

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 15 June 2011

Public Authority: East Riding of Yorkshire Council
Address: County Hall
Beverley
East Riding of Yorkshire
HU17 9BA

Summary

The complainant asked East Riding of Yorkshire Council (the “public authority”) to provide information relating to a council officer’s remuneration package on his early retirement. The Council advised the complainant that some information was already available and that it was therefore exempt by virtue of section 21. It withheld further information using the exemption under section 40(2) of the Freedom of Information Act 2000 (the “Act”).

The Commissioner investigated and decided that section 21 did not apply as the information was not available as indicated. However, he also found that 40(2) had been correctly applied in relation to some – but not all - of the information, and that disclosure of this information would breach the Data Protection Act 1998 (the “DPA”). The complaint is partially upheld.

The public authority’s handling of the request also resulted in breaches of certain procedural requirements of the Act as identified in this Notice.

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.

Background

2. Employees of the public authority may be members of the Local Government Pension Scheme. Each person's pension benefits will be unique to them depending on the contributions made over a period of time. In April 2005, Regulations allowed an employer to use their discretion to allow employees who retired between the ages of 55 and 59 to access their pension and for the employer to augment a member's pension by a specified number of years. If a member retired early, there would be an additional "strain" on the pension fund. The "strain" costs are the "strain" on the pension fund as a whole of allowing an employee to retire earlier than expected and be granted augmented service. To counter this, when an early retirement is proposed, an actuarial evaluation would take place to ascertain what contribution would be required by the employer in order to offset this additional strain on the fund.
3. Although completed after the date of this request, the public authority has published a report about its "Early Retirement Scheme" which was written by a Review Panel. This provides useful background information which relates to the circumstances covering the retirement which is the crux of this request. It can be found on the public authority's website¹.
4. Mr Darryl Stephenson was the public authority's Chief Executive Officer ("CEO") and he applied for early retirement. Applications for early retirement at Head of Service level and above are considered by the Cabinet of the Council. In this case, a report was prepared for a Cabinet meeting on 12 April 2005 suggesting the formation of a Council Cabinet to consider allowing early retirement of the CEO. The Council Cabinet subsequently approved the application. The following information is from that Cabinet meeting:

"The Director of Corporate Resources submitted a report concerning the possible early retirement of the Chief Executive under the 85 year rule.

Resolved – (a) That the retirement of the Chief Executive under the provisions of the 85 year rule be approved in principle, and the requirement for applications to be made within three months of the employee's 55th birthday be waived in order

¹ <http://www.eastriding.gov.uk/cr/legal-and-democratic-services/democratic-services/overview-and-scrutiny/review-panels/>

- to allow the recruitment process to commence at the earliest opportunity;*
- (b) *that a Cabinet Committee be established to oversee the process of recruiting a replacement and to resolve any other matters arising from (a) above, and*
- (c) *that the Committee referred to in (b) above comprise 4 Members at a ratio of 2 Conservatives, 1 Liberal Democrat and 1 Labour and its Terms of Reference be as follows: -*
- To determine all matters relating to the retirement of the Chief Executive.*
 - To advise the Council, with the exception of the terms and conditions issues, on the appointment of his successor".*
5. Applications for early retirement at Head of Service level and above are considered by the Cabinet of the Council. In this case, a report was prepared for a Cabinet meeting on 12 April 2005 suggesting the formation of a Council Cabinet to consider allowing early retirement of the CEO. The Council Cabinet subsequently approved the application.

The request

6. On 14 May 2010 the complainant made the following information request:

"My request for Information concerns the remuneration packages which the East Riding of Yorkshire Council (ERYC) have paid to Mr Darryl Stephenson former CEO of the Council on his early retirement in the Autumn of 2005.

- 1. I wish to be supplied in hard paper copy form, all recorded information, emails, Council meeting minutes, research and reports held by you in whatsoever files concerning the granting of this Council Officer's retirement package.*
- 2. This should also include financial details concerning the bill for a black-tie bash at Beverley's Guildhall, allegedly financed by the public purse.*

- 3. I also wish to be provided with details of the Officer's gross remuneration package paid to the Officer in the two years preceding retirement which should include salary, car allowances and the like.*
- 4. Finally I wish to be provided with details of any paid work carried out post retirement by Mr Stephenson on behalf of the ERYC".*
7. The public authority acknowledged receipt of the request on 17 May 2010.
8. On 7 June 2010 the public authority sent out its response. It disclosed information in respect of parts 2, 3 and 4 of the request but withheld information in respect of part 1. It advised that this was exempt by virtue of section 40 and that disclosure would breach the sixth principle of the Data Protection Act (the "DPA").
9. On 10 June 2010 the complainant sought an internal review. This was acknowledged on 16 June 2010 and the complainant was advised to expect a response by 5 July 2010.
10. On 18 November 2010 the public authority sent out its internal review. It maintained its original position.

The investigation

Scope of the case

11. On 24 October 2010, having not received an internal review, the complainant first contacted the Commissioner to complain about the way his request for information had been handled. This was acknowledged on 28 October 2010.
12. On 3 November 2010 the Commissioner wrote to the public authority about its lack of internal review. On 18 November 2010 the public authority sent out its internal review.
13. On 22 November 2010 the complainant again wrote to the Commissioner. This was acknowledged on 25 November 2010.
14. On 9 February 2011 the Commissioner wrote to the complainant to advise that he was starting his investigation. He advised the complainant that he would consider the withholding of information in

respect of the first part of his request and also the length of time to provide an internal review.

15. The complainant acknowledged this on 18 February 2011.

Chronology

16. On 9 February 2011 the Commissioner commenced his investigation.

17. Following correspondence with the complainant, on 23 February 2011 the Commissioner raised some queries with the public authority.

18. On 1 April 2011 he received its response.

Analysis

Substantive Procedural Matters

Section 11 – means by which communication to be made

19. Section 11(1) provides that –

“(1) Where, on making his request for information, the applicant expresses a preference for communication by one or more of the following means, namely –

(a) the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,

(b) the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and

(c) the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant,

the public authority shall so far as is reasonably practicable give effect to that preference”.

(2) In determining for the purposes of this section whether it is reasonably practicable to communicate information by a particular means, the public authority may have regard to all the circumstances, including the cost of doing so.

(3) Where a public authority determines that it is not reasonably practicable to comply with any preference expressed by the applicant in making his request, the authority shall notify the applicant of the reasons for its determination.

(4) Subject to subsection (1), a public authority may comply with a request by communicating information by any means which are reasonable in the circumstances."

20. The Commissioner notes that the complainant sought a 'hard copy' of the information. Section 11(1) of the Act permits a requester to express a preference for the way in which information is to be communicated. The Commissioner considers that a public authority shall, so far as reasonably practicable, give effect to that preference.
21. The public authority has not provided any reasons for denying a hard copy of the information in this case. The Commissioner notes that there is only a fairly small amount of information to which section 21 was applied and that this was readily provided to the Commissioner in hard copy to allow him to undertake his own investigation. The Commissioner therefore considers that provision of a hard copy of the requested information in this case would be reasonable and that the information should therefore be provided in this format.

Exemptions

Section 21 – information accessible to applicant by other means

22. Section 21 of the Act states that information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information. It is an absolute exemption, therefore no public interest test is required.
23. It is the Commissioner's view that the relevant consideration in relation to section 21 is whether the requested information is reasonably accessible to the complainant. For the exemption to be engaged the Commissioner must be satisfied that:
- the complainant has already found the information; or
 - the public authority is able to direct the complainant precisely to the requested information, i.e. it must be reasonably specific about where the information is held so that the complainant can find it without difficulty.

24. The public authority advised the complainant that the 'open' parts of the Cabinet minutes could be accessed directly from its website, and it provided a link. However, when he looked on the website the oldest minutes that the Commissioner could find were from October 2007, more than 2 years later than those requested. The minutes were therefore clearly not available and the complainant could not readily access them.
25. Therefore, the Commissioner finds that section 21 is not engaged in relation to this information, and the public authority should disclose it to the complainant.

Section 40 – personal information

26. 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”.*

27. The exemption provided by section 40(2) is an absolute exemption in combination with section 40(3)(a)(i) or 40(3)(b). This is where disclosure of information which falls under the definition of personal data contained in section 1(1) of the Data Protection Act 1998 (DPA) would breach any of the data protection principles.
28. In order to decide whether or not this exemption is engaged, the Commissioner shall consider whether the requested information is the personal data of one or more third parties and whether the release of this information would be fair and lawful.

Is the information personal data?

29. Section 1(1) of the Data Protection Act 1998 (the DPA) provides the following definition of personal data:

“‘personal data’ means data which relate to a living individual who can be identified-

- (a) from those data, or*
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller.”*

30. This provides two criteria that must be fulfilled for information to constitute personal data; the information must relate to an individual, and that individual must be identifiable either from that information directly, or from that information combined with other information available to the holder of that information.
31. Having viewed the withheld information, the Commissioner considers it clear that the information requested relates to a specified individual in that it all concerns his own remuneration package. The Commissioner has therefore concluded that because the information in question relates to the specified individual, and that he would be directly identifiable from this information, this is therefore his 'personal data' according to the definition given in section 1(1) of the DPA. The Commissioner has further determined that details of the retirement package would not constitute 'sensitive' personal data for the purposes of the DPA.
32. The public authority originally claimed that disclosure of the requested information would breach the sixth data protection principle. This provides that:

"Personal data shall be processed in accordance with the rights of data subjects under [the DPA]".

33. This principle relates to the rights of the individual, i.e. in this case the CEO himself. The Commissioner does not consider this to be the appropriate principle for the public authority to rely on so he advised the public authority accordingly. In its response the public authority clarified that it considered the first data protection principle to be the appropriate one.
34. In its internal review the public authority found:

"In order for ... personal data to be released it is necessary for one of the conditions in Schedule 2 of the Data Protection Act to be met. Guidance from the ICO indicates that the relevant conditions are consent and legitimate interests. With regard to consent we do not have the consent of the data subject to release the information. With regard to legitimate interest we do not believe that there is a legitimate interest in the release of this information. Whilst there may be a legitimate interest in knowing how much a Council has spent in total costs of early

retirement there is no such legitimate interest in knowing the details of an individual officer's pension details".

35. In subsequent correspondence with the Commissioner it added:

"There is the Council submit no public interest in details of [the CEO]'s age at retirement, his length of public authority service or his date of birth."

"With regards to the public interest in 'strain costs' this can only be interest in knowing how a public authority spends public funds. The interest has to be limited as this does not related [sic] to a recent spending decision. The decision in this case took place nearly six years ago. The accounts for this particular period will have been closed. There is therefore only a limited public interest in knowing which spending decisions an authority made six years ago as opposed to a decision made within the current tor [sic] last financial year."

"... [D]isclosure is not necessary to meet the public interest. The Council on a regular basis takes a report to its Cabinet setting out details of the amount spent on funding early retirements within a specific period. This report meets the public interest in the public knowing how much public money is being used to fund early retirements. There is no need for the amount used to fund an individual early retirement to be disclosed in order for this public interest to be satisfied."

"... [I]t is considered that the disclosure would cause unwarranted harm to the interest of the individual."

"The individual would also have had a legitimate expectation that details of the retirement package would not be disclosed. Reports to the Councils [sic] Cabinet that deal with application for early retirement are taken as 'exempt reports' i.e. they are not disclosed to the public, they do not appear on the agenda place on deposit for public inspection and press and public can be excluded from meetings at which such items are discussed. The officer concerned would not expect that the reports in relation to his early retirement would be dealt with in any way other than other request [sic] of the same nature i.e. that the report would have remained exempt and confidential."

Although the reports do not reveal full details of the person's retirement package they reveal sufficient information to enable a third party to estimate an individual's retirement package ... The

salary rewarded to the Chief Executive has been the subjects [sic] of reports in the local press in the past so this would be know [sic].

In this particular case the rules that set out the benefits would have been calculated by reference to the Local Government Pension Scheme Regulations 1997. With the rules the information applied in the reports and knowledge of the individual salary an individual could calculate the amount of pension that a particular individual would be entitled to upon retirement. This would exclude any element that relates to any additional voluntary contributions made but a reasonable calculation could be made."

"In all the circumstances therefore the Council considers that disclosure of the report had breach [sic] the First Data Protection principal [sic] and the information therefore should not be disclosed".

Would disclosure contravene the first data protection principle?

36. The first data protection principle has two main components. They are as follows:
- the requirement to process all personal data fairly and lawfully; and,
 - the requirement to satisfy at least one DPA Schedule 2 condition for processing of all personal data.
37. Both requirements must be satisfied to ensure compliance with the first data protection principle. If even one requirement cannot be satisfied, processing will not be in accordance with the first data protection principle.
38. It is important to note that any disclosure under this Act is disclosure to the public at large and not just to the complainant. If the public authority is prepared to disclose the requested information to the complainant under the Act it should be prepared to disclose the same information to any other person who asks for it.
39. The Tribunal in the case of *Guardian & Brooke v The Information Commissioner & the BBC* [EA/2006/0011 and EA/2006/0013] (following *Hogan and Oxford City Council v The Information Commissioner* [EA/2005/0026 and EA/2005/0030]) confirmed that:

“Disclosure under FOIA is effectively an unlimited disclosure to the public as a whole, without conditions” (paragraph 52)².

Would disclosure be fair?

40. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual and the potential consequences of the disclosure, against the legitimate public interest in disclosing the information.

Reasonable expectations

41. The Commissioner accepts that as a matter of general principle information relating to pensions and retirements will often carry a strong expectation of confidentiality. However, in making his decision about whether disclosure would have been within the reasonable expectations of the former CEO, the Commissioner will have regard to the actual information in question as opposed to focusing purely on what type of information it is.
42. In this case, the public authority has advanced the arguments provided above. It therefore follows that the public authority recognises that in the case of senior public servants, their legitimate expectations of privacy may sometimes be qualified or carry less weight. The Commissioner understands that the rationale behind this is that the more senior a member of staff is, the more likely it is that information about them will be placed into the public domain. However, it is further understood that some of the information requested does include detailed breakdowns and calculations of the CEO's salary and pension and that information of this nature is generally considered to be a private and confidential matter, even amongst senior people.
43. There are a few points that the Commissioner would like to make regarding the above arguments. Although a lack of consent is indicative of what the expectations of an individual were, the Commissioner will consider on a case-by-case basis whether it was *objectively reasonable* to expect that the information would not be disclosed to the public. A lack of consent in itself does not prevent the disclosure of personal data under section 40(2) of the Act.
44. The seniority of the individual concerned will be relevant as senior individuals generally expect greater levels of transparency. The former

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

CEO's decision to request early retirement resulted in a decision by the public authority which involved public money. In the Commissioner's view, senior individuals should be more accountable for the decisions they make which have an impact on public funds which is not part of the normal course of business. The Commissioner therefore considers that it is appropriate to have regard to the seniority of the former CEO when considering whether disclosure of the information would have been within his reasonable expectations.

45. The Commissioner has carefully considered the nature of the withheld information and believes it can be categorised as follows:

- 3 reports appended to minutes;
- a Decision Record relating to the approval of the retirement;
- internal emails concerning the calculation of the pension;
- pension fund and monthly salary breakdowns.

46. Based on the nature of the information contained within the documents he finds that the first two bullet points relate to information of a similar nature, namely 'formal records' of events; and the latter two are likewise similar, namely 'detailed accounts' appertaining to the CEO's actual salary and pension calculations. The Commissioner will therefore consider the two types of information separately.

Formal records

47. The Commissioner notes that the 'open' minutes of the meetings were supposedly made available to the complainant, although in practice he found that this was not the case (see above). However, two appended reports for the meeting dated 12 April 2005 and one further report for the meeting dated 24 June 2005 have all been withheld in full. The three reports specifically relate to the application for early retirement. There is also a Decision Record which is a formal record of the approval of the early retirement.

48. The information within the two reports from the earlier meeting is largely procedural, detailing proposals about the early retirement. However, the CEO's date of birth is also included in both reports at paragraph 1.1. The Commissioner is prepared to accept that the former CEO could reasonably expect that his date of birth would not be disclosed to the public. The Commissioner considers that, although it ought to be within the reasonable expectations of the former CEO that the public authority would confirm he met the qualifying criteria, it would not be within his reasonable expectations for this very precise pension-related information to be disclosed and such details attract a legitimate expectation of confidentiality.

49. The Commissioner also notes the public authority's reference to the former CEO's age and length of service. However, his age has already been released within the discloseable minutes and his actual length of service is not contained in these records. Furthermore, the parameters which the retiring person must fall into are already defined by the year 85 Rule so his minimal age and length of service would be known.
50. The report appended to the latter minutes contains more detail in that it includes the strain cost figures. Again it contains procedural information, which is mostly repeated from the earlier reports, but it does also include the overall costs if the retirement is to be approved. The public authority has argued that it would not be fair to release this information as it would be possible to estimate the retirement package. However, it does itself state that this would only be an 'estimate' based on the level of information within the reports. The Commissioner notes that the public authority has already released details of the CEO's remuneration package as part of its original response in this case. The Commissioner therefore concludes that by knowing his age and by estimating his length of service based on the minimal requirements, it would already be possible to estimate his retirement package to some degree.
51. Other than the CEO's date of birth, the Commissioner does not consider that disclosure of the information within the first two reports is outside the reasonable expectations of the former CEO. The majority of the information is quite general in nature and the Commissioner does not consider that disclosure of information of this type should have been beyond the CEO's reasonable expectations in view of his senior position and the fact that the decision to allow his early retirement involves public money.
52. However, the more detailed information covers the total augmented costs / strain on the Pension Fund. Whilst these figures are not broken down and precise calculations do not form part of these 'formal records' they do nevertheless reveal information which the Commissioner considers any individual would not reasonably expect to be made public. He also draws attention to an earlier decision he has made on a similar matter, FS50286813³, which also related to an early retirement package, as he believes the same considerations apply to this case as did in that one. Accordingly, he considers that the CEO

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http://www.ico.gov.uk/~media/documents/decisionnotices/2010/FS_50286813.ashx

would not reasonably expect the contents of the first two sentences in paragraph 2.2 of the letter report to be disclosed.

53. The Decision Record is a single document which formally records the decision to allow the CEO's early retirement. As this was obviously ratified by the Cabinet the Commissioner concludes that disclosure would be in the reasonable expectations of the former CEO.
54. In reaching the conclusion that the disclosure of the majority of the information should have been within the reasonable expectations of the former CEO, the Commissioner has attached significant weight to his seniority and the amount of public money concerned. He has also had regard to the current economic climate and the increased pressure on public authorities to make the best use of their resources. Against this background, the Commissioner considered that the former CEO ought to have expected that it was likely that the Cabinet would be called upon to be as transparent as possible about the information it took into account when making the decision to allow his early retirement.

Detailed accounts

55. The Commissioner has carefully considered the nature of this information and formed the view that the former CEO would not reasonably have expected this information to be disclosed - this reasoning again falls in line with the earlier decision which the Commissioner has referred to in paragraph 52 above. The information is largely of a 'personnel' nature relating to the Council processing the request for early retirement and it includes information that is of a very personal and private nature, such as a pension estimate and the former CEO's salary details.
56. Although the former CEO was obviously in a senior role and the decision to take early retirement involved public money, the Commissioner's view is that, while he considers that there should have been a reasonable expectation of disclosure in respect of the majority of information in official reports that form part of the decision-making process, he considers that the former CEO's reasonable expectations would have been very different in respect of this information which is largely of an administrative nature and includes details of his individual pension and retirement. The Commissioner considers that no public sector employee would have the reasonable expectation that information of this nature and containing this level of detail would be disclosed to the public.

Consequences of disclosure

57. The Council has argued that the disclosure would be distressing to the CEO because it would cause him unwarranted harm. It also drew the Commissioner's attention to one of his other cases concerning another of its officers - the other case also relates to the early retirement of a senior member of its staff which met with unfavourable press reports at the time. It believed that releasing the strain costs in this instance would be likely to also result in unfavourable press and would therefore cause the former CEO unwarranted harm.
58. However, the Commissioner has already set out above why he does not consider that disclosure of the vast majority of the information in the 'formal reports' would have been outside of the reasonable expectations of the former CEO. However, he can also appreciate that disclosure of a small amount of this information, as identified above, may prompt further criticism which may be directed at the former CEO.
59. In relation to the remaining 'detailed accounts', the Commissioner considers that disclosure would not have been within the reasonable expectations of the former CEO. He also considers that the disclosure would be distressing because it would represent an unwarranted invasion of his privacy.

Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure

60. The Commissioner has considered below the legitimate public interest in the disclosure and he has balanced this against the reasonable expectations of the former CEO and the consequences of disclosure.
61. The Commissioner's view is that there is a legitimate public interest and value in allowing the public to see the 'formal records' (with the limited redactions mentioned above) in order to be transparent about the information which was presented to the decision-makers at each stage of the process. This is particularly in regard to the former CEO's seniority, the fact that the decision involved public money, and the Commissioner's finding that disclosure should not have been outside his reasonable expectations. The Commissioner has also carefully considered the potential that disclosing further information about this particular issue may prompt some personal criticism of the former CEO. However, the Commissioner has regard to the nature of the information, and the passage of time, and he does not consider that this would be likely to inflame the situation significantly.
62. With regard to the 'detailed accounts', as already described above, the Commissioner's view is that the disclosure of this information would not have been within the reasonable expectations of the former CEO

and as such it would be distressing to him. It is in the public interest for public authorities to be transparent and accountable and there is therefore always some public interest in the disclosure of information held by a public authority. However, the Commissioner considers that, when taken together, the lack of a reasonable expectation of disclosure and the distressing effects of that disclosure outweigh the legitimate public interest in disclosure. In the Commissioner's view, while there is a significant legitimate public interest in disclosure of the information relating to the decision-making process, the legitimate interest in disclosure of this aspect of the information is not particularly strong.

Would the disclosure be necessary?

63. For clarity, when a disclosure would be fair, the Commissioner must consider whether it would be necessary in accordance with Condition 6 in Schedule 2 of the DPA. The full wording of Condition 6 is as follows:

"The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject".

64. The Council has explained this it does not think there is any legitimate interest in the release of this information because, although there may be interest in knowing how much money it has spent, there is no such interest in knowing how much it has spent on a named individual. The Commissioner does not agree with this. The seniority of the member of staff concerned means that disclosure will be of public interest.
65. It has further advised the Commissioner that the public interest is limited because of the age of the decision in this case, as opposed to more recent financial decisions. It went on to comment that in light of their age the related accounts for this period would be 'closed'. The Commissioner again disagrees. Although the decision was made some time ago no further detail has been released into the public domain.
66. The public authority also commented that it reports to its Cabinet on early retirement matters and it believes that by doing so it meets any public interest regarding how public funds are being spent. However, the public is unlikely to be present at such meetings so, although the process may be fair, the public is not fully informed on such matters.
67. The Commissioner is of the view that there is a strong legitimate public interest in the disclosure of the reports which formed the decision-

making process, to allow the public to understand more about how this particular decision was made. Furthermore, he considers that releasing the Decision Record also shows that the retirement was formally approved.

Was the exemption under section 40(2) engaged?

68. For the reasons provided above, the Commissioner considered that section 40(2) had been correctly applied to the information in the 'detailed accounts'. However, the Commissioner considered that section 40(2) had not been correctly applied to the majority of the information in the 'formal records', with the exception of the following:
- the CEO's date of birth in paragraphs 1.1 of both Reports dated 12 April 2005;
 - the first two sentences of paragraph 2.2 in the Report dated 24 June 2005.

Procedural Requirements

69. As the minutes which the public authority claimed to be available by other means were not actually available, the Commissioner finds that the public authority is in breach of sections 1(1)(b) and 10(1) of the Act for its failure to provide the information within 20 working days of the request or by the date of its internal review.
70. Furthermore, as he finds that the public authority incorrectly applied the exemption in section 40(2) to withhold the majority of the information described in the 'formal records', he finds further breaches of these sections.

The Decision

71. 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:
- it correctly withheld the 'detailed accounts' under section 40(2).
72. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- it incorrectly cited section 21 to information which is not available;
 - it incorrectly withheld the 'formal records' under section 40(2);

- it breached sections 1(1)(b) and 10(1) in failing to disclose this information.

Steps required

73. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- it should provide hard copies of the information withheld under section 21;
 - it should provide hard copies of the 'formal records' other than the items identified in paragraph 51.
74. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

75. 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

76. 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 June 2011

Signed

**Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal annex

Freedom of Information Act 2000

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 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 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
- (a) either the first or the second condition below is satisfied."

Section 40(3) provides that –

The first condition is-

- (b) 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
 - (i) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

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."