

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 8 January 2008

Public Authority: The Commissioner of the Metropolitan Police Service
Address: New Scotland Yard
Broadway
London
SW1H 0BG

Summary

The complainant requested the agreement leading to the reinstatement following suspension of a senior officer at the public authority. The public authority withheld this, citing sections 38 (health and safety), 40 (personal information) and 41 (information provided in confidence). Following the intervention of the Commissioner, the public authority dropped its claim that section 38 applied. The Commissioner finds that the exemption provided by section 40(2) is not engaged as, whilst the information in question does constitute personal information, its disclosure would not breach the data protection principles. The Commissioner also finds that the exemption provided by section 41 is not engaged as the information in question was not provided to the public authority from a third party. The public authority is required to disclose the information initially withheld.

The Commissioner's Role

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

The Request

2. On 18 March 2005, the complainant requested the following information:
"...the ACAS negotiation settlement regarding the reinstatement of Ali Dizaei"
3. The public authority responded to this on 1 April 2005. In this response, the public authority firstly confirmed that the information requested by the complainant was held by it. The public authority went on to state that the information requested by

the complainant would not be disclosed as it was considered exempt under sections 38, 40 and 41.

4. In connection with section 38, the public authority stated that it believed disclosure of the requested information would have a detrimental effect on the health of Superintendent Dizaei (the "third party"). In connection with section 40, the public authority stated that the requested information contained personal information relating to individuals other than the complainant. In connection with section 41, the public authority stated that the information requested by the complainant constituted a confidential agreement and disclosure of this would be a breach of confidence.
5. The complainant responded to this on 19 April 2005. In this letter, the complainant asked the public authority to carry out an internal review of its handling of his request.
6. The public authority responded to this on 12 July 2005. In this response, the public authority upheld its initial decision to withhold the information requested, stating that the exemptions cited at the time that the request was refused had been applied correctly.

The Investigation

Scope of the case

7. On 12 September 2005, the complainant contacted the Commissioner to complain about the handling of his information request. The complainant specified that he wished to complain about the decision of the public authority to refuse to disclose the information requested as he did not agree that the exemptions had been applied correctly.
8. The Independent Police Complaints Commission (the "IPCC") has previously published a report into the actions of the public authority in relation to the suspension and reinstatement of the third party. This report includes quotations from the compromise agreement that is the subject of this notice. This notice relates only to those parts of the compromise agreement that were not disclosed with the publication of the IPCC report.
9. An individual aside from Superintendent Dizaei is named in section 3 of the compromise agreement. The name of this individual should be redacted from the version of this document disclosed in response to this notice. The redaction of this information is covered in paragraph 67 below.

Chronology

10. The Commissioner contacted the public authority initially on 30 March 2007. In this letter, the public authority was notified of the complaint and the complainant's grounds for this complaint.

11. The public authority was asked to respond with the following clarification in relation to each of the exemptions cited in response to the complainant's request:
 - **Section 38**

12. The public authority was asked to respond, stating in what way it considered that disclosure of the requested information would have a detrimental effect on the health of the third party and that of his family members. It was also noted that, in its refusal notice, the public authority had cited an invasion of the privacy of the third party through disclosure. The Commissioner advised the public authority that, where it had concerns about the disclosure of personal information, section 40 would be more likely to be the relevant exemption.
 - **Section 40**

13. The public authority was asked to confirm whether the relevant subsection here was (2) and was asked to advise which of the data protection principles it believed would be breached through disclosure of the requested information and why.
 - **Section 41**

14. The public authority was asked firstly to confirm the details of the agreement that this information would be held in confidence. The public authority was asked to include in its response confirmation that the information withheld under this exemption had been provided to it by a third party organisation or individual and that the breach of confidence resulting from the disclosure of this information would be actionable.

15. The public authority responded to this on 8 June 2007. Firstly, the public authority provided a synopsis of the events involving the third party that the information request pertained to. The third party was the subject of an investigation, named 'Operation Helios', which led to the prosecution of criminal charges against him. He was eventually cleared and following negotiations involving ACAS, the third party was reinstated to the employment of the public authority. He was suspended during his prosecution.

16. In connection with section 38, the public authority stated that it no longer considered that this exemption was applicable. Section 38 is not, therefore, considered any further in this notice.

17. The public authority referred specifically here to a book co-written by the third party which was published in March 2007. The public authority acknowledged that the third party had publicly commented on Operation Helios in this book.

18. The public authority went on to give its reasoning for citing section 40. The public authority confirmed that subsection (2) is indeed relevant here and described which of the data protection principles it believed would be breached through the disclosure of this information and its reasoning for this.

19. The public authority stated that the agreement with the third party had been made on a basis of confidentiality and it believed, therefore, that the third party would have no reasonable expectation that this information would be disclosed. The public authority believed that, on this basis, disclosure of this information would breach the first data protection principle. The public authority also stated that it believed disclosure of this information would breach the second and sixth data protection principles.
20. The public authority also gave its reasoning as to why it believed that section 41 was applicable in this case. The public authority stated that all information provided to ACAS as part of their conciliation service is confidential. Section 66 of The ACAS Arbitration Scheme (Great Britain) Order 2004 states that:

“Arbitrations, and all associated procedures under the Scheme, are strictly private and confidential”.
21. The public authority stated that the agreement brokered by ACAS was provided to it by ACAS, rather than having been generated by the public authority itself. The public authority also stated that all parties to the agreement had agreed that it should remain confidential. The public authority stated that it believed that any breach of this confidence would be actionable.
22. The Commissioner contacted the public authority again on 28 June 2007. In this letter, the public authority was asked to provide to the Commissioner's Office a copy of the withheld information in this case in order that it could be assessed whether the exemptions applied to this information had been cited correctly.
23. Also in this letter, it was noted that there had been substantial media coverage and publicising of the issues surrounding the third party and that the third party and the public authority had participated in this media coverage. This coverage had included the previously mentioned book co authored by the third party.
24. The Commissioner noted that this had lead to a substantial amount of information relating to the issues surrounding the third party being in the public domain. The public authority was asked to provide its comments on what impact it considered that this coverage should have on the expectations of privacy held by the third party.
25. The public authority commented on this issue only to say that fairness was not an issue when considering whether section 41 applies. The public authority did not comment in connection with the general expectations of privacy held by the complainant and did not address the issue of the information already in the public domain in connection with section 40. At this stage the public authority also stated that it considered that the information is by its nature confidential and, therefore, subject to section 41.
26. The Commissioner contacted the public authority further on 30 August 2007. In light of the participation of the third party in the media coverage, the public

authority was asked to confirm whether the third party had been consulted as to his views on disclosure and, if so, what his response was. If the public authority had not consulted the third party as to his views on disclosure, it was asked to do so at that stage.

27. The public authority responded to this on 25 October 2007. With this response, the public authority attached the third party's written confirmation that he objected "*vehemently*" to disclosure of the requested information. The public authority also attached to its response the decision of the IPCC Review Panel into the circumstances surrounding the suspension and subsequent reinstatement of the third party to the public authority. The public authority referred the Commissioner to pages 3 and 4 of this document, where it stated that the "*precise nature of the confidentiality of the compromise agreement is outlined*". The passage in question from the IPCC Review Panel decision is as follows:

"...the MPS had taken the wholly unprecedented step of concluding a 'private & confidential' agreement with Supt. Dizaei, brokered by ACAS and with the Metropolitan Police Authority, the Police Superintendents Association and the Metropolitan and National Black Police Associations as parties to the agreement. We return to this agreement below; suffice to note here that we are satisfied that the MPS was well aware that its provisions relating to discipline were ultra vires, seeking as it did to circumvent the PCA's exercise of its powers under the 1996 Act concerning the police disciplinary system, and amounted, in the MPS' own words to 'a wholesale departure from the rules'. We deplore this action by the authority responsible for upholding the integrity of the police disciplinary system. We also deplore the 'private and confidential' basis for such an agreement when the PCA was not included in either its negotiation or completion. And we deplore the covert manner in which the negotiations were conducted, and the MPS' subsequent prevarication in failing to secure the release of the full document to the PCA."

28. With regard to the high profile of the issue of the suspension of the third party and his subsequent reinstatement, the Commissioner researched the extent to which the contents of the compromise agreement is widely known through the media. The following are examples of the myriad information disclosed through the media about this matter and available online:

http://entertainment.timesonline.co.uk/tol/arts_and_entertainment/books/book_ext_racts/article1450632.ece

"Chief Superintendent Dizaei received 'words of advice' in two areas where he acknowledged that his conduct had fallen below the standards expected of a police officer"

<http://news.bbc.co.uk/1/hi/england/london/3226687.stm>

"...Superintendent Ali Dizaei was suspended from his £52,000-a-year-job in 2001 following claims that he was involved in drugs, prostitution and theft. But he was cleared of all charges last month and has now reached a settlement with the police force through arbitration."

http://www.ipcc.gov.uk/news/pr160604_dizaei.htm (press release by the Independent Police Complaints Commission)

“The Commission’s report by a panel of three Commissioners is published today (16 June). It finds the MPS handling of the misconduct case against Supt Ali Dizaei to be seriously flawed, with two main errors of judgement and mismanagement:

- *Making a private and confidential agreement with Supt Dizaei and then delaying its full disclosure to the PCA, thereby pre-empting the MPS’ own investigation and usurping the requirements of the 1996 Police Act without just cause.*
- *Confusing the vital public interest in promoting an effective diversity recruitment plan for the MPS with its public duty to uphold the police discipline system by assessing misconduct proceedings against Supt Dizaei on their merits.”*

Analysis

Exemption

Section 40

29. There are two conditions that must be met for this exemption to be engaged. Firstly, the information in question must constitute personal data. Secondly, disclosure of this information must breach one of the data protection principles.

Personal data?

30. Firstly, on the issue of whether the compromise agreement would constitute personal data, the stance of the public authority is that this information would constitute the personal data of the third party. The compromise agreement is divided into 7 sections. Section 1, titled “Return to work” concerns specifically the reinstatement of the third party and this is considered here first.
31. This section covers the specific details of the third party’s reinstatement, including the date for this and the steps that were to be taken by the third party and by the public authority designed to ensure that the reinstatement was a success. The third party is also clearly identified as the individual to whom the agreement relates. The Commissioner is satisfied that the information in section 1 of the compromise agreement is clearly the personal data of the third party. This information relates to the third party and has biographical significance to him.
32. Sections 2 – 7 of the agreement relate to wider actions that will be taken by the public authority and other parties to the compromise agreement. The information

- contained in these sections is less closely related to the third party than the information in section 1 of the agreement and the issue of whether this would constitute personal data relating to the third party has been considered separately.
33. As referred to above, the information in sections 2 – 7 of the compromise agreement relates less clearly to the third party. This information concerns steps that will be taken by the public authority, Metropolitan Police Authority, Metropolitan Black Police Association and the National Black Police Association in response to the reinstatement of the officer to the public authority. In some cases, this is to reverse or cancel policies or actions instigated in response to the controversial circumstances of the suspension of the third party from the public authority.
 34. Sections 2 – 7 of the agreement do not include content directly related to the reinstatement of the third party in that they do not set out details of this reinstatement or of steps that should be taken by the third party in connection with his reinstatement. Neither is any reference made to the detail of the third party's suspension.
 35. That there is no direct link between the information contained in parts 2 – 7 of the agreement to the third party would suggest that this would not constitute his personal data. At the least, it is clear that much, if not all, of this information would not be personal data of the third party if it were held in a different context than within this compromise agreement.
 36. However, the context within which this information appears here is crucial. Even without considering why this information is included within the compromise agreement, it could be surmised that the parties to the compromise agreement believed this information to be associated with the third party, given that this information has been included within the agreement and evidently that these matters were discussed as part of the negotiations leading to the reinstatement of the third party.
 37. As noted above at paragraph 34, whilst this information does not relate directly to the third party, it does concern steps that will be taken by the various parties to the agreement in response to the reinstatement of the third party. The Commissioner surmises that this information has been included within the compromise agreement document as the actions set out in these parts of the agreement were integral to the decision to reinstate the third party. If it is accepted that the conditions set out in sections 2 – 7 of the agreement are integral to the decision to reinstate the third party, it would be artificial to separate these sections from the whole.
 38. The Commissioner finds that the compromise agreement in its entirety is personal data relating to the third party. As stated above, the Commissioner is satisfied that the information in section 1 of the agreement is clearly personal data of the third party. This section relates directly to the decision to reinstate the third party and the steps that he was to take in connection with the reinstatement.

39. Whilst the information in parts 2 – 7 of the agreement is less clearly directly related to the complainant, the Commissioner finds that, in the context of the compromise agreement, this also is personal data relating to the third party. In coming to this conclusion, the Commissioner has noted that the inclusion of these sections within the compromise agreement demonstrates that the actions described were integral to the decision to reinstate the third party. This information cannot, therefore, be separated from the wider compromise agreement.

Breach of the data protection principles?

40. The Commissioner's considerations here have focussed on whether disclosure would be fair and in compliance with the first data protection principle. As the public authority has argued that, in addition to a breach of the first data protection principle, disclosure here would also constitute a breach of the second and sixth data protection principles, the Commissioner has also considered the arguments of the public authority as to why disclosure would breach the second and sixth principles.
41. The second data protection principle provides that personal data shall be processed only for one or more specified and lawful purposes. The argument of the public authority is that disclosure here would be incompatible with the purpose for which this information was created.
42. The Commissioner does not consider the disclosure of personal data in response to an FOI request to be a specific purpose for which such information is processed. In responding to an FOI request a public authority is not fulfilling one of its business purposes; it is simply complying with a legal obligation. It would be difficult to argue that, as a rule, compliance with a legal obligation, such as that imposed by the Act, would be incompatible with the other purposes for which personal data may be processed. Therefore the Commissioner rejects the argument that a disclosure in response to an FOI request would, in itself, breach the second data protection principle.
43. The sixth data protection principle requires that personal data shall be processed in accordance with the rights of data subjects under the Data Protection Act 1998 (the "DPA"). The argument of the public authority here is that, as the third party was given a specific guarantee of confidentiality in relation to the information in question, disclosure would be in breach of his rights under the DPA.
44. It is not the case that the sixth principle refers to the raft of ways in which the DPA protects personal data as a 'right'; rather Schedule 1 Part II(8) of the DPA sets out the only circumstances in which the sixth principle can be breached. The circumstances specified are where personal data are not processed in accordance with the rights provided by sections 7, 10, 11 and 12 of the DPA. The public authority's argument as to why the sixth principle would be breached through disclosure here do not refer to the rights provided by these sections and it is incorrect, therefore, in its belief that the sixth data protection principle would be breached through disclosure.

45. Turning to the first data protection principle, which requires that personal data shall be processed fairly and lawfully, the argument of the public authority here is that the first data protection principle would be contravened through disclosure due to the strong expectation of confidentiality that the third party would hold in relation to the requested information. The public authority stated that this expectation resulted from the strict assurance of confidentiality at the time that the agreement was reached.
46. The Commissioner accepts that the expectation of confidentiality held by the third party would be strong. As referred to above, the public authority has stated that a strict assurance of confidentiality was made in relation to the compromise agreement. The agreement itself is marked "Private & Confidential" on its cover page.
47. The Commissioner also considers it legitimate to argue that the nature of the withheld information would mean that the parties to it would have a reasonable expectation of confidentiality. In general, discussions between the employer and employee would be subject to some expectation of confidentiality. In this circumstance, where the employee has been suspended and is returning to work subject to conditions, it would be fair to argue that the employee would hold a strong expectation of confidentiality in relation to the information recording the details of his return to work.
48. As referred to at paragraph 27, the public authority sought the views of the third party to disclosure. The third party confirmed that he objected to disclosure of the information in question. Having recently expressed this view on disclosure, the third party is likely to hold a strengthened expectation against disclosure. This confirmation from the third party also removes the possibility that any expectation of confidentiality that he does hold has been reduced due to the passage of time since the finalising of the compromise agreement.
49. On the issue of the nature of the information withheld and the expectation of confidentiality held by the third party in relation to this, the Commissioner notes that there are valid arguments that disclosure would be unfair. Both the nature of the contents of the withheld information and the specific guarantees of confidentiality mean that the third party would hold a strong expectation that this information would not be disclosed and is likely to believe strongly that any such disclosure would be unfair.
50. Turning to the arguments that disclosure here would not be unfair, there has been considerable media coverage of the circumstances of the third party's initial suspension from the public authority and his subsequent reinstatement. Specific examples of the information disclosed through the media are given above at paragraph 28.
51. Where media coverage had taken place without the active or consenting involvement of the subject, and particularly where the subject has expressly objected to the coverage, this would limit the weight that could be given to this factor when considering the fairness of a broader disclosure. However, in this

case both the public authority and, notably, the third party have actively participated in this coverage. The public authority has issued several press releases concerning the issue involving the third party.

52. The involvement of the third party in the media coverage has gone further than this. Whilst the Commissioner accepts that the specific details of the contents of the compromise agreement were not disclosed in the third party's book, given that the third party has recently objected to the disclosure of the compromise agreement, that the third party has actively sought publicity and to financially profit from these circumstances must be taken into account here. As well as the book, the third party has given interviews about this matter to a number of media outlets. That the third party and, to a lesser extent, the public authority has participated in the media coverage of this matter is a valid and strong argument that disclosure of the compromise agreement could not be characterised as unfair.
53. As noted above, the third party would hold a strong expectation of the confidentiality of this information. However, in light of the comments of the IPCC as quoted above at paragraph 27, it is questionable whether it was appropriate for the public authority to guarantee to the third party the confidentiality of this information. Whilst it is not suggested that the intention of the IPCC in stating that *"We also deplore the 'private and confidential' basis for such an agreement when the PCA was not included in either its negotiation or completion. And we deplore the covert manner in which the negotiations were conducted"* was to indicate that the compromise agreement should be publicly available, rather the IPCC was indicating that it was inappropriate for this agreement to have been entered into away from the accountability provided by the Police Complaints Authority. The Commissioner considers this of relevance in that it suggests that it was inappropriate for the public authority to guarantee that the compromise agreement would be subject to such a high level of confidentiality.
54. It is appropriate to consider what, if any, detriment would be suffered by the third party through disclosure here. Where considerable detriment or harm would result through disclosure and this detriment would be unnecessary or unjustified, this would add weight to the argument that disclosure would be unfair.
55. Where disclosure would result in the first time release of information showing that an individual had been the subject of allegations and had been suspended by their employer as a result, a strong argument could be made that significant detriment would result. In this case, that the third party was the subject of allegations about his conduct and that he was suspended from the employment of the public authority as a result is widely known. The withheld information here contains no further details of the allegations made against the third party than those which are already widely known.
56. It is highly significant that the information in question here relates solely to the third party in connection with his professional life. In general, the Commissioner will be more inclined to conclude that disclosure of personal data would be unfair where this would involve a disclosure of information concerning an individual's private life. Where an individual is employed by a public authority, information

concerning that employment is always likely to have a lesser quality of confidence attached to it than information disclosing details of an individual's private life, even where very specific guarantees of confidence have been made in relation to that information.

57. The argument that disclosure of the information in question here would be unfair is significantly reduced as a result of this information relating to the third party in a solely professional capacity. This is particularly the case when considering whether disclosure would result in unnecessary or unjustified detriment to the third party. In general, arguments in this area would focus on detriment resulting to an individual's private life; rarely will similar arguments be compelling where they relate to an individual in a professional capacity.
58. Compliance with the first data protection principle requires the fulfilment of at least one condition from DPA Schedule 2. Where processing of personal data does not meet at least one of these conditions, it will not be compliant with the first data protection principle.
59. The Commissioner's considerations here have focussed on the sixth condition. This provides that processing of personal data will be compliant with the first data protection principle where it is carried out in the legitimate interests of a third party or parties to whom the data are disclosed, unless this processing is unwarranted through prejudice it would cause to the rights and freedoms or legitimate interests of the data subject. Having recognised arguments in favour of disclosure, the Commissioner has considered whether disclosure would be in the legitimate interests of a third party or parties and whether it would prejudice the rights and freedoms or legitimate interests of the data subject.
60. Disclosure under the Act is 'global' disclosure; that is that where a decision is made that information should be disclosed in accordance with the Act, it should be disclosed to any person, not only to the applicant in any particular case. In this case, therefore, the third parties referred to in condition 6 would be the public at large. The argument about legitimate interests of third parties here therefore becomes an argument as to whether disclosure would be legitimately in the public interest.
61. When considering the public interest, the media coverage is of relevance. Whilst the difference between of interest to the public and in the public interest should be recognised, that the media coverage here was of the actions of an organisation that is publicly funded and, ultimately, publicly accountable, suggests that the media coverage was of a subject legitimately in the public interest. The extent of this coverage can be taken as an indicator of the strength of this public interest.
62. The issue of accountability of the public authority is relevant here. The actions of the public authority are subject to review by the Independent Police Complaints Commission (the "IPCC") and the actions of the public authority here have been reviewed by the IPCC. The report of the IPCC into the actions of the public authority in this circumstance was critical of the public authority in several areas, including where it had sought to avoid its accountability to the predecessor to the IPCC, the Police Complaints Authority.

63. That the public authority should be accountable is clearly in the public interest. To the extent that disclosure would improve the accountability of the public authority through revealing details of actions taken by it without accountability, this would serve the public interest.
64. Further to this argument, it is necessary to consider the impact of steps taken by the public authority without accountability. Included within the withheld information are details of decisions taken with regard to policies that will affect persons other than the parties to the agreement. Where the public authority has formulated policy that may result in a broad impact, it is of particular significance for this policy to be subject to accountability.
65. Part of the compromise agreement was for the public authority to take action later specifically contradicted by the IPCC. Whilst the Commissioner notes that the IPCC report was published on 16 June 2004, after both the compromise agreement dated 24 October 2003 and the date on which the action in question was to be taken by the public authority, it nonetheless is of significance that a further result of the public authority acting without accountability was to include within the compromise agreement a step specifically contradicted within the belated accountability provided by the IPCC. This further supports the argument that disclosure would be in the public interest to enhance the accountability of the public authority.
66. Overall, the Commissioner finds that disclosure here would clearly be in the legitimate interests of third parties. The Commissioner does not believe that prejudice would be caused to the rights and freedoms of the third party through disclosure and believes that any argument that disclosure would be counter to the third party's legitimate interests is outweighed by the arguments in favour of the legitimate interests of the public. The processing of personal data inherent in the disclosure of the compromise agreement would, therefore, be compliant with the first data protection principle to the extent that Condition 6 from DPA Schedule 2 would be fulfilled.
67. As noted above at paragraph 9 the compromise agreement includes personal data relating to an individual other than the third party. In relation to this information, the Commissioner concludes that disclosure would be in breach of the first data protection principle and thus is exempt by virtue of section 40(2). In coming to this conclusion, the Commissioner has had regard to the fact that this individual is not the subject of this agreement and that the interest of the complainant is not in information relating to this individual.

Conclusion

68. The conclusion of the Commissioner is, firstly, that the compromise agreement would in its entirety constitute personal data of the third party. Second, the Commissioner concludes that disclosure of this information would not breach the data protection principles. The exemption provided by section 40(2) is not, therefore, engaged.

69. The Commissioner has dismissed the arguments of the public authority concerning the second and sixth data protection principles, as covered in paragraphs 40 - 44. The conclusion in relation to the first data protection principle is that disclosure would not be unfair. In coming to this conclusion, the Commissioner has recognised that the third party would hold a strong expectation of confidentiality in relation to this information. The third party has in any event recently confirmed that he objects to disclosure and the nature of the information supports the notion that disclosure would be unfair.
70. However, the Commissioner also finds that much information about the overall set of circumstances concerning the third party and some of the detail of the compromise agreement has been disclosed through media coverage and that, crucially, the third party has participated in this coverage. The Commissioner further finds that there is no clear detriment that would result to the third party through disclosure and that, further to the argument that the third party would hold a strong expectation of confidentiality, it may have been inappropriate for the public authority to formulate this agreement on the basis of strict confidentiality given the comments made on this issue by the IPCC.
71. Had the information related to the third party in a private rather than professional capacity, it is far more likely that the Commissioner would have concluded that disclosure would be unfair. However, this information relates to the third party in a professional capacity, significantly reducing the argument that disclosure would be unfair. Finally, the Commissioner finds that the processing of personal data inherent in the disclosure of this information would fulfil a condition for compliance with the first data protection principle.

Section 41

72. There are two conditions that must be fulfilled for this exemption to be engaged. Firstly, the information to which this exemption is considered to relate must have been obtained by the public authority from a third party. Secondly, disclosure of this information must constitute an actionable breach of confidence. If either of these conditions is not fulfilled this exemption will not be engaged.
73. The stance of the public authority here is that the information in question was obtained by it from ACAS. The public authority states that the compromise agreement constituting the withheld information was brokered and authored by ACAS and a copy of the agreement was provided to the public authority and to the other parties to the agreement. The public authority further argues that this information was subject to an agreement to maintain its confidentiality.
74. The Commissioner does not consider that the information withheld here was obtained by the public authority from a third party. Whilst the Commissioner acknowledges that ACAS was involved in the brokering of this agreement, it does not appear that the information withheld was created by ACAS and subsequently obtained by the public authority from ACAS. Instead, it appears that all parties to this agreement were responsible for its contents. Given that this agreement is primarily between the third party and the public authority, the Commissioner considers that the agreement originated from the public authority.

75. The Commissioner also notes the ruling of the Information Tribunal in the case of *Derry City Council v The Information Commissioner*. In that case, the Tribunal upheld the ICO view that a written agreement between two parties did not constitute information provided by one of them to the other, and that therefore, a concluded contract between a public authority and a third party does not fall within section 41(1)(a) of the Act.
76. The Commissioner concludes that this exemption is not engaged. As this conclusion has been reached on the basis that the information in question was not obtained by the public authority from a third party, no further consideration has been given to the other requirements of section 41.

The Decision

77. The decision of the Commissioner is that the public authority has failed to comply with section 1(1) of the Act in that it applied the exemptions provided by sections 40(2) and 41 incorrectly to the majority of the information.
78. He is however satisfied that section 40(2) was correctly applied to the name of the individual other than the third party mentioned in the agreement and that this information should not therefore be released.

Steps Required

79. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
80. Disclose to the complainant the information withheld in response to his information request of 18 March 2005. The name of the individual other than Mr Dizaei should be redacted from the version that is released.

Failure to comply

81. 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.

Other matters

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

83. It has been suggested at various stages of the case handling process that disclosure here would be against the wishes and interests of the other parties to the compromise agreement, aside from the public authority and the third party. However, at no stage has any exemption from the Act been cited in support of these arguments. The arguments put forward by the public authority related solely to a duty of confidence it claimed was owed to it and that it would be in breach of the data protection principles to disclose the third party's personal data. The Commissioner has given no consideration to the possible impact of disclosure on the other parties to the compromise agreement.

Right of Appeal

84. 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

85. 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 8th day of January 2008

Signed

**Richard Thomas
Information Commissioner**

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

Legal Annex

Freedom of Information Act 2000

Section 38

Section 38(1) provides that –

“Information is exempt information if its disclosure under this Act would, or would be likely to-

- (a) endanger the physical or mental health of any individual, or
- (b) endanger the safety of any individual.”

Section 40

Section 40(2) provides that –

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

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

Section 41

Section 41(1) provides that –

“Information is exempt information if-

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

Data Protection Act 1998

The first data protection principle

“Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

- (a) at least one of the conditions in Schedule 2 is met, and
- (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.”

Schedule 2(6)(1) states that:

“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.”

The second data protection principle

“Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.”

The sixth data protection principle

“Personal data shall be processed in accordance with the rights of data subjects under this Act.”

Schedule 1 Part II(8) states:

“A person is to be regarded as contravening the sixth principle if, but only if –

(a) he contravenes section 7 by failing to supply information in accordance with that section.

(b) he contravenes section 10 by failing to comply with a notice given under subsection (1) of that section to the extent that the notice is justified or by failing to give a notice under subsection (3) of that section,

(c) he contravenes section 11 by failing to comply with a notice given under subsection (1) of that section.

(d) he contravenes section 12 by failing to comply with a notice given under subsection (1) or (2)(b) of that section or by failing to give a notification under subsection (2)(a) of that section or a notice under subsection (3) of that section.”