

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 20 December 2010

Public Authority: Home Office
Address: Seacole Building
2 Marsham Street
London
SW1P 4DF

Summary

The complainant asked the Home Office (the “public authority”) to provide information concerning its contract to deliver the early releases of the National Identity Scheme (the “NIS”). The public authority provided some information but refused to disclose the remainder citing the exemptions under sections 23(1) (Information supplied by or relating to bodies dealing with security matters), 24(1) (national security), 31(1) (law enforcement), section 40(2) (personal information) and 43(2) (commercial interests) of the Freedom of Information Act 2000 (the “Act”).

The Commissioner’s decision is that none of the exemptions are engaged. The complaint is therefore upheld and the public authority is required to disclose the requested information.

The public authority’s handling of the request also resulted in breaches of certain procedural requirements of the Act as identified in this Notice.

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. The request concerns a contract between the Identity and Passport Service (IPS) and the corporation Thales Information Systems in relation to provision of the National Identity Scheme (NIS). According to the IPS website¹:

"To date IPS has awarded four contracts in direct support of the NIS ...

The contract to deliver the first identity cards was awarded to Thales in July 2008 for a period of four years. This contract is worth £18m and has been operational since autumn of 2009. This contract supports the issue of identity cards in North West England, at Manchester and City Of London airports and further extension of the NIS that may be set in commencement orders".

3. The public authority also produced a publication entitled *"The National Identity Service: Delivery Update 2009"*². Although this was not available at the time of the request, it includes further general background information about the NIS.
4. The complainant has made a request concerning a different contract concerning the IPS and the provision of the NIS. The Commissioner has issued a separate Decision Notice concerning this request – reference number FS50309445.

The request

5. On 28 November 2008 the complainant made the following information request³:

"Please supply a copy of the following documents, which form a part of the contract signed 1st August 2008 with Thales Information Systems to support IPS in delivering the early releases of the National Identity Scheme (NIS):

¹http://www.ips.gov.uk/cps/files/ips/live/assets/documents/PP_2.1_Public_Panel_further_briefing_December_2009.pdf

²http://www.ips.gov.uk/cps/files/ips/live/assets/documents/Doc_D__IPS_delivery_report_8.pdf

³http://www.whatdotheyknow.com/request/contract_with_thales_for_national_identity_scheme

1. *The thirty-six Service Agreement Schedules and annexes (in the order 1-36, or 2-36 followed by 1 if Schedule/Annex 1 is entitled "Definitions")*
2. *The Service Agreement which contains conditions specific to a contract*
3. *The Framework Agreement which sets out the core terms for contracts awarded*
4. *Any and all other documents which form a part of this contract, in ascending order of the number of pages within the document. For documents with the same number of pages, the documents should be considered in ascending alphabetical order of their titles.*

Please supply as many pages as possible, starting with page 1 of the document appearing first in the ordering as specified above, and proceeding sequentially through the pages of this document followed by the remainder of the above listed documents, in order, to the extent that my request would not be subject to exemption under section 12 of the FOIA".

6. On 5 December 2008 the public authority acknowledged the request.

7. On 29 December 2008 the public authority advised the complainant as follows:

"I regret that we are unable to send you a full response to your request within 20 working days, as required by the Freedom of Information Act. I would like to apologise for this delay and for any inconvenience that this may cause. I would like to assure you that we are dealing with your request as a matter of urgency, and that we will send you a substantive reply as soon as possible. We now aim to reply by 26 January 2009".

8. On 30 January 2009 and 10 February 2010 the complainant chased a response. Having received nothing, on 28 March 2010 he sought an internal review. This was acknowledged on 5 May 2009 when the public authority advised: *"... we aim to have provided you with a full response by the 18th May 2009".*

9. On 22 May 2009 the complainant chased a response. On 29 May 2009 the public authority advised that a response was being drafted and that he should receive a reply within the 15 working days.

10. On 3 July 2009 the complainant again chased a response.

11. On 9 July 2009 the public authority sent its response. It advised the complainant as follows:

"After careful consideration we have decided that the information you have requested is exempt from disclosure under Sections 12 and 22 (1) of the Freedom of Information Act 2000. In applying these exemptions IPS [Identity & Passport Service] has had to balance the public interest in disclosing this information against the public interest of withholding it.

There is public interest in disclosure because we are committed to providing as much transparency on contracts for the National Identity Scheme as we can. To that end we are pleased to advise you that an exercise has been commissioned within IPS to release further contractual information. This will allow us to publish summaries of the contracts for the Scheme, including those we will be awarding in the coming months. Our intention is that this document will provide as much information as we can, without prejudicing commercial, personal data or security interests. This will be made available on the IPS website and once this work has concluded, a copy will be sent to you.

The exemption within Section 12 applies to your request as a whole, not on an 'incremental' basis. The case against disclosure is that, in order for us to comply with the request without incurring such cost, a more refined request will be required to understand the exact information you require. Any public interest test can then be conducted in regard of any potential commercial, technical and security information within the documentation. However, we believe the summary contracts we intend to publish will provide the information you have sought where practical."

12. On 19 August 2009 the complainant asked for an internal review of his request of 28 November 2008. He explained why he did not believe the exemptions at section 12 and 22 were applicable.
13. This was acknowledged on 23 September 2009.
14. On 4 February 2010 the public authority sent out its response. It found that the exemptions at sections 12 and 22 were not appropriate. It concluded that:

"IPS intend to publish summaries of the two contracts with Thales and CSA by the end of February 2010. They will be available on the IPS website. I understand that the summaries which will be published will, in terms of the information which they provide if not the exact format, be that which would be provided in response to an FoI request such as those which you

have made. Where information is withheld, IPS will explain the reason and refer to the relevant sections of the Act. IPS will accordingly send to you later this month a revised response based on the summaries which will be published, together with the references to the sections of the FoI Act under which information is withheld. Since the information is too large to send electronically, they will require a postal address to which to send the information. I would be grateful if you could provide such an address”.

15. On 26 February 2010 the public authority wrote to the complainant directing him to the now published information⁴. It advised him that some of the information was being withheld under the exemptions at sections 23(1) (information supplied by or relating to bodies dealing with security matters), 24(1) (national security), 31(1) (law enforcement), 40(2) (personal information) and 43(2) (commercial interests).
16. Further documents under the heading “*Framework Agreement for the National Identity Scheme*” were put on the public authority’s website on 31 August 2010⁵.

The investigation

Scope of the case

17. On 26 March 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
 - non-disclosure of any Framework Agreement/s;
 - excessive redaction of the Service Agreements / schedules.
18. The complainant subsequently qualified that he was not complaining about schedules 12, 13, 16, 34 and 36 of the contract.

⁴ http://www.ips.gov.uk/cps/rde/xchg/ips_live/hs.xsl/1473.htm

⁵ http://www.ips.gov.uk/cps/rde/xchg/ips_live/hs.xsl/1787.htm?advanced=&searchoperator=&searchmodifier=&verb=&search_date_from=&search_date_to=&stage=&search_event_subject=&search_category=&search_query=&search_scope=&search_group=&varChunk

19. As the Framework Agreement documents had been made available on the public authority's website, albeit at a very late stage, the Commissioner asked the complainant to confirm that these met part 3 of his request. The complainant acknowledged this but, despite being asked on two further occasions, he did not provide a response. In the absence of such a response the Commissioner has proceeded as if the public authority's disclosure has met this part of the complainant's request and he has removed this element from the scope of his investigation.

Chronology

20. On 20 July 2010 the Commissioner commenced his investigation. He requested a complete, unredacted copy of the contract, annotated to show where each exemption was being applied. He also sought further explanations regarding the applicability of the exemptions. This was acknowledged on 21 July 2010.
21. Following an initial agreement to extend the time to respond to the Commissioner's queries, on 27 August 2010 the public authority sought additional time to allow for further consultation. It asked for an extension until 28 September 2010.
22. On 7 September 2010 the Commissioner responded to this request. As an interim measure, he again asked for a full copy of the contract so that he could start to consider whether it should be released. He expressed an expectation that this was already 'marked up' to identify where exemptions were applied, given that the public authority had cited exemptions during its internal review. He advised that he did not need to see any information redacted by virtue of section 23 at this stage.
23. On 10 September 2010 the public authority sent the Commissioner a copy of the contract.
24. On 20 September 2010 the Commissioner provided the complainant with a brief update.
25. On 29 September 2010 the public authority telephoned the Commissioner. It advised him that it was hoping to be in a position soon to release further content. The Commissioner agreed that he would allow five more days for work to be completed.
26. On 6 October 2010 the Commissioner requested an update. He specifically enquired as to whether any further information had now been released. The public authority provided a further response by

- return. This included details of concerns raised by the contractor. It also included further details regarding the non-disclosure of staff names and identified where these were within the Contract.
27. On 7 October 2010 the Commissioner again enquired regarding the proposed time for a further release of information to the complainant. On 11 October 2010 the public authority advised that it was doing some further work and that the releases would be made a maximum of 30 days later. These were not expected to be full releases of the information and exemptions were still expected to be applied in part.
 28. Due to the lack of progress, and the likely requirement for him to make a decision in any case, the Commissioner advised the public authority on 13 October 2010 that he would be proceeding with his Decision Notice. This was reiterated on 28 October 2010.
 29. On 7 December 2010 the public authority provided a response to questions which were initially raised by the Commissioner on 20 July 2010. In this response it concluded that section 23 was not engaged and that further information was suitable for release – although which parts of the contract fell into this latter category remained unclear.
 30. The public authority provided a list of those pieces of information where it was now seeking to rely on section 24 and those pieces where section 24 was being disapplied. There was still no breakdown to identify where the exemptions at sections 31(1) and 43(2) were being applied.
 31. Although reluctant to consider such a late response from the public authority the Commissioner recognises the potential seriousness of disclosing information which could have an impact on national security. He has therefore decided to take this into account. However, he would stress his disappointment that the public authority would appear to have previously applied sections 23 and 24 without proper regard to the information being withheld. He has drawn this conclusion as a result of the public authority eventually dropping reliance on section 23 and removing reliance on section 24 in several instances.

Analysis

Exemptions

Section 24 – national security

32. The public authority has only identified to the Commissioner at a very late stage where it believes this exemption applies. The Commissioner notes that in many cases information which was previously withheld under this exemption has now been identified as not falling under this exemption. The Commissioner therefore presumes that the public authority has concluded that this is now suitable for disclosure although it is not clear from its latest response.
33. Section 24(1) provides an exemption from the duty to disclose information, imposed by section 1(1)(b), where this is *required* for the purpose of safeguarding national security. This exemption is also qualified by the public interest test. This means that the information should be disclosed if the public interest favours this despite the requirements of safeguarding national security.
34. The first step in considering whether this exemption is engaged is to establish what the wording of the exemption is referring to and whether the arguments of the public authority are relevant to this exemption. The exemption will only be engaged where it is *required* for the purpose of safeguarding national security. The approach of the Commissioner is that *required* in this context means reasonably necessary. It is not sufficient for the information sought simply to relate to national security; there must be a clear basis for arguing that disclosure would have an adverse effect on national security before the exemption is engaged.
35. On the issue of the meaning of *national security*, the Commissioner has followed the approach taken by the Information Tribunal in the case *Baker v the Information Commissioner and the Cabinet Office* (EA/2006/0045). The Tribunal noted that it had been unable to find an exhaustive definition of national security, but referred to a House of Lords decision (*Secretary of State for the Home Department v Rehman* [2001] UKHL 47; [2003] 1 AC 153), which made the following observations on this issue:
 - “(i) *national security*’ means the ‘security of the United Kingdom and its people’ (para 50 per Lord Hoffman);
 - (ii) *the interests of national security* are not limited to action by an individual which can be said to be ‘targeted at’ the UK, its

system of government or its people (para 15 per Lord Slynn);

- (iii) the protection of democracy and the legal and constitutional systems of the state is part of national security as well as military defence (para 16 per Lord Slynn);*
- (iv) 'action against a foreign state may be capable indirectly of affecting the security of the United Kingdom' (para 16-17 Lord Slynn): and*
- (v) reciprocal co-operation between the United Kingdom and other states in combating international terrorism is capable of promoting the United Kingdom's national security' (para 17 Lord Slynn)."*

36. The Commissioner has viewed the withheld information and considered the public authority's arguments. The Commissioner's view in this case is that insufficient evidence has been put forward to support a conclusion that the withheld information is *required* for the purposes of national security. He further notes that some of the information to which this exemption has been applied in this case has been deemed suitable for disclosure in a different contract which the public authority has been considering at the same time as this one. This inconsistency again leads the Commissioner to conclude that the exemption has been inappropriately relied on in this case.
37. The exemption provided by section 24(1) is not, therefore, engaged. In these circumstances it has not been necessary to go on to consider the balance of the public interest.

Section 40(2) – personal information

38. Section 40(2) provides an exemption for information which is the personal data of an individual other than the applicant, and where one of the conditions listed in section 40(3) or section 40(4) is satisfied. One of the conditions, listed in section 40(3)(a)(i), is where the disclosure of the information to any member of the public would contravene any of the principles of the Data Protection Act 1998 (the "DPA"). This exemption has been cited in respect of parts of Schedules 14 and 32 of the contract.
39. During his investigation the public authority advised the Commissioner that it was no longer applying this exemption to civil servants, rather it was being applied to information which identified particular members of staff of the suppliers and third parties by name. It confirmed that it believed disclosure of the names of those third parties involved with the contract would breach the first data protection principle.

40. The first principle of the DPA requires that the processing of personal data is fair and lawful, and that:
- at least one of the conditions in schedule 2 is met, and
 - in the case of sensitive personal data, at least one of the conditions in schedule 3 is met.

Is the requested information personal data?

41. Section 1 of the DPA defines personal data as data which relates to a living individual who can be identified:
- from that data, or
 - from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.
42. The information which the public authority has continued to withhold on the basis of section 40(2) consists of the names of 11 members of staff who are representatives of third parties rather than being the public authority's own staff. All have been identified as being mentioned once in either Schedule 14 or 32 of the contract. They are clearly identified by name, employer and position and the Commissioner therefore considers that these references are their 'personal data'. However, for the section 40(2) exemption to apply the public authority would need to show that disclosure would contravene one of the data protection principles as set out in the Data Protection Act 1998. The first data protection principle has been cited in this case.

The first data protection principle

43. The public authority has advised the Commissioner that it believes disclosure would contravene the first data protection principle. 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."*

44. The Commissioner's guidance on section 40 can be accessed on his website via the following link:

http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/personal_data_flowchart_v1_with_preface001.pdf.

This guidance suggests a number of issues that should be considered when assessing whether disclosure of information would be fair.

- The individual's reasonable expectations of what would happen to their personal data.
- The seniority of any staff.
- Whether the individuals specifically refused to consent to the disclosure of their personal data.
- Whether disclosure would cause any unnecessary or unjustified distress and damage to the individuals.
- The legitimate interests in the public knowing the requested information weighed against the effects of disclosure on the individuals.

45. Furthermore, the Commissioner's guidance suggests that, when assessing fairness, it is also relevant to consider whether the information relates to the public or private lives of the third party. His guidance states:

"Information which is about the home or family life of an individual, his or her personal finances, or consists of personal references, is likely to deserve protection. By contrast, information which is about someone acting in an official or work capacity should normally be provided on request unless there is some risk to the individual concerned".

46. Having reviewed the redacted names the Commissioner notes that there are three names withheld from Schedule 14 and eight from Schedule 32. They can be grouped in two categories:

- (i) security controllers from three named subcontractors; and,
- (ii) key personnel of the supplier.

47. The public authority gave the Commissioner the following reasons for non-disclosure of staff names:

"It is considered that due to the controversial nature of the contract at the time of publication, there was a real risk of exposing the individuals to unsolicited lobbying or individual contact which would be both inappropriate and disruptive to their ability to carry out their roles.

Furthermore it is not considered that the release of the personal information would be necessary in light of the suppliers

themselves being clearly identified and available for enquiries should a member of the public wish to make further enquiries.

Whilst it is acknowledged that the level of public interest in the named individuals in the contract is likely to be significantly lower in light of the changing circumstances, it is also considered that the public interest in such individuals having their personal information or names disclosed is significantly lower due to the same circumstances. It is not considered to be necessary to disclose the names of these individuals to further public understanding of the contracts and as such it is not considered to be fair to do so.

We do not consider that the disclosure of staff names in this case would be fair, in a general sense, given the expectations that these staff have about the disclosure of their identities and contact details. Therefore disclosure could not be made in compliance with the general "fairness" test within the first data protection principle, and it would therefore breach the DPA with the result that section 40(2) applies. In addition it is worth noting that even if disclosure could be regarded as being generally "fair" none of the more specific conditions enabling compliance with the first data protection principle contained within Schedule 2 of the DPA would be met in this case".

48. The Commissioner believes that a distinction can be drawn between the levels of information which staff at a junior compared with a senior level should expect to have disclosed about them. This is because the more senior a member of staff the more likely it is that they will be responsible for making influential policy decisions and/or decisions related to the expenditure of significant amounts of public funds.
49. With regard to the names of the staff in the redacted Schedules, the Commissioner considers that these people are relatively senior individuals within the organisations who were given high-level responsibilities, as outlined in the public authority's arguments above. They are cited as either 'security controllers' for named organisations or 'key personnel' for the supplier. The Commissioner believes that it would therefore not be unreasonable for them to have an expectation that their involvement in a significant contract would be disclosed.
50. The Commissioner does also note that, in this case, the data subjects are employees of the private sector contractors rather than being employees of the public authority. Irrespective of this, the Commissioner believes that in any sector the 'higher up' the organisation you are the more you would expect to be publicly

associated with that organisation. Furthermore, in the light of the Act, when a private sector company does business with the public sector, it should recognise that it too will be subject to public scrutiny and so will its staff. The Commissioner believes that this will shape the expectations of the organisation's staff and that it 'comes with the territory' that if you make your living helping manage or direct a company that does business with public authorities, then there is the potential for some personal data to be disclosed. This will be particularly true when the contract is for a high-profile project.

51. Furthermore, the Commissioner does not accept the public authority's argument that the staff may be at risk from 'lobbying' because of the controversial nature of the contract. As identified within the request, the contract had already been signed on 1 August 2008, some three months prior to the request.
52. To comply with the first principle disclosure also needs to be lawful. The public authority has provided no arguments to suggest that disclosure would be unlawful in this particular case and the Commissioner therefore concludes that there is no such reason.
53. The Commissioner therefore concludes that disclosure would not breach the first data protection principle.
54. As is outlined above, for third party personal data to be disclosed under the Act, disclosure not only has to be fair and lawful but also has to meet one of the conditions for processing in schedule 2 of the DPA. In this case the Commissioner considers that the most relevant condition is Condition 6. This states that:

"the processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject."

55. In deciding whether condition 6 would be met in this case the Commissioner has considered the decision of the Information Tribunal in *House of Commons v Information Commissioner & Leapman, Brooke, Thomas* [EA/2007/0060]. In that case the Tribunal established the following three-part test that must be satisfied before the sixth condition will be met:

- there must be legitimate interests in disclosing the information;

- the disclosure must be necessary for a legitimate interest of the public;
 - even where disclosure is necessary it nevertheless must not cause unwarranted interference or prejudice to the rights, freedoms and legitimate interests of the data subject.
56. No specific argument to support a legitimate interest for disclosure of the named parties has been given by the complainant. The Commissioner has, however, considered whether or not the disclosure of the parties would assist with transparency and accountability for managing such a contract and whether disclosure is necessary for the legitimate interests of the public.
57. Those staff in who are 'security controllers' have had their names, job titles and the company details all redacted. Those who are 'key personnel' have had their names, security clearance, and length of time in role redacted. In the Commissioner's view, all the staff are identified purely as nominated representatives for management of the contract.
58. The Commissioner has not identified any specific harm in releasing the information in this case, and he considers that the release of the redacted information would be fair. The Commissioner considers that – given the benefits of transparency and accountability – a legitimate interest arises from the disclosure on request of information by public bodies. More specifically, there is legitimate interest in the public knowing and understanding the full details of the contract and who was responsible for important decisions involving significant sums of public money. The Commissioner further finds that disclosure is necessary for the public to be able to be satisfied as to the seniority of those involved.
59. He also finds that there is no evidence in this case that there would be unwarranted interference or prejudice to the rights, freedoms and legitimate interests of the senior-level individuals concerned.

Exemptions at sections 31(1) (law enforcement) and 43(2) (commercial interests).

60. The public authority has not provided the Commissioner with any breakdown regarding how either of these exemptions has been applied to the withheld information or any part of it..
61. In order to have previously cited these exemptions, which were first relied on at internal review stage, the Commissioner would have expected the public authority to have scrutinised all the information and applied the exemptions specifically where it thought they were

engaged. Furthermore, based on the substantial amount of time that it took the public authority to comply with both the original request and the subsequent internal review, the Commissioner would again have expected that it would have considered the withheld information in some detail and documented its reasons for non-disclosure. However, the public authority has been unable to provide the Commissioner with any such breakdown despite having been asked for this information on 20 July 2010.

62. In the absence of any detailed arguments or explanation regarding where each of the exemptions has been applied, the Commissioner has concluded that the public authority has failed to provide *prima facie* evidence that either of them is engaged.

Procedural requirements

Section 1(1) and 10(1)

63. 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”.

64. Section 10(1) provides that-

‘... a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.’

65. The original information request in this case was made on 28 November 2008. The public authority failed to comply with section 1(1) until 9 July 2009, therefore taking 150 working days (it also took 432 working days to publish the information in respect of part 3 of the request). In failing to confirm that it held information falling within the request within 20 working days, the public authority breached section 10(1).

66. Furthermore, by failing to communicate the information the public authority breached s1(1)(b) and, by failing to do so within 20 working days, it breached s10(1)

Section 17(1)

67. 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."

68. In this case the public authority issued its refusal notice later than the 20 working day limit. Accordingly, the Commissioner finds a breach of section 17(1).

69. The public authority cited section 40(2) but failed to advise the complainant which data protection principle/s would be breached were it to disclose the requested information. In doing so it breached section 17(1)(c).

The Decision

70. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act.

- In failing to provide a timely response it breached sections 10 and 17(1).
- In failing to provide an adequate refusal notice it breached section 17(1)(c).
- In failing to communicate the requested information it breached sections 1(1)(b) and 10(1).

Steps required

71. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

- the full contract / schedules should be provided to the complainant.

72. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

73. 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.

Other matters

74. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.

Internal review

75. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his '*Good Practice Guidance No 5*', published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner is concerned that in this case, it took over 100 working days for an internal review to be completed, despite the publication of his guidance on the matter.

Engagement

76. During the course of his investigation, the Commissioner has encountered considerable delay on account of the public authority's reluctance or inability to meet the timescales for response set out in his letters. This mirrors the experience of the complainant and the lengthy delay he experienced in getting a response to his requests.

77. Accordingly the Commissioner does not consider the public authority's approach in this case to be particularly co-operative, or within the spirit of the Act. As such he will be monitoring the public authority's future engagement with the ICO and would expect to see improvements in this regard.

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 sent.

Dated the 20th day of December 2010

Signed

**Graham Smith
Deputy Commissioner**

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

Legal annex

Section 1(1) provides that -

"Any person making a request for information to a public authority is entitled-

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

Section 10(1) provides that -

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt".

Section 17(1) 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 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."