

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 15 July 2010

Public Authority: The governing body of
Seven Kings High School

Address: Ley St
Ilford
Essex
IG2 7BT

Summary

The complainant requested details of the salary, bonus and expenses paid to the headmaster of the school, together with copies of the minutes of every governors' meeting for the years 2004 to 2008. The public authority refused to provide the information relating to the headmaster, and provided copies of the minutes to the governors' meetings with some elements redacted, on the basis of the exemption provided at section 40 of the Act. During the Commissioner's investigation, it was discovered that, due to a misunderstanding over the dates relevant to the request, certain minutes had not been disclosed. The Commissioner's decision is that the public authority incorrectly refused to provide salary and expenses information for the headmaster, but information on bonus payments was correctly withheld. The public authority also failed to provide all the information it held, in breach of section 1(1)(b) and section 10(1) of the Act. By failing to cite the full and correct exemption details applicable, the public authority also breached section 17(1)(b) of the Act. During the course of the Commissioner's investigation, the public authority provided the missing or incorrectly withheld information above. The Commissioner requires no further steps to be taken.

The Commissioner's Role

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

The Request

2. On 25 June 2009 the complainant wrote to the public authority, requesting the following:

"1. The salary paid to Sir Alan Steer, Headmaster for the years 2004 to 2008, inclusive.

2. Bonuses paid to Sir Alan Steer, Headmaster for the years 2004 to 2008, inclusive,

3. Expenses paid to Sir Alan Steer, Headmaster for the years 2004 to 2008, inclusive.

4. Minutes of every Governors' meeting held for the years 2004 to 2008, inclusive."

3. The public authority replied on 8 July 2009. It refused the information relating to the headmaster's salary, bonuses and expenses on the basis of the exemption provided by section 40 of the Act. Copies of the publicly available minutes of the meetings of the governing body were disclosed, but it was explained that minutes which contained confidential information, or information about an individual, were not publicly available and were refused.
4. The complainant requested an internal review of this response on 9 July 2009, arguing that the information relating to the headmaster was in his professional capacity as headmaster and should be disclosed. The complainant also argued that the withheld minutes should also be disclosed, subject to redactions as necessary in respect of elements which were exempt from disclosure.
5. The public authority replied on 2 September 2009, stating that it maintained the view expressed in its letter of 8 July 2009.

The Investigation

Scope of the case

6. On 27 August 2009 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider the following points.
 - She had not received a response to her request for internal review;
 - the information refused should be supplied in redacted form where necessary;
 - the information disclosed was incomplete and did not contain any appendices to the minutes.
7. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

8. On 25 September 2009 the Commissioner wrote to the complainant and the public authority regarding the completion of the internal review.
9. The public authority responded on 14 October 2009, enclosing a copy of a letter sent to the complainant on 2 September 2009 providing the response from its internal review. It also provided a copy of a further letter sent to the complainant on 14 October, which included a second copy of the internal review letter. The complainant replied on 15 October 2009, acknowledging receipt of the public authority's internal review letter on 15 October 2009.
10. The Commissioner wrote to the public authority and the complainant on 20 October 2009, indicating that the complaint had been accepted for formal consideration under the Act and requesting a copy of the withheld information from the public authority.
11. The public authority responded on 13 November 2009, enclosing copies of the withheld elements of the minutes of the governors' meetings and the withheld information relating to the headmaster's remuneration. It explained that the information corresponding to items 1-3 of the request were withheld under section 40 of the Act, because it was the personal data of the headmaster and related directly to the named individual, not to the post. As personal data, the public authority argued that there was no legitimate interest in disclosure of the information under condition 6

of schedule 2 of the Data Protection Act because there was no public interest case in favour of disclosure of the information. For similar reasons, it also argued that disclosure would not be fair and lawful, as required by the first Data Protection Principle. It suggested that, if the Commissioner found that the salary information should be disclosed, any disclosure should be made only with reference to £5000 salary bands.

12. The public authority confirmed that, for the most part, the minutes of the governors' meetings are open to inspection and had been disclosed. It provided copies of the withheld elements, which had been withheld because they contain what it considered to be confidential information or personal data.
13. On 20 November 2009, following a telephone call with the complainant, the Commissioner wrote to her to request a schedule of those elements of the minutes which she believed had been withheld. The complainant provided a list of minutes provided to her, detailing the missing elements, on 2 December 2009. The complainant indicated that this communication was confidential.
14. On 4 December 2009, having obtained the complainant's permission to forward the list of missing elements contained in her reply, the Commissioner wrote to the public authority with that list, which is provided in an annex to this Decision Notice. He indicated that in his opinion, having viewed the withheld information, certain documents which related to the pay and remuneration of the headmaster and the appointment of a new headmaster, should be disclosed with specified elements redacted.
15. The Commissioner also noted that one element of the withheld information related to a governors' meeting held on Monday 13 October 2008, the main minutes of which were not listed by the complainant, who had been informed that in 2008 only two meetings were held, in March and June. The Commissioner noted this discrepancy and asked the public authority to check whether any other ordinary meetings of the governors were held, other than those held in March and June 2008.
16. Similarly, a withheld document relating to an extraordinary meeting of the governing body dated 12 February 2008 had been provided to the Commissioner, but no reference to the main minutes of that meeting had been made by the complainant. Again, the public authority was asked to check whether any other dates of such meetings would require consideration.
17. The Commissioner also indicated his initial view that he would be likely to order disclosure of the headmaster's salary, expressed with reference

to £5000 bands, and also information about expenses incurred in his role as headmaster, and reimbursed by the public authority. The Commissioner indicated that he was not minded to suggest, at that stage, that the bonus information should be disclosed.

18. The public authority replied on 17 December 2009, enclosing a copy of a letter sent to the complainant on the same date. This disclosed the details of the headmaster's salary, with reference to £5000 bands, and details of expenses reimbursed by the public authority. It confirmed that, during the period specified by the complainant, no bonus payments had been made to the headmaster. The Commissioner notes that he had not indicated that information about bonus payments should be disclosed, but that the public authority explained that the headmaster had consented to the disclosure in any event.
19. The public authority also disclosed to the complainant the redacted documents referenced above. The public authority observed that the request had been for 'minutes' of meetings and that the list of missing elements were reports provided for those meetings, not the minutes themselves. For that reason, the public authority concluded that they were not described by the 25 June request, the meaning of which the public authority considered had been clear. Having now been made aware of the complainant's requirement for that information, the public authority intended to treat that as a fresh request for information and would disclose the information within the statutory timescale.
20. The public authority also commented to the Commissioner that there may have been confusion relating to the provision of the minutes of the October 2008 meeting of the governors. In a subsequent letter to the complainant, dated 5 January 2010, the public authority explained that a misunderstanding had arisen at the school over the description 'the years 2004 to 2008 inclusive' in that this had been assumed to mean 'school years' 2004 to 2008, in other words, September 2004 to July 2008. An objective reading of the request would also require consideration in terms of calendar years.
21. At the same time, the public authority also disclosed the majority of the items which had been listed by the complainant, in response to the fresh request for information it had identified at paragraph 19, above.

Analysis

Substantive Procedural Matters

Section 1

22. The complainant has argued that a request for 'minutes' of meetings should be interpreted to include any appendices or associated reports produced for those meetings.
23. Section 1 of the Act requires a public authority to communicate information to an applicant, where it holds 'information of the description specified in the request'. Therefore, much may rest on the interpretation of the 'description specified in the request'.
24. The matter has previously been considered by the Information Tribunal, for example in the case of *Berend v the ICO & London Borough of Richmond upon Thames* (EA/2006/0049 & 0050)¹.
25. At paragraph 86, the Tribunal makes clear that:

"The Tribunal is satisfied as set out above (paragraph 47 et seq) that:

 - *the request should be read objectively by the public authority,*
 - *there is no requirement to go behind what appears to be a clear request,"*
26. In this case, the description at issue is "minutes of every Governors' meeting held for the years 2004 to 2008 inclusive". It therefore appears to be a clear request for minutes of meetings and, applying the arguments in *Berend*, above, an objective reading of a clear request would oblige a public authority only to provide the minutes themselves.
27. The Commissioner accordingly finds that the public authority provided copies of the minutes of the meetings requested and was not obliged to provide any reports, annexes or appendices to those minutes in response to the request.
28. The public authority, however, misinterpreted that element of the request which related to 'the years 2004 to 2008, inclusive' to mean school years rather than calendar years. A school year commences at the beginning of the Michaelmas term, typically in early September, and

¹ available at the following link:

http://www.informationtribunal.gov.uk/Documents/decisions/aberend_v_InfCommlondofrichmond_12july2007.pdf

ends at the completion of the Summer term, usually in July. As school staff are accustomed to thinking in terms of 'school years' it is an understandable error, but the Commissioner would caution against an automatic interpretation of this nature. If a public authority is unsure which dates to apply, it is open to it to request clarification from the complainant, under section 1(3) of the Act.

29. If the requester intended to obtain information in relation to calendar years, a response which accounted for school years might fail to provide all the information held by the public authority and described in the request. That would be a breach of section 1(1)(b) of the Act. In this case, the public authority provided the information to the complainant once this error came to light during the Commissioner's investigation.
30. The public authority therefore breached section 1(1)(b) in that it failed to provide information it held.

Exemptions

Section 40

31. The public authority initially refused to provide details of the headmaster's remuneration, including salary, expenses and bonus payments but these were subsequently disclosed during the Commissioner's investigation (the salary with reference to £5000 bands, in accordance with the Commissioner's published guidance²) and are therefore not considered further in this notice.
32. The public authority initially withheld copies of the minutes of the pay and conditions committee of the governing body for 11 October 2004 and 21 November 2005 as these provide information on the exact spinal point on the salary scale applicable to the headmaster, and also minutes of an extraordinary meeting of the governing body of the school for 12 February 2008 which dealt with the appointment of his replacement, and the salary point to be paid to her. The Commissioner considered that disclosure of the exact salary paid to the headmaster would be unfair under the first data protection principle, but if these precise salary points were redacted, the remainder of the minutes could be disclosed. This was provided to the complainant on 17 December 2009.
33. The public authority also withheld a confidential appendix to the minutes of the ordinary meeting of the governors of the school. This appendix nevertheless constitutes a minute as it describes the proceedings for one

² Available online at http://www.ico.gov.uk/upload/documents/library/freedom_of_information/practical_applications/salary_disclosure.pdf

agenda item in the minutes, but is provided as a confidential appendix which, the public authority explained, relates to one of the complainant's children. This was withheld under section 40 of the Act as it is the personal data of the child. While acknowledging that the applicant in this case is the data subject's mother, the public authority is aware that disclosure under the Act is considered to be disclosure to the wider world, not merely to the applicant, and therefore the information should not be disclosed.

34. The Commissioner has seen the information and agrees that it contains personal data, including some sensitive personal data, of the individuals it refers to and should not be disclosed because the processing of the data would be unfair, and there are no conditions applicable under schedule 3 of the Data Protection Act which would permit the processing of the sensitive personal data. The Commissioner is aware that this information was subsequently disclosed to the complainant by the public authority, prior to the serving of this Decision Notice, as a response to a subject access request submitted under the Data Protection Act.
35. The public authority also withheld a set of 8 minutes, titled 'Minutes of the pupil discipline committee' which dealt with decisions to exclude pupils from the school. The Commissioner has established that this committee is part of the governing body of the school and therefore these minutes were eligible for consideration under the description in the request.
36. These minutes were also withheld under the exemption provided by section 40 of the Act, because they contain personal data about individuals. The Commissioner has examined these minutes to ascertain whether any elements of the minutes should be disclosed, with suitable redactions, or whether the entire document should be withheld. Aside from the naming of the pupils, and other members of their families, it is clear that the entire purpose of the meeting in each case was the consideration of the headmaster's decision to exclude the pupil, and consequently the entire document constitutes the personal data of the pupil and will, in addition, contain personal data of the other individuals involved in the proceedings. The relevant individuals could be identified even if the names were redacted. To the extent that the proceedings were concerned with the possible commission of offences by the pupil, the information would also be the sensitive personal data of the pupil.
37. The Commissioner notes that the information in this case falls under section 2(g) of the Data Protection Act 1998 insofar as it relates to the data subject's alleged commission of an offence. As such, by its very nature, this has been deemed to be information that individuals regard as the most private information about themselves. Further, as

disclosure of this type of information is likely to have a detrimental or distressing effect on the data subject, the Commissioner considers that it would be unfair to disclose the requested information.

38. Where the decision to exclude a pupil from the school is not on the basis of the commission, or alleged commission, of an offence, the information may not be sensitive personal data but nevertheless remains the personal data of the data subject. It also remains the case that the disclosure of information relating to the decision to exclude an individual from school would be likely to have a detrimental or distressing effect on the data subject.
39. There is also a general expectation that hearings and considerations relating to disciplinary matters will be conducted in private. The Commissioner therefore considers that pupils thus excluded would have a reasonable expectation that the processes of deciding their exclusion would remain essentially private and would not be disclosed to the wider world.
40. While a public authority may, in general, be expected to accept a degree of public scrutiny of its activities, there is no compelling public interest in the disclosure of the school's deliberations on what are essentially private and confidential matters that are likely to remain of some concern to the data subjects. The Commissioner therefore finds that disclosure of the withheld minutes of the pupil discipline committee would be unfair and these minutes should not be disclosed.
41. The Commissioner notes that the public authority issued its refusal notice stating only that information was refused under 'section 40' of the Act. The correct manner for the refusal in the circumstances would be to refuse on the basis of section 40(2) of the Act and the condition at section 40(3) of the Act.

Section 41

42. The public authority also refused the material described above on the grounds that it was 'confidential'. This argument was also advanced by the public authority in its submissions to the Commissioner.
43. In this case, the information refused as 'confidential' is the same information referred to in the analysis of Section 40, above. As the information should not be disclosed, the Commissioner has not gone on to consider the application of section 41 any further.

Procedural Matters

Section 10

44. Some of the information identified during the course of the Commissioner's investigation was disclosed to the complainant at that time. By failing to disclose information held within 20 working days of receiving the request, the public authority breached section 10(1) of the Act.

Section 17

45. Section 17(1) of the Act requires that if information is to be refused on the basis of an exemption in Part II of the Act, any refusal notice must state the exemption in question. Where an exemption contains several sections, it is necessary, in order to comply with section 17(1), to identify the relevant sub-section of any exemption which is considered to apply. In this case, information was refused on the basis of 'section 40' without indicating which sub-section of section 40 was considered to apply. Information was also refused on the basis that it was 'confidential' without explaining that this is covered by the exemption at section 41(1) of the Act.

The Decision

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

- The public authority correctly determined that the reports, annexes and appendices to the minutes were not caught by the description of 'minutes' in the request and disclosure was not required under section 1(1)(b) of the Act.
- The public authority correctly withheld the minutes of the pupil discipline committee under the exemption provided at section 40(2) of the Act.

47. 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 failed to identify information described in the request relating to the period in early 2004 prior to the commencement of the school year, and in late 2008, subsequent to the end of the school year. The public authority also failed to

disclose salary information, in accordance with the Commissioner's guidance, and expenses information which should have been disclosed. In failing to identify and disclose this information within 20 working days, the public authority breached section 1(1)(b) and section 10(1) of the Act.

- By its failure, in its refusal notice, to cite the full exemption details including the relevant subsections as applicable, the public authority breached section 17(1)(b) of the Act.

Steps Required

48. The Commissioner requires no steps to be taken.

Other matters

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

Time for compliance

49. One element of the original complaint relates to the apparent failure of the public authority to conduct an internal review and communicate its outcome to the complainant. The complainant requested an internal review of the school's response on 9 July 2009. On 27 August 2009, having not received any internal review response, the complainant submitted a complaint to the Commissioner.
50. The public authority provided a response on 2 September 2009 (albeit the complainant states that she did not receive a copy of this letter until 15 October 2009). The period from 9 July to 2 September would normally be considered to be 38 working days. While there is no statutory timescale for the completion of an internal review, the Commissioner's guidance³ suggests that this should take no longer than 20 working days or, in unusual circumstances 40 working days.
51. However, The Freedom of Information (Time for Compliance with Request) Regulations 2004 (the Regulations) provide that, in the case of a school, 'working days' are only considered to be those days when the

³ Available online at

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/time_limits_internal_reviews.pdf

school is in session. The relevant section of the Regulations is provided in the legal annex to this Decision Notice.

52. If the period from late July to the beginning of September is disregarded, therefore, the school provided its response within the 20 working day timescale. The Commissioner notes, however, that the internal review letter is perfunctory and provides no evidence that the matters have been fully reconsidered by someone who was not involved with the initial response. The public authority therefore missed an opportunity to rectify the breach of section 1(1)(b) prior to the involvement of the Commissioner.

Right of Appeal

53. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

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

Dated the 15th day of July 2010

Signed

**David Smith
Deputy Commissioner**

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

Legal Annex

S.1 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'.'

S.10 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.'

The Freedom of Information (Time for Compliance with Request) Regulations 2004

Governing body of a maintained school or maintained nursery school and schools maintained by the Secretary of State for Defence

3. - (1) This regulation applies-

(a) to a request for information that is received by the governing body of a maintained school or a maintained nursery school^[3]; and

(b) to a request for information which is held by the public authority only by virtue of the information being situated in a school which is maintained by

the Secretary of State for Defence and which provides primary or secondary education, (or both primary and secondary education).

(2) Where this regulation applies, subsections (1) and (2) of section 10 of the Act have effect as if any reference to the twentieth working day following the date of receipt were a reference to either-

(a) the twentieth working day following the date of receipt, disregarding any working day which, in relation to the school referred to in paragraph (1), is not a school day, or

(b) the sixtieth working day following the date of receipt,

whichever occurs first.

(3) "School day", for the purposes of this regulation, means any day on which, at the school referred to in paragraph (1) above, there is a session.

S.17 Refusal of Request

Section 17(1) provides that -

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

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies.'

Section 17(2) states –

'Where–

(a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-

(i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or

- (ii) *that the information is exempt information only by virtue of a provision not specified in section 2(3), and*
- (b) *at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,*

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.'

Section 17(3) provides that -

'A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

- (a) *that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or*
- (b) *that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.'*

Section 17(4) provides that -

'A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.'

Section 17(5) provides that –

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

Section 17(6) provides that –

'Subsection (5) does not apply where—

- (a) the public authority is relying on a claim that section 14 applies,*
- (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and*
- (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.'*

Section 17(7) provides that –

'A notice under subsection (1), (3) or (5) must—

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and*
- (b) contain particulars of the right conferred by section 50.'*

S.40 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.'

S.41 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.'

Annex 2 – Schedule of missing elements provided by the complainant

The complainant received information for the Ordinary meetings of the governing body of Seven Kings High School which took place on the dates listed below, but the bulleted items make reference to annexes, reports or other supplementary elements of the minutes, which were not provided:

Monday 11th October, 2004

- Page 2 at item "10" - Headteacher's Report not provided
- Page 3 at item "15" - Salary Review - Pay Levels for Heads & Deputies - not provided.

Monday 17th October, 2005

- Page 1 at item "9" - Headteacher's Report not provided
- Page 2 at item "13" - Pupil's Term and Holiday dates 2006/2007
- Page 3 at item "14" - Pay Levels for Head & Deputies - not provided
- Page 3 at item "15" - Teacher's Pay Report
- Page 3 at item "16" - Ilford Ursuline High School - not provided
- Page 3 at item "17" Chairman's Action - The chair signed the Specialist School proposal - not provided

Monday 13th June 2005

- Page 1 at item "5" - Headteacher's Report - not provided
- Page 2 at item "7" - Appendix to School's Child Protection Policy - not provided

Monday 21st February 2005

- Page 1 at item "3" Minutes of meeting held on 11/10/04 - not provided
- Page 2 at item "5" Headteacher's Report - not provided

Monday 20th February 2006

- Page 1 at item "6" - Headteacher's report - not provided
- Page 1 at item "6.3" - "Independent report" - not provided
- Page 2 at item "6.6" - Performance League Tables - not provided
- Page 2 at item "7" - Health and Safety Policy - not provided

Monday 5th June 2006

- Page 1 at item "5" - Headteacher's Report - not provided
- Page 2 at item "6" - School Term and Holiday Dates 2007-2008 - not provided

Monday 16th October 2006

- Page 1 at item "10" - Headteacher's report - not provided
- Page 2 at item "12" - School finance and Charging Policies - not provided
- Page 3 at item "15" - School profile - not provided

Monday 15th October 2007

- Page 1 at item "6" - Headteacher's report - not provided
- Page 2 at item "7" - Accident Report - not provided
- Page 2 at item "13" - Pay Levels for Heads & Deputies - not provided
- Page 3 at item "16" - Any Other Business - Minutes for the Extraordinary Meeting held on 11/9/07 - not provided

Monday 11th June 2007

- Page 1 at item "6" - Headteacher's Report - not provided
- Page 2 at item "8" - Disability & Access Equality policy - not provided
- Page 2 at item "9" - Racial Equality Policy - not provided
- Page 2 at item "10" - Model Complaints Procedure for Schools - not provided

Monday 19th February 2007

- Page 1 at item "3" - Minutes of meeting held on 16/10/06 - not provided
- Page 2 at item "5" - Headteacher's report - not provided

Monday 10th March 2008

- Page 1 at item "6" - Headmaster's report - not provided
- Page 3 at item "10" - Minutes of Extraordinary meeting on 28/3/08 - not provided
- Page 3 at item "11" - Extraordinary meeting held on 10/1/08 and amendment to the Extraordinary Meeting held on 12/2/08 - not provided

Monday 9th June 2008

- Page 1 at item "6" - Headmaster's report - not provided
- Page 3 at item "8" - Appendix C - not provided
- Page 3 at item "8" - Appendix D - not provided

The complainant received information for the Finance meetings of the governing body of Seven Kings High School which took place on the dates listed below, but the bulleted items make reference to annexes, reports or other supplementary elements of the minutes, which have not been provided:

Monday 15th November 2004

- Page 1 at item "5" - Termly Financial Statement - not provided
- Page 1 at item "6" - Audit Report 2003/4 - not provided
- Page 2 at item "8" - Target set for 2006 - not provided

Monday 21st November 2005

- Page 1 at item "5" - Termly Financial Statement - not provided

- Page 2 at item "6" - Audit Report 2004/2005 - not provided
- Page 2 at item "8" - Attendance Targets 2006/2007 - not provided
- Page 2 at item "10" - School Pay policy - not provided
- Page 2 at item "11" health and Safety policy - not provided

Wednesday 20th July 2005

- Page 1 at item "5" - Budget 2004/2005 - not provided
- Page 2 at item "6" - Chair's Action - letter not provided
- also, letters of thanks - not provided

Monday 25th April 2005

- Page 1 at item "5" - Termly Financial Statement - not provided
- Page 1 at item "6" - Budget 2005/2006 - not provided
- Page 1 at item "7" - School Improvement Plan - not provided

Tuesday 4th July 2006

- Page 1 at item "5" - Budget 2005/2006 - not provided
- Page 2 at item "5" - Financial Statement for 2005/2006 - not provided
- Page 2 at item "9" - School Self Evaluation Form and profile - not provided

Monday 20th November 2006

- Page 1 at item "5" - Termly Financial Report - not provided
- Page 2 at item "9" - Controls Assessment Assurance - not provided

Monday 19th November 2007

- Page 1 at item "5" - Termly Financial Report: Appendix B - not provided (Termly Financial Report for April - October 2007 - not provided)
- Page 1 at item "6" - Target Setting Appendix C - not provided
- Page 2 at item "10" - Free School Meals Appendix D - not provided
- Page 2 at item "11" - Any other business - letter from OFSTED - not provided

Monday 23rd April 2007

- Page 1 at item "5" Termly Financial Statement April - December 2006 - not provided
- Page 2 at item "6" Budget 2007/2008 - not provided

Monday 2nd July 2007

- Page 1 at item "5" - Budget April 2006 - March 2007 Appendix B - not provided
- Page 1 at item "6" - School Fund Statement Appendix C - not provided
- Page 2 at item "8" - School Performance Management Policy - Appendix D - not provided

- Page 2 at item "9" - Extraordinary Meeting 11th September 2007 - Minutes - not provided

Monday 28th April 2008

- Page 1 at item "5" - Financial Report April - December 2007 Appendix B - not provided
- (Termly Financial Report for April - December 2007 - not provided)
- Page 1 at item "6" - Budget 2008/2009 Appendix C - not provided

Monday 7th July 2008

- Page 1 at item "4" - letter from Council re planning permission - not provided
- Page 1 at item "5" - Financial Report April 2007 - March 2008 Appendix B - not provided