

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 21 June 2010

Public Authority: The London Borough of Haringey
Address: River Park House
225 High Road
London
N22 8HQ

Summary

The complainant requested a copy of the first Serious Case Review ("SCR") dated October 2008 into the death of Peter Connelly (formerly known as "Baby P"). The London Borough of Haringey ("the Council") applied the exemptions under section 36(2)(b)(ii) and 36(2)(c) of the Freedom of Information Act 2000 ("the FOIA") and it concluded that the public interest in maintaining both the exemptions outweighed the public interest in disclosing the information. The Commissioner investigated and decided that the exemption under section 36(2)(b)(ii) was engaged and that the public interest in maintaining the exemption outweighed the public interest in disclosing the information in all the circumstances of the case. The Commissioner found breaches of section 17(1), 17(1)(b), 17(1)(c), 17(7)(b). He does not require any steps to be taken.

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 FOIA. This Notice sets out his decision.

Background

2. This case concerns information relating to the tragic death of Peter Connelly. The background to this case is complex and for this reason,

the Commissioner has set out below at some length a summary of relevant background information up until the date that the Council was due to comply with the complainant's request.

3. On 25 February 2000, Victoria Climbié, an eight year old child living in London, was declared dead following her admission to hospital. At the time of her death, Victoria was subject to a child protection plan. In January 2001, the child's great-aunt and her boyfriend were sentenced to life imprisonment for murder and child cruelty. The case attracted wide-scale media attention.
4. As a result of Victoria's death, the government announced an independent public inquiry to be chaired by Lord Laming, the former Chief Inspector of the Social Services Inspectorate and Director of Hertfordshire Social Services. Lord Laming's report was published on 28 January 2003.¹ The report detailed serious failures on the part of the various organisations involved. The report also made some 108 recommendations with the aim of reforming the child protection system in general to help prevent a similar tragedy occurring in the future.
5. The government published a Green Paper called "Every Child Matters"² alongside the formal response to Lord Laming's report which detailed plans to strengthen services for children, young people and their families. Following a consultation, the government published "Every Child Matters: The Next Steps"³ and passed the Children Act 2004.⁴
6. On 16 February 2007, a lawyer acting for a former Haringey social worker wrote to the government alleging, among other matters, that child protection procedures were still not being followed in Haringey.
7. Peter Connelly was 17 months old when, on 3 August 2007, he was taken to hospital and pronounced dead upon arrival suffering from severe injuries. At the time of his death, Peter was subject to a child protection plan, as had been the case since 22 December 2006. Peter had also been in contact with various professionals throughout his life. The case once again attracted wide-scale media attention with many expressing a severe loss of confidence in the child protection system in general and particular concern about Haringey, especially as this was

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<http://publications.everychildmatters.gov.uk/default.aspx?PageFunction=productdetails&PageMode=publications&productId=CM+5730&>

² <http://publications.everychildmatters.gov.uk/eOrderingDownload/CM5860.pdf>

³ <http://www.dcsf.gov.uk/consultations/downloadableDocs/EveryChildMattersNextSteps.pdf>

⁴ http://www.opsi.gov.uk/Acts/acts2004/ukpga_20040031_en_1

the same authority so heavily criticised after the death of Victoria Climbié.

8. When a child has died or has been seriously injured or harmed and abuse is known or suspected to have been a factor, Local Safeguarding Children Boards (“LSCB”) undertake a SCR in accordance with the government’s statutory guidance, “Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children”.⁵ LSCBs oversee the work of various agencies involved in child welfare, including social services, education, health services and the police. The purpose of a SCR is to:
 - Establish whether there are lessons to be learned from the case about the way in which local professionals and organisations work together to safeguard and promote the welfare of children
 - Identify clearly what those lessons are, how they will be acted upon, and what is expected to change as a result and
 - As a consequence, improve inter-agency working and better safeguard and promote the welfare of children.⁶
9. On 6 August 2007, Haringey’s LSCB notified the relevant body, the Office for Standards in Education, Children’s Services and Skills (“Ofsted”), of its intention to carry out a SCR concerning Peter’s death.
10. On 8 August 2007, a sub-committee of the LSCB met to agree the scope of the review and to arrange for each relevant agency to provide a management review in respect of the services provided to Peter and his family. The aim of management reviews is to consider individual and organisational practice to determine whether changes can and should be made and how any changes required could be made. Relevant staff members from the agencies involved contribute to the management reviews. The agencies contributing to the SCR in this case were:
 - Haringey’s Children and Young People’s Service (Children’s Social Care and Schools Services)
 - Haringey’s Strategic and Community Housing Prevention and Options Team
 - The Metropolitan Police
 - Haringey Teaching PCT
 - North Middlesex University Hospital in Partnership with Great Ormond Street Hospital for Children NHS Trust
 - Whittington Hospital NHS Trust
 - Family Welfare Association

⁵ <http://www.dcsf.gov.uk/everychildmatters/resources-and-practice/IG00060/>

⁶ See footnote 5 – Chapter 8, p. 8.3

- Great Ormond Street Hospital
 - Haringey Legal Services
11. The SCR sub-committee met on seven occasions in the period from September 2007 to July 2008 to complete the SCR into Peter's death and to produce an executive summary of the full report to be put into the public domain.
 12. On 11 November 2008, Peter's mother's boyfriend and his brother were convicted of causing or allowing Peter's death. Peter's mother had already pleaded guilty to this charge. The executive summary of the SCR was published on the same day.
 13. The Secretary of State for Children, Schools and Families, the Rt Hon. Ed Balls MP, received a copy of the SCR on 12 November 2008. Mr Balls immediately arranged for the secondment of John Coughlan, the Director of Children's Services in Hampshire, to oversee children's services in Haringey. He also decided that Ofsted, the Healthcare Commission and HM Inspectorate of Constabulary should carry out an urgent inspection of child protection in Haringey called a Joint Area Review ("JAR"). The inspection commenced on 13 November 2008 and was completed by 26 November 2008.⁷
 14. On 17 November 2008, Mr Balls also commissioned Lord Laming to undertake an urgent report on the progress being made across the country to implement effective arrangements for safeguarding children since the publication of the report of the independent statutory inquiry into the death of Victoria Climbié. This report has now been published and was entitled "The Protection of Children in England: A Progress Report" (March 2009)⁸.
 15. Mr Balls was presented with the final JAR on 1 December 2008 and a copy was also provided to Ms Sharon Shoemith, the Director of Children's Services at the Council at the time. The report revealed a list of failings in Haringey which were summarised in Mr Balls' public statement made on the same day.⁹ Mr Balls described the report as "devastating" and stated that he had directed the Council to appoint Mr Coughlan as Director of Children's Services and to remove Ms Shoemith from post. The Leader of the Council and the Lead Member for Children's Services also announced their resignations.

⁷ [http://www.ofsted.gov.uk/oxcare_providers/la_view/\(leaid\)/309](http://www.ofsted.gov.uk/oxcare_providers/la_view/(leaid)/309)

⁸ <http://publications.everychildmatters.gov.uk/eOrderingDownload/HC-330.pdf>

⁹ <http://www.independent.co.uk/news/uk/politics/baby-p-ed-balls-statement-in-full-1044023.html>

16. Mr Balls made a number of other announcements in his statement including the fact that Ofsted inspectors had decided that the Council's SCR had been inadequate. The reasons for this finding were set out in the JAR. Ofsted also found that the executive summary had itself been inadequate. Mr Balls described this as an "unacceptable" situation and announced the appointment of a new and independent chair of the LSCB. Mr Balls asked the new chair to begin immediate work on a new SCR into Peter's death to be submitted to Ofsted by the end of February 2009. It was expected that an executive summary of the new report would be published by the end of March 2009 which Mr Balls said "must provide a fair and comprehensive summary" of the full SCR.
17. Mr Balls also announced that Ofsted had completed a report about the quality of SCRs across the country. This report was entitled "Learning lessons, taking action: Ofsted's evaluations of serious case reviews 1 April 2007 to 31 March 2008".¹⁰ Amongst the key findings of the report was that a large proportion of the SCRs which were evaluated (20 out of 50) had been inadequate. Mr Balls stated that as a result he had asked each LSCB responsible for a SCR which had been judged to be inadequate to convene a panel to be chaired by an independent person to reconsider the review. He would then seek Ofsted's advice on whether the new report had addressed the issues. He confirmed that this process would be followed in future for every SCR that is deemed to be inadequate and added that Ofsted would also be undertaking unannounced inspections of safeguarding practice in every area of the country. If an area had had more than one inadequate SCR, further action would be considered.
18. On 8 December 2008, Ms Shoesmith was permanently dismissed from her post by a panel of Haringey councillors, without compensation.
19. On 17 December 2008, the terms of reference for the second SCR into Peter's death were determined by the LSCB. The second SCR and executive summary, dated February 2009, were submitted to Ofsted in March 2009 and rated as "good" in April 2009. The new executive summary was published on 22 May 2009.¹¹

Ofsted's role

20. From 1 April 2007 Ofsted assumed the responsibility of inspecting all local authority children's services. Prior to this responsibility for working with local authorities on such matters rested with the

¹⁰ <http://www.ofsted.gov.uk/Ofsted-home/Publications-and-research/Browse-all-by/Documents-by-type/Thematic-reports/Learning-lessons-taking-action-Ofsted-s-evaluations-of-serious-case-reviews-1-April-2007-to-31-March-2008>

¹¹ http://www.haringeylscb.org/index/news/babypeter_scr.htm

Commission for Social Care Inspection ("the CSCI"). From 2005-2008, Ofsted undertook Annual Performance Assessments ("APAs") of local authorities' children's services which gave a performance rating. Ofsted also undertook JARs of children's services every three years. This involved the inspection and the consideration of the performance of all local partners in safeguarding children.

21. Ofsted's responsibilities included briefing ministers on SCRs and carrying out an evaluation of the quality of the review undertaken. Ofsted requires LSCBs who have undertaken SCRs to provide a complete set of papers for evaluation, including the terms of reference, overview report, individual management reports, recommendations and action plan. The individual aspects of SCRs considered in the evaluation are set out in Ofsted's report "Learning Lessons, taking action..." and include consideration of the scope and time period of the review, its independence, the quality of the individual management reviews, the overview report and the executive summary.
22. The findings of the evaluation and the overall judgement are sent to the chair of the LSCB and the Director of Children's Services, if different. A meeting with the inspector is offered in order that the findings of the evaluation can be further explained and discussed. The outcome of the evaluation is also shared with LSCBs and forms part of the evidence used for the APA of a local area.

The Request

23. On 19 November 2008, the complainant wrote to the Council and requested information in the following terms:

"I would like to request the following information under the Freedom of Information Act: a copy of the full Serious Case Review in relation to the death of Baby P".

24. For clarity, the complainant's request was for a copy of the first SCR into Baby Peter's death dated October 2008 which Ofsted had found to be inadequate as the second SCR had not been ordered by Mr Balls at this stage.
25. The Council replied on 17 December 2008. It stated that the full report was exempt under section 36, section 40(2) and 41 of the FOIA. The Council explained that all the information in the report was exempt under section 36 on the basis that the Council's qualified person was of the opinion that disclosure would be likely to prejudice the effective conduct of public affairs by inhibiting the free and frank exchange of

views for the purposes of deliberation. It set out its considerations of the public interest test and concluded that the public interest in maintaining the exemption outweighed the public interest in disclosing the information. In relation to section 40(2), the Council stated that it would be a breach of its obligations under the Data Protection Act to disclose the personal data of third parties, including their sensitive personal data. In relation to section 41, the Council stated that the parties to the SCR and the family members involved would have expected confidence.

26. On 19 December 2008, the complainant asked the Council to carry out an internal review. She stated that she did not consider that the Council had given adequate consideration to the public interest test or to the issue of whether it could disclose a redacted version of the report.
27. The Council completed its internal review on 21 January 2009. The Council elaborated on the factors it took into account when it conducted the public interest test under section 36 but ultimately decided that it was unable to change its decision. The Council also added that it was unable to disclose a redacted version of the report as the exemption under section 36 applied to the report in its entirety.

The Investigation

Scope of the case

28. On 3 February 2009 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider whether the Council had correctly refused to disclose the information.

Chronology

29. The Commissioner wrote to the Council on 5 May 2009. He set out the details of the complaint and asked the Council to provide a copy of the full SCR that had been withheld and he asked for some clarification regarding the exemptions applied by the Council.
30. The Commissioner wrote to the complainant on the same day to set out his understanding of the complaint. He also asked the complainant to confirm her continued interest in pursuing the complaint.
31. On 14 May 2009, the Commissioner contacted the Council again noting that the executive summary associated with the SCR had been

- removed from the Council's website. He asked the Council to provide a copy of the summary in order to enable the Commissioner to consider what information had been available to the public at the time of the request.
32. On 20 May 2009, the Council responded to the Commissioner. It provided a copy of the executive summary and explained that it had posted a copy of the full SCR to the Commissioner. The Council confirmed that it had applied section 36 to the whole report but it added at this stage that it considered it was likely that section 44(1) was applicable to some of the information. It also elaborated on the rationale for applying section 40(2) and 41(1) of the FOIA to information in the report.
 33. The Commissioner received a response from the complainant on 6 June 2009 confirming her continued interest in pursuing the complaint.
 34. On 8 July 2009, the Commissioner wrote to the Council and asked it to provide further information to help him to consider the application of section 36 to the report. In particular, he asked the Council to specify the relevant subsection upon which it was seeking to rely.
 35. The Council replied on 19 August 2009. It stated that the primary subsection upon which it was seeking to rely was section 36(2)(b)(ii). The Council added that although it had not expressly referred to section 36(2)(c) in its initial refusal notice, it felt that comments made in the refusal notice fell within the scope of this subsection. The Council also provided some information about the opinion given by the qualified person in this case and provided other information to help the Commissioner to consider the case.
 36. The Commissioner wrote to the Council on 15 September 2009. He explained that he had not been convinced, based on the evidence provided, that it was sufficiently clear that the qualified person's opinion at the time had been that section 36(2)(c) was engaged. He also asked the Council for information to help him to consider the public interest test in this case.
 37. The Commissioner wrote to the complainant on the same day and he asked whether she could describe why she considered that disclosure of the report in response to her request would have been in the public interest.
 38. On 29 September 2009, the complainant replied via email and explained why she felt that the public interest in maintaining the exemption had not outweighed the public interest in disclosing the information.

39. The Council replied on 30 September 2009 maintaining its position that the qualified person had considered that section 36(2)(c) applied to the full report. It also answered the questions posed by the Commissioner.
40. On 21 October 2009, the Commissioner telephoned the Council. He sought clarification about the arguments that the Council wished to rely on in relation to section 36. Following this conversation, the Commissioner wrote to the Council on 23 October 2009 setting out the information he required to assist with his investigation.
41. On 5 November 2009, the Council provided the information requested by the Commissioner.
42. The Commissioner sent an email to the Council the next day asking the Council to elaborate and provide clarification on some of the points it had made.
43. The Council sent a response to the Commissioner on 23 November 2009 and provided the information requested.

Analysis

Exemption – Section 36

The opinion of the qualified person

44. The Council claimed that at the time of the request, the exemption at section 36(2)(b)(ii) and 36(2)(c) applied to all the information in the SCR. It stated that section 36(2)(b)(ii) was the “primary” subsection upon which it was seeking to rely. In view of this, the Commissioner decided to consider the Council’s reliance on section 36(2)(b)(ii) first.
45. Section 36(2)(b)(ii) provides that information is exempt under the FOIA if, in the reasonable opinion of a qualified person, disclosure of the information would or would be likely to inhibit the free and frank exchange of views for the purposes of deliberation.
46. In order to establish whether the exemption was engaged, the Commissioner must:
 - Establish that an opinion was given
 - Ascertain who the qualified person was
 - Ascertain when the opinion was given and

- Consider whether the opinion was objectively reasonable and reasonably arrived at
47. The Council issued a refusal notice on 17 December 2008 which was signed by John Suddaby, Head of Legal Services and Monitoring Officer at the Council. The Council had confirmed in its refusal notice that Mr Suddaby was the Council's "qualified person". It clearly stated in the refusal notice the following:
- "While acknowledging the existence of a public interest in disclosure, we believe that to publish the Serious Case Review Report in full is likely to prejudice the effective conduct of public affairs by inhibiting the free and frank exchange of views for the purposes of deliberation – a central aspect of the Serious Case Review system".*
48. The Council explained to the Commissioner that it asked for the qualified person's approval of the refusal notice on 16 December 2008 and that this was provided on 17 December 2008 as indicated by the qualified person's signature on the refusal notice. Having inspected a copy of the refusal notice, the Commissioner was satisfied that an opinion was given by the qualified person, Mr Suddaby, on 17 December 2008 that section 36(2)(b)(ii) was engaged. The Commissioner must therefore now consider whether the opinion could be considered to be reasonable.
49. In *Guardian and Brooke v the Information Commissioner and the BBC* (EA/2006/0011 and EA2006/0013), the Information Tribunal decided that a qualified person's opinion under section 36 is reasonable if it is both "reasonable in substance and reasonably arrived at". It elaborated that the opinion must therefore be "objectively reasonable" and based on good faith and the proper exercise of judgement, and not simply "an opinion within a range of reasonable opinions". However, it also accepted that "there may (depending on the facts) be room for conflicting opinions, both of which are reasonable". In considering whether an opinion was reasonably arrived at it proposed that the qualified person should only take into account relevant matters. The Commissioner accepts that the Information Tribunal's view that an opinion does not have to be verified by evidence i.e. they could not be expected to prove that there would be an inhibition in the future, but the Commissioner would still expect the public authority to be able to provide some evidence of how the qualified person reached his opinion. It is also accepted that materials which may assist in the making of a judgement will vary from case to case

Was the opinion reasonably arrived at?

50. To help the Commissioner to consider whether the opinion was reasonably arrived at, he considered the information that the qualified person had been provided with that would have helped him to give his opinion. The Council explained to the Commissioner that when it had asked for the qualified person's opinion on 16 December 2009, it had provided a copy of the complainant's request for information. It also explained that the qualified person had already been provided with a copy of the full SCR when it was completed in October 2008 and had also been presented with an earlier draft of the report. The Council explained that in his role of Head of Legal Services, the qualified person had also seen and approved some detailed legal advice sent to him on 3 September 2008 (exploring what the Council could do in the event of a request for a copy of the SCR) together with a copy of a Decision Notice issued by the Commissioner dated 23 August 2006 concerning Plymouth City Council (FS50084360). This Notice was particularly relevant because it concerned a request for a copy of a SCR (known then as a "Part 8 Review"). The Council provided a copy of the legal advice to the Commissioner.
51. The Commissioner notes that no attempt was made in the refusal notice or internal review to identify precisely why the prejudice would be likely to occur and what form it would take. However, the Commissioner did not consider that there was evidence that the submissions made to the qualified person contained any irrelevant arguments and he acknowledges that consideration of the Commissioner's decision in the Plymouth City Council case coupled with the legal advice approved by the qualified person would have meant that the qualified person had been provided with a significant amount of detailed information about the relevant issues.
52. The Commissioner considers that the Council could clearly improve the level of detail it records about the rationale behind the qualified person's decision. As there was nothing recorded describing precisely why and how inhibition would occur, the Commissioner has had to rely on the more detailed arguments presented by the Council during his investigation in support of the opinion and this means that he cannot therefore be sure that the reasons advanced by the Council in support of the opinion were the same reasons behind the original decision made by the qualified person. It also would have been helpful if the Council had kept a record showing how the qualified person weighed up different factors, including counter arguments, to demonstrate how he arrived at the decision that he did. Despite this, the Commissioner ultimately did not consider that there was evidence that the opinion was arrived at in such a way that it should be considered to be

unreasonable.[The Commissioner published a new guidance note “section 36 – what should be recorded” in December 2009.¹²

Was the opinion reasonable in substance?

53. As the Commissioner was satisfied that the opinion was reasonably arrived at, he went on to consider whether the opinion was “reasonable in substance”. It is worth emphasising that this does not mean that the Commissioner has to agree that the inhibition described was “likely” to occur as this is for the qualified person to decide. The Commissioner has summarised the crux of the arguments presented in the bullet points below:

- If there was any relaxation of the usual confidentiality surrounding SCRs professionals contributing to the second Baby Peter SCR or any other future SCR would have been likely to withhold information, particularly sensitive information, because of the fear of public criticism either directed at individuals or the organisation involved. Professionals would also have been likely to have taken a more defensive stance resulting in useful and important information and evidence not being properly explored. Further if professionals had felt the need to seek legal advice, or any other form of representation, in order to protect their own positions, this would have inhibited the SCR process by delaying it.
- Any inhibition of the nature described above would have reduced the ability of SCR report writers to accurately identify the lessons that needed to be learnt which in turn would have inhibited the free and frank deliberation that needs to take place between the relevant agencies when a SCR has been completed.
- The report writers and the writers of individual management reviews of the second Baby Peter SCR or any other SCRs in the future would have been likely to have been inhibited because the prospect of disclosure would have been likely to lead them to “err on the side of caution” and write reports that are more selective and superficial because they would be more fearful of exposing other people to public criticism. They would fear public criticism of their own work which would be likely to result in inhibition.
- Any reluctance by SCR writers to fully reflect the circumstances when compiling reports would inhibit the free and frank deliberations that need to take place when a SCR has been completed.

¹²

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/section_36_practicalities_v1.pdf

54. Dealing with the first two bullet points above, the Commissioner can readily accept that if professionals contributing to SCRs in the future concerning Baby Peter or other children were inhibited then this would lead to the inhibition described in the second bullet point. The Commissioner has therefore focused on whether it was a reasonable opinion that professionals contributing to SCRs in the future would have been likely to be inhibited if any part of the Baby Peter SCR had been disclosed to the public as described in the first bullet point.
55. The Commissioner accepts that the main purpose of SCRs is not to investigate where to lay the blame for a child's death. They are clearly meant to operate as a learning tool to ensure that the welfare of children in future cases is not jeopardised by the failings identified. In line with this, professional contributions are made to the SCR on a voluntary basis with the clear understanding that the information will be made available to a limited number of people and will be used for the main purposes of improving child protection.
56. The death of a child is always a very sensitive and emotive subject and one which is likely to attract media attention. The Commissioner realises that given the nature of this type of information, there is often a strong desire amongst some to try to apportion blame, perhaps to individuals. The Commissioner can therefore accept that the disclosure of the information to the general public may have caused professionals contributing to future SCRs, especially the second Baby Peter SCR, to consider that it is more likely that the SCR they were contributing to could be disclosed. This may have undermined their confidence in the process and may have increased the fear of the information being used as a way of putting organisations and individuals on trial. He accepts that this may have reduced the cooperation of those involved. He accepts that some may have tried to withhold records or information and that there was a real risk that the process could be significantly slowed down if individuals became more defensive and perhaps sought representation to try to protect their own positions.
57. The Commissioner accepts that professionals contributing to future SCRs would also fear that if the SCR they were contributing to was disclosed, there would be a risk that they could be identified which could put their health and safety in danger in extreme cases. He considers that the worry about this could reduce their cooperation yet further. He considers that this may especially be the case in relation to those professionals expected to contribute to the second SCR having witnessed the intense media interest in the case and the focus on the role of particular individuals. The complainant has sent correspondence to the Commissioner stating that she considers that SCRs are sufficiently anonymous when they do not contain names. However, the

Council explained to the Commissioner that sometimes overall circumstances and a process of elimination can result in the identification of individuals, particularly in the case of smaller organisations, and it was able to provide an example of this. The Commissioner accepts that identification of some professionals may well be possible, particularly if they were subject to a determined media campaign and he appreciates that this possibility may be a cause of concern to some professionals.

58. Similar concerns to those argued by the Council in this case were considered by the Commissioner in three cases involving Plymouth City Council (FS50082251, FS50082254 and FS50084360). In these cases, the Commissioner was able to accept that the qualified person's opinion that section 36 was engaged was reasonable when he stated the following:

"The Commissioner finds it a convincing argument that concerns over the possible disclosure of Part 8 Reviews to the general public would inhibit the participation of professionals who may have worries that the information could be used to direct public criticism at individuals. Any reluctance by professionals to fully and openly contribute to the Part 8 Review process would inevitably reduce the reviewer's ability to accurately identify the lessons that need to be learnt. If professionals felt the need to seek legal advice, or any form of representation, in order to protect their own positions, this would inevitably delay the review process. Both these consequences would have a detrimental impact on child protection. In light of the above the Commissioner is satisfied that the qualified person's opinion that disclosing the information would prejudice the conduct of public affairs was a reasonable one and that the exemption was engaged".

59. The Commissioner noted that there was a limited amount of information within the report that was more general in nature or which does not deal directly with the roles of particular individuals or organisations. However, the Commissioner accepts that disclosure of any of the information outside the normal procedures may well have caused inhibition to those contributing to the second Baby Peter SCR or other reviews in the future because it would have undermined the confidence of those professionals that the information would only be disclosed in a carefully considered executive summary and may have increased the fear that further information could be disclosed. Of course, with the introduction of the FOIA, there is no longer any guarantee that information will not be disclosed but the Commissioner appreciates that in cases where certain information has never been disclosed in the past, expectations about confidentiality may still be reasonable.

60. The Commissioner is satisfied that it was a reasonable opinion that disclosure of any of the information from the report other than that already disclosed through the executive summary would be likely to inhibit the free and frank exchange of views for the purposes of deliberation.

Public interest test

61. Section 36 is a qualified exemption and therefore the Commissioner must consider whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
62. In the case of *Guardian Newspaper Limited and Heather Brooke v the Information Commissioner and the BBC* (EA/2006/001 and EA/2006/0013)¹³ heard before the Information Tribunal, some useful general principles were set out with regard to the public interest test under section 36 as follows:
- (a) The lower the likelihood is shown to be that the free and frank exchange of views would be inhibited, the lower the chance that the balance of the public interest will favour maintaining the exemption.
 - (b) Since the public interest in maintaining the exemption must be assessed in all the circumstances of the case, the public authority is not permitted to maintain a blanket refusal in relation to the type of information sought. The authority may have a general policy that the public interest is likely to be in favour of maintaining the exemption in respect of a specific type of information, but any such policy must be flexibly applied, with genuine consideration being given to the circumstances of the particular request.
 - (c) The passage of time since the creation of the information may have an important bearing on the balancing exercise. As a rule, the public interest in maintaining the exemption will diminish over time.
 - (d) In considering factors that militate against disclosure, the focus should be on the particular interest that the exemption is designed to protect, in this case the effective conduct of public affairs through the free and frank exchange of views for the purposes of deliberation.
 - (e) While the public interest considerations in the exemption from disclosure are narrowly conceived, the public interest considerations in favour of disclosure are broad-ranging and operate at different

¹³ www.informationtribunal.gov.uk

levels of abstraction from the subject matter of the exemption. Disclosure of information serves the general public interest in promotion of better government through transparency, accountability, public debate, better public understanding of decisions, and informed and meaningful participation by the public in the democratic process.

63. In respect of the statement made at point (a), the Tribunal commented that it was for the qualified person to decide whether prejudice was likely and thereby whether the exemption was engaged. However, in making a decision on the balance of the public interest, the Tribunal (and therefore the Commissioner) would need to make a decision as to the severity, frequency, or extent of any prejudice that would or might occur.

Public interest arguments in favour of disclosing the requested information

64. The “default setting” of the FOIA is in favour of disclosure. This is based on the underlying assumption that the disclosure of information held by public authorities is in itself of value and in the public interest in order to promote the interests described in point (e) above. These general interests were acknowledged by the Council.
65. The Council also acknowledged that there was a particular interest in holding the performance of public authorities to account in child protection matters, and that was even more so given the circumstances of this case
66. The public interest in the information within SCRs in general is acknowledged in the guidance document “Working Together to Safeguard Children”.¹⁴ It specifically acknowledges the public interest in the accountability of public services. Child protection services have such important responsibilities and the consequences of failure in those responsibilities are so devastating that there is a clear public interest in as much transparency as possible to reassure the public that they are operating properly and if they are not, to help the public to understand how and why they are failing.
67. The Commissioner considers there was substantial public interest in the full SCR being disclosed at the time both in terms of helping the public to understand what happened in Haringey and in holding the professionals involved and others responsible for service delivery to account for their actions and conduct. This could have helped the public to participate in a more informed and meaningful way.

¹⁴ See footnote 5

68. It was clearly the case that the failings found in the way Haringey's child protection system was operating were of a very serious nature. He notes that in Mr Balls' statement delivered on 1 December 2008 he refers to the fact that in the judgement of the Chief Inspector, the failings in management, oversight and practice in Haringey were "exceptional".¹⁵ More recently, whilst giving evidence at the judicial review hearing brought by Ms Shoemith against the Council, Ofsted's lead inspector is reported to have said that the quality of practice in Haringey's children's department was the worst she had ever seen with only a single example of good practice found in the whole inspection.¹⁶
69. Peter's death concerned many because it occurred within Haringey which had been the focus of wide-ranging reforms in 2003 to improve the child protection system following the death of Victoria Climbié. Peter's death and the subsequent findings about the failings in Haringey's child protection system demonstrated to the public that Haringey was still not providing adequate child protection services. This seriously undermined public confidence that Haringey was fit for purpose as a safeguarding authority.
70. The Commissioner also notes that at this point in time, the public's confidence in the wider functioning of the SCR process and the national child protection system would have been further undermined by the publication of Ofsted's review in December 2008¹⁷ which found that 20 out of the 50 SCRs conducted by public authorities during the period in question had been judged to be inadequate including the Baby Peter SCR.
71. In correspondence to the Commissioner, the complainant has pointed out that if SCRs had always been publicly available it was likely that it would have come to light much sooner that a significant proportion of the SCRs being conducted were inadequate. She argues that considering the proportion of SCRs found to be inadequate and the fact that Baby Peter's death happened after the Victoria Climbié inquiry, some cynicism about the practical effectiveness of the SCR process is inevitable. The complainant has expressed the following:

"I have come to the conclusion that a contributing factor to cases like these (and others) is the secrecy, the closing ranks culture and the lack of transparency...I believe the phrase which is being dragged out 'lessons will be learned' won't be fully possible if the facts of the case and the failures in the case are kept hidden...Simply issuing another 150 Laming-like recommendations every time a tragedy happens

¹⁵ See footnote 9

¹⁶ <http://news.bbc.co.uk/1/hi/england/london/8293971.stm>

¹⁷ See footnote 10

simply adds procedures that take professionals away from their work without ever being able to see the why and wherefore of such recommendations – nor to judge or be able to critique the new ways from an informed position. The issues are kept hidden between local authority, the other agencies and the Government – so keeping out those who would, could and should benefit from reading the whole story”.

72. The Commissioner appreciates that complete openness in the SCR system would help the public and other professionals not directly involved in the case to consider fully what the problems were and whether appropriate lessons are being learned. This in turn could lead to some improvements in the general SCR process and the child protection system and increase public confidence. The Commissioner also considers that disclosure of the SCR could help the public to understand more fully why Ofsted found that the SCR was inadequate.
73. When considering the extent to which transparency was required in this case, the Commissioner also had regard to the information that was available to the public at this stage about the problems at Haringey. The summary of the report was published on 11 November 2008 however, it was apparent by the time of compliance with the request that the executive summary was in itself inadequate. The complainant, who has seen a copy of the information, also considered that it was inadequate and she has made comments to the Commissioner concerning its lack of detail and its casual nature. It was clearly the case therefore that the information that was in the public domain at the time did not satisfy the public interest in understanding as much as possible about what had happened in Peter’s case.

Public interest arguments in favour of maintaining the exemption

74. As noted earlier in this Notice, the Commissioner has accepted that the qualified person’s opinion was a reasonable one. This means that he accepts that if the information had been disclosed in response to the request, inhibition would have been likely to occur.
75. Inhibition of the type envisaged could seriously undermine the usefulness of the SCR process. If the report’s confidentiality was not maintained, those contributing to the second SCR review into Peter’s death or other SCRs in the future would have been likely to withhold information, particularly sensitive information. This could have seriously undermined the usefulness of any future SCRs and in particular, it could have undermined the ability of the authorities to understand the nature of the mistakes made concerning Peter’s care and to consider how to avoid such mistakes in the future.

76. Professionals contributing to SCRs in the future would have been likely to become more defensive and seek representation to try to protect their own positions. This would particularly be the case in respect of those professionals expected to contribute to the second SCR into Peter's death. This would delay the process and it is imperative that the review process is carried out swiftly so that the relevant authorities can take steps to ensure that other vulnerable children in the area are protected. It could also result in useful information not being properly explored which would also undermine the effectiveness of the review.
77. In short, inhibition in the serious case review process could ultimately put the lives of vulnerable children at risk by prejudicing the process that is in place to make sure that necessary improvements are made to the child protection system.

Balance of the public interest arguments

78. The argument being put forward is that disclosure of any of the information in the report would have been likely to inhibit professionals contributing to the second SCR into Peter's death and other SCRs in the future. As the Commissioner has accepted that the qualified person's opinion was reasonable in this case, he has to give due weight to the fact that it has been deemed "likely" that this inhibition would occur. This means that there was a real and significant risk that there would have been inhibition.
79. As already noted, although the Commissioner cannot decide for himself whether inhibition would have been likely, he can consider the severity, extent and frequency of the inhibition that was likely.
80. The Commissioner considered that failure to cooperate in future SCRs may fall below the professional standards expected, particularly in relation to senior staff members who are expected to be more accountable. The complainant has expressed the view in correspondence to the Commissioner that those involved have a "duty" to cooperate fully with such reviews. The Commissioner accepts that this sense of "duty" that comes from having professional responsibilities would lessen the inhibition to some extent.
81. Although the process is voluntary, the Commissioner also considered that where it is possible to detect a lack of cooperation, this could result in criticism from others, including an individual's employer, which may also act as a counterbalance to some extent.
82. For the reasons stated in the two paragraphs above, the Commissioner considers that the risk of authorities withholding actual records would not be particularly high. He acknowledges that a good deal of

information that would be relevant to conducting the SCR process would be contained in such records. The fact that records could be checked against staff interviews would, in the Commissioner's view, lessen the severity of the inhibition.

83. In terms of inhibition to the second SCR into Peter's death, the Commissioner has taken into account that a lot of relevant information would have already been gathered by the time of the request which would have had the effect of reducing the severity and extent of the inhibition. The Commissioner also considered that at the time of the request, there was intense government pressure surrounding the production of a second SCR and that this atmosphere may have resulted in some individuals cooperating more, perhaps, because they are being pressed to do so by their employer.
84. In respect of inhibition to other SCRs in the future, the Commissioner generally considers that the more wide-ranging a "chilling effect" argument is, the less convincing it becomes. The circumstances of one SCR may be very different to another and while disclosure of some information may have been warranted in one, this will not necessarily be the case in respect of another. The Commissioner would expect public authority staff to have some awareness of this. Also, as circumstances vary from case to case, the risk of inhibition to a different SCR in the future may be significantly less.
85. Despite the arguments above, the Commissioner ultimately considered that the inhibition that was likely would have been severe, frequent and extensive enough to pose a serious risk to the effectiveness of the SCR process for the reasons set out below. The Commissioner has focused on the particular circumstances of the case, particularly noting the intensity of the media attention focused on the case at the time of the request and the focus on roles carried out by individual public officials.
86. Ultimately the process is a voluntary one and there are no clear sanctions for individuals who fail to cooperate. Indeed, it may not in fact be clear that any information is being withheld or the effect of inhibition may be delay while the employee seeks representation. It would be difficult or impossible to prevent such delays.
87. While the Commissioner appreciates that a significant amount of useful information could be obtained from records, he considers that there remains a risk that some authorities or individuals would seek to withhold records and that authorities could not be prevented from choosing to withdraw from the process altogether. He also appreciates that not all useful information is recorded, perhaps as a result of poor records management, and that a considerable amount of information

that could be useful during a SCR may not be obtained from records alone.

88. Regarding the second SCR, although a significant amount of information would already have been gathered relating to the Baby Peter SCR by the time of the request, the Commissioner acknowledges that the review was found to be inadequate. There was therefore still more useful information to be obtained from the professionals involved and a real risk of inhibition to this process. This was particularly so in respect of the second SCR because of the timing of the request. The request was made just before a second review had been ordered and while the case was very much under the media spot-light. It is the Commissioner's view that disclosure at this time, while the issues were still live and ongoing, would have risked a level of inhibition that would have been severe and extensive enough to cause serious prejudice to the SCR process. These are particular circumstances that are relevant to this case that may not apply to disclosure of all SCRs.
89. Regarding other SCRs in the future, although the Commissioner will generally attach less weight to wide-ranging "chilling effect" arguments, he recognises that there has always been a strong expectation of confidentiality in respect of the specific details of SCRs. He recognises that owing to the highly-charged subject-matter of SCRs, the disclosure of any information from a review not covered by an executive summary could result in a level of inhibition that would be severe, frequent and extensive enough to pose a real threat to the process as a whole and undermine its main purpose.
90. In considering this issue, the Commissioner has also had regard to comments made by Lord Laming in his progress report in March 2009. The Commissioner considers that Lord Laming clearly has considerable expertise in the subject of child protection. He was the former Chief Inspector of the Social Services Inspectorate and Director of Hertfordshire Social Services and he conducted the public inquiry into Victoria Climbié's death in 2003. He has also compiled other reports while investigating how child protection is operating across the country. In view of this background, the Commissioner considers that it is appropriate to give weight to the opinion he expressed in the progress report as follows:

"SCRs inevitably include a great deal of case material that should remain confidential, not only to protect vulnerable people, but also because SCRs depend upon the cooperation of witnesses, often in a highly charged situation. Without this assurance many would be reluctant to participate in the process, rendering the task worthless. The future of SCRs depends, to a large degree, on the guarantee of confidentiality. Full reports should, therefore remain confidential"

beyond the immediate partners involved in a case, the relevant inspectorates, Government Offices and the relevant government departments”.

91. The Commissioner considers that Lord Laming's comments indicate that the likely inhibition resulting from disclosure of the report would be severe enough and would occur with enough frequency and extensiveness to seriously undermine the effectiveness of the SCR process and therefore child protection in this country.
92. Turning now to the arguments made in favour of the disclosure of the information, the Commissioner considered the issue of whether the disclosure of any of the information contained in the report was necessary to promote transparency and accountability in the circumstances of this case.
93. The Commissioner notes that the SCR process recognises the importance of the public interest in accountability and transparency in cases where a SCR is required. This is demonstrated by the fact that an executive summary is produced which covers the key findings and recommendations of the SCR. The Commissioner also recognises that in the circumstances of this case, the public interest in transparency and accountability was particularly high because of the exceptional nature of the case.
94. The Commissioner is aware that at the time of the request in this case, an executive summary was in the public domain which was found by Ofsted to be “inadequate”. However, he notes that by the date of compliance with the request, Mr Ed Balls had ordered a second SCR to be conducted urgently which would have resulted, in due course, in a new executive summary being produced which would represent a fairer and more comprehensive summary of the issues. As a specific decision had been made to correct failings in the SCR process in this case, the Commissioner has not attached significant weight to the fact that the information that was in the public domain at the time was judged to be inadequate. It is also important to note that as the second SCR was not complete, the learning process was still ongoing and it was still very important that lessons were learned from this case.
95. In terms of whether it would have been in the public interest to disclose more information than would have been contained in an executive summary, the Commissioner notes that the purpose of the SCR review is not about apportioning blame for what happened. It is focused on learning the lessons from the tragedy and taking steps to protect other vulnerable children. The Commissioner is mindful of the arguments posed by the complainant that at the time of the request, there was substantial evidence that the SCR process in general was

failing and therefore putting vulnerable children at risk. He appreciates that opening the SCR process to the public could have resulted in some valuable contributions being made by others that are usually kept outside the process and increased public confidence.

96. In relation to the argument above, the Commissioner has considered the comments made by the Information Tribunal in *E S Galloway v Information Commissioner* (EA/2008/0036)¹⁸ regarding the Commissioner's decision notice relating to Plymouth City Council as follows:

"We agree with the principles set out in the Commissioner's decision in the Part 8 Reviews Case: Enabling investigators to ascertain the root causes of an SUI with the assistance of full, frank and honest witness accounts of the relevant events is a more effective method of improving standards than ensuring that every piece of material gathered in the process is publicly available. The overriding public interest is to ensure that patients receive proper care. This is best served by enabling the investigators to gather all relevant information and then make decisions as to its accuracy.

We accept that the public interest is served by disclosing information that reveals whether the appropriate lessons have been learnt and that this builds public confidence, and that informed public debate has the potential to influence policy and perhaps to reprioritise resources. However, in assessing the strength of this argument, regard must be had as to the degree to which disclosure of this information would on the facts actually serve to inform the public debate in this way. We find that public disclosure of the statements would not contribute to this debate given the information already disclosed".

97. In a similar way, although the Commissioner recognises the merit in the complainant's arguments, he does not consider that disclosure of more information other than what would be contained in an executive summary would have significantly assisted in addressing the failings in the SCR process at the time. The timing of the request in this case is clearly a key factor. In his speech on 1 December 2008, Ed Balls made it clear that the government recognised the problems with the SCR process in general and the Baby Peter SCR in particular and was taking action. The Commissioner also considered that the public interest in allowing the public to understand why the SCR was found to be inadequate was met, to some extent, by the publication of the JAR.¹⁹

¹⁸ www.informationtribunal.gov.uk

¹⁹ See footnote 7

98. Although the Commissioner appreciates that other people outside the SCR process would have useful contributions to make, ultimately, the Commissioner was not persuaded that placing this information into the public domain at the time would have served to inform public debate usefully in respect of child protection issues to a sufficient enough extent to make it worthwhile seriously prejudicing the SCR process. The SCR that the complainant was seeking disclosure of had been judged to be inadequate. The Commissioner notes that the report was based on nine individual management reviews and of these, only three were good, one was adequate and five were inadequate. The meaning of an "inadequate" finding by Ofsted can be located at the back of Ofsted's report "Learning lessons, taking action..."²⁰
99. The Commissioner has considered the possibility of whether the document can be disclosed in a redacted form. He has noted the sensitivity of disclosing any information from the report and the complexity of the document in terms of the numbers of professionals and other public officials involved in the review. He has decided that all of the document was correctly withheld under section 36(2)(b)(ii).
100. The Commissioner has therefore decided that in all the circumstances of the case, the public interest in maintaining the exemption under section 36(2)(b)(ii) outweighed the public interest in disclosing the information.
101. As the Commissioner was satisfied that section 36(2)(b)(ii) was engaged and the public interest in maintaining the exemption outweighed the public interest in disclosing the information in all the circumstances of the case, he has not gone on to consider section 36(2)(c) or any of the other exemptions relied upon by the Council.

Procedural Requirements

102. When the Council issued its refusal notice on 17 December 2008, it did not cite the subsection(s) of section 36 that it was relying upon. In view of this, the Commissioner finds that the Council breached section 17(1) for failing to comply with section 17(1)(b) within 20 working days. As the Council had still not cited the relevant subsections of section 36 that it was relying upon by the date of its internal review, the Commissioner considers that the Council breached section 17(1)(b)
103. Having considered the contents of the Council's refusal notice, the Commissioner concluded that the Council also breached section 17(1) because it failed to adequately explain why the exemptions under section 36(2)(b)(ii), 36(2)(c), 40(2) and 41(1) applied within 20 working days. As the Council's internal review did not offer any further

²⁰ See footnote 10

explanation of the reasons why the exemptions applied, focusing primarily on elaborating on its considerations in respect of the public interest test under section 36, the Commissioner considers that the Council breached section 17(1)(c).

104. The Council's refusal notice did not contain particulars of the right conferred by section 50 of the FOIA. This represented a breach of section 17(7)(b).

The Decision

105. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the FOIA:

- The Council correctly relied upon the exemption under section 36(2)(b)(ii) to withhold the information and it correctly determined that in all the circumstances of the case, the public interest in maintaining the exemption outweighed the public interest in disclosing the information.

106. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the FOIA:

- The Council breached section 17(1) for failing to specify which subsections of section 36 it was relying upon within 20 working days and section 17(1)(b) for failing to rectify the above by the date of its internal review.
- It breached section 17(1) for failing to adequately explain why the exemptions under section 36(2)(b)(ii), 36(2)(c), 40(2) and 41(1) applied and section 17(1)(c) for failing to rectify the above by the date of its internal review.
- It breached section 17(7)(b) because its refusal notice did not contain particulars of the right conferred by section 50 of the FOIA.

Steps Required

107. The Commissioner requires no steps to be taken.

Other matters

108. Whilst this decision notice was in the process of being finalised, Tim Loughton MP, Parliamentary Under-Secretary of State for Children and Families, wrote to all chief executives, directors of children's services, and lead members for children's services about a change to the statutory guidance set out in Chapter 8 of Working Together to Safeguard Children (2010) relating to the publication of serious case reviews.²¹ The new guidance sets out that Local Safeguarding Children Boards should publish all new SCR overview reports and executive summaries from 10 June 2010, redacting personal information to suitably anonymise the report. The Commissioner acknowledges this change in government policy and would stress that his decision, on the circumstances of this case, does not necessarily prevent disclosure of some information from SCR reports in future. It is up to a public authority whether it wishes to apply the exemption under section 36. Careful consideration of whether disclosing any personal data contained in the reports will breach the Data Protection Act 1998 will need to take place. The reports will include personal data relating to children, their families and public officials.

²¹ Letter from Tim Loughton MP, Parliamentary Under-Secretary of State for Children and Families, 10 June 2010
<http://www.education.gov.uk/news/news/~media/Files/lacuna/news/munro-review/toalldirectorsofchildrenservices.ashx>

Right of Appeal

109. 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 sent.

Dated the 21st day of June 2010

Signed

**Steve Wood
Head of Policy Delivery**

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

Legal Annex – The Freedom of Information Act 2000

General right of access

Section 1(1) provides that –

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

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

The public interest test

Section 2(2) provides that –

“In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that –

- (a) the information is exempt information by virtue of a provision conferring absolute exemption, or
- (b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information”

Refusal notice

Section 17(1) provides that –

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

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

Section 17(7) provides that –

“A notice under section (1), (3) or (5) must –

- (b) contain particulars of the right conferred by section 50.”

Section 36 – Prejudice to the effective conduct of public affairs

Section 36(2) provides that –

“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.

Section 40(2) – Third party personal data

Section 40(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.”

Section 40(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."

Section 40(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 41(1) – 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 44(1) - Prohibitions on disclosure

Section 44(1) provides that –

"Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it-

- (a) is prohibited by or under any enactment,
- (b) is incompatible with any Community obligation, or
- (c) would constitute or be punishable as a contempt of court."