

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 10 November 2009

**Public Authority:** Charity Commission  
**Address:** PO Box 1227  
Liverpool  
L69 3UG

### Summary

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The complainant made a request to the Charity Commission for details of correspondence it had entered into with the National Trust on a specific issue. The Charity Commission provided some information. However, it refused to provide any additional information on the basis that it was exempt under sections 40(2) and 41 of the Freedom of Information Act 2000. As a result of the Commissioner's investigation, the Charity Commission agreed to provide some further information to the complainant. The Commissioner has found that the public authority correctly applied section 41. However, it incorrectly applied section 40(2). He has therefore ordered disclosure of one element of the requested information. In addition, he has noted some procedural breaches of the Act.

### 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.

### Background

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2. Prior to making his request, the complainant had raised with the Charity Commission (the "public authority") concerns he had over the National Trust's voting procedures. The Commissioner understands that the National Trust had employed a policy of emboldening preferred candidates' names on ballot papers for elections to the National Trust's Council. The complainant was interested to learn whether the public authority had raised his concerns with the National Trust, the detail of those discussions and information as to whether very senior figures in both organisations had been involved in those discussions.

## The Request

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3. On 15 October 2008 the complainant wrote to the public authority and requested the following information:

“I would be grateful if you would let me know if you have sent a copy of your letter to the National Trust or you have intimated to them that there has not been a breach of legal principle. Please send me copies of any correspondence you have had with the National Trust on this subject. (Please accept this as a formal data protection request).”
4. The public authority responded on 12 November 2008. It confirmed that it held the requested information, and provided extracts from its records in response to the complainant's request. The public authority included records of telephone conversations it had had with the National Trust as falling within the scope of the complainant's request. However, it refused to provide the information in full as it believed the remaining information was exempt under section 41 of the Act (information provided in confidence). Further, the public authority explained that it had removed all personal information from which individuals could be identified in the information provided to the complainant. The public authority also responded to the complainant's query regarding the letter to the National Trust and its views on the issue of the legal principle.
5. On 18 November 2008 the complainant wrote to the public authority and requested an internal review of the decision to withhold information from him.
6. The public authority contacted the complainant again on 17 December 2008 with the outcome of its internal review. It confirmed that it had identified all information relevant to the complainant's request and that the information it had withheld was exempt under sections 40(2) (by virtue of section 40(3)(a)(i)) and 41 of the Act.

## The Investigation

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### Scope of the case

7. On 9 February 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the public authority's refusal to provide the requested information.
8. The Charity Commission disclosed additional information to the complainant during the course of the investigation. The Commissioner does not consider this information in the Decision Notice and instead focuses only on the remaining disputed information, which comprises:
  - the name of a member of staff in the Large Charities Division Team; and
  - a paragraph in a memorandum of a telephone conversation between the employee referenced above and a representative of the National Trust.

9. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act. In particular, the complainant suggested that he may be the focus of some of the withheld information and he wished to be satisfied as to whether this is the case. The Commissioner is also responsible for regulating the Data Protection Act 1998 (the "DPA") and therefore whilst DPA complaints may not be the subject of Decision Notices, the Commissioner may investigate them separately. The Commissioner has examined the withheld information and is satisfied that it is not the complainant's personal data. The public authority is therefore not obliged to consider this matter again from a DPA perspective.

## **Chronology**

10. The Commissioner wrote to the public authority on 13 July 2009 to begin the investigation. He asked to be supplied with a full and unredacted copy of the information withheld from the complainant, marked to show which exemptions had been applied to which sections of the information, and asked a number of questions to assist him in understanding the public authority's handling of the request.
11. The public authority responded on 10 August 2009. It supplied a full and unredacted copy of the information. However, it had not marked the copies. It did, however, provide a response to the Commissioner's questions.
12. On 14 August 2009 the public authority provided marked up copies of the withheld information to the Commissioner following a further request from him for this information.
13. On 17 August 2009 the Commissioner wrote to the public authority again and requested clarification on a number of points arising from his consideration of the withheld information and the public authority's response of 10 August 2009.
14. The public authority responded on 1 September 2009. Following receipt of this letter, the Commissioner telephoned the public authority to discuss his preliminary conclusions to this case.
15. On 21 September 2009 the public authority contacted the complainant and provided some additional information to him.
16. During the preparation of this Notice, on 21 October 2009, the Commissioner telephoned the public authority again to clarify some details. The public authority provided the necessary information whilst on the telephone.

## Analysis

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### Exemptions

#### Section 40: Personal information

17. The Commissioner has considered whether the public authority correctly applied section 40(2) of the Act.
18. Section 40(2) provides that information which constitutes the personal data of a third party will be exempt information if its disclosure would breach one or more of the principles set out in schedule 1 of the DPA (the “data protection principles”).
19. Further, information which does not otherwise breach the data protection principles may only be disclosed if one of the conditions in schedule 2 of the DPA (“schedule 2 conditions”) is met.
20. The information to which the public authority has applied section 40(2) is the name of a member of staff in the Large Charities Division Team.
21. The name of an individual is clearly that person’s personal data. The Commissioner has therefore gone on to consider whether disclosure of this data would breach one or more of the data protection principles.
22. The public authority has explained that it considers disclosure of the requested information would be unfair to the individual and would not meet any of the schedule 2 conditions. The data protection principle most relevant is therefore the first principle, which states that:

“...personal data shall be processed fairly and lawfully...”
23. In support of this view, the public authority provided the Commissioner with a communication the complainant had sent to it, which included personal observations about a more senior member of staff in the same division. The public authority explained that the staff member had been offended by these personal comments and that it had written to the complainant to explain the offence caused. The public authority was concerned that “harmful observations” may be made about other members of staff if their names were to be disclosed.
24. The Commissioner has produced guidance to assist public authorities in determining when names of individuals should be released:

[http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/practical\\_application/whenshouldnamesbedisclosed.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/practical_application/whenshouldnamesbedisclosed.pdf)
25. The guidance sets out that public authorities should consider the following factors when deciding whether names should be released:
  - Is the information about the person’s public role?
  - Would they expect their role to be subject to public scrutiny?

- Is there a likelihood of unwarranted damage or distress to the individual?
26. The requested information is about the individual's role at a public authority. The public authority has confirmed that the role is considered to be "public facing", as the individual liaises with stakeholders and members of the public on a regular basis. The individual takes decisions and signs communications in his own name, rather than that of the public authority.
  27. The individual has declined his consent to the release of his name, which demonstrates that he does not expect this information to be released. However, in view of the information provided by the public authority at paragraph 26, namely that the individual comes into contact with external parties on a daily basis, the Commissioner considers it would be reasonable for the individual to expect public awareness of his role.
  28. The public authority has explained that it has weighed factors concerning the seniority of individuals and the nature of their role, as well as the likelihood of unwarranted prejudice arising from disclosure of the requested information. It has cited the example of the more senior employee being criticised by the complainant as evidence of the likelihood of the same occurring if the more junior employee's name were to be disclosed.
  29. On balance, the Commissioner has decided that it would not be unfair to the individual if his name were to be released under the Act. This is because, whilst he may be subject to adverse comments following release of the information, individuals who work in public facing roles should expect to be accountable for the decisions they make. The public authority would retain the right to contact the complainant to justify its decisions and counter any adverse comments made, as it had done in the case of the senior employee, as outlined at paragraph 23 above.
  30. The Commissioner has no reason to suppose that disclosure of the requested information would be unlawful. He has therefore determined that disclosure of the requested information would not breach the requirement of the first data protection principle that processing of personal data must be both fair and lawful. However, he may only order disclosure of the requested information if one of the schedule 2 conditions applies.
  31. The Commissioner considers that the only schedule 2 condition that may be relevant is condition 6(1), which provides -

"The processing is necessary for the purposes of the legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject".
  32. The sixth condition establishes a three part test which must be satisfied;
    - there must be legitimate interests in disclosure of the information,

- the disclosure must be necessary for a legitimate interest of the public and,
- even where the disclosure is necessary it nevertheless must not cause unwarranted interference (or prejudice) to the rights, freedoms & legitimate interests of the data subject.

### *Legitimate interests*

33. Before he orders disclosure of an individual's personal data, the Commissioner must be satisfied that disclosure of the information would satisfy a legitimate public interest.
34. The Commissioner considers that there is a legitimate interest in allowing the public to understand who is responsible for dealing with issues that affect them. In this case, the complainant wishes to be certain that concerns he raised with the public authority were given due consideration. Whilst this information is of particular interest to the complainant, it may also be said to be of wider public interest. This is because members of the public should be able to have confidence in the public authority's ability to discharge its statutory functions and regulate charities effectively.

### *Necessity*

35. The Commissioner must consider whether disclosure is necessary to achieve the stated legitimate interests. In doing so, he has to consider whether the legitimate interests may be satisfied by means other than disclosure of personal data.
36. Following consideration of the nature of the requested information, which is the name of an individual employed by the public authority in a public facing role, the Commissioner has determined that there are no alternative means by which the public's legitimate interests may be satisfied. If disclosure was limited to the name of the individual's team or division, this would only indicate which senior member of staff was ultimately responsible for the individual's actions and not which particular individual raised the issues of concern with the National Trust.

### *Unwarranted interference or prejudice*

37. The public authority has argued that disclosure of the individual's name could potentially expose him to unwarranted prejudice, most likely in the form of critical comments from the complainant (and perhaps other individuals who have contacted the National Trust with regard to the same issue). The Commissioner has explained at paragraph 23 above how the public authority has countered such comments in the past and how it may do so again in the future.
38. In reaching a decision on this case, the Commissioner has considered the Tribunal's decision in *House of Commons v Information Commissioner and Leapman, Brooke and Thomas (EA/2007/0060)*. In that case, the Tribunal considered the extent to which expenses information relating to named members of parliament should be released. In that case, the Tribunal agreed that the following information should be withheld:

- sensitive personal data within the meaning of section 2 of the DPA;
- personal data of third parties;
- financial details that could expose an MP to fraud;
- itemised numbers shown on phone bills;
- details of contractors who had regular access to MPs home for security reasons;
- details of security measures; and
- the address of the MPs homes where this was necessary for security reasons, for example the MP was a particular target for terrorists.

39. Although the circumstances of the present case are different, none of the factors set out in paragraph 38 above apply. Whilst the individual is clearly concerned about the release of his name, the Commissioner does not consider this information to be so sensitive that its disclosure would constitute an unwarranted interference in his private life. The name is requested in the context of allowing the public to scrutinise the way the individual handled a particular issue in the course of his employment with the public authority. The information is not connected with the individual's private life: it does not raise concerns regarding sensitive personal data or security.
40. In view of the above, the Commissioner does not consider that disclosure of the individual's name would constitute an unwarranted interference with his private life.

#### **Section 41: information provided in confidence**

41. The Commissioner has considered whether the public authority correctly applied section 41 of the Act.
42. **Section 41(1)** provides that –
- “Information is exempt information if-
- (a) it was obtained by the public authority from any other person (including another public authority), and
  - (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.”
43. The information to which section 41 has been applied is a paragraph in a memorandum of a telephone conversation between the junior employee referenced above and a representative of the National Trust.
44. In order for the exemption under section 41 to apply, public authorities must first be able to satisfy the Commissioner that the requested information was obtained by that authority from a third party.
45. The withheld information constitutes an extract from a record of a telephone call. The record itself was generated by the public authority. However, the information contained therein was provided to the public authority by the National Trust. The

Commissioner has considered whether the requested information was obtained by the public authority from a third party.

46. The Information Tribunal (the "Tribunal") considered a similar issue in the case of the Department for Business, Enterprise and Regulatory Reform v Information Commissioner and Friends of the Earth (EA/2007/0072). It confirmed, at paragraph 78, that information which is transcribed or recorded by one party can fall under s41(1)(a) FOIA if that record contains information disclosed to it in whatever form from a third party.
47. The Commissioner has considered the content of the withheld information and finds that it constitutes information provided to and recorded by the public authority. Section 41(1)(a) therefore applies.
48. Once it has been established that the requested information has been provided to the public authority by a third party, the Commissioner must assess whether an actionable breach of confidence would arise if the information were to be disclosed.
49. For an actionable breach of confidence to arise, the following factors must be present:
  - the information must have the necessary quality of confidence, namely the information must not be trivial and must not be in the public domain; and
  - the information must have been imparted in circumstances importing an obligation of confidence, whether expressed implicitly or explicitly.
50. In addition, it is useful for public authorities arguing that an actionable breach of confidence would arise, to confirm whether any detriment to the party providing the confidential information would occur if it were indeed disclosed.
51. The public authority has explained that it does not consider the information to be trivial or to be in the public domain. The information concerns voting arrangements within the National Trust. The Commissioner is satisfied that such information cannot be said to be trivial and has been provided with evidence of communications from the National Trust which make it clear the charity considers the information to be confidential.
52. The public authority has explained to the Commissioner that it does not have an explicit confidentiality agreement with the National Trust. However, both the public authority and the National Trust have explained that the withheld information is prefaced with the statement "for information only" in bold type and that this demonstrates the National Trust's intention that the information was not for wider circulation. The complainant has argued that the expression "for information only" 'has a commonplace and regular meaning [that] goes no further than indicating the presence of informative material requiring no action or response...the suggestion that in some undefined way it should be given a special meaning creating an obligation of confidence is strained in the extreme'.



53. The Commissioner has considered the arguments of both parties carefully. Whilst he acknowledges the complainant's argument about one of the interpretations of the phrase "for information only", the Commissioner is of the view that, given the content of the information provided to the public authority by the National Trust, it clearly intended that the information should not be circulated more widely. The Commissioner considers that whilst there may be more than one interpretation to the phrase "for information only", the interpretation put forward by the public authority is not unreasonable.
54. On the issue of detriment, the public authority has argued that disclosure of the withheld information would have been detrimental to the National Trust, as it discusses a paper that had been prepared for, but not yet discussed with, the National Trust's Council<sup>1</sup>. The Commissioner accepts this point and agrees that it would be detrimental to the party providing information in confidence if that information were made available to the public at large prior to being put before part of the organisation charged with holding the organisation to account.
55. In view of the above, the Commissioner considers that the National Trust would be able to bring an action for breach of confidence against the public authority if the requested information were to be disclosed.
56. Section 41 is an absolute exemption and therefore, unlike other exemptions under the Act, it is not subject to the public interest. However, there is a public interest defence to the breach of confidence. The Tribunal considered this matter in the case of *Derry City Council v Information Commissioner (EA/2006/0014)* and concluded that there did not need to be an exceptional case to overturn the obligation of confidence, simply that the public interest balancing exercise to be carried out is the reverse of that usually carried out under the Act. The public authority must therefore consider whether the public interest in providing the requested information outweighs the public interest in withholding it.
57. The public authority has explained that, in addition to the detriment to the National Trust if the information were to be disclosed, disclosure would be detrimental to the Charity Commission's relationship with the National Trust and would generally hamper its ability to regulate charities effectively. The public authority has argued that disclosure would inhibit its ability to have free and frank discussions with charities, which may refuse to co-operate with the public authority, thus prejudicing its ability to fulfil its statutory functions.
58. The Commissioner recognises that there is a public interest in public authorities being accountable for their actions and transparent in their decision-making. However, the Commissioner considers that disclosure of the withheld information would be unlikely to enlighten the public in this regard. The information is limited to that provided by the National Trust, which is not itself a public authority and therefore should not be subject to the same level of scrutiny as a public authority subject to the Act.

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<sup>1</sup> [http://www.nationaltrust.org.uk/main/w-trust/w-thecharity/w-thecharity\\_our-present/w-how\\_we\\_are\\_run/w-how\\_we\\_are\\_run-council.htm](http://www.nationaltrust.org.uk/main/w-trust/w-thecharity/w-thecharity_our-present/w-how_we_are_run/w-how_we_are_run-council.htm)

59. On balance, the Commissioner considers that the public interest in favour of providing the information does not outweigh the public interest in withholding it. Therefore, the public authority would not have a defence to breaching the National Trust's confidence in this instance.

## **Procedural requirements**

### **Section 1: General Right of Access**

60. The Commissioner has considered whether the public authority dealt with the complainant's request in accordance with section 1(1) of the Act.
61. Section 1(1) provides that –
- “Any person making a request for information to a public authority is entitled –
- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
  - (b) if that is the case, to have that information communicated to him.”
62. The complainant made his request for information on 15 October 2008. The public authority confirmed to the complainant that it held the requested information on 12 November 2008. However, at the time of writing it has not provided the complaint with any information to which this Notice relates.
63. The public authority has complied with section 1(1)(a) of the Act by confirming to the complainant that it held the requested information within twenty working days of receipt of the request.
64. The Commissioner has found that the information to which the public authority applied section 40(2) of the Act is not exempt from disclosure. The public authority should have supplied this information to the complainant; therefore it has breached section 1(1)(b) of the Act by failing to provide that information to him.
65. The public authority has not breached section 1(1)(b) of the Act in respect of the information the Commissioner has found to be exempt under section 41.

### **Section 10: Time for Compliance**

66. The Commissioner has considered whether the public authority dealt with the complainant's request for information on time.
67. Section 10(1) 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.”

68. The complainant made his request for information on 15 October 2008. As yet, the information to which the public authority applied section 40(2) has not been provided. The public authority has therefore breached section 10(1) of the Act in respect of this information.

## **The Decision**

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

- it correctly applied section 41 to part of the requested information.

However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- the public authority incorrectly applied section 40(2) to part of the requested information and therefore it breached sections 1(1)(b) and 10(1) by failing to provide this information within twenty working days of the complainant's request.

## **Steps Required**

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

- the public authority must provide the complainant with the information it had redacted under section 40(2).

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

## **Failure to comply**

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72. 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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73. 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](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://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 10<sup>th</sup> day of November 2009**

**Signed .....**

**David Smith  
Deputy Commissioner**

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

## Legal Annex

### General Right of Access

**Section 1(1)** provides that –

“Any person making a request for information to a public authority is entitled –

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

**Section 1(2)** provides that –

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

**Section 1(3)** provides that –

“Where a public authority –

- (a) reasonably requires further information in order to identify and locate the information requested, and
- (b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”

**Section 1(4)** provides that –

“The information –

- (a) in respect of which the applicant is to be informed under subsection (1)(a), or
- (b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”

**Section 1(5)** provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

**Section 1(6)** provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.”

### **Time for Compliance**

**Section 10(1)** 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 10(2)** provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.”

**Section 10(3)** provides that –

“If, and to the extent that –

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

**Section 10(4)** provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

**Section 10(5)** provides that –

“Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and

- (b) confer a discretion on the Commissioner.”

**Section 10(6)** provides that –

“In this section –

“the date of receipt” means –

- (a) the day on which the public authority receives the request for information, or
- (b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”

## **Personal information**

**Section 40(1)** provides that –

“Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.”

**Section 40(2)** provides that –

“Any information to which a request for information relates is also exempt information if-

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

**Section 40(3)** provides that –

“The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
  - (i) any of the data protection principles, or
  - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

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

**Section 40(4)** provides that –

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

**Section 40(5)** provides that –

“The duty to confirm or deny-

- (a) 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), and
- (b) does not arise in relation to other information if or to the extent that either-
  - (i) he giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A (1) of that Act were disregarded, or
  - (ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).”

**Section 40(6)** provides that –

“In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.”

**Section 40(7)** provides that –

In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;



"data subject" has the same meaning as in section 1(1) of that Act;

"personal data" has the same meaning as in section 1(1) of that Act.

### **Information provided in confidence**

**Section 41(1)** provides that –

“Information is exempt information if-

- (a) it was obtained by the public authority from any other person (including another public authority), and
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.”

**Section 41(2)** provides that –

“The duty to confirm or deny does not arise if, or to the extent that, the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) constitute an actionable breach of confidence.”