

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 21 July 2009

Public Authority: University of Oxford
Address: University Offices
Wellington Square
Oxford
OX1 2JD

Summary

The complainant requested information from Oxford University relating to the consideration, by the University's Donations Acceptance Review Committee ('DARC'), of a gift from an entrepreneur. The University replied, refusing to release this information and providing no grounds for doing so. It did, however, give some general information about the guidelines used by the DARC. The complainant requested an internal review. Following the review, the University provided some further information, to the effect that the DARC did consider the proposed gift, confirming that a number of documents were used by the University during this process and drawing the complainant's attention to a number of publicly available information sources. However, it claimed exemption for some information, citing 43(2) of the Act and maintaining that some of the information was personal in respect of the donor. It also maintained that the public interest in maintaining the exemption outweighed the public interest in disclosing the information.

The Commissioner has decided that, in failing to specify in its refusal notice all of the exemptions that applied to each element of the requested information, the public authority breached section 17(1) (b). The Commissioner has also decided that all of the withheld information should be released as he considers that sections 40(2) and 43(2) are not engaged. The public authority had therefore breached section 1(1) (b) in failing to disclose this information and section 10(1) in not doing so within the required period.

The Commissioner requires that the information be released within 35 days.

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. The complainant emailed Oxford University ("the University") on 27 May 2007 and requested the following information under the Act:

"Please would you let me know in writing if you hold information of the following description:

Information about a gift to Oxford University from Stanley Ho an entrepreneur, including, but not limited to, information relating to the consideration of this proposed gift by the Donations Review Acceptance Committee"

3. The University responded to this request in a letter on 25 June 2007. It supplied the complainant with a document about the role of the Donations Acceptance Review Committee ("DARC") and the guidelines it applies when considering donations. It also confirmed that the DARC vetted and approved the donation specified in the request in accordance with its standard procedures. The University noted that the complainant already appeared to be aware of the membership of the DARC. It did not specify whether it held any further information nor did it claim any exemption. The University informed the complainant of his right to request an internal review and his right to complain to the Commissioner.
4. In a letter dated 26 June 2007, the complainant requested an internal review. When doing so he noted that no information beyond the general guidelines used by the DARC had been released. He suggested that other information within the scope of his request, such as minutes and background briefing papers, must be held by the University and should have been released.
5. The University replied in a letter dated 30 July 2007, informing the complainant of the outcome of the internal review. It explained that:

"...to provide any detailed information on a matter relating to the work of the Donations Acceptance Review Committee would be likely to prejudice its commercial interests by impairing its ability to raise private funds to support its teaching, research and other related activities – Section 43 of the Freedom of Information Act. Donors and potential donors expect confidentiality in their dealings with the University, and to disclose any detailed information on a particular donation, of the sort that would be contained in the documents you have requested, could seriously discourage potential donors from giving to the University in future.

The Act requires us to weigh up the public interest in disclosing the information requested, which is presumed from the Act, against the public interest in withholding it. We recognise that there is a public interest in the disclosure of information regarding donations to the University and the procedures used to assess whether potential donations are ethically acceptable."

6. It also stated that:

“Since the disclosure [.....] beyond that already provided would be likely to impair the ability of the University to pursue its fundraising activities, it is our view that the balance of the public interest in this case lies against further disclosure. In addition, personal data is protected from disclosure with the FOIA”

7. However the University also confirmed that when researching the background to donors it consults a number of sources including material published in “reputable newspapers and journals and other media”. It then listed 14 articles from 10 different sources that were used when assessing the background of the donor relevant to this case. It advised the complainant that this was some, but not all, of the information used in this matter. The complainant was informed of his right to complain to the Commissioner.

The Investigation

Scope of the case

8. The complainant contacted the Commissioner on 7 August 2007 in order to complain about the way his request for information had been handled.

Chronology

9. The Commissioner wrote to the University on 26 June 2008 and asked it to provide him with further submissions in respect of the exemptions claimed under sections 40(2) and 43(2). In particular, he asked it to provide further and better particulars as to why the University believed the release of this information would impair its ability to raise future funds, including any examples of where this has previously occurred. He also sought further reasoning in respect of the University’s assertion in respect of personal information.

10. The University provided a response in a letter dated 23 July 2008, in which it restated that the withheld information was commercially sensitive and that disclosing it would be likely to prejudice the commercial interests of the University. It provided further argument that confidentiality and privacy were essential in maintaining good relationships with potential donors and that any release of information in this case would be regarded as requiring disclosure of information on background checks in all cases at all times. As a consequence, this could lead to the possibility that information on any background checks would not be recorded by the University for its own files, or that no background checks would be made. The University maintained that the public at large would wish to know that the University has machinery in place to make such checks, but would not expect to have the details of any checks made available, if that were to put success in fundraising seriously at risk. The University were unable to provide

any examples of where the release of such information has impaired their ability to raise future funds.

11. The University expanded its contention that personal information was included within the withheld information. It maintained that, although at least part of the information used by the Committee was already within the public domain, certain of it might not be. In addition, some of the information in the documents was not about the donor, but about others associated with him, so that even if it were considered appropriate to disclose information about the individual, this personal information would need to be redacted and that such redaction would render much of the document incomprehensible.
12. In respect of the public interest test under section 43, the University developed its assertion that it was not in the public interest to release this information. It referred to the Government's Matched Funding Scheme, as well as a new £200m matched funding scheme for voluntary giving to the higher and further education sectors due to commence in August 2008. It drew attention to the fact that the public funding the University received for undergraduate teaching does not cover the full costs, and that the University has to meet the shortfall from its own sources. It believed that private funding would be seriously put at risk if potential donors could not be assured of the confidentiality of process.
13. After receiving this letter, the Commissioner wrote to the University on 21 August 2008. He made a number of comments, inviting the University to highlight any personal information in this case that was not already in the public domain. The public authority was given a final chance to develop its arguments in respect of potential harm to the University's commercial interests.
14. On 16 September, the University wrote seeking a small extension in the time given to reply. This was granted.
15. On 25 September a second extension was sought and, again, was granted.
16. Finally, on 26 September, a second letter was received from the University. It restated the University's position in respect of section 40 (2) and 43 (2) exemptions, providing further arguments for both exemptions.

Background

17. The donor is a Chinese entrepreneur with business interests in entertainment (particularly gaming as the owner of several large casinos), tourism, shipping, real estate banking and air transport. He has a track record in philanthropy, including donations to the Chinese Government, and more pertinently, education.
18. The donor has previously endowed the University of Hong Kong. In 2006, he made a £2.5m donation to Pembroke College at Oxford University to endow a chair – 'the Stanley Ho University Lecturer in Chinese History'.

Analysis

Procedural

Section 1

Interpretation of the request

19. Section 1(1) states 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.
20. The University has claimed that in the request dated 27 May 2007, the complainant only specified information relating to the DARC. It claimed he then made his request more specific when he asked for an internal review on 26 June 2007. Generally, where an applicant for information makes a broad request to a public authority and then seeks to narrow it the Commissioner considers any refined request to constitute a new request. However in this case the Commissioner does not agree with the University's position.
21. The complainant's request was for "information about a gift to Oxford University from Stanley Ho an entrepreneur, including but not limited to information relating to the consideration of this proposed gift by the Donations Review Acceptance Committee" (sic).
22. It is clear from the phrase underlined that the request was broader than simply for information considered by the DARC. Moreover the Commissioner does not consider that the complainant tried to refine his request in his letter of 26 June 2007. The references to more specific information in the request for an internal review were in the context of challenging the University's initial response and in particular the failure to disclose any material beyond the guidelines used by the DARC or to cite any exemptions. The information specified by the complainant was an example of the material he considered must be held and that would fall within the scope of his initial request.

The Commissioner is satisfied that by the time the internal review was complete the University had considered the material it held which fell within the scope of the initial request. He has considered whether that material was appropriately withheld under sections 40(2) and 43(2) and has concluded that it was not. Therefore, for the reasons set out in the exemption section below, he has decided that the University breached section 1(1) (b) in failing to communicate the requested information to the complainant.

Information provided to the complainant

23. The University also explained to the Commissioner that it did not in fact consider its initial response to the complainant's request to constitute a refusal. Bearing in mind the University's narrow interpretation of the request, it claimed that it had provided the complainant with the information he requested in its reply. In particular it provided a copy of the guidelines used by the DARC and confirmation that the Committee had considered the donation in line with its standard procedures and had found it to be entirely satisfactory. In justifying this position it asserted that the Act 'entitles individuals to have access to information and not to documents'. Therefore, for example, it was not obliged to disclose the minutes of the meeting at which the DARC approved the donation but simply to communicate that this was the case.
24. Section 1 provides a right of access to recorded information. The effect of this is that the right of access is broadened beyond information recorded in documents. The explanatory notes to the Act state that it, "will permit people to apply for access to documents, or copies of documents, as well as to the information itself" (paragraph 6). Section 84 states that "information (subject to sections 51(8) and 75(2)) means information recorded in any form". Thus section 1 would apply to information held, for example, in a database.
25. Section 11 of the Act entitles the applicant to specify a preferred means of communication including the provision of copies of information that has been requested. A public authority is required to meet any specified preference so far as is reasonably practicable. In this case the complainant did not specify that he required copies of the material requested. Whilst in many cases the provision of copies will be the simplest means of communicating information, it is still up to a public authority to determine how to do so if no preference is stated. When a public authority decides to include information in a letter rather than by way of a copy of the original recorded material, it must communicate the exact information as it is recorded.
26. In this case the Commissioner does not consider that some of the information communicated by the University in its letter to the complainant dated 25 June 2007 was identical to that recorded in the material within the scope of the request. Moreover he does not consider that all relevant material was disclosed even on the narrow reading of the request let alone the broader interpretation that he considers was in fact applicable. By way of example, the minutes of the DARC meeting at which the donation was considered were in the scope of the request, except to the extent that they recorded discussion of completely separate donations. The University confirmed that the donation had been vetted and advised the complainant that the names of the committee members had not been released because in its view he was already aware of their identities. It did not however specifically rely on the exemption in section 21. In fact the Commissioner considers that, subject to any exemption, the complainant was entitled to all the information in the minutes relating to the donation in question including the date of the meeting and the identities of those who were present or absent.

27. In light of the above the Commissioner has considered the information the University withheld at internal review all of which he considers to have been relevant to the initial request. This includes the minutes of the DARC meeting at which the donation was approved. As mentioned previously, he has set out his reasons for concluding that neither of the exemptions was appropriately maintained in the exemptions section below.

Section 10

28. 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.
29. To the extent that details of sources used by the University were disclosed to the complainant it appears that they were identical to what was recorded in the material held. In failing to supply that information which was within the scope of the original request within twenty working days the University breached section 10(1) of the Act.
30. In addition as the Commissioner has concluded that the University should have released all of the withheld information, its failure to do so within 20 working days also constitutes a breach of section 10(1).

Section 17

31. Section 17 (1) requires a public authority, which is relying upon an exemption in order to withhold requested information, to issue a refusal notice which:
- states the fact,
 - specifies the exemption in question, and
 - states (if that would not otherwise be apparent) why the exemption applies.
32. In failing to consider the full scope of the request and issue a refusal notice citing the relevant exemptions within twenty working days the University breached section 17(1).
33. The internal review specified that section 43 applied but it only referred to personal data and not explicitly to section 40(2). By failing to quote the subsection of the exemption in section 43 that was applicable or to specifically cite section 40(2) at all the University breached section 17(1) (b). The full text of sections, 1, 10 and 17 can be found in the Legal Annex at the end of the Notice.

Exemptions

Section 43

34. In the case of *Hogan v the ICO and Oxford City Council* the Information Tribunal ('the Tribunal') set out how the prejudice test should be interpreted. It stated that it "should be considered as involving a numbers of steps. First, there is a need to identify the applicable interest(s) within the relevant exemption.....Second, the

nature of 'prejudice' being claimed must be consideredA third step for the decision-maker concerns the likelihood of occurrence of prejudice" (paras 28 to 34).

35. Section 43(2) provides an exemption from section 1(1) (b) where disclosure of information would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it). The full text of section 43 can be found in the Legal Annex at the end of this Notice.
36. The University asserted that the release of the information in this case would likely prejudice its commercial interests by creating a precedent. It argued that future donors would be dissuaded from offering money to the institution if there was a real prospect that material used in the vetting process was released. Before considering the merits of this line of reasoning, in particularly the likelihood of prejudice, it is essential to consider whether fundraising is a commercial activity.
37. In the Commissioner's view a commercial interest relates to a person's ability to participate competitively in a commercial activity, i.e. the purchase and sale of goods and services. The University is, broadly speaking, not a profit making organisation, the provision of higher education as a public service (albeit for a fee) is its underlying motive. Moreover, the services are paid for out of the public purse and supplemented by private donors. In providing higher education, the University's survival is not dependant on its ability to generate its own funding and therefore the need to be commercially competitive is not a paramount consideration in the sense one would expect of a privately funded organisation.
38. The release of the information in this case may or may not affect the University's ability to raise future funds, but this is not a commercial activity albeit that it may be a financial interest. In view of this the Commissioner does not consider the applicable interests to fall within section 43 and therefore he has concluded that the exemption was incorrectly relied upon by the University to refuse access to the information requested. In light of this conclusion it is not necessary to further consider the nature of the prejudice in this case or the likelihood of it occurring.

Section 40

39. The University argued that some of the information requested is the personal data of the donor and various third parties and that to release it to the complainant, even in redacted form, would breach their rights under the First Data Protection Principle of the Data Protection Act 1998 (the "DPA"). It cited section 40(2) of the Act, the full text of which can be found in the Legal Annex at the end of this Notice.
40. The Commissioner has considered whether the University was correct to apply the exemption at section 40(2) by virtue of (3) (a) (i) of the Act. When considering the University's reliance on that exemption, the Commissioner has considered the following questions:

- Is all of the withheld information personal data of the donor and/or third parties?
- Is any of the withheld information sensitive personal data?
- Would disclosing the information be unfair or unlawful?
- If disclosing the information would not be unfair or unlawful can condition 6 of schedule 2 of the Data Protection Act be met?

Is all of the withheld information personal data of the donor and/or third parties?

41. Personal data is defined in section 1(1) of the DPA as:

“data which relates to a living individual who can be identified-

a) from those data, or

b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller...”

42. The Commissioner is satisfied having considered the definition above and the withheld information in this case that it all constitutes the personal data of the donor. A considerable amount of the information is also personal data of third parties associated with the donor.

Is any of the withheld information sensitive personal data?

43. The Commissioner has reviewed all of the requested information and is satisfied that none of it constitutes sensitive personal data as defined in section 2 of the DPA. Therefore it is not necessary to consider the conditions in schedule 3 of the DPA in this case. He has explained further why he has reached this conclusion in paragraph 1 of the Confidential Annex to this notice. He is unable to provide further details in this regard without revealing the contents of the withheld material. Obviously, in order to avoid prejudice to any appeal, the Confidential Annex will only be released to the public authority.

Would disclosure be unfair or unlawful?

44. The University has asserted that if it were to release the requested information it would breach the First Data Protection Principle. This states that information must be processed fairly and lawfully and must not be processed unless one of the conditions in schedule 2 of the DPA is met. The Commissioner would also highlight that each case must be determined on its own merits and therefore cases involving similar information in the future may not necessarily result in the same decision.

45. It is not apparent that the donor gave the University any personal information in this case. From the information provided by the University, it would appear that the personal information about the donor and the third parties was collected from a number of published sources. Nevertheless the Commissioner accepts that a small amount of the information has not been sourced from public information and that the details extracted and used or internally generated by the University are

not in the public domain. Furthermore all the information is personal data and therefore it is still necessary for the University to process it in accordance with the Data Protection Principles notwithstanding that it does not appear to have been obtained from the data subjects or that it has been primarily sourced from the public domain.

46. When individuals are asked to give personal data, any proposed non-obvious uses for that data should be explained by the data controller in a so-called “fair processing notice”, so far as is practicable. Generally, the Commissioner considers that the details contained in a fair processing notice should concern the business purposes of the data controller. The Commissioner does not consider compliance with FOI requests as being a distinct business purpose of a public authority; public authorities do not collect personal data specifically for the purpose of responding to such requests. Therefore, omitting to mention disclosures under the Act in a fair processing notice will not in itself mean a disclosure contravenes the DPA. It will be necessary instead to consider the wider implications of “fairness” in relation to the First Principle. Where personal data is not obtained from the data subjects but is nevertheless held the Commissioner believes the same considerations are relevant. (In reaching this view the Commissioner has followed the Tribunal’s comments in *EA/2006/0015 and 0016 House of Commons v ICO & Norman Baker MP* (paragraph 75).
47. As no information appears to have been sourced from the donor or his associates, when assessing fairness, the Commissioner has considered whether the donor and/or the third parties would have expected the information to be freely disclosed.
48. The University argued that whilst donors may well expect some form of vetting to take place before a donation is accepted, they would have a reasonable expectation that this would remain confidential. It supplied the Commissioner with a copy of the Financial Regulations and highlighted the section relating to gifts received to demonstrate the commitment to ensuring due process where donations are concerned. It is the Commissioner’s view that section 2.3 of the Financial Regulations increases the likelihood that the donor would have expected vetting by the DARC. The Commissioner notes the Financial Regulations that detail when donations will be referred to the DARC. However they do not make any explicit statement as to the confidentiality or otherwise of any considerations by DARC and neither do its terms of reference which were disclosed to the complainant. Therefore he does not consider that the Financial Regulations constitute persuasive evidence one way or the other about the donor’s expectations.
49. The Commissioner has also taken into account the content of the ‘Donors Charter’ when considering the issue of fairness and the expectations of the donor and his associates. The Charter states that donors have the right to:

“be assured that [their] rights to privacy will be respected and that there will be full compliance with the Data Protection Act 1998.

receive appropriate acknowledgement, recognition, and publicity for their donation in consultation with the donor, and to respect anonymity if requested”.

50. The Commissioner accepts that in some cases it may be reasonable to conclude that a donor will have an expectation that some information used in the vetting process would remain confidential, for example, if they have specifically asked to remain anonymous and it would not be possible to release material without revealing their identity. However he considers that reasonable expectations will differ depending in part upon the degree to which the rights and freedoms of the data subject would be prejudiced if the information were released. The Commissioner considers that any detriment to the donor or his associates is likely to be lower where information is already in the public domain and therefore their expectations may be that it would be fair to release that information.
51. The donor has a long and significant track record in the public eye. He is a well-known philanthropist and there is a considerable amount of information in the public domain including biographies and listings detailing the donations he has made. There is also a wealth of information available about the donor's financial and business interests. A lot of the publicly available information demonstrates that the donor's family life, business interests and philanthropic activities are often inextricably linked. For example he has opted to name other gifts after himself or members of his family. The endowment at the centre of this case relates to the creation of a Chair in the donor's name. It thus follows that the benefactor is seeking to publicise his generosity, or as mentioned above is not intent upon remaining anonymous.
52. In this case the Commissioner has not been provided with any evidence to suggest that the donor or the third parties have specifically objected to the disclosure of the requested information. He also considers that the size of the donation would have been increased the donor's expectation that it would be subject to greater scrutiny by the public. In view of this and the fact that the majority of the withheld information has been sourced from the public domain the Commissioner does not consider that it would be unfair or unlawful to disclose the information that relates to the donor.
53. The Commissioner does not consider that the associates would not have an expectation of anonymity and in his view would have some expectation that the disputed material may be disclosed. He is further satisfied that it would not be unfair or unlawful to disclose the information that relates to the donor's associates. However he is unable to explain further in this notice why this is the case and therefore has provided further detail in paragraphs 2 and 3 of the Confidential Annex attached to this decision notice.

If disclosing the information would not be unfair or unlawful can condition 6 of schedule 2 of the Data Protection Act be met?

54. In considering compliance with the First Principle, the Commissioner has looked at the requirement contained within it that information may not be processed unless at least one condition from schedule 2 is met, and, in the case of sensitive

personal data (as defined at section 2 of the DPA), at least one condition from schedule 3.

55. As the Commissioner considers that the information the University has been asked to disclose does not constitute sensitive personal data, only one condition in schedule 2 of the DPA needs to be met in order to satisfy the basis for processing element of the First Principle.
56. The first condition in schedule 2 is that the data subject has consented to information being processed. The Commissioner has not been presented with any evidence that the donor or his associates have consented to the disclosure of information and therefore this condition is not met.
57. In light of the above, the Commissioner considers the only other relevant condition to be in paragraph 6(1) of schedule 2 of the DPA.
58. Paragraph 6(1) of schedule 2 of the DPA establishes a three part test which must be satisfied;
 - there must be legitimate interest in disclosing the information,
 - the disclosure must be necessary for a legitimate interest and,
 - even where the disclosure is necessary it nevertheless must not cause unwarranted interference (or prejudice) to the rights, freedoms and legitimate interests of the data subject.

Legitimate interest

59. The Commissioner considers that there is a public interest inherent in the provision of access to official information and is aware that this view is supported by the Information Tribunal (*paragraph 55 EA/2007/0060 the House of Commons v ICO & Leapman, Brooke, Thomas*).
60. The Commissioner notes that details about the role of the DARC were released to the complainant in the initial response to his request. Nevertheless he is satisfied that there is a legitimate interest not only in seeking further information about the relevant processes but also about how individual cases have been decided. Disclosing the requested information would highlight just what the DARC did and did not consider when deciding to accept the donation. In other words it would demonstrate the degree to which procedures put in place by the public authority to vet donations have been followed.
61. In the Commissioner's view there is a legitimate interest in ensuring that the public has access to information which ensures that the University is accountable and transparent about the basis of the decision it has taken to accept the donation. Moreover he also considers that disclosing the requested information would inform the debate about the adequacy of the process and the appropriateness of accepting significant sums of money from particular sources. In this specific case the Commissioner considers that the legitimate interests have significance given the size of the donation and the concerns expressed by some about the University's decision to accept funds linked to gambling.

62. The University indicated to the Commissioner that it was in the process of revising the arrangements for scrutinising potential donations and if adopted, the new proposals would be reflected in new Regulations which would be publicly available. It therefore argued that disclosure of the requested information, in these circumstances, would add little to the public understanding of how the University scrutinises potential donations. In the Commissioner's view, the fact that the University may be amending its processes in respect of vetting donations, does not negate the legitimate interest in the public knowing more about the extent to which donations have been vetted under existing procedures. Moreover disclosure may have enabled those impacted by the decisions of the DARC or concerned with its processes to have lobbied from a more informed standpoint about how the arrangements should be altered which the Commissioner considers, as he has indicated above, to be a legitimate interest.

Necessity

63. The Commissioner notes that at internal review stage, the University provided the complainant with links to publicly available news sources that were consulted by the DARC as part of its deliberations. Whilst he considers that this goes some way to satisfying the legitimate interests outlined above, in his view it is nevertheless necessary in this instance to disclose all of the requested information. This is because in order to be fully informed about the rigour of the deliberations, it is necessary to have a complete picture of all of the material that was considered, how it was presented and of any views or opinions expressed by the University.

Unwarranted prejudice to the rights and freedoms of the data subject(s)

64. As the Commissioner is satisfied that there are legitimate interests in disclosing the requested information and it is necessary to do so for those purposes, he has considered whether it would nevertheless result in unwarranted prejudice to the rights and freedoms of the data subjects.
65. The Commissioner often distinguishes between the public and private lives of individuals when assessing whether disclosure would breach the First Data Protection Principle. Generally, it is more likely to be unfair to release information about someone's personal life than their public one. However, in this case the Commissioner has been cognisant of the fact that the donor is a high profile individual with a well known public face who has been subject to, for whatever reason, significant public scrutiny. Therefore, whilst the withheld information contains material about the donor's personal life, the Commissioner does not consider disclosure would result in unwarranted prejudice to his rights and freedoms in this regard.
66. As previously mentioned, the Commissioner recognises that the withheld information itself is not in the public domain and that disclosure would reveal exactly what the University considered when vetting the donation. In the Commissioner's view revealing which aspects of publicly available material the University opted to use would not result in unwarranted prejudice to the donor's

rights and freedoms. Nor does he think that revealing the material that was internally generated by the University rather than obtained from public sources would have this effect. In particular he does not consider such information to be particularly free and frank or to reveal anything that would be detrimental to the donor.

67. The Commissioner has considered whether condition 6 in schedule 2 of the DPA is met in relation to the personal data about third parties. He considers that the same arguments regarding legitimate interests and necessity apply to information about third parties as have been explained above in relation to the donor. This is particularly given that details about the donor are inextricably linked with the details about the third parties. He has concluded that disclosure would not result in unwarranted prejudice to the rights and freedoms of the third parties but is unable to explain why in detail because, in his view, to do so would potentially reveal the content of the information. Therefore he has provided further detail in this regard in paragraph 4 the Confidential Annex to this decision notice.
68. In light of all of the above, the Commissioner is satisfied that the condition for processing at schedule 2 paragraph 6(1) is met and that disclosure would not breach the First Data Protection Principle.

The Decision

69. The Commissioner's decision is that Oxford University did not deal with the request for information in accordance with section 1 (1) (b) of the Act in that it inappropriately relied upon sections 40 (2) and 43 (2) to withhold the information.
70. The University also acted in breach of sections 1(1), 10 (1) and 17 (1).

Steps Required

71. The Commissioner requires Oxford University to take the following steps to ensure compliance with the Act:

The requested information should be disclosed to the complainant within 35 calendar days of receipt of this Notice

Failure to comply

72. 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.

Right of Appeal

73. 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

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 21st day of July 2009

Signed

**Jo Pedder
Senior Policy Manager**

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

Legal Annex

Section 1

- (1) Any person making a request for information to a public authority is entitled –
- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to him.

Section 10

- (1) 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 17

- (1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1 (1), give the applicant a notice which -
- (a) states that fact
 - (b) specifies the exemption in question, and
 - (c) states (if that would not otherwise be apparent) why the exemption applies.
- (2) Where –
- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim –
 - (i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2 (3) is relevant to the request
or
 - (ii) that the information is exempt information only by virtue of a provision not specified in section 2 (3), and
 - (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66 (3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1) (b) or (2) (b) of section 2

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate

of the date by which the authority expects that such a decision will have been reached.

- (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.
- (4)** A public authority is not obliged to make a statement under subsection (1) (c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information
- (5)** A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1 (1), give the applicant a notice stating the fact.
- (6)** Subsection (5) does not apply where –

 - (a) the public authority is relying on a claim that section 14 applies
 - (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
 - (c) it would in all circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.
- (7)** A notice under section (1), (3) or (5) must –

 - (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
 - (b) contain particulars of the right conferred by section 50.

Section 40

- (1)** provides that –
Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.
- (2)** 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.
- (3)** provides that –
The first condition is -
- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
 - (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A (1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded."
- (4)** provides that –
The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).

Section 43

- (2)** provides that –
Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).