

Freedom of Information Act 2000 (Section 50)

Decision Notice

15 December 2008

Public Authority: Children and Family Court Advisory and Support Service
Address: National Office
8th Floor
South Quay Plaza
189 Marsh Wall
London
E14 9SH

Summary

The complainant requested copies of all papers listed as having been discussed at the 8 September 2006 board meeting of the public authority. The public authority refused the request, with the exemptions provided by sections 36(2)(b)(i) & (ii) and 36(2)(c) (prejudice to the effective conduct of public affairs), 40(2) (personal information) and 44(1)(a) (statutory prohibition) cited. The Commissioner finds that the exemptions provided by sections 36(2)(c) and 40(2) were applied correctly. However, the Commissioner also finds that the exemption provided by section 44(1)(a) is not engaged and that the public authority breached section 17(1)(b) in failing to cite section 40(2) at the refusal notice or internal review stage despite later relying on this when corresponding with the Commissioner.

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 17 October 2006, the complainant made the following information request:

"...I formally request copies of all papers, reports and policy documents presented to the CAF/CASS board at the board meeting on the 8th September 2006 and as listed in the minutes of that meeting."

3. The public authority responded to this on 9 November 2006. In this response the public authority disclosed the majority of the information falling within the scope of the request, but some of the information was withheld. The titles of the documents withheld and the exemptions cited in connection with these documents are as follows:

“Separate Representation of Children and Family Procedure Rules A new procedural code for family proceedings.”

Section 21 (information available by other means); the public authority stated that this information was available on its website.

The Corporate Risk Register

Section 36(2)(b) and (c) (prejudice to the effective conduct of public affairs); the Chief Executive as the Qualified Person (‘QP’) gave his opinion that disclosure would inhibit the free and frank exchange of views and would otherwise prejudice the effective conduct of public affairs.

Interim Policy on Staff Retirement, and

“Review of Child Deaths and Other Serious Incidents”

The public authority cited The Children and Family Court Advisory and Support Service Regulations 2005 Regulation 21(1) in respect of both these documents. Regulation 21(1) provides that meeting minutes in some cases will not be subject to disclosure. The public authority did not specify an exemption from the Act here.

4. On 13 November 2006, the complainant requested an internal review of the handling of his request. The public authority responded to this on 7 December 2006 and upheld the initial refusal of the request. Subsections 36(2)(b)(i) & (ii) and 36(2)(c) were quoted by the public authority. The public authority also specified that section 44(1)(a) should have been cited in connection with the Children and Family Court Advisory and Support Service Regulations 2005 (the “Cafcass” Regulations). The public authority further stated that once the interim policy on staff retirement had been replaced by a permanent policy, which was being drafted, a copy of this would be disclosed to the complainant.

The Investigation

Scope of the case

5. The complainant contacted the Commissioner on 16 January 2007 to raise the issue of the refusal by the public authority to disclose the requested information.
6. The document titled *“Separate Representation of Children and Family Procedure Rules A new procedural code for family proceedings.”* was refused under section

21 as it was available on the website of the public authority. The complainant was advised early in the case handling process that it would be assumed that he had accessed this information and that the citing of section 21 would not be included within the scope of his complaint, unless he advised otherwise. The complainant did not respond on this issue and the citing of section 21 is not covered further in this notice.

7. The request for the *Interim Policy on Staff Retirement* was initially refused under section 44. At internal review the complainant was advised that once a permanent policy on staff retirement had been finalised, this would be disclosed to him. The public authority later confirmed to the Commissioner that the retirement policy had been disclosed to the complainant. Following this disclosure, the retirement policy is not covered further in this notice.

Chronology

8. The Commissioner contacted the public authority initially on 9 November 2007. In connection with the citing of section 36, the public authority was asked to confirm that its Chief Executive was the QP for the purposes of section 36 and to state when the QP had given his opinion and what he had taken into account when giving this opinion. The public authority was also asked to specify why it believed that prejudice or inhibition would or would likely result from disclosure and why the public interest in maintenance of the exemption outweighed the public interest in disclosure. It was also noted that some organisations choose to make their risk registers public. The public authority was asked to comment on why it believed that the exemption applied in respect to information made publicly available by other organisations.
9. In connection with the citing of section 44, it was noted that Cafcass Regulation 21 appeared to relate specifically to meeting minutes and that the information in connection with which this exemption had been cited was a paper discussed at a meeting and referred to in the minutes, rather than being a minute itself. In light of this, the public authority was asked to confirm why it believed that the information withheld here would be subject to this regulation. Finally, the public authority was asked to provide to the Commissioner a copy of all information withheld from the complainant.
10. The public authority responded to this on 14 December 2007. In this response, the public authority stated firstly that the Department for Constitutional Affairs (now the Ministry of Justice) had designated the Chief Executive as the QP for the purposes of section 36. On the issue of other organisations proactively disclosing their risk registers, the public authority stated that it had consulted with the Department for Children, Schools and Families on this issue and had been advised that *"not all public bodies make their higher level risk registers available"*. The public authority stated that it considered itself to be a high profile organisation and its risk register may be of use to pressure groups against the public authority. The public authority cited the following as its grounds for concluding that the public interest favoured the maintenance of section 36.

- *“Premature disclosure of the risk register may result in closing off options for Cafcass because of adverse public reaction.”*
 - *“Releasing the document would result in appropriate advice not being sought because of the reluctance of those who might supply it to engage in a debate where their contribution might be disclosable.”*
 - *“The release of this information may damage Cafcass and third party business reputation or the confidence that service users, suppliers or contractors may have in it. Disclosure of this information would reduce the effectiveness of this register by inhibiting full discussion and exploration of options in the early stages of actioning the risks.”*
11. In connection with the document titled *“Review of Child Deaths and Other Serious Incidents”*, the public authority stated the following in relation to the question of whether Cafcass Regulation 21 would apply to papers referred to in meeting minutes:
- “Having reviewed this response the exemption would relate to individual cases as stated in Cafcass Regulation 21”*
12. The public authority went on to state that it considered that this paper would also be subject to the exemption provided by section 40(2). The public authority stated that it believed that the contents of the paper constituted personal data and that disclosure would result in detriment to the data subjects.
13. The Commissioner contacted the public authority again on 9 January 2008. It was noted that the previous response from the public authority had not addressed the issue of whether the public authority believed that Cafcass Regulation 21 covered papers circulated at a meeting when it appeared clear that this regulation relates only to meeting minutes. The public authority was again asked to address this issue.
14. The public authority was also asked to respond with further details about its citing of section 40(2). It was noted that, given that the paper does not directly identify any individual, the stance of the public authority appeared to be that the contents of the paper combined with other information available to the reader would enable the identification of individuals. In connection with this, the public authority was asked to respond to the following:
- Specify from which sources you believe information would be available that would enable identification of individuals when combined with the information in the paper titled *“Review of Child Deaths and Serious Incidents”*.
 - Specify to which individuals the personal data disclosed would relate.
15. The public authority responded to this on 25 January 2008. It specified that it believed that the children referred to in the paper could be identified from the contents of the paper, combined with information disclosed into the public domain through the media. The public authority stated that it considered it particularly likely that neighbours of the children referred to in the paper, or teachers and pupils at the schools they had attended would be able to identify them. The public

authority failed to respond to the question about whether a paper circulated at a meeting would constitute meeting minutes.

Findings of fact

16. The Ministry of Justice specifies the Chief Executive of the public authority as the QP for the purposes of section 36:

<http://www.foi.gov.uk/guidance/exguide/sec36/annex-d.htm#part6>

17. [PARAGRAPH REDACTED]

Analysis

Procedural matters

Section 17

18. Section 17(1)(b) requires that, where a request is refused on the grounds that any exemption from Part II of the Act applies, the public authority should specify the exemption in question. In failing to cite section 40(2) in respect of the document titled "*Review of Child Deaths and Other Serious Incidents*" and later relying on this in correspondence with the Commissioner, the public authority failed to comply with section 17(1)(b).

Exemption

Section 36

19. When determining whether section 36 has been appropriately applied the Commissioner must consider the following:

Whether an appropriately designated qualified person has given their opinion?

What the opinion was, when it was given and was it objectively reasonable?

Whether the public interest in maintaining the exemption outweighs the public interest in disclosure?

20. Appropriately designated qualified person

For each public authority, section 36(5) sets out who the QP would be. The public authority in this case falls within section 36(5)(o), which means that its QP is either a Minister of the Crown, the public authority itself if authorised to act in this capacity by a Minister of the Crown, or an officer or employee of the public authority if authorised to act in this capacity by a Minister of the Crown. The Ministry of Justice lists the Chief Executive of the public authority as the QP for

the public authority and the refusal notice referred to the Chief Executive in connection with the citing of section 36.

21. The public authority has provided the Commissioner with a record of an e mail exchange between the Chief Executive and an employee of the public authority. This demonstrates that the Chief Executive did personally give an opinion on the citing of this exemption.
22. What was the opinion, when was it given, was it reasonably arrived at and was it objectively reasonable?

The public authority cited subsections 36(2)(b)(i) & (ii), which provides that information the disclosure of which, in the reasonable opinion of a qualified person, would, or would be likely to, inhibit the free and frank provision of advice and the free and frank exchange of views for the purpose of deliberation is exempt subject to the public interest test.

23. The public authority also cited subsection 36(2)(c), which provides that information will be exempt if the reasonable opinion of the qualified person is that disclosure would prejudice the effective conduct of public affairs in any way not specified in subsections 36(2)(b)(i) & (ii). The public authority did not clearly specify what prejudice would be likely to occur aside from that in section 36(2)(b). However some of the arguments it advanced in favour of maintaining the exemption are not concerned with inhibition to the free and frank provision of advice or to the exchange of views for the purposes of deliberation, specifically that disclosure may damage the business reputation of the public authority and the confidence that service users, suppliers or contractors may have in it and that disclosure may assist pressure groups targeting the public authority. The Commissioner has taken these as the description of the other prejudice that the public authority believes would be likely to occur and in connection with which it has cited section 36(2)(c).
24. The email exchange mentioned in the previous section records that the QP gave his opinion on 8 November 2006. The process by which the opinion was reached includes considering what information was made available to the QP at the time the opinion was given. The Act does not comment on what would constitute an appropriate process for forming a reasonable opinion however the Commissioner would regard consideration of the contents of the specific information in question as essential to this process.
25. In this case the public authority has stated that the Chief Executive viewed the corporate risk register and discussed this issue with the Department for Children, Schools and Families (DCSF). The public authority has given no indication of the content of this discussion with the DCSF or what impact this had on the QP's opinion. In terms of the conclusions the QP drew after viewing the corporate risk register, these can be discerned through the arguments set out above at paragraph 10.
26. The Commissioner understands that the QP was also provided with submissions by his staff setting out the different factors to consider and further information

about the way the Act works. The Commissioner accepts that this together with a review of the exempt material shows that the QP undertook a reasonable process when forming his opinion.

27. Turning to the inhibition and prejudice that the QP has identified as the basis for his opinion, the grounds on which the public authority believed that the public interest favoured maintenance of the exemption are set out above at paragraph 10. The Commissioner has also taken these as the inhibition and prejudice that the QP identified. The initial refusal notice stated that the opinion of the QP was that the inhibition and prejudice identified would result. Since then, both at the internal review stage and in correspondence with the Commissioner, the stance of the public authority has appeared to be that the opinion of the QP was that inhibition and prejudice would be likely to result. Where the evidence suggests that it would be appropriate to do so, the Commissioner will consider the position of the public authority to be that disclosure 'would' result in inhibition or prejudice even in the absence of specific confirmation from the public authority that this is its position. In this case, as the public authority has at different times referred to both 'would' and 'would be likely', the Commissioner considers it appropriate to take the position of the public authority as being that the QP believed that inhibition or prejudice would be likely to result through disclosure.
28. When considering whether the opinion of the QP can be characterised as objectively reasonable, it is not for the Commissioner to form his own view of the likelihood of inhibition or prejudice, rather the role of the Commissioner is to consider whether the opinion held by the QP that the inhibition and prejudice identified would be likely to occur is objectively reasonable.
29. When determining whether or not the qualified person's opinion is objectively reasonable the Commissioner takes into account the nature and content of the specific withheld material in a particular case. In relation to section 36(2)(b)(i), the opinion of the QP was that disclosure could lead to people being inhibited from supplying advice in the future for fear that it could be disclosed. In connection with section 36(2)(b)(ii), the opinion of the QP was that inhibition would be likely to result to discussions of how to react when risks identified in the risk register occur.
30. The description given by the public authority for why the opinion of the QP was that the inhibition identified in subsections 36(2)(b)(i) and (ii) would be likely to occur lacks detail and quality. If it were the case that arguments of this standard were advanced in relation to a regular prejudice based exemption, the Commissioner would be unlikely to conclude that the exemption is engaged.
31. However, section 36 is unique amongst the exemptions within Part II of the Act in that it relies on the opinion of a qualified person. As has been recognised by the Information Tribunal in *Guardian & Brooke v The Information Commissioner & the BBC* (paragraph 64), section 36 relies on the good faith of the person giving the opinion. Where the evidence is that the opinion was reasonably arrived at and the public authority has identified specific inhibition that the QP believed was likely to occur as a result of disclosure, the Commissioner is unlikely to conclude that the opinion of the QP is objectively unreasonable. In this case the Commissioner

accepts that the opinion given by the QP was reasonable and the exemption provided by sections 36(2)(b)(i) and (ii) is, therefore, engaged.

32. Turning to the arguments of wider prejudice to the effective conduct of public affairs (section 36(2)(c)), the opinion of the QP here was that disclosure would be likely to harm its business interests and reduce the confidence that service users, suppliers or contractors have in it. The risk register records the likelihood of the risks identified occurring. This shows that the public authority believes that it is *“highly likely”* that some of these risks will occur. The Commissioner recognises that a third party contractor may wish to avoid entering into a contract with the public authority if it believes it can avoid a *“highly likely”* risk by not doing business with the public authority. However, as the public authority is unique in the service it provides, this argument does not appear to have the same degree of validity when applied to service users.
33. The public authority has argued that third parties, such as pressure groups, may seek to impede it by taking advantage of the contents of the risk register. The public authority has not explained how a third party could activate the risks identified in the risk register nor has it evidenced why this is likely. However, there is independent evidence available that the public authority has on a number of occasions been a target for protest by parents' rights groups and the Commissioner accepts that it is appropriate for the public authority to consider whether disclosure of the risk register could assist pressure groups in planning and carrying out future disruptive protests. Although it is not clear and it has not been described by the public authority how disclosure of the risk register would assist pressure groups, the Commissioner accepts that, given the evidence available and referred to above at paragraph 17 suggesting that the public authority has been repeatedly targeted by pressure groups, the possibility of this information being of assistance to such groups means it is reasonable for the QP to give this factor some weight.
34. The Commissioner accepts that the opinion of the QP that disclosure would be likely to prejudice the public authority in a manner other than that specified in subsections 36(2)(b)(i) and (ii) is objectively reasonable. The specific prejudice relevant to subsection 36(2)(c) in relation to which the Commissioner accepts the QP's opinion as reasonable is that third party contractors may be discouraged from doing business with the public authority as a result of disclosure and that disclosure may assist pressure groups in disrupting the work of the public authority. The exemption provided by subsection 36(2)(c) is, therefore, engaged.

The public interest

35. When considering the public interest in connection with sections 36(2)(b)(i) & (ii) and 36(2)(c), the Commissioner will have regard to the severity, extent and frequency of the inhibition and prejudice identified by the QP when giving their reasonable opinion. Whilst the Commissioner has accepted as objectively reasonable the opinion of the QP that inhibition and prejudice would be likely to result through disclosure here, this is not to suggest that the Commissioner has reached any conclusion about the severity, extent or frequency of this inhibition or prejudice. Where it appears that the severity, extent and frequency of inhibition or

prejudice would not be severe, this will weaken the argument that the public interest favours the maintenance of the exemption.

36. Covering sections 36(2)(b)(i) & (ii) firstly, the opinion of the QP was that inhibition would be likely to occur to the freeness and frankness of those contributing to the risk register through concern about future disclosure of the result of this advice. If such inhibition were to occur, its impact could be severe and extensive if, for example, it was to lead to the public authority being unable to plan how to effectively respond to risks. However, given that the risk register gives no indication of who contributed to it, the Commissioner does not believe that this inhibition is likely to be severe.
37. The QP also believed that inhibition would be likely to result to discussions of how to react when risks identified in the register occur. If such inhibition were to occur, the impact of this could be severe and extensive if, for example, it lead to the public authority reacting to risks ineffectively. However, the information falling within the scope of the request here does not cover the record of any discussion within the public authority of how to react to risks. In the absence of further explanation from the public authority as to why this inhibition would be likely to occur, the Commissioner does not believe that this inhibition would be likely to occur frequently.
38. Turning to section 36(2)(c), the first ground on which the Commissioner has accepted as objectively reasonable the opinion of the QP is that disclosure would be likely to discourage third party contractors from working with the public authority. Covering firstly the frequency of this prejudice, to the extent that the public authority is likely to rely on the services of third party contractors on a regular basis in order to function effectively, this prejudice is likely to be frequent. Further to this, if the public authority was regularly unable to operate effectively the resulting prejudice would be likely to be extensive and severe.
39. Turning to the second ground for the QP's opinion, that disclosure would assist pressure groups in disrupting the work of the public authority, as noted above there is evidence available that suggests that the public authority has frequently been targeted in this way by pressure groups. This clearly suggests that the resulting prejudice would be high in frequency and, to the extent that the pressure groups are successful in disrupting the work of the public authority, extensive and severe.
40. The Commissioner has reviewed the contents of the risk register to assess whether there is further inhibition or prejudice that would be likely to result through disclosure aside from that described by the public authority. On the issue of inhibition, it is significant that the risk register is a finalised and internally published document and was at the time of the request. Had the drafting of the risk register been in progress at the time of the request, prejudice to the drafting process is a factor to which the Commissioner may have attached weight when considering the balance of the public interest. As the risk register was finalised at the time of the request however, this is not a public interest factor in favour of maintenance of the exemption that carries any weight.

41. However, the Commissioner recognises that the maintenance of an up to date risk register requires creative, strategic thinking on the part of the contributors. It is in the public interest that such thinking should not be inhibited and the exposure of serious potential risks as a result of this process should not be suppressed by a fear of public disclosure, which might be seen as potentially threatening or damaging to the organisation.
42. Turning to the arguments in favour of disclosure here, there is a legitimate public interest in favour of disclosure where this would assist in determining what risks have been identified by the public authority and how these are measured. Reference to the areas that have been identified as risks by the public authority may also assist in reaching a view on the performance of the public authority by, for example, noting where the public authority has recognised as a risk an area where it has experienced difficulties in carrying out its role. Similarly, that a potential risk has not been identified in the register can also be seen as a commentary on the performance of the public authority.
43. The public authority relies on public funds. Where disclosure of the risk register would increase transparency and public understanding about the allocation of resources by the public authority in response to the risks recognised in the withheld information, this would represent a valid public interest argument in favour of disclosure.

Conclusion

44. Having found that the opinion of the QP that section 36(2)(c) was engaged was objectively reasonable, the Commissioner has also concluded that the prejudice identified as the basis for this opinion would be likely to frequently result and the impact of this would be likely to be extensive and severe, albeit that he did not reach a similar conclusion in connection with sections 36(2)(b)(i) & (ii). Disclosure likely to result in extensive, severe and frequent prejudice to the public authority would be counter to the public interest. Whilst the Commissioner has acknowledged valid arguments that disclosure would be in the public interest, these are outweighed by the public interest arguments in favour of avoiding the likely prejudice. The Commissioner therefore concludes that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Section 40

45. The public authority has cited section 40(2) in connection with the paper titled "Review of Child Deaths and Serious Incidents". In order for this exemption to be engaged, there are two conditions that must be met. Firstly, the information in question must constitute personal data and, secondly, the disclosure of this information must result in a breach to at least one of the data protection principles.

Personal data?

46. The stance of the public authority is that the information in the paper, combined with information available through the media, would enable identification of the children referred to in the paper and, therefore, the contents of the paper would constitute personal data. However, for information to constitute personal data it must relate to living individuals. Where the cases referred to resulted in the death of the child, the information would not constitute the personal data of the child.
47. The Commissioner has also considered whether the information could constitute personal data relating to any other individuals, particularly relatives of the children referred to. The first issue to consider is whether the information contains sufficient detail to enable identification of the children who are the subject of the paper. The paper is anonymised; the subjects of the paper are referred to as Child A to Child P. However, it is necessary to consider whether the public authority is correct in stating that it would be possible to identify the children concerned through information available via the media or through information already known to any person.
48. The Commissioner accepts that there is sufficient information included within the information in question that it may enable a person with existing knowledge of the circumstances described to relate these to the child concerned. The circumstances of the incidents referred to are described and, in some cases, geographical detail is included. The Commissioner also considers that individuals with sufficient existing knowledge to link the circumstances described to individuals would be likely to have some knowledge of the relatives of the children referred to, such as parents, siblings or, indeed, of the children themselves where the cases did not result in death. Therefore, the conclusion of the Commissioner is that the information in the paper titled "Review of Child Deaths and Serious Incidents" constitutes personal data of relatives of the children referred to, or in some cases, the children themselves. Having reached this conclusion it is necessary to go on to conclude whether disclosure of this information would breach any of the data protection principles.

The data protection principles

49. The Commissioner has focussed on the first data protection principle here. In order for processing of personal data to be compliant with the first data protection principle, it must be fair and lawful. As well as the general consideration of whether the processing in question would be fair, the processing in question must fulfil at least one condition from Schedule 2 of the Data Protection Act 1998 (the "DPA").
50. In general, the Commissioner will be more likely to conclude that disclosure of personal data would be unfair where the data in question relates to an individual in a private, rather than professional, capacity. This approach was also taken by the Information Tribunal in the case *House of Commons v ICO & Norman Baker MP* where it stated "*it is possible to draw a distinction between personal data related to an individual's public and private life*" (paragraph 79). In this case the personal data relates to individuals in a private capacity.

51. A key issue when considering fairness is what expectations the data subjects would hold about disclosure. In this case, the Commissioner believes that the nature of the information indicates that the data subjects would hold an expectation that this would not be disclosed into the public domain.
52. The public authority has stated that it believes the data subjects would suffer detriment through the disclosure of this information, although it has not specified what form this detriment would take or how it would occur. On this point the Commissioner recognises that, were disclosure to lead to the data subjects being linked to the incidents described within the information where before they had not been, this would constitute a detriment to the data subjects.

Conclusion

53. The conclusion of the Commissioner is that disclosure of this information would be unfair to the data subjects and thus in breach of the first data protection principle on the basis that it relates to individuals in a private capacity, the data subjects would hold no reasonable expectation that this information may be disclosed and the data subjects may suffer detriment as a result of disclosure of this information. As this conclusion has been reached on this basis, it has not been necessary to go on to consider whether the processing of personal data inherent in disclosure would fulfil any condition from Schedule 2 of the DPA. The exemption provided by section 40(2) is, therefore, engaged.
54. Whilst the Commissioner has reached this conclusion on the basis that the information in question constitutes personal data of relatives of the children referred to and the children themselves where the cases did not result in death, the position of the public authority was that this information constituted personal data of all the children referred to in the paper. This argument is not valid, however, as information will constitute personal data only where it relates to living individuals. The Commissioner notes that it may have been more appropriate for the public authority to cite section 36(2)(c) in relation to information about cases where the child or children concerned had died.

Section 44

55. Although the section 40(2) conclusion above relates to the entirety of the information withheld under section 44(1)(a), the Commissioner gave consideration to the application of section 44(1)(a) during the handling of this case. Details of these considerations are included here in order to provide direction for the public authority in connection with its handling of information requests in future.
56. Where the disclosure of information is prohibited by any enactment, it is exempt from disclosure through the Act by virtue of section 44(1)(a). The public authority has cited this exemption in connection with the paper titled "Review of Child Deaths and Serious Incidents" and has stated that a statutory bar to disclosure is

provided by Cafcass Regulation 21. The full wording of this regulation is given in the legal annex.

57. Cafcass Regulation 21 refers specifically to meeting minutes. The withheld information in this case does not constitute a meeting minute in itself and neither is it a part of the minute of the meeting for which it was prepared, rather it is a paper that was circulated during that meeting. The public authority was asked to address the point of how the information in question here would constitute part of the meeting minute, but did not do so. As this information does not constitute a meeting minute in itself, nor a part of a meeting minute, it is clear that it is not subject to Cafcass Regulation 21.
58. Despite having reached this conclusion, in order to assist the public authority the Commissioner's analysis of whether Cafcass Regulation 21 would constitute a valid statutory bar for information that does constitute a meeting minute, or a part of a meeting minute, is also included here. Cafcass Regulation 21(1) imposes an obligation upon the public authority to make its meeting minutes open to public inspection. Regulation 21(3) specifies where the obligation will not apply. This provides an exception from the duty to disclose imposed by Regulation 21(1); it does not provide a similar exception in relation to any other access regime, including that provided by the Act. Were there any doubt about this conclusion, Regulation 21(4) would remove such doubt by making it clear that Cafcass may be subject to other obligations to disclose.

Conclusion

59. The Commissioner concludes that the exemption provided by section 44(1)(a) is not engaged in that the information in question does in itself constitute a meeting minute and neither is it a part of a meeting minute. This information is not, therefore, subject to Cafcass Regulation 21 which is explicit in only relating to meeting minutes. The Commissioner also finds that Cafcass Regulation 21(3) would not provide a valid statutory bar for information that does constitute a meeting minute, or a part of a meeting minute.

The Decision

60. The Commissioner's decision is that the public authority complied with the Act in that the exemptions provided by sections 36(2)(c) and 40(2) were applied correctly. However, the Commissioner also finds that the exemption provided by section 44(1)(a) is not engaged and that the public authority breached section 17(1)(b) by failing to cite section 40(2) either at the time of the initial refusal or internal review.

Steps Required

61. The Commissioner requires no steps to be taken.

Right of Appeal

62. 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

- 63. 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.
- 64. 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 15th day of December 2008

Signed

**Graham Smith
Deputy Commissioner**

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

Legal Annex

Freedom of Information Act 2000

Section 17

Section 17(1) provides that -

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

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

Section 36

Section 36(2) provides that -

“Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act-

- (a) would, or would be likely to, prejudice-
 - (i) the maintenance of the convention of the collective responsibility of Ministers of the Crown, or
 - (ii) the work of the Executive Committee of the Northern Ireland Assembly, or
 - (iii) the work of the executive committee of the National Assembly for Wales,
- (b) would, or would be likely to, inhibit-
 - (i) the free and frank provision of advice, or
 - (ii) the free and frank exchange of views for the purposes of deliberation, or
- (c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.”

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 44

Section 44(1) provides that -

“Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it-

- (a) is prohibited by or under any enactment,
- (b) is incompatible with any Community obligation, or
- (c) would constitute or be punishable as a contempt of court.”

The Children and Family Court Advisory and Support Service (Membership, Committee and Procedure) Regulations 2005

Regulation 21 provides that -

“Minutes of meetings

21(1) Minutes (including the names of those present) are to be taken of the proceedings of each meeting of the Service and are to be signed by the member presiding at the next meeting of the Service.

(2) The minutes are to be open to public inspection in such manner as the Service shall decide.

(3) Paragraph (2) does not apply to minutes which relate to

- (a) officers or employees of the Service,
- (b) the remuneration of officers or employees of the Service,
- (c) individual cases,
- (d) matters which the Service considers to be commercially confidential or sensitive, or
- (e) legal advice obtained by the Service.

(4) Paragraph (3) is without prejudice to any obligation imposed on the Service otherwise than under this regulation.”