

Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 18 September 2006

Public Authority: Department for Constitutional Affairs

Address: 1st Floor
Clive House
70 Petty France
London
SW1H 9HD

Summary decision and action required

The complaint requested a copy of a letter from the European Commission to the UK government regarding alleged deficiencies in the implementation of Directive 95/46/EC by the UK. He also requested a copy of the UK government's response to that letter. Although the complainant put forward compelling arguments in favour of disclosure of the requested information, the Commissioner took the view that the DCA was correct not to communicate the requested information to the complainant. In the light of that conclusion, the notice requires no further action.

- 1. Freedom of Information Act 2000 – Application for a decision and the duty of the Information Commissioner**
 - 1.1 The Information Commissioner (the 'Commissioner') has received an application for a decision whether, in any specified respect, the complainant's request for information made to the public authority has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 (the 'Act').
 - 1.2 Where a complainant has made an application for a decision, unless:
 - a complainant has failed to exhaust a local complaints procedure, or
 - the application is frivolous or vexatious, or
 - the application has been subject to undue delay, or
 - the application has been withdrawn or abandoned,the Commissioner is under a duty to make a decision.
 - 1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.
- 2. The complaint**

- 2.1 The complainant has advised that on 22 December 2004 the following request for information was made to the Department of Constitutional Affairs [the 'DCA'] in accordance with section 1 of the Act:

"In June the UK Government has received a 20 page letter from the European Commission about alleged deficiencies in the UK's implementation of Directive 95/46/EC. Could I have a copy of that letter please and the Government's response."

- 2.2 Although the complainant's request for information was made prior to full implementation of the Act, the DCA was willing to consider the request as if it had been made under the Act. The complainant clearly expected his request to be treated in this way. Therefore the Commissioner is also content to treat the request as valid for the purposes of the Act.
- 2.3 On 31 January 2005 the DCA replied to the complainant's request. It confirmed that it held the requested information. However, it refused the complainant's request, citing the exemption at s.27 of the Act (international relations) as its basis for doing so. It set out why it believed the exemption to be engaged and explained its view that the public interest was best served by not disclosing the information.
- 2.4 In a document dated March 2005 the complainant appealed against the DCA's initial refusal of his request. He provided a substantive submission, explaining why, in his view, the s.27 exemption is not engaged and putting forward his reasons for believing that, even if the exemption were engaged, the public interest would be served by disclosure of the requested information.
- 2.5 On 7 September 2005 the DCA again refused the complainant's request. It again cited s.27, but also introduced s.35(1)(a) (the formulation and development of government policy) as an additional basis for exempting the requested information from disclosure.
- 2.6 On 17 October 2005 the complainant contacted the Commissioner to complain about the way the DCA had dealt with his request for information.

3. Relevant statutory provisions under the Act

Section 1(1) (general right of access):

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 27 (international relations):

(1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice –

- a) relations between the United Kingdom and any other State,
- b) relations between the United Kingdom and any international organisation or international court,
- c) the interests of the United Kingdom abroad, or
- d) the promotion or protection by the United Kingdom of its interests abroad.

(2) Information is also exempt information if it is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court.

(3) For the purposes of this section, any information obtained from a State, organisation or court is confidential at any time while the terms on which it was obtained require it to be held in confidence or while the circumstances in which it was obtained make it reasonable for the State, organisation or court to expect that it will be so held.

Section 35 (Formulation of government policy etc):

(1) Information held by a government department or by the National Assembly for Wales is exempt information if it relates to –

- a) the formulation or development of government policy.

4. Review of the case

- 4.1 The complainant has asked the Commissioner to review the DCA's decision to withhold the requested information.
- 4.2 The complainant also made a request to the Commissioner himself for information he holds that relates to the infraction proceedings. The reference number of that case is FS50091810.
- 4.3 The Commissioner already had a copy of the requested information because it had been provided to him in his capacity as supervisory authority for the Data Protection Act 1998 – 'the 1998 Act'. This is because the UK Government had sought the Commissioner's advice about the EC's potential action against the UK Government in connection with the UK's transposition into its law of Directive 95/46/EC – 'the Directive'.
- 4.4 The Commissioner reviewed the requested information and the correspondence relating to the complainant's request. The requested information consists of a letter from the European Commission dated 7 July 2004, and an undated letter from the UK government to the European Commission. The correspondence concerns prospective infraction proceedings against the UK Government in connection with its transposition into national law of the Directive.

4.5 Following the DCA's initial refusal of his request, the complainant provided the DCA with a detailed submission in support of his belief that the requested information should have been provided to him. The complainant provided an additional detailed submission when he complained to the Commissioner about the DCA's handling of his request. The DCA had also provided full responses to the complainant, at the initial refusal and appeal stages. The Commissioner therefore has access to all the information he needs to enable him to decide whether the DCA has dealt with the complainant's request in accordance with the requirements of Part 1 of the Act.

4.6 The DCA's initial refusal of the complainant's request

4.6.1 The DCA initially refused access to the requested information on the basis of the s.27 exemption. It argued that the requested information related to documents generated by the European Commission and by the UK in response. It pointed out that it had sought the Commission's opinion about possible disclosure of the information. The Commission had advised that as the infraction proceedings are still in progress, it would not disclose the correspondence if the request were made to it, nor would it expect the UK government to disclose the information. The DCA said that its view was that disclosure in the face of opposition from the EC would not be in the UK's best interests as it could adversely affect the UK's relations with the Commission, in this or in subsequent infraction proceedings. The DCA concluded, therefore, that the exemption at 27 of the Act is engaged.

4.7 The DCA's assessment of the public interest under s.27 of the Act

4.7.1 The exemption at s.27 of the Act is subject to the public interest test. The DCA explained how the infraction process is conducted, and that it includes an iterative process of discussion and negotiation, leading up to the adoption of a position. At this point there will either be agreement between the UK Government and the EC about a way forward, or the Commission will issue a 'reasoned opinion' – the first formal stage of proceedings that could lead to a case being heard in the European Court of Justice. The DCA argued that it is important that, during this process, the UK retains the maximum flexibility in negotiations with the Commission – this could involve the UK shifting its position from that adopted in its initial response. The DCA concluded, therefore, that negotiating the process in public would prejudice the UK's interests and that this would not be in the public interest.

4.8 The complainant's response to the DCA's initial refusal

4.8.1 The prospective infraction proceedings that the requested information is about primarily concern the scope of the Data Protection Act 1998 and whether, in the light of the Durant judgment¹, the UK has adequately transposed the Directive into its national law. A failure to transpose a Directive properly, for example by

¹ Durant v Financial Services Authority ([2003] EWCA Civ 1746)

narrowing its scope inappropriately, could mean that the UK is in breach of its Community obligations. In this case, it could also mean that individuals about whom UK data controllers keep personal information are not being given the protection that the Directive is intended to provide.

4.8.2 The complainant provided a comprehensive response to the DCA's initial refusal of his request. His response included a preamble setting out the following arguments in favour of disclosure of the requested information:

- Questions about the scope of data protection law, implicit in the infraction proceedings, are of importance to individuals and businesses in the UK. The scope of the law affects individuals' expectations of privacy and the plans of businesses that process personal data.
- The decision of the Court of Appeal in the case of Durant has been widely interpreted as defining personal data in a narrow way. The information requested determines whether there can be long-term reliance on this decision.
- There is a legitimate public interest in allowing scrutiny of the initial exchanges between the Commission and the UK government about the UK's implementation of the Directive. The wide impact of implementation means that debate should not go on behind closed doors and that any necessary change to the law is widely understood.
- Withholding the requested information harms democracy because it prevents reasoned debate of alleged defects in the 1998 Act.
- Withholding the requested information serves to continue the climate of uncertainty surrounding the scope of the 1998 Act. This prevents data controllers planning their future processing of personal data and confuses data subjects as to the level of protection afforded by the 1998 Act.

4.8.3 The complainant went on to argue that the s.27 exemption does not apply to the requested information. He put forward the following arguments:

- As the positions of the Commission and UK government in relation to the Directive are so well known, disclosure of the requested information cannot jeopardise international relations.
- The request for information is limited to the complaint from the Commission and the government's response to it. The requested information does not concern the subsequent iterative process.
- The Commission itself did not refuse access to the information on the grounds that its disclosure would undermine the protection of international relations. It is therefore irrational for the UK government to claim that disclosure would do so.

- The Swedish government apparently sees no prejudice to international relations, in general, resulting from the release of the kind of information that has been requested. It is therefore difficult to see why the UK government should be any different.
- The requested information was provided by the DCA to the Information Commissioner [in his capacity as regulator of the 1998 Act]. If the requested information was prejudicial to international relations, this release would not have occurred in such an insecure manner, nor would the information have been circulated around the Working Party of Data Protection Commissioners.
- Given the subject matter of the requested information, i.e. an internal dispute on the implementation of a data protection directive, it is not credible that its release would prejudice international relations.

4.8.4 The complainant then went on to argue that even if some of the requested information is subject to an exemption, not all of it is. He put forward the following arguments:

- The DCA should, at least, be able to release some information summarising the government's position.
- Information about the Commission and the DCA being in agreement about the deficiencies of the 1998 Act can be released in an unredacted form.
- The DCA can release information that relates to the advice issued by the Information Commissioner. Information that pertains to the Commissioner's publicly available advice on personal data cannot be subject to an exemption that relates to international relations. Its release might harm relations with the Commissioner but does not cause prejudice to international relations.
- The DCA can release that information about various topics that are already the subject of public speculation, for example likely contravention of Article 2 of the Directive following the Durant case.

4.8.5 The complainant then went on to argue that even if the requested information does fall within the scope of the exemption, something he does not accept, then the public interest would still favour disclosure. The complainant then reiterated and expanded upon several of the arguments he had set out in his preamble:

- The implementation of the 1998 Act is a matter of substantial public interest given the obligations it places on data controllers and the rights it gives to data subjects. Uncertainty as to the scope of the 1998 Act should not be determined by a small cabal hidden from public gaze. It is not in the public interest to inhibit public involvement for the foreseeable future on a subject matter which impacts on everybody in the UK.
- The refusal to publish details of the Commission's complaint denies Parliament the ability to effectively scrutinise legislation that requires comprehensive databases to be constructed – e.g. the Identity Cards Bill. The

Government has refused to provide details of the infraction proceedings to both Houses of Parliament, yet has made bland statements about the 1998 Act applying to such databases. There is a considerable public interest in allowing Parliament a way of judging the effect of the protection afforded by the 1998 Act by providing detailed information about the divergence of views on the scope of personal data. It is not in the public interest to inhibit Parliamentary involvement in relation to legislation which impacts on every elector and every business in the UK.

- Refusal to publish the information does not allow the public to properly engage in public consultation exercises. The public has no way of judging the impact of the protection afforded by the 1998 Act in contexts such as identity cards. There is a public interest in releasing the divergent views on the interpretation of personal data.
- There is a public interest in knowing the scope of personal data before an ID Card is implemented, in order to allow compliance with Article 8 of the European Convention on Human Rights to be assessed.
- The Thatcher and Major governments implemented a policy of delay in its agreement on the text of a Directive with the European Commission. If there was any prejudice to international relations, such prejudice has existed for decades. There is a public interest in knowing whether a policy of delaying full implementation of the Directive is being continued by the current government.
- The Durant decision has effectively delivered the government's policy objective of changing the UK's data protection law, personal data which has the data subject as its focus is equivalent to the processing of personal data by reference to the data subject, as found in the Data Protection Act 1984. Narrowing the scope of the law in this way could imply that the Government favours the interests of data controllers over those of data subjects. This is of itself of immense public interest.
- The disclosure of information about the infraction proceedings has a bearing on resolving various issues arising from the Durant judgement.

4.9 The DCA's second refusal of the complainant's request

- 4.9.1 Despite the complainant's detailed submission, on review the DCA upheld its initial decision to withhold the information. The DCA pointed out that it had contacted the Commission to seek its view about disclosure of the requested information. The Commission shared the DCA's view that as the particular infraction proceedings are still in progress, the correspondence should not be disclosed. The Commission advised the DCA that it would not disclose were it to receive the request, and that it would not expect the UK government to do so. Therefore the DCA argued that releasing the information would, or would be likely to prejudice relations between the UK and an international organisation, in this case the European Commission.

4.9.2 At this point the DCA also argued that the exchange of correspondence informs the government's consideration of the current policy position in relation to data protection and implementation of the Directive. DCA argued, therefore, that the requested information falls within the exemption at s.35(1)(a) of the Act. This exempts information from disclosure if it relates to the formulation or development of government policy.

4.10 The DCA's assessment of the public interest

4.10.1 Both the exemptions cited by the DCA at the review stage are subject to the public interest test. The DCA put forward the following arguments against disclosure of the requested information:

- Disclosure would inhibit the free and frank process of policy formulation. It is in the public interest that the UK Government can take account of the views of the Commission in its continuing policy discussions, and that this is not inhibited by the premature disclosure of those views. If correspondence relating to this were less candid in the future, its value would be reduced and the policy process would be less well informed, to the detriment of effective policy formulation.
- The requested information relates to the early stages of potential infraction proceedings. At this stage, the process is a two-way iterative one in which the Commission expresses its concerns and the Member State sets out, in a free and frank way, its view on the points raised. The points raised at this stage of the process are very often quite different to those issues, if any, that are eventually the subject of formal infraction proceedings. Disclosure of this early correspondence would potentially adversely affect the UK's negotiating position and the effectiveness of the process by which the necessity of any subsequent infraction proceedings is discussed, debated and refined. It is important for the UK to have maximum flexibility in negotiating. Conducting negotiations in public would prejudice the UK's position and the Commission's ability to ascertain whether infraction proceedings are necessary.

4.10.2 The DCA also put forward the following arguments in favour of disclosure:

- Data protection plays an important role in civil society. Possible changes to the data protection regime are likely to affect a great many people, therefore there is a strong public interest in greater understanding and transparency in this area. This will allow a more informed debate and enhance public understanding of this area of law.

4.10.3 The DCA further commented, however, in reference to the above, that putting the initial views on the part of the Commission into the public domain would lead to uncertainty over whether the UK's law properly implements the Directive. This could also lead to the domestic legislation being unnecessarily challenged in litigation.

4.10.4 The DCA concluded that the public interest in maintaining the exemption outweighed the public interest in disclosure and therefore confirmed its initial decision not to disclose the requested information. The complainant then made a complaint to the Information Commissioner about the DCA's handling of his request for information.

4.11 The DCA's additional arguments

4.11.1 On 27 July 2006 the DCA wrote to the Commissioner to provide additional arguments against the disclosure of the requested information. It argued that given the nature of the infraction proceedings and the Commission's view that its letter should not be disclosed, the requested information is exempt from disclosure by virtue of s.27(2) of the Act (confidential information obtained from an international organisation). It also argued that the information is exempt by virtue of s.41 (actionable breach of confidence). The DCA also reiterated its argument that given the Commission's view that its letter should not be disclosed, disclosure would prejudice relations between the UK and the Commission. The DCA also cited the exemptions at s.27(1)(c) (prejudice to the interests of the UK abroad) and 27(1)(d) (prejudice to the promotion or protection by the UK of its interests abroad) as additional bases for withholding the requested information.

4.11.2 On receipt of these additional arguments the Commissioner invited the complainant to put forward any additional arguments he may have in favour of disclosure of the requested information. The complainant replied, saying that he had put forward all the relevant arguments in his previous submissions. However, he did provide a copy of correspondence and other information relating to a request he made to the European Commission for the same information as he had requested from the DCA. This request had been refused by the Commission.

5. The Commissioner's decision

5.1 The engagement of the exemptions at s.27, s.35 and s.41 of the Act

5.1.1 The DCA has cited the following exemptions as its grounds for withholding the requested information:

S.27 (international relations)

S.35(1)(a) (the formulation and development of government policy)

S.41 (actionable breach of confidence)

5.2 Section 41

5.2.1 The DCA cited s.41 of the Act as one of its grounds for withholding the requested information. It did so because, in its view, the letter from the European Commission was clearly not intended to be made public. The Commissioner accepts that the Commission did not intend its letter to be made public. However, the DCA has provided no evidence that disclosure would constitute an actionable breach of confidence. As the Commissioner understands it, it would be unusual

for the European Commission to initiate action for breach of confidence against a Member State in circumstances such as these. The Commissioner is not satisfied therefore that the exemption at s.41 of the Act is engaged in respect of the requested information.

5.3 Section 27

5.3.1 Section 27(1)(b)

The DCA has argued that the Commission neither wanted nor expected its letter to the UK Government to be disclosed, and that the Commission clearly wants to handle the initial part of the infraction process on a confidential basis. The DCA has argued that disclosure of this information in the face of the Commission's express opposition would, or would be likely, to prejudice relations between the UK and an international organisation, i.e. the Commission.

5.3.2 However, the complainant has argued that there is circularity in the DCA's justification for withholding the requested information. The complainant argues that the DCA will not disclose the requested information because the European Commission will not itself disclose the information. However, in coming to its own decision not to disclose, the Commission appears to have placed great weight on the UK government's own opposition to the disclosure of the requested information. There is some justification, therefore for the complainant's belief that there is circularity in the Commission's, and the DCA's, justification for withholding the information. The complainant's concern about this is compounded by the fact that the Swedish government has apparently released similar information to that requested in this case, with no apparent detriment to its relations with the Commission.

5.3.3 It is worth noting here that although information requested in this case was apparently released by the Swedish government, Sweden embraced freedom of information law very early in its history. In general, standards of public openness remain relatively high in Sweden. This is reflected, for example, in its publicly available taxation records and in the high degree of openness that the Swedish government has displayed historically. Despite this, it is the Commissioner's duty to consider whether the complainant's request has been handled according to the requirements of Part 1 of the Freedom of Information Act 2000. In this respect, the practices of other countries in respect of the release of information under freedom of information law are not directly relevant.

5.3.4 The DCA's own opposition to disclosure of the requested information seems to have influenced the Commission's own decision not to disclose. Had the DCA been in favour of disclosure, the Commission's decision about disclosure may have been different. The Commissioner is not satisfied that a decision by the DCA to disclose the requested information would, or would be likely, to prejudice relations with the Commission, given the influence that the DCA seems to have had on the Commission's own decision not to disclose the information. The Commissioner does not accept, therefore, that the exemption at s.27(1)(b) of the Act is engaged in respect of disclosure of the requested information.

5.4 Section 27(1)(c)

The DCA has given its account of how the infraction process is conducted, explaining that it includes an iterative process of discussion and negotiation, leading up to the adoption of a position. At this point there will either be agreement between the UK Government and the EC about a way forward, or the Commission will issue a 'reasoned opinion' – the first formal stage of proceedings that could lead to a case being heard in the European Court of Justice. The DCA has argued that it is important that, during this process, the UK retains the maximum flexibility in negotiations with the Commission – this could involve the UK shifting its position from that adopted in its initial response. The Commissioner accepts that disclosing the requested information at this stage, part of which is the UK government's initial response to the Commission, would make it more difficult for the UK to negotiate flexibly with the Commission, to the prejudice of the UK's interests abroad. The Commissioner accepts, therefore, that the exemption at s.27(1) (c) is engaged in respect of disclosure of the requested information.

5.5 Section 27 - the public interest.

- 5.5.1 There is an inherent public interest, reflected in the exemption provided by s.27(1)(c), in the UK government being able to advance its cause in an effective way, and thus to defend the UK's interests abroad. The Commissioner is satisfied that disclosing the requested information whilst infraction proceedings are being contemplated would prejudice the UK's ability to negotiate flexibly during the early stages of the process. There is a strong public interest in there being a stage of the infraction process during which the UK government and the Commission can exchange views in private and adopt different positions. There is a real risk that public scrutiny of this stage of the process would make it more difficult for either party to change position in response to the other party's concerns. Disclosure is likely to cause entrenchment and defensiveness in respect of the positions the two sides adopted initially. Ultimately, this would undermine the UK's ability to address the Commission's concerns prior to formal infraction proceedings being commenced, and would increase the likelihood of formal proceedings being initiated. There is, therefore, a strong public interest in maintaining the exemption.
- 5.5.2 However, there are also strong public interest arguments in favour of disclosing the requested information.
- 5.5.3 The Commissioner accepts the complainant's concern that uncertainty over the scope of the law serves neither the interests of individuals or of businesses that process personal information. He also accepts that uncertainty over the scope of the law weakens the public's ability to judge the impact of the protection afforded by the 1998 Act in contexts such as identity cards. Further, the Commissioner accepts that disclosure of the requested information would facilitate public debate of the UK government's approach to the transposition of the Directive.
- 5.5.4 Despite his acceptance of these points, however, the Commissioner is not convinced, though, that releasing the requested information would do anything in a practical sense to decrease uncertainty over the scope of the UK's data protection law. It may facilitate public debate about the scope of the UK's law and

whether the UK has implemented the Directive properly. It may allow the public to compare the positions taken by the UK government and the Commission. It would not, though, do anything to clarify the scope of the Data Protection Act 1998 in a way that would be helpful to individuals or businesses. The lack of practical usefulness does not mean, though, that the information should not be disclosed.

- 5.5.5 The Commissioner also accepts that there is a strong argument that, in general, the public should know why the European Commission is considering launching infraction proceedings against the UK. Laws are intended to protect the public. There is a strong argument, therefore, that the public should be aware of any alleged deficiencies in them. The public interest argument here is particularly strong where there is concern that the UK's transposition of a Directive is failing to provide individuals with the protection that it is designed to deliver.
- 5.5.6 The Commissioner does not accept the complainant's view that because the scope of data protection law may not be as weighty a matter as others, release of the requested information would be unlikely to prejudice international relations. The Commissioner accepts that the subject matter of requested information will have a bearing on whether its release is likely to prejudice the international relations and interests as set out on section 27(1)(b) and (c) of the Act.. Information about some issues will be more sensitive than that about others, and the more sensitive information is, the more likely it is that its release will cause prejudice. However, data protection is by no means a trivial matter. It is a key area of UK and European law, being the primary means of protecting information about individuals in a rapidly expanding and increasingly sophisticated information society. The Commissioner recognises, therefore, that questions relating to the release of information about data protection law need as careful consideration as those relating to any other issue.
- 5.5.7 On balance, taking all the above considerations into account, the Commissioner takes the view that the public interest in maintaining the s.27(1) (c) exemption outweighs the public interest in disclosing the information.

5.6 Section 35

- 5.6.1 The DCA also cited the exemption at s.35(1)(a) of the Act as grounds for withholding the requested information. This exempts information if it relates to the formulation or development of government policy. The requested information is about the UK Government's transposition of the Directive. It is also about the effect of the Durant judgement, if any, on the scope of the UK's law.
- 5.6.2 It is certainly the case that government policy in respect of data protection law will be kept under review in the light of infraction proceedings. There is also a strong possibility that infraction proceedings being taken against the UK could lead to the development of existing government policy on data protection, and to the formulation of new policy.
- 5.6.3 The Commissioner is satisfied, therefore, that the requested information does relate to the formulation or development of government policy. The

Commissioner is satisfied, therefore, that the exemption at s.35(1)(a) of the Act is engaged in respect of the requested information.

5.7 Section 35 - the public interest

- 5.7.1 The exemption at s.35 of the Act exists to protect the inherent public interest in the government being able to hold information about the formulation or development of its policy, without fear of disclosure of this information damaging the policy process. In assessing the public interest in the context of the s.35 exemption, the Commissioner must decide whether the public interest in disclosure outweighs any damaging effect that disclosure may have on the UK government's ability to formulate or develop its policy.
- 5.7.2 The Commissioner is satisfied that disclosure of the requested information at this stage would prevent the UK Government negotiating candidly and flexibly with the Commission. This would limit the UK's ability to respond to the Commission's concerns and would prejudice the UK government's ability to formulate or develop its policy in response to the Commission's concerns. Having taken into account all arguments for and against disclosure, the Commissioner is not satisfied that the nature of the requested information is such that the public interest in its disclosure is sufficiently strong to outweigh the damage to the policy process that its disclosure might cause.
- 5.7.3 On balance the Commissioner therefore takes the view that the public interest in maintaining the s.35 exemption outweighs the public interest in disclosing the information.

5.8 The Commissioner's decision

- 5.8.1 The Commissioner's decision in this matter is that the DCA has dealt with the complainant's request in accordance with the requirements of Part I of the Act. However, the Commissioner does recognise the importance of the requested information and takes the view that arguments against its disclosure will be weakened significantly once infraction proceedings are completed or abandoned.
- 5.8.2 Given the nature of the requested information, the Commissioner does not consider it feasible to release a summarised or redacted version of the information. A version with exempt content removed would be meaningless. Nor would it be feasible to separate and disclose advice issued by the Information Commissioner that is contained within the requested information
- 5.8.3 The Commissioner has found this case unusually difficult to deal with. He has close constitutional relations with the DCA as the DCA is the Information Commissioner's sponsoring department in government. As the supervisory authority for the Data Protection Act 1998, the Commissioner has given his advice to the DCA about the UK government's transposition of the Directive. He expects the DCA to continue to consult him on matters that lie within his area of statutory responsibility. However, despite the Commissioner's involvement in the matters that the requested information concern, his receipt of a similar request

himself and his relationship with the DCA, he is confident that he has dealt with this case objectively and fairly.

6. Action required

6.1 No action is required.

7. Right of appeal

7.1 Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

7.2 Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 18th day of September 2006

Signed

**Richard Thomas
Information Commissioner**

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