

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 30 July 2007

**Public Authority:** Valuation Office Agency  
**Address:** New Court  
Carey Street  
London  
WC2A 2JE

### Summary

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The complainant requested information concerning the number of complaints made against an individual employee of the public authority. The public authority refused to confirm or deny whether the requested information was held in the belief that this would constitute a disclosure of personal data that would contravene the first data protection principle. The Commissioner finds that the public authority was correct in refusing to confirm or deny that the requested information was held, but that the refusal notice issued by the public authority was inadequate. Although the public authority failed to comply with the procedural requirements of the Act in its refusal notice, this breach does not necessitate remedial action.

### The Commissioner's Role

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

### The Request

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2. On 14 February 2005, the complainant made the following information request:

*"(1) Is this the first time [name redacted] has stood in the dock, so to speak?  
(2) Were there other critics of her actions, either from the public or within your internal structures, including the VTS etc?"*

3. The public authority responded to this request on 22 February 2005. In this

response, the public authority stated that information related to complaints made about the employee of the public authority named in the information request (the "third party"), would not be disclosed. The public authority did not cite an exemption from the Act, stating only that 'personnel records' are exempt.

4. The public authority made no reference to an internal review procedure in its refusal notice. For this reason, the complainant initially contacted the Commissioner without requesting that the public authority review its handling of his information request.
5. Following initial contact with the Commissioner, the complainant was advised that he should request that the public authority carry out an internal review of its decision to refuse his request. The complainant subsequently did so, by letter dated 24 May 2006. In this letter, the complainant clarified that his request was for the number of complaints made to the public authority about the third party.
6. The public authority responded, giving the outcome of its internal review, on 10 July 2006. In this response, the public authority stated that the initial decision to refuse the information request was upheld. The public authority also specified that it was neither confirming nor denying whether it held recorded information falling within the scope of the request. The public authority cited section 40(5)(b)(i) and stated that it believed that to confirm or deny whether information falling within the scope of the request was held would be in breach of the data protection principles.
7. However, the public authority did provide with this response details of the total number of complaints that had been made about its service during the financial year 2005/06. This figure was broken down further to show which of these complaints related to the public authority's London North Group, which had responsibility for the complainant's issues.

## The Investigation

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### Scope of the case

8. The complainant initially contacted the Commissioner on 30 June 2005. The complainant specified the refusal to provide the requested information as the basis for his complaint.
9. Initial correspondence sent from the Commissioner to the complainant, on 12 April and 18 April 2006, notified the complainant that his case had been allocated to a case officer and outlined how this case would be progressed. The Commissioner also noted that the complainant had clarified in his letter of 2 March 2005 to the public authority that his request was for the number of complaints made about the third party. The complainant was advised in a letter dated 22 May 2006 that he should request that the public authority carry out an internal review of its handling of his information request.

10. The public authority responded to the complainant on 10 July 2006, giving the outcome of its internal review. In this response, the public authority stated that it would neither confirm nor deny whether information falling within the scope of the request is held as it considered that the exemption provided by section 40(5)(b)(i) applied here. The public authority specified that it believed that to confirm or deny would breach the requirement to process personal data fairly and lawfully.
11. The Commissioner contacted the complainant on 26 July 2006. In this letter, the Commissioner confirmed that he had received a copy of the letter giving the outcome of the internal review. The Commissioner also confirmed that the case would be progressed from that point on the basis of the refusal under section 40(5)(b)(i). The focus of this case from that point was on determining whether confirming or denying that the requested information is held would constitute a disclosure of personal data and, if so, if this disclosure would be in breach of the first data protection principle.

## Chronology

12. The Commissioner contacted the public authority initially on 27 July 2006. In this letter the public authority was advised of the basis for the complaint. It was also noted that the public authority had stated in its internal review response that it considered that to confirm or deny would breach the requirement of the Data Protection Act 1998 (the "DPA") to process personal data fairly and lawfully. This indicated that the public authority believed that to confirm or deny whether the information requested is held would constitute a disclosure of personal data and that this disclosure would be in breach of the first data protection principle, which states that personal data shall be processed fairly and lawfully.
13. The public authority was asked to respond with its reasoning as to why it believed that to confirm or deny here would be in breach the first data protection principle. The public authority was also asked to advise what procedures were in place within the public authority designed to ensure the accountability of its employees.
14. The public authority responded on 9 August 2006. In this response, the public authority stated that it believed that issues concerning complaints made about its staff members were between it and its employees. The public authority stressed that it believed that this extended to confirmation of whether any complaints had been made.
15. The public authority went on to describe the procedures in place within the public authority to ensure the accountability of its employees. The public authority provided to the Commissioner a copy of a leaflet setting out its complaints procedure. This specified that, where a complaint cannot be settled through discussions with the staff member concerned or their line manager, a complaint can be made to the public authority's Chief Executive. If the complaint is not resolved at this stage, it can be further escalated to the Adjudicator's Office. The public authority is also subject to scrutiny by the Parliamentary Ombudsman.
16. The public authority made reference to a previous Decision Notice FS50065043 issued by the Commissioner. This case related to a request made for information

about a grievance involving a specific staff member within a public authority. In that case, the Commissioner had upheld the withholding of information under section 40(2).

17. The public authority went on to state that it believed, as a public authority, it was accountable to the public for mistakes made. The public authority believed that, as it had an internal procedure in place to ensure the accountability of its staff members, and took corporate responsibility externally for mistakes made, disclosure of information about individual staff members was not necessary in order to ensure accountability.
18. The Commissioner contacted the public authority again on 27 February 2007. In this letter, the public authority was asked to respond clarifying how it recorded information about complaints made to it and how easily attributable to an individual staff member this information would be. The public authority was also asked to clarify if it distinguished between complaints made about the behaviour of a staff member and those made about the professional performance of a staff member.
19. The public authority responded to this on 14 March 2007. It firstly drew a distinction between complaints made about the Council Tax banding assigned to a property, which is subject to a statutory appeals process, and complaints made about the handling of a case by the public authority. Only in the latter case would this expression of dissatisfaction be treated as a complaint by the public authority.
20. The public authority went on to provide some further clarification of the information held by it about complaints. The public authority stated that this could include information held by the public authority's Human Resources team that related to a staff member's conduct.
21. The public authority also stated that it held statistics about the number of complaints made to it. These statistics were broken down by region and by the basic category of the complaint.
22. The Commissioner contacted the public authority for further information on 16 May 2007. In this letter, the public authority was asked to be specific in its arguments as to why it believed that to confirm or deny whether the requested information is held would be unfair and in breach of the first data protection principle.
23. The public authority responded to this on 19 June 2007. In this response, the public authority stated firstly why it considered that to confirm or deny whether the requested information is held would constitute personal data. The public authority referred to a previous Decision Notice FS50086498 of the Commissioner in which the circumstances were similar. The public authority referred specifically to paragraphs 16 and 17 from this decision, which state the following:

*16. "The information that has been requested in this case relates to complaints made against named individuals. In confirming or denying that the information requested is held, the public authority would be revealing something about those*

*individual members of staff, specifically whether or not complaints had been made about them.”*

*17. “The Commissioner, therefore, believes that confirming or denying that the information requested in this case is held would disclose the ‘personal data’ of those individuals, within the definition set out above.”*

24. The public authority went on to describe why it considered that disclosure of this personal data would be unfair and in breach of the first data protection principle. In doing so, the public authority again referred to Decision Notice FS50086498 , specifically the following paragraph:

*“The Commissioner considers that for data to be processed fairly, individuals should be made aware of any ‘non-obvious’ purposes for which the information about them may be used or disclosed. The Commissioner believes that in this case it would be reasonable for employees of the public authority to expect that, if complaints are made against them personally, the fact that such complaints had been made would be kept confidential within the authority and would not be released into the public domain. Accordingly, the Commissioner believes that for the public authority to confirm or deny that the information requested is held would be unfair and therefore breach the first data protection principle.”*

## Findings of fact

25. The public authority maintains a record of complaints made against individual staff members.
26. This record is broken down by area and by the nature of the complaint, e.g. complaints about Council Tax banding and complaints about the service provided by public authority employees.

## Analysis

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### Procedural

#### Section 17(1)

27. This provision requires that a refusal notice sent in response to a request shall specify the exemption from Part II of the Act which is believed to apply to the requested information. The refusal notice in this case made no reference to any of the exemptions provided in Part II of the Act and so did not comply with the requirement of this provision.

#### Section 17(7)

28. This provision requires that a refusal notice should state whether the public authority has in place a procedure for carrying out internal reviews of its responses to information requests. If such a procedure does exist, the requester should be provided with details of this procedure. In this case, the refusal notice

made no mention of internal reviews and so failed to comply with the requirement of this provision.

## **Exemption**

### **Section 40(5)(a)(i)**

29. This provision provides that a public authority is not obliged to confirm or deny whether requested information is held if to do so would:
- constitute a disclosure of personal data, and
  - this disclosure would breach any of the data protection principles or section 10 of the DPA
30. The Commissioner's analysis of whether the above criteria would be fulfilled is as follows:

### **Would confirming or denying that the requested information is held constitute a disclosure of personal data?**

31. The complainant has requested information relating to complaints made about a specific, named, individual within the public authority. The public authority argues that confirming or denying whether information falling within the scope of the request is held would disclose whether complaints had been made about the third party. The public authority further argues that this would constitute a disclosure personal data relating to the third party.
32. The Commissioner agrees that confirming or denying whether the requested information is held would constitute a disclosure of personal data. Confirming or denying would unavoidably disclose whether complaints had been made about the third party. As this information would clearly relate to an identifiable individual, the Commissioner accepts that this information would constitute personal data.

### **Would disclosure of this personal data be unfair and in breach of the first data protection principle?**

33. The personal data that would potentially be disclosed here would relate to the third party in a professional capacity. No personal data relating to the third party outside a professional capacity would be disclosed here. This is significant in that the Commissioner has made a clear distinction when issuing decisions relating to requests for information relating solely to professional matters and information relating to an individual outside their professional capacity. The Commissioner has been clear that he considers it far less likely that disclosure of personal data relating to professional matters would be unfair than disclosure of information relating to an individual in a non professional capacity.
34. It is important to consider what expectation of disclosure the third party would hold. The public authority has stated it believes that information about complaints made against individual employees should remain between it and its employees. Given that this is the position of the public authority, it can be surmised that its



employees would not have been given any notification that information about complaints made against individual staff members could be subject to disclosure. Similarly to the point made in Decision Notice FS50086493, referred to above at paragraph 23, the Commissioner would consider it reasonable that employees of the public authority would have an expectation that information about complaints made against them individually, including whether or not any complaints have been made, would not be disclosed, even without any specific notification of this.

35. As mentioned above at paragraph 7, the public authority has disclosed to the complainant a total figure for the number of complaints that had been made about individual employees. The Commissioner considers this significant as it demonstrates that the public authority has attempted to be open and accountable about the issue of complaints made about its service, within the restriction of not wishing to disclose details of complaints made about individual employees. It can be argued, therefore, that a disclosure of the number of complaints made against individual employees of the public authority would not be necessary in order to enhance the openness and accountability of the public authority, when this has already been demonstrated through the disclosure of the total number of complaints.
36. The potential for detriment to the third party through disclosure of information relating to complaints made against them is a significant issue here. Decision Notice FS50086498 referred to earlier in this notice includes this argument about the issue of detriment:

*“To release the fact that a complaint has been made against an employee may lead to assumptions being made about that employee’s competence. However, the complaint may be unsubstantiated or malicious, or certain employees may be involved more frequently with difficult decisions that are more likely to result in dissatisfaction. Therefore, releasing this information does not aid transparency or accountability but could be misleading and unfair to particular employees.”*

37. This argument also applies in this case. A counter argument that an employee of a public authority should have an expectation of accountability could be made, but the public authority has demonstrated its commitment to openness and accountability through disclosing the total number of complaints. Any enhancement to the openness and accountability of the public authority brought about by further disclosure of information concerning complaints made against individual employees would be lessened by the fact of its previous disclosure of the total number of complaints. As referred to above at paragraph 15, the public authority has also provided to the Commissioner details of the procedures that it has in place in order to ensure the accountability of its employees.

## Conclusion

38. As mentioned previously, the Commissioner has taken a clear line that disclosure of personal information relating solely to an individual in a professional capacity would be less likely to be considered unfair than disclosing information about an individual’s private life. It can also be argued that employees of public authorities should have an expectation that they will be accountable.

39. However, the Commissioner has also previously concluded that disclosure of information about complaints made against individual employees would be unfair as the employees would have a reasonable expectation that such information would not be disclosed and due to the potential detriment that could result from disclosure of information of this kind. It is also of significance that the public authority has demonstrated transparency through disclosure of the total number of complaints received.
40. The conclusion of the Commissioner is that the application of section 40(5)(b)(i) should be upheld here. In making this decision the Commissioner has firstly concluded that confirming or denying that the requested information is held would constitute a disclosure of personal data. The Commissioner considers that it is clear that confirming or denying whether the requested information is held would disclose information that could be linked to an identifiable individual.
41. Secondly, the Commissioner has considered whether disclosure of this personal data would be unfair and thus would constitute a breach of the first data protection principle. The Commissioner here concludes that disclosure of this personal data would be unfair and thus would be in breach of the first data protection principle, which requires that personal data shall be processed fairly and lawfully. In making this decision, the Commissioner has taken into account that the public authority has previously disclosed details of the total number of complaints that have been made to it and thus a further disclosure of the number of complaints made about an individual employee would not be necessary in order to improve the openness and accountability of the public authority. The Commissioner has also recognised that the data subject would be unlikely to hold an expectation that this personal data would be disclosed and that such a disclosure could result in detriment being caused to the data subject.

## The Decision

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42. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act in that it applied section 40(5)(b)(i) correctly.
43. However, the Commissioner also finds that the public authority did not deal with the request in accordance with the provisions of the Act in that it failed to comply with the procedural requirements of section 17 of the Act in its refusal notice.

## Steps Required

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44. Although the Commissioner finds that the public authority failed to comply with the procedural requirements of section 17, this breach does not necessitate remedial action. The public authority is not, therefore, required to take any steps.



## Right of Appeal

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45. 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](mailto:informationtribunal@dca.gsi.gov.uk)

46. 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 30<sup>th</sup> day of July 2007**

**Signed .....**

**Gerrard Tracey  
Assistant Commissioner**

**Information Commissioner's Office  
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Cheshire  
SK9 5AF**