

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 21st January 2008

Public Authority: Ministry of Defence
Address: Main Building
Whitehall
London SW1A 2HB

Summary

The complainant requested film footage relating to Operation Cauldron, an exercise carried out by the Ministry of Defence (the 'MOD') in 1952. The information contained images of identifiable individuals, and the MOD argued that it would need to obscure or mask the faces of the individuals, as this information would be exempt under sections 38, 40(2) and 44 of the Act. The MOD estimated that the process of masking would exceed the cost limit as set out in section 12 of the Act, and therefore refused the complainant's request.

The Commissioner found that the footage did contain images of identifiable individuals, some of whom may still be alive, but that disclosure of the footage would not breach any of the data protection principles. For this reason the Commissioner found that the MOD wrongly applied the exemption under sections 38, 40(2) and 44, and the cost limit under section 12. The Commissioner therefore requires the MOD to disclose the footage in full.

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 has advised that on 19 February 2005 he requested the following information from the MOD:

“... a copy of the videotape, held by Dstl Porton, entitled Operation Cauldron – 1952.”

3. Operation Cauldron was a series of sea trials of the dissemination of biological warfare agents, held between 1951 and 1953. The trials were held off the coast of Scotland, and involved the exposure of animals to plague germs. Film footage was taken of the trials, which was transferred to a video of approximately 50 minutes. Although some information relating to Operation Cauldron is in the public domain, mainly through open files held by the National Archives, the information in question (the ‘footage’) is not currently in the public domain.
4. The MOD responded to the complainant on 9 March 2005, advising that it was viewing the footage “in compliance with the Data Protection Act... prior to its potential release”. The MOD wrote to the complainant again on 21 April 2005 to advise that the footage could not be provided to him. The MOD advised that, in order to be able to disclose the footage, it would need to obscure the faces of all the individuals featured, to comply with the Data Protection Act. The MOD estimated that the cost of this redaction would exceed the £600 limit set out in section 12 of the Act, and advised the complainant that he may wish to refine his request to bring the cost of compliance under the limit.
5. The complainant was dissatisfied with the MOD’s response, and requested an internal review on 14 July 2005. The MOD acknowledged this request on 5 August 2005, although it did not provide the complainant with a substantive response until 26 October 2005.
6. In its letter of 26 October 2005 the MOD advised that it had conducted an internal review of its handling of the complainant’s request. The MOD accepted at this stage that it had not provided the complainant with an adequate refusal notice to explain why the requested information was not being provided. The MOD clarified that it was relying on the exemption under section 40(3)(a)(i) and (ii) of the Act. This exemption applies if the information is personal data relating to identifiable individuals (other than the requester), and if disclosure would breach any of the data protection principles, or section 10 of the Data Protection Act 1998 (the ‘DPA’).
7. The MOD considered that, in order to avoid breaching the data protection principles, it had two options: either to seek consent from each individual featured in the footage, or to obscure the faces of each individual to prevent identification. The MOD felt that the processes involved in following either of these options would exceed the cost limit, and neither would therefore be appropriate.
8. In addition, the MOD considered that identification of individuals caused by disclosure of the footage might breach section 10 of the DPA in that it might cause any of these individuals unwarranted distress. The MOD pointed out that relatives were often unaware of the nature of the work undertaken by MOD employees, and confirmation of an individual’s involvement in Operation Cauldron could cause distress.

9. The MOD argued that disclosure of the footage would breach section 10 of the DPA (the right to prevent processing likely to cause damage or distress). The MOD contended that there was a risk of distress to relatives of the individuals featured in the footage, who may not have been aware of the nature of the work undertaken by those individuals.
10. With this in mind, the MOD also indicated its reliance on the exemption under section 38 of the Act, (where disclosure of the information would, or would be likely to, endanger the health or safety of any individual). The MOD reasoned that disclosure of the footage could expose staff and their families to harassment by animal rights extremists.
11. Finally, the MOD considered that the footage might be exempt under section 44 of the Act (statutory prohibitions on disclosure), since disclosure might breach the Human Rights Act in respect of information relating to living and deceased individuals. However, the MOD did not feel it necessary at this stage to seek legal advice on whether this exemption was in fact engaged, since the MOD was of the view that other exemptions were applicable.

The Investigation

Scope of the case

12. On 15 December 2005 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant felt that the footage had been wrongly withheld, and ought to be disclosed. The complainant pointed out that information relating to Operation Cauldron was already in the public domain via the National Archives, and that disclosure of the footage would not cause any more harm than the information currently available.

Chronology

13. The Commissioner contacted the MOD to discuss the complaint and to obtain an unredacted copy of the footage. The Commissioner explained to the MOD that it had wrongly applied section 12 as the cost limit only applied to the process of retrieving and extracting the requested information, rather than redacting exempt information. The Commissioner advised the MOD that he would therefore need to consider whether or not the information was in fact exempt under the exemptions applied. The Commissioner also sought clarification and further information in relation to the MOD's reliance on the exemptions under sections 40(2), 40(3)(a)(i) and (ii), 38 and 44 of the Act.

Section 40 exemption

14. Given the age of the information, the Commissioner asked the MOD to confirm the extent to which it was able to identify individuals featured in the footage, and whether or not it was likely that any of these individuals were alive. This was

relevant because the MOD had claimed in its refusal notice that the footage contained personal data according to the definition in section 1(1) of the DPA:

“personal data’ means data which relate to a living individual who can be identified –

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller.”

15. The MOD advised the Commissioner that family, friends and colleagues of many of the individuals might be able to identify them, and the MOD was aware of at least one individual featured in the footage who was still alive. In addition, the MOD acknowledged that some information relating to Operation Cauldron was already in the public domain via open files held by The National Archives. These files contained general information on Operation Cauldron, as well as a list of the personnel who were involved or who visited the trial sites. The MOD was of the view that if the footage were released into the public domain it could be used along with information already available to the public, and could make it easier to identify the individuals involved with Operation Cauldron. For these reasons the MOD believed that the footage did comprise personal data of individuals who could be identified.
16. Having asserted that the footage contained personal data which did not relate to the complainant, the MOD provided the Commissioner with its reasoning in relation to the application of the exemption under sections 40(3)(a)(i) and (ii) of the Act.
17. The MOD explained its view that disclosure of the footage into the public domain would be unfair to the individuals involved, and would therefore breach the first data protection principle (which requires that personal data be processed fairly and lawfully). In support of this view, the MOD asserted that the individuals featured would have believed that the footage was only to be used for internal purposes, and they would not have expected the footage to be disclosed into the public domain. In addition, family members of the individuals might be caused distress by disclosure of the footage and consequent confirmation of the work undertaken by the individuals involved in Operation Cauldron. Finally, the MOD argued that animal rights extremists might use the footage to identify, locate and target the individuals featured. The MOD further argued that it could not identify a condition for processing, in terms of disclosure of the footage, as required by the first data protection principle.
18. The MOD was also of the view that disclosure of the footage would breach the second data protection principle (which requires that personal data shall be obtained only for a specified purpose, and shall not be further processed in any manner incompatible with that purpose). The MOD reminded the Commissioner that the individuals featured in the footage would not have expected that the footage be disclosed into the public domain, as they understood that it would be used for internal purposes only. The MOD argued that disclosure of the footage would be incompatible with the purpose for which it was originally obtained, ie, internal circulation and use.

19. Finally in relation to the exemption under section 40, the MOD provided the Commissioner with an explanation of its view that the footage could be exempt under section 40(3)(a)(ii) of the Act. This section relates to section 10 of the DPA, the right to prevent processing of personal data likely to cause substantial damage or distress. Under section 10 of the DPA an individual may serve a notice requiring a data controller to stop processing, or not to start processing, personal data if that processing would cause the individual (or any other individual) substantial, unwarranted damage or distress. The Commissioner asked the MOD whether it had received any such notices, and the MOD confirmed that it had not. However the MOD was of the view that it had identified a risk of distress, and it would therefore be justified in not disclosing the footage into the public domain. The MOD indicated to the Commissioner that this risk of distress applied equally to the individuals featured in the footage, and to their friends and family.
20. For the purposes of comparison, the MOD drew the Commissioner's attention to information released into the public domain via official roadshows and provision of historical records to the National Archives in 1997, which related to another (although not identical) series of defence trials, named Operation Harness. The MOD provided evidence to demonstrate that the disclosure of this information in 1997 did cause distress to an individual's family, as they had been unaware of the nature of the work carried out by that individual. The MOD advised that, following this distress, and the subsequent introduction of the DPA, it had decided not to release into the public domain any further footage which clearly showed the faces of staff members.
21. The MOD also advised the Commissioner that a national newspaper had published a detailed article on Operation Cauldron in 2005, prior to a radio programme on the same subject. The MOD felt that this demonstrated the media interest around Operation Cauldron (as opposed to the general public interest in disclosure), and therefore the increased risk of distress to the individuals and their relatives.

Section 38 exemption

22. The MOD advised the Commissioner that many of the arguments made in relation to the exemption under section 40(3)(a)(ii) of the Act, could equally apply in relation to the exemption under section 38(1). The MOD maintained that disclosure of the footage could expose the individuals and their relatives to harassment and intimidation by the media or animal rights activists. For this reason the MOD felt that the exemption under section 38(1) was engaged, and in relation to the public interest test, the MOD indicated its view that the arguments made in relation to the exemption under section 40(3)(a)(ii) indicated that the public interest lay in maintaining the exemption.

Section 44 exemption

23. The MOD indicated to the Commissioner its view that disclosure of the footage might breach Article 8 of the European Convention on Human Rights (the

'Convention'). Article 8 of the Convention states that individuals have a right to respect for their private and family life. The MOD argued that the risk of distress to staff and their relatives, as outlined at paragraphs 19-21 above, meant that disclosure of the footage could unjustly interfere with those individuals' right to respect for their private lives.

Analysis

Procedural matters

Section 12: cost limit

24. The Commissioner noted that the MOD had initially sought to refuse the complainant's request on the grounds that compliance would exceed the cost limit as set out in section 12 of the Act. However, the MOD included the process of redacting exempt information in its consideration of section 12, an approach which the Commissioner considers to be incorrect. His view is now supported by the judgment of the Information Tribunal in the case of *Jenkins v Information Commissioner and Defra*. Therefore the Commissioner is of the view that the MOD was wrong to refuse the complainant's request in reliance on section 12 of the Act.

Section 17: refusal notice

25. The Commissioner notes that the MOD acknowledged in its internal review that it did not handle the complainant's request in accordance with the Act. The MOD accepted that it did not provide an adequate refusal notice, and remedied this at the internal review stage. The Commissioner is of the view that this demonstrates the value of conducting an effective internal review, as it provides an opportunity for a public authority to learn from initial handling errors and correct these before a complaint is made to the Commissioner.

Exemptions

26. As the request could not be refused under section 12 of the Act, it falls to the Commissioner to decide whether or not the MOD correctly applied the exemptions under sections 38, 40 and 44 to the footage.

Section 40(2): personal information

Is the information personal information?

27. The Commissioner has first considered whether or not the footage does in fact comprise personal information relating to individuals other than the data subject, as explained in paragraph 14 above. The Commissioner notes that the footage was produced in 1952, and does not contain any images of children. So for example, if the youngest person featured was 18 years of age at the time of production, he or she would be approximately 74 years of age now. In fact, many

of the individuals featured were clearly middle-aged or older at the time, and are therefore unlikely to be alive today. However, the Commissioner notes that the MOD has identified at least one individual featured who is still alive, and with this in mind the Commissioner is inclined to treat the whole of the footage as potentially comprising personal data of living individuals.

28. For this reason the Commissioner is satisfied that the footage does fall within subsection 40(2) of the FOI Act. This creates an absolute exemption (that is one not subject to the public interest test) for information falling within the definition of personal data contained in the DPA of which the applicant is not the data subject.

Would disclosure breach any of the data protection principles?

29. The next step for the Commissioner is to decide whether or not disclosure of the footage would breach any of the data protection principles. The MOD has claimed that disclosure would in fact breach the first and second data protection principles. However, section 40(3) of the FOI Act provides that the exemption only applies if disclosure to a member of the public would contravene any of the principles defined in Schedule 1 to the DPA or section 10 of the DPA (the right to prevent processing likely to cause damage or distress.)

First data protection principle

30. The first data protection principle provides that:

“Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

- (a) at least one of the conditions in Schedule 2 is met, and
- (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.”

31. The MOD has not argued to the Commissioner that the footage comprises “sensitive personal data” as defined in the Act, and having viewed the footage, the Commissioner is of the view that it does not contain sensitive personal data. Schedule 3 of the Act is thus not relevant to this particular case.
32. The MOD maintained to the Commissioner that it was unable to identify a condition for processing the footage, ie disclosing it into the public domain. However, the Commissioner is satisfied that processing could be carried out in reliance on Condition 6 of Schedule 2 to the DPA. This provides that personal data may be processed lawfully if:
- “The processing is necessary for the purposes of legitimate interests pursued by the data controller or the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.”
33. The Commissioner is of the view that compliance with the Act can be interpreted as “legitimate interests pursued by the data controller”. Therefore the MOD does potentially have a condition for processing the footage by disclosing it.

34. The Commissioner is mindful of the Information Tribunal's decision in the case of the House of Commons v Baker and the Information Commissioner¹, with particular regard to this condition for processing. The Tribunal found that, when considering disclosure of personal data against the condition for processing in paragraph 6 of Schedule 2, it is necessary to weigh the legitimate interests of the recipient of information against the rights of data subjects.
35. In considering whether personal data contained within the footage would be processed fairly if it were disclosed to the complainant, the Commissioner has therefore considered the legitimate interests of the subjects of those data, and whether there would be any unfairness to the individuals.
36. The MOD has advised the Commissioner that the individuals involved in Operation Cauldron had no expectation that the footage would be disclosed to the public, and were never asked for their consent regarding possible disclosure. However, the Commissioner is not persuaded by this argument partly because the footage was produced long before the Act was conceived and the possibility of disclosure of the footage would probably not have been considered at this time. The Commissioner also accepts that it would be difficult if not impossible for the MOD to seek consent from each of the individuals in relation to disclosure, but he notes that in any event the DPA does not make consent a prerequisite for disclosure.
37. The MOD also argued to the Commissioner that disclosure would be unfair because it might cause distress to the individuals, and their relatives, who might be unaware of the involvement of the individuals. The MOD advised the Commissioner of such distress experienced by a family after the MOD disclosed information about Operation Harness in 1997. The Commissioner is of the view that the current culture of openness would not have been as developed in 1997 as it is in 2007. Indeed, the Commissioner is aware that the MOD has made a large amount of information about Operation Cauldron accessible to the public via the National Archives. This includes a "Who's Who" of Operation Cauldron, detailing the names and positions of all involved personnel. In light of this the Commissioner considers it unlikely that distress will be caused to individuals and their relatives by disclosure of the footage, when the substantive information is already in the public domain.
38. The MOD has maintained to the Commissioner that the risk of distress is increased by the media interest in Operation Cauldron. The MOD provided the Commissioner with copies of relevant newspaper articles, which provided detailed information on Operation Cauldron, and an interview with one of the original staff members involved. Whilst the Commissioner is mindful that what interests the public is not the same as what is in the public interest, he is not persuaded by the MOD's argument in this regard. Although the MOD claimed that a family was distressed to learn that their relative was involved in Operation Harness (referred to at paragraph 20 above), the Commissioner has seen no evidence to suggest that any distress was caused by the disclosure of the information. The Commissioner notes that the family in question asked the MOD for further

¹ Appeal numbers: EA/2006/0015 and 0016

information about their relative's involvement, and did not make a complaint about the disclosure itself.

39. For the reasons set out above the Commissioner is satisfied that disclosure of the footage into the public domain would not be unfair or unlawful, and that it would not therefore breach the first data protection principle.

Second data protection principle

40. The second data protection principle provides that:

“Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or purposes.”

41. With regards the second data protection principle, the Commissioner does not believe this is relevant as it would effectively bar the release of the majority of third party data requested under the Act on the basis that the data was not originally obtained for that purpose. Given that there is a provision for the release of such data in section 40, the Commissioner considers that this cannot have been the intention of the interface between the Act and the DPA, and that the more appropriate test is one of fair and lawful processing (the first data protection principle). Neither does he consider that disclosure of that information in response to a request under section 1 of the FOI Act would constitute processing incompatible with the purpose for which the information was obtained.

Section 10 of the DPA

42. The Commissioner is satisfied that disclosure of the footage would not breach any of the data protection principles. Therefore, the final step in considering the application of the exemption under section 40 is to consider whether disclosure would contravene section 10 of the DPA (the right to prevent processing likely to cause damage or distress.)
43. The MOD has confirmed to the Commissioner that it has not received any notifications from individuals in relation to section 10 of the DPA. In the absence of any such notification the MOD has assumed that disclosure might cause distress, and has concluded that the risk of causing distress is such that the information ought not to be disclosed.
44. The Commissioner acknowledges the MOD's argument that once the footage is disclosed into the public domain it cannot be easily removed, and therefore it would not be possible for the MOD to comply with any subsequent section 10 notice. However, the Commissioner is of the view that for section 40(3) to be breached, the authority in question needs to have received a section 10 notice under the DPA. An authority cannot claim that disclosure of information would contravene section 10 of the DPA if no such notice has been received.
45. In any event, the Commissioner has set out at paragraph 37 above the reasons why he is not satisfied that disclosure would in fact be likely to cause damage or

distress. The Commissioner is not convinced by the MOD's arguments in relation to section 10, and accordingly he is satisfied that disclosure of the footage would not breach this section of the DPA.

46. The Commissioner is satisfied that disclosure of the footage would not contravene any of the data protection principles, nor would it contravene section 10 of the DPA. Therefore the Commissioner is of the view that the MOD has wrongly relied on section 40 of the Act to withhold the footage.

Section 38(1): health and safety

47. For the exemption under section 38(1) of the Act to be engaged, a public authority needs to argue that disclosure of the information would, or would be likely to endanger the health or safety of any individual. The MOD has claimed that disclosure of the footage would be likely to cause such harm, as Operation Harness involved experiments carried out on animals. The MOD felt that animal rights extremists might be able to identify individuals from the footage, and might then go on to intimidate these individuals or their families.
48. In addition to animal rights extremists, the MOD argued that the media, having already published articles about Operation Cauldron, might attempt to use the information to discredit the MOD and its staff, which might affect the health and safety of staff.
49. The fact that one or more newspapers have published information about Operation Cauldron, and have interviewed a former member of staff, would not necessarily increase any risk of distress. Having viewed the footage, the Commissioner is satisfied that its disclosure would not create significant risk to any individual, of the level required for section 38 to be engaged.
50. For the reasons set out above, the Commissioner is not satisfied that the MOD has provided sufficient evidence to suggest that disclosure of the footage would or would be likely to endanger the physical health, mental health or safety of any individual. Therefore the Commissioner finds that the exemption under section 38(1) of the Act is not engaged in relation to the footage, and the MOD wrongly relied on this exemption to withhold the footage.

Section 44 exemption

51. Section 44 of the Act provides an exemption if disclosure of the requested information is prohibited by UK or European law. The Commissioner has considered the MOD's assertion that disclosure of the footage might breach Article 8 of the Convention as explained in paragraph 23 above. However, the Commissioner is not satisfied, on the basis of the arguments put forward by the MOD, that disclosure of the footage would breach any individual's right to respect for their private and family life as set out in Article 8 of the Convention.

52. The Commissioner is assisted by the Information Tribunal's decision in the case of *Bluck & ICO v Epsom & St Helier University Hospital Trust*². The Tribunal's view was that:

"... we would not be in favour of translating the general principles laid down in Article 8 into the form of specific legal prohibition to which we believe section 44 is intended to apply."

53. The Commissioner is therefore satisfied that Article 8 of the Convention does not act as a statutory prohibition on disclosure in this particular case. The Commissioner finds that the MOD wrongly relied on the exemption under section 44 of the Act in relation to the footage.

The Decision

54. The Commissioner's decision is that the MOD did not initially deal with the request for information in accordance with the Act in that it wrongly applied the cost limit and failed to provide an adequate refusal notice to the complainant.
55. In relation to the application of the exemptions relied on by the MOD the Commissioner's decision is as follows:
- The information is not exempt under section 38 of the Act
 - The information is not exempt under section 40 of the Act
 - The information is not exempt under section 44 of the Act

Steps Required

56. The Commissioner requires the public authority to provide the complainant with the information he requested (namely the footage) within 35 calendar days of the date of this notice.

Failure to comply

57. 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.

² Appeal number EA/2006/0090

Right of Appeal

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

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

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

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

Dated the 21st day of January 2008

Signed

**Graham Smith
Deputy Commissioner**

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

Legal Annex: Relevant statutory obligations

1. **Section 1(1)** provides that:

- (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. **Section 12(1)** provides that:

Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.

3. **Section 17(1)** provides that:

“A public authority which ... 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 ... is to any extent relying:

- on a claim 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 public authority holds the information, or
- on a claim that in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information

must either in the notice under section 17(1) or in a separate notice within such time as is reasonable in the circumstances, state the reasons for claiming -

- (a) that, on a claim 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 public 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. **Section 38** provides that:

(1) 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.

(2) 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).

5. **Section 40(2)** provides that:

(2) Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.

(3) The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-

- (i) any of the data protection principles, or
- (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

(4) The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).

6. **Section 44** provides that:

(1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it-

- (a) is prohibited by or under any enactment,
- (b) is incompatible with any Community obligation, or
- (c) would constitute or be punishable as a contempt of court.

(2) The duty to confirm or deny does not arise if the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) fall within any of paragraphs (a) to (c) of subsection (1).