



Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 7 June 2006

Public Authority: East Sussex Hospitals NHS Trust

Address: Eastbourne District General Hospital
Kings Drive
Eastbourne
East Sussex
BN21 2UD

Summary Decision and Action Required

The Information Commissioner's (the "Commissioner") decision in this matter is that East Sussex Hospitals NHS Trust (the "Trust") has not dealt with the Complainants' request in accordance with Part 1 of the Freedom of Information Act 2000 (the "Act") in that it failed to comply with section 1(1) (b), section 10 (1) or issue an adequate refusal notice in accordance with its obligations under section 17(1) and section 17(3).

- 1) The Commissioner accepts the Trust has communicated the majority of the information specified in the request to the Complainants. Some information has been redacted on the basis the Trust considers this to be exempt under section 40. The Commissioner considers the redacted words on page 4 of the report are not personal data and therefore the Trust has incorrectly applied section 40 to these words. In failing to disclose this part of the requested information the Trust has breached section 1(1) (b).
- 2) The Trust breached section 10(1) by not providing its decision to exempt some of the information requested within 20 working days.
- 3) The Trust did not specify in its refusal notice the exemption it was applying or state why the exemption applies as required by section 17 (1).
- 4) Furthermore it did not specify in accordance with section 17(3) (a), the reasons why when considering the application of section 40(3) (a) (ii) it decided that the public interest in avoiding unwarranted substantial damage or substantial distress was greater than the public interest in disclosing the information.
- 5) The Commissioner accepts that apart from the words referred to in 1) above the redacted information is personal data and disclosure of some of the redacted information would breach the first data protection principle. The Commissioner has also identified redacted information which is covered by a



Section 10 Notice under the Data Protection Act 1998 (DPA). He has concluded that the public interest considerations which have to be taken into account when relying on section 40(3) (a) (ii) justify reliance on the section 40 exemption in all the circumstances of this case.

The Commissioner notes that the Complainants made a freedom of information request to another public authority for a copy of the same Report. The Complainants have received a redacted copy of this Report but this copy did not redact the sentence referred to in 1) above.

In view of the matters referred to above the Commissioner does not require any remedial steps to be taken by East Sussex Hospitals NHS Trust.

1. Freedom of Information Act 2000 (the 'Act') – Application for a Decision and the Duty of the Commissioner

1.1 The Commissioner has received an application for a decision whether the Complainants' request for information made to the Public Authority has been dealt with in accordance with the requirements of Part I of the Act.

1.2 Where a complainant has made an application for a decision, unless:

- the complainant has failed to exhaust a local complaints procedure, or
- the application is frivolous or vexatious, or
- the application has been subject to undue delay, or
- the application has been withdrawn or abandoned,

the Commissioner is under a duty to make a decision.

1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority

2. The Complaint

2.1 On 4th January 2005 the Complainants requested the following information from the Public Authority in accordance with section 1 of the Act.

2.2 *"A copy of the report of the Independent Inquiry Panel in respect of concerns which arose about the clinical governance at East Sussex Hospitals NHS Trust"*

2.3 The Trust responded to the Complainants on the 1st February 2005 indicating that it believed exemptions may apply to the request and that it estimated it would be in a position to make its decision within 14 days of the date of its letter. It said that the information contained personal information (s.40) and that disclosure may also



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prejudice the effective conduct of public affairs (s.36). The Trust wrote again on the 11th February 2005 stating that it needed to extend its initial estimate for deciding whether exemptions applied. It indicated that a decision may not be made for a further 54 days. As a result of this delay the Complainants, via their solicitor, wrote to the Commissioner on the 10th March 2005 complaining that the Trust had failed to comply with the provisions of the Act. In particular, the Complainants were dissatisfied with the time taken by the Trust to handle their request.

2.4 The Complainants received a response from the Trust by letter dated 18th March 2005 in which they were provided with a redacted copy of the Report. They were told that redactions were necessary in order to remove personal information about various individuals which the Trust believed to be exempt from disclosure. In addition to the Report the Complainants were provided with a number of other documents relating to the Inquiry. These included a copy of the Action Plan in response to the Independent Inquiry, Trust Board minutes and a copy of the Independent Inquiry Report to the Trust Board.

2.5 The Complainants have not gone through the Trust's internal review procedure. However the Trust advised the Commissioner that the Complainants' request has already been considered at a very high level and that there is no one more senior to conduct an internal review. Therefore the Commissioner has decided to make a decision without an internal review having taken place.

3. Relevant Statutory Obligations under the Act

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 –

“...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... is to any extent relying:



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- on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request, or
- on a claim that information is exempt information

must, within the time for complying with section 1(1), give the applicant a notice which –

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

Section 17 (3) (b) provides that:

“ 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-
(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. Review of the case

- 4.1 The Complainants, via their solicitors, wrote to the Commissioner on 10th March 2005 complaining about the Trust's lack of response to their request for information. The Complainants subsequently clarified, following the release of the redacted report, that they were also dissatisfied with the Trust's decision to apply the s. 40 exemption in order to justify its failure to release a complete, unredacted copy of the Report.
- 4.2 When releasing the redacted Report the Trust clarified that the only exemption it was applying was s. 40. It argued the Report contained personal information relating to various individuals which was exempt from disclosure under the Act, because its release would breach the data protection principles.
- 4.3 The Report was produced following concerns raised by patients, staff and local MPs about the quality of management and patient services at the Conquest Hospital, part of the East Sussex Hospitals NHS Trust. A confidential independent inquiry panel was set up to ascertain the nature and content of the allegations, consider whether the allegations had been appropriately investigated, whether further investigation was necessary, whether the allegations were sufficiently serious to require immediate action by the Trust and to consider the management



style of senior staff within the Trust and whether good practice was being followed. The Report refers to specific members of staff at the Conquest Hospital and describes the nature and content of the allegations made against these staff. Some of the Report details complaints made to the Trust by the Complainants making this complaint to the Commissioner.

- 4.4 During the course of correspondence with the Commissioner, the Trust explained that in January 2004 it had received a Section 10 Notice, served under the DPA 1998, requiring the Trust not to publish or make the Report available to anyone without the express permission of the individual issuing the Notice.
- 4.5 A data controller may receive notice in writing (Section 10 Notice) by an individual not to process his personal data on the grounds that to do so is causing or is likely to cause unwarranted substantial damage or substantial distress to him or to another. Upon receiving this Notice, the data controller must cease or not begin processing any personal data in respect of which the individual issuing the Notice is the data subject, unless one of the conditions listed in 1 to 4 of Schedule 2 of the DPA 1998 is relevant.
- 4.6 The Commissioner wishes to clarify that a Section 10 Notice can only prevent the processing of personal data. The Trust explained to the Commissioner that on receiving the Section 10 Notice in January 2004 it requested legal advice, part of which related to the Section 10 Notice, but which also dealt with the areas of legal risk to the Trust if the report was disclosed. The Commissioner has seen the Report and has concluded that it does not consist entirely of personal data.
- 4.7 However the Commissioner notes that the legal advice the Trust received recommended that the Report should not be disclosed at all. The Commissioner notes that the legal advice was subsequently disclosed at a public meeting on the 28th January 2004, in order to explain why the Trust was not able to demonstrate publicly how it would respond to individual concerns. It therefore decided to refuse disclosure of the Report entirely.
- 4.8 The Trust advised the Commissioner that it decided to release a redacted version of the Report following the freedom of information request in January 2005, but would not disclose a copy of the full Report because it took the view that processing (i.e. disclosing) personal data about the individual who served the Section 10 notice would cause or would be likely to cause him unwarranted, substantial damage or substantial distress. The Trust justified taking this view because it considered releasing the information would damage that person's professional reputation.
- 4.9 The Commissioner's investigation has therefore focused on:



- the time taken by the Trust to respond to the complainant's request
- whether disclosure of the redacted information would breach any of the data protection principles
- how the Trust dealt with the Section 10 Notice and in particular whether the public interest in avoiding unwarranted substantial damage or substantial distress was greater than the public interest in disclosing the information

5. The Commissioner's Investigation

- 5.1 The Complainants made their original request for information on the 4th January 2005 but were not made aware of the Trust's decision to disclose a redacted copy of the Report until on or shortly after the 18th March 2005.
- 5.2 The Trust wrote to the Complainants on the 1st February 2005 pointing out that it may wish to rely on the exemptions referred to at 2.3 above and that it required more time to consider whether or not to do so. A further letter was sent to the Complainants on the 11th February stating that it would require up to a further 54 days to make its decision.
- 5.3 A public authority is normally expected to comply with section 1 of the Act within 20 working days of receiving a request. However s. 17 (2) allows public authorities a further period of time to consider its reliance on a non absolute exemption i.e. one where the public interest has to be taken into account. Where a public authority seeks to rely on a non-absolute exemption and requires further time in order to decide whether to do so, it must give an estimate of the date by which it expects to reach its decision. Therefore part of the Commissioner's investigation focused on whether the Trust was justified in extending the period of time it needed to decide whether exemptions applied to the requested information. The Commissioner also considered whether by extending the date in order to decide whether exemptions applied the Trust had complied with s.10 of the Act.
- 5.4 The Commissioner wrote to the Trust on the 27th June 2005 requesting a copy of the unredacted Report to enable him to consider whether or not the Trust had correctly applied the s.40 exemption. This was received by the Commissioner on the 22nd July 2005. The Trust again explained that most of the redactions were necessary as the Report contained personal information relating to one particular individual employed by the Trust. This individual served the Section 10 Notice on the Trust in January 2004. The Notice stated that the Trust must not publish or make the Report available to anyone without the subject of the Notice's express permission. The Notice acknowledged that the Report had already been seen by a number of people within the Trust and its legal advisers. The Commissioner has clarified in 4.6 above that a Section 10 Notice can only be used to prevent the processing of personal data in the report.



- 5.5 The Trust also explained that the remaining redactions relate to personal information about other third parties. In one case the information concerns a complaint about the care and treatment of a patient. Apparently these individuals have had no opportunity to comment on the disclosure of personal information about them within the Report. The names of two consultants mentioned in the Report have also been redacted. The Trust has explained they were not interviewed by the Inquiry panel and have had no opportunity to comment on the references to them in the Report.
- 5.6 The Commissioner wrote to the Trust again on the 26th July 2005. He enquired about its reasons for redacting certain information about the Complainants who were referred to within the Report. The Trust replied on the 2nd August 2005 explaining that another copy of the Report had been sent to the Complainants in April 2005. It clarified that information identifying them and their family was no longer redacted (information identifying other third parties remained redacted).
- 5.7 The Commissioner wrote to the Complainants' solicitors on the 8th August 2005 to confirm the Complainants' receipt of this second redacted Report and to request a copy of this version of the redacted Report. This was received by the Commissioner on the 17th August 2005.
- 5.8 The Commissioner still remained unclear as to how the Trust had initially dealt with the Section 10 Notice when it was first received and after it subsequently received the freedom of information request. He therefore wrote to the Trust again on the 30th August 2005 requesting a copy of the Notice and seeking the Trust's clarification that upon receiving the freedom of information request an assessment of the public interest considerations had been undertaken prior to reaching its decision to continue to accept the Notice. The Trust telephoned the Commissioner's Office on the 9th September 2005 stating that it would be able to send a copy of the Notice together with its comments by the end of the following week. This was not received until the 7th October 2005.
- 5.9 The Commissioner considered the Trust's response and was of the view that more information was required from the Trust to show how it responded to the Section 10 Notice. A letter was therefore sent to the Trust on the 14th October 2005 seeking further clarification of the Trust's handling of the Notice.
- 5.10 The Trust replied by letter dated 21st November 2005 stating that on receipt of the Section 10 Notice it sought legal advice, as discussed in 4 above. The legal advice advised that disclosure would breach the Section 10 Notice. The Trust accepted this advice and explained to the Commissioner that it did so because it considered disclosure could damage the subject of the Notice's professional reputation and standing within the hospital.



- 5.11 However following receipt of the freedom of information request the Trust reviewed its decision not to disclose the Report. This review resulted in the release of a redacted copy of the Report. The redacted Report still did not contain personal data relating to other third parties or personal data which the Trust considered was covered by the Section 10 Notice.
- 5.12 The Trust confirmed that in reviewing its decision not to disclose personal data about the subject of the Section 10 Notice, regard was then given to the public interest considerations. It explained however that the Chief Executive who handled this issue is no longer employed by the Trust and there was no documentation to show what public interest considerations she took into account.
- 5.13 During the course of correspondence it also became clear that the Complainants had made an identical request for information under the Act to the Healthcare Commission, which also holds a copy of the Report.
- 5.14 The Commissioner considered the comments made by the Trust and sought further clarification as to what information had been released by the Healthcare Commission. The Commissioner was provided with a copy of the letter sent to the Complainants together with the redacted report released by the Healthcare Commission. The Commissioner noted that this was in a slightly different, less redacted format than the version released by the Trust. In particular it disclosed the words redacted by the Trust on page 4 of the same Report.
- 5.15 In reaching his decision the Commissioner firstly considered whether the Trust was required to cease, or not to begin, the processing of personal data in response to the Section 10 Notice. This involved a consideration of whether, in accordance with Section 10 of the DPA, disclosure would cause or is likely to cause unwarranted substantial damage or substantial distress. Having viewed a copy of the unredacted Report the Commissioner has concluded the Trust was correct to accept the Notice and he has decided the Trust was required to comply with it by not processing, i.e. disclosing the personal data within the Report.
- 5.16 The Commissioner then considered the competing public interest issues. The Commissioner notes the Trust has not documented the public interest considerations and has not provided any further explanation of how it approached them. The Commissioner has therefore had to reach his decision by considering the evidence before him. His analysis and conclusion are detailed in 6.4 below.

6. The Section 40 exemption

Section 40(2) of the Act states that:

“Any information to which a request for information relates is also exempt information if-



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*(a) it constitutes personal data which do not fall within subsection (1), and
(b) either the first or second condition below is satisfied.”*

Section 40 (3) states:

The first condition is:

(a) in a case where the information falls within any of the 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 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).....”*

It is the contention of the Trust that the disclosure of some of the redacted information would have breached the first data protection principle. The Trust also contends that disclosure of the remaining redacted information would breach s.10 of the DPA.

The first data protection principle states that:

“Personal data shall be processed fairly and lawfully, and, in particular, shall not be processed unless-

- (a) at least one of the conditions in Schedule 2 is met, and*
- (b) in the case of sensitive personal data, at least one of the conditions in Schedule 2 is also met”*

Section 10 (1) of the Data Protection Act 1998 states:

“Subject to subsection (2), an individual is entitled at any time by notice in writing to a data controller to require the data controller at the end of such period as is reasonable in the circumstances to cease, or not to begin, processing, or processing for a specified purpose or in any specified manner, any personal data in respect of which he is the data subject, on the ground that, for specified reasons-

- (a) the processing of those data or their processing for that purpose or in the manner is causing or is likely to cause substantial damage or substantial distress to him or to another, and*
- (b) that damage or distress is or would be unwarranted.”*

The Commissioner notes that the Trust has confined its argument to the first data protection principle and to the Section 10 Notice. The Commissioner is satisfied that disclosure of the information in question would not involve issues of compliance with any other data protection principle.



In this case the Commissioner therefore considered the following issues when reaching his decision regarding the application of the section 40 exemption and the effect of the Section 10 Notice:

- a) Is the information personal data for the purpose of section 40?
- b) If so, would disclosure breach any of the data protection principles?
- c) Is the Trust obliged not to process (i.e. disclose) the personal data in order to comply with the Section 10 Notice?
- d) If so, where does the balance of the public interest consideration lie?

6.1 ***Is the information personal data?***

Personal data is defined in section 1(1) of the Data Protection Act 1998 as:

"...data which relate to a living individual who can be identified –

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual"

The Commissioner has viewed an unredacted copy of the Report and he is satisfied that the majority of the redacted material does constitute the personal data of which various named individuals are the data subjects.

However he does not consider the redacted words on page 4 of the Report to constitute personal data as it is not possible to identify an individual from the words or from context. These words have been disclosed to the Complainants in a copy of the same Report released by the Healthcare Commission in response to a freedom of information request made after the request to the Trust. The Commissioner concludes that there is therefore no point in the Trust continuing to rely on the exemption in respect of these particular words.

6.2 ***Would disclosure breach the data protection principles?***

The Trust has advised that some of the information contained within the report refers to the care of specific named patients and that it would be unfair to disclose this information. It therefore argues disclosure of this personal information would breach the first data protection principle.

The Commissioner has considered this material and accepts the information is sensitive and that disclosure would be unfair. He notes the data subjects have not given their consent to the disclosure of this information or had an expectation that



disclosure may occur in view of the terms in which the report was commissioned. Whilst fairness does not necessarily depend on whether consent has been given, the Commissioner accepts that in this case, the redacted information relating to the care of patients and their families is personal information about their private life and is subject to a duty of confidentiality. He accepts that the individuals concerned would have had a legitimate and reasonable expectation that the information would not be disclosed.

The Commissioner also accepts that disclosure of the name of the consultants referred to on page 8 of the report would be unfair and therefore breach the first data protection principle. The comments made are subjective, unsubstantiated and the consultants were not interviewed by the inquiry panel.

In conclusion, the Commissioner is satisfied that the redacted information requested by the complainant which refers to third parties other than the subject of the Section 10 Notice is exempt by virtue of section 40 because its release would contravene the first data protection principle.

6.3 ***Is the Trust obliged not to process the personal data in order to comply with the Section 10 Notice?***

The Trust has advised that disclosure of the remaining redacted material would contravene the Section 10 Notice.

In considering the application of the Section 10 Notice the Commissioner had to consider the following points:

- Was the s.10 Notice valid?
- Was the Trust obliged to cease, or not to begin, processing?
- Did redacting the information prior to disclosing it ensure the Trust complied with the Notice?

The Commissioner has reviewed a copy of the Notice and has concluded that the Section 10 Notice was valid.

The Commissioner notes that prior to the FOI request the Trust made a decision not to disclose the Report at all, on the basis of the Section 10 Notice and having taken legal advice on the Trust's legal position if it did so.

Having considered the individual's reasons for issuing the Notice the Commissioner has concluded that the Trust was obliged not to process, i.e. disclose, the personal data about the individual who served the Section 10 Notice. He is satisfied that material referring to the subject of the Notice within the Report is of a very personal, subjective unsubstantiated nature making reference to various allegations made about the subject of the Notice. The Commissioner accepts that the Trust was correct in concluding that the processing, i.e. disclosure, of this data could cause



the subject of the Notice unwarranted substantial damage or substantial distress. The Trust was therefore obliged not to process the personal data.

However where an applicant makes an FOI request for access to personal data about another individual who has served a Section 10 notice under the DPA 1998, the exemption under s.40 (3) (ii) of the FOI Act is not absolute. The Trust is therefore required to review its decision to accept the Notice and consider whether in all the circumstances of the case, the public interest considerations justify reliance on the section 40 exemption. The Commissioner notes that the Trust reviewed its decision not to disclose the information in response to the Notice upon receiving the FOI request. Following consultation with the subject of the Notice agreement was reached to disclose a redacted copy of the Report. The Trust did however continue to comply with the Notice in respect of the remaining redacted material on the basis that it considered disclosure would cause unwarranted substantial damage or substantial distress to the subject of the Notice. The Trust highlighted its concerns that the information contained very personal, subjective and unsubstantiated statements which could be damaging to this individual's professional reputation.

In redacting the information which it considered to be covered by the Section 10 Notice prior to disclosure, the Commissioner considers this action did bring about compliance with a valid Section 10 Notice.

6.4 ***Where does the balance of the public interest consideration lie?***

As noted above, section 40(2), for the purposes of this case, is a qualified exemption. In accordance with section 2(2)(b) of the Act, it is therefore necessary to decide whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information. In other words, is the public interest in avoiding unwarranted substantial damage or substantial distress greater than the public interest in disclosing the information?

The Commissioner considers that where the data controller has received a formal section objection under section 10 of the Data Protection Act to the disclosure of information on the grounds that it is likely to cause unwarranted substantial damage or substantial distress, this will attract considerable weight. There is a public interest rationale behind section 10, even though it protects the position of the individual. The public interest in disclosure would need to be particularly strong in order to warrant the causing of substantial damage or substantial distress and to thereby justify non compliance with the Notice.

Whilst the Trust has indicated that in reaching its decision it has considered the public interest arguments, the Commissioner notes it has failed to explain these arguments to the complainant or spell out how the (admittedly complex) tests have



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been applied. The Commissioner has therefore had to make his decision on the basis of the available information available to him.

There is a strong presumption in favour of disclosure in respect of information about public officials acting in a professional capacity; in general, they should be publicly accountable for their actions. The information within the Report that was redacted in response to the Section 10 Notice does concern the individual acting in his professional capacity. The Commissioner also recognises that there is a clear public interest argument in enhancing awareness and public debate on the efficiency and quality of management and patient services within hospitals, including the performance of its staff.

The Commissioner accepts, however, that the Report contains some very personal, subjective, and unsubstantiated comments, the accuracy of which has not been checked. No opportunity has been given to the individual to respond to the comments made. The Report states that the remit of the inquiry panel was not to test the veracity of the complaints or seek other opinions. Disclosure of the information would therefore be likely to cause the individual substantial damage or substantial distress and this would be unwarranted.

The more subjective and less factual personal information subject to a Section 10 Notice is, the easier it is to argue that there is a public interest in its non-release, unless there is an overriding public interest argument favouring disclosure. In this case, therefore, Commissioner has drawn a distinction between factual information about the individual's professional activities and, unsubstantiated, subjective comments about him, albeit that they concern the individual's professional activities.

The Commissioner also took into account the fact that the Trust has already put a substantial amount of information in the public domain following the Independent Inquiry Panel's findings. This not only includes the redacted version of the Report but also a Summary of the Report to the Trust Board, an Action Plan in response to the Inquiry, Trust Board Minutes, and a document dealing with the completion of the Action Plan. The Commissioner therefore considers that in this case the question of openness and public accountability of the Trust has been satisfied in that most of the information requested has already been released by the Trust. He considers that releasing the subjective and unsubstantiated personal information referred to above would not serve any useful purpose in furthering the public accountability or transparency of the Trust.

In this case the Commissioner has concluded that the public interest considerations favouring disclosure of the outstanding information do not appear to be strong. In contrast there is a strong public interest in the circumstances of this case in avoiding unwarranted substantial damage or substantial distress. According, he



has concluded that the Trust was justified in relying upon section 40(2) in relation to this information.

In November 2004, prior to the Complainants complaint to the Commissioner, the Healthcare Commission began its own detailed investigation of many of the issues raised in the Independent Inquiry Report. The Healthcare Commission's report was disclosed in full in January 2006, but this is not directly relevant to the decision in this case.

7. The Commissioner's Decision

7.1 The Commissioner's decision in this matter is that the Trust has not dealt with the Complainants' request in accordance with the following requirements of Part 1 of the Act:

Section 1(1) - in that it failed to communicate to the complainant such of the information specified in their request which did not fall within the s.40 exemption.

The Commissioner has decided s. 40 has not been correctly applied to all of the material redacted from the Report. The Commissioner considers the words redacted on page 4 of the Report do not fall within the s.40 exemption and should have been communicated to the complainant, unless otherwise exempt. He has concluded that these words do not fall within the definition of personal data as defined in s.1(1) of the DPA 1998 in that he does not consider it is possible to identify an individual from these words, or from their context.

The Commissioner is therefore satisfied that in this respect the Trust is in breach of its obligations under s.1 (1) of the Act.

Section 10 (1) - in that it did not comply with s. 1(1) within 20 working days

The Complainant requested the information on 4th January 2005. The Trust did not provide its formal response to the request for information until 18th March 2005. The Trust's reply of 1st February 2005 stated that it had not yet reached a decision as to whether to apply the exemptions, but specified a date by which it hoped to do so. Although s.10 (3) of the FOI Act allows the Trust to take as much time as is reasonable in the circumstances to reach its decision on the application of the public interest, the failure by the Trust in its letter of 1st Feb 2005 to reach a decision as to whether exemptions applied was a breach of s.10 (1).

Section 17(1) - in that the Trust did not specify in its refusal notice the exemption it was applying or state why the exemption applies as required by s.17(1).



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The Trust's letter of the 18th March 2005 stated that some of the material within the report was redacted on the basis that it contained personal information about various individuals. However the Trust did not specify it was applying the s.40 exemption or explain why it applied, particularly in view of the Section 10 DPA Notice it had received.

Section 17(3) (b) - in that it refused the Complainants' request for all the information but when communicating this to the Complainants it failed to state its reasons for claiming that in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

The Commissioner found no evidence that in applying s.40(3)(a)(ii), (this being a qualified exemption) the Trust had explained to the Complainants why it considered the public interest in avoiding unwarranted substantial damage or substantial distress was greater than the public interest in disclosing the information?

7.2 The Commissioner has however decided that the Trust was justified in relying on s.40 in respect of the redacted material covered by the Section 10 Notice and in respect of personal data about other individuals referred to in the Report, other than the redacted material referred to on page 4 of the Report.

8. Action Required

In view of these matters the Commissioner hereby gives notice that in exercise of his powers under section 50 of the Act he does not require any remedial steps to be taken by the public authority.

9. Right of Appeal

9.1 Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre



Information Commissioner's Office
Promoting public access to official information
and protecting your personal information

PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

9.2 Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 7th day of June 2006

Signed

Richard Thomas
Information Commissioner

Information Commissioner
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Wilmslow
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SK9 5AF