

Freedom of Information Act 2000

Decision Notice

Date: 30 March 2011

Public Authority: Brent Council
Address: Town Hall
Forty Lane
Wembley
Middlesex
HA9 9HD

Summary

The complainant requested information concerning the council's commissioning of a private company to renegotiate residential care fees for people with mental health disabilities. The council refused disclosure of the information under s41(1) and s43(2) of the Act.

The Commissioner decided that the exemptions were not engaged and ordered disclosure of the information. He identified items of personal data that required redaction prior to disclosure.

The Commissioner found that the council failed to comply with s1(1)(a), s1(1)(b), s10(1), s17(1)(a), s17(1)(b), s(17)(1)(c) and s17(3)(b) of the Act.

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 complainant represents a person who provides residential care services to people with mental health disabilities. His company, First

Choice Care, provides its services in small care homes. Some of its placements are commissioned by the council. The council employed a consultancy company (OLM) to renegotiate the fees it pays to First Choice Care and other residential care providers.

The Request

3. On 30 December 2008 the complainant requested the following information from the council:

“(i) Please give the names of all the individual ‘consultants’ (not directly employed by Brent Council) who have or are assessing data received from First Choice Care under the umbrella of OLM.

(ii) For each person please state (a) his/her qualifications and experience in relation to the care of people with mental health needs; and (b) confirm that a current Criminal Records Bureau Enhanced Disclosure and references have been obtained verifying that s/he is suitable to consider sensitive personal data about, and visit the home of, vulnerable adults.

(iii) What is the basis of OLM's charges to Brent Council for this work?

(iv) How much has already been paid to OLM and what is the anticipated fee?

(v) Please supply a copy of OLM's written brief (or if contained in a contract please supply a full copy of the contract).

(vi) How many placements for ‘young adults’ (ie under 65) with mental health needs in (a) residential care and (b) supported living accommodation has Brent Council funded during the current financial year and 2006/7?

(vii) How many of those placements are being scrutinised by OLM?

viii) For how many of those placements has OLM received data?

(ix) Please supply that data. (It is acceptable to provide anonymised data both as to providers and service users.)

(x) What national, regional or other data is OLM using to compare information received from my client?

(xi) Please supply a copy of that data.

(xii) Please supply copies of any reports (including interim reports) made by OLM to the Council regarding this project.

(xiii) Please supply copies of any minutes of meetings, letters, memoranda or emails within Brent Council concerning this project."

4. In a refusal notice of 27 January 2009 the council responded with reference to item (i) that some names of the consultancy company's staff were known to the complainant and that the other names had not been supplied by the company to the council.

With reference to item (ii) the council stated that it had not been informed of the qualifications or experience of the consultancy company's staff. It said the company routinely carried out CRB checks on its staff.

Re item (iii) it informed the complainant that the company's charges were based on a fixed fee negotiated in advance of the commencement of the contract.

Re item (iv) the council withheld the information under s43 of the Act.

Re item (v) the council did not provide a copy of the requested information. It did not cite which exemption of the Act it had engaged in order to withhold the information.

Re item (vi) the council stated that it had 47 residential placements and 45 supported housing placements.

Re item (vii) the council's response was that there were 50 placements.

Re item (viii) the council's response was again 50.

Re item (ix) the council withheld the information under s43 and s40 of the Act.

Re item (x) the council responded that the company's 'My Care Costs' database, CSCI reports and information from CSCI, Companies House and the Charity Commission were used.

Re item (xi) the council stated that the database has not been provided by Brent. It stated that the other requested information was available elsewhere.

Re item (xii) the council withheld the information under s43 and s40 of the Act.

Re item (xiii) the council withheld the information under s43 and s40 of the Act.

5. On 11 February 2009 the complainant requested the following additional information:

“(xiv) Please would you disclose the My Care Costs model, methodology and research basis. My client obviously has the spreadsheet which requests details of expenditure and depreciation but please supply a copy of the model which analyses the data provided, sets out any assumptions (e.g. occupancy levels) and indicates how and where the data has been derived and verified.

(xv) The ‘service use views and outcomes other than financial ones’ which have been collated in my client’s case and which are going to be taken into account in the value for money assessment.

(xvi) A copy of the Commissioning Board’s decision and any reports or recommendations which the Board took into account before reaching the decision.

(xvii) Details of the other work which you say Brent is doing in relation to fair pricing for younger adult residential mental health care to which the OLM work is a supplement.

(xviii) My client is aware that not all providers (with whom Brent has placed younger adults with mental health needs) have been asked to complete the OLM spreadsheet. What criteria have been used to select which providers are asked to complete these spreadsheets?”

6. The council provided its response to items (xiv) to (xviii) in a refusal notice of 6 March 2009.

With reference to item (xiv) the council referred to a clause in its contract with the consultancy company to the effect that disclosure of any information concerning the company required the company’s written authority and that the council did not have this.

With reference to item (xv) the council stated that the information had not been gathered.

Re item (xvi) the council supplied the requested information.

Re item (xvii) the council indicated that the information was not held.

Re item (xviii) the council replied that the criteria used for selection were those placements which were at the highest cost and those funded by the authority’s adult social care budget.

7. The complainant asked the council to review its decision and on 6 April 2009 the authority upheld its refusal to disclose request items (iv), (ix),

(xii) and (xiii). In relation to item (ix) the council's review added that the information had been provided in confidence. In relation to items (xii) and (xiii) the council no longer declared reliance on s40 to withhold the information. The council did not review its decision concerning item (xiv).

The Investigation

Scope and chronology

8. The complainant wrote to the Commissioner on 8 July 2009 to complain about the way the council had handled her request for information.
9. The scope of the Commissioner's investigation concerns the council's response to request items (iv), (v), (ix), (xi), (xii), (xiii) and (xiv). On 16 July 2009 the Commissioner asked the council to provide him with the withheld information in order to determine whether the exemptions under the Act had been properly applied. In a separate letter the Commissioner asked the council to list each item of information that had been withheld and to provide him with its reasons for withholding each item. He also asked the council to provide him with further arguments to support its position that the information was exempt from disclosure. In addition he requested the council's detailed consideration of the public interest test in relation to qualified exemptions of the Act that applied.
10. On 13 August 2009 the council replied that it was unable to supply the Commissioner with the information he had requested because it related to a contract with the consultancy company. The council suggested that the Commissioner should approach the company himself to ask it to give the council permission to disclose the information.
11. Notwithstanding its suggestion of 13 August the council wrote again on 22 October 2009 and supplied the Commissioner with information in relation to item (iv). It also supplied samples of information in relation to items (ix), (xii) and (xiii). The council submitted that the exemptions at s41 and s43 of the Act applied to all these items. The samples of information supplied by the council in relation to items (ix) and (xii) had been redacted by the council. The council stated that it had deleted information from the samples on the grounds that it was personal data or comprised names of providers.
12. With reference to item (xiv) – the pricing model - the Commissioner wrote on 3 February 2010 to inform the council that he still required a copy which the council had maintained that it was prevented from

supplying owing to the contractual restriction imposed by the consultancy company. He advised the council that a public authority cannot contract out of its responsibilities under the Act and that unless information is covered by an exemption it must be released.

13. The council did not respond. The Commissioner therefore wrote again on 23 February 2010. Because the council still did not reply he warned the authority on 22 March 2010 that he would need to issue an information notice in the absence of a response. He subsequently issued an information notice on 7 April 2010 requiring provision of the information and an explanation of the exemption(s) upon which the council relied to withhold it.
14. On 25 May 2010 the council responded with a letter dated 6 May 2010. The council's letter stated that the information required by the information notice (item xiv) was attached. It maintained that it was exempt from disclosure by virtue of sections 41(1) and 43(2) of the Act. However, the information attached by the council was not that relating to item (xiv). Instead it was a copy of some of the samples that had previously been supplied in relation to item (ix).
15. The Commissioner wrote twice more to the council concerning the matter. In each instance the council failed to respond. He therefore issued a further information notice on 6 July 2010 requiring provision of the information in relation to item (xiv). The notice required the council to state clearly whether or not the information was held. It also required the council to provide a copy of item (v) – its contract with the consultancy company.
16. With regard to item (xiv) the council's response of 4 August 2010 repeated its earlier assertion of 6 May 2010 that it relied upon the exemptions as set out at sections 41 and 43 of the Act. Although it had exempted the information the response also stated that it did not hold item (xiv).
17. With regard to item (v) the council submitted that the contract was exempt from disclosure by virtue of sections 41 and 43 and that the reasons for the exemptions were the same as those conveyed in its previous letter of 6 May 2010. Its response stated that a copy of the contract was now enclosed but omitted to provide this. The council eventually supplied a copy on 10 August 2010 after further contact from the Commissioner about the missing document.
18. With regard to the redacted samples and incomplete information that had been provided by the council in relation to items (iv), (ix), (xii) and (xiii) of the request, the Commissioner asked the authority for full and un-redacted copies to be supplied to him. He also asked the council to

clearly confirm whether the pricing model been held at any time by the council and to detail the searches it had undertaken in order to establish whether the information was held. The council failed to supply the requested information. On 16 September 2010 the council informed the Commissioner of its opinion that he had been sent sufficient information in order for him to form a view in this case.

19. The Commissioner again advised the council that in the event that it did not supply the information he had requested he would need to issue an information notice requiring its provision. In a subsequent telephone call with the council he was informed that the information would be provided. However, the council failed to supply this or provide a sufficient response to the queries he had raised.
20. On 20 October 2010 the Commissioner warned the council that in the event that the authority did not provide the information he had requested he would need to proceed with the information notice.
21. The council failed to reply. On 8 November 2010 the Commissioner issued a further information notice requiring provision of the information. The council's response of 7 December 2010 simply declared that no other information had been unearthed.
22. The Commissioner informed the council of his concerns regarding the authority's response. He advised that schedule 3 of the Act provided him with the power of entry and inspection where he believed that a public authority had failed to comply with an information notice or that an offence under section 77 of the Act had been or was being committed. The Commissioner informed the council that he may apply to a circuit judge for a warrant to allow his staff access to its premises in order to seek evidence of such non compliance or offence if it was considered that the authority might refuse access. He advised the council that failure by the authority to provide access would be brought to the attention of the circuit judge at the time of the application for issue of the search warrant. Consequently, the Commissioner arranged for his staff to visit the council at its offices on 3 February 2011 in order to discuss his requirements.
23. At the meeting on 3 February 2011 the council clarified and confirmed that it had never seen the company's cost comparator or its database. The council had only read the company's marketing brochure. As the council had never held the information requested in item (xiv) the council acknowledged that it had applied the exemptions at sections 41(1) and 43(2) inappropriately to the information.
24. In relation to the provision of items (iv), (ix), (xii) and (xiii) the council undertook to locate and supply the information required by the

Commissioner within 28 calendar days. The Commissioner finally received the information from the council on 3 March 2011.

Analysis

Exemptions

Section 43

25. The council relied upon the exemption at s43(2) in order to withhold items (iv), (v), (ix), (xii) and (xiii).
26. Section 43(2) of the Act exempts information if its disclosure *would, or would be likely to*, prejudice the commercial interests of any person including the public authority holding it. In the Commissioner's view, the term '*likely to prejudice*' means that the possibility of prejudice should be real and significant and certainly more than hypothetical or remote. The term '*would prejudice*' places a much stronger evidential burden on the public authority and must be at least more probable than not. Where the level of prejudice has not been specified by the public authority, unless there is clear evidence that the higher level should apply, the lower threshold of '*likely to prejudice*' should be used. Owing to the council's lack of clarity in its application of the exemption he asked it to specify the threshold which applied.
27. The council submitted in its letter to the Commissioner of 6 May 2010 that disclosure of the information "would" prejudice the commercial interests of both the council and the consultancy company. The council's letter was ostensibly in response to the Commissioner's queries concerning item (xiv) but in addressing the matter the authority maintained that the higher threshold of prejudice encompassed all the withheld information that it supplied to the Commissioner.
28. The council maintained that disclosure of the requested information would interfere with the company's ability to offer its service potentially to the point of extinguishment. However, the council did not demonstrate how any interference or extinguishment of the company's ability would result from disclosure.
29. The council also maintained that the council's savings made from fee reductions by care providers would be jeopardised, reduced or extinguished by disclosure of the information. Again the council did not demonstrate how any jeopardy, reduction or extinguishment to its savings would result from such disclosure.

Item (iv) - the amount paid to the company and the anticipated fee

30. The information supplied by the council to the Commissioner in relation to item (iv) comprised a list of fees in the form of a service quotation agreed by the council for the company's services.
31. The council had initially informed the complainant that disclosure of the information requested in item (iv) may prejudice contract negotiations by the company with its current and future customers. The council's internal review maintained that disclosure of the information would prejudice the company's negotiations.
32. Neither the refusal notice nor the internal review specified the relevant subsection of the exemption, however, it is apparent from later correspondence with the Commissioner that the council intended to rely on s43(2) of the Act.
33. The council's correspondence with the Commissioner stated that disclosure of the information would cause prejudice but did not explain how such prejudice would arise from disclosure.
34. The Commissioner has examined the document supplied by the council in relation to item (iv). He has ascertained that it does not contain any technical information concerning systems used by the company or any information that could be considered a trade secret. It simply itemises the prices charged by the company for its services in relation to each user group. It does not reveal the method used by the company to calculate the prices charged. The Commissioner has considered whether disclosure of the prices charged to the council would allow competitors to understand the methodology or strategies of the company in submitting the prices they did and he has concluded that it would not.
35. In the absence of any evidence from the council or the provision of any argument to support or explain how commercial detriment would arise from disclosure the Commissioner considers that it has failed to establish engagement of the exemption in relation to item (iv).
36. As the exemption at s43(2) of the Act is not engaged he has not proceeded to consider the public interest test in respect of the exemption.

Item (v) - a copy of the written brief or contract with the company

37. The information provided by the council to the Commissioner in relation to item (v) consisted of its contract with the company and a copy the service quotation it had supplied in relation to item (iv). The Commissioner's consideration of the latter document has been detailed above.

38. The council did not provide the complainant with a reason for withholding its contract with the consultancy company. In his information notice of 6 July 2010 the Commissioner asked the council to specify the exemption upon which it was reliant in order to withhold the contract. The notice also required the council to provide an explanation of the prejudice that it considered would or would likely be caused if the contract was disclosed. He emphasised that detailed arguments were required and that general references to 'confidentiality' or 'commercial sensitivity' alone would be insufficient.
39. The council's response of 4 August 2010 cited reliance on the exemption at s43 in order to withhold the contract. However, it provided no further explanation of the prejudice that would result from disclosure as required by the notice but referred the Commissioner to its previous correspondence of 6 May 2010 which in turn stated that it could do no better than refer back to an earlier letter from the council of 22 October 2009.
40. None of these letters provided the Commissioner with the explanation he had requested as to how disclosure of the contract would result in prejudice to the commercial interests of either the council or the consultancy company.
41. The Commissioner has examined the content of the contract and has ascertained that it does not contain any technical information concerning systems used by the company or any information that could be considered a trade secret. The contract repeats the same itemisation of fees charged by the company as in item (iv). As in item (iv) the contract does not reveal the methods used by the company to calculate or arrive at those fees. The Commissioner's conclusion is that disclosure of the fees itemised in the contract would not enable any competitor to understand the methodology or strategies of the company in charging those fees.
42. In the absence of any evidence from the council or the provision of any argument to support or explain how commercial detriment would arise from disclosure the Commissioner considers that it has failed to demonstrate that the exemption is engaged in relation to item (v).
43. As the exemption at s43(2) of the Act is not engaged he has not proceeded to consider the public interest test in respect of the exemption.

Item (ix) - the placement data supplied by the council to the company

44. The council informed the complainant in its refusal notice that the placement data requested in item (ix) was commercially sensitive.

However, it provided no explanation as to how commercial prejudice would result from disclosure. The council's internal review maintained that disclosure would prejudice the company's commercial interests but provided no further explanation.

45. In the course of the Commissioner's investigation the council maintained that disclosure of the information would cause prejudice but again failed to explain the nature of the commercial prejudice that would arise.
46. The placement data supplied by the council to the Commissioner consisted of placement panel reports and cost analysis reports. The placement panel reports summarise the circumstances of individual service users. The cost analysis reports contain financial information under standard headings on the fees charged by the council's care providers. The Commissioner considers the information within the cost analysis reports to be commercial in that it relates to the costs of care. He does not consider the information in the placement panel reports to be commercial apart from the single reference in each report to the overall placement cost of the individual concerned.
47. The cost analysis reports contain financial conclusions reached by the consultancy company. These are stated by the company to have been derived from an application of a benchmarking test of providers' fees compared to a price comparator. However, that calculation is not revealed in the reports. Because the process by which the financial conclusions are arrived at is not apparent within the reports, any disclosure of the reports would not reveal the methodology employed by the company. The financial conclusions in the reports would therefore have no commercial value to any competitor of the company. Consequently their disclosure would not result in commercial detriment to the company.
48. The council in its letter to the Commissioner of 6 May 2010 maintained that care providers should not be informed of the prices paid by other providers. It submitted that competitive advantage would be lost if this occurred but did not explain the reasoning for this.
49. The Commissioner considers that service users in these circumstances require differing levels of support. They have individual needs which require individually tailored packages of care. Without detailed knowledge of the particular service user and care home involved it would not be possible on the basis of the information provided in the reports for other providers to make accurate comparisons of care fees charged. The brief summary of each user's requirements and level of healthcare need itemised in the placement panel reports is insufficient to make any close comparison with those of other users. The Commissioner has considered whether the use of such brief information as a platform for

further enquiry might make it feasible for other providers to correlate sufficient information for purposes of fee comparison. However in order to do this, identification of the provider and service user would be required as a basis for such further enquiry.

50. The Commissioner is minded that the complainant stated in her request that it is acceptable for the information to be anonymised in respect of both providers and service users. The Commissioner considers that the redaction of that detail will also adequately serve to prevent any comparative fee analysis by other providers in the event that such cross referencing of information might be attempted.
51. With the above redactions in place the Commissioner is satisfied that the exemption at s43(2) is not engaged in relation to the information requested in item (ix). He has therefore not proceeded to consider the public interest test in respect of the exemption.

Item (xii) - copies of reports made by the company to the council regarding the project

52. The council's refusal notice informed the complainant that the reports requested in item (xii) contained commercially sensitive information relating to individual service users. The council did not provide any explanation as to the nature of the commercial detriment that would be caused by disclosure. The authority's internal review later maintained that disclosure would prejudice the consultancy company's commercial interests. However, it did not explain what the commercial detriment to the company would be other than to suggest that its confidence in entering contractual arrangements with the council may be undermined.
53. The reports requested in item (xii) consist of a number of spread sheets which summarise the care providers' costs and identify suggested savings to be made in respect of the costs of care for each service user. The Commissioner considers that the information in the spread sheets is commercial information in that it contains financial information concerning the costs of care. He finds that a substantial proportion of the information in the spreadsheets was supplied by the council or the care providers themselves. Suggested savings figures identified by the company in the reports have been derived from the company's declared process as outlined in paragraph 47 above. The calculations from which the identified savings have been achieved are not shown in the reports. Therefore the process from which the savings figures have been arrived at cannot be replicated by a competitor. Subsequently they have no commercial value to a competitor of the company. Because they have no commercial value their disclosure would not result in commercial detriment to the company.

54. The council's submission that care providers should not be informed of the prices paid by other providers has also been considered by the Commissioner in relation to item (xii). As with item (ix) he considers that without detailed knowledge of the service user involved it would not be possible for providers to make direct comparisons of care fees charged. In his view redaction of the names of service users and care providers will again be sufficient to prevent any comparative analysis of fees charged.
55. In light of the above, the Commissioner has concluded that the exemption at s43(2) of the Act is not engaged in relation to item (xii). He has therefore not proceeded to consider the public interest test in respect of the exemption.

Item (xiii) - copies of minutes of meetings, letters, memoranda and emails concerning the project

56. Item (xiii) consists of minutes and a set of emails regarding the project.
57. The council's refusal notice stated that the requested information contained commercially sensitive information relating to individual service users. The council did not provide any explanation as to the nature of the commercial detriment that would be caused by disclosure. The council's internal review later maintained that disclosure would prejudice the commercial interests of the consultancy company. Other than suggesting that the company's confidence in entering contractual arrangements with the council might be undermined as a result of disclosure it did not explain the commercial detriment that would result from release of the information.
58. The council did not adequately explain to the Commissioner how commercial prejudice would arise from disclosure of the information requested in item (xiii). In the absence of any evidence or supporting argument to that effect he is unable to conclude that the authority has established that the exemption is engaged.
59. As the exemption at s43(2) of the Act is not engaged in relation to item (xii) the Commissioner has not proceeded to consider the public interest test in respect of the exemption.
60. The Commissioner has noted that one of the emails contains a copy of the same information he has considered in relation to item (iv). His consideration of that information in item (iv) applies to the copy in item (xiii). Three of the emails (numbered 10, 14 and 16 by the council) contain names of other providers, one of which is another authority. The emails numbered 10, 12, 15 and 16 contain service users' names. In line with the complainant's agreement for such data to be anonymised, the

Commissioner considers that this detail should be redacted by the council before disclosure of item (xiii).

Section 41

61. The council relied upon the exception at s41(1) in order to withhold the information requested in items (iv), (v), (ix), (xii) and (xiii).
62. Section 41(1) provides that information is exemption from disclosure if:-
 - (a) it was obtained by the public authority from another person and
 - (b) the disclosure of the information to the public by the public authority holding it would constitute a breach of confidence actionable by that or any other person.
63. An actionable breach is one that would on the balance of probabilities succeed. The three stage test in *Coco v Clark (1968) FSR 415* sets out the constituent elements of an actionable breach to be that:
 - (i) the information has the necessary quality of confidence
 - (ii) the information was imparted in circumstances importing an obligation of confidence
 - (iii) disclosure would be an unauthorised use of the information and in the case of commercial information would have a detrimental impact on the commercial interests of the confider.
64. Disclosure will not constitute an actionable breach of confidence if there is a public interest in disclosure which outweighs that in keeping the information confidential.

Item (iv) - the amount paid to the company and the anticipated fee

65. Item (iv) contains the consultancy company's fees that were agreed by the council for the provision of its services.
66. The council did not inform the complainant in either its refusal notice or its review or that the exemption at s41(1) applied or that it considered the information to be confidential in order to withhold the information. Its review cited a secrecy/confidentiality clause within its contract with the company but stated that this applied to other items that had been withheld rather than to item (iv). The authority later submitted to the Commissioner that the secrecy/confidentiality clause within the

contract prevented it from disclosing any of the withheld information and that therefore the s41 exemption applied to item (iv).

67. The Commissioner does not accept that a confidentiality clause will necessarily mean that the information should be considered confidential. To accept such a view would essentially allow public authorities to contract out of their obligations under the Act. The section 45 Code of Practice states that public authorities should refuse to include contractual terms which restrict disclosure of information held by the authority beyond the restrictions permitted by the Act. He therefore looks behind such clauses with a view to ascertaining whether the duty of confidence is applicable to the information.
68. Section 41(1) of the Act provides that information is exempt information if it was obtained by the public authority from any other person and if disclosure constitutes an actionable breach of confidence.
69. The information examined by the Commissioner in item (iv) records the scope and cost of an agreement and in his view does not constitute information provided in confidence. He is mindful of the Information Tribunal's decision in Derry City Council v ICO - EA/2006/0014 – which upholds the view that an agreement concluded between two parties does not constitute information provided by one to the other.
70. Whilst such agreements can sometimes contain confidential technical information that has been 'obtained' by one party from another, it is not the case in this instance. The Commissioner is satisfied that the fees for the company's services as detailed in this agreement and their acceptance on the part of the council do not fall within s41(1)(a) of the Act. In light of his finding that s41(1) is not engaged he has not proceeded to consider either the issues of whether disclosure would result in an actionable breach of confidence or the public interest defence to disclosure.

Item (v) - a copy of the written brief or contract with the company

71. The Commissioner notes that the copy of the contract supplied to him by the council was not signed or dated by either the authority or the company. The document is entitled 'Contract for services of a consultant' and reiterates the services and fees agreed by the council that were detailed in item (iv). The Commissioner also notes that the confidentiality clause in the copy of the contract that was supplied to him is only directed towards the consultancy company whereas the clause quoted to the complainant in the council's internal review had insertions to the effect that it applied to the council.

72. The council did not respond directly to the complainant's request for provision of a copy of the contract. The Commissioner asked for a copy of the contract on 13 August 2009 but the council's response of 22 October 2009 failed to supply one or indeed refer to the contract. A copy was eventually supplied after the Commissioner issued an information notice on 6 July 2010 requiring its provision. The council's accompanying letter of 4 August 2010 maintained that it relied on the s41 exemption to withhold the contract and referred to the right of the consultancy company to enforce the confidentiality clause of the contract.
73. Notwithstanding that the clause in question does not appear to relate to the council, the Commissioner does not accept that confidentiality clauses necessarily mean that information should be considered confidential. To accept such a view would essentially allow public authorities to contract out of their obligations under the Act. Indeed the section 45 Code of Practice clearly states that public authorities should refuse to include contractual terms which restrict disclosure of information beyond the restrictions permitted by the Act. He therefore looks behind such clauses in order to ascertain whether the duty of confidence is properly applicable to the information.
74. Section 41(1) of the Act provides that information is exempt information if it was obtained by the public authority from any other person and if disclosure constitutes an actionable breach of confidence.
75. The information examined by the Commissioner in the contract records the scope and cost of an agreement and in his view does not constitute information provided in confidence. He is again mindful of the tribunal's decision in Derry City Council v ICO which upholds the view that an agreement concluded between two parties does not constitute information provided by one to the other.
76. Whilst contracts may sometimes include confidential technical information that has been 'obtained' by one party from another, it is not the case in this instance. The Commissioner is satisfied that the charges agreed for the company's services as detailed in the contract do not fall within s41(1)(a) of the Act. In light of his finding that s41(1) is not engaged he has not gone on to consider either the issues of whether disclosure would result in an actionable breach of confidence or the public interest defence to disclosure.

Item (ix) – the placement data supplied by the council to the company

77. The council did not inform the complainant in its refusal notice that it considered the information in item (ix) to be confidential or that it

relied on the exemption at s41(1) in order to withhold the information. The council's internal review submitted that the information was provided in confidence but supplied no further explanation.

78. The council declared in its correspondence to the Commissioner that the confidentiality clause in the contract it had signed with the consultancy company entailed reliance on the exemption at s41 to withhold the information as disclosure would constitute a breach of confidence actionable by the company.
79. The stated requirement of the exemption at s41(1)(a) is that the information has to be obtained by the public authority from another person. In the case of item (ix) it is clear to the Commissioner that the request was not for the provision of information supplied by the company. Consequently there is no obligation of confidence to the company in respect of the information requested in item (ix).
80. The Commissioner's decision therefore is that the exemption at s41(1) of the Act is not engaged in relation to item (ix). As the exemption is not engaged he has not gone on to consider either the issues of whether disclosure would result in an actionable breach of confidence or the public interest defence to disclosure.

Item (xii) - copies of reports made by the company to the council regarding the project

81. The council did not inform the complainant in its refusal notice that it considered the information in item (xii) to be confidential or that it relied on the exemption at s41(1) in order to withhold it. Neither did the council's internal review. Its review referred to the confidentiality clause in the contract and suggested that disclosure of the information may undermine the company's confidence in entering into contractual arrangements with the council.
82. The council's letter of 22 October 2009 to the Commissioner maintained that the authority's reliance on the s41 exemption stemmed from having signed a contract with the company which contained the confidentiality clause. As indicated earlier in this notice, the contract received by the Commissioner was not signed by either the council or the company.
83. The Commissioner has outlined his views regarding inappropriate reliance on confidentiality clauses in order to limit disclosure of information beyond the restrictions permitted by the Act. Notwithstanding the inappropriateness of the council's reliance on a confidentiality clause to exempt information under s41, a commercial detriment to the provider of commercial information needs to be established in order for an actionable breach to succeed.

84. The Commissioner found earlier in this notice that disclosure of the information requested in item (xii) would not be commercially detrimental to the company. Consequently its disclosure would not constitute an actionable breach of confidence. The exemption at s41(1) is therefore not engaged. As disclosure of the information would not result in an actionable breach of confidence the Commissioner has not proceeded to consider the public interest defence to disclosure.

Item (xiii) copies of minutes of meetings, letters, memoranda and emails within Brent Council concerning this project

85. The council did not inform the complainant in either its refusal notice or its internal review that it considered the information in item (xiii) to be confidential or that it relied on the exemption at s41(1) in order to withhold it. The council's internal review quoted the confidentiality clause in its contract with the company and suggested that disclosure of the information may undermine the company's confidence in entering into contractual arrangements with the authority.
86. As with item (xii), the council's correspondence with the Commissioner maintained that its reliance on the s41 exemption stemmed from having signed a contract containing the confidentiality clause.
87. The Commissioner has referred to the unsigned contract that he has been supplied with. He has also expressed his views concerning the council's reliance on a confidentiality clause in order to limit disclosure of information beyond the restrictions permitted by the Act.
88. He notes that emails from the company to the council within the requested item have standard footers attached to the effect that the contents of the emails are confidential. The Commissioner does not accept that the routine attachment of such footers necessarily means that the information should be considered confidential for exactly the same reasons he has espoused in relation to the attachment of confidentiality clauses.
89. The council in its letter of 6 May 2010 to the Commissioner maintained that a corollary of signing up to the confidentiality clause in the contract was that a breach of that obligation would result in an actionable breach of confidence against the council by the company.
90. As indicated earlier in this notice it does not appear that the council actually signed up to the confidentiality clause quoted, however, as outlined in relation to item (xii), in order for an actionable breach to succeed, a commercial detriment to the provider of commercial information needs to be established. The Commissioner has already established that disclosure of the information requested in item (xiii) would not be commercially detrimental to the company. Consequently,

its disclosure would not constitute an actionable breach of confidence and the exemption at s41(1) is therefore not engaged.

91. As disclosure of the information requested in item (xiii) would not result in an actionable breach of confidence the Commissioner has not proceeded to consider the public interest defence to disclosure.

Section 40

92. The council's refusal notice informed the complainant that the information in items (ix), (xii) and (xiii) was exempt from disclosure under s40 of the Act as it contained personal information relating to service users. Its internal review upheld the s40 exemption in relation to item (ix) but did not do so in relation to items (xii) and (xiii).
93. The complainant's request of 11 February 2009 had made clear to the council that the names of service users and providers could be redacted from the information requested. Accordingly for purposes of this notice the Commissioner considers that the names of service users and care providers lie outside the scope of the request and should be redacted from all the requested items prior to disclosure.
94. The Commissioner notes however that items (iv), (ix) and (xiii) contain the personal information of council staff and company employees in the form of names of individuals and their job titles.
95. The first principle of the Data Protection Act (DPA) requires that personal information is processed fairly and lawfully and that at least one of the conditions in schedule 2 is met. In this respect the Commissioner considers that the names and job titles of senior council officers can be disclosed and that disclosure of this information would be fair. In his view occupants of senior posts in public authorities are legitimately exposed to a greater level of scrutiny and accountability than others. He considers that there is a legitimate public interest in a public authority's procurement of private sector services and in information showing which public officials are responsible for their engagement.
96. The Commissioner differentiates between information concerning an individuals' private and public lives. He considers that information about individuals acting in official or work capacities should be disclosed unless there is a risk to the individuals concerned. Whilst it is right to take into account any damage or distress that may be caused to a third party by the disclosure of personal information, the focus should be on the damage or distress that may be caused to an individual acting in a personal or private capacity. The exemption should not be used, for instance, as a means of sparing official embarrassment over decisions made. The Commissioner is satisfied in

this instance that the information relates to the public life of the individuals concerned.

97. He is minded of the Information Tribunal's decision in *House of Commons v The Information Commissioner* (EA/2006/0015 & EA/2006/0016) which states, "*we find that when assessing the fair processing requirements under the DPA that the consideration given to the interests of data subjects, who are public officials where data are processed for a public function, is no longer first and paramount. Their interests are still important but where data subjects carry out public functions...or spend public funds they must have the expectation that their public actions will be subject to greater scrutiny than would be the case in respect of their private lives.*"
98. The Commissioner considers that in this instance disclosure of the names and job titles of senior council officers meets the legitimate interests of those to whom the information would be disclosed (i.e. the general public) and would be proportionate to the limited prejudice to the rights and freedoms of the data subjects. He is therefore satisfied that condition 6(1) of schedule 2 of the DPA is met in this instance. Consequently s40(2) of the Act is not engaged and does not provide an exemption from disclosure.
99. In line with the above consideration the Commissioner considers that disclosure of the names of junior council staff and those of the consultancy company's employees would not be fair and should be redacted from the information.

Procedural Breaches

100. The council failed to confirm to the complainant that its contract with the consultancy company (item v) was held by the authority. By failing to do so the council breached s1(1)(a) of the Act. It also breached s10(1) of the Act by failing to provide the required confirmation within 20 working days.
101. The council failed to confirm to the complainant that the pricing model (item xiv) and the database (part of item xi) was not held by the authority. By failing to do so the council breached s1(1)(a) of the Act. It also breached s10(1) of the Act by failing to provide the required confirmation within 20 working days.
102. The council failed to inform the complainant that it was reliant on a claim that its contract with the company was exempt under s41(1) and s43(2) of the Act. The council breached s17(1)(a) by not stating that fact; s17(1)(b) by not specifying the exemptions and s17(1)(c) by not stating why the exemptions applied.

103. The council sought to rely upon an exemption it had not cited to the complainant. It failed to state in its refusal notice that the exemption at s41(1) was applicable to items (iv), (ix), (xii) and (xiii) of the requested information. It also did not explain to the applicant why the exemption applied. In failing to do so the council breached s17(1)(a), s17(1)(b) and s17(1)(c) of the Act.
104. The council's refusal notice failed to specify the exemption at s43(2) upon which it relied to withhold items (iv), (ix), (xii) and (xiii) of the information. In failing to do so the council breached s17(1)(b) of the Act.
105. The council failed to state to the complainant the reasons why the public interest in maintaining the s43(2) exemption in relation to the withheld information outweighed the public interest in disclosure. By failing to do so the council breached s17(3)(b) of the Act.
106. The council failed to specify the exemption at s21(1) in respect of the information requested in item (xi) other than the database. By failing to do so the council breached s17(1)(b) of the Act.

The Decision

107. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act in that it failed to comply with its obligations under section 1(1)(b).
108. The council incorrectly applied the exemptions at s41(1) and s43(2) of the Act in order to withhold the information.
109. The Commissioner found the council to have breached s1(1)(a), s10(1), s17(1)(a), s17(1)(b), s17(1)(c) and s17(3)(b) of the Act.

Steps Required

110. The Commissioner requires that the council shall within 35 calendar days of the date of this decision notice disclose the information requested by the complainant after redacting the names of service users, care providers, employees of the consultancy company and junior council staff and their job titles where applicable.

Failure to comply

111. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Other matters

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

The Commissioner first asked the council for copies of the withheld information on 16 July 2009 in order to carry out his investigation. The council did not supply the information he required until 3 March 2011.

In investigating complaints received under section 50(1) of the Act, the Commissioner relies upon submissions from public authorities in order to reach a decision. This includes responding to queries about the handling of a request or providing the Commissioner with information which has been withheld under an exemption. Whilst the Act does not place an explicit obligation on authorities to assist with this process, an unwillingness to cooperate may indicate a disposition which is at odds with the spirit of the Act. In cases where a request has been refused and where the Commissioner's investigation may result in a requester being provided with information to which they are entitled, delays in responding to the Commissioner unnecessarily prolong this process.

During the course of his investigation the Commissioner has encountered considerable delay on account of the council's reluctance to meet the timescales for response set out in his letters. Furthermore the Commissioner has been met with resistance in his attempts to understand the council's reasons for invoking particular exemptions. The delays and resistance have been such that the Commissioner has been forced to issue three Information Notices in order to obtain details relevant to his investigation.

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

Right of Appeal

113. 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

114. 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.

115. 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 30th day of March 2011

Signed

**Gerrard Tracey
Principal Policy Adviser
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Freedom of Information Act 2000

Section 1 states that:

(1) Any person making a request for information to a public authority is entitled—

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.

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

(3) Where a public authority—

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

(b) has informed the applicant of that requirement,

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

(4) The information—

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.

(5) A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).

(6) In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.

Section 10 states that:

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

Section 17 states that:

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

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

(2) Where—

(a) in relation to any request for information, a public authority is, as respects any information, relying on a claim—

(i) that any provision of Part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or

(ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and

(b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.

(3) A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming—

(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

(4) A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

(5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

(6) Subsection (5) does not apply where—

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

(7) A notice under subsection (1), (3) or (5) must—

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

Section 21 states that:

(1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.

(2) For the purposes of subsection (1)-

- (a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and
- (b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.

(3) For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.

Section 40 states that:

(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

(2) Any information to which a request for information relates is also exempt information if-

(a) it constitutes personal data which do not fall within subsection (1), and

(b) either the first or the second condition below is satisfied.

(3) The first condition is-

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-

(i) any of the data protection principles, or

(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

(4) 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).

(5) The duty to confirm or deny-

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

(b) does not arise in relation to other information if or to the extent that either-

- (i) he giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or
- (ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).

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

(7) In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;

data subject" has the same meaning as in section 1(1) of that Act;

"personal data" has the same meaning as in section 1(1) of that Act.

Section 41 states that:

(1) Information is exempt information if-

- (c) it was obtained by the public authority from any other person (including another public authority), and
- (d) 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 43 states that:

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

Section 45 states that –

- (1) The Secretary of State shall issue, and may from time to time revise, a code of practice providing guidance to public authorities as to the practice which it would, in his opinion, be desirable for them to follow in connection with the discharge of the authorities' functions under Part I.
- (2) The code of practice must, in particular, include provision relating to –
 - (e) the provision of advice and assistance by public authorities to persons who propose to make, or have made, requests for information to them,
 - (f) the transfer of requests by one public authority to another public authority by which the information requested is or may be held,
 - (g) consultation with persons to whom the information requested relates or persons whose interests are likely to be affected by the disclosure of information,
 - (h) the inclusion in contracts entered into by public authorities of terms relating to the disclosure of information, and
 - (i) the provision by public authorities of procedures for dealing with complaints about the handling by them of requests for information.
- (3) The code may make different provision for different public authorities.
- (4) Before issuing or revising any code under this section, the Secretary of State shall consult the Commissioner.
- (5) The Secretary of State shall lay before each House of Parliament any code or revised code made under this section.

Section 77 states that –

(1) Where –

- (a) request for information has been made to a public authority, and
- (b) under section 1 of this Act or section 7 of the Data Protection Act 1998, the applicant would have been entitled (subject to payment of any fee) to communication of any information in accordance with that section,

any person to whom this subsection applies is guilty of an offence if he alters, defaces, blocks, erases, destroys or conceals any record held by the public authority, with the intention of preventing the disclosure by that

authority of all, or any part, of the information to the communication of which the applicant would have been entitled.”

(2) Subsection (1) applies to the public authority and to any person who is employed by, is an officer of, or is subject to the direction of, the public authority.

(3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) No proceedings for an offence under this section shall be instituted –

(j) in England or Wales, except by the Commissioner or by or with the consent of the Director of Public Prosecutions;

(k) in Northern Ireland, except by the Commissioner or by or with the consent of the Director of Public Prosecutions for Northern Ireland.

Schedule 3

Powers of Entry and Inspection

Issue of warrants

1. - (1) If a circuit judge is satisfied by information on oath supplied by the Commissioner that there are reasonable grounds for suspecting—

(a) that a public authority has failed or is failing to comply with—

(i) any of the requirements of Part I of this Act,

(ii) so much of a decision notice as requires steps to be taken, or

(iii) an information notice or an enforcement notice, or

(b) that an offence under section 77 has been or is being committed,

and that evidence of such a failure to comply or of the commission of the offence is to be found on any premises specified in the information, he may, subject to paragraph 2, grant a warrant to the Commissioner.

(2) A warrant issued under sub-paragraph (1) shall authorise the Commissioner or any of his officers or staff at any time within seven days of the date of the warrant—

(a) to enter and search the premises,

(b) to inspect and seize any documents or other material found there which may be such evidence as is mentioned in that sub-paragraph, and

(c) to inspect, examine, operate and test any equipment found there in which information held by the public authority may be recorded.

2. - (1) A judge shall not issue a warrant under this Schedule unless he is satisfied—

(a) that the Commissioner has given seven days' notice in writing to the occupier of the premises in question demanding access to the premises, and

(b) that either—

(i) access was demanded at a reasonable hour and was unreasonably refused, or

(ii) although entry to the premises was granted, the occupier unreasonably refused to comply with a request by the Commissioner or any of the Commissioner's officers or staff to permit the Commissioner or the officer or member of staff to do any of the things referred to in paragraph 1(2), and

(c) that the occupier, has, after the refusal, been notified by the Commissioner of the application for the warrant and has had an opportunity of being heard by the judge on the question whether or not it should be issued.

(2) Sub-paragraph (1) shall not apply if the judge is satisfied that the case is one of urgency or that compliance with those provisions would defeat the object of the entry.

3. A judge who issues a warrant under this Schedule shall also issue two copies of it and clearly certify them as copies.

Execution of warrants

4. A person executing a warrant issued under this Schedule may use such reasonable force as may be necessary.

5. A warrant issued under this Schedule shall be executed at a reasonable hour unless it appears to the person executing it that there are grounds for suspecting that the evidence in question would not be found if it were so executed.

6. - (1) If the premises in respect of which a warrant is issued under this Schedule are occupied by a public authority and any officer or employee of

the authority is present when the warrant is executed, he shall be shown the warrant and supplied with a copy of it; and if no such officer or employee is present a copy of the warrant shall be left in a prominent place on the premises.

(2) If the premises in respect of which a warrant is issued under this Schedule are occupied by a person other than a public authority and he is present when the warrant is executed, he shall be shown the warrant and supplied with a copy of it; and if that person is not present a copy of the warrant shall be left in a prominent place on the premises.

7. - (1) A person seizing anything in pursuance of a warrant under this Schedule shall give a receipt for it if asked to do so.

(2) Anything so seized may be retained for so long as is necessary in all the circumstances but the person in occupation of the premises in question shall be given a copy of anything that is seized if he so requests and the person executing the warrant considers that it can be done without undue delay.

Data Protection Act 1998

Schedule 2 condition 6

Conditions relevant for purposes of the First Principle: Processing of any personal data.

6 (1) 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.