

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date 31 March 2009

**Public Authority:** University of Cambridge  
**Address:** University Offices  
The Old Schools  
Cambridge  
CB2 1TN

### Summary

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The complainant requested information held by several Universities, including Cambridge University (the “public authority”) in relation to research it may have undertaken or be undertaking with primates. This included numbers and species of primates used in previous returns already provided to the Home Office along with a summary of any current research and the species being used.

The public authority originally decided to neither confirm nor deny that information was held citing section 38 of the Freedom of Information Act 2000 (the “Act”). It later varied this by confirming that it held the information but still withholding it under section 38.

The Commissioner finds that the exemption is not engaged and the complaint is therefore upheld. He further finds that the public authority breached sections 1(1)(b), 10(1), 17(1)(b) & (c) and 17(3)(a).

### 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 Act. This Notice sets out his decision.

### The Request

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2. On 31 July 2006 the complainant wrote to the public authority and made the following request for information:-

*“... under section 1 (1)(b) of the Freedom of Information Act 2000:*

- 1. please explain how many primates were held under licences and certificates under the Animals (Scientific Procedures) Act 1986 by or at your university, as provided to the Home Office in the last two returns of annual statistics, breaking the figure down by species*
- 2. please provide a summary of the research primates are currently used for at the university, again by species*

*We are contacting a number of universities in the UK in order [to] collate an accurate and up-to-date picture of primate experimentation at UK universities. Published work by researchers at your institution suggests that primates are being used there. We think it is in the public interest that more information is given about the nature of such use, so that a more complete picture can be obtained about overall primate use in the UK than is currently available.”*

3. The public authority received the request on 03 August 2006. On 30 August 2006 it responded stating that it believed the information to be exempt under section 38.
4. On 12 December 2006 the complainant requested an internal review.
5. On 25 January 2007 the public authority responded to the request for an internal review. It upheld its earlier refusal with no further explanation.

## **The Investigation**

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### **Scope of the case**

6. On 25 April 2007 the complainant wrote to the Commissioner about this and the other refusals it had received from other public authorities in respect of this request. (The Commissioner has dealt with each complaint under a separate Decision Notice). It included a statement of complaint common to all the cases and a further complaint specific to this public authority.
7. In its submissions it set out the reasons why it considered the public authority had inappropriately relied upon section 38 as the basis for refusing the request.

8. The complainant's request was made on 31 July 2006 and therefore covers the Home Office returns for 2004 and 2005. It also requested a summary of research that primates were currently being used for, broken down by species. This therefore covers research being carried out on 31 July 2006.
9. The complainant has not asked for numbers of current primates being held for research. It has also not asked for details of the research that was undertaken using the primates in the two previous returns. The only common factor to both questions is the species in use.

### **Chronology**

10. On 11 September 2007 the Commissioner wrote to the public authority to advise it that he had commenced his investigation. He pointed out that the requests had been fully answered by other Universities, i.e. some had confirmed that primates were in use and the nature of the research. He therefore queried why the public authority believed it was exempt under section 38.
11. At the same time, the Commissioner wrote to the complainant to advise it that he was now investigating all six complaints.
12. Following a joint request from the six Universities against which complaints had been made, the Commissioner met with them on 18 October 2007 to discuss some of their concerns prior to them answering his initial questions.
13. The public authority sent in its arguments in respect of its reliance on section 38 on 2 November 2007.
14. The Commissioner sought clarification on some further issues on 13 August 2008. The public authority responded on 15 August 2008.
15. During the course of this investigation the Commissioner also sought further information in respect of the other related cases he was considering which raised similar issues.
16. As part of his investigation the Commissioner conducted broad internet searches in order to identify what information was already in the public domain about the public authority's research using primates.

## Background information

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17. The Animals (Scientific Procedures) Act 1986 (ASPA) came into force on 1 January 1987 and made provision for the protection of animals used for experimental or other scientific purposes in the United Kingdom. ASPA regulates any experimental or other scientific procedure applied to a "protected animal" that may have the effect of causing that animal pain, suffering, distress or lasting harm.
18. ASPA requires that before any regulated procedure is carried out, it must be part of a programme specified in a project licence and carried out by a person holding an appropriate personal licence authority. In addition, work must normally be carried out at a designated scientific procedure establishment. The personal licence is issued to an individual who could be carrying out research at more than one establishment. The personal licence holder, not the institution, is responsible for submitting an annual return to the Home Office stating, amongst other things, the number of animals used in that year under the terms of their licence.
19. The Home Office publishes annual statistics of scientific procedures on living animals which are available on-line at <http://scienceandresearch.homeoffice.gov.uk/animal-research/publications-and-reference/statistics/?view=Standard> These are compiled from yearly returns submitted by licence holders which is a necessary condition of being granted a licence under ASPA. A nil return is required if no work is undertaken.
20. All Universities have to report to the Home Office before 31 January each year. For example, in January 2008 the figures returned will be those for animals used in 2007 which will then be used to compile the report issued in July 2008. This request was made on 31 July 2006 and therefore covers the returns for 2004 and 2005.
21. The statistics subject to this request cover returns for 2004 and 2005 which were published in December 2005 and July 2006 respectively.
22. According to the published statistics, the total number of non-human primates used for licensed research in 2005 was 2472 macaques and 643 tamarins or marmosets. The figures for 2004 were 2045 and 747 respectively.
23. Whilst there is no legal obligation for licence holders to provide abstracts about their research the Government actively encourages their publication. As such, many are 'anonymously' published on the Home Office website at: <http://scienceandresearch.homeoffice.gov.uk/animal-research/publications-and-reference/001-abstracts/> The lists are not

complete though there appears to be a high return from establishments. This scheme was fully implemented in January 2005.

24. After its completion, research of the type related to the request may be published and thereby made available to the general public. The published papers indicate the types of research undertaken, the types of animals used, the names of those involved, and sometimes the specific location of the research. Summaries of such research are readily available online via PubMed's website <http://ukpmc.ac.uk/>, which is a service that includes citations from biomedical articles; or the whole research paper can be purchased from the associated publisher (which is identified on this site).
25. There are previous published papers which reveal that primate research has been undertaken either at this establishment and/or by its academics. This includes some specifically referred to on its own website.
26. The complainant requested the same information from several universities. Nine of these complied with the request in full, either stating that they held the information and supplying it or, conversely, stating that they did not hold it. Originally six universities did not reply to the complainant's satisfaction and complaints were made to the Commissioner. During the course of his subsequent investigations one further university responded in full to the complainant and the complaint was therefore withdrawn. The other five complaints have all been dealt with by separate Decision Notices.
27. The Commissioner feels it is important to reiterate his stance of impartiality. He acknowledges that the use of animals in research is highly emotive and it is a matter that many members of the public have strong feelings about on all sides of the argument. However, it is not the Commissioner's role to take sides in this debate. Instead he has to consider each complaint in accordance with the requirements of the Act.

## Analysis

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### Procedural issues

#### Section 17 – refusal of request

28. Section 17(1) of the Act requires that, where a public authority is relying on a claim that an exemption in Part II of the Act is applicable to the information requested, it should in its refusal notice:-
  - (a) state that fact,

- (b) specify the exemption in question,  
(c) state why the exemption applies.
29. In this case, the public authority stated that it was relying on section 38 but failed, by the time of the completion of the internal review, to specify which sub-section of the exemption it was relying on or state why the exemption applied. It therefore breached section 17(1)(b) and (c).
30. Section 17(3)(a) requires that where an exemption being relied on by a public authority is a qualified exemption it should state in its refusal notice the reasons for claiming that the public interest in maintaining the exemption outweighed the public interest in disclosing the information. In this case, the public authority failed to specify the public interest factors it had considered by the time of the completion of the internal review. It therefore breached section 17(3)(a).
31. In addition, by not providing the requested information to the complainant within 20 working days of the request, the public authority breached section 10(1). By not providing it to the complainant by the time of the completion of the internal review, it breached section 1(1)(b).

## Exemption

### Section 38 – health & safety

32. 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. Although the public authority did not state the relevant subsection being relied on to the complainant it later confirmed to the Commissioner that it had withheld the information under subsection (1)(a) and (b).
33. The public authority did not specify whether it was relying on the argument that disclosure of the information *would have* endangered the physical health, mental health or safety of any individual or whether disclosure *would have been likely* to endanger the physical health, mental health or safety of any individual. On this matter the Commissioner has noted the comments of the Tribunal in *McIntyre V ICO & the Ministry of Defence*, [EA/2007/0068] in which the Tribunal explained, at paragraph 45 that:

*“We consider that where the qualified person does not designate the level of prejudice, that Parliament still intended that the reasonableness of the opinion should be assessed by the Commissioner but in the absence of designation as to level of prejudice that the lower threshold of prejudice*

- applies, unless there is other clear evidence that it should be at the higher level.”*
34. It is the Commissioner's view that where a public authority has not specified the level of prejudice, or in this case endangerment, at which an exemption has been engaged, the lower threshold of “likely to endanger” should be applied, unless there is clear evidence that it should be the higher level. In the absence of any such evidence, he has therefore applied the lower threshold in this case..
35. In dealing with the issue of whether disclosure would have been likely to endanger the physical health, mental health or safety of any individual, the Commissioner notes the comments of the Information Tribunal in the case of *John Connor Press Associates Limited v The Information Commissioner (EA/2005/0005)*. Whilst this decision related to the likelihood of prejudice to commercial interests, the Commissioner believes that the test is equally applicable to assessing the likelihood of endangerment under section 38. In its decision the Information Tribunal confirmed that “the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk.” (para 15). The Commissioner has viewed this as meaning that the risk of prejudice or endangerment need not be more likely than not, but must be substantially more than remote.
36. In support of its contention that section 38 was engaged at the time of the request the public authority informed the Commissioner that: *“This University takes as its starting point the Commissioner’s finding [in FS50082472] that “there is clear evidence that organisations and individuals involved in animal research have been targeted and their health and safety put at risk by militant anti-vivisection groups”. It is well documented that such organisations and individuals include this University and its staff and students, see enclosed ... newspaper reports ... web page print outs ... and ... log of incidents.”*
37. *“In the context of such pre-existing threat to the health and safety of its staff and students, as well as the staff and students of other universities, this University contends ...that it is sufficient to engage section 38 if the publication of the requested information in question is likely to lead to an increase in that threat, however small, providing it is not trivial. Based on the historical evidence [provided] ... it is this University’s case that the disclosure of either of the two categories of information requested by the [complainant] would, or would be likely to, lead to more than an insignificant increase in the risk to the physical or mental health, and/or safety, of its staff and students, or the staff or students at other institutions, and that consequently section 38 is engaged.”*

38. The Commissioner notes the points made by the public authority and has considered very carefully the extent to which the disclosure of the information that was requested in this case might have led to an increase in the risk to the physical health, mental health or safety of any person.
39. The public authority's further arguments in respect of section 38 are summarised below; these have all been presented to the Commissioner during his investigation. These arguments, which have been italicised, were given in respect of each of the two requests and, for simplicity, the Commissioner has considered the application of the exemption to each request in turn.

**Request 1 - Numbers and species of primates as provided to the Home Office in the last two returns of annual statistics**

40. The public authority initially argued that *"It has been a long standing policy of the Home Office not to place information in the public domain which identifies individual establishments where procedures under the Animal (Scientific Procedures) Act 1986 are carried out, still less information which might identify individual licence holders or the number or species of primates held at any individual establishment under the 1986 Act. Organisations, including [the complainant], have sought such information from the Home Office and the Home Office's decision to withhold such information has been consistently upheld by the Commissioner."*
41. The Commissioner notes that the complainant has only made requests to those universities where it had established a likelihood, based on information already in the public domain, that procedures under ASPA were carried out. He further notes that the public authority has confirmed that it is an establishment where such procedures are carried out and therefore the policy that the Home Office might choose to pursue with regard to the publication of establishments by name would not appear to be relevant. Additionally, with regard to the public authority's point about the Home Office not disclosing information which might identify individual licence holders, this request was for details of the numbers and species of primates that have been used; information about individual licence holders was not requested.
42. With regard to the Commissioner's previous decisions he acknowledges that he has made previous decisions in relation to requests for information regarding research undertaken with animals. However, those requests were for substantially different information to the requests under consideration in this Notice. He is also of the view that such matters have to be dealt with on a case by case basis depending on the facts that are relevant to each request.

43. The public authority further mentioned to the Commissioner: *“It is noted that [the complainant] states that it does not propose publicising the information in a way which identifies individual universities... Once the requested information is disclosed, it enters the public domain and its use becomes uncontrollable. It may be freely disseminated. The Freedom of Information Act 2000 imposes no restriction on what may be done with requested information...”*
44. The Commissioner accepts the point that disclosure to the complainant is not to it personally and, as such, the complainant cannot control how the information is used in future if it were disclosed.
45. The public authority has contended that disclosure of *“... the information requested ... would enable the number of primates, broken down by species, held at each of the universities in the UK to be placed in the public domain for the first time. It would be likely to provoke extensive media interest, nationally, locally and in the student press. It would, for example, enable “league tables” to be compiled, making comparisons between the respective numbers of primates held under the 1986 Act at each individual UK university. On the basis of past experience, such information is likely to promote sensationalist coverage in certain quarters and lead to targeted campaigns and attendant extremist activity, creating a consequent risk to the health and safety of individuals working at the relevant establishment, which would not otherwise have arisen but for the release of the specific information requested ...”*
46. The Commissioner recognises that it is possible that some sort of historical league table might be compiled as a result of information disclosed in response to this and related requests. But, even if the publication of such a table were to increase the risks of some sort of extremist action directed against institutions at the top or bottom, the line of causation would be too long to conclude that disclosure of the disputed information would be likely to endanger any individual. In reaching such a view, the Commissioner has noted that the complainant did not request numbers of primates involved in current studies only the species concerned and the types of research being undertaken
47. There were previous published papers, available at the time of the request, which revealed that primate research had been undertaken either at this establishment or by its academics. These would therefore already allow the public authority to be considered as a ‘target’ by activists. Previously released research, which is obviously much more detailed than what has been requested, has therefore been deemed an acceptable risk. Health and safety has not been deemed to override the importance of promulgating the research.

48. Historical evidence, examples of which were provided by the public authority to the Commissioner in support of its arguments, shows that this public authority was already a 'target' for animal rights extremists. Such evidence is readily available online in various media reports and on animals rights websites such as the SPEAK campaign at: <http://www.speakcampaigns.org/letters.php/> Risk therefore can be shown to have pre-existed the request. Similarly, evidence was provided to demonstrate risks apparent at dates after the request so it can be assumed that similar risks existed at the time of the request.
49. The public authority has argued that *"It is no matter that the first class of information requested by [the complainant] would not enable named individuals to be identified. The evidence demonstrates that extremist activity is indiscriminately targeted at the staff or students of relevant establishments, as well as the staff of businesses having any connection with those establishments, without regard to whether the individuals in question have any personal connection with primate experimentation."*
50. As is apparent from the original request, the Commissioner notes that the complainant has only 'targeted' those universities where it had already established a likelihood that the information would be held based on information already in the public domain. The public authority has confirmed it undertakes such research and has therefore already connected itself, and its associates, with primate experimentation. This fact, coupled with the historical evidence provided, would demonstrate that risks were on-going at the time of the request.
51. The Commissioner considers that the disclosure of information in respect of previous returns cannot result in any more risk than already exists. The published research he has viewed contains much more detail than what has been requested. In addition, the species of primates used are already limited to the few species identified in the published returns (see paragraph 7 above). He further believes that, if it so wished, the media would be in a position to *promote sensationalist coverage* by commenting on research as it is published or by simply confirming that research has been undertaken, and is still on-going, at those universities which have confirmed this to be the case.
52. The Commissioner does not believe that responding to the first part of the request made by the complainant adds to any existing health and safety risk. The public authority's provided its own *historical evidence* which demonstrates that it is already a target. It has accepted itself that an individual cannot be identified by complying with this part of the request and it has also detailed in its own evidence that it has been a target because of its work in the past. Again, the risk therefore pre-exists this

- request and the Commissioner does not accept that the limited amount of information which has been requested would add to this on-going threat.
53. Whilst the Commissioner recognises the public authority's concerns in respect of releasing any information in relation to the request he again notes that the public authority has, nevertheless, not sought to deny that it holds such information.
54. For the reasons given above, the Commissioner does not find that the exemption at section 38 is engaged in respect of the first part of the request.

## **Request 2 - Summaries of current research using primates, by species**

55. The public authority has provided several arguments (italicised in the following paragraphs) to the Commissioner in respect of this part of the request which the Commissioner has gone on to consider below.
56. The public authority has stated that: *"The amount and nature of primate research carried out at particular establishments is treated as confidential and is not disclosed by the Home Office or individual establishments for reasons relating to the health and safety of their staff. Placing such information in the public domain for the first time is likely to lead to targeted campaigns, aimed, for example, at those institutions where the most research is carried out or at institutions which have not previously been known to be carrying out such research. ... the evidence [provided] demonstrates that such campaigns are likely to provoke indiscriminate intimidation and threats to the health and safety of staff and students. Even where campaigns are promoted by mainstream organisations, experience shows that they almost invariably have the effect of attracting militant activity from extremist elements acting independently of the organisations themselves."*
57. Despite its perceived threat of risk to the health and safety of individuals the Commissioner again notes that the public authority has not opted to 'neither confirm nor deny' that it holds the information.
58. The Commissioner understands that the Home Office does not publish the amount or nature of primate research down to establishment level and therefore that the information requested has not previously been placed in the public domain. However, the fact that primate research was being conducted by this public authority was established by its response to the complainant and the request therefore only seeks to ascertain what type/s of research were currently being done and the species used. Animal rights campaigns have evidently been ongoing prior to the request and this has

- not persuaded the public authority to either cease such research or to seek to deny it is being done.
59. The substantial evidence provided by the public authority included a log of local incidents, press cuttings and information from the internet going back for several years about animal rights demonstrations and adverse comments made about its animal research work. Whilst the Commissioner notes that these highlight the issues that the public authority, and those associated with it, has to face, he also notes that this was already happening and had been for some time. Whilst such campaigns may have resulted in indiscriminate intimidation and threats to the health and safety of staff and students, he believes that this is an on-going possibility because of the research that is known to have been still taking place.
60. The 'animal rights' campaigns have been going on for many years. Presumably, any group intent on pursuing its campaign will be avidly checking publications to assess what has been happening recently and would be readily able to target those involved if this was their desired course of action. Individuals are already at risk and the Commissioner does not believe that there is any evidence to suggest that the release of further limited information would escalate this.
61. The Commissioner finds the public authority's argument that disclosure of the requested information would reveal institutions which were not already known to be undertaking this research to be implausible. The complainant had only asked those universities where it believed such work was most likely to be on-going and all have confirmed whether or not this belief was correct. This request cannot be read as covering potential future requests to other institutions; any future request would be investigated on its own merit as necessary and this Decision Notice cannot be presumed to set a precedent.
62. The public authority has also stated that: *"It may be possible at present to connect certain anonymised abstracts to certain published research papers, whose authors include an academic or academics based at this University, but it should not be possible to establish authoritatively whether any relevant scientific procedures were in fact carried out by the academic or academics in question at this University. Verification ... has the potential to enable ... recipients of the information authoritatively to identify individual academics at this University as licence-holders under the 1986 Act, something which cannot be achieved on the basis of the information currently in the public domain. This creates a significant risk of such individuals being personally named and targeted as part of extremist campaigns, placing them at personal risk. The singling out of [name removed] provides an illustration of how such targeting can arise in*

*practice, derived apparently from ostensibly anonymised project licence narrative.”*

63. The public authority has argued that published research papers do not establish authoritatively whether or not specific research was actually carried out by or on its behalf, although the work may have been done by academics which were or are normally based at its premises. However, the Commissioner again notes that it has already confirmed that it does conduct the type of research requested so he cannot see how the information requested would add to any potential harm.
64. The risk that is generated by those of its academics who carry out this type of work may also lead to risks to other staff or associates of the public authority. This would presumably still be the case if research were carried out by its academics elsewhere or on behalf of others. Even if some of the published work has been done on behalf of other parties individuals still risk being targeted irrespective of where they carried out their research and who it was for. The Commissioner believes that they would remain a 'target' irrespective of where or when the work was done. This risk is likely to remain as long as the academics concerned continue to carry out and publish this type of research.
65. Published research, from both at the time of the request and more recently, identifies that some of the public authority's academics have been involved in primate research. It could therefore be argued that by identifying the types of current research being carried out it would be possible to surmise which academics may be participating in that particular research and, by association, possibly be a licence holder. However, whilst it is not apparent whether these academics are currently involved in such work, it is obvious that they have been. Some of the research has also been published since the request and the Commissioner therefore believes that any risk to their health and safety existed both at the time of the request and subsequent to it. This same research would also already allow potential licence holders to be 'best guessed' either for current or future work.
66. The Commissioner also understands the view that releasing a summary of the current research could possibly divulge the likely project licence holder and create more risks for any individuals involved with that project. However, he does not accept that the release of a summary of the types of research being undertaken could in itself create any additional risks to any individual than already existed at the time of the request. The public authority has disclosed that it currently does such research. Publications made at the time of the request, and subsequent to it, confirm that its academics have been involved in such research. Other universities have already released such information to the complainant with no apparent

- effect. In any event, there is a likelihood that the findings of any current research will be eventually published with much more detail than currently requested. The names of the researchers will also be published at this stage and could make or reinforce their status as a 'target' for campaigners – as is presumably also the case as a result of any published articles. Even if the researchers are no longer located at this particular establishment, or their research was undertaken elsewhere, they will either carry the perceived risk with them to their latest establishment or leave the risk behind them at the previous establishment.
67. The complainant has not requested details about individuals. It has asked for information about areas of research and the species of primate being used. The Commissioner is of the opinion that suitable summaries could be supplied which are no more likely to provide the identity of a licence holder than 'best-guessing' from information which is already available. The public authority itself has accepted that *"it may be possible at present to connect certain anonymised abstracts to certain published research papers, whose authors include an academic or academics based at this University, but it should not be possible to establish authoritatively whether any relevant scientific procedures were in fact carried out ... at this University"*. This therefore assumes that academics known to be associated with the public authority may actually be undertaking their research at a different location. Conversely, providing summaries could not authoritatively identify which individual was undertaking the research at an establishment as the academic involved could be from a different institution.
68. The Commissioner accepts that a detailed summary could possibly allow further information to be ascertained by successfully matching it to anonymised abstracts published on the Home Office website (see paragraph 23 above). However, although encouraged by the Home Office, provision of the abstracts remains voluntary and there is nothing which attributes them to any specific institution. Although it may be possible to guess which abstract applies to a summary provided in response to this request this would remain speculative as abstracts are not compulsory and there could be similar research being undertaken at any number of different establishments. Even if a successful guess was made, this would still only be a guess and, in any event, it would not be possible to accurately determine the licence holder or academics concerned as they may be from outside the public authority.
69. Having reviewed some of the abstracts which he considered were most likely to involve primate research, the Commissioner found none which actually stipulated that primates were actually being used.

70. It should also be noted that this part of the request includes a request for details of species of primates being used, not actual numbers. It is known that primates are already in use. Although details of species are not at this point published by the Home Office they will be in the following annual return. Based on the previously published returns it seems likely that the species will continue to be the three types listed in the returns (see paragraph 22 above).
71. The Commissioner may have previously accepted that information currently published by the Home Office is sufficient to facilitate public debate of the pros and cons of animal experimentation in his Decision Notice reference FS50082472. It is important to reinforce that Decision Notices are written on a case-by-case basis and whilst previous decisions can be useful they do not necessarily set a precedent. This particular case related to a request made to the Home Office for the names of those holding licences at all of the 35 licensed establishments in Scotland. The Commissioner was satisfied that section 38 was engaged and that disclosure of information revealing the identities of individuals holding licences would or would be likely to endanger the health and safety of them as individuals. This previous request cannot be considered to be the same as this one.
72. The Commissioner is of the view that information in the public domain may be relevant as an indication that no harm has occurred as a result of it being widely known. In this particular request he also accepts this to be the case.
73. For the reasons set out in the paragraphs above, the Commissioner finds that in the specific circumstances of this case, and with considerable weight placed on the information already in the public domain, the exemption is not engaged.
74. The Commissioner has provided what he considers to be an acceptable summary in response to the second part of the request in a confidential annex to this Notice.

## **The Decision**

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75. The Commissioner's decision is that the public authority has not dealt with the request for information in accordance with the Act in that:
76. The public authority failed to satisfy the requirements of sections 17(1)(b) & (c) as it failed to specify which sub-section of section 38 it was relying on by the time of the completion of the internal review. It also breached

section 17(3)(a) as it failed to specify the public interest factors it had considered by the time of the completion of the internal review.

77. The public authority inappropriately withheld the requested information under sections 38(1). In doing so it also breached sections 1(1)(b) and 10(1).

### **Steps Required**

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78. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act.
79. The requested information should be released to the complainant.
80. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

### **Other Matters**

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81. The Commissioner notes that although the public authority advised the complainant of its rights to appeal to him for a decision notice it did not include detail of how to contact his office. Whilst this is not a breach of the Act as a matter of good practice he considers that his contact details should be provided.
82. The Commissioner would like to acknowledge help he has been given by the Animals Scientific Procedures Division of the Home Office. Staff gave helpful advice which has assisted in compiling this Notice.

## Right of Appeal

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83. 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@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

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 31st day of March 2009**

**Signed (on behalf of the Commissioner and with his authority)**

.....  
**Peter Bloomfield**  
**Senior Corporate Governance Manager**

**For and on behalf of**  
**Richard Thomas**  
**Information Commissioner**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**

## Legal Annex

**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.

**Section 10(1)** provides that –

...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 11** provides that –

**(1)** Where, on making a request for information, the applicant expresses a preference for communication by any one or more of the following means, namely –

- (a) the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,
- (b) the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and
- (c) the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant,

the public authority shall so far as reasonably practicable give effect to that preference.

**Section 17** provides that -

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

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

**(3)** 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.

- (7)** A notice under subsection (1), (3) or (5) must-
- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
  - (b) contain particulars of the right conferred by Section 50.

**Section 38**

- (1)** 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.
- (2)** The duty to confirm or deny does not arise if, or to the extent that, compliance with Section 1(1)(a) would, or would be likely to, have either of the effects mentioned in subsection (1).