

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 20 August 2009**

**Public Authority:** Thames Valley Police  
**Address:** Police Headquarters  
Oxford Road  
Kidlington  
OX5 2NX

### Summary

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The complainant made a request to Thames Valley Police for information in relation to the transport of munitions between RAF Welford and RAF Fairford during the period of military operations against Iraq in February – May 2003. Thames Valley Police refused the request, citing the exemptions at sections 24 (national security), 31 (law enforcement), 38 (health and safety) and 40 (personal data). During the course of the Commissioner's investigation, Thames Valley Police released some information to the complainant and confirmed it was citing the exemptions at sections 24, 31 and 38 in relation to the remainder of the withheld information. The Commissioner has investigated and found that the exemptions at sections 31 and 38 are engaged in respect of all but one element of the information. He orders that this information is disclosed. However, in relation to the remainder of the withheld information he finds the the public interest in maintaining the exemptions outweighs the public interest in disclosure. The Commissioner also identified a series of procedural shortcomings on the part of the public authority relating to delay (sections 1 and 10) and failure to specify appropriately the exemptions cited and the reason they applied (section 17).

### The Commissioner's Role

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

## Background

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2. RAF Welford, which is part of the United States Air Force, is one of the largest munitions stores in Europe and holds small arms, explosives and 2,000lb bombs, which it supplies to RAF Fairford. It is 38 miles from its parent base at Fairford.
3. RAF Fairford is a NATO-designated standby base and is shared with the US Air Force. It became a focus for anti-war protests for a number of months before and during hostilities in the Gulf.
4. There was a policing operation in 2003 to support ammunition convoys travelling between the underground storage facility at RAF Welford and RAF Fairford.
5. The transportation of munitions took place against a background of protests, meetings and demonstrations around the country regarding the question of war with Iraq.

## The Request

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6. On 22 September 2006 the complainant wrote to Thames Valley Police requesting information in relation to the transport of munitions between RAF Welford and RAF Fairford during the period of military operations against Iraq in February – May 2003.

*'I should be grateful if you would provide me with complete copies of documents containing any of the following information which may be held by Thames Valley Police:*

- *Documents outlining objectives, scope, and command arrangements for the policing operation during transport of munitions between the two bases.*
  - *Copies of any instructions / requests for support for the policing operation received from any of the following organisations:*
    - *Ministry of Defence Police*
    - *US Visiting Forces*
    - *Any units of the Defence Transport Munitions Agency, Defence Munitions, or Ministry of Defence Headquarters*
  - *Briefings to senior police officers or Ministry of Defence civil servants on the operation*
  - *Notes or documents relating to any meetings between the Chief Constable of Thames Valley Police and representatives of US Visiting Forces concerning operations related to military activity against Iraq in February – May 2003*
  - *Reviews / evaluations conducted after the operation'.*
7. Thames Valley Police wrote to the complainant on 19 October 2006 advising him that it required more time to consider the public interest test.

8. Thames Valley Police provided its decision on 10 November 2006 enclosing *'redacted versions of the Thames Valley Police Operation Orders dated 15 March 2003, 27 February 2003 and Protocol Document'*. The Police explained the information had been redacted in accordance with the following exemptions:
  - section 40 – Personal data
  - section 24 – National security
  - section 31 – Law enforcement
  - section 38 – Health and safety
9. The complainant wrote to Thames Valley Police on 8 December 2006 requesting an internal review of the decision not to disclose the withheld information.
10. On 28 February 2007, Thames Valley Police wrote to the complainant with the outcome of its internal review. Thames Valley Police advised the complainant it was *'still of the opinion that the information requested has been redacted and released to you correctly'*.

## The Investigation

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### Scope

11. The complainant contacted the Commissioner on 2 April 2007 to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
  - *'Whether Thames Valley Police has followed the law and relevant guidance and given sufficient consideration to the relevant factors in applying a public interest test to disclosure of the information.'*
  - *'Whether the balance of the public interest lies in favour of disclosure, given that the information requested relates to a matter which is now four years in the past and thus of little operational significance, yet is still a controversial matter of public debate'*
  - *'Whether Thames Valley Police was right to withhold the information which has been redacted from the documents disclosed'*
  - *'Whether the arguments in my appeal to Thames Valley Police have been adequately addressed by the force.'*
12. During the course of the Commissioner's investigation Thames Valley Police disclosed further information within the scope of the request.
13. The complainant wrote to the Commissioner on 12 March 2009 advising him that he was prepared in general to accept the reasons given by Thames Valley Police for exempting the remaining withheld information from disclosure. However he drew the Commissioner's attention to specific information which, in his view,

should be released. In light of this, the Commissioner has restricted the focus of his investigation to these specific areas.

14. Following a further release of information by Thames Valley Police, the Commissioner has focussed his investigation on the following withheld information contained in the Operation Order:
  - Paragraph 1.8 – Make-up of the Convoys
  - Phrases within paragraph 5.1 – Command Structure
  - Part of paragraph 5.4.1 – Escorting of Convoys
  - Part of paragraph 5.5.1 – Arrest Policy

## Chronology

15. On 27 November 2008 the Commissioner contacted Thames Valley Police asking it to confirm whether or not, given the passage of time, the withheld information could now be disclosed. If this was not the case, the Commissioner asked Thames Valley Police to provide further information about its decision to apply the exemptions cited, and further arguments in relation to the public interest test.
16. On 24 February 2009, Thames Valley Police advised the Commissioner that, having reconsidered the matter, it had released a revised copy of the information to the complainant in which many of the original redactions had been removed.
17. A further release of information was made on 8 May 2009, with Thames Valley Police providing the Commissioner with its reasons for withholding the remainder of the information.
18. The complainant contacted the Commissioner on 30 May 2009 confirming that he wished the Commissioner to continue with his investigation as he considered '*that the information which I listed in my letter of 12 March [2009] to you should be disclosed in full. ....I should therefore be grateful if you would prepare a Decision Notice requesting Thames Valley Police to disclose the remaining withheld information listed in my previous letter to you*'.

## Analysis

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### Exemptions

19. The following exemptions have been cited by Thames Valley Police in relation to the withheld information that is the focus of this Decision Notice.

Sections 24 (national security), 31 (law enforcement) and 38 (health and safety):

- Paragraph 1.8 – Make-up of the Convoys

Section 31 (law enforcement) only:

- Phrases within paragraph 5.1 – Command Structure
- Part of paragraph 5.4.1 – Escorting of Convoys

- Part of paragraph 5.5.1 – Arrest Policy
20. In considering the make-up of the convoys, the Commissioner notes that Thames Valley Police sought to rely on multiple exemptions in relation to this information. He has first addressed whether or not it was appropriate to cite section 31 in this regard.

### Section 31 – Law enforcement

21. Section 31 creates an exemption from the right to know if the release of information would, or would be likely to, prejudice the purposes of law enforcement, taxation, and various types of regulatory activity as defined in the section.
22. In this case, Thames Valley Police has cited section 31(1)(a) which provides that:
- 'Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-*
- (a) the prevention or detection of crime'.*

#### *Applicable interest*

23. In order for section 31 to be engaged, Thames Valley Police must show that the disclosure would, or would be likely to, prejudice the stated interest. Accordingly, the Commissioner has only considered as relevant those arguments about whether or not disclosure of the withheld information could be prejudicial to the prevention or detection of crime.

#### *Nature of the prejudice*

24. The Information Tribunal in *Hogan* (EA/2005/2006 and EA/2005/0030) commented:
- 'An evidential burden rests with the decision maker to be able to show that some causal relationship exists between the potential disclosure and the prejudice and the prejudice is, as Lord Falconer of Thornton has stated "real, actual or of substance" (Hansard HL (VOL. 162, April 20, 2000, col. 827)'*
25. When making his assessment regarding the prejudice test, the Commissioner must consider not only whether the prejudice identified can be said to have a real, detrimental or prejudicial effect but also whether or not the nature of the prejudice can be adequately linked back to the disclosure of the information in question.
26. In this case, Thames Valley Police has argued that disclosure of information relating to policing of the transportation of munitions may *'compromise the current or future law enforcement capability of the force to prevent and detect crime and protect life and/or property'*. The Commissioner is satisfied that, in this respect, a causal link has been established between the nature of the prejudice and the disclosure of the requested information being withheld under this exemption. Due

to the nature of the withheld information, the Commissioner is unable to detail fully the arguments in this regard without prejudicing the prevention or detection of crime.

### *Likelihood of prejudice*

27. Thames Valley Police has not specified in this case whether its stance is that prejudice *would*, as opposed to *would be likely to*, result through disclosure. Where a public authority does not specify *would* or *would be likely*, the Commissioner will consider whether prejudice would be likely to result through disclosure.

### *Evidence of prejudice*

28. In order for the Commissioner to conclude that prejudice would be likely to result, the possibility of prejudice must be real and significant, rather than hypothetical or remote. This is in line with the direction provided by the Information Tribunal in the case *John Connor Press Associates Limited v The Information Commissioner* (EA/2005/0005) in which it stated:

*“Likely connotes a degree of probability that there is a very significant and weighty chance of prejudice to the identified public interests. The degree of risk must be such that there ‘may very well’ be prejudice to those interests, even if the risk falls short of being more probable than not.”*

29. The Commissioner’s view is that the use of the term ‘prejudice’ is important to consider in the context of the exemption. It implies not just that the disclosure of information must have some effect on the applicable interest, but that this effect must be detrimental or damaging in some way.
30. Although not expressed in terms of prejudice, the public authority has provided the Commissioner with an explanation of its reasons for citing this exemption with regard to the withheld information.
31. Thames Valley Police has also stated that disclosure:

*‘may lead to unlawful activity by individuals or groups’.*

32. The Commissioner understands that a wide range of activities, including the sabotage of assets and threat of terrorism, are risks in relation to the transportation of munitions.

33. In this case, the information requested is contained in a Thames Valley Police Operation Order relating to the transportation of munitions. The Commissioner notes that the Operation Order states that:

*‘The intention of the police operation is, as far as is reasonably practicable to:*

- *Preserve the Queen’s Peace*
- *To facilitate the safe and unimpeded progress of the munitions convoys*



- *To facilitate the right to lawful, peaceful protest*
  - *To work with Gloucestershire, Wiltshire and Ministry of Defence Police and other agencies in providing a safe environment for all persons at the scene of protest, whether they are members of the public, protesters, or police officers and support staff*
  - *To minimise disruption to the life of the community*
  - *To assist the Ministry of Defence Police in maintaining the integrity of external security fencing at RAF Welford*
  - *To minimise any traffic congestion in or around the venue*
  - *To prevent and detect offences'.*
34. In this context, and taking account of the Information Tribunal's comments in *Hogan*, (EA/2005/2006 and EA/2005/0030), the Commissioner has considered the extent to which Thames Valley Police has been able to demonstrate that the likelihood of prejudice to the prevention or detection of crime meets the threshold being tested in this case.
35. In respect of the withheld information contained in the phrases in section 5.1 of the Operation Order (command structure), the Commissioner notes that, during the course of his investigation, Thames Valley Police released further information in relation to the arrangements for Command and Control, including information contained within section 5.1. The remaining withheld information contains geographical details relevant to the arrangements for Silver Command.
36. Noting that, in this case, the stated interest is the prevention or detection of crime, and taking into account the nature of the related information already disclosed to the complainant, the Commissioner is not persuaded that there is a real and significant risk of prejudice being suffered as a result of disclosure of the information about the command structure. Consequently, he does not find the exemption engaged in relation to this information.
37. In relation to the other withheld information which is the subject of this Decision Notice, the Commissioner notes that while the intentions of the Operation Order cover matters relating to crime prevention and detection, the aim of the operation was '*to provide co-ordinated Police support to Military Security Convoy Operations between RAF Welford and RAF Fairford*' rather than the prevention or detection of crime per se.
38. In considering this aspect of the case, the Commissioner has referred to the decision in the Information Tribunal case *England v ICO and London Borough of Bexley* (EA/2006/0060 and 0066). In this, the Tribunal addressed the issue of whether section 31(1)(a) applies to information obtained for other purposes, which co-incidentally if released would, or would be likely to, prejudice the prevention or detection of crime.
39. The Information Tribunal concluded that section 31(1)(a) is applicable to information, even if the purpose of the collation of the information was not the prevention of crime per se. In this case the Commissioner therefore considers it appropriate to take account of whether the disclosure of information relating to police operations would facilitate the commission of any offence.

40. In this case, having viewed the withheld information, the Commissioner considers that disclosure of the information requested carries a level of risk which is substantially more than remote. He therefore finds the exemption at section 31 engaged in respect of the information about the make-up of the convoys, escorting of convoys and arrest policy.

#### *The public interest test*

41. Section 31 is a qualified exemption subject to a public interest test under section (2)(2)(b) of the Act. Therefore, in addition to being satisfied that the exemption applies to the information in question, the Commissioner must also consider whether *'in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure of the information'*.

42. In the case of *Bellamy v the Information Commissioner and the DTI* (EA/2005/0023), the Tribunal clarified that only relevant public interest considerations could be taken into account, stating that:

*"As section 2(2)(b) makes clear, the relevant exercise is to weigh the public interest in maintaining the exemption which is manifested by the relevant provisions against the public interest in disclosing the information. If the weighing process is in favour of the maintenance of the exemption, then any duty to communicate or disclose is disapplied. It necessarily follows that not all public interest considerations which might otherwise appear to be relevant to the subject matter should be taken into account. What has to be concentrated upon is the particular public interest necessarily inherent in the exemption or exemptions relied upon."* (paragraph 5)

43. In line with this clarification, the Commissioner has issued guidance on conducting the public interest test in which he addresses the matter of taking public interest considerations into account when balancing the opposing factors.

#### *Public interest arguments in favour of disclosing the requested information*

44. When requesting a review of the decision not to disclose the requested information, the complainant argued that the policing operation in question *'was completed more than three years ago'* and therefore, in his view, the risks to law enforcement must be small.
45. He has also argued that *'much of the information relating to the efficient and effective conduct of police operations is already in the public domain as a result of observations of munitions transport arrangements made and publicised by anti-war campaigners at the time ....'*
46. Thames Valley Police acknowledges that, generally, in relation to informing and enhancing public debate on topical subjects, *'the release of accurate information may inform public debate and boost levels of confidence and awareness about issues that may affect the community'*.



47. More specifically, one of the public interest factors in favour of disclosure is that of making public authorities more accountable. In this respect, Thames Valley Police considers that disclosure of the withheld information in this case would demonstrate to the public that adequate protection is provided for munitions in transit.
48. The complainant has put forward the following reasons in support of his argument that it is in the public interest that the information regarding the make-up of the convoys is disclosed:
- *'the convoys travelled in full public view and such information is already known to anti-war campaigners and members of the public who witnessed the convoys when they were on the road';*
  - *'future munitions convoys travelling in peace time between the two military bases would not necessarily have the same make-up and security arrangements as those travelling between the bases over the crisis period during the invasion of Iraq'.*
49. However, the complainant has not provided the Commissioner with any evidence in support of his argument that future convoys would not necessarily have the same make-up as the ones from 2003. Nor is the Commissioner aware of any changes to arrangements for the transportation of munitions that would add weight to this view.
50. With regard to the fact that the convoys travelled in full public view, the Commissioner accepts that this inevitably means that people in the vicinity at the time could see the convoys and the number and nature of the vehicles involved in them.
51. In relation to the escorting of convoys, the complainant has argued in favour of disclosure, the basis of his argument being that:
- '...arrangements for the peacetime transport of munitions will differ from those during the crisis period in spring 2003, and were visible to all who witnessed the munitions convoys. I think it is reasonable to assume that different types of military convoy will have their own specific escort arrangements, and thus information on escort arrangements for the 2003 convoys between Welford and Fairford can be released without harming security, safety, or policing interests'.*
52. Concerning the withheld information about the arrest policy at the time, the complainant has claimed:
- 'Members of the public must surely have the right to know the circumstances under which they are liable to face arrest, and, given concerns about the political nature of the UK's involvement in the invasion of Iraq, it is in the interests of the police themselves to demonstrate that their arrest policy was within the law and was based on objective criteria'.*

*Public interest arguments in favour of maintaining the exemption*

53. In support of the public interest argument against disclosure of the withheld information, Thames Valley Police has claimed that:

*'ongoing police operations may be compromised when the information contributes to the disclosure of specific operations which could adversely affect operational planning and as such could be used to compromise the way Thames Valley Police responds to such events'.*

The Commissioner understands this to mean events involving the transportation of munitions.

54. In respect of its law enforcement role, Thames Valley Police has stated that:

*'It is not in the public interest to disclose information that may compromise the force's ability to fulfil its core function of law enforcement'.*

55. More specifically, it has argued:

*'information relating to the policing for the transportation of munitions may compromise the current or future law enforcement capability of the force to prevent and detect crime.'*

56. The Commissioner acknowledges there is a clear public interest in understanding that adequate protection is provided for the transportation of munitions. However, he recognises that, although it is necessary to have appropriate arrangements in place for the security and protection of convoys and that these may vary to suit the size and nature of the munitions being carried, it is clear that the scope for such variation may be limited.

57. He therefore accepts that although the requested information in this case relates to events in the past, disclosure of information about the escort arrangements and make-up of the convoys could be used to the advantage of those intent on criminal activity in the future. This would not be in the public interest.

*Balance of the public interest arguments*

58. The Commissioner considers that maintaining confidence in law enforcement is crucial to the public interest. He also notes that, on occasions, there will be tension between the emphasis on openness and the need to maintain the confidentiality of specific operations.

59. In balancing the competing interests, the Commissioner has noted that press reports at the time covered the transportation of munitions between the two locations, including the fact that peace protesters held protests at RAF Fairford on a number of occasions.

60. When considering the public interest test, the Commissioner considers that the age of the information requested is a relevant factor to the extent that the passage of time may impact upon the strength of the public interest arguments.
61. In this case, the Commissioner notes that at the time the information was requested by the complainant it was several years after the policing operation in question took place.

#### Make-up of and escort of convoys

62. Regarding the complainant's argument that other information about the convoys involved in the transportation of munitions at the time is already in the public domain, the Commissioner notes the complainant's comment that this has been made available as a result of observations by anti-war campaigners (rather than as a result of statements issued by the police).
63. In weighing the opposing considerations put forward in this case, the Commissioner is not persuaded by the argument that future convoys would necessarily be subject to different escort arrangements.
64. While there can be no certainty that the release of the withheld information would lead to criminal activity, there is sufficient evidence to lead the Commissioner to conclude that release of the information, together with knowledge gained from visual sightings of convoys, would confer an advantage on anyone wishing to cause disruption.
65. Therefore, while acknowledging there is a clear public interest in understanding that adequate protection is provided for the transportation of munitions, the Commissioner considers there is a greater public interest in withholding the information about the make-up of convoys and the nature of the escort provided to them.

#### Arrest Policy

66. In this case, the arrest policy in question is the one in operation in relation to disturbances during the transportation of munitions between RAF Welford and RAF Fairford.
67. Thames Valley Police acknowledged at the time that '*convoys may be at risk from protests, peaceful or otherwise*'.
68. In this respect, the Commissioner has taken into account the fact that there have been disturbances in the past when munitions have been transported. He must therefore consider the possible consequences of the disclosure into the public domain of tactical details relating to specific types of operation, such as this.
69. In considering whether or not it is in the public interest to disclose the withheld information about the arrest policy, the Commissioner is not aware of any changes in police strategy in this regard. He therefore does not consider the requested information to be historical information, the disclosure of which would

have no practical impact. Accordingly, he has concluded that there is greater public interest in withholding this tactical information due to the potential for the operational capability of the police with regard to the prevention or detection of crime to be compromised. This is because of the advantage that knowledge of this information may confer on those liable to face arrest for wrong doing thereby undermining the law enforcement role of the police.

70. As he has found section 31 engaged in respect of the information about the make-up of the convoys, the Commissioner has not gone on to consider sections 38 and 24 in relation to this information.

## Procedural Requirements

### *Section 1 – General right of access*

71. Section 1(1) states:

*‘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’.*

72. As the Commissioner considers that some of the withheld information should have been disclosed, he finds Thames Valley Police in breach of section 1(1)(b) of the Act in that it failed to provide disclosable information by the time of the completion of the internal review.

### *Section 10 - Time for compliance*

73. Section 10(3) of the Act provides that:

*‘If, and to the extent that –*

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or*
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,*

*the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.’*

74. If the final decision is to withhold the requested information, a second notice must then be issued providing the reasons for the decision on the public interest. Under the terms of section 10(3) of the Act, this second notice need not be issued *‘until such time as is reasonable in the circumstances’*. As the Commissioner has explained in his *‘Good Practice Guidance 4’*, public authorities should aim to conduct the public interest test within 20 working days. In cases where the public

interest considerations are exceptionally complex it may be reasonable to take longer but in the Commissioner's view the total time taken should in no case exceed 40 working days. He notes that, in this case, the response was provided within 40 working days.

75. However, in this case the Commissioner has concluded that some of the withheld information should have been disclosed. Therefore, by not providing the requested information to the complainant within the statutory timescale, the public authority breached section 10(3).

#### *Section 17 – Refusal of request*

76. 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.'*

77. In this case Thames Valley Police referred generally to sections 24, 31, 38 and 40 in its refusal notice without specifying which sub-section was being applied. It also failed to specify in sufficient detail why each exemption applied. The Commissioner has therefore concluded that it breached section 17(1)(b) and 17(1)(c) of the Act in failing to supply a notice compliant with the requirements of that section within 20 working days.

## **The Decision**

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78. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act:
- it breached section 1(1)(b) by not providing the complainant with the requested information by the time of the completion of the internal review;
  - it breached section 10(3) by not providing the complainant with the requested information within the statutory timescale; and
  - it breached section 17(1)(b) by failing to specify the subsections of the exemptions claimed
  - it breached section 17(1)(c) by failing to specify in sufficient detail why each exemption applied.

## Steps Required

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79. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- to disclose the withheld information contained in section 5.1 of the Operation Order.
80. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

## Failure to comply

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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

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82. Although they do not form part of this Decision Notice, the Commissioner wishes to highlight the following matters of concern:
83. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information. As he has made clear in his *'Good Practice Guidance No 5'*, published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. Whilst he recognises that in this case, the delay occurred before the publication of his guidance on the matter, the Commissioner is concerned that it took over two months for an internal review to be completed.
84. Paragraph 39 of the section 45 Code of Practice encourages authorities to provide a fair and thorough review of matters, including a fresh look at the application of exemptions:
- 'The complaints procedure should provide a fair and thorough review of handling issues and of decisions taken pursuant to the Act, including decisions taken about where the public interest lies in respect of exempt information. It should enable a fresh decision to be taken on a reconsideration of all the factors relevant to the*



*issue. Complaints procedures should be as clear and simple as possible. They should encourage a prompt determination of the complaint.'*

85. In this case the internal review was lacking in scope and thoroughness with no explanation of the exemptions cited and the reasons they applied. The Commissioner therefore takes the view that this internal review was inadequate.

## Right of Appeal

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86. 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](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

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

**Dated the 20<sup>th</sup> day of August 2009**

**Signed .....**

**David Smith  
Deputy Commissioner**

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

## Legal Annex

### **S.1 General right of access**

**Section 1(1)** provides that -

*'Any person making a request for information to a public authority is entitled –*

*(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*

*(b) if that is the case, to have that information communicated to him.'*

### **S.10 Time for Compliance**

**Section 10(1)** provides that –

*'Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.'*

**Section 10(3)** provides that –

"If, and to the extent that –

(c) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or

(d) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given."

### **S.17 Refusal of Request**

**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 17(3)** provides that -

*'A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -*

*(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or*

*(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.'*

### **S.24 National Security**

**Section 24(1)** provides that –

*'Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security.'*

### **S.31 Law enforcement**

**Section 31(1)** provides that –

*'Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-*

- (a) the prevention or detection of crime,*
- (b) the apprehension or prosecution of offenders,*
- (c) the administration of justice,*
- (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,*
- (e) the operation of the immigration controls,*
- (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,*

- (g) *the exercise by any public authority of its functions for any of the purposes specified in subsection (2),*
- (h) *any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or*
- (i) *any inquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.'*

### **S.38 Health and safety**

**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.'*