

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 4 March 2010

Public Authority: Department for Children, Schools and Families
Address: Sanctuary Buildings
Great Smith Street
Westminster
London SW1P 3BT

Summary

The complainant requested correspondence between DCSF, Partnership for Schools (PfS) and the London Borough of Camden regarding the latter's application for Wave 5 of the Building Schools for the Future programme. DCSF disclosed some information but withheld parts of the information citing sections 36(2)(b)(i) and (ii), 36(2)(c), 40 and 43 of the Act. The Commissioner considers that DCSF correctly applied section 36(2)(b)(i) and (ii) and section 36(2)(c) of the Act to the information it withheld in this case. However, the Commissioner finds that DCSF wrongly applied section 40(2) and requires DCSF to disclose to the complainant the names of individuals previously withheld under section 40(2) of the Act. The Commissioner also recorded a number of procedural breaches.

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.

Background

2. PfS is the body which oversees Building Schools for the Future (BSF) on behalf of the DCSF. BSF began in 2005/06 and has been described by the Secretary of State for Children, Schools and Families as being the largest single capital investment programme in schools in England for more than 50 years. BSF will see virtually all of England's 3,500 secondary schools rebuilt or substantially refurbished in 15 waves of investment (subject to future government spending decisions). The request in this case centres on the London Borough of Camden's application for Wave 5 of BSF.

3. The Commissioner notes that the complainant originally made her request to the Department for Education and Skills (DfES). DfES became the Department for Children, Schools and Families (DCSF) on 28 June 2007.

The Request

4. On 19 December 2006, the complainant made the following information request to the Right Honourable Jim Knight MP, the then Minister of State for Schools at DfES:

“Please could you provide me with the information contained within or copies of all written and e-mail correspondence between the DfES or Partnership for Schools (PfS) and the London Borough of Camden since May 2006 regarding the application of LB [London Borough of] Camden for the Building Schools for the Future programme, and including in particular any correspondence to the Chief Executive and Director of Children, Schools and Families in December 2006 concerning the allocation of LB Camden to Wave 5 of BSF”.
5. On 6 February 2007, DfES wrote to the complainant advising that it did not hold information on correspondence between the London Borough of Camden and PfS. DfES sought the complainant's approval to transfer that part of the request to PfS.
6. Of the information that it did hold, DfES disclosed some information to the complainant, but advised that officials' names had been redacted. DfES also advised that some information had been redacted under section 36 of the Act on the basis that disclosure could inhibit the free and frank provision of advice and exchange of views for the purposes of deliberation.
7. At the time of DCSF's dealing with this request, Camden Council was weighing up options on how best to proceed with their BSF program but had yet to reach a final decision on the best options to pursue. In this case, the information in dispute relates to earlier tentative thoughts, options and possibilities that had been once considered between the DCSF/PfS and Camden Council as part of the BSF. These options, included capital investment and academy status. The DCSF advised that had such options been taken further, proposals would have been released when appropriate for statutory consultation. The DCSF believed that release of the disputed information through disclosure would have had a negative impact upon schools, pupils and parents and lead to a huge amount of uncertainty but not provide an outlet for stakeholders to engage with the DCSF, Camden Council or sponsors.
8. On 13 February 2007, the complainant wrote to DfES requesting an internal review of its decision, making the following points:
 - it was not clear on what basis DfES had refused to disclose officials' names

- DfES had not explained its reasoning behind the assertion that section 36 of the Act applied and why, in the specific context of Camden, references to issues that were already in the public domain should fall within the section 36 exemption.
 - DfES had not considered the public interest test.
9. On 19 March 2007, DfES advised the complainant it had completed its internal review. DfES disclosed some information relating to individuals' names who were members of the Senior Civil Service. DfES upheld its decision to withhold the remaining information, but clarified its application of the exemptions. In particular, DfES explained that it was relying on section 36(2)(b) in relation to some of the information, and section 43 in relation to other information.

The Investigation

Scope of the case

10. On 29 May 2007, the complainant wrote to the Commissioner to complain about the way her request for information had been handled, in particular the application of sections 36 and 43 of the Act.
11. During the course of the Commissioner's investigation DCSF released some of the information it had previously withheld. Therefore the Commissioner's decision in this case relates to the remaining withheld information.

Chronology

12. Regrettably, owing to the large volume of complaints received, the Commissioner did not commence his investigation until April 2009.
13. On 14 May 2009, the Commissioner wrote to the now DCSF outlining the nature of the complaint and asking a number of detailed questions in relation to the management of the information request and application of exemptions.
14. On 15 July 2009 the Commissioner received DCSF's response.
15. Having considered in detail the submission provided by DCSF, on 5 November 2009 the Commissioner requested further clarification with particular regard to the DCSF's application of the section 36 exemption, in particular, evidence of how the decision was made and the advice upon which it was made. The DCSF provided clarification on 17 November 2009.
16. On 13 November 2009 the Commissioner requested further clarification concerning the application of the section 43 exemption which was provided by the Department on 3 December 2009.
17. On 4 December 2009 the Commissioner sought more detailed arguments from the DCSF concerning the section 36 exemption which was provided on 10

December 2009. This established that the qualified opinion had been sought prior to the issue of the DCSF's refusal notice on 6 February 2006 in relation to both section 36(2) (b) and (c) of the Act.

Analysis

Exemptions

Section 36: prejudice to the effective conduct of public affairs

18. DCSF withheld some of the requested information under section 36(2)(i) and (ii) and withheld other information under section 36(2)(c). The Commissioner considers that it is acceptable to claim more than one limb of section 36(2) for the same information, as long as arguments can be made in support of the claim for each individual subsection.
19. Section 36 operates in a slightly different way to the other prejudice based exemptions contained in the Act, as the opinion of a qualified person is required to engage the exemption. Section 36(2)(b)(i) and (ii) provides:

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

....

(b) would, or would be likely to, inhibit –

 - (i) the free and frank provision of advice, or
 - (ii) the free and frank exchange of views for the purposes of deliberation, or
 - (c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

Opinion of the qualified person

20. When investigating cases involving the application of section 36, in order to establish whether the exemption has been applied correctly the Commissioner has:
 1. Ascertained who is the qualified person or persons for the public authority in question;
 2. Established that an opinion was given;
 3. Ascertained when the opinion was given; and
 4. Considered whether the opinion given was reasonable.
21. In deciding whether the opinion was 'reasonable' the Commissioner has been led by the Tribunal's decision in the case *Guardian Newspapers & Brooke v Information Commissioner & BBC* [EA/2006/0011 & EA/2006/0013] in which the Tribunal considered the sense in which the qualified person's opinion is required to be reasonable. The Tribunal concluded that 'in order to satisfy the sub-section, the opinion must be both reasonable in substance and reasonably arrived at'

(paragraph 64). In relation to the issue of reasonable substance, the Tribunal indicated that 'the opinion must be objectively reasonable' (para 60).

The engagement of section 36

22. Section 36(5) (a) states that in relation to information held by a government department in charge of a Minister of the Crown, the qualified person includes any Minister of the Crown. In this case the Commissioner has established that the reasonable opinion was given by the Right Honourable Alan Johnston MP, then Secretary of State. The Commissioner is therefore satisfied that the Secretary of State was a qualified person for the purposes of section 36 of the Act.
23. In its submissions to support the application of section 36, the DCSF has explained the process by which this opinion was provided. The qualified person's opinion was sought by way of a submission dated 25 January 2007. DCSF provided the Commissioner with a complete copy of the submission and supporting documentation and confirmed that the arguments as presented to the Secretary of State were all contained within the submission. DCSF further stated that the BfS and Academies programmes were high profile policy areas subject to extensive public and media scrutiny and that the Secretary of State would have had a significant degree of background knowledge which would have further informed his understanding of the sensitivities surrounding the potential disclosure of this information. Having reviewed the submission provided by DCSF, the Commissioner is satisfied that the Secretary of State's opinion was sought and obtained properly.
24. The Commissioner notes that the qualified person's opinion clearly identifies the likelihood of the inhibition in the case of section 36(2) (b)(i) and (ii) occurring as one that in the case of section 36(2)(b) (i) and (ii) occurring as one that meets the higher test of '**would inhibit**'. In the case of section 36(2)(c), the Commissioner notes the DCSF submission identifies that it considers the likelihood of the prejudice occurring as one that could prejudice or as the Act states '**would be likely to occur**'.
25. The Commissioner has been provided with all of the evidence which led the qualified person to reach the conclusion that the information was exempt on the basis of section 36(2) (b) and (c). The Commissioner is of the view that the correct process was followed in obtaining both opinions. The Commissioner is satisfied that both opinions were objectively reasonable opinions and were reasonably arrived at. He is therefore satisfied that sections 36(2)(b)(i) and (ii) and section 36(2)(c) are engaged in relation to the information that has been withheld. As these are qualified exemptions, the Commissioner has therefore gone on to consider the public interest test.

Public interest test

26. Under section 2(2) of the Act, exempt information must still be disclosed unless, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. The

Commissioner has considered public interest arguments in relation to section 36(2)(b)(i) and (ii), and section 36(2)(c), separately.

27. As noted in the case of *McIntyre v Information Commissioner and the MOD* (EA/2007/0068), the reasonable opinion of the qualified person is limited to the degree of likelihood that inhibition or prejudice may occur and 'does not necessarily imply any particular views as to the severity or extent of such inhibition or prejudice, or the frequency with which it may occur, save that it will not be so trivial, minor or occasional as to be insignificant'. The Commissioner understands this to mean that whilst due weight should be given to the reasonable opinion of the qualified person when assessing the public interest, the Commissioner can and should consider the nature, severity, extent and frequency of prejudice or inhibition.

Sections 36(2)(b)(i) and (ii)

Public interest arguments in favour of disclosing the information

28. DCSF considered there was a general public interest in releasing information about the potential changes to the organisation of local schools and in providing greater transparency about such changes.
29. The Commissioner considers disclosure of the withheld information in this case would show the public how a key mechanism within DCSF makes decisions that impact on their children's lives and the education system and how this process happens. Open policy making may lead to increased trust and engagement between citizens and government. Furthermore, disclosure of officials' advice and deliberations could provide a certain level of encouragement to ensure the quality of advice they provide in the future and actually improve decision-making processes.

Public interest arguments in favour of maintaining the exemption

30. DCSF argued that at the time of the request, Camden Council was considering a number of options regarding the future direction of South Camden Community School but had yet to reach a final decision on the best way forward. DCSF considered that any decisions involving the educational system should be based on the best advice available and only after consideration of all the available options. The Department argued there is a public interest in providing a private space to develop their thinking, explore options and think the unthinkable. This private space allows for the opportunity for the discussion of issues relevant to the case without the fear of those deliberations being disclosed at an early stage.
31. DCSF also argued that the disclosure of early stage discussions would have a negative impact on schools, pupils and parents creating false hopes and rumour in some communities and jeopardising early consultations by the uncoordinated release of exploratory discussions.

Balance of the public interest

32. In considering where the balance of the public interest lies, the Commissioner notes that the arguments for non-disclosure outlined above rely on the fact that the content of the information requested indicates frank discussions having taken place, and that disclosure would inhibit similar discussions in the future. The Commissioner is not generally persuaded that disclosure of one set of discussions would necessarily inhibit future discussions, but is of the view that this issue must be considered on a case by case basis.
33. Having reviewed the withheld information, the Commissioner considers that the opinions and views expressed by the officials at DCSF internally and to other third parties were given freely and frankly and with the intention of providing advice in dealing with the early stages of potential BSF projects. In relation to any 'chilling effect' on the frankness of future advice provided by officials that might result in poorer decision making, the guiding principle is the robustness of officials – i.e. they should not be easily deterred from doing their job properly.
34. However, the Commissioner considers that in this particular case, the views expressed by DCSF officials related to very early stage discussions aimed at exploring all the available options. The Commissioner accepts that public authorities need time, space and privacy when deciding how best to proceed with significant projects and that in this particular case there is a real and likely risk that similar discussions would be inhibited in future if officials are not able to give such opinions freely and frankly. As noted in paragraph 7, at the time the request was made Camden Council were still actively considering their options and discussions with DCSF and PfS were still ongoing. The Commissioner accepts that a chilling effect in the frankness and candour of discussions would be significant if disclosure of the requested information was made at this stage.
35. The Commissioner acknowledges that disclosure could provide the public with further information as to the Government's position on an issue that will affect education provision in Camden and the matter was the subject of much local debate. The Commissioner is also mindful of the role free and frank discussion plays in enabling early stage discussions about issues threatening the delivery of objectives, providing officials with the opportunity to think strategically, develop thinking and explore options and their implications in a frank and candid way.
36. The Commissioner concludes that the public interest in maintaining the exemptions contained at sections 36(2)(b)(i) and (ii) outweighs the public interest in disclosing this information.

Sections 36(2)(c)

Public interest arguments in favour of disclosing the information

37. As with its arguments in relation to section 36(2)(b)(i) and (ii), DCSF considered there was a general public interest in releasing information about the potential changes to the organisation of local schools and in providing greater transparency about such changes.

38. DCSF also considered there is a general public interest in openness in decision making and that stakeholders have a legitimate interest in understanding on what basis decisions are made.

Public interest arguments in favour of maintaining the exemption

39. DCSF argued that disclosure would cause unnecessary and unwanted disruption to the existing education setup in the borough to the detriment to those children, through rumour, speculation and confusion.
40. DCSF also considered that disclosure would have a damaging effect on the conduct of public affairs by prejudicing its ability to effectively deliver this flagship BFS programme, diverting resources to manage the impact of the disclosure.
41. DCSF also argued that information about exploratory discussions which took place over three years ago will confuse and mislead the public.

Balance of the public interest

42. As with section 36(2)(b), the Commissioner acknowledges that disclosure of the withheld information would inform the public as to the Government's position on an issue with significance to education provision in Camden.
43. Whilst the Commissioner accepts the opinion of the qualified person relating to section 36(2)(c) was objectively reasonable, the Commissioner has not been persuaded by the argument that disclosure of exploratory discussions would confuse and mislead the public. In this case, given the circumstances of the timing of the request (and the content of the information) the Commissioner accepts that disclosure would be likely to have a significant impact on the management of a significant capital expenditure programme, due to the diversion of managing the impact of disclosure with relevant parties involved and those wishing to be involved. He accepts that disclosure would have a significant impact on the conduct of public affairs, in the form of the BSF programme.
44. On balance the Commissioner concludes that the public interest in maintaining the exemption under sections 36(2)(c) outweighs the public interest in disclosing this information.
45. As the Commissioner believes the section 36 exemption has been correctly applied he has not gone on to consider the application of section 43.

Section 40(2) – personal information

46. The exemption under section 40(2) applies to information which is the personal data of an individual other than the applicant, where disclosure of the information would breach any of the data protection principles or section 10 of the Data Protection Act 1998 (the DPA).
47. DCSF withheld information that it classed as personal data relating to officials below the grade of Senior Civil Service or equivalent. DCSF consider a junior

official to be anyone below senior civil service grade 5 (Deputy Director level).
None of the information is personal data of the complainant.

Is the information personal data?

48. "Personal data" is defined at section 1(1) of the DPA:

"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.

49. The Commissioner has first considered whether or not the withheld information does in fact comprise personal data relating to living individuals. The Commissioner notes that the information withheld under this exemption comprises names of a number of individuals, some of whom are civil servants and some of whom are not. The individuals' names have biographical significance in that they record employers' names, the individuals' whereabouts at a particular time and that he or she took part in a meeting with a government department. The Commissioner is therefore satisfied that the names of staff constitute the personal data of these individuals.

Would disclosure contravene any of the data protection principles?

50. DCSF has claimed that disclosure of the withheld information in this case would be unfair to the individuals concerned. The Commissioner has looked at the issue of fairness with particular reference to the first data protection principle (as set out at Schedule 2 to the DPA).

First data protection principle

51. The first data protection principle provides 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, and
- (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met."

Would it be unfair to disclose the information?

52. In considering whether disclosure of the withheld information would be unfair and therefore contravene the requirements of the first data protection principle, the Commissioner has taken the following factors into account:

- The individual's reasonable expectations of what would happen to his or her information;
- The seniority of the individuals;

- Whether disclosure would cause any unnecessary or unjustified damage to the individuals; and
 - The legitimate interests of the public in seeing the withheld information.
53. In considering individuals' expectations the Commissioner has considered how senior the staff member was, whether they had a public profile and whether their role required a significant level of personal judgement and individual responsibility. As has been recognised by the Information Tribunal (for example, in *DfES v the Information Commissioner and the Evening Standard* (EA/2006/0006); *Secretary of State for Work and Pensions v the Information Commissioner* (EA/2006/0040) and *Ministry of Defence v the Information Commissioner and Rob Evans* (EA/2006/0027)), in considering whether or not the names of government officials should be released, a distinction may be drawn between junior and senior officials, and that the names of the former are more likely to be withheld than the latter. In the *DfES* case the Tribunal has, however, also made it clear that each decision will depend on the facts of the individual case.
54. DCSF argued originally that officials' names were considered to be outside the scope of the request. However, at internal review it was decided to release the names of those in the Senior Civil Service or equivalent.
55. DCSF argued that the individuals in questions would not expect their roles to be subject to public scrutiny. DCSF recognised that the disclosure of officials' names may assist scrutiny of the decision making processes and that the officials were senior enough to meet with the chief executive and a director of a local authority but considered that disclosure would expose those officials to inappropriate pressures from MPs, lobby groups and parents.
56. DCSF expressed the view that the officials named had no decision making powers, and they did not hold public facing roles. Therefore these individuals would have no expectation that their names might be published. DCSF further advised one of the officials named had now moved to another team within DCSF and one has left the Department altogether. Releasing these individuals' names could disrupt those officials' current work which was unrelated to this particular matter.
57. DCSF argued to the Commissioner that there was no public gain in releasing this information and that it would be unfair to officials to do so as it is ministers rather than the officials who make the decisions and that individually named "junior officials" should not be held accountable in the public's eyes for Ministerial policy. The DCSF inferred that releasing the names would have a negative impact on the candour and robustness of advice given.
58. The Commissioner is of the opinion that DCSF applied a blanket definition of 'junior civil servant', defining all those civil servants not classed as senior civil service as junior – that is all staff below the Grade 5 (Deputy Director level). It is not clear from any of the information provided by DCSF what grade those staff members named would fall within however it is clear those names were senior enough to meet with the chief executive and the director of a local authority.

59. The Commissioner considers that it is good practice to have a policy on routine disclosure of names at certain levels, in certain roles or in certain circumstances, however this does not always mean that the names of more junior staff should always be withheld. Often it will not be unfair to release their names as the context will not be sensitive or controversial. The fact that a public authority has not specifically advised employees or officials about the implications of the Act is not a bar to disclosure, as they should anyway be aware of the Act's existence. DCSF policy appears to be that the names of civil servants below Grade 5 will not be released and the Commissioner notes that DCSF did not consider contacting the individuals concerned in an attempt to gain their consent to release their names. No further explanation was provided.
60. The Commissioner believes that staff involved in the correspondence of this case are sufficiently senior to expect to be able to be publicly associated with these aspects of the BSF programme. Therefore the Commissioner does not consider that it would be unfair to any of the individuals to release their names.

Would it be unlawful to disclose the information?

61. The Commissioner having decided that disclosure of officials' names would not be unfair has gone on to consider whether the processing would be lawful. In this case, the Commissioner is not aware of any duty of confidence or statutory bar protecting the information and he is satisfied that the disclosure would not be unlawful.

Schedule 2 conditions

62. The sixth condition provides that:

“personal data shall be processed in accordance with the rights of the data subjects under this Act”

63. It establishes a three part test which must be satisfied:

- there must be legitimate interests in disclosing the information,
- The disclosure must be necessary for a legitimate interest of the public, 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.

64. The Commissioner believes there is a legitimate interest in the DCSF being as open and transparent as possible and that there is a general public interest in knowing who are making decisions impacting on the education system. The Commissioner is of the view that disclosure of the names in question is necessary to achieve that aim.

65. Having already established that the processing is indeed fair, the Commissioner is also satisfied that the release of the individuals' names would not cause any unnecessary interference with the rights, freedoms and legitimate interests of the

data subjects. The Commissioner is satisfied that the information relates only to those individuals' professional lives and does not intrude on their private and family lives. Furthermore, there is no evidence to suggest that disclosure would compromise their personal safety or lead to harassment in their working lives.

66. The Commissioner concludes that DCSF wrongly applied the section 40(2) exemption, and ought to have disclosed this information to the complainant.

Procedural Requirements

Section 1(1) (b): duty to provide information

67. Section 1(1) (b) of the Act requires a public authority to provide information to an applicant in response to a request. For the reasons set out above, the Commissioner is of the view that some of the information withheld under section 40(2) ought to have been disclosed to the complainant at the time of his request. The Commissioner finds that DCSF failed to comply with section 1(1) (b) of the Act in relation to this information.

Section 10(1): time for compliance

68. Section 10(1) of the Act states that a public authority must comply with section 1(1) promptly and in any event not later than the twenty working days after the request has been received. In this case, the complainant submitted her request on 6 December 2006 and DCSF provided some information in its response of 6 February 2006. This was outside the twenty day time limit.
69. In light of the above the Commissioner finds that DCSF breached section 10(1) of the Act in responding outside the time limit. In addition, DCSF further breached section 10(1) in failing to provide the information withheld under section 40(2).

Section 17(1): refusal of a request

70. Section 17(1) of the Act provides that:

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

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

71. The Commissioner finds that DCSF breached section 17(1) (b) and (c), in that its refusal notice dated 6 February 2007 advised it was withholding officials' names but failed to specify the exemption (section 40(2)) as required under the Act.

72. The Commissioner also finds that DCSF breached section 17(1) (b) in that it failed to cite the sub paragraphs (i) and (ii) in its reliance on section 36(2) (b) and failed to specify section 36(2) (c) in its internal review of 19 March 2007.

The Decision

73. The Commissioner's decision is that DCSF correctly withheld some information in reliance on the exemptions at section 36(2) (b) (i) and (i) and section 36(2) (c) of the Act.
74. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- DCSF breached section 1(1)(b) and section 10(1) of the Act in that it failed to provide non-exempt information to the complainant within the statutory time limit.
 - DCSF breached section 17(1)(b) of the Act in that it failed to specify the section 40(2) exemption as required under the Act.
 - DCSF breached section 17(1)(b) of the Act in that it failed to specify the section 36(2) exemption as required under the Act.

Steps Required

75. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- Disclose to the complainant the names of the individuals previously withheld under section 40(2) of the Act.
76. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

77. 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

78. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals
PO Box 9300
Arnhem House
31 Waterloo Way
Leicester
LE1 8DJ

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: 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 4th day of March 2010

Signed

**Steve Wood
Assistant Commissioner**

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

Legal Annex

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.

Section 17 - 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.

(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 that 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 the 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 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 36 - Prejudice to effective conduct of public affairs

(1) This section applies to—

- (a) information which is held by a government department or by the Welsh Assembly Government and is not exempt information by virtue of section 35, and
- (b) information which is held by any other public authority.

(2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act—

- (a) would, or would be likely to, prejudice—
 - (i) the maintenance of the convention of the collective responsibility of Ministers of the Crown, or
 - (ii) the work of the Executive Committee of the Northern Ireland Assembly,
- or

- (iii) the work of the Cabinet of the Welsh Assembly Government.
- (b) would, or would be likely to, inhibit—
 - (i) the free and frank provision of advice, or
 - (ii) the free and frank exchange of views for the purposes of deliberation,or
- (c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

Section 40 – 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).

Data Protection Act 1998

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

“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;

Schedule 1 – The Data Protection Principles

1. 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, and
 - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.
2. Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.
3. Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.
4. Personal data shall be accurate and, where necessary, kept up to date.
5. Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.
6. Personal data shall be processed in accordance with the rights of data subjects under this Act.
7. Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
8. Personal data shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.