

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

12 February 2007

**Public Authority:** Architects Registration Board  
**Address:** 8 Weymouth Street  
London  
W1W 5BU

### Summary

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The complainant asked for details of a settlement between the Architects Registration Board and a former Board member, including the costs of both parties. The Architects Registration Board refused (but is willing to supply information about its own costs). The Commissioner decided that the information requested was personal information the disclosure of which would breach the first data principle, and so was exempt under section 40 of the Act.

### The Commissioner's Role

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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.

### The Request

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2. In the period of time leading up to February 2005, certain issues had arisen within the Board of the Architects Registration Board (ARB) which had given rise to court proceedings between ARB and a particular member of its Board (the then Board Member). On 11 February 2005, ARB issued a statement saying that:  
"The Court proceedings between the ARB and [the then Board Member] have been settled on terms satisfactory to both parties. It has been agreed that the terms will remain confidential and that neither party will make any comment about the proceedings or the terms of settlement beyond this press release."
3. On 18 February 2005 the complainant asked ARB for full details of the legal settlement between it and the then Board Member, including the costs

incurred by both parties, and any other conditions. The complainant asked for copies of any documents that had been signed by both parties.

4. ARB replied on 15 March 2005 saying that the Court proceedings between it and the then Board Member had been settled on terms satisfactory to both parties. It had been agreed that the terms would remain confidential and that neither party would comment on either the proceedings or the terms of settlement. ARB said that it was unable to confirm or deny the existence of any settlement document. ARB added that, as the information sought was exempt under section 41 of the Act (Information provided in confidence), the request must be refused.
5. On 11 April 2005 the complainant asked ARB to reconsider the request, and said that the Act did not allow this information to be exempt as the agreement had been made between ARB and the then Board Member. Therefore it had been an internal agreement and did not represent information obtained from another person in the manner to which section 41 referred. On 19 April ARB replied that its Board and the then Board Member were not one and the same legal person; the Board was a separate statutory person and, therefore the exemption did apply.

## The Investigation

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### Scope of the case

6. On 11 May 2005 the complainant contacted the Commissioner to complain about the way in which his request for information had been handled. The complainant specifically asked the Commissioner to consider his view that section 41 of the Act did not allow ARB to withhold this information because the then Board Member had still been a member at the time the settlement was made. It had not therefore been 'obtained' by ARB from another person or body but had been drawn up between two current members of the Board.
7. On 1 August 2006 the Commissioner began his investigation into the matter. There were exchanges of legal view, clarification of the facts and a meeting held between the Commissioner's staff and ARB on 24 January 2007.

### Findings of fact

8. At the meeting on 24 January 2007 ARB briefed the Commissioner's staff, in strict confidence and only to the extent necessary to assist him in determining the complaint, on the background to the complaint, the Court proceedings, and the settlement in so far as its terms permitted.

## Analysis

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### Exemption

#### Section 41 (information obtained in confidence)

9. The essential requirement of section 41 (the full details of which are set out in the Legal Annex) is that information should have been obtained in confidence from a third party. In this case, the Commissioner is unpersuaded by the view that the information at issue had been “obtained from” the then Board Member by ARB, an essential prerequisite to engaging section 41 of the Act. The Commissioner’s reasoning is that information such as the terms of a settlement is normally the subject of joint discussion or negotiation between the parties it could not therefore be described as information “obtained ... from any other person” – which is what section 41 of the Act requires. That objection particularly applied, in his view, to information about the costs of pursuing a case. It is not therefore the Commissioner’s view that section 41 could be held applicable in this case.

#### Section 40 (Personal information)

10. The Commissioner is, however, of the view that section 40 of the Act (Personal information) does apply to the situation that has arisen here. Under that section, if it can be shown that the information requested is personal data as defined by the Data Protection Act 1998 and that its disclosure to the public otherwise than under the Act would breach any one of the data protection principles set out in Schedule 1 to the Data Protection Act 1998, then the information is exempt.
11. In the Commissioner’s opinion the information requested does constitute personal data for the purposes of the Data Protection Act 1998.
12. Under the first data protection principle, processing of personal data must be fair and lawful and shall not be processed unless one of the conditions set out in Schedule 2 to the Data Protection Act 1998 (the ‘Schedule 2 Conditions’) is satisfied.
13. As a result of his full investigation into this matter the Commissioner is satisfied that, in the circumstances of this case, none of the Schedule 2 Conditions would be satisfied if ARB were to provide to the complainant the information relating to the settlement beyond that in the 11 February 2005 statement. In particular such disclosure would be unwarranted as it would prejudice the rights and freedoms of the data subject, the then Board Member. The disclosure would also be unfair as the information was never intended to be made available to the public and that was the expectation of the parties, also there does not appear to be any overriding argument in favour of disclosure (such as evidence of criminal activity) that might render such disclosure fair. The requested disclosure to the complainant would, therefore, breach the first data protection principle.
14. The Commissioner has, therefore, decided that the information requested is exempt information under section 40 of the Act.

15. The Commissioner does however understand that ARB is willing to disclose its own legal costs in this matter and that ARB will write to the complainant shortly with this information. The Commissioner welcomes this development.

## **The Decision**

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16. The Commissioner's decision is that, subject to the issues recorded in the analysis section above, the public authority dealt with the request for information in accordance with the Act.

## **Steps Required**

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17. The Commissioner requires no steps to be taken by ARB.

## Right of Appeal

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

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

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

**Dated the 12<sup>th</sup> day of February 2007**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

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

## Legal annex

### Personal information

**Section 40(1)** provides that –

“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.”

**Section 40(2)** provides that –

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

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

**Section 40(3)** provides that –

“The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
  - (i) any of the data protection principles, or
  - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.”

**Section 40(7)** provides that –

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.

## Information provided in confidence

**Section 41(1)** provides that –  
“Information is exempt information if-

- (a) it was obtained by the public authority from any other person (including another public authority), and
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.”

## Data Protection Act 1998

### Schedule 1 The Data Protection Principles

1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –
  - (a) at least one of the conditions in Schedule 2 is met, and
  - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.