

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 2 April 2008**

**Public Authority:** University College London  
Gower Street  
London  
WC1E 6BT

### Summary

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On the 1 January 2005 the complainant made a request for information to University College London ("UCL"). The complainant sought three pieces of information held by UCL relating to Dr Andrew Wakefield's research into the MMR vaccine, as follows: 'Patent Applications'; the 'Management of MMR Controversy'; and details relating to the custody of records. UCL refused to disclose this information under section 21, section 36, section 38, section 40, section 41, section 42 and section 43 of the Freedom of Information Act 2000 ("the Act"). The Commissioner finds UCL in breach of section 1 (1) (b), 17 (1), 17 (3), 17 (7) 10 (1) of the Act and finds that some of the information ought to have been disclosed to the complainant. As a result of the Commissioner's intervention some of the information was disclosed to the complainant. The Commissioner requires UCL to disclose some of those categories of the withheld information as identified in this decision notice and as set out in an attached annex served on UCL.

### The Commissioner's Role

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- 1.0 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 Act. This Notice sets out his decision.

## The Request

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2.0 On the 01 January 2005 the complainant made a request for information to UCL. The complainant sought three pieces of information relating to Dr Andrew Wakefield's research into the MMR vaccine. In particular the request covered three categories of information, 'Patent Applications,' the 'Management of MMR Controversy'; and details relating to the custody of records relating to the controversy. A full text of the request ("the request") is detailed at annex A of this decision notice.

## Background to the Request - The 'MMR Litigation and Dr Andrew Wakefield

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- 3.0 MMR is a triple vaccine against measles, mumps and rubella. It was introduced into the UK in 1988. Concerns were raised about MMR and its connection to autism in the mid 1990s and following the publication of research by Dr Andrew Wakefield (lead author) and others in the Lancet in 1998.<sup>1</sup> Since then there has been much speculation in the media as well as the public arising from the research findings. Dr Wakefield was a former employee of the Royal Free Medical School. In August 1998 the medical school at UCL merged with the Royal Free Hospital Medical School to create the new Royal Free and University College Medical School within UCL.
- 3.1 The research reported a link between inflammable bowel disease (IBD) and autism. Following the publication of Dr Wakefield's research and the ensuing media coverage there followed a drop in the vaccination rates<sup>2</sup>. Some parents opted to give their children single jabs or to avoid the vaccination altogether. In the wake of this publicity, many parents started litigation proceedings because they believed the MMR vaccine had permanently damaged their children (the "MMR litigation").
- 3.2 It has been reported in the media that Dr Andrew Wakefield has since resigned his post at UCL. At the time of this decision notice the Commissioner is aware that Dr Andrew Wakefield and others are appearing before a General Medical Council fitness to practice panel.

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<sup>1</sup> Wakefield et al, 1998, the Lancet, 351, 637-41

<sup>2</sup> See 'Postnote' 'Vaccines and Public Health' June 2004, Number 219, Parliamentary Office of Science and Technology'

## The Complaint

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- 4.0 On the 14th January 2005 UCL responded to the complainant's request of the 1<sup>st</sup> January. In that letter UCL asked the complainant to reconstitute his request in terms of 'information' rather than by reference to documents or classes of documents. UCL relied on section 1(3) of the Act in seeking further 'information' sought which 'may or may not be contained within the documents'.
- 4.1 The complainant responded by email on the 14th January 2005, requesting an internal review. UCL responded on the 25th of January 2005 stating that an appeal is 'unnecessary' as the request for information had not been refused.
- 4.2 On the 16th January 2005 the complainant emailed UCL stating that his request was for "the content and the form and style of any documents of the type I have characterised in my three requests".
- 4.3 On 14 February 2005 UCL provided the complainant with some of the information covered by his request. In relation to the remaining information, UCL stated that this was exempt under sections 21, 36, 38, 40, 41, 42 and 43 of the Act. The Commissioner has treated this correspondence of the 14 February as UCL's refusal of the complainant's request.
- 4.4 On the 16th of February 2005 the complainant emailed UCL expressing his dissatisfaction with this refusal. On the 11th March 2005, having carried out an internal review of this decision, UCL released a further small amount of information to the complainant, consisting mainly of press statements and an application for a patent receipt filed by the Royal Free Hospital School of Medicine. UCL reiterated their reliance on section 43 and section 36 of the Act as regards the remaining information.
- 4.5 On the 22 April 2005, the complainant wrote to the Information Commissioner ('the Commissioner') regarding UCL's refusal to disclose the information. On the 16 May 2005, UCL provided the complainant with additional information in relation to his request. The Commissioner contacted UCL on 2 May 2006 to advise of receipt of the complaint and to commence his investigation.

## The Commissioner's Investigation

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- 5.0 The Commissioner wrote to UCL on 24 May 2006 posing a number of detailed questions in relation to its application of the exemptions claimed in their initial refusal letter of the 14 February 2005 (sections 21, 38, 40, 36, 38, 40, 41, 42 and 43 of the Act). The Commissioner

asked UCL to provide the remaining information for the purposes of ascertaining whether the exemptions had been correctly applied.

- 5.1 In that letter, the Commissioner asked UCL to comment on its duty to give advice and assistance under section 16 of the Act. The Commissioner also asked UCL to consider the requirements of the Section 45 Code <sup>3</sup> ("the section 45 code"). The Commissioner informed UCL of his view that the refusal notice of 14 February 2005 failed to meet the requirements of section 17(1) of the Act in that it failed to state why the exemptions claimed applied in this case. The Commissioner also asked UCL to identify the exemption claimed in respect of each piece of information covered by the request. In addition, UCL were asked to clarify the public interest factors in relation to each piece of information, where appropriate.
- 5.2 The Commissioner drew to UCL's attention the fact that the refusal letter did not contain the particulars of its complaints procedure for the purposes of the Act in accordance with section 17(7) (a). Neither did that letter contain the details of the complainant's right to appeal to the Commissioner under section 50 of the Act and in the Commissioner's view this breached section 17(7)(b) of the Act
- 5.3 On 17th July 2006, UCL responded to the Commissioner's letter enclosing nine files of information and setting out the background and context for the request. In addition, UCL provided detailed comments on the application of the exemptions as follows:-
  - (i) Details on the background to the request and the work of Dr Andrew Wakefield;
  - (ii) Details of all of the correspondence with the complainant held by UCL in relation to the request;
  - (iii) Comment on section 16 of the Act in relation to the duty to give advice and assistance;
  - (iv) Comment on the Commissioner's views of their refusal notice to the complainant;
  - (v) General commentary on each of the exemptions claimed.
- 5.4 The Commissioner considered at length the remaining information. The Commissioner also considered UCL representations in relation to the application of the exemptions to the information contained in the files. The complainant submitted representations to the Commissioner on public interest arguments relating to the disclosure of this information under the Act.
- 5.5 On the 24th May 2007, the Commissioner wrote again to UCL setting out his views on the remaining information and his preliminary view that some of it was not exempt under the Act. The Commissioner

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<sup>3</sup> Secretary of State for Constitutional Affairs Code of Practice on the Discharge of Public Authorities functions under Part 1 of the Freedom Of Information Act 2000

considered that a more discriminatory approach was required by UCL in relation to the application of the exemptions in this case. The Commissioner asked UCL to consider the disclosure of some of this information with reference to a number of relevant Tribunal judgements on the interpretation of the exemptions claimed.

- 5.6 UCL responded to this letter on 13 June 2007 stating that UCL had no objection to releasing information that was already in the public domain at that time. However, UCL sought clarification as to the information that the Commissioner considered was publicly available. On 16th August 2007, the Commissioner asked UCL again about its application of the section 36 exemption in light of the Information Tribunal (“the Tribunal”) judgement in the case of Guardian Newspapers and Heather Brooke v Information Commissioner and the BBC (08 January 2007 EA/2006/0011 and EA 2006/0013) (“the BBC case”). The Commissioner also provided examples of the information which was in the public domain and which could in his view be released to the complainant.
- 5.7 At this stage UCL provided the Commissioner with a summary of comments from the qualified person in response to his queries regarding UCL’s application of section 36 of the Act.
- 5.9 In order to narrow the issues in this case, a further more detailed discussion concerning the remaining information took place on the 29th August 2007, between the Commissioner, his staff and UCL representatives. As a result of those discussions, some of the hitherto undisclosed information was released to the complainant on the 18th September 2007. This included the information requested by the applicant in relation to the custody of the records (see Annex A).
- 5.9 At that meeting, the Commissioner also sought clarification as to whether a section 10 notice under the Data Protection Act had been served by or on behalf of Dr Wakefield. Arising from those discussions, on the 09 October and again on the 12th of October 2007, UCL provided to the Commissioner representations from Radcliffes Le Brasseur solicitors (“Radcliffes”), solicitors acting for Dr Andrew Wakefield. In earlier correspondence with UCL, Radcliffes confirmed their view that three of the nine files held by UCL relating to the request comprised the personal data of Dr Andrew Wakefield. On 5<sup>th</sup> October, Radcliffes purported to serve a notice under section 10 of the Data Protection Act 1998 (the DPA) on UCL which stated Dr Wakefield’s objections to the disclosure of this personal data.
- 5.10 The Commissioner has carefully considered these additional representations which argue that all of the information is the personal data of Dr Andrew Wakefield and that disclosure of this would cause him distress. Although not under a statutory obligation to do so by virtue of section 50 of the Act, the Commissioner has taken these representations into account in making this decision. The

Commissioner notes that the letter of the 05 October 2007 from Radcliffes purports to serve a notice under section 10 of the DPA. The Commissioner has considered the validity of such a notice at paragraph 9.5, in whether disclosure of the withheld information in this case would contravene the notice.

- 5.11 On the 22 October 2007, UCL released further information to the complainant some of which had by that stage been put in the public domain as a result of the fitness to practice proceedings. Earlier UCL had set out to the Commissioner their views to the non-disclosure of the outstanding information (the withheld information). This decision notice deals only with the information that has not been disclosed to the complainant by UCL and which relates to the Patent Applications and the MMR Controversy (parts 1 and 2 of the request).

## Procedural matters

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- 6.0 The Commissioner has considered whether the refusal notice issued by UCL complied with section 17 of the Act. Section 17 states that:

*“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which-*  
*(A) states that fact,*  
*(b) specifies the exemption in question, and*  
*(c) states (if it would not otherwise be apparent) why the exemption applies.’*

- 6.1 The complainant's request was sent by email to UCL on the 1st January 2005. On the 14th January 2005, UCL informed the complainant that it was not able to identify the 'information' he requested as the Act was *'not intended to be a mechanism whereby applicants have access to classes of or a specific document...'* UCL asked the complainant to reconstitute his request in terms of 'information' sought rather than by reference to documents or classes of documents. On the 16 January 2005 the complainant further emailed UCL stating his request was for the *'the content and the form and style of any documents of the type I have characterised in my three requests'*.
- 6.2 The Commissioner has considered this correspondence and considers that the request (whilst covering a wide range of material) was sufficiently precise to have enabled UCL to identify the information requested. The Commissioner is of the view that UCL ought to have responded to that email 'promptly' and within the time limit set by section 10 of the Act. The Commissioner considers that UCL were in

no better position to deal with the request after receiving the complainant's email of the 16 January 2005 which purported to reconstitute the request, than they were previously. The Commissioner notes that UCL did not issue a substantive refusal of the request until the 14 February 2005, approximately 31 working days after receiving the request.

- 6.3 The Commissioner has considered that the complainant's request was sufficiently clear to be dealt with on the 01 January 2005, and has noted that UCL did not state to the complainant that they were extending the time limit to consider the public interest test in relation to any particular exemption. Therefore the Commissioner has concluded that UCL did not deal with the complainant's request in accordance with the requirements of section 17 (1) of the Act by providing a late refusal notice.
- 6.4 The Commissioner notes that in their letter of the 14th February 2005 UCL refused to disclose information to the complainant by relying on seven exemptions namely sections s.21, 36, 38, 40, 41, 42 and 43 of the Act. The Commissioner has treated this correspondence as the 'statutory notice' under section 17 of the Act. Although the UCL notice mentions in broad terms the exemptions claimed by UCL, it does not specify why those exemption apply to the information caught by the request. The Commissioner concludes therefore that UCL have not complied with section 17 (1) (c). That is because the statutory notice does not make it clear to the complainant why each of these exemptions has been applied. UCL referred to the requested information in broad terms and the complainant was not informed of the information held by it.
- 6.5 Where a public authority seeks to rely on a qualified exemption, there is an additional requirement as set out in section 17(3)(b) below –
- 17 (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 .....  
...(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information."*
- 6.6 In this case UCL have relied on a number of qualified exemptions (sections 36, 38, 42 and 43(2)) to refuse the request. However, UCL did not meet the requirements of section 17 (3) (b) of the Act as they did not specifically state reasons why for each of the qualified exemptions the public interest in maintaining that exemption outweighed the public interest in disclosing the information. The Commissioner has noted UCL's general explanation as to why all of the exemptions applied. Their notice did not however specify why in

relation to the information requested the public interest in maintaining each exemption outweighed the public interest in disclosure.

- 6.7 The Commissioner has also considered whether the requirements of Section 17 (7) have been met by UCL in this case. Section 17 (7) states:

*“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.”*

- 6.8 The Commissioner notes that the UCL notice of 14 February 2005 did not contain the particulars as detailed at section 17 (7) of the Act. The Commissioner has drawn this failure to meet the requirements of section 17 (7) to UCL's attention. They have accepted that they failed to meet this requirement in this case and have advised the Commissioner that these statutory particulars will appear in all future section 17 notices.

- 6.9 The Commissioner considered whether UCL had complied with its obligations under section 10 (1) of the Act.

Section 10 (1) of the Act states:

*“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.”*

The Commissioner noted that UCL released information to the complainant on the 18<sup>th</sup> September 2007 and the 22 October 2007 respectively. The Commissioner therefore concludes that UCL did not comply with their obligation under section 10 of the Act as they did not comply with the obligations under section 1(1) (b) of the Act by communicating the information to the complainant promptly and in any event no later than 20 days after receiving the request.

## Analysis

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- 7.0 For ease of reference in this investigation, the Commissioner has themed the withheld information into the following categories.

- 1: Legal Information
- 2: Financial and IPR information (Copies of draft assignment agreements, correspondence in relation to IPR, etc)
- 3: Ethical Approval and correspondence involving ethics committees.



- 4: Clinical Information (research proposals/protocols/research summaries)
- 5: Internal Correspondence between UCL staff
- 6: External Correspondence
- 7: Human Resources Information
- 8: Press statements and correspondence regarding dealing with the media
- 9: Administrative Information (largely names addresses and contact details of UCL employees).
- 10: General background information on the MMR (newspaper reports, journal articles)
- 11: Media Requests and correspondence from the complainant

### **The Section 40 exemption.**

- 7.1 The Commissioner considered whether some or all of the withheld information was the personal data of Dr Andrew Wakefield and fell within the exemption set out at section 40 of the Act given the particular circumstances of this case.
- 7.2 On the 29 August 2007 the Commissioner issued Technical Guidance on 'Determining what is personal data' ("the technical guidance") (available at [www.ico.gov.uk](http://www.ico.gov.uk)). This revised guidance has now replaced his former guidance on the implications of the Durant judgement which was available at the time of the complainant's request. It is the approach to the definition of personal data which is set out in the technical guidance which the Commissioner has applied to the withheld information in this case.
- 7.3 The request is for a variety of information relating to the involvement of Dr Andrew Wakefield in the MMR controversy. UCL has confirmed to the Commissioner that the bulk of the withheld information is the personal data of Dr Wakefield. His solicitors (Radcliffes) have claimed that some of the withheld information (that contained in three UCL files) is exempt by virtue of section 40(2) of the Act but have not made representations relating to the entirety of the information. It appears to the Commissioner that the 9 paginated lever arch files of withheld information were brought together by UCL for the purposes of satisfying an application for discovery by the GMC (the Commissioner is aware that the GMC are currently investigating Dr Andrew Wakefield but were not at the time of the request). UCL have confirmed this to the Commissioner. Upon viewing the information the Commissioner is of the view that this information was brought together by UCL for the purposes of an upcoming investigation into the conduct of Dr Andrew Wakefield. Collectively all of this information relates to Dr Andrew Wakefield and his conduct and research whilst employed at UCL. The Commissioner notes that it was exceptional circumstances which lead to this information being collated about Dr Wakefield in such a fashion and it is not normal practice for information to be gathered by employers in this regard about an individual employee. The

Commissioner considers therefore the information held in this fashion to be the personal information of Dr Andrew Wakefield and has considered the exemption at section 40 of the Act. Section 40 (2) of the Act is an exemption from disclosure into the public domain for information which is the personal data of a third party as follows :-

*'40(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 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 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."*

7.4 Having viewed the withheld information the Commissioner is satisfied that all of the withheld information 'relates to' Dr Wakefield and therefore is his personal data but that none of it is sensitive personal data<sup>4</sup> of Dr Wakefield or any other person. He has also considered whether the disclosure of any such information to the public at large would contravene any of the data protection principles. The principles are to be found at schedule 1 of the DPA.

7.5 The definition of personal data is set out at section 1(1) of the DPA. Before information can be classed as 'personal', it must fall within the statutory definition of data<sup>5</sup>. The Commissioner is satisfied from

<sup>4</sup> Sensitive personal data is defined in section 2 of the Data Protection Act 1998 which states

"In this Act 'sensitive personal data' means personal data consisting of information as to –

- (a) the racial or ethnic origin of the data subject,
- (b) his political opinions,
- (c) his religious beliefs or other beliefs of a similar nature,
- (d) whether he is a member of a trade union (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992),
- (e) his physical or mental health or conditions,
- (f) his sexual life,
- (g) the commission or alleged commission by him of any offence, or
- (h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings."

<sup>5</sup> "data" means "information which –

- (a) is being processed by means of equipment operating automatically in response to instructions given for that purpose.,

viewing the withheld information that some of it falls within categories (a) – (d) of the definition of data contained in section 1(1) of the DPA. That is because some of the withheld information is held by UCL electronically. Also some of the withheld information is held manually by UCL. Having viewed this manual data, the Commissioner is satisfied that it is held in unstructured files and falls therefore within category (e) of the definition of 'data'. Further the phrase personal data is also defined as follows

*“personal data means data which **relate to** a living individual who can be identified –  
from those data, or 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”.*

- 7.6 The technical guidance sets the questions for determining whether data (electronic or manual) is 'personal data' for the purposes of the DPA and in particular when information 'relates to' a living individual. The Commissioner has considered these in this case and has concluded that the withheld information relates to Dr Wakefield because it has Dr Wakefield as its focus and because the information relates to him, his employment at UCL and his work there. The Commissioner in reaching this conclusion is mindful of the particular link between the MMR research and Dr Wakefield. In effect his name is so closely linked to this issue that it is difficult to disassociate the two.
- 7.7 The Commissioner is satisfied that the categories of withheld information outlined at paragraph 7.0 contain a combination of information which held collectively relate to Dr Andrew Wakefield and his activities whilst employed by UCL. The Commissioner is satisfied that many individuals can be identified in this information, for example through correspondence by virtue of their name, address and position. However the Commissioner is of the view that the collective processing (holding) of all of the withheld information by UCL is information which linked primarily to Dr Andrew Wakefield during his employment at UCL. UCL has confirmed to the Commissioner that the 9 bundles of withheld information are those bundles which were sent by UCL to the GMC as part of a discovery application in relation to the prospective hearing concerning Dr Wakefield. UCL have confirmed for clerical reasons the Commissioner received 9 bundles, but the GMC received 11. UCL

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- (b) is recorded with the intention that it should be processed by means of such equipment,
  - (c) is recorded as part of a relevant filing system or with the intention that it should form part of the relevant filing system, or
  - (d) does not fall within paragraphs (a), (b) or (c) but forms part of an accessible record as defined by section 68;”

have confirmed both sets of bundles are one and the same.<sup>6</sup> The withheld information is linked to Dr Wakefield and was collated by UCL in order to fulfil an application of discovery. In light of the revised approach outlined in the technical guidance the Commissioner is satisfied therefore that all of the withheld information in this case is the personal data of Dr Andrew Wakefield. The fact that it relates to his professional life whilst he was employed at UCL as opposed to his private life does not in the Commissioner's view preclude such information from falling within the scope of the DPA.

- 7.8 The Commissioner is mindful of UCL and Radcliffe's representations concerning the extent to which the withheld information is Dr Wakefield's personal data. Further he is mindful of the fact that Radcliffe's claim to have served a section 10<sup>7</sup> notice in this case. The Commissioner has dealt with issue at paragraph 9.5 below.
- 7.9 Having determined that all of the withheld information is the personal data of Dr Andrew Wakefield, the Commissioner must now consider whether either the first or second condition under section 40(2) is satisfied in this case. The Commissioner must consider whether the disclosure of any of this information would breach any of the data protection principles or a section 10 notice (the first condition). The second condition is that by virtue of any provision of Part IV of the DPA, the information is exempt from a data subject's<sup>8</sup> right of access to his personal data. In other words, a requester under the Act would not have a right of access to third party personal information, where that individual would not have that right himself.

<sup>6</sup> See para 8 Andrew Wakefield v Channel Four television Corporation Twenty Twenty Productions Ltd Brian Deer [2006] EWHC 3289 (QB)

<sup>7</sup> Section 10 (Right to prevent processing likely to cause damage or distress) states 10 (1) "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 a 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 that 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.

(2) Subsection (1) does not apply –

- (a) in a case where any of the conditions in paragraphs 1 to 4 of schedule 2 is met, or
- (b) in such other cases as may be prescribed by the Secretary of State by order.

(3) The data controller must within twenty-one days of receiving a notice under subsection (1) ("the data subject notice") give the individual who gave it written notice –

- (a) stating that he has complied or intends to comply with the data subject notice, or
- (b) stating his reasons for regarding the data subject notice as to any extent unjustified and the extent (if any) to which he has complied or intends to comply with it

(4) If a court is satisfied, on the application of any person who has given a notice under subsection (1) which appears to the court to be justified (or to be justified to any extent), that the data controller in question has failed to comply with the notice, the court may order him to take such steps for complying with the notice (or for complying with it to that extent) as the court thinks fit.

(5) The failure by a data subject to exercise the right conferred by subsection (10) or subsection 11 (1) does not affect any other right conferred on him by this Part".

<sup>8</sup> Section 1 (1) of the DPA defines a data subject as "data subject means an individual who is the subject of personal data;"

- 7.10 In relation to the first condition and the question as to whether disclosure would breach any of the data protection principles, of particular relevance in this case is the first principle:  
*“Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –  
 at least one of the conditions in schedule 2 is met, and  
 in the case of sensitive personal data, at least one of the conditions in schedule 3 is also met”.*
- 7.11 The Commissioner has considered the issue as to whether disclosure would be fair in this case and in doing so has had regard to the fair processing requirements set out at paragraph 2 of Part 11 of Schedule 1 of the DPA.<sup>9</sup> These requirements to inform individuals of the processing of their information are certain minimum steps that an organisation must take if it is to process personal data fairly. In considering the fairness the Commissioner must also look at the overall impact that the processing would have on an individual. The Tribunal in the case of *CCN Systems Ltd and CCN Credit Systems Ltd v Data Protection Registrar (Case DA/90 25/49/9)* para. 51 confirms the view of this approach. Fairness must be judged, according to the Tribunal primarily by reference to the data subject. The Tribunal state:
- “ The word “fairly” in the first principle is not defined in the Act, and no guidance is given as to its interpretation. In determining its meaning we must have regard to the purpose of the Data Protection Act. It is quite clear, from the Act as a whole and in particular from the data protection principles set out in Schedule 1, that the purpose of the Act is to protect the rights of the individual about whom data is obtained, stored, processed or supplied, rather than those of the data user.”*
- 7.12 At paragraphs 8.0 to 16.2 of this decision notice, the Commissioner has considered the impact of disclosure of each category of the withheld information on Dr Wakefield. In order to properly assess impact in this case, regard must be had to the actual nature and content of the information. This decision notice will look at the impact of the disclosure of each category of withheld information as outlined in paragraph 7.0 above.

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<sup>9</sup> Sch 1, Pt 2, ss 2(1) “ Subject to paragraph 3, for the purposes of the first principle personal data are not to be treated as processed fairly unless –

- (a) in the case of the data obtained from the data subject, the data controller ensures so far as practicable that the data subject has, is provided with, or has made readily available to him, the information specified in sub-paragraph (3), and
- (b) in any other case, the data controller ensures so far as practicable that before the relevant time or as soon as practicable after that time, the data subject has, is provided with, or has made readily available to him, the information specified in sub-paragraph (3).”

## Withheld Information

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- 8.0 Legal Information - The Commissioner is satisfied that this category of withheld information, in the context of this case is the personal data of Dr Andrew Wakefield. That is because it 'relates' in the broadest sense to his work and activities at UCL and to the MMR litigation to which he is closely linked. The Commissioner has considered which of the two conditions is satisfied. As the Commissioner is of the view that the legal information in this category is information which could attract a claim for legal professional privilege, he has just considered that second condition at section 40 (4) of the Act.
- 8.1 The requirements of the second condition are met if the data subject would be refused access by any exemption in part IV of the DPA or Schedule 7 then the requestor could be refused access. The Commissioner has considered that exemption at schedule 7 (10) of the DPA which states:
- "Personal data are exempt from the subject information provisions if the data consist of information in respect of which a claim to legal professional privilege or, in Scotland, to confidential as between client and professional legal adviser, could be maintained in legal proceedings"*
- 8.2 The Commissioner is satisfied that as the information in this category attracts legal professional privilege, he is satisfied that the second condition at section 40 (4) of the Act is fulfilled. As this exemption is a qualified exemption, the Commissioner must also consider the application of the public interest test as set out in section 2 (2) (b) of the Act.
- 8.3 The Commissioner recognises the long established doctrine of legal professional privilege in that there is a strong public interest in enabling persons to obtain appropriate legal advice and assistance. It is important that members of the public can have frank communications with their lawyers with a high degree of certainty that the exchanges are not liable to be disclosed. The Commissioner notes that there is a clear public interest in improving the accountability of the public authorities for the decisions they take. The legal advice upon which UCL make decisions would clearly add to the public debate surrounding the MMR litigation.
- 8.4 On balance, however, whilst the Commissioner considers there are strong public interest arguments favouring the release of the information, these are not strong or exceptional enough to override the long established doctrine of legal professional privilege. The Commissioner therefore concludes that the public interest favours the

maintaining of the exemption set out at schedule 7 of the DPA under section 40 (4) of the Act.

## The Financial and Intellectual Property Information

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- 9.0 The Commissioner has had sight of information pertaining approximately to five significant Intellectual Property (“IPR”) events during Andrew Wakefield’s employment at UCL which relate to him and his work as well as financial information in relation to costs and other monetary information in relation to these IPR events.
- 9.1 Some of the IPR information has now been disclosed as a result of the intervention of the Commissioner in this case. The Commissioner will consider only the remainder of information falling in this category that has been withheld. This comprises information relating to exploration of proposals to utilise Dr Wakefield’s research. The information disclosed by UCL to the complainant includes, draft copies of an assignment agreement, letters from a drug company expressing interest in the work of Dr Wakefield as well as a summary of a new venture called Immunospecifics Biotechnologies Ltd. In addition, all of this disclosed information had been redacted to remove financial data relating to these proposals.
- 9.2 At the time of the complainant’s request, some of the background to this category of information was in the public domain.<sup>10</sup> For example, the fact that there was a relationship between Dr Wakefield and Carmel Ltd in connection with MMR research was publicly available. However, the detail of the IPR information was not available to the public at large.
- 9.3 The Commissioner has considered the nature and content of this category of withheld information. He has also considered the context of the links between UCL, Dr Wakefield and Carmel Ltd and the fact that some of this is in the public domain. In considering fairness, the Commissioner has considered the impact of disclosure of this information. In light of the nature of the IPR information and the fact that it does not reveal any specifics of Dr Wakefield’s private life but rather relates to his working life, the Commissioner has concluded that it would not be unfair to disclose same. In light of this, he is satisfied that the first condition is not met.
- 9.4 An individual who sought access to this IPR information would be entitled to it under the subject access provisions of the DPA. Therefore the Commissioner does not consider that the second condition would apply in this case.
- 9.5 The Commissioner is aware that Dr Wakefield’s solicitors claim to have served a section 10 notice in their letter of the 05 October 2007 on UCL. It is not clear by the contents of this letter to what extent this ‘notice’ applies to all of the categories of withheld information in this

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<sup>10</sup> <http://66.102.9.104/search?q=cache:Ojm4c8JGuYsJ:briandeer.com/mmr-lancet.htm+brian+deer+carmel+ltd+andrew+wakefield&hl=en&ct=clnk&cd=1&gl=uk>



case. The provision of section 40 (3) (a) (ii) of the Act covers the possibility that a data subject has exercised the right to object to the processing on the grounds that substantial damage or substantial distress is being caused to the data subject by virtue of the processing. If this right has been exercised, and a notice given under section 10 of the DPA and has been accepted by the data controller, then such data affected by the notice would become exempt information if there was a subsequent request for access to these data from a person who was not the data subject. The Commissioner has noted that UCL have not treated this notice as a valid section 10 notice as they have not complied with any of the steps in section 10 (3) of the DPA. The Commissioner has also noted that Radcliffes claim under section 10 was only put forward over 2 years after the complainant had submitted his request and was not acted upon by UCL. As UCL have not treated this notice as a valid section 10 notice the Commissioner has not considered this notice under section 10 to be valid either and has not considered it further in this decision notice.

- 9.6 The Commissioner must therefore consider whether there is a valid ground for disclosure of this IPR information under schedule 2 of the DPA. Having regard to the content and context of this information, the Commissioner considers that the condition at schedule 2 (6) of the DPA is an appropriate ground in this case, which states that

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

- 9.7 The Commissioner takes a wide view of the legitimate interest condition having regard to the dicta of the Tribunal in the case of the House of Commons v ICO & Norman Baker MP (“the House of Commons case”). The balance is between *“(i) the legitimate interests of those to whom the data would be disclosed which in this context are members of the public ... and (ii) prejudice to the rights, freedoms and legitimate interests of the data subjects which in this case are MPs”* (para 90)

- 9.8 The Commissioner is of the view that UCL would have a legitimate interest in disclosing that information relating to the IPR activities of Dr Andrew Wakefield. UCL have already notably disclosed to the complainant information relating to the IPR arrangements between UCL and Dr Andrew Wakefield. The Commissioner considers that all of the remaining withheld information (including that information in relation to the monetary sums redacted from the financial and IPR category which UCL redacted when they released it to the complainant on the 22 October 2007) carries with it a strong legitimate interest in the openness and transparency of UCL’s commercial dealings with their employees. The Commissioner considers that UCL have a legitimate

interest in being open and accountable as to the commercial dealings of their employee Andrew Wakefield especially given the amount of speculation and media interest at the time of the request concerning those dealings. The Commissioner also considers that most of this information was over 5 years old at the time of the request and UCL were no longer pursuing any IPR relationship with Dr Wakefield and therefore would have a legitimate interest in disclosing those commercial ventures which are no longer current.

- 9.9 The Commissioner also considered the legitimate interests of the data subject, Dr Andrew Wakefield. The Commissioner in considering the schedule 2(6) exemption is aware that Dr Wakefield has claimed through his solicitors that he would be caused damage and distress if this information were to be released. On the particular facts of this case the Commissioner does not consider that the withheld financial information generated as a result of Dr Wakefield's research at UCL would prejudice Dr Wakefield's rights and freedoms. The Commissioner is aware that it is in the public domain that Dr Wakefield did attempt to exploit the commercial possibilities of his research, the details of which are contained in this category of withheld information. The Commissioner has been offered no evidence that Dr Wakefield would be unable to exploit any of his research in the future if it was revealed those ventures that he previously tried to take forward or was involved in whilst he was employed at UCL almost 7 years ago. The Commissioner therefore considers that UCL can satisfy the legitimate interest condition at schedule 2 (6) of the DPA if they release this information to the complainant.
- 9.10 The Commissioner considers that Dr Wakefield did have a high public profile as a result of his MMR related research. Post publication of this research in the Lancet<sup>11</sup>, Dr Wakefield and others attended a press conference to communicate his findings. In addition, he gave presentations and interviews publicly in relation to his findings. The Commissioner has taken into account the fact that this category of information does not relate to Dr Wakefield's private life but rather relates to his work activities.

### **Other Exemptions**

- 9.11 UCL have advised the Commissioner that correspondence concerning the professional valuation of related intellectual property rights were exempt under section 36 (2) (b) (c) and section 43 of the Act. Later, in discussions with the Commissioner, UCL stated that this information may also be exempt by virtue of section 41 of the Act. The Commissioner will now consider whether the withheld IPR information in this category was exempt under section 41, as well as section 43 and section 36 (2) (b) (c) of the Act.

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<sup>11</sup> 'see study reported in the Lancet, 'Ileal –Lymphoid-nodular hyperplasia, non-specific colitis and pervasive developmental disorder in children. Lancet vol 351, No 9103 28 February 1998

9.12 Section 41 (1) provides that :

*“41 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.”*

9.13 The IPR information was generated through the course of an evolving IPR relationship between UCL and Dr Andrew Wakefield which both UCL and Dr Andrew Wakefield as an employee of UCL contributed to for the benefit of both parties. Therefore, the Commissioner is satisfied that this is not information obtained by UCL from any other person as required by the first limb of section 41. The Commissioner relies on this interpretation on the Tribunal findings in the case of *Derry City Council v Information Commissioner (EA/2006/0014)* which looked at the issue of ‘Heads of Agreement’ between Ryanair and Derry City Council as being received ‘from any other person’. The Information Tribunal also addressed the effects of its conclusions as per para 32 (e) of the judgement.

*“We are aware that the effect of our conclusion is that the whole of any contract with a public authority may be available to the public, no matter how confidential the content or how clearly expressed the confidentiality provisions incorporated into it, unless another exemption applies (most probably, that one or both parties to the contract could show that its disclosure would be likely to prejudice its commercial interests, so as to bring section 43 into play).”*

9.14 The Commissioner considers the information was not generated remotely by a third party in abstract from UCL. The Commissioner considers that the withheld information in this category was not obtained from another person and therefore section 41 does not apply. The Commissioner must now consider whether the section 43 exemption will apply.

9.15 UCL have not indicated, either to the complainant or the Commissioner which part of section 43 they seek to rely upon. The Commissioner therefore has assessed the applicability of both subsections of the section 43 exemption to the IPR information.

9.16 The Commissioner notes that the section 43 creates two types of exemptions designed to protect commercial interests. The first exemption is a class-based one; information is exempt if it constitutes a trade secret. The second exemption is a prejudice-based one; information is exempt if its disclosure under the Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

- 9.17 The term 'trade secret' is not defined in the Act. However, the Commissioner is aware that it is a term familiar from the common law to describe certain information confidential to business. The Commissioner has also noted that in *Lansing Linde Ltd v Kerr*<sup>12</sup>, Staughton LJ defined trade secrets as information used in a trade or business of which the owner limits the dissemination or at least does not encourage or permit widespread publication and which if disclosed to a competitor would be liable to cause real (or significant) harm to the owner of the secret. Having reviewed the withheld IPR information, the Commissioner is satisfied that none of this information could be classed as a trade secret.
- 9.18 Section 43(2) of the Act states that "*information is exempt if its disclosure under the Act would, or would be likely to prejudice the commercial interests of any person (including the public authority holding it).*" This is a qualified exemption and is subject to the public interest test as found at section 2 (2) (b) of the Act. The public interest test at section 2 (2) (b) states:
- "in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.*
- 9.19 In relation to the section 43 exemption UCL have provided only general arguments on section 43 generally. UCL state that some of the older IPR information (dating back to the 1990s ) was withheld on the basis that there was a potential risk to the commercial interests of Dr Wakefield and others should he wish to pursue the options referred to in this category of withheld information.
- 9.20 In determining whether disclosure of this information 'would or would be likely to prejudice either the commercial position of UCL or Dr Andrew Wakefield the Commissioner applied the test for 'would prejudice or would be likely to prejudice' as set out in the Tribunal decision EA/2005/005 'John Connor Press Associates v the Information Commissioner'. The Tribunal confirmed that *'the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk.'* (Para 15). The Tribunal in its decision in Hogan vs. the Information Commissioner EA/2005/0026 ("the Hogan case") which stated:
- "When considering the existence of 'prejudice', the public authority needs to consider the issue from the perspective that the disclosure is being effectively made to the general public as a whole, rather than simply the individual applicant, since any disclosure may not be made subject to any conditions governing subsequent use."*
- 9.21 In this case the Tribunal considered what was meant by "would or would be likely to prejudice". In determining this meaning the Tribunal

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<sup>12</sup> [1991] 1 WLR 251, 260, CA.

drew support from the decisions in *John Connor Press Associates Limited v Information Commissioner (EA/2005/0005)* as well as the dicta of Mr Justice Mundy in *R (on the application of Lord) v Secretary of State for the Home Office [2003] EWHC 2073 (Admin)*. The Tribunal in the Hogan case stated:

*“On the basis of these decisions there are two possible limbs on which a prejudice-based exemption might be engaged. Firstly, the occurrence of prejudice to the specified interest is more probable than not, and secondly there is a real and significant risk of prejudice, even if it cannot be said that the occurrence of prejudice is more probable than not.”*

- 9.22 UCL has advised the Commissioner that the IPR information was withheld in the event that Dr Wakefield may wish to pursue those options at a later date. A mere possibility of some future commercial exploitation of the options would not in the Commissioner's view represent a real and significant risk of prejudice in this case. The Commissioner in assessing whether there is, a real or significant risk of prejudice in this case has also noted that some of the IPR information was between 5 and 8 years old at the date of the request. In addition, as indicated at paragraph 9.3, some of the background to the relationships captured by the IPR information is and was, at the date of the request, in the public domain. In light of this, the Commissioner has concluded that the disclosure of the remaining IPR information would not, nor would it be likely to prejudice the commercial interests of UCL or any other person.
- 9.23 The Commissioner has considered the application of section 36 (2) (b) and (c) to the IPR information. Section 36(2) (b) (c) states: “Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act –  
 (b) would or would be likely to, inhibit –  
 (i) the free and frank provision of advice, or  
 (ii) the free and frank exchange of views for the purposes of deliberation, or  
 (c) Would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.”
- 9.24 UCL have not identified to the Commissioner a specific provision in section 36 (2) which they intend to rely upon with regard to specific information they feel is exempt by virtue of section 36. Under section 36(2) information is exempt if, in the reasonable opinion of a qualified person its disclosure would, or would be likely to inhibit the free and frank provision of advice, or the free and frank exchange of views for the purpose of deliberation.
- 9.25 The qualified person whose opinion was sought in this case was Professor Malcolm Grant, Provost of University College London. The Commissioner was provided evidence by UCL of this opinion. That

evidence comprises an e mail from Professor Grant dated 24 August 2007 in which he confirms reviewing a selection of withheld information to be exempted under section 36. Professor Grant states that he did not avail himself of the offer to view all of the material in this case but agreed upon review that the selection presented to him was exempt under section 36.

- 9.26 The Commissioner is satisfied that, on the basis of UCL submissions in this case that the opinion of Professor Grant was reasonably arrived at. He has arrived at this conclusion having regard to the extraordinary volume and range of information covered by the request.
- 9.27 In relation to the reasonableness of the opinion in this case, the Commissioner has taken into account the context in which the IPR information was gathered as well as the nature of the information. That is in the context of an exploration of possible options for the exploitation of Dr Wakefield's research and their financial viability. In those circumstances, the Commissioner accepts that it is reasonable to conclude that the disclosure of such information would or would be likely to inhibit the free and frank exchange of views for the purposes of deliberation.
- 9.28 In relation to the public interest factors in this case, the Commissioner has adopted the approach to section 36 as set out by the Information Tribunal in the BBC case. The Tribunal stated at paragraph 92

*"In our judgement the right approach, consistent with the language and scheme of the Act is this: the Commissioner, having accepted the reasonableness of the qualified person's opinion that disclosure of the information would, or would be likely to, inhibit the free and frank exchange of views for the purposes of deliberation, must give weight to that opinion as an important piece of evidence in his assessment of the balance of the public interest test. However, in order to form the balancing judgement required by s 2(2) (b), the Commissioner is entitled, and will need, to form his own view on the severity, extent and frequency with which inhibition of the free and frank exchange of views for the purposes of deliberation will or may occur."*

- 9.29 The Commissioner has considered the public interest test which is inherent in this exemption. He firstly considered the public interest in maintaining the exemption. The Commissioner is of the view that there is a public interest in relation to the ability of public authorities to be able to freely exchange views and thus fully explore all potential options. There is a public interest in maintaining a free thinking space so as to arrive at the optimum decision. The Commissioner considered there is a strong public interest in a public authority being able to discuss issues of the day freely and to cultivate the requisite candour needed to arrive at a balanced judgement especially in those issues relating to public affairs and to issues that are of public interest and concern.

- 9.30 The Commissioner considers there is a public interest in the public being informed as to options explored by UCL in this case. There is also a strong public interest in the accountability for public funds and for accountability for the decisions taken on behalf of the public purse. The Commissioner also considers there is a public interest in the public being informed fully of those issues which are of public concern. The MMR research had a huge impact on the health of the nation and there is a very strong public interest in matters that pertain to public health. There is also a public interest in informing the debate on matters of such widespread public concern.
- 9.31 In this case the Commissioner does not accept that disclosure of the particular IPR information would have such a chilling effect as to cause severe or frequent inhibition in the deliberation process within UCL. In light of this and for the reasons set out at paragraph 9.30, the Commissioner considers that the balance of the public interest favours disclosure of the withheld IPR information. The Commissioner has served Annex B to this Decision Notice upon UCL, which includes details of all of the IPR information which UCL are now required to disclose.

## The Clinical Information

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- 10.0 Information in this category relates to the descriptions of research, including summaries and methodologies, grant proposals, trial proposals as well as invention details for research involving Andrew Wakefield. The Commissioner has considered whether the clinical information is exempt by virtue of section 40(2). UCL have released to the complainant some information in this category.
- 10.1 The Commissioner has considered whether the first condition under section 40 (2) applies. In the case of section 40 (3) (a) (b) the Commissioner considered whether any of the data protection principles would be contravened if disclosure of this information were to take place. In particular the Commissioner considered the first data protection principle in relation to fair and lawful processing. The Commissioner is of the view that the first principle of the DPA introduces the requirement that, as a requisite of fair and lawful processing, personal data shall not be processed unless at least one of the conditions for processing in schedule 2 of the Act is met. The Commissioner is satisfied that the clinical information does not contain any sensitive personal information.
- 10.2 The Commissioner considered whether it would be unfair to disclose the remaining clinical information and is mindful of the fact that it relates to Dr Wakefield's research. As a result of the publication of his

research<sup>13</sup>, most of this clinical information is in the public domain. In those circumstances the Commissioner has considered the impact of the disclosure of all of this information in circumstances where Dr Wakefield has through publication of his findings himself placed the bulk of this information in the public domain. He considers that in those circumstances that it would not be unfair to disclose such information

- 10.3 In relation to a schedule 2 condition under the DPA, the Commissioner considers that the schedule 2(6) condition as detailed at paragraph 9.8 above is appropriate. The Commissioner has considered the legitimate interests of UCL in providing further detail to the public of research conducted by their staff. The Commissioner has also noted that there is a large proportion of information already in the public domain concerning the research and the methodologies of Dr Andrew Wakefield's research. The Commissioner has considered therefore both those legitimate interests of the public in wanting this category of research made available as well as those legitimate interests of Dr Andrew Wakefield. The Commissioner is aware that Dr Wakefield's research findings have previously been reported in the Lancet and much of Dr Wakefield's research and findings have been made public by himself. The Commissioner therefore considers that UCL have a legitimate interest in disclosing the withheld clinical information.
- 10.4 For the reasons set out at paragraph 10.3 above, the Commissioner does not consider that the disclosure of this information is unwarranted in this case having regard to Dr Wakefield's rights, freedoms or legitimate interests.
- 10.5 Having regard to the nature of this information and its potential value, the Commissioner has considered whether there would have been any prejudice to the commercial interests of either UCL or Dr Andrew Wakefield if information withheld in this category was released.
- 10.6 As stated at para 9.21 above the section 43 (2) exemption is a prejudice based exemption which if prejudice is shown to be likely to occur, carries with it a public interest test. The Commissioner has assessed the likelihood of prejudice occurring to both Dr Wakefield or to UCL if this information had been released at the time of the request.
- 10.7 The Commissioner has noted the age of the withheld clinical information at the time of the request. Some of this information was over five years old at the time of the request and the Commissioner considers that the likelihood of prejudice to the commercial interests of Dr Wakefield or UCL would be significantly lessened.
- 10.8 As at para 10.7 above the Commissioner does not consider that he has been presented with any evidence of prejudice to the future commercial interests of UCL or to Dr Wakefield. The Commissioner

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<sup>13</sup> Ibid, 10



has considered UCL submissions as to any future prejudice to be suffered by Dr Wakefield should he choose to exploit any of these products. Despite giving UCL every opportunity to further substantiate these submissions, the Commissioner is not satisfied that there is sufficient evidence of any real or significant prejudice to the commercial interests of Dr Wakefield or UCL. He has arrived at this view taking into account the age of the information at the time of the request (over 5 years old). That information is now seven years old.

- 10.9 The Commissioner considers that the section 43 exemption is not engaged and therefore has provided to UCL a list of all of the clinical information which in his view ought to have been disclosed to the complainant in this case.

## Ethical Information

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- 11.0 Information in this category comprises ethical submissions and approvals as well attendees at meetings and representations made to the Committees. UCL has advised the Commissioner that information concerning the work of the UCL Ethics Committees was to be found in two of the nine lever arch files provided to him. These files contained a variety of information in each of the categories identified by the Commissioner which UCL claimed to the Commissioner was exempt under section 36 (2) (b) (c) of the Act.
- 11.1 Some of the information in this category has been disclosed to the complainant following discussions with the Commissioner and his staff. UCL have justified the decision to exempt the remaining ethical information by arguing that essential to the proper working UCL ethics committees is the need for a free thinking space. The Commissioner however has now viewed and considered all of the withheld ethical information, some of which is the identities of the committee members and attendees.
- 11.2 The Commissioner is aware that since 1991 Research Ethics Committees have been established by the NHS in England. In 2001 the Clinical Trials Directive<sup>14</sup> imposed an obligation on member states to implement its requirements. The subsequent Medicines for Clinical Use Regulations 2004<sup>15</sup> has formalised the work of the ethics committees. At the time of dealing with the application from Dr Wakefield for ethical approval, the committees were less centralised and to a lesser degree regulated by legislation. The Commissioner is aware that different Trusts and different jurisdictions within the United Kingdom operated their systems of ethical approval in a less structured manner.

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<sup>14</sup> Directive 2001/20/EC

<sup>15</sup> EC Number Clinical Trials Directive

- 11.3 The Commissioner is aware that there is some of the ethical information in the public domain regarding Dr Andrew Wakefield and the Royal Free ethics committee. In addition there is correspondence to the ethics committees from Professor Arie Zuckerman, former dean of Medicine at UCL, as well as correspondence from Professor Sir David Hull concerning the work of Dr Andrew Wakefield, now in the public domain.<sup>16</sup> It was also publicly available at the time of the request.
- 11.4 The Commissioner has considered the first condition under section 40 (2). As stated at paragraph 7.5 above the Commissioner considers that the information in this category falls both within the definition of 'data' at section 40 (3) (a) of the Act as well as that definition at section 40 (3) (a) (b) of the Act. In the case of section 40 (3) (a) (b) the Commissioner considered whether any of the data protection principles would be contravened if disclosure of this information were to take place. In particular the Commissioner considered the first data protection principle in relation to fair and lawful processing. The Commissioner is of the view that the first principle of the DPA introduces the requirement that, as a requisite of fair and lawful processing, personal data shall not be processed unless at least one of the conditions for processing in schedule 2 of the Act is met. The Commissioner is satisfied that the withheld ethical approval information does not contain any sensitive personal information.
- 11.5 The Commissioner considered whether it would be unfair to disclose the remaining ethical information and is mindful of the fact that it relates to Dr Wakefield's research. The Commissioner considered that information which is already in the public domain and is of the view that it would not be unfair to disclose the information in this category as it relates to research which has been already published and relates to Dr Wakefield's professional work put by him into the public domain. It would not therefore be unfair to release the information surrounding the ethical considerations regarding his work.
- 11.6 The Commissioner therefore considered the schedule 2 condition under the DPA. The Commissioner considers that the schedule 2(6) condition as detailed at paragraph 9.6 above is particularly appropriate. The Commissioner has considered the legitimate interests of UCL in providing further detail to the public of the ethical approvals and considerations regarding research conducted by their staff. The Commissioner has also noted that there is a large proportion of information already in the public domain in relation to the ethical approval and consideration in of Dr Wakefield's work. The Commissioner has considered therefore both those legitimate interests of the public in wanting this category of information made available as well as those legitimate interests of Dr Andrew Wakefield. The Commissioner therefore considers that UCL have a legitimate interest in disclosing the withheld clinical information.

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<sup>16</sup> see [www.briandeer.com](http://www.briandeer.com)

- 11.7 For the reasons set out at paragraph 10.3 above, the Commissioner does not consider that the disclosure of this information is unwarranted in this case having regard to Dr Wakefield's rights, freedoms or legitimate interests.
- 11.8 The Commissioner has also considered UCL's application of section 36 (2) (b) to the withheld information in this category concerning the ethics committees. Under section 36(2) information is exempt if, in the reasonable opinion of a qualified person its disclosure would, or would be likely to inhibit the free and frank provision of advice, or the free and frank exchange of views for the purpose of deliberation. The Commissioner for the reasons stated in paragraph 9.27 above is of the view that the reasonable opinion was both reasonable and reasonably arrived at. The Commissioner therefore has considered the public interest test in this category of information in relation to the likelihood of an inhibition of those categories as set out at section 36 (2) (b) and (c) of the Act.
- 11.9 The exemption under section 36 (2) (b) of the Act is a qualified exemption. Accordingly, section 2 of the Act requires the Commissioner to consider whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
- 11.10 The Commissioner has considered the strong public interest in committees of this nature being able to discuss the applications before them freely and without the fear of premature disclosure. This free thinking space, it is recognised allows individual members to provide their views and opinions freely and openly. This in itself is a public interest worthy of protection. The Commissioner considered that there is a strong public interest in experts and lay members alike to be candid in any reservations they may have about a study or to be frank about any incidental thoughts they may have which may have a bearing on the safety of a patient or for their general wellbeing and with regard to their dignity and respect as a patient taking part in the research.
- 11.11 The Commissioner considered there was a public interest in the public being aware of the discussions of the Royal Free ethics committee in relation to the MMR research. The Commissioner considers that ethics committees represent a check on research which acts in the interest of the patient and the public at large. Ethics committees are in a position to prevent research which poses a danger to human health from proceeding or indeed research which could compromise those ethical standards imposed by the Clinical Trials Directive. The Commissioner therefore considers that there is a strong public interest in their decisions and deliberations being made known to the public who will be the participants in the research conducted by the NHS. That public interest is particularly strong in this case because the MMR debate has

had such a significant impact on the health of children and future generations.

- 11.12 The Commissioner has noted that UCL has already made available to the complainant (and thus to the public) a substantial amount of information in relation to the work of the Royal Free ethics committee. That is as a result of the Commissioner's intervention. However, the Commissioner notes that some of the ethical information which UCL has not disclosed was at the time of the request already in the public domain.
- 11.13 For the reasons set out at paragraphs 11.11 and 11.12 above, the Commissioner has considered that in this particular case there is a strong countervailing public interest in the discussions around the ethical approval in this particular research being made available to the public. The Commissioner has noted that at the time of the request there was much public concern as to what ethical approval Dr Wakefield had received when carrying out his research as well as those concerns raised to the Ethics Committee at the time. The Commissioner considers that on the facts of this particular case the public interest in releasing this information is greater than the public interest in maintaining the exemption.
- 11.14 In arriving at this conclusion, the Commissioner considers that responsible members of the scientific community would not in future be inhibited from voicing their concerns about research nor indeed about asking questions as to the ethical validity of research if this information were disclosed. The Commissioner is also of the view that there is no evidence that members of ethics committees today would be inhibited from giving their views and expertise as to their ethical considerations of current research. In light of this, the Commissioner has provided a list to UCL of the information in this category which he now orders UCL to disclose.

## **The Internal Correspondence**

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- 12.0 The Commissioner has considered that category of withheld information relating to internal correspondence which includes views expressed on the nature of Dr Wakefield's research, and the development of internal strategies on dealing with Dr Wakefield and the implications of his research. The Commissioner has viewed all of the information in this category and notes that it relates to correspondence from senior members of staff at UCL including Dr Andrew Wakefield. UCL have stated to the Commissioner that this is exempt under 'section 36', sections 40 and 41. The Commissioner in reviewing all of the files has also found internal correspondence throughout all of the files and not just the two section 36 lever arch files. The

Commissioner's decision in this notice relates to all of the UCL internal correspondence.

- 12.1 The Commissioner has considered the exemption at section 40 (2) of the Act which states that personal data which does not fall within subsection (1) (i.e. a data subject seeking his own personal information) is exempt information if the first or second condition at section 40 (3) or (4) is satisfied. In relation to section 40 (3) the Commissioner considered whether the withheld information in this category if disclosed under the Act would contravene any of the data protection principles. The Commissioner in particular assessed the first principle of the DPA relating to fair and lawful processing.
- 12.2 In particular the Commissioner considered the first data protection principle in relation to fair and lawful processing. The Commissioner is of the view that the first principle of the DPA introduces the requirement that, as a requisite of fair and lawful processing, personal data shall not be processed unless at least one of the conditions for processing in schedule 2 of the Act is met. The Commissioner is satisfied that the withheld internal information does not contain any sensitive personal information.
- 12.3 The Commissioner considered whether it would be unfair to disclose the internal correspondence and is mindful of the fact that it relates to Dr Wakefield and his work at UCL. The Commissioner considered that it would not be unfair to release the information in this category as it relates to Dr Wakefield's in a professional capacity and is correspondence generated by staff at UCL relating to the work of Dr Wakefield and Dr Wakefield in his professional role.
- 12.4 The Commissioner therefore considered the schedule 2 condition under the DPA. The Commissioner considers that the schedule 2(6) condition as detailed at paragraph 9.6 above is particularly appropriate. The Commissioner has considered the legitimate interests of UCL in providing further detail to the public of the internal correspondence generated by UCL regarding Dr Wakefield. The Commissioner has considered therefore both those legitimate interests of the public in wanting this category of information made available as well as those legitimate interests of Dr Andrew Wakefield. The Commissioner believes that UCL have a legitimate interest in releasing that withheld information in this category as it adds further detail to the public debate on the issues of public concern it has raised. The Commissioner has considered that Dr Wakefield has made known by his own doings much of the details of his research and work and this correspondence goes to the heart of discussions between UCL and Dr Wakefield as well as correspondence between UCL staff regarding Dr Wakefield's research and conduct whilst employed at UCL. The Commissioner therefore considers that UCL have a legitimate interest in disclosing the withheld internal information.

- 12.5 UCL stated to the Commissioner that internal correspondence generated in this case, such as internal memos found within the two section 36 lever arch files were exempt by virtue of section 36 (2) (b) (c) as well as section 41. For the reasons set out at Para 9.15 above the Commissioner has not considered that exemption at section 41 in relation to that correspondence internally generated by UCL. The Commissioner has however concluded, for the reasons set out at para 9.27 above in relation to the application of section 36 (2), that the opinion of the reasonable person, in this case the Provost, Professor Grant, was reasonably arrived at. He has therefore considered the public interest test in relation to this category of information with regard to the likelihood of the inhibition occurring to the categories of section 36(2).
- 12.6 The Commissioner considered the high public interest in the ability for free and frank exchanges and deliberations to occur with the knowledge that colleagues can be candid in their views. The Commissioner also believes that there is a public interest in senior staff at UCL having free space to discuss and to debate those issues most pressing to the concerns of UCL such as in this case the work of Andrew Wakefield and the MMR controversy.
- 12.7 The Commissioner also considered those public interest factors which would favour disclosure in this case. There is a high public interest in senior staff being held to account for their deliberations and actions when dealing with issues which are of high public concern. There is also a public interest in the transparency of senior staff members in their views and approaches to dealing with the implications of the MMR litigation and the work of Dr Andrew Wakefield.
- 12.8 The Commissioner has considered that on the facts of this particular case the balance of the public interest test favours disclosure of the withheld information in this category. The Commissioner considers that there is a strong public interest in the public being made aware of the internal debates occurring within UCL and how they dealt with an issue of public concern. The Commissioner is also of the view that at the time of the request much of this information was over 5 years old, and Dr Wakefield was no longer employed at UCL, although the media controversy involving the MMR vaccine was still raging. The Commissioner considers that on the facts of this case there is an exceptional case to be made that the internal debates of senior members of UCL staff can be released, not only to inform the public debate but to highlight to the public the thinking of UCL's senior staff at the time when Dr Wakefield was employed by UCL. Accordingly the Commissioner has ordered UCL to release all of the information in this category.
- 12.9 The Commissioner has detailed that information in this category that he now considers UCL can release in an annex B of this decision notice. Annex B will only be served upon UCL and not the complainant.

## External Correspondence

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- 13.0 As with all of the other categories of information the Commissioner considers that the information in relation to external correspondence held throughout the various files is the personal information of Dr Andrew Wakefield. He therefore considered section 40 (2) of the Act in relation to this category of withheld information. This category of withheld information contains correspondence between members of UCL staff and other members of the scientific community across the world as well as correspondence written in from members of the public regarding Dr Andrew Wakefield and his work. UCL have stated in their correspondence of the 17 July 2006 that, as well as this information being exempt under section 36, they also approached some of those external contributors who stated that they gave their views in confidence.
- 13.1 The Commissioner has considered the first condition under section 40 (2). As stated at paragraph 7.6 above the Commissioner considers that the information in this category falls both within the definition of 'data' at section 40 (3) (a) of the Act as well as that definition at section 40 (3) (a) (b) of the Act. In the case of section 40 (3) (a) (b) the Commissioner considered whether any of the data protection principles would be contravened if disclosure of this information were to take place. In particular the Commissioner considered the first data protection principle in relation to fair and lawful processing. The Commissioner is of the view that the first principle of the DPA introduces the requirement that, as a requisite of fair and lawful processing, personal data shall not be processed unless at least one of the conditions for processing in schedule 2 of the Act is met. The Commissioner is satisfied that the withheld information in this category does not contain any sensitive personal information.
- 13.2 The Commissioner firstly considered whether it would be unfair under the first principle of the data protection act to release the withheld external correspondence. The Commissioner in viewing the information in this category as well as taking account of those representations from UCL believe that this correspondence relating to Dr Wakefield and his work was given with an expectation of confidentiality. The Commissioner believes that those expressing their opinions and views at the time did so with the expectation that they would not be disclosed and were given in a private manner by individuals who would not expect their views to be made known to the public at large. The Commissioner on viewing the information in this category believes that such views were given in confidence. He considered the common-law of confidence. He considers that the information which is not publicly available has the necessary quality of confidence about it, was

imparted in circumstances importing an obligation of confidence; <sup>17</sup> To release this information would be a breach of confidence, would be unfair to those who had provided it and therefore would be a breach of the first principle of the DPA. The Commissioner considers that the information in this category is exempt therefore under section 40 (2) (3) of the Act.

## The Human Resources Information

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- 14.0 The Commissioner is of the view that this information within this category is the personal data of Dr Andrew Wakefield. The Commissioner considered whether the first or second condition at section 40(2) was satisfied in relation to this category and thus making the withheld information exempt. The Commissioner assessed at section 40 (3) whether disclosure of the withheld information would contravene any of the Data Protection Principles. The Commissioner considered the first principle in relation to fair and lawful processing. Before assessing whether any scheduled conditions could permit the processing (disclosure) of this category of withheld information the Commissioner considered whether release of this particular category was unfair under the first principle of the DPA. The Commissioner after viewing all of the information contained within this category of information is satisfied that it would be unfair to Dr Wakefield to reveal those details which are relevant to the terms of his departure from UCL. The impact of disclosing this personal information relating to his employment at UCL into the public domain has also been considered.
- 14.1 The Commissioner notes that this information is only known to a discrete number of staff in UCL, and represents those discussions which only that small number of staff at UCL are aware as well as Dr Wakefield. The Commissioner is satisfied that the information generated in relation to this category of information is private information which goes to the heart of Dr Wakefield's expectations of privacy under Article 8 of the European Convention of Human Rights as implemented by the Human Rights Act 1998, in relation to his final arrangements with UCL <sup>18</sup>. Article 8 sets out the right to respect for private and family life, home and correspondence <sup>19</sup>

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<sup>17</sup> See formulation of the requirement for breach of confidence from *Campbell v MDN Ltd* [2002] EWCA Civ 1373, CA.

<sup>18</sup> article 8

<sup>19</sup> "1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*

2. *There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety of the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others"*



14.2 The Commissioner considers that any interference by a public authority with the exercise of the rights guaranteed by art 8(1) must be in accordance with the law, as well as those legitimate aims as detailed at section 8 (2) of the HRA. The test of necessity involves deciding whether there is a pressing social need' for the interference and whether the means employed are proportionate to the legitimate aim pursued by the public authority. The Commissioner does not consider that in this case the public interest is great enough to justify or warrant UCL interfering with, or indeed in the case of the particular request for information in hand, disclosing that information in relation to the final negotiations between UCL and Dr Wakefield. To reveal this information would be unlawful under Article 8 as implemented by the HRA and therefore unfair within the meaning of the first principle of the DPA. The Commissioner therefore has not considered any scheduled conditions for processing in relation to this category of withheld information.

**Press statements, General MMR background information and correspondence from the complainant**

- 15.0 The Commissioner has considered the 8<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> categories outlined at paragraph 7.0 above. In the Commissioner's view they raise similar issues as regards the application of exemptions by UCL and for this reason the Commissioner has considered all of these categories of withheld information together. UCL have released some of this information formerly in all of these categories.
- 15.1 The Commissioner considered all of this information taken together comprises of the personal information of Dr Andrew Wakefield. The Commissioner has considered the exemption at section 40 (2) of the Act which states that personal data which does not fall within subsection (1) (i.e. a data subject seeking his own personal information) is exempt information if the first or second condition at section 40 (3) or (4) is satisfied. In relation to section 40 (3) the Commissioner considered whether the withheld information in this category if disclosed under the Act would contravene any of the data protection principles. The Commissioner in particular assessed the first principle of the DPA relating to fair and lawful processing.
- 15.2 In particular the Commissioner considered the first data protection principle in relation to fair and lawful processing. The Commissioner is of the view that the first principle of the DPA introduces the requirement that, as a requisite of fair and lawful processing, personal data shall not be processed unless at least one of the conditions for processing in schedule 2 of the Act is met. The Commissioner is satisfied that the withheld information in these categories does not contain any sensitive personal information.

- 15.3 The Commissioner considered whether it would be unfair to disclose the information in relation to the press statements and background information to the MMR research held by UCL. On viewing the withheld information the Commissioner considered that it would be unfair to release the information in these categories as they relates to Dr Wakefield's in a professional capacity and is correspondence generated by and held by UCL relating to the work of Dr Wakefield and Dr Wakefield in his professional role.
- 15.4 The Commissioner therefore considered the schedule 2 condition under the DPA. The Commissioner considers that the schedule 2(6) condition as detailed at paragraph 9.8 above is particularly appropriate. The Commissioner has considered the legitimate interests of UCL in providing further detail to the public regarding the formation of their press statements and that information which helped them to form their opinions and the public stand taken by UCL in relation to the work of Dr Wakefield. The Commissioner has considered therefore both those legitimate interests of the public in wanting these category of information made available as well as those legitimate interests of Dr Andrew Wakefield.. The Commissioner believes that UCL have a legitimate interest in releasing that withheld information in this category as it adds further detail to the public debate on the issues of public concern it has raised. The Commissioner has considered that the damage and distress that Dr Wakefield may suffer would not be warranted should this information be released and would be limited, for the reasons that Dr Wakefield has made known by his own doings much of the details of his research and UCL have made their position on the issue clear by virtue of press statements they issued.
- 15.5 The Commissioner considered the exemption at section 36. For the reasons set out in paragraph 9.27 above the Commissioner considers that the exemption in relation to section 36 exemption was reasonable. The Commissioner has considered the public interest test for these categories of information.
- 15.6 The Commissioner considers there is a strong public interest in public authorities being able to deliberate frankly and candidly when dealing with the media and adopting approached in dealing with the media. The Commissioner considers that there is a public interest in the ability of officials being able to discuss issues, take policy decisions, and refer to information already in the public domain without the fear or premature scrutiny.
- 15.7 The Commissioner considers that there are high public interest factors in the public being made aware of how UCL arrived not only at its position as regards the work of Dr Andrew Wakefield, and the public debate generated by that work, the Commissioner also considered the public interest in holding public officials and senior members of staff to account for those reasons and positions adopted by their actions in dealing with the media.

15.8 The Commissioner has considered that the public interest favours disclosure of all of the information in this case. The Commissioner considers that at the time of the request much of this information was already over 5 years old. The Commissioner considers that UCL position as regards press statements given at the time of Andrew Wakefield's research was coming to prominence has been well cemented in the public domain. The Commissioner considers that given the circumstances of this case and given that most of the information in these three categories is already in the public domain; UCL should have released it to the complainant. The Commissioner therefore directs UCL to release all of the information within these three categories.

For the reasons set out above, the Commissioner considers that all of the withheld information in these categories is not exempt and has required UCL to disclose this.

### **Category 9: Personal Information relating to Third Parties**

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- 16.0 The Commissioner notes that a small amount of information relates to identities and contact details of members of UCL staff. This comprises information such as addresses and private or personal telephone numbers. It also contains the home address of Dr Wakefield.
- 16.1 The Commissioner considers that some of the information in this category is the personal data of Dr Andrew Wakefield. Within this category also is the personal data of the individuals identified or identifiable from that information. In a sense it is intermingled data. The Commissioner has considered whether releasing this information is unfair to the other UCL staff concerned and in relation to his information, to Dr Wakefield. He considers that disclosure of such personal information into the public domain, albeit in a professional context would be unfair. That is because these individuals have an expectation that this personal information will be kept private.
- 16.2 The Commissioner therefore considers that as it would be unfair to release this information under the first principle of the DPA, the personal data in this category is exempt by virtue of section 40 (2) (3) of the Act.

## The Commissioner's Decision

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- 17.0 The Commissioner has found UCL in breach of the following provisions of the Act, section 1(1) (b), section 10 (1), section 17 (1), section 17 (1) (c) and 17 (7) of the Act.
- 17.1 In relation to the exemptions the Commissioner has found that UCL have not applied correctly section 36, section 40, section 41, section 43 of the Act. The Commissioner did not consider section 38 as this was not pursued by UCL. To the extent that section 42 (legal professional privilege) was relied upon it has been covered by paragraphs 8.0 to 8.4 of this decision.
- 17.2 The Commissioner has accordingly ordered that the following information be released to the complainant as set out at para 7.0. He orders UCL to disclose that information in relation to IPR information, clinical information, ethical information, and internal correspondence, information in relation to press statements, information from the complainant and background information on the MMR research to the complainant. The Commissioner has detailed this information in annex B of this decision notice, to be served on UCL. The Commissioner therefore upholds this complaint in part.

## Other Matters

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- 18.0 Whilst not forming a part of this decision notice, the Commissioner has considered that UCLs reluctance to apply the exemptions to specific information rather than to lever arch files in general, significantly hampered his investigation and made analysis of this information extremely difficult. The Commissioner considers that UCL should have looked at the information by way of themes and not by information placed in bundles in date order. The Commissioner is aware that UCL have gone through some of the files and marked various exemptions onto the pages, but has noted that UCL have not done this for all information within all of the files. Whilst the Commissioner is aware that this is one of the first cases that UCL have dealt with under the Freedom of Information Act, he found it very difficult to investigate this case owing to the lack of the direct application of exemptions to specific pieces of information.

## Steps Required

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- 19.0 The Commissioner requires UCL to release within 35 days that information as directed in annex B to UCL.

## Right of Appeal

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20.0 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 2<sup>nd</sup> day of April 2008**

**Signed .....**

**Richard Thomas  
Information Commissioner**

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

## **Annex A – Text of the complainant's request of the 01 January 2005.**

01.01.2005

Please accept the following requests under the 2000 Freedom of Information Act, concerning the Royal Free hospital school of medicine, part of University College London:

### **REQUEST 1: PATENT APPLICATIONS**

(a) The patent application concerning a pharmaceutical composition for the treatment of IBD and RBD, filed with the London patent office on 05.06.97, or thereabouts, by/or on behalf of the Royal Free hospital medical school and others. [For information, this application was terminated in December 1998, with the substitution of further applications, and with the technology later abandoned. It cannot reasonably be regarded as commercially confidential.]

(b) Letters, internal memos, financial records and other documents relating to this application, and to SUBSEQUENT patent applications, concerned with purported treatments for IBD, RBD, and for vaccines based on similar technologies. These to include communications with, or records concerning, the Neuroimmuno Therapeutics Foundation and/or Dr Hugh Fudenberg.

(c) Minutes and records of any discussions or deliberations relevant to such patent applications.

### **REQUEST 2: MANAGEMENT OF MMR CONTROVERSY**

(a) Letters, internal memos and other documents relating to research findings, discussions and deliberations, and management of staff and resources, connected with research on children with pervasive developmental disorders and gastrointestinal problems between 1996 and the present, and/or connected with the issue of the MMR and MR vaccines, passing through the office of the former dean, Professor Arie Zuckerman, the present vice-dean, Professor Humphrey Hodgson, and the head of medicine, Professor Mark Pepys.

(b) Any letter, memo or minute sent, received, or processed during 2004 by the office of the vice-dean of the medical school, Humphrey Hodgson, containing any reference to (i) past research within the school connected with MMR/MR and/or children with pervasive developmental disorders, (ii) the ethics of research involving Dr Andrew Wakefield, and/or Professor John Walker-Smith, in the academic departments of medicine and paediatric gastroenterology, (iii) the MMR/MR vaccines, or (iv) Brian Deer.

(c) Any letter, memo or minute sent, received, or processed by Zuckerman, Hodgson or Pepys, concerning a paper published in The Lancet on 28 February 1998 by Wakefield, Murch et al, and/or a press conference and video news release of February 1998, relating to the paper. The request concerns records created both before and after the events.

### REQUEST 3: CUSTODY OF RECORDS

(a) In the event of any determination that any records requested above have been destroyed, I request under the Act the dates of such destruction, the authority upon which the destruction was carried out, and any records relating to the destruction.

I request photocopies, but am willing to look at the relevant files, if this would be considered more practicable.”

**Annex B – Directions to UCL for Information to be released.  
TO BE SERVED ON UCL ONLY.**

**UCL Should release the following table of information with attached letter of directions.**



## Annex C – Legal Annex.

### Relevant Statutory Obligations and Provisions under the Act

#### General Right of Access

**Section 1(1)** provides that -

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

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

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

**Section 1(2)** provides that -

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

**Section 1(3)** provides that –

“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.”

**Section 1(4)** provides that –

“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.”

**Section 1(5)** provides that –

“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).”

**Section 1(6)** provides that –

“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 2(1)** provides that –

“Where any provision of Part II states that the duty to confirm or deny does not arise in relation to any information, the effect of the provision is that either –

- (a) the provision confers absolute exemption, or
- (b) 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 public authority holds the information

section 1(1)(a) does not apply.”

**Section 2(2)** provides that –

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

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

**Section 2(3)** provides that –

“For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption –

- (a) section 21
- (b) section 23
- (c) section 32
- (d) section 34
- (e) section 36 so far as relating to information held by the House of Commons or the House of Lords
- (f) in section 40 –
  - (i) subsection (1), and
  - (ii) subsection (2) so far as relating to cases where the first condition referred to in that subsection is

satisfied by virtue of subsection (3)(a)(i) or (b) of that section,  
(g) section 41, and  
(h) section 44”

### **Time for Compliance**

**Section 10(1)** provides that –  
“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

### **Refusal of Request**

**Section 17(1)** provides that -  
“A public authority which ... is to any extent relying:

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

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

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

**Section 17(3)** 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-

- (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 public 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.

## **Section 17 (7)**

17 (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 40.

## **Information Accessible by other Means**

**Section 21(1)** provides that –

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

**Section 21(2)** provides that –

“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.”

**Section 21(3)** provides that –

“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.”

## **Prejudice to effective conduct of public affairs.**

**Section 36(1)** provides that –

“This section applies to-

- (a) information which is held by a government department or by the National Assembly for Wales and is not exempt information by virtue of section 35, and
- (b) information which is held by any other public authority.

**Section 36(2)** provides that –

“Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act-

- (a) would, or would be likely to, prejudice-
  - (i) the maintenance of the convention of the collective responsibility of Ministers of the Crown, or
  - (ii) the work of the Executive Committee of the Northern Ireland Assembly, or
  - (iii) the work of the executive committee of the National Assembly for Wales,
- (b) would, or would be likely to, inhibit-
  - (i) the free and frank provision of advice, or
  - (ii) the free and frank exchange of views for the purposes of deliberation, or
- (c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

### **Health and safety.**

**Section 38(1)** provides that –

“Information is exempt information if its disclosure under this Act would, or would be likely to-

- (a) endanger the physical or mental health of any individual, or
- (b) endanger the safety of any individual.”

**Section 38(2)** provides that –

“The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, have either of the effects mentioned in subsection (1).”

### **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(4)** provides that –

“The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).”

**Section 40(5)** provides that –

“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) the 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).”

**Section 40(6)** provides that –

“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.”

**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.”

**Section 41(2)** provides that –

“The duty to confirm or deny does not arise if, or to the extent that, the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) constitute an actionable breach of confidence.”

### **Legal Professional Privilege**

**Section 42(1)** provides that –

“Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.”

**Section 42(2)** provides that –

“The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) in respect of which such a claim could be maintained in legal proceedings.”

**Commercial interests.**

**Section 43(1)** provides that –

“Information is exempt information if it constitutes a trade secret.”

**Section 43(2)** provides that –

“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 43(3)** provides that –

“The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the interests mentioned in subsection (2).”