

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 11 March 2008

Public Authority: Driving Standards Agency
Address: Stanley House
56 Talbot Street
Nottingham
NG1 5GU

Summary

The complainant made a request for information on the discussions about two specific rules relating to cyclists in the Highway Code. The public authority withheld the information requested by virtue of the exemption contained in section 35(1)(a). During the course of the investigation the public authority further relied on the exemption contained in section 42 in respect of one of the documents containing the information requested. On considering the case the Commissioner is satisfied that both exemptions are engaged and the public interest favours maintaining both exemptions.

The Commissioner's Role

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

The Request

2. On 24 May 2007 the complainant made a request for the following information;
'(copies of all internal and intergovernmental meeting notes, memos, e-mails, letters and other communications related) to the change of wording in Rules 58 and 60 of the Highway Code (between the version laid out for consultation in February 2006 and the version laid before parliament in March 2007).'
3. On 18 June 2007 the public authority issued a refusal notice to the complainant in which it stated the information requested was exempt by virtue of the exemption contained in section 35(1)(a) of the Act. It also concluded that public interest

factors in favour of withholding the information outweighed those in favour of its disclosure. In arriving at this conclusion it considered the public interests factors for and against disclosure.

Public interest factors in favour of disclosure

Greater transparency makes government more accountable to the electorate

There is a public interest in being able to assess the quality of advice available and full consideration of all the options

4. The public authority's detailed public interest arguments against disclosure are referred to in the 'chronology' section below.
5. On 20 June 2007 the complainant asked the public authority to review its decision not to disclose the information requested. The complainant based his internal review request on two grounds;
 - *'(T)he Highway Code and its wording does not represent Government policy and therefore information related to its development does not qualify for exemption under Section 35(1)(a) of the Act.'*
 - *'(R)egardless of this the strong public interest expressed in the wording outweighs any factors for withholding the information.'*
6. The public authority received the complainant's review request on 26 June 2007. It concluded the internal review and responded in a letter dated 30 July 2007. The public authority upheld its original decision to withhold the information requested by virtue of the exemption contained in section 35(1)(a) and also upheld its original determination that the public interest was in favour of withholding the information requested.

The Investigation

Scope of the case

7. The complainant contacted the Commissioner on 28 July 2007 to initially complain about the lack of response from the public authority to his review request as well as its refusal to disclose the information requested. However as noted above the public authority did subsequently respond. The Commissioner has considered the timing of its response in the "Other Matters" section of this notice.

Chronology

8. The Commissioner first wrote to the public authority on 19 September 2007 and asked the public authority to provide him with copies of the information requested. The Commissioner also asked the public authority to provide a full and detailed explanation as to why it concluded the applicable exemption in this instance was

section 35(1)(a) paying particular consideration to its relevance to the Highway Code.

9. In the same letter the Commissioner also asked the public authority to provide a detailed explanation and reasoning behind the public interest factors it considered in reaching the decision to withhold the information requested.
10. On 13 November 2007 the public authority responded to the Commissioner's letter. It informed the Commissioner that it had identified six documents as relevant to the complainant's request and provided the Commissioner with copies of these documents. According to the public authority decisions made by government ministers including decisions on the content of the Highway Code are government policy. Amendments to the code including consultation are subject to statutory procedures and the government decides on what to include in the code as laid before Parliament.
11. The public authority therefore concluded that the information contained in the documents requested relate to amendments to the Highway Code and is therefore exempt from disclosure as it relates to the formulation or development of government policy.
12. The public authority also provided the Commissioner with a more detailed explanation of the public interest factors it considered in reaching the conclusion that those in favour of withholding the information outweighed those in favour of disclosure. It considered the following factors for withholding the information:
 - Decision making should be based on the best advice available and full consideration of all options.

According to the public authority there needs to be free space in which it is possible to " 'think the unthinkable' " and use imagination without the fear that policy will be held up to ridicule. There may be a deterrent effect on external experts or stakeholders who might be reluctant to provide advice because it may be disclosed.

- The need to conduct rigorous and candid risk assessments of policies including consideration of the pros and cons without premature disclosure that might close off options

The public authority argued that a balance needs to be struck between disclosing sufficient information to allow informed debate and protecting the space within which ministers are advised and formulate policy. To release the information into the public domain at the advice stage before any decisions have been made could compromise this process. The public authority was however of the view that even though the Highway Code had been published since it conducted its internal review disclosing the documents requested would undermine the ability of officials to provide impartial advice to ministers.

- If officials advice were put into the public domain it would seriously undermine their ability to provide impartial advice to Ministers without concern about the possible reactions/pressure from stakeholders

The public authority reiterated the point made above that the impartiality of the civil service might be undermined if advice was routinely made public as there is a risk that officials could come under political pressure not to challenge ideas in the formulation of policy thus leading to poorer decision making.

13. Following a clarification request from the Commissioner, on 5 December 2007 the public authority provided the Commissioner with different versions (including rules 58 and 60 referred to by the complainant) of the Highway Code relating to the use of cycle lanes.
14. Having noted the minor changes made to rules 58 and 60 within the time frame of the complainant's request (between February 2006 and March 2007) the Commissioner wrote to the public authority asking it to further explain why it considered section 35(1)(a) as the appropriate exemption in light of the fact that information is only exempt under this section if it 'relates to the formulation or development of government policy'.
15. On 31 December 2007 the public authority responded to the Commissioner's letter of 5 December 2007. According to the public authority there can be significant policy discussion and development that results in very little change to texts, information generated during a reappraisal and critical analysis of existing policy would deserve to be protected under section 35. It further added that the development of policy can include improving or altering already existing policy such as reviewing the effects of existing policy and concluded that the information requested reflects this process. It also noted the Information Tribunal's view in *DFES v ICO and Evening Standard (EA/2006/0006)* that "relates to" and "formulation and development of policy" can safely be given a reasonably broad interpretation' and pointed to the relevance of this view to this case because policy on the safety of cyclists is intrinsically linked to policy on other road users and on road and junction layout etc.
16. According to the public authority therefore the Highway Code promulgates current road safety policy as to best practice and its amendment requires a great deal of policy making and revision which involves extensive consultation with interested parties. The purpose for such consultation is to inform policy-making by ensuring that the revised rules take into account the needs of other road users. The requested information deals principally with the consultation with cyclists' organisations on the proposed changes to the rules referred to by the complainant, the discussion of their responses, and what changes should be made to the rules. In the public authority's view the question of whether or not changes should be made to the rules as requested by the cycling lobby to afford them better protection from contributory negligence claims is a policy issue. The documents in question reflect and discuss the extent to which the government was prepared to accept this request.

17. In its response the public authority also informed the Commissioner that it believed one of the documents in question was also exempt under section 42. According to the public authority this document contained requests for legal advice and the advice consequently provided. In its view the factors in favour of maintaining this exemption were as follows;
- There is a strong public interest in an individual or body seeking access to legal advice being able to communicate freely with legal advisors in confidence and being able to receive advice in confidence
 - If legal advice were routinely disclosed, there would be a disincentive to such advice being sought and/or a disincentive to seeking advice on the basis of full and frank instructions
 - If legal advice were routinely disclosed, caveats, qualifications or professional expressions of opinion might be given in advice which would therefore prevent free and frank correspondence between government and its legal advisers.
 - Legal advice in relation to policy matters should be obtained without the risk of that advice being prematurely disclosed.

Analysis

Exemptions

Section 35

18. The Commissioner first considered whether section 35(1)(a) is engaged in respect of all of the documents (six in number) which constitute the information requested.
19. A full text of section 35 is available in the legal annex at the end of this notice.
20. Information is exempt from disclosure under section 35(1)(a) if it '*relates to the formulation or development of government policy.*'
21. The Commissioner therefore firstly considered the key issue of whether the Highway Code can be considered government policy for the purposes of section 35(1)(a).
22. In the Commissioner's view 'government policy' is a policy which requires cabinet input or represents the collective will of ministers, applies across government and is also suggestive of a political process. (The Commissioner's Guidance on the application of section 35 is available at; http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/ag_no_24_formulation_of_government_policy.pdf)
23. In his view therefore government policy would usually have a political dimension and although not definitive, a strong indicator of whether information constitutes government policy would be where there was some ministerial involvement in producing such information.

24. The statutory backbone for the Highway Code can be found in the Road Traffic Act 1988 (RTA). Section 38(8) of the RTA defines the code as;

'.....the code comprising directions for the guidance of persons using roads issued under section 45 of the Road Traffic Act 1930, as from time to time revised under this section or under any previous enactment.'

25. Section 38(1) and (2) of the RTA states;

'The Highway Code shall continue to have effect, subject however to revision in accordance with the following provisions of this section.'

Subject to the following provisions of this sections, the Secretary of State may from time to time revise the Highway Code by revoking, varying, amending or adding to the provisions of the Code in such a manner as he thinks fit.'

26. It also goes further to lay down procedures required for the amendments of any provisions to the code. In this respect section 38(3) and (5) provide;

'Where the Secretary of State proposes to revise the Highway Code by making any alterations in the provisions of the Code (other than alterations merely consequential on the passing, amendment or repeal of any statutory provision) he must lay the proposed alterations before both Houses of Parliament and must not make the proposed revision until after the end of a period of forty days beginning with the day on which alterations were so laid.'

Before revising the Highway Code by making any alterations in its provisions which are required by subsection (3) above to be laid before Parliament, the Secretary of State must consult with such representative organisation as he thinks fit.'

27. A full text of the section 38 of the RTA is available in the legal annex at the end of this notice.

28. In the Commissioner's view the combined effect of section 38 subsections 2, 3, 5 and 8 not only strongly suggest ministerial involvement in proposed amendments to the code but also indicate that such alterations or changes are governed by a political process. In other words an implicit assumption can safely be made that there is a political dimension to the process of drafting provisions of the Highway Code. The Commissioner is therefore persuaded by the public authority's argument that the Highway Code can be regarded as government policy for the purposes of the exemption contained in section 35(1)(a).

29. The Commissioner next considered whether section 35(1)(a) is engaged with regard all of the documents which constitute the information requested.

30. As stated above for this exemption to be engaged the information requested must relate to the *'formulation or development'* of government policy. *'Formulation'* suggests output from early stages of the policy process where options are generated and recommendations are put to a minister. On the other

hand development is suggestive of a stage beyond formulation which would involve a process of improving or altering already existing policy by reviewing, analysing, or recording the effects of existing policy.

31. The Commissioner notes that the information requested captures the discussions between staff of the public authority in respect of responses received from the cycling community relating to a consultation exercise conducted with regard to proposed amendments to the Highway Code. Although the discussions are specific to proposed amendments to the rules referred to by the complainant they are nonetheless inherently linked to the general deliberations on proposed amendments to the code as a whole. The Information Tribunal in *DFES v ICO* and *The Evening Standard EA/2006/0006* took the view that 'relates to' should be broadly construed due to the fact that section 35 is a class based exemption enjoying a qualified rather than an absolute exemption.
32. In the Commissioner's view therefore the information requested is exempt by virtue of the exemption contained in section 35(1)(a) only to the extent that it relates to the development of government policy rather than its formulation.

Public Interest Test

33. As noted above section 35(1)(a) is a qualified exemption and accordingly subject to the public interest test. The Commissioner has therefore gone on to consider whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
34. From the outset it is important to note that the latest amendments to the Highway Code were laid before Parliament on 15 June 2007 and a revised edition was consequently published in September 2007. As noted above the complainant's information request was made on 24 May 2007 and the public authority completed its internal review on 30 July 2007.
35. In the Commissioner's view the following public interest factors favour the disclosure of the information requested;
 - Greater transparency makes government more accountable for decisions taken and also creates better understanding which assists individuals in challenging those decisions thereby leading to a more inclusive government.
 - In addition public contribution to the policy making process could become more effective based on knowledge of the way government works. In other words the public interest may be served by the public seeing how their comments have been utilised in the development of policy and perhaps also inform them of how to constructively contribute to consultation processes in future.
 - There is also a public interest in being able to assess the quality of advice given to ministers and the subsequent decision taken based on the advice provided. This could also create an avenue for informed debate on the policy under consideration.

36. Having noted the public interest factors in favour of disclosure the Commissioner has gone on to consider the public interest factors against disclosure put forward by the public authority. The Commissioner notes that the public authority has identified the wider effects of disclosure of information within the class envisaged by section 35(1)(a). However his role is to determine to what extent disclosure of the specific information requested in this case would lead to the more 'general effects' on disclosure envisaged by the public authority.
37. The public authority is of the view that there must be space available to those best placed to give advice to 'think the unthinkable' and allow a free and frank exchange of ideas. Added to this is that the impartiality of civil service could be severely undermined if advice was routinely made public. The Commissioner recognises the fact that a balance needs to be struck between disclosing sufficient information to allow informed debate and protecting the private thinking space of civil servants. However having viewed the information the Commissioner is not persuaded that the six documents in question contain information which if disclosed would have inhibited a frank exchange of views between the staff of the public authority in respect of the proposed amendments to the code or perhaps provide an indication to suggest such disclosure would be the norm in every other case.
38. The Commissioner is also not persuaded by the view that disclosure of the information would undermine the neutrality of civil servants. In his view the neutrality of civil servants which is embodied in the civil service code is not something which disclosure or a mere threat to disclose the information requested should undermine. Indeed he does not believe the disclosure of any information should undermine the neutrality of civil servants especially in a culture of openness. This view is further strengthened by the Tribunal's observations in *DfES v Information Commissioner and Evening Standard EA/2006/0006*. According to the Tribunal;
- 'we are entitled to expect of (civil servants) the courage and independence.....that...(is)....the hallmark of our civil service.....(They).....are highly educated and politically sophisticated public servants who well understand the importance of their impartial role as counsellors to ministers of conflicting convictions.'* (Paragraph 75 (vii))
39. Be that as it may the Commissioner also notes that there was a public consultation exercise in respect of all proposed amendments to the code and another public consultation exercise specifically in respect of the proposed amendments which affect cyclists. Indeed one of the documents containing the information requested does highlight the large number of responses and questions generated from the cycling lobby as a result of the consultation exercise. In the Commissioner's view therefore disclosing the information requested at the time of the request would not have added anything new to the debate on the proposed amendments and could have instead made the process more cumbersome, as it seems likely that a similarly large number of representations would have been generated. The Commissioner is therefore persuaded that disclosure might well have compromised the process of revising the Highway Code, as suggested by the public authority.

40. The public authority is also of the view that there needs to be a candid risk assessment of policy options without a premature disclosure that might close off options. The public authority has not provided the Commissioner with any specific evidence that disclosure of the information requested would have had the effect of closing off possible options with regard the proposed amendments. However as noted above the Commissioner appreciates that the significant interest of the cyclist community may have resulted in premature headlines being generated by the disclosure of the information requested with a consequent risk of a less rigorous consideration of the relevant issues in light of the premature publicity. As observed by the Tribunal in the DfES case ministers should be able to *'hammer out policies without the threat of lurid headlines.'* (Paragraph 75 (iv))
41. The Commissioner is mindful of the fact that if the information was requested now a different approach and reasoning may well be required. However as noted by the Information Tribunal in the Secretary of State for Work and Pensions v Information Commissioner EA/2006/0040, the Commissioner's decision under section 50 is made with reference to the time the information request was made to the public authority rather than at the time the Commissioner assesses the complaint or the Tribunal hears the appeal.
42. In view of the above and especially in light of the importance attached to the timing of the request as noted by the Tribunal in the DfES case (Paragraph 75 (iv)), the Commissioner has concluded that on balance the public interest factors in maintaining the exemption outweigh those in favour of disclosing the information requested.

Section 42

43. Although the Commissioner is satisfied that all of the documents which constitute the information requested are caught by section 35(1)(a), in light of the contents of the document to which the public authority also applied section 42, he felt it appropriate to consider the applicability or otherwise of this exemption to the document in question.
44. Information is exempt under section 42 if a claim to legal professional privilege could be maintained in legal proceedings in respect to that information.
45. A full text of section 42 is available in the legal annex contained at the end of this notice.
46. From the outset it should be noted that there are two types of privilege which come under the umbrella of legal professional privilege. 'Litigation privilege' covers confidential information between a client and professional legal adviser obtained in contemplation of litigation while 'legal advice privilege' refers to confidential communications between a client and professional legal adviser where the dominant purpose is seeking or providing legal advice.
47. Having examined the document in question the Commissioner is satisfied that it constitutes information within the description of confidential communication which

falls under legal advice privilege and is therefore exempt from disclosure by virtue of the exemption contained in section 42.

Public Interest Test

48. Section 42 is a qualified exemption accordingly subject to the public interest test. The Commissioner has therefore considered below whether on balance of the public interest factors those for maintaining the exemption outweigh those in favour of disclosing the information requested.
49. The Commissioner has noted the public interest factors against disclosure put forward by the public authority. However before considering these factors he has outlined below the public interest factors in favour of disclosing the information requested.
50. It is pertinent however to point out that the Commissioner has taken into account the strong element of public interest built into legal professional privilege which must be taken into account in considering the application of section 42. According to the Tribunal in *Bellamy v Information Commissioner (EA/2005/0023)* '*at least equally strong counter-vailing considerations would need to be adduced to override that inbuilt public interest*' (paragraph 35).
51. The Tribunal also noted in the same case that '*there is no doubt under English law the privilege is equated with if, not elevated to, a fundamental right at least insofar as the administration of justice is concerned*' (paragraph 8). The Tribunal further added; '*It is important that public authorities be allowed to conduct a free exchange of views as to their legal rights and obligations with those advising them without fear of intrusion, save in the most clear case.....*' (paragraph 35)
52. In the Commissioner's view disclosing the information requested would enhance accountability by ensuring that decisions made in respect of the rules referred to by the complainant were based on good quality advice. It would also improve understanding of how the decisions on the referred rules were reached as well as enhance transparency in the decision making process.
53. However the inherent public interest in the maintenance of legal professional privilege is particularly strong and the arguments in this respect have been put forward strongly by the public authority. The Commissioner recognises the fact that as a qualified exemption, notwithstanding the strong public interest element, Parliament did not intend for this exemption to be used absolutely. Indeed the recent Tribunal decision in *Mersey Tunnel Users Association v Information Commissioner and Merseytravel EA/2007/0052* further underlines this point. However it must also be pointed out that the Tribunal considered amongst other factors the lack of transparency in the public authority's actions in that case as being a crucial public interest factor which weighed heavily in favour of overriding the strong element of public interest inbuilt into the privilege. The Commissioner does not believe the same could be said in this case.

54. In the Commissioner's view therefore, the public interest factors in favour of disclosure in this case are not compelling enough to override the long held principle of legal professional privilege.

The Decision

55. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

Section 35(1)(a): complaint not upheld

Section 42: complaint not upheld

Steps Required

56. The Commissioner requires no steps to be taken.

Other matters

57. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

Although the public authority completed its internal review within 40 working days it should as a matter of good practice have explained to the complainant why it needed more than 20 working days to complete the review.

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@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 11th day of March 2008

Signed

**Graham Smith
Deputy Commissioner**

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

LEGAL ANNEX

Formulation of Government Policy

Section 35(1) provides that –

“Information held by a government department or by the National Assembly for Wales is exempt information if it relates to-

- (a) the formulation or development of government policy,
- (b) Ministerial communications,
- (c) the provision of advice by any of the Law Officers or any request or the provision of such advice, or
- (d) the operation of any Ministerial private office.

Section 35(2) provides that –

“Once a decision as to government policy has been taken, any statistical information used to provide an informed background to the taking of the decision is not to be regarded-

- (a) for the purposes of subsection (1)(a), as relating to the formulation or development of government policy, or
- (b) for the purposes of subsection (1)(b), as relating to Ministerial communications.”

Section 35(3) provides that –

“The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1).”

Section 35(4) provides that –

“In making any determination required by section 2(1)(b) or (2)(b) in relation to information which is exempt information by virtue of subsection (1)(a), regard shall be had to the particular public interest in the disclosure of factual information which has been used, or is intended to be used, to provide an informed background to decision-taking.”

Section 35(5) provides that –

“In this section-

"government policy" includes the policy of the Executive Committee of the Northern Ireland Assembly and the policy of the National Assembly for Wales;

"the Law Officers" means the Attorney General, the Solicitor General, the Advocate General for Scotland, the Lord Advocate, the Solicitor General for Scotland and the Attorney General for Northern Ireland;

"Ministerial communications" means any communications-

- (a) between Ministers of the Crown,
- (b) between Northern Ireland Ministers, including Northern Ireland junior Ministers, or

- (c) between Assembly Secretaries, including the Assembly First Secretary, and includes, in particular, proceedings of the Cabinet or of any committee of the Cabinet, proceedings of the Executive Committee of the Northern Ireland Assembly, and proceedings of the executive committee of the National Assembly for Wales;

"Ministerial private office" means any part of a government department which provides personal administrative support to a Minister of the Crown, to a Northern Ireland Minister or a Northern Ireland junior Minister or any part of the administration of the National Assembly for Wales providing personal administrative support to the Assembly First Secretary or an Assembly Secretary;

"Northern Ireland junior Minister" means a member of the Northern Ireland Assembly appointed as a junior Minister under section 19 of the Northern Ireland Act 1998."

Legal Professional Privilege

Section 42(1) provides that –

"Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information."

Section 42(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 involve the disclosure of any information (whether or not already recorded) in respect of which such a claim could be maintained in legal proceedings."

Refusal of Request

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(2) states –

“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.”

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 17(4) provides that -

“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.

Section 17(5) provides that –

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

Section 17(6) provides that –

“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.”

Section 17(7) provides that –

“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 38 of the Road Traffic Act 1988

The Highway Code

(1) The Highway Code shall continue to have effect, subject however to revision in accordance with the following provisions of this section.

(2) Subject to the following provisions of this section, the Secretary of State may from time to time revise the Highway Code by revoking, varying, amending or adding to the provisions of the Code in such manner as he thinks fit.

(3) Where the Secretary of State proposes to revise the Highway Code by making any alterations in the provisions of the Code (other than alterations merely consequential on the passing, amendment or repeal of any statutory provision) he must lay the proposed alterations before both Houses of Parliament and must not make the proposed revision until after the end of a period of forty days beginning with the day on which the alterations were so laid.

(4) If within the period mentioned in subsection (3) above either House resolves that the proposed alterations be not made, the Secretary of State must not make the proposed revision (but without prejudice to the laying before Parliament of further proposals for alteration in accordance with that subsection).

(5) Before revising the Highway Code by making any alterations in its provisions which are required by subsection (3) above to be laid before Parliament, the Secretary of State must consult with such representative organisations as he thinks fit.

(6) The Secretary of State must cause the Highway Code to be printed and may cause copies of it to be sold to the public at such price as he may determine.

(7) A failure on the part of a person to observe a provision of the Highway Code shall not of itself render that person liable to criminal proceedings of any kind but any such failure may in any proceedings (whether civil or criminal, and including proceedings for an offence under the Traffic Acts, the [1981 c. 14.] Public Passenger Vehicles Act 1981 or sections 18 to 23 of the [1985 c. 67.] Transport Act 1985) be relied upon by any party to the proceedings as tending to establish or negative any liability which is in question in those proceedings.

(8) In this section “the Highway Code” means the code comprising directions for the guidance of persons using roads issued under section 45 of the [1930 c. 43.] Road Traffic Act 1930, as from time to time revised under this section or under any previous enactment.

(9) For the purposes of subsection (3) above—

(a) “statutory provision” means a provision contained in an Act or in subordinate legislation within the meaning of the [1978 c. 30.] Interpretation Act 1978 (and the reference to the passing or repeal of any such provision accordingly includes the making or revocation of any such provision),

(b) where the proposed alterations are laid before each House of Parliament on different days, the later day shall be taken to be the day on which they were laid before both Houses, and

(c) in reckoning any period of forty days, no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.