

Freedom of Information Act 2000 (Section 50)

Decision Notice

23 December 2008

Public Authority: University of Leicester
Address: University Road,
Leicester, LE1 7RH

Summary

In this matter the complainant made a series of Freedom of Information requests of the public authority. The requests were refined and the Commissioner has made a decision about three outstanding items. The Commissioner has concluded that all of those items, in this context, constitute the complainant's personal data and therefore they are exempt under section 40(1) and should have been considered under section 7 of the Data Protection Act 1998. He has found a breach of section 17(1)(b) in relation to the refusal notice provided in respect of one of the requests. He has not ordered any remedial steps.

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. Between 1994 and 1997 the complainant studied for a University of Leicester accredited degree at its then Associated College Nene College Northampton (Nene). The College has now become part of the University of Northampton (Northampton).
3. The complainant made 5 requests for information to the public authority between 20 May 2005 and 11 October 2005. Each request specified a number of items sought by the complainant. In the course of his investigation the Commissioner sought to clarify what information was required and the complainant agreed to limit the scope of his complaint to four items. This is covered further in the scope of the case section of this decision notice. The Commissioner has only included

details of the requests that relate to the items the complainant has indicated he still wishes to pursue in the body of this notice.

20 May 2005 request

4. On 20 May 2005 the complainant requested the following from the public authority:
 - “University College Northampton’s letter dated 9 October 2001 to the University of Leicester.
 - University of Northampton’s letter of 10 April 2001 to the University of Leicester, complete with all enclosures (i.e. pertinent Board of Examiners’ minutes, External Examiners’ reports and results sheets).
 - University of Leicester’s Graduate Surveys between 1999 and 2002.
 - University of Leicester’s current complaints procedure/s”.
5. On 16 June 2005 the public authority released the third and fourth items in their entirety. Items 1 and 2 above were released with all third party personal data removed. The public authority cited Section 40 of the Freedom of Information Act as the reason for redacting the information. It stated that disclosure of the redacted information would constitute a breach of the Data Protection Principles. The complainant was advised that the information which the University considered to constitute his personal data had not been removed for practical reasons. However strictly speaking it was exempt information under the Act. This is because section 40(1) provides an exemption for information of which the applicant is the data subject.
6. On the 4 July the complainant made another request which is not the subject of this decision notice and when doing so made a complaint about the use of the Section 40 exemption in relation to his first request. He submitted that Section 35 (2) of the Data Protection Act confirmed that the public authority could disclose personal data for the purpose of legal proceedings, and that this would not contravene the data protection principles.
7. The public authority provided a response to the complainant’s review requests of 4 and 15 August 2005. The response included the review of the answers to the complainant’s first request, made on 20 May 2005. The public authority maintained its use of redactions and the Section 40 exemption stating *‘the view was taken that students have an expectation that details of their results and references to them made in the Minutes of the Board Meetings would be treated confidentially and that such information would only be processed for purposes of determining their degree results. It was therefore considered that it would be unfair to release this information and that to do so would breach the First Data Protection Principle’*.
8. The public authority also provided arguments about why it did not think Section 35(2) of the DPA was applicable in this matter.

9. Regarding anonymised data, the public authority argued that deleting a name does not guarantee anonymity and that *' it may still be possible to deduce the identity of a student from individual marks or from comments made about individuals in minutes in meetings when considered in conjunction with other information that may be known'*. The names and personal data of the students were therefore redacted from the information provided to the complainant as there was a possibility that the names of the students might be deduced.

24 August 2005 request

10. The complainant made a further request on 24 August 2005 as follows,

"I use the FoI when asking the University of Leicester to address the following question: -

Reference University of Leicester accredited degree Students' [6 students named]. How many of these Students are recorded in the 18 June 1998 BA Business Information Systems' Board of Examiners minutes?"

11. The complainant also asserted that the public authority was required under the section 45 code of practice to consult the two individuals relevant to the requests that he made on 4 July and 1 August 2005 to seek their consent to the disclosure of information.

12. The public authority responded to this request on 13 September 2005, stating:

' The University cannot confirm the number of students from your list of six, who (sic) names appear within the Board of Examiners minutes of 18 June 1998, for Business Information Systems. The size of the group of students whom you have identified is very small. i.e. six. Consequently if the University were to disclose this information, it is possible that the identities of the students whose names appear in the minutes detailed above could be deduced. This information is therefore exempted under Section 40(Personal Data) of the Freedom of Information Act 2000.'

13. Regarding the second question the public authority stated *' Neither the Lord Chancellor's Code of Practice nor Section 45(2) of the Freedom of Information Act 2000 oblige or require public authorities to seek consent from third parties to disclose their information. Additionally, it is not University Policy to divulge or discuss the business of its staff or students with any other third party'*.

The Investigation

Scope of the case

14. On 18 August 2005 the complainant contacted the Information Commissioner's Office (ICO) to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider his submission that he needed the requested information as soon as possible for legal proceedings.
15. Regrettably due to the number of cases received by his office, the Commissioner was unable to begin investigating this complaint until November 2006. The complainant provided a considerable amount of correspondence setting out the background to this and a related complaint against another public authority. Once the case was allocated, the case officer undertook a review of both files to identify what information had been disclosed by the public authority and what remained outstanding. This was in an effort to clarify the scope of the investigation and to identify any possible opportunities for informal resolution, in line with the Commissioner's normal procedures.
16. On 27 November 2006 the complainant was sent a breakdown of the information the case officer had identified as having been requested, that which appeared to have been provided and that which remained outstanding. The complainant was asked to confirm whether this accurately reflected the information that the public authority had continued to withhold as this would be the focus of the investigation. The complainant responded on 1 December 2006 listing the information he continued to seek. During the course of the investigations some information was disclosed and the scope of the investigations shifted.
17. On the 7 July 2007 the complainant agreed to further limit his complaint to the following four items:
 - Item 1. University of Northampton's letter and enclosures to the University of Leicester dated 10 April 2001;
 - Item 2. University of Northampton's letter to University of Leicester dated 9 October 2001;
 - Item 3. University of Leicester's data privacy/disclosure statement;
 - Item 4. Statement confirming how many of University of Leicester's accredited degree students listed in University of Northampton's BA Business Information Systems 18 June 1998 Board of Examiners minutes are recorded in University of Northampton's July 1998 Degree Congregation publication.
18. The Commissioner contacted the complainant on 12 July 2007 and explained that there were some discrepancies between the information the complainant had

identified as outstanding and the copies of the requests supplied to the Commissioner. Specifically the complainant was advised that the Commissioner had no record of requests having been made to the public authority for items 3 or 4.

19. In a letter to the Commissioner dated 23 July 2007 the complainant accepted that he had not in fact requested item 3 from the public authority. He suggested that the Commissioner should nevertheless instruct the public authority to disclose this information. Section 50 of the Act provides that any person may apply to the Commissioner for a decision about whether a public authority has in any specified respect, dealt with a request in accordance with the requirements of Part I. As no request has in fact been submitted to the public authority in relation to item 3 the Commissioner cannot make a decision in relation to this item. Therefore this item will not be commented upon further in this decision notice except within the chronology section.
20. In the same letter the complainant conceded that he had not in fact made a request for the information specified in item 4 using the same terminology. However he indicated that his requested dated 24 August 2005, outlined in the request section above, sought the same information using slightly different language. Therefore the analysis section of this decision notice will cover items 1 and 2 and the request as set out in the letter dated 24 August 2005 which will in effect cover the information detailed in item 4 above.

Chronology

21. As previously explained, the Commissioner contacted the complainant on 27 November 2006, outlining his understanding of the requests made, the responses provided and specifically the information that remained outstanding. His intention was to focus the investigation on the information which had not been provided by the public authority.
22. The complainant responded on 1 December 2006. In that letter the complainant confirmed that he was still seeking access to:
 - An un-redacted copy of the University College Northampton 's letter of 9 October 2001 to the University of Leicester;
 - An un-redacted copy of UCN's letter of 10 April 2001 to Leicester, complete with all enclosures (i.e. pertinent Board of Examiners minutes, external examiners reports and result sheets).
 - An answer to the question: '*did the two students referenced in University College Northampton 's letter dated 9 October 2001 enrol at Nene College of High Education Northampton for University of Leicester accredited degrees?*'
 - Confirmation as to whether '*the two students redacted from UCN's 9 October 2001 letter appear in the list of students detailed above?*';

- Confirmation of how many of the six named students are recorded in the 18 June 1998 BA Business Information Systems' Board of Examiners Minutes;
 - Information to confirm how many of the 18 students recorded in the 1998 Board's minutes were awarded:
 - University of Leicester accredited degrees in July 1998
 - Nene University Northampton accredited degrees in July 1998
23. On 19 January 2007 the Commissioner wrote to the public authority, seeking an un-redacted copy of the withheld information for his investigation and submissions about the disputed pieces of information.
24. Copies of this information were provided on 12 February 2007. The public authority maintained its use of the Section 40 exemption and felt that release of the information could lead to the identities of the students being deduced.
25. On 19 February 2007 the complainant wrote to the Commissioner enclosing a copy of a judgment dated 20 December 2006. This related to a civil matter in which he was the applicant and staff members at the public authority were the respondents. The application was not successful but the judgment noted that the complainant had applied to the Commissioner. It stated that if new evidence could be deduced to demonstrate 'bad faith' on the part of one or more of the parties as a result of the complaint he could consider fresh proceedings.
- The complainant provided this judgment to the Commissioner as evidence of the importance of his application. He also highlighted that in his view unless he could obtain the information he requested he would not be able to submit the fresh evidence and commence fresh proceedings.
26. On 22 February 2007 the complainant made a freedom of information request to the ICO. The request was for information received by the Commissioner in connection with the investigation of a related matter against another public authority. The complainant advised that until this request was dealt with, he would not provide final submissions in this matter. The request was processed and eventually an internal review response was issued on 12 June 2007.
27. The Commissioner wrote to the complainant on 6 July 2007. In that letter he:
- a. Asked for clarification about the requests for information which were still deemed to be outstanding, as it appeared that he had now received some of the information he had referred to in his 1 December 2006 letter;
 - b. Offered to provide a summary of the arguments made by the public authority which he would take into account when coming to a decision about the use of the exemptions;
 - c. Provided copies of the letters that the complainant had originally sent in support of his case. This was to assist him in identifying the outstanding requests he still wished to pursue.

28. The complainant responded to this letter on 7 July 2007. In that letter he stated that he still required the following four pieces of information:
- Item 1. University of Northampton's letter and enclosures to the University of Leicester dated 10 April 2001;
 - Item 2. University of Northampton 's letter to University of Leicester dated 9 October 2001;
 - Item 3. University of Leicester's data privacy/disclosure statement;
 - Item 4. Statement confirming how many of University of Leicester's accredited degree students listed in University of Northampton 's BA Business Information Systems 18 June 1998 Board of Examiners minutes are recorded in University of Northampton 's July 1998 Degree Congregation publication.
29. In the letter the complainant stated that he considered that the public authority could release student names but remove any comments about them. This was on the basis that students authorise the disclosure of their names by their university otherwise they could not produce their Degree Congregation publications.
30. The Commissioner wrote to the complainant on 12 July 2007, outlining the arguments made by the public authority regarding the items sought.
31. The complainant responded to this letter on 23 July 2007. He put forward further arguments in support of his position that the public authority could provide the requested information. In summary the complainant:
- Emphasised his view that the information he had requested contained factual inaccuracies and misrepresentations and that access to it would help to verify whether this was the case. As this information had formed part of the evidence used to inform the decision in relation to his appeal about his degree classification, he explained that it was important for him to have access to it.
 - Re-iterated his need to determine whether 6 named students had their degree classification specified in the June 1998 and earlier minutes. He asserted that if they were not recorded this constituted misconduct and asked the Commissioner to consider whether this furthered the public interest and his legitimate interest in access to the non-sensitive personal data.
 - Disputed the public authority's position that it may be possible to determine the identities of the two named students in the 9 October 2001 letter. The authority had also taken the view that it could not release other information in an anonymised form because it may still be possible to determine a student's identity, for example from a specific grade. The complainant

asserted that the authority should point to the specific information available that would make identifying individuals in this way possible.

- Argued that disclosure to him would not breach first data protection principle because it was necessary in order for him to pursue his civil claim against the public authority.
- Asserted that there is a public interest in releasing the information to further the public's understanding of how public authorities conduct themselves when addressing grievances. He also explained that if misconduct was evidenced this would increase the weight of this argument.

Analysis

Exemptions

32. The Commissioner is the regulator of both the Data Protection Act 1998 ('the DPA') and the FOIA. The wording of the Act ensures that the rights under the FOIA cannot prejudice or take precedence over a data subject's rights under the DPA. This interpretation was confirmed in the recent House of Lords decision: *Common Services Agency (Appellants) v Scottish Information Commissioner (Respondent) (Scotland)* [2008] UKHL 47. Whilst this judgment relates to the Freedom of Information (Scotland) Act 2002, the Commissioner is satisfied that the provisions of that legislation are sufficiently close to those of the Act for this interpretation to be adopted in this case.

33. In *Bowbrick v Information Commissioner* in paragraph 51 the Information Tribunal confirmed that the Commissioner had discretion under the Act to look at section 40 issues when considering cases under the Act:

"If the Commissioner considered that there was a section 40 issue in relation to the data protection rights of a party, but the public authority, for whatever reason, did not claim the exemption, it would be entirely appropriate for the Commissioner to consider this data protection issue because if this information is revealed, it may be a breach of the data protection rights of data subjects....Section 40 is designed to ensure that freedom of information operates without prejudice to the data protection rights of data subjects."

34. In this case the Commissioner notes that the public authority cited section 40(2) in relation to some of the outstanding information. However, having reviewed the correspondence provided by both parties in this matter he identified that there was a possibility that some, or all, of the outstanding information could in fact constitute the complainant's personal data. The Commissioner was alerted to this fact in part because he was advised that the public authority had in fact already considered access to some of the requested material under the DPA when processing a request the complainant made in November 2001 prior to the Act's implementation.

35. Where the Commissioner identifies that information may be the applicant's personal data he will consider whether this is the case in the first instance. This is to ensure that the requests are processed under the correct access regime and that the correct tests are applied. In particular disclosure of information under the DPA is to the applicant only whereas information released under the Act must be suitable for disclosure to the wider public. He also considers section 40(1) in the first instance because it is an absolute exemption and requires no public interest test to be conducted. He will also consider whether any assessment under section 42 of the DPA is required.

Section 40(1)

36. Section 40(1) states that:

“(1) 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”.

Subsection (5)(a) states 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)”.

37. In order to rely on the exemption provided by section 40, the information being requested must constitute personal data as defined by the DPA. Section 1(1) of the DPA defines personal data as:

“...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,

and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect to the individual”.

38. The Commissioner's understanding of the nature of personal data is informed by the recent discussions by the Article 29 Working Party (a European advisory body on data protection and privacy).
39. Following these discussions the Commissioner reissued his guidance in August 2007. This guidance is designed to assist organisations and individuals to determine whether information may be classified as personal data. In order to do this the guidance asks a series of questions. The Commissioner has considered the nature of the information being sought by the complainant along side these questions.

40. The Commissioner's Guidance can be viewed in full at the following link:

http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/personal_data_flowchart_v1_with_preface001.pdf

41. The Commissioner considered whether the information relevant to items 1, 2 and 4 constituted the complainant's personal data.

Item 1 - University of Northampton's letter and enclosures to the University of Leicester dated 10 April 2001

42. The Commissioner notes that the public authority provided redacted copies of this letter and enclosures, having removed third party personal data pursuant to Section 40(2) of the FOIA on 16 June 2005. When releasing the information the public authority explained that the complainant's personal data had not been removed for his convenience but that it was technically exempt under the Act because it should be considered under the DPA. The complainant continues to seek the information that was withheld from him. The public authority also highlighted that the same redacted information had already been released to the complainant in response to a request he made under the DPA in 2001.
43. The Commissioner's conclusion is that the public authority was correct to advise the complainant that information that constituted his personal data was exempt and should be considered under the DPA. However, when considered against the aforementioned guidance about the definition of personal data, the Commissioner considers that in fact all of the information within the scope of item 1 constitutes the complainant's personal data in this context and is therefore exempt under section 40(1).
44. The Commissioner is satisfied that this is the case for the following reasons. The letter and its enclosures are held by the public authority on its file about the complainant's appeal against his degree classification. The appeal centred on alleged procedural irregularities on the part of the board of examiners. The complainant is aware of the nature of the evidence considered because it was listed in the letter dated 16 June 2005 and redacted copies were released to him.
45. Whilst minutes and examiners' reports may not appear to constitute the complainant's personal data at first glance, the Commissioner is satisfied that in this context they do because they directly informed the decisions made in relation to the appeal, the outcome of which has a significant impact upon the complainant. This is particularly evident given that the complainant has asserted that his omission from certain minutes gives weight to his argument that his degree classification has not been appropriately determined. Moreover the Commissioner notes that the complainant is identifiable because his name is recorded in the subject line in the letter and at various points in the enclosures. He has therefore concluded that section 40(1) applies to all of the information within the scope of item 1.

46. The Commissioner notes that the letter and particularly the enclosures contain a significant amount of information about other students, including their results for different aspects of their degree course over several years. In this case he does not believe that this information can be meaningfully separated because it has been used to inform the decisions that impact significantly on the complainant. As explained above, this is why he has concluded that all of the material constitutes the complainant's personal data and access to it should have been considered entirely under section 7 of the DPA. This approach has been supported by the Information Tribunal in the case of *George Fenney v The Information Commissioner [EA/2008/0001]*. In that case the Tribunal considered a request for information involving more than one data subject. It rejected the suggestion that the only data subject to be considered when assessing a document containing data on more than one individual is the one whose data is more extensive or significant. At paragraph 13, the Tribunal stated:

"...There is no basis for arguing that the DPA intended that the only data subject to be considered when assessing a document incorporating data on more than one individual is the one whose data is more extensive or more significant. If information incorporates the personal data of more than one person the data controller is not required to attempt an assessment as to which of them is the more significant and to then recognise the rights to protection of that individual and ignore any others. Its obligations are set out in sections 7(4) to 7(6) DPA, which require it to consider whether the information requested includes information relating to a third party and, if it does, to disclose only if that third party consents or it is reasonable in all the circumstances (by reference to the particular matters identified in subsection (6)) to comply with the request without his or her consent..."

Item 2 - University of Northampton's letter to University of Leicester dated 9 October 2001

47. The complainant made no reference to the enclosures to this letter when the scope of the investigation was clarified by the Commissioner. Therefore this decision relates solely to the letter of 9 October 2001. The Commissioner understands that the public authority did not deem all of the material within the letter the complainant's personal data and withheld the names of two other individuals on the basis of section 40(2). However for the same reasons as those outlined above in respect of the 10 April 2001 letter the Commissioner is satisfied that all of the information constitutes the complainant's personal data and is therefore exempt under section 40(1) of the Act.
48. The Commissioner also wishes to record that he is aware that the complainant was provided with an un-redacted copy of this letter by a different public authority on 23 July 2007.

Item 4 - Reference University of Leicester accredited degree Students' [6 students named]. How many of these Students are recorded in the 18 June 1998 BA Business Information Systems' Board of Examiners minutes?

49. It is important to highlight that the right of access to information provided by section 1(1) of the Act is to recorded information. "Information" is defined in section 84 of the Act as "information recorded in any form". Therefore when considering item 4 the Commissioner is required to consider what, if any, recorded information is held by the public authority that would fall within the scope of this request. He is satisfied the minutes of the 18 June 1998 meeting are the relevant recorded information because access to them would enable the complainant to determine how many of the named students are recorded.
50. The Commissioner understands that the complainant is aware that the 18 June 1998 minutes formed part of the enclosures to the letter of 10 April 2001 (item 1) as a result of previous disclosures of redacted material. As the Commissioner has concluded that the letter and all of the enclosures constitute the complainant's personal data in their entirety, it follows that the material held in relation to item 4 is also exempt under section 40(1).
51. The Commissioner also notes that as he has concluded that section 40(1) applies to all of the withheld information, the public authority was not in fact required to comply with section 1(1)(a) of the Act by virtue of section 40(5)(a). He is satisfied that access to all of the requested information should in fact have been considered under the DPA. In view of the Commissioner's conclusions above, he has not considered the section 40(2) further.

Procedural matters

52. In the letter dated 16 June 2005 the public authority identified that in its view some information constituted the complainant's personal data and therefore it was exempt and should be considered under the DPA. In failing to specifically cite section 40(1) in the refusal notice in respect of that information the public authority breached section 17(1)(b) of the Act.

The Decision

53. 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 identified that some of the requested information within the scope of items 1 and 2 was exempt from disclosure on the basis that it was the complainant's personal data.
54. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- It breached section 17(1)(b) in relation to the information it identified as the complainant's personal data in its letter dated 16 June 2005 because it failed to specifically cite section 40(1) in respect of that material.
- It failed to identify that in fact all of the information held which is relevant to items 1, 2 and 4 constitutes the complainant's personal data and is therefore exempt under section 40(1).

Steps Required

55. In view of the conclusions set out above the Commissioner requires no steps to be taken by the public authority.

Other matters

56. The Commissioner notes the complainant's assertion that information he had requested which contained personal data of others could be disclosed to him because it was needed for legal proceedings. In doing so he referred to section 35 of the DPA. This provides that personal data are exempt from the non-disclosure provisions where disclosure is necessary for the purpose of legal proceedings. In other words, information which could not normally be processed because to do so would breach certain data protection principles can be released if this is required for legal proceedings. This would be relevant when considering whether a disclosure is appropriate within the context of such legal proceedings. However in this case the Commissioner is not considering such a limited disclosure and is instead required to determine whether information should have been released to the wider public under the Act. Therefore section 35 of the DPA is not relevant and has not been considered.
57. The Commissioner has determined that all of the requested information constitutes the complainant's personal data and should have been considered under section 7 of the DPA. He will now go on to make an assessment under section 42 of the DPA as to whether the public authority has complied with that Act.
58. However, the assessment will be dealt with separately and will not form part of this Decision Notice, because an assessment under section 42 of the DPA is a separate legal process from the consideration of a complaint under section 50 of the FOI Act.

Right of Appeal

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

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

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

60. 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.
61. Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 23rd day of December 2008

Signed
Gerrard Tracey
Assistant Commissioner

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

Legal Annex

Section 1

“(1) 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.

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

(3) 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 17

“(1) 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.

(5) 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.

(7) 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”.

Section 40 - Personal information

40. - (1) 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.

(2) 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.

(3) 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.

(4) 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).

(5) 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) the 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).

(6) 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.

(7) 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.