

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 3 March 2009**

**Public Authority:** St Edmundsbury Borough Council  
**Address:** Borough Offices  
Angel Hill  
Bury St Edmunds  
Suffolk  
IP33 1XB

### Summary

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The complainant asked the Information Commissioner (“the Commissioner”) to consider the response provided by St Edmundsbury Borough Council (“the Council”) to a request he had made about an agreement concerning the Cattle Market Redevelopment Project in Bury St Edmunds. He sought copies of the advice (as well as the source of that advice) that led to another company being added as surety to the existing agreement concerning the project. As it was not clear from the initial response provided whether the Council held information relevant to the request, the Commissioner sought to clarify what, if any, relevant information was held. The Council identified that it held a number of reports containing some information that it believed was exempt under section 43(2) of the Freedom of Information Act 2000 (“the Act”) but following the Commissioner’s intervention, the information relevant to the request was disclosed. Further investigation revealed that the Council held other relevant information in the form of three items of correspondence. The Council applied the exemptions under sections 43(1) and 43(2) of the Act to withhold this information. The Commissioner investigated and was not satisfied that the Council had been able to demonstrate that either exemption was engaged and he therefore requires the Council to disclose the information to the complainant. Additionally, the Commissioner noted a number of procedural failings, particularly concerning section 17 of the Act.

### The Commissioner’s Role

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1. The Commissioner’s role 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 Act. This Notice sets out his decision.

## Background

2. The Cattle Market Redevelopment Project concerned a plan for a new shopping centre in Bury St Edmunds. The original developer for the project was Centros Miller (Bury St Edmunds) Ltd and the surety under the original agreement in place was The Miller Group Ltd who had, at the time of the request, a shareholding interest in the developing company and its subsidiaries. A subsidiary company is a company that is controlled by another company which owns over 50% of the issued share capital.
3. On 15 January 2005, a special meeting of the full council authorised the Head of Legal and Democratic Services to sign a revised Development Agreement and authorised the Chief Executive, in consultation with the Chair and Vice-Chair of the Cattle Market Redevelopment Working Party, to agree certain outstanding items. Final amendments were agreed on 24 February 2005 and the Head of Legal and Democratic Services signed the new Development agreement on 10 March 2005.
4. Under the revised agreement, the developer was changed to Bury St Edmunds General Partner Limited as general partner for Centros Miller Bury St Edmunds Limited Partnership. This means that the developer became two companies that share the business relationship of being “general partners”. The connection to the original developer is that Centros Miller Bury St Edmunds Ltd Partnership was a subsidiary company of Centros Miller (Bury St Edmunds) Ltd.
5. The surety under the revised agreement for the project was also changed to The Miller Group and DV3 Ltd on an equal share basis following an offer that was put into writing by Delancey Real Estate Asset Management Ltd (“Delancey”) in a letter to the Council’s solicitors on 7 February 2005. DV3 Ltd is a company registered in the British Virgin Islands and is a subsidiary company to Delancey.
6. Since the time of the request, Delancey has bought out The Miller Group Ltd and taken over the shareholding interest it had in Centros Miller (Bury St Edmunds) Ltd and its subsidiaries. The shareholding interest amounts to a 50% stake so these companies did not become subsidiaries of Delancey. However, the subsidiaries of Centros Miller (Bury St Edmunds) Ltd ceased to be subsidiaries since the company no longer owned more than a 50% shareholding interest.
7. Therefore, at the time of the request, Delancey’s only connection to the project was through DV3 Ltd, the company that was added as surety under the revised agreement. At the time of writing this Decision Notice, Delancey’s connection to the project is that it has a 50% shareholding interest in Centros Miller St Edmunds Limited Partnership (one of the general partners that is now the developer) and it owns 100% of The Miller Group which is one of the sureties and over 50% of DV3 Ltd which is the other surety in the agreement.

## The Request

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8. The complainant made an information request to the Council on 2 August 2005 for information concerning the Cattle Market Redevelopment Project. The complainant noted from a meeting held at the Council on 18 January 2005 that certain parties with whom the Council was contracting under a revised agreement were different to those set out in the original agreement. In particular, he noted the change to the developer and the additional surety. In relation to these changes the complainant requested to know:  
  
“1) On what date(s) was the decision taken to agree to a change in the parties with whom the Council was contracting?  
2) By whom was that decision taken?  
3) On the basis of what advice and from what source of advice was that decision taken?”
9. The Council responded on 24 August 2005. It confirmed the dates the decision to change parties was taken and that this decision was taken by The Cattle Market Redevelopment Working Party, Cabinet and Council. Concerning element 3 of the complainant's request, the Council advised that external advice was obtained from the Council's property consultants and legal advisers.
10. As the complainant remained dissatisfied, he contacted the Council on 25 August 2005 to request an internal review. Concerning element 1 of his request, he asked the Council to correlate the dates in its response to the decision makers it had identified and to specific documents on its website. In relation to element 3 of his request, the complainant explained that his request was for the advice itself as well as for the source of the advice. The complainant stated that the Council's response only cited sources.
11. The Council responded on 15 September 2005 informing the complainant of the outcome of the internal review process. It expressed the view that it believed it had provided all the information requested however it noted that the complainant required details of the advice given to the Council. The Council identified that it held a number of reports which it referred to as “blue papers”. It explained that the reports had not been published in their entirety and made reference to the provisions of the Local Government Act 1972. The Council stated that it was unable to release the withheld information as it considered that it was exempt from disclosure under section 43 of the Act although it did not explain why.
12. As the complainant remained dissatisfied with the way his request had been handled, he approached the Commissioner on 19 September 2005 to request that his complaint be given formal consideration.

## The Investigation

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### Scope of the case

13. During an initial investigation conducted by the Commissioner into the handling of the complainant's request on 2 August 2005, the Commissioner established that the complainant was satisfied that the Council had provided the information required in elements 1 and 2 of his request. Following the Commissioner's intervention, the Council also disclosed parts of the redacted reports it had referred to as "blue papers" and this satisfied part of the complainant's request in element 3 to know the advice relied upon and the source of that advice which led to the change of developer. However, the complainant was not satisfied that the Council had complied fully with element 3 of his request for information about the advice relied upon and the source of that advice that led to the additional surety in the revised agreement. (This part of the request will be referred to throughout the Notice as part ii) of element 3). As the Council identified that it held further relevant items of correspondence that it considered were exempt under sections 43(1) and 43(2) of the Act, the Commissioner decided to investigate this issue further. For clarity, this Decision Notice therefore only concerns the Council's handling of part ii) of element 3 of the complainant's request.

### Chronology of the case

14. On 18 December 2006, the Commissioner wrote to the Council to request a copy of the withheld information referred to in its internal review. He also asked the Council to review its decision to withhold information in light of the passage of time.
15. The Council responded on 7 February 2007. It enclosed copies of the "blue papers" it had referred to, individually referenced as reports numbered V225, V226, V373, V398 and Appendix A to V372. The Council confirmed that it was now willing to release some of this information due to the passage of time and would therefore make redacted versions of these reports available on its website.
16. On 27 June 2007 and 3 July 2007, the Commissioner wrote to the Council to seek further clarification in respect of the exemption(s) it wished to claim for each section of each report now being withheld.
17. Following several reminders and the threat of more formal action, the Council responded on 4 December 2007. It again confirmed that further information could now be released due to the passage of time and provided the Commissioner with a further breakdown of those sections of each report which remained exempt under section 43(2) of the Act. The Council also provided some limited information indicating why it believed the exemption applied. It wrote directly to the complainant on 5 December 2007 to provide the additional information.
18. Following the receipt of the Council's response dated 5 December 2007, the complainant wrote to the Commissioner on 6 December 2007 to express further dissatisfaction. He stated that he had asked the Council to answer very specific

questions relating to the change in parties. However, the Council had not provided a clear response with appropriate references to the correct material. Instead it had referred the complainant to a mass of documents. He also stated that he was not convinced by the arguments provided that the information was exempt.

19. The complainant wrote to the Commissioner again on 12 December 2007 to inform him that he had now reviewed the redacted reports. The complainant confirmed that he was now satisfied that elements 1 and 2 of his request had been answered and part of element 3. However, he remained dissatisfied with the Council's response to part ii) of element 3. The complainant indicated that he had found some limited information in the report that may concern the change in surety but he was not satisfied that this fully answered his request at part ii) of element 3.
20. The Commissioner reviewed the reports and wrote to the Council on 13 December 2007 to request that it reconsider whether the information in the reports answered part ii) of element 3 and if so to confirm exactly which sections of the reports being withheld contained the information.
21. The Council emailed the Commissioner and explained that it had reconsidered its original response to the request. It stated that it believed some of the information it held relating to part ii) of element 3 was contained in third party correspondence. It stated that it was in the process of obtaining the views of a third party concerning the possibility of disclosure.
22. The Commissioner telephoned the Council on 6 February 2007 to discuss the Council's email. He asked the Council to write directly to the complainant to provide an update on its position.
23. The Council wrote to the complainant on 6 February 2008. It explained that although certain information relating to the acceptance of DV3 Ltd as surety was within the reports it had supplied, further information had since been located. It stated that the recorded information held concerning the change in surety comprised of correspondence that was marked strictly confidential.
24. The Council wrote to the Commissioner again on 6 March 2008. It confirmed that it had now obtained the third party view relating to the decision to change the surety and that the third party had objected to the disclosure. The Council stated that it considered that the information was exempt under sections 43(1) and 43(2) of the Act and provided some explanation. The Council also supplied the Commissioner with a copy of the withheld information, which comprised of two letters regarding DV3 Ltd and its financial position.
25. The Commissioner reviewed the requested information. As it was apparent that one of the two letters the Council had supplied referred to another piece of correspondence, the Commissioner wrote to the Council on 17 March 2008 to establish whether this further correspondence was relevant to the request and whether it could be provided. In addition, the Commissioner indicated that he had

- not been persuaded that the information was exempt and requested the Council to elaborate further on some of the arguments submitted by the third party.
26. The Council responded on 3 April 2008. It agreed that a further letter it held concerning DV3 Ltd was relevant to part ii) of element 3 of the complainant's request and supplied a copy of this information to the Commissioner. In addition it supplied a copy of a response from the third party dated 28 March 2008 which outlined in more detail why it objected to the disclosure of the information.
  27. As the Commissioner required more detail about the arguments presented by the third party and the Council, he wrote to the Council again on 23 April 2008 to request the application of section 43 of the Act be given further consideration.
  28. The Council replied on 19 May 2008 attaching a further response it had received dated 9 May 2008 from the third party. This correspondence provided more detailed information about the third party's reasons for objecting to disclosure.
  29. The Commissioner contacted the Council on various occasions from June to October 2008 to request some background information and clarification, particularly information to help him to understand the complex relationship between the companies involved and whether any further information was held. The Council provided the information requested by the Commissioner and confirmed that no further information was held.

## Analysis

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### Procedural issues

30. The relevant legislative provisions have been included in an annex at the end of this Decision Notice.
31. The complainant was expecting to receive the details of the advice relied upon (and the source of the advice) that led to the decision to change the surety. The Council appears not to have understood from the original request that the complainant wanted to see the actual details of the advice relied upon or that he wanted to know more specific details to identify the advisors when he asked for the "source" of the advice. However, the Commissioner's view is that the request could be read objectively to include a request for this information and he therefore believes that it ought to have formed part of the Council's considerations when it initially responded. As such, the Commissioner considers that the Council failed to state within 20 working days whether it held the information requested concerning part ii) of element 3 of the request. It therefore breached section 10(1) of the Act. As the Council failed to rectify this failing by the date of the completed internal review, it also breached section 1(1)(a).
32. When the complainant wrote to the Council on 25 August 2005 and stated that he wished to see the actual advice in question, the Council stated that it wished to apply an exemption for the first time in its internal review on 15 September 2005

and it subsequently applied exemptions to other information located after the internal review. The Council therefore breached the requirement under section 17(1) to issue a refusal notice within 20 working days.

33. Further the Council failed to specify by the date of the completed internal review which exemption applied and therefore breached section 17(1)(b). It failed to explain why (when it was not otherwise apparent) the exemption applied in this case and therefore breached section 17(1)(c). It failed to explain why the public interest favoured maintaining the exemption and this was a breach of section 17(3). The internal review also did not contain particulars of the right conferred by section 50 of the Act to appeal to the Commissioner for a decision. The Council therefore breached section 17(7)(b).

### Exemptions

34. The Council decided to withhold the following information from the complainant on the basis that all the letters were exempt under sections 43(1) and 43(2).
- A letter dated 7 February 2005 from the Chairman of the Delancey Group ('Delancey') to the Council's legal adviser
  - A letter dated 25 February 2005 from Delancey's legal adviser to the Council's legal adviser
  - A letter dated 2 March 2005 from Delancey's accountant to the Council's legal adviser.

### Section 43(1)

35. In a letter to the Commissioner on 6 March 2008, the Council advised that it believed that the exemption under section 43(1) applied to the information. This limb of the exemption states that information will be exempt if it constitutes a trade secret. The Council argued that the withheld information constitutes a trade secret, "because of the secret nature of the size of the commitments made by shareholders of DV3 Ltd". In addition, the Council argued that the information disclosed details of DV3 Ltd's "exclusive trading relationship with a third party" and that such relationships can be of economic value simply because they are not known.
36. The Commissioner acknowledges that the term "trade secret" is not defined in the Act. However his own published guidance (Awareness Guidance number 5) suggests that the term "trade secret" encompasses technical secrets such as secret formulae or recipes and business secrets such as pricing structures or unique strategies or methodologies if such information gives a company a "competitive edge". The Commissioner has also considered the recent Tribunal decision *Department of Health v Information Commissioner (EA2/2008/0018)*. He notes comments made by the Tribunal in paragraph 52:

"A trade secret implies that the information is more restricted than information that is commercially sensitive. The ordinary understanding of the phrase usually suggests something technical, unique and achieved with a degree of difficulty and

investment. Few would dispute that the recipe for “Coca Cola” is (or has been) a trade secret.”

37. It is the Commissioner’s view that the exemption under section 43(1) is not engaged in this case because neither the Council nor a third party has presented any evidence that would suggest that there is any information contained within the letters that would constitute a “trade secret”. It is also not obvious to the Commissioner that such information is contained within the letters following a careful inspection of them. It is unlikely that there are any unique strategies or methodologies that could be gleaned from the identity of a third party trading with DV3 Ltd or knowledge of the size of shareholder commitments. The Commissioner believes that the arguments proposed would be more appropriately considered under the exemption under section 43(2) and he therefore believes that the Council incorrectly applied the exemption under section 43(1).

### Section 43(2)

38. For the Commissioner to agree that section 43(2) of the Act applies, the Council first needed to demonstrate that prejudice would or would be likely to occur to the commercial interests of the Council and/or DV3 Ltd and/or Delancey. To help him to decide the meaning of the words “would be likely to”, the Commissioner considered a decision from the Information Tribunal hearing of *John Connor Press Associates Ltd v Information Commissioner* (EA/2005/0005) which outlined the tribunal’s interpretation of “likely to prejudice”. The tribunal confirmed that:

“...the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk”.

In other words, the risk of prejudice need not be more probable than not, but must be substantially more than remote.

39. The exemption is also a qualified exemption. That is, it is subject to the public interest test under section 2 of the Act which states that if the information is to be withheld, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. This need not be considered by the Commissioner unless the Council can persuade the Commissioner of a real and significant risk of prejudice.

### The Council’s view

40. When considering disclosure, the Council contacted Delancey whose legal adviser submitted detailed arguments to the Council outlining why prejudice is likely to be caused to both DV3 Ltd and Delancey if the information is disclosed. This is in line with the Information Tribunal case *Derry City Council v The Information Commissioner* (EA/2006/0014) that indicates that public authorities must ensure that arguments concerning prejudice to a third party’s commercial interest are the genuine concerns of the third party itself rather than simply the Council’s own thoughts on the matter. The arguments presented have been addressed in more detail below. The Council also provided the Commissioner

with copies of the responses it received from the third party during the course of the investigation in which it argued in favour of maintaining the exemption.

41. Delancey advised the Council that the requested information was provided to the Council in the strictest of confidence and should not under any circumstances be disclosed in response to the complainant's request. It highlighted that the author of the letter dated 7 February 2005 had specifically referred to the strictly confidential nature of the information. The third party expressed the view that the three letters contain key commercially sensitive information about DV3 Ltd and its financial position. It argued that the requested information also contains commercially sensitive information about the wider Delancey Group. It stated that if such information were released it could be used by market competitors to both DV3 Ltd and Delancey's disadvantage.
42. In terms of DV3 Ltd's financial position, the third party highlighted that the letters revealed; the total commitments of the shareholders in DV3 Ltd, the total equity raised, the aggregate cost of DV3 Ltd's investments, the total amount of money capable of being raised by the company, the total monies actually invested in property transactions, the company's net assets and some detail about its relationship with a UK Bank.
43. The third party explained that the disclosure of the total commitments made by DV3's shareholders would allow Delancey's competitors to work out the size of deals done by DV3 so far. It further explained that in the fund management industry, businesses are extremely sensitive about the extent of their equity being made public. It went on to argue that if total commitments to DV3 Ltd are revealed to the market, competitors could calculate the company's gross fund mandate and consequently, its capacity for gearing. Therefore, if a target business calculated that its own value was greater than that of the company, it could prejudice current and future property transactions which in turn would adversely impact on Delancey's earnings. The third party also argued that revealing the aggregate costs of DV3's investments would enable competitors to work out a notional profit and, in a soft market, potentially negotiate a reduction in the asking price of properties developed by Delancey. Finally, the third party suggested that disclosing detail about its relationship it has with a UK bank could also prejudice its relationship with the bank involved.
44. In terms of other commercially sensitive information, the third party stated that the identity of Delancey's joint venture business partners and shareholders is market-sensitive information. It referred to Delancey's list of clients as the "crown jewels" of an asset manager. It further explained that competing businesses may seek to poach DV3's investor base which, it highlighted, consists of high-net-worth individuals and corporations. The third party also highlighted that disclosure of some of the projects Delancey had been involved in had the potential to generate controversy where there had been compulsory land purchases. It stated that it believed an objector could easily cause damage to Delancey's business relationships by harassing Delancey's business partners.
45. The third party also stressed that as DV3 Ltd is an offshore subsidiary, the shareholder register is not publicly available. It expressed the view that this

reason in itself was sufficient to demonstrate that the company is entitled to expect that the confidential nature of its business and financial data should be respected. It also stated that investors in the company invest on the understanding that the investment is private and, particularly in cases involving some element of controversy, disclosure of their involvement may serve to make investors refuse to invest any further or require the company not to pursue riskier investments. As riskier investments often carry a likelihood of higher investment returns, this could in turn prejudice the returns investors can expect and also Delancey's earnings.

46. No arguments were submitted by the third party concerning the public interest test under section 2 of the Act. However, the Council confirmed that it had considered the public interest in disclosure and had concluded that the public interest would be best served by maintaining the exemption. It argued that disclosure of the information would not substantially further the understanding of the issues surrounding the redevelopment project as it merely supports the suitability of DV3 Ltd as surety, whereas Delancey had expressed strong objections to the disclosure and understood that the information would be treated in confidence.

#### The Commissioner's view

47. Firstly, the Commissioner notes that in the requested information Delancey stipulated that the information was strictly confidential and should not be disclosed to anyone without its prior consent. He also notes from the above submissions that Delancey objects to the requested information being disclosed for this reason. However, it is the Commissioner's view that such clauses alone are not sufficient to prevent recorded information held by public authorities from being disclosed under the Act. It is the Commissioner's view that private companies entering into contracts with public authorities should be aware that public authorities are subject to the provisions of the Act and that public authorities are required to be open and transparent in their decision making, particularly where such contractual arrangements involve substantial public funding as in this case.
48. Regarding the information about the company's financial position that has been identified by Delancey as being commercially sensitive, the Commissioner was not persuaded that it had been demonstrated that there was a real and significant risk of commercial prejudice to the third party. He notes that all companies registered in the UK are required to submit annual returns to Companies House in accordance with the Companies Act 1985 (recently updated in 2006). If a company has share capital, the annual return must contain the nominal value of the total issued share capital and the number and types of shares held or transferred. Members of the public can obtain copies of the annual returns submitted to Companies House for any company that is registered in the UK for a small fee so in the UK, this type of information can be obtained fairly easily. The Commissioner considers that the level of transparency generally brought about by the existence of Companies House in the UK undermines Delancey's assertions that such information is generally well-guarded in the industry or that it would put

DV3 Ltd at a competitive disadvantage compared with other competing companies.

49. Although the Commissioner notes that DV3 Ltd is registered offshore so such information is not publicly available and he appreciates the potential for this circumstance to provide DV3 Ltd with some kind of competitive advantage over similar businesses registered in the UK, the Commissioner has not been provided with sufficient argument describing precisely how this advantage would occur and the likelihood of commercial prejudice if the information in question was disclosed. Delancey also did not give any particular reason for why it believed that its relationship with the UK bank would be likely to result in commercial prejudice and the reason was not obvious to the Commissioner.
50. In terms of other information identified by Delancey as commercially sensitive, the Commissioner does not accept that disclosure of the identity of shareholders or investors is likely to prejudice DV3 Ltd commercially because he notes that the names and addresses of shareholders would also be submitted to Companies House in an annual return. In addition, although the Commissioner acknowledges Delancey's argument that the investors and shareholders in an offshore company may not have expected disclosure which may have influenced a decision to become involved despite more controversial projects being undertaken by DV3 Ltd, neither the third party nor the Council provided evidence or sufficient argument as to the likelihood of commercial prejudice being caused to the shareholders or Delancey in this respect.
51. Nor does the Commissioner accept that Delancey demonstrated likelihood of commercial prejudice when it argued that disclosure of the identities of its joint venture business partners may lead to competitors attempting to "poach" from the company's investor base. There was no evidence to suggest that the risk of this would be substantially more than remote. Indeed, the use of the word "may" in the argument suggested to the Commissioner that commercial prejudice in this respect was probably not sufficiently likely. Likewise, there was no evidence of the likelihood of harassment of Delancey's business partners who may have invested in controversial projects.
52. Despite being provided with opportunities to provide evidence and argument to the Commissioner in support of the exemption under section 43(2) of the Act, ultimately, the Commissioner was not persuaded that either the Council or the third party had been able to demonstrate a real and significant risk of commercial prejudice to the interests of either party if the information requested by the complainant was disclosed.
53. As the Commissioner was not satisfied that the Council and the third party had demonstrated that commercial prejudice was likely to result from the disclosure of the information, he did not go on to consider where the balance of the public interest lay in this case.

## The Decision

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54. The Commissioner's decision is that the Council incorrectly applied the exemptions under section 43(1) and section 43(2) of the Act to the three letters in question. It therefore breached section 10(1) of the Act for not providing this information within the statutory time limit. It also breached section 1(1)(b) for not providing this information by the date of the internal review.
55. The Commissioner also identified a number of procedural failings in the Council's handling of the request. As the Council failed to state that it held information falling within the description specified in the request within the statutory time limit, it breached section 10(1). The Council also breached section 1(1)(a) of the Act for not confirming or denying whether this information was held by the date of the completed internal review.
56. The Commissioner also finds that the Council breached section 17(1) of the Act because it failed to issue a refusal notice in respect of information that it held and believed to be exempt within the statutory time limit. The Council also breached sections 17(1)(b), 17(1)(c) and 17(3) because it did not specify which exemption it wished to apply and did not explain why the exemption applied or why the public interest favoured maintaining the exemption. The notice also did not contain details of the right to complain about the refusal to the Commissioner and it therefore breached section 17(7)(b) of the Act.

## Steps Required

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57. The Commissioner requires the public authority to disclose the withheld information to the complainant, namely the letters dated 7 February 2005, 25 February 2005 and 2 March 2005 within 35 calendar days of the date of this notice to ensure compliance with the Act.

## Other matters

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58. Although the following matter does not form part of this Decision Notice, the Commissioner wishes to highlight that he was concerned by the delay caused to his investigation by the Council's failure to respond in a timely manner to the Commissioner's enquiries, particularly in the early stages of the investigation. As described in the chronology of this Decision Notice, although the Commissioner asked the Council to provide information to help him to consider the complaint on 3 July 2007, the Council did not provide its response until 4 December 2007 and was reminded about the outstanding information on several occasions by the Commissioner. The Commissioner was pleased to note that the Council's engagement with the Commissioner subsequently improved however he would like to remind the Council that engagement with the spirit of the legislation necessitates timely responses being provided to the Commissioner.

## **Failure to comply**

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59. 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.

## Right of Appeal

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60. 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)

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 3<sup>rd</sup> day of March 2009**

**Signed .....**

**Steve Wood  
Assistant Commissioner**

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

## Legal Annex

### Freedom of Information Act (2000)

#### Section 1 - General right of access

Provides that “any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.”

#### Section 2(2) - the public interest test

Provides that, “In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that –

- (a) the information is exempt information by virtue of a provision conferring absolute exemption, or
- (b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information”

#### Section 10(1) - Time for Compliance

Provides that, “Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

#### Section 17(1) - refusal notice

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

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

#### Section 17(3) - refusal notice

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 -

(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(7) - refusal notice

Provides that, “A notice under section (1), (3) or (5) must –

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

Section 43(1) - trade secrets

Provides that, “Information is exempt information if it constitutes a trade secret.”

Section 43(2) - commercial interests

Provides that, “Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).”