

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 14 October 2009**

**Public Authority:** Wakefield Metropolitan District Council  
**Address:** Town Hall  
Wood Street  
Wakefield  
WF1 2HQ

### Summary

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The complainant requested information held by Wakefield Metropolitan District Council (the council) in relation to the settlement of employment tribunal proceedings brought by six former council employees under the Public Interest Disclosure Act 1998 who were dismissed for whistle blowing. In particular, he asked for the total amount paid to the former employees. The council has refused to provide this information as it believes it is exempt under section 40(2) of the Act in that it constitutes the personal data of the former employees and processing of it would be unfair and unlawful under the Data Protection Act 1998 (DPA). Also the council has cited section 41 on the basis that the information was provided in confidence. The Commissioner has decided that neither sections 40(2) or 41 are engaged and accordingly has ordered that the withheld information be disclosed in 35 days.

### 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. In February 2006 six former council employees began proceedings in the Employment Tribunal under the Public Interest Disclosure Act 1998 after they were sacked for highlighting a series of alleged management lapses at children's homes in the region. The case was due to be heard by the Tribunal in September 2007 for which a 6 week period was allocated. However, approximately three weeks before the hearing in August 2007 an out-of-court settlement was reached

with the six named employees the terms of which were embodied in a compromise agreement containing a confidentiality clause.

3. In a statement the council said it had 'reached an out-of-court settlement with six former employees who were dismissed following publication in the Press of various allegations regarding the council's looked-after children services'. It acknowledged 'that the concerns raised were genuinely held and raised in what staff members perceived to be a manner that was for the benefit of children in the council's care. The council recognises that the management of the response did not sufficiently reflect the expectations of the staff members and wishes to place on record that lessons have been learned from these regrettable events with changes made to staff and procedures at all levels of service'.
4. The Public Interest Disclosure Act 1998 came into force on 2 July 1999 and is designed to protect workers from detrimental treatment (e.g. dismissal) or victimisation from their employer if, in the public interest, they "blow the whistle" on wrongdoing. Such wrongdoing may include situations where a worker reasonably believes there has been (or will be) a criminal offence, a breach of legal obligation, a miscarriage of justice and a danger to the health and safety of an individual.
5. If a worker is dismissed for disclosing information regarding one or more of the above wrongdoings the dismissal will automatically be unfair and the worker will be entitled to claim compensation in a Tribunal. There is no limit on the amount of such compensation which is assessed according to the workers' individual circumstances and losses. Any compensation awarded may also include an element for aggravated damages.

## The Request

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6. On 29 August 2007 the complainant requested by email;

'information the council holds on the settlement of an employment tribunal claim made by six former council employees who were sacked for whistleblowing. Specifically, I would like information the council holds on the amount paid to the six former employees'.
7. The council responded by email on 30 August 2007 stating that the information was exempt under both sections 40(2) and 41 of the Act. In relation to section 40(2) the council said that the information constituted the personal data of a third party and disclosure would not be consistent with their right to privacy under the DPA. In relation to section 41 the council said disclosure of the information would constitute an actionable breach of confidence as the settlement was subject to a confidentiality agreement.
8. On the 30 August 2007 the complainant replied by email and requested an internal review. With regard to section 40(2) he said that one piece of information the council could provide was 'the total amount paid to the six whistleblowers'

adding that 'individual payments would not be identifiable in those circumstances'. In any event he said that there was 'a clear public interest in the information being released given the circumstances in which the council had to pay a substantial amount of public money to former employees. With regard to section 41, he said that he did not believe that the exemption applied as the information had been 'jointly created' as opposed to being 'provided to the council' and referred to the Commissioner's [Decision Notice FS50080312](#) as authority for this. Furthermore, he said that even if section 41 was engaged there was a 'clear public interest in providing the information'.

9. On 19 September 2007 the council wrote to the complainant with the outcome of its internal review following careful consideration by its 'Exemptions Panel' which was that the initial decision was upheld. In relation to section 40(2) it said that as this was an absolute exemption there was no requirement to consider the public interest. Instead it said that any legitimate interests of the public would have to be weighed against any prejudice to the rights, freedoms and legitimate interests of the former council employees. It added that given the fact that the former employees and the council entered into a compromise agreement on the understanding that the settlement details would remain private it believed that their rights and those of the council would outweigh the interests of the local community. In relation to section 41 it said that it did not agree with the complainant's interpretation of section 41 and the relevance of the Commissioner's decision in [Decision Notice FS50080312](#).

## The Investigation

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### Scope of the case

10. On 1 October 2007 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He specifically asked the Commissioner to consider the arguments raised in his internal review request dated 30 August 2007 and made it clear that he was requesting the total amount paid in compensation.

### Chronology

11. On 23 October 2007 the Commissioner wrote to the council requesting details of the total sum paid, a breakdown of who was awarded what amount and the reasons for any disparity (length, of service, seniority etc) together with a copy of the compromise and confidentiality agreements. The Commissioner also requested the council's detailed reasoning regarding its application of sections 40(2) and 41 of the Act together with information as to whether the compensation payment was or would be referenced in its financial records or accounts and whether it was or would be mentioned in any minutes or meeting notes.
12. On 9 November 2007 the council emailed the Commissioner stating that if it disclosed the compromise agreement voluntarily it would breach its terms.

- Accordingly, it invited the Commissioner to issue an Information Notice requiring it to produce the document.
13. On 26 November 2007 the Commissioner issued an Information Notice requiring the council to disclose the information listed in paragraph 6 above within 30 days.
  14. On 19 December 2007 the council sent the Commissioner a copy of the compromise agreement (containing a confidentiality clause) and pointed out that there was not a separate confidentiality agreement. In relation to the amount paid the council pointed out that although the total figure was set out in the compromise agreement it held no information regarding any breakdown of the sums paid to the six individuals. It said that a full settlement amount was paid to the solicitor acting for the former staff but the council was not privy to how this amount was divided between the six individuals.
  15. On 7 November 2008 the Commissioner emailed the council and requested an answer to a question initially put in his letter dated 23 October 2007 namely whether the compensation payment had been or would be detailed in its financial records or accounts and whether the payment had been or would be discussed, mentioned or referred to in any minutes or meeting notes.
  16. On 11 November 2008 the council responded by email saying that although the compensation payment was not separately identified or detailed in its accounts it was 'recorded and properly accounted for'.
  17. On 2 December 2008 the Commissioner emailed the council and asked where in its accounts the payment was recorded and whether it would have been available for inspection under section 15 of the Audit Commission Act 1998 (ACA).
  18. On 8 December 2008 the council responded by email stating that the settlement amount was accounted for on page 41 of its Statement of Accounts for 2007/08 under the heading 'Income and Expenditure account - Childrens and Education Services' where the 'gross expenditure' figure was shown as £349,264,000. In relation to section 15 of the ACA the council said that details of the compensation payment would not have been made available for inspection by virtue of section 15(5).
  19. On 20 January 2009 the Commissioner emailed the council and requested further information in relation to accountability for and public access to the compensation payment. In particular, the Commissioner asked whether the council followed any specific guidance in relation to the publication of severance or compensation payments and made reference to the Statement of Recommended Practice (SORP) issued by the Chartered Institute of Public Finance and Accountancy (CIPFA).
  20. On 12 February 2009 the council replied by clarifying that the settlement figure was included within the 'gross expenditure' figure of £349,264,000 in the Statement of Accounts. It also pointed out that it followed the SORP guidance issued by the CIPFA for the publication of anonymised severance/compensation payments within the £10,000 remuneration bands starting at £50,000. However,

in an email dated 12 March 2009 it clarified its interpretation that the guidance would not apply to the six former employees as they were not employees at the time the payments were made.

21. In its email response to the Commissioner dated 12 February 2009 the council pointed out that as all of the six former employees were 'identifiable from a number of media reports and the settlement amount related to those individuals' the total settlement figure would qualify as their personal data under the DPA. The council added that although the settlement figure related to more than one person 'it did not render null and void the fact that it also related to them as individuals'. The council pointed out that considering the amount and the number of staff involved disclosure of the total sum might be considered indicative of the individual amounts received. However, it reiterated that it did not hold any information in relation to the breakdown of the total figure and was therefore unable to comment upon the actual amounts involved.
22. The Council said that disclosure of the total figure would breach the DPA as it would not meet any of the conditions provided by the first principle, could not be considered to meet the reasonable expectations of those involved and, in turn, could therefore not be considered fair as all parties involved agreed to the non disclosure of the settlement amount as evidenced by the compromise agreement. Secondly, the Council would be in breach of the legally binding conditions of the compromise agreement should it choose to disclose and would therefore fail to meet the requirement of lawfulness. Finally it said that no schedule 2 condition seemed to be a relevant condition for the processing of the personal data involved.
23. In a further email from the council to the Commissioner dated 5 May 2009 it stated that it did not consider it appropriate given the 'timing of events' to make a 'provision' in its accounts for 2006/07 for any potential liability it may have to pay compensation and/or legal costs in relation to the Employment Tribunal proceedings.

## Analysis

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### Exemptions

24. The council has cited two exemptions in relation to the information requested; section 40(2), personal information and section 41, information provided in confidence.

### Section 40(2) of the Act

25. Section 40(2) provides an exemption to the duty to disclose information where the information requested constitutes the personal data of a third party, (subject to the provisions of the Data Protection Act 1998). Section 40 is an absolute exemption and therefore, there is no need to apply the public interest test under section 2 of the Act.

26. Section 1(1) of the DPA defines personal data as 'data which relate to a living individual who can be identified from those data, or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and indication of the intentions of the data controller or any other person in respect of the individual...'
27. When considering disclosure or non-disclosure of third-party personal information, an authority is required to consider the data protection principles as set out in Schedule 1 of the Data Protection Act 1998 (DPA).
28. The first data protection principle requires that personal data shall be processed fairly and lawfully, and in particular, shall not be processed unless at least one of the conditions in Schedule 2 of the DPA is met. The Commissioner believes that the relevant condition in Schedule 2 is the sixth condition.
29. The sixth condition states that the processing of personal data will be fair where it 'is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject'.
30. When considering compliance with the first data protection principle it is necessary to consider what the reasonable expectations of a person would be in relation to how their information would be used.
31. In addition, where the personal data is classified as sensitive personal data, as defined in Part 1, section 2 of the DPA, then at least one condition in Schedule 2 and one condition in Schedule 3 of the DPA must be met.
32. A full text of section 40 is available in the Legal Annex at the end of this Notice.

**Is the information personal data?**

33. The council has argued that the requested information constitutes the personal data of the former employees and disclosure would not be consistent with their right to privacy under the DPA. It clarified that as all of the six former employees were 'identifiable from a number of media reports and the settlement amount related to those individuals' the total settlement figure would qualify as their personal data under the DPA. The council added that although the settlement figure related to more than one person 'it did not render null and void the fact that it also related to them as individuals'. The council pointed out that considering the amount and the number of staff involved disclosure of the total sum might be considered indicative of the individual amounts received. However, it reiterated that it did not hold any information in relation to the breakdown of the total figure and was therefore unable to comment upon the actual amounts involved.

34. The complainant has argued that the information does not constitute the personal data of the former employees as it does not specify how much each individual received.
35. When considering whether the information is personal data the Commissioner has taken into account his own published guidance: '[Determining what is personal data](http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/personal_data_flowchart_v1_with_preface001.pdf)' which can be assessed at: [http://www.ico.gov.uk/upload/documents/library/data\\_protection/detailed\\_specialist\\_guides/personal\\_data\\_flowchart\\_v1\\_with\\_preface001.pdf](http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/personal_data_flowchart_v1_with_preface001.pdf)
36. From his guidance there are two questions that need to be answered in the affirmative when deciding whether the information, if disclosed to the public, would constitute the personal data of the individuals:
- a. Can a living individual be identified from the data, or, from the data and other information in the possession of, or likely to come into the possession of, the members of the public?
  - b. Does the data 'relate to' the identifiable living individual, whether in personal or family life, business or profession?
37. As the names of the six former employees and the fact that they were paid compensation is already in the public domain through various media articles it is clear that total compensation payment can be attributed to them as a group. However, the question to be determined is whether the information can be related to them individually.
38. The position is not clear cut. However, on balance the Commissioner's view is that the information is the personal data of the claimants in that it relates to them as individuals. It is apparent that the withheld information when coupled with that already in the public domain reveals that each of the six complainants received part of a pot of money the total value of which was a defined figure.
39. As the Commissioner is satisfied that the information is the personal data of the six individuals, the next question for him to consider is whether the disclosure would contravene the first data protection principle.

**Would disclosure contravene the first data protection principle?**

40. The Commissioner considers the first data protection principle to be relevant in this case. It states that :

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

(a) at least one of the conditions in Schedule 2 is met".

41. The Commissioner considers that the relevant Schedule 2 condition is Condition 6 which provides that personal data may be processed for the purposes of legitimate interests pursued by the data controller or by the third party (ies) to

whom the data are disclosed unless the processing would prejudice the rights and freedoms or legitimate interests of the data subject.

42. In considering whether disclosure of the former employees' personal data would be unfair and contravene the first data protection principle, the Commissioner has taken the following factors into account:
- a. The existence of a legally drafted compromise agreement between the parties containing a confidentiality clause;
  - b. The reasonable expectations of the former employees about what would happen to their personal data
  - c. Whether the information relates to the individual's personal or private life
  - d. The position and the roles of the former employees within the council
  - e. The legitimate interests of the public in knowing the financial impact on the council as a result of the out-of-court settlement reached with the six former employees
  - f. The unwarranted prejudice to the rights and freedoms or legitimate interests of the data subjects.

**a. Compromise agreement**

43. The Commissioner believes that compromise agreements play an important role in employer/employee relationships. They avoid the time, expense and stress of a full hearing in an Employment Tribunal when an employer/employee relationship comes to an end. Such agreements provide the opportunity to conclude the relationship in private and allow both parties to make a fresh start if they so choose. The Employment Rights Act 1996 established the opportunity for parties to reach a compromise agreement and has built safeguards into the process to ensure employees receive independent and accountable legal advice before entering into such agreements. The aggregate payment made to the six former employees (as opposed to the individual amounts) is included in the compromise agreement. The Commissioner notes that paragraph 4 of the compromise agreement contains a confidentiality clause which binds both parties not to disclose any facts or matters relating to the Tribunal proceedings unless required to do so by law or for the purpose of obtaining legal advice.
44. The Commissioner also believes that the right to access official information and the right to reach an equitable compromise when an employer/employee relationship comes to an end are not mutually exclusive. However, where a compromise agreement has been reached between a Council and its former employees, a balance has to be struck between a public authority's duty to be transparent and accountable about how and why it decided to spend public money in a particular way, and its duty to respect its former employees' reasonable expectations of privacy.

**b. Reasonable expectations**

45. From the evidence provided, the Commissioner has no reason to believe that disclosure of the information requested was within the six former employees'



reasonable expectations. The compromise agreement includes a confidentiality clause, which is binding on both the parties.

**c. Personal or private**

46. The Information Commissioner's Office has produced [Awareness Guidance on section 40 of the Act](#), which makes it clear that where the information relates to the individual's private life (ie their home, family, social life or finances) as opposed to their public life (ie their work as a public official or employee) it will deserve more protection than information about them acting in an official or work capacity. Although the requested information in this case relates to the private finance of six individuals it is linked to public finances and the spending of public money. In the Commissioner's view the fact that the council have failed to meaningfully account for the spending of this sum of money within their accounts strengthens the public interest in disclosure of this money.

**d. Seniority and roles**

47. The above [Awareness Guidance on section 40 of the Act](#), also makes it clear that public authorities should take into account the seniority of employees when personal information about their staff is requested under the Act. The more senior a person is, the less likely it is that disclosing information about their public duties will be unwarranted or unfair. Information about a senior official's public life should generally be disclosed unless it would put them at risk, or unless it also reveals details of the private lives of other people (eg the official's family). However, the Commissioner also considers that information which might be deemed 'HR information' (for example details of pension contributions, tax codes, etc) should remain private, even though such information relates to an employee's professional life, and not their personal life. In this case the withheld information relates to the consequences of the former employees exercising their public duty to disclose information about the council's perceived wrongdoings under the Public Interest Disclosure Act 1998.
48. The Commissioner has taken into account the fact that the positions and roles of the six former employees were not public facing or particularly senior.

**e. Legitimate interests of the public**

49. The Commissioner must weigh the above four factors against the legitimate interests of the public in knowing the financial impact and consequences on the council of the out-of-court settlement.
50. The Commissioner notes that the only references to the financial settlement are those contained in the annual Statement of Accounts for 2007/08 and the speculative and unconfirmed figures quoted in the media. The council has pointed out that the financial settlement is properly accounted for in its Statement of Accounts for 2007/08 under the heading 'Income and Expenditure account – Children and Education Services', where the 'gross expenditure' figure is shown as £349,264,000. The settlement figure quoted in various media articles (for example the Yorkshire Post and BBC) is £1 million. A report of the council's

corporate director for family services in 2007 has stated that the sums quoted in the press 'are not accurate and are speculative'.

51. The Commissioner accepts that information in the public domain suggests that the out-of-court settlement was substantial. However, he believes that legitimate interests of the public in understanding the financial impact on the council is not adequately satisfied by the information provided by the council in its annual accounts only. Furthermore, the Public Interest Disclosure Act 1998 is intended to provide protection for those who, in limited circumstances, expose wrongdoing. There is a public interest in knowing how public authorities deal with claims relative to the Act and in particular, how they treat individuals who might have rights to protection under the Act.

**f. Unwarranted processing by reason of prejudice to the rights and freedoms/legitimate interests of the data subject**

52. The Commissioner recognises that the legitimate interests of the public must be weighed against any unwarranted prejudice to the rights and freedoms or legitimate interests of the data subjects. Although the confidentiality clause in the compromise agreement confirms an expectation on the part of the former employees that the total financial settlement terms will remain private, the Commissioner does not believe that disclosure of this information (which does not reveal the individual amounts received) would sufficiently prejudice the individuals to outweigh the legitimate interests in the public knowing the financial implications on the council.
53. On balance the Commissioner accepts that disclosure of the withheld information would be necessary to fulfil the public's legitimate interests and agrees that this outweighs any unwarranted prejudice that might be caused to the data subjects' rights, freedoms and legitimate interests. The Commissioner is therefore satisfied that condition 6 of Schedule 2 to the DPA is met in this case.
54. The Commissioner is not satisfied that the information requested was correctly withheld by the council under section 40(2) of the Act. Therefore, he has gone on to consider whether the Council correctly applied section 41 of the Act, which provides an exemption for information which was provided to public authorities in confidence.

**Section 41 of the Act**

55. The council has also argued that the requested information is exempt under section 41 of the Act as it was provided to them in confidence and disclosure would constitute an actionable breach of confidence.
56. The complainant argued that section 41 did not apply and as the requested information had been jointly created as opposed to being provided to the council. He cited the Commissioner's decision in the case of [Doncaster Metropolitan Borough Council \(FS 50080312\)](#), when reaching this conclusion. In this decision the Tribunal stated that "the correct position is that a concluded contract between a public authority and a third party does not fall within section 41(1)(a) of the Act".

57. Section 41(1)(a) of the Act states that information will be exempt from disclosure where it is obtained “from any other person” under a duty of confidence, and disclosure would constitute an actionable breach of that confidence. Section 41 is produced in full in the legal annexe to this decision notice.
58. The Commissioner has considered in the first instance whether the information which is held would satisfy the initial criterion provided in section 41 of the Act. His conclusion is that the exemption in section 41 of the Act would not be engaged as this information was not obtained “from another person”. He has drawn upon the Information Tribunal’s decision in [Derry City Council v Information Commissioner \(case EA/2006/0014\)](#), when reaching this conclusion. In this decision the Tribunal stated that “the correct position is that a concluded contract between a public authority and a third party does not fall within section 41(1)(a) of the Act”.
59. The Commissioner has also had regard to his own [Guidance on ‘Information provided in confidence related to contracts’](#) [http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/detailed\\_specialist\\_guides/confidenceandcontracts.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/confidenceandcontracts.pdf)
60. The Commissioner’s decision is therefore that section 41 is not engaged.

## The Decision

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61. The Commissioner’s decision is that the public authority did not deal with the request for information in accordance with the Act in that, sections 40(2) and 41 were not engaged.

## Steps Required

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62. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:  
  
to disclose to the complainant the requested information
63. 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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64. 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

Reference: FS50178553



Information Commissioner's Office

in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Right of Appeal

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65. 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 14th day of October 2009**

**Signed .....**

**David Smith  
Deputy Commissioner**

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

## Legal Annex

### The Freedom of Information Act 2000

#### Section 1 - General right of access to information held by public authorities

(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.

(2) Subsection (1) has effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.

(3) Where a public authority—

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.

#### Section 10 - Time for compliance with request

(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.

(2) Where the authority has given a fees notice to the applicant and the fee is paid in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.

(3) 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.

#### Section 12 – Exemption where cost for compliance exceeds the appropriate limit

(1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.

(2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.

(3) In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.

(4) The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority—

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.

(5) The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are to be estimated.

### **Section 17(1) – Refusal of request**

(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.'

#### **Section 40 – Personal information**

(1) 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) 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) 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 [1998 c. 29.] 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 [1998 c. 29.] Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

(4) The second condition is that by virtue of any provision of Part IV of the [1998 c. 29.] 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).

(5) The duty to confirm or deny—

(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and



- (b) does not arise in relation to other information if or to the extent that either—
- (i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the [1998 c. 29.] Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or
- (ii) by virtue of any provision of Part IV of the [1998 c. 29.] Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).

(6) In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the [1998 c. 29.] Data Protection Act 1998 shall be disregarded.

(7) In this section—

- “the data protection principles” means the principles set out in Part I of Schedule 1 to the [1998 c. 29.] Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;
- “data subject” has the same meaning as in section 1(1) of that Act;
- “personal data” has the same meaning as in section 1(1) of that Act.

## **Data Protection Act 1998**

### **Section 1 - Basic interpretative provisions**

(1) In this Act, unless the context otherwise requires—

- “data” means information which—
  - (a) is being processed by means of equipment operating automatically in response to instructions given for that purpose,
  - (b) is recorded with the intention that it should be processed by means of such equipment,
  - (c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system, or
  - (d) does not fall within paragraph (a), (b) or (c) but forms part of an accessible record as defined by section 68;
- “data controller” means, subject to subsection (4), a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed;
- “data processor”, in relation to personal data, means any person (other than an employee of the data controller) who processes the data on behalf of the data controller;
- “data subject” means an individual who is the subject of personal data;

- “personal data” means data which relate 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,and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;
  - “processing”, in relation to information or data, means obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data, including—
    - (a) organisation, adaptation or alteration of the information or data,
    - (b) retrieval, consultation or use of the information or data,
    - (c) disclosure of the information or data by transmission, dissemination or otherwise making available, or
    - (d) alignment, combination, blocking, erasure or destruction of the information or data;
  - “relevant filing system” means any set of information relating to individuals to the extent that, although the information is not processed by means of equipment operating automatically in response to instructions given for that purpose, the set is structured, either by reference to individuals or by reference to criteria relating to individuals, in such a way that specific information relating to a particular individual is readily accessible.
- (2) In this Act, unless the context otherwise requires—
- (a) “obtaining” or “recording”, in relation to personal data, includes obtaining or recording the information to be contained in the data, and
  - (b) “using” or “disclosing”, in relation to personal data, includes using or disclosing the information contained in the data.
- (3) In determining for the purposes of this Act whether any information is recorded with the intention—
- (a) that it should be processed by means of equipment operating automatically in response to instructions given for that purpose, or
  - (b) that it should form part of a relevant filing system,
- it is immaterial that it is intended to be so processed or to form part of such a system only after being transferred to a country or territory outside the European Economic Area.
- (4) Where personal data are processed only for purposes for which they are required by or under any enactment to be processed, the person on whom the obligation to process

the data is imposed by or under that enactment is for the purposes of this Act the data controller.

**Information provided in confidence.**

**Section 41(1)** provides that –

“Information is exempt information if-

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

**Section 41(2)** provides that –

“The duty to confirm or deny does not arise if, or to the extent that, the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) constitute an actionable breach of confidence.”