1).'

Section 38

Section 38(1) provides that –

'Information is exempt information if its disclosure under this Act would, or would be likely to-

- (a) endanger the physical or mental health of any individual, or*
- (b) endanger the safety of any individual.'*

Section 38(2) provides that –

'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, have either of the effects mentioned in subsection (1).'