

Freedom of Information Act 2000 (Section 50)

Decision Notice

23 December 2008

Public Authority: University of Northampton ("the University")
Address: Boughton Green Road,
Northampton,
NN27AL

Summary

The complainant submitted a number of requests to the public authority from March 2005 to September 2005. In September 2005 the public authority refused to answer any further requests from the complainant on the basis that the requests were vexatious. During the investigation the complainant limited his complaint to requests about 9 outstanding items. The Commissioner has considered whether the University responded to 8 of those requests in accordance with Part I of the Act. The other item is dealt with in the other matters section of this decision. He has concluded that items 1 to 5, 8 and 9 are the complainant's personal data and therefore are exempt under section 40(1) and (5). He has concluded that item 7 is not held by the University. The Commissioner has also concluded that the University breached sections 17(1)(a), (b) and (c), (5) and (7)(a) in relation to different aspects of the 8 outstanding requests.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. Between 1994 and 1997 the complainant studied for a University of Leicester accredited degree at its then Associated College Nene College Northampton (Nene). The College has now become part of the University of Northampton ('the University').

3. In a series of eight letters the complainant made thirty two requests for pieces of information from the University of Northampton under the Act between May 2005 and August 2007. These are outlined in Annex A.
4. The University provided numerous replies to these request which are outlined in Annex B.
5. There has been extensive communication between the parties; an outline of the documentation by date that the Commissioner has been provided with is outlined in the Annexes C and D.
6. On 23 July 2006 the complainant agreed that he would limit his complaint to just nine outstanding items after correspondence with the Commissioner. The point at which these items were requested is highlighted in Annex A.

The Investigation

Scope of the case

7. The complainant initially complained to the Commissioner on 16 August 2005 about the way that the University handled his requests for information. He reiterated this complaint on 11 October 2005.
8. The University's solicitors declared that the requests made by the complainant were vexatious on 9 September 2005 and refused to answer any further requests in relation to this matter from him.
9. The complainant has argued that the information he has requested which contains personal data of other people can be disclosed to him because it is required for court proceedings. He has asserted that one of the exemption provisions within the Data Protection Act 1998 permits such a disclosure. The Commissioner has made further comments in relation to this assertion in the other matters section below. However he has not considered whether the information should have been disclosed for the proceedings as there are separate rules of disclosure which govern such proceedings and these are not within the Commissioner's remit. The Commissioner's role in this case is simply to determine whether or not a public authority has appropriately applied the provisions of the Act where it has refused to provide the applicant with information. It should be noted that information disclosed in response to an FOI request must be suitable for release to the world at large and not solely to the applicant.
10. The Commissioner has investigated access to information that the complainant originally sought in his FOI requests to the University. The Commissioner has not considered any subsequent requests for information made during the course of the investigation.

11. On 5 July 2007 the complainant narrowed the scope of his complaint to 7 items. The Commissioner wrote to the complainant on 13 July 2007 to clarify issues relating to the 7 items and to seek final submissions from the complainant.
12. On 23 July 2007 the complainant responded to the Commissioner stating the scope of his outstanding issues in relation to the 7 items and adding 2 further items that he still required. His complaint was therefore limited to the following nine items:
 - Item 1. UoN's letter and enclosures to University of Leicester (UoL) dated 10 April 2001¹;
 - Item 2. UoN's letter to UoL dated 9 October 2001²;
 - Item 3. UoN's BA Business Information Systems Board of Examiners minutes for June and September 1995³;
 - Item 4. BA Business Information Systems Board of Examiners Minutes for September 1998;⁴
 - Item 5. BA Business Information Systems Board of Examiners Minutes for June 1999;⁵
 - Item 6. Explanation regarding why BA Business Information Systems Student Surveys before and after 1995-1996 academic year are still available but a strongly critical survey are not (1995-1996 Year 2 surveys);
 - Item 7. UoN's 1998 data privacy/disclosure statement;
 - Item 8. Statement confirming how many of the listed students are recorded in the BA Business Information Systems 18 June 1998 Board of Examiners Minutes;
 - Item 9. UoN's Dr Clark's document to UoN's Mr Halton dated May/June 1997⁶.

For the sake of clarity the complainant explained that he still required the enclosures sent with the letter in item 1 in a letter to the Commissioner dated 1 December 2006. However, he limited his complaint about item 2 to the letter itself and not the enclosures. This was re-iterated in the 23 July 2007 letter. Therefore the Commissioner has made a decision about the enclosures with item 1 but not with the letter in item 2.

¹ Item 2 requested on 20 May 2005 (see Annex A).

² Item 1 requested on 20 May 2005 (see Annex A).

³ Item 4 requested on 20 May 2005 (see Annex A).

⁴ Part of item 5 requested on 20 May 2005 (see Annex A).

⁵ Part of Item 5 requested on 20 May 2005 (see Annex A).

⁶ Item 29 requested on 5 September 2005 (see Annex A).

13. In his letter of 13 July 2007 the Commissioner explained that he had no record of the complainant having specifically requested item 6. He indicated that it appeared that the complainant was disputing the University's response that it did not hold the 1995-1996 Year 2 Surveys. However, when the complainant responded to the Commissioner's queries (on 23 July 2007) he did not in fact appear to dispute the fact that the particular surveys in question had been destroyed. Instead he explained that in his view the University "wilfully destroyed these documents when it realised it could incriminate them". In view of these comments the Commissioner has taken this element of the complaint to constitute an allegation of a section 77 offence under the Act. He has made comments about this in the other matters section of this notice.
14. Given that the complainant does not appear to dispute the fact that the 1995-1996 surveys have been destroyed and he has clarified the nature of his complaint in relation to item 6, the Commissioner has not made any finding on whether this information is held or when or why it was destroyed. He has confined his comments about item 6 to the section 77 allegation and has only dealt with the other 8 items in the analysis section of this notice.

Chronology

15. On 27 November 2006 the Commissioner contacted the complainant to ask for clarification in respect of the nature and scope of the complaint.
16. On 1 December 2006 the complainant contacted the Commissioner to clarify the requests for information he felt were outstanding. He outlined several of the requests which he felt were definitely outstanding and others that he suspected were still outstanding. Whilst assisting the Commissioner to some extent, the letter did not provide a definitive list of the remaining issues.
17. The Commissioner contacted the University on 22 January 2007 to request a copy of all the withheld information, further details about the information it asserted was not held and further submissions regarding the University's assertion that the complainant's request of 5 September 2005 was vexatious.
18. On 12 February 2007 the University contacted the Commissioner and provided copies of the withheld information, details regarding the information it maintained that it did not hold and further submissions regarding its view that the complainant's last request was vexatious.
19. On 19 February 2007 the complainant wrote to the Commissioner enclosing a copy of a judgment dated 20 December 2006. This related to a civil matter in which he was the applicant and staff members at the public authority were the respondents. The application was not successful but the judgment noted that the complainant had applied to the Commissioner. It stated that if new evidence could be deduced to demonstrate 'bad faith' on the part of one or more of the parties as a result of the complaint he could consider fresh proceedings.

20. The complainant provided this judgment to the Commissioner as evidence of the importance of his application. The complainant submitted that unless he could obtain the information requested he would not be able to submit the fresh evidence and commence new proceedings.
21. On 7 March 2007 the University provided the Commissioner with additional evidence to support its contention that the complainant's continued requests were vexatious and therefore section 14(1) applied.
22. On 27 March 2007, the Commissioner wrote to the University to ascertain whether it had considered releasing the following documents to the complainant:
 - A copy of UCN [the University's] Dr Clarke's document to UCN's Mr Halton of May/June 1997.
 - Nene College Northampton's 1997 Graduate to Success publication.
 - Nene University Northampton's 10 July 1998 Degree Congregation publication.
23. The University asserted that it could not locate a copy of Dr Clarke's document to Mr Halton. Regarding the two other publications, the University advised the Commissioner on 2 April 2007 that it was willing to provide these documents to the complainant in an attempt to informally resolve the complaint and without prejudice to its position that the requests for that information were vexatious. On 27 April 2007 the University provided the Commissioner with a copy of the letter it sent to the complainant.
24. On 3 July 2007 the Commissioner wrote to the complainant requesting further clarification about whether there were any further outstanding aspects of his requests.
25. On 5 July 2007 the complainant wrote to the Commissioner advising that he felt that seven items of information were outstanding. Those items were identified by him as follows:
 1. University of Northampton's (UoN) letter and enclosures to University of Leicester (UoL) dated 10 April 2001;
 2. UoN's letter to UoL dated 9 October 2001;
 3. UoN's BA Business Information Systems Board of Examiners minutes for September 1995;
 4. Explanation regarding why BA Business Information Systems Student Surveys before and after 1995-1996 academic year are still available but a strongly critical survey are not (1995-1996 Year 2 surveys);
 5. UoN's 1998 data privacy/disclosure statement;

6. Statement confirming how many of the listed students are recorded in the BA Business Information Systems 18 June 1998 Board of Examiners Minutes;
7. UoN's Dr Clark's document to UoN's Mr Halton dated May/June 1997.
26. The Commissioner wrote to the complainant on 13 July 2007. In that letter he went through the seven items outlining the exemptions cited, the reasons the University gave to explain that it does not hold some of the items and indicated which items he considered were reworded versions of an earlier request.
27. The complainant replied to the Commissioner on 23 July 2007. In that response he added two items to the list of seven items he sought. Those items were the BA Business Information Systems Board of Examiners minutes for September 1998 and June 1999.
28. The complainant also indicated that on 20 July 2007 the University gave him a copy of the 9 October 2001 letter he sought in his first request, as part of current court proceedings which were pending between himself and the University. He indicated that he believed this information was given to him in error.
29. The chronology reflects the fact that the Commissioner considered the 9 items above when carrying out his investigation. The Commissioner would not normally make a decision in relation to information that the complainant has already received. However it is unclear whether the information was disclosed in error to the complainant or because it was appropriate in the context of the proceedings. For the sake of completeness and particularly given the complicated background to this complaint, the Commissioner has decided that it is appropriate to include a decision about whether the letter dated 9 October 2001 should have been provided under the Act notwithstanding that the complainant has now obtained a copy via his proceedings.

Analysis

30. Having provided substantive responses to a number of requests the University informed the Commissioner that it believed the request of 5 September 2005 for information about the procedures surrounding degree classification to be vexatious in its entirety. On 12 February 2007, during the Commissioner's investigation, the University asserted that all of the complainant's continued requests regarding examination results for the BA Business Information Systems course in 1998 and 1999 and related procedures were vexatious within the meaning of section 14(1).

31. As explained previously in the scope section of this notice, the Commissioner has limited his analysis to the outstanding eight items agreed by the complainant on 23 July 2007. The Commissioner notes that items 1 to 8 were originally requested prior to September 2005 and were responded to substantively by the University. Item 9 was requested on 5 September 2005 and refused by the University on the basis of section 14(1).
32. The Commissioner has determined the following issues which need to be addressed in his analysis of the outstanding 8 items.
 - To what extent are any of the 8 items the complainant's personal data and therefore exempt under sections 40(1) and/or 40(5) of the Act?
 - Where information is not exempt under sections 40(1) and/or (5) and the request was not deemed vexatious, did the University comply with the Act in its substantive reply?
 - Where information is not exempt by virtue of sections 40(1) or (5) is the request for information vexatious within the meaning of section 14(1)?
33. In determining that it would be appropriate to identify whether any of the outstanding items are the complainant's personal data in the first instance, the Commissioner has been influenced by the Information Tribunal ('the Tribunal') judgment in the case of *Ahithirunayagam v The Information Commissioner [EA2006/0070; 20 June 2007]*. In that case the complainant made a number of requests which had been refused by the relevant public authority on the grounds that they were vexatious. However, it transpired that some of the information that had been requested was in fact the complainant's personal data. In paragraph 31 of the judgment the Tribunal stated that it, "*had identified some [requests] which in our view either should or might have been treated as subject access requests. As such the University would have been entitled to refuse disclosure on the basis that the information was exempt information under section 40(1) of the Act and the Appellant should have made his request under the Data Protection Act 1998*". It then went on to explain the information it had taken into account in relation to section 14(1) in respect of requests that "*should or might have been treated as a valid request under the Act*".
34. In view of the above, the Commissioner takes the view that it is appropriate for public authorities to identify information within a request which is subject to section 40(1) or (5) when it is received. Having done so, it should then consider access to that information under the Data Protection Act 1998 ('DPA') subject to the applicant providing the relevant fee and any identification that may be required to prove that they are the data subject. For the avoidance of doubt, the Commissioner considers it unnecessary for applicants to submit a separate request under the DPA. Public authorities should then go on to consider any of the outstanding elements of a request under the Act. At that stage consideration could be given to section 14 or any of the other aspects of Part I of the Act that may mean it is not obliged to comply with section 1(1).

To what extent are any of the 8 items the complainant's personal data and therefore exempt under section 40(1) and/or (5)?

35. Section 40(1) states that:

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

Subsection (5)(a) states 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)”.

36. In order to rely on the exemption provided by section 40, the information being requested must constitute personal data as defined by the DPA. Section 1(1) of the DPA defines personal data as:

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

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

and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect to the individual”.

37. The Commissioner's understanding of the nature of personal data is informed by the recent discussions by the Article 29 Working Party (a European advisory body on data protection and privacy).

38. Following these discussions the Commissioner reissued his guidance in August 2007. This guidance is designed to assist organisations and individuals to determine whether information may be classified as personal data. In order to do this the guidance asks a series of questions. The Commissioner has considered the nature of the information being sought by the complainant along side these questions.

39. The Commissioner's Guidance can be viewed in full at the following link:

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

Items 1 to 5 – 2 letters and minutes of BA Information Systems Board of Examiners 1995, 1998 and 1999

40. The University has explained that items 1 to 5 were previously considered in the context of a subject access request that the complainant made on 19 October 2001. Redacted versions of those items were provided to the complainant at that time. The complainant has also acknowledged that he received that redacted information in 2001. The complainant made a further subject access request to the University in May 2005 and additional redacted copies of items 1 to 5 were released to him again by the University with its response in December 2006.
41. The Commissioner notes the University advised the complainant that items 1 to 5 were exempt under section 40(1) in its letter dated 26 May 2005. The complainant was advised to make a subject access request under the DPA in the same letter. Following additional correspondence regarding these items the University claimed that the information constituted third party data and that it was exempt under section 40(2) of the Act. The Commissioner understands that this was on the basis that the information contained material about third parties as well as the complainant.
42. Information can often contain personal data of more than one individual. In such cases if the information is the applicant's personal data then it will be exempt under section 40(1) notwithstanding that it may contain personal data of others. This conclusion is supported by the Tribunal decision in the case of *Mr George Nicholas Fenney v the Information Commissioner* [EA/2008/0001; 26 June 2008]. In that case the applicant sought information about complaints he had made about various police officers. It was determined that the material constituted the personal data of both the appellant and the officers that were the subject of his complaints. In paragraph 13 of its decision, the Tribunal stated that, "*if information incorporates the personal data of more than one person the data controller is not required to attempt an assessment as to which of them is the more significant and to then recognise the rights to protection of that individual and ignore any others. Its obligations are set out in sections 7(4) to 7(6) DPA, which require it to consider whether the information requested includes information relating to a third party and, if it does, to disclose only if that third party consents or it is reasonable in all the circumstances (by reference to the particular matters identified in subsection (6)) to comply with the request without his or her consent*".
43. In view of the above, the Commissioner's view is that where information is exempt by virtue of section 40(1) the public authority should go on to consider it under the DPA. This is because the request falls out of the machinery of the FOIA. In doing so, if the material contains the personal data of third parties it would need to consider the balancing test set out by the Tribunal above when deciding whether or not it could disclose third party data to the applicant under the DPA.
44. The Commissioner understands that items 1 and 2 are held by the public authority on its file about the complainant's appeal against his degree

classification. The appeal centred on alleged procedural irregularities on the part of the board of examiners. The complainant is aware of the nature of the evidence considered because it was released to him in redacted form in relation to his subject access requests in 2001.

45. Whilst minutes and examiners' reports may not appear to constitute the complainant's personal data at first glance, the Commissioner is satisfied that in this context they do because they directly informed the decisions made in relation to the appeal, the outcome of which has a significant impact upon the complainant. This is particularly evident given that the complainant has asserted that his omission from certain minutes gives weight to his argument that his degree classification has not been appropriately determined. Moreover the Commissioner notes that the complainant is identifiable because his name is recorded in the subject line in the letter and at various points in the enclosures. He has therefore concluded that section 40(1) applies to all of the information within the scope of items 1 and 2 and that access to that material should have been considered under section 7 of the DPA. The information contains a substantial amount of detail about third parties. In this respect the test applicable to third party information outlined by the Tribunal in the Fenney case cited above should be applied.
46. Items 4 and 5 are in fact part of the enclosures to item 1. As the Commissioner has already indicated above he is satisfied that they are therefore exempt under section 40(1) for the reasons given in the preceding paragraphs.
47. The Commissioner also understands that the minutes relevant to item 3 are held by the public authority on the file related to the complainant's appeal and that they have been used as evidence to inform the decision about it. Moreover, they contain specific references to the complainant and have previously been considered when processing his subject access requests. Whilst he understands that the minutes were not created for the purposes of the appeal and that they are likely to be held elsewhere by the University for operational purposes they were, nevertheless part of the information considered making a decision about the appeal. As with items 1,2, 4 and 5, the Commissioner is satisfied that in these circumstances item 3 is exempt under section 40(1).

Item 8 – statement confirming how many of named students are recorded in the BA Business Information Systems 18 June 1998 Board of Examiners Minutes.

48. It is important to highlight that the right of access to information provided by section 1(1) of the Act is to recorded information. "Information" is defined in section 84 of the Act as "information recorded in any form". Therefore when considering item 8 the Commissioner is required to consider what, if any, recorded information is held by the public authority that would fall within the scope of this request. He is satisfied the minutes of the 18 June 1998 meeting are the relevant recorded information because access to them would enable the complainant to determine how many of the named students are recorded.

49. The Commissioner understands that the complainant is aware that the 18 June 1998 minutes formed part of the enclosures to the 10 April 2001 letter (item 1) as a result of previous disclosures of redacted material. As the Commissioner has concluded that the letter and all of the enclosures constitute the complainant's personal data in their entirety, it follows that the material held in relation to item 8 is also exempt under section 40(1).

Item 9- UCN's Dr Clarke's document to UCN's Mr Halton dated May/June 1997.

50. Finally the Commissioner understands that item 9 is not in the University's physical possession. It has explained that it may be held by its solicitors who were dealing with the proceedings involving the complainant's appeal. In some cases the Commissioner will need to make a decision about whether the information requested is held by the solicitor on the public authority's behalf. However this has not been necessary in this case. The University has explained, with reference to the material it does possess, what the letter contained. On 10 April 2008 the University clarified that a reference to the letter in item 9 appears to have been made in another letter it holds. On the basis of those references it is apparent that item 9 would have likely contained details about the complainant's right of appeal against his degree classification and the way that his complaints were being considered. As such the Commissioner is satisfied that the information in the letter, if held, would also constitute the complainant's personal data and would be exempt by virtue of section 40(1).
51. Section 40(5)(a) of the Act states 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 by virtue of subsection (1)”.

The Commissioner is satisfied that in fact the public authority was not therefore obliged to comply with section 1(1)(a) in relation to item 9 by virtue of section 40(5)(a).

52. It is also pertinent to point out that as the Commissioner has concluded that items 1 to 5 and 8 are the complainant's personal data and therefore exempt under section 40(1) the public authority would not in fact have been obliged to comply with section 1(1)(a) in relation to that information either, again by virtue of section 40(5)(a). However, all the requests for items 1 to 5 and 8 should have been dealt with under section 7 of the DPA. In view of this he has not gone on to consider section 14 in relation to the requests for those items.

Where information is not exempt under section 40(1) and the request was not deemed vexatious, did the University comply with the Act in its substantive reply?

53. The Commissioner does not consider that item 7 constitutes the complainant's personal data. The University provided a substantive response to the request for item 7. Therefore the Commissioner has considered whether that response complied with the requirements of the Act below.

Item 7 - UoN's 1998 data privacy/disclosure statement

54. The complainant has acknowledged that he did not submit a request to the University that is identical to the one above. This specific terminology was used when he was clarifying which material remained outstanding. In his letter to the Commissioner dated 23 July 2007 the complainant explained that item 7 referred to the request in his letter to the University dated 27 May 2005. It stated the following:

“In July 1998 the UCN distributed a publication whose cover said DEGREE CONGREGATION Wednesday 8 July 1998 at Derngate, Northampton. Within this document students' names by courses studied are detailed. Please provide an unedited copy of the document that permitted this disclosure of personal data”.

The Commissioner has therefore determined whether the University complied with the Act when responding to the request above.

55. On 16 June 2005 the University wrote to the complainant and confirmed that no information existed in relation to this request. It also explained that no information of relevance would ever have been created. It stated that if there had been any question about disclosure or consent specific to that publication it would have been managed “within the conditions applying to and the context of personal data processing and protection throughout each individual student's whole period of enrolment”.
56. The complainant has asserted that documentary evidence should exist which demonstrates the basis upon which the data subjects' names in the congregation leaflet were published. He has also asserted that the University should have held a general data processing and personal data protection practices document which would have been within the scope of the request.
57. On the basis of the information available and on a balance of probabilities the Commissioner is satisfied that no information specifically referring to and permitting the processing of personal data within the degree congregation booklet would be held.
58. However, the Commissioner is satisfied that read objectively a general statement or policy regarding the way in which students' personal data was to be used by the University in 1998 would be within the scope of the request for item 7. He notes that the University did not interpret the request in this way. In failing to read the request sufficiently broadly the University breached section 1 of the Act. The denial under section 1(1)(a) issued by the University only related to a document specifically permitting the publication of names in the

- degree congregation booklet. In failing to confirm or deny holding a more general policy the public authority breached section 1(1)(a).
59. Having determined that the request for item 7 covered a general statement of policy about the processing of personal data applied by the University in 1998, the Commissioner asked the University whether such information was held during the course of his investigation.
60. The University conducted searches and advised that it could not locate a policy or statement dating from 1998. It is noted that as the DPA 1998 did not come into force until 1 March 2000, any such policy would have related to the 1984 Act. The University located a leaflet informing staff and students about data protection issues which was in use in 2002. It also explained that prior to that in 2000 students were asked to sign the Student Code which explained that their name would be published in the ceremony brochure. As the complainant was interested in policies applicable in 1998 neither of these pieces of information would be within the scope of the request. The University also explained that it is current practice to ask new students to sign a form when they enrol which explains how their personal data will be processed. This includes a statement about the names being included in the congregation booklet on completion of the course. Students are advised that if they do not wish their names to be included then they should advise the University accordingly. Again this information is outside of the scope of the request because it relates to current practice rather than what was done in 1998.
61. In addition to the above, the University explained that in 1998 the ceremony was held by the University of Leicester because at the time it was their degree that students were studying for. Therefore it would have been the University of Leicester's responsibility to notify students about the way in which their personal data would be used. The University also provided the Commissioner with evidence that the complainant had obtained a data protection statement from the University of Leicester which was used as evidence in his proceedings.
62. In view of the above, the Commissioner is satisfied that the University does not hold a general statement or policy relevant to item 7 which was applicable in 1998 and therefore within the scope of the request. In failing to deny that such a policy was held the public authority breached section 1(1)(a).

Where information is not exempt by virtue of section 40(1) is the request vexatious within the meaning of section 14(1)?

63. The Commissioner has determined that items 1 to 5, 8 and 9 are the complainant's personal data and therefore exempt under section 40(1) and (5)(a). He has further made a decision about the substantive response provided by the University in relation to item 7 and has concluded that this information is not held. In view of this it is not in fact necessary to consider the University's application of section 14(1) in this instance.

The Decision

64. For the sake of clarity the Commissioner has set out his decision in relation to each item in turn below.

Items 1 to 5

65. The University complied with the Act in refusing access to this information on the basis that section 40(1) applied in its letter dated 26 May 2005. The Commissioner notes that in fact the University was not therefore obliged to comply with section 1(1)(a) by virtue of section 40(5)(a).

Item 7

66. The Commissioner is satisfied that the University complied with section 1(1)(a) in denying that it held information specifically relating to the congregation booklet. However it breached section 1 of the Act in interpreting this request too narrowly and therefore not considering all of the information within its scope. The Commissioner's view is that the scope of the request covered any data protection policy that existed in 1998. Therefore in failing to confirm or deny whether that information was held it breached section 1(1)(a). As a result of his investigation the Commissioner is satisfied that such information was not in fact held by the University and therefore he has not issued any steps in this regard.

Item 8

67. The information which the University holds which could answer this request is held as part of the enclosures to item 1. As mentioned above the Commissioner has concluded that in this case item 1 and the enclosures constitute the complainant's personal data and therefore the exemption in 40(1) applies. Moreover the public authority was not in fact obliged to comply with section 1(1)(a) by virtue of section 40(5)(a).

Item 9

68. The Commissioner has concluded that this information would, if it were held, constitute the complainant's personal data and therefore section 40(1) would apply. As such the University was not in fact obliged to comply with section 1(1)(a) by virtue of section 40(5)(a). In failing to inform the complainant of this the University breached section 17(1)(a)(b) and (c). However in view of the contents of this notice the Commissioner has not ordered any remedial steps in this regard.

Steps Required

69. The Commissioner requires no steps to be taken.

Other matters

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

Complainant's personal data

71. The University processed the requests for items 1 to 5 as a subject access request under section 7 of the DPA in May 2005. It previously considered the same information in relation to an earlier subject access request made by the complainant in 2001. The Commissioner considers this to be the appropriate regime. Where an applicant is not satisfied with the response to a subject access request they have the right to request a decision from the Commissioner under section 42 of the DPA. In view of this and the fact that the complainant has specifically asked for issues concerning his personal data to be considered, the Commissioner will go on to make an assessment under section 42 of the DPA as to whether the University has complied with that Act. The assessment will cover items 1 to 5, 8 and 9.
72. However, the assessment will be dealt with separately and will not form part of this Decision Notice, because an assessment under section 42 of the DPA is a separate legal process from the consideration of a complaint under section 50 of the FOI Act.

Section 77

73. In his initial request dated 20 May 2005 the complainant requested copies of various student surveys for several years. On 16 June 2005 the University explained that the student surveys were not held within its 'primary retained record sets'. However following an extensive search for copies that may have survived elsewhere it located some information within the scope of the request. Copies of relevant information that was located were disclosed to the complainant with personal data of third parties redacted on the basis that section 40(2) applied. The complainant was also informed that the 1995-1996 surveys were no longer held.
74. In a letter to the University dated 6 July 2005 the complainant asked when the surveys that were not released on 16 June 2005 were destroyed, lost or mislaid. The University responded on 14 July 2005 explaining that no information was held in its primary retained record sets, but where it was available from secondary sets it was supplied in redacted form. It clarified that other records would have been destroyed as part of a regular administrative process though the Commissioner understands that no formal record of this

- destruction is held. As the University was in the process of developing records management procedures and systems the records that it was able to locate were those that had not been picked up during regular administrative destruction. For the avoidance of doubt it also explicitly stated that “UCN did not, after receiving your [the complainant’s] request, alter, deface, block, erase, destroy or conceal any record held by UCN, which would have formed part of your request for information”.
75. During the course of the Commissioner’s investigation the complainant paraphrased his request made on 6 July 2005 about when the 1995-1996 surveys were destroyed and in doing so also asked why they were not available. It was somewhat unclear whether the complainant required a decision from the Commissioner about whether the surveys were in fact held, contrary to the University’s position, or whether he wanted to know when or why they had been destroyed. As explained in the scope section of this decision notice, the complainant’s letter dated 23 July 2007 clarified that in his view the information had been deliberately destroyed and therefore the Commissioner limited his consideration to whether there was evidence of any section 77 offence.
76. The complainant has asserted that the University deliberately destroyed the 1995-1996 student surveys because he alleges they contained critical comments about the institution.
77. The Commissioner wishes to highlight that a decision made under section 50 of the Act relates to the extent to which a public authority has complied with Part I. Section 77 is not part of the requirements of Part I of the Act. Therefore any decision as to whether or not a public authority had committed an offence under section 77 would not be dealt with via a decision notice.
78. In any event the Commissioner wishes to record that in this case he has not been provided with sufficient evidence to demonstrate that there is even a possibility of a section 77 offence having been committed. Section 77 states that,
- “any person to whom this subsection applies is guilty of an offence if he alters, defaces, blocks, erases, destroys or conceals any record held by the public authority, with the intention of preventing the disclosure by that authority of all, or any part, of the information to the communication of which the applicant would have been entitled”.
79. The requirement that the person must have intended to prevent the disclosure of information means that there is a relatively high threshold of evidence required. In reaching this decision in relation to the survey the Commissioner notes that the public authority in fact made extensive searches of what it referred to as secondary records in order to locate information relevant to the complainant’s request.
80. The complainant has also asserted on several occasions that the University has refused to supply information citing exemptions which has then later been

released to him. In particular he has referred to material within the 9 October 2001 letter (item 2). He contends that this is also evidence of a section 77 offence. The Commissioner does not consider there to be any evidence to support this assertion.

81. Furthermore he notes that where information has been provided to the complainant it has been given in the context of legal proceedings as opposed to under the Act. As mentioned above in order for information to be released in response to a request under the Act it must be suitable for disclosure to the general public. However, different rules apply where a person requests information in the context of legal proceedings, such as the civil procedure rules.

Section 35 of the Data Protection Act 1998

82. The Commissioner also notes the complainant's assertion that information he had requested which contained personal data of others could be disclosed to him because it was needed for legal proceedings. In doing so he referred to section 35 of the DPA. This provides that personal data are exempt from the non-disclosure provisions where disclosure is necessary for the purpose of legal proceedings. In other words, information which could not normally be processed because to do so would breach certain data protection principles can be released if this is required for legal proceedings. This would be relevant when considering whether a disclosure is appropriate within the context of such legal proceedings. However in this case the Commissioner is not considering such a limited disclosure and is instead required to determine whether information should have been released to the wider public under the Act. Therefore section 35 of the DPA is not relevant and has not been considered.

Right of Appeal

83. 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@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

84. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
85. 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 23rd day of December 2008

Signed

**Gerrard Tracey
Assistant Commissioner**

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

Annex A [Catalogue of the information originally requested]

The Commissioner believes the complainant submitted eight unique letters to the University of Northampton which requested 32 different items of information. This excludes exact reaffirmations of previous requests.

The details of each request are in this Annex, along with the date each request was submitted to the University of Northampton.

Letter 1 (Submitted 20 May 2005)

The information I want from the University College Northampton is unedited copies of:

1. University College Northampton's letter of 9 October 2001 to the University of Leicester. **[Item 2]**
2. University College Northampton's letter of 10 April 2001 to the University of Leicester, complete with all enclosures (i.e. pertinent Board of Examiners' minutes, External Examiners' reports and results sheets). **[Items 1]**
3. BA Business Information Systems Year 1 results sheets for June 1995. **[Item 3]**
4. BA Business Information Systems Year 1 Board of Examiners' Minutes for June and September 1995.
5. BA Business Information Systems Board of Examiners' minutes for September 1998 and June 1999. **[Items 4 and 5]**
6. BA Business Information Systems Year 1 External Examiners' reports for June 1995.
7. BA Business Information Systems External Examiners' Report for September 1998 and June 1999.
8. BA Business Information Systems Year One Student Survey reports during September 1994 and June 1995.
9. BA Business Information Systems Year Two Student Survey reports during September 1995 and June 1996.
10. BA Business Information Systems Year 3 Student Survey reports during September 1996 and June 1996.
11. College Standard Agenda regarding Boards of Examiners' required conduct between June 1995 and June 1999.
12. Assessment in School Staff Guide from September 1994 to June 1998.
13. University College Northampton Graduate Survey's between 1999 and 2002.
14. University College Northampton current complaints procedure/s.

Letter 2 (Submitted 27 May 2005)

15. 'Please provide an unedited copy of the document that permitted this disclosure of personal data'. **[Item 7]**

Referring to a 1998 publication in connection with a degree ceremony (Their ref: RMU/JLA/Fol(f30.7)/000010).

Letter 3 (Submitted 6 July 2005)

16. 'University College Northampton's (UCN) letter of 16 June 2005 enclosed copies of its publication Graduate to Success as requested. Unfortunately I should also have asked for the 1998 Publication. Will UCN please release a copy of this publication in accordance with its obligations under the FOI' We take this to mean [the complainant] wants:
 - The 1998 Publication of Graduate to Success.

'University College Northampton's (UCN) letter of 16 June 2005 stated it believed the FOI entitles enquirers to information not necessarily documents. Accordingly, without any prejudice to any argument made under 2 please address the following in accordance with its obligations under the FOI"

17. How many students were awarded University of Leicester accredited degrees in July 1998 are recorded in Nene-University College Northampton's BA Business Information Systems 18 June 1998 Board of Examiners minutes?'
18. Did the two students referenced in UCN's letter dated 9 October 2001 enrol at Nene College of Higher Education Northampton for University of Leicester accredited degrees?
 - We take this to mean [the complainant] wanted the University to answer these two questions.
19. Regarding the 1995-1996 Student Surveys – "please confirm when the documents not disclosed were destroyed, lost or mislaid" **[Item 6]**

Letter 4 (Submitted 25th July 2005)

20. Unfortunately your answer to 'How many students awarded University of Leicester accredited degrees in July 1998' cannot be 17. It cannot because the Degree Congregation publication confirms only 6 students.
 - We take this to mean that [the complainant] wanted the University to confirm that it had released the correct information to him and that the answer 17 was correct and that it was not 6 as he thought'
21. As your answer to my first question is wrong I believe it prudent to check "Did the two students referenced in UCN's letter dated 9 October 2001 enrol at Nene College of Higher Education Northampton for University of Leicester accredited degrees?' is right'
 - The University was asked to check that too.'
22. Accordingly please confirm if the two students redacted from UCN's 9 October 2001 letter appear in the list (6 named students redacted, including the name of the complainant)'.
 - This is a new request – whether the two of the six named students appear on the 9 October 2001 letter.

Letter 5 (Submitted 10th August 2005)

Reference to your letter of 9 August 2005.

Please note and respond to the following:

23. How many students awarded University of Leicester accredited degrees in July 1998 are recorded in Nene-University College Northampton's BA Business Information Systems 18 June 1998 Board of Examiners minutes?
24. [FOI Section 77 confirms it is an offence to block with the intention of preventing disclosure. Accordingly, your wilful blocking of information that should be disclosed is an offence. Consequently] 'Rectify this by confirming how many of the six students detailed in my 25 July letter are recorded in the 18th June 1998 Board of Examiners minutes?'
25. Did the two students referenced in UCN's letter dated 9 October 2001 enrol at Nene College of Higher Education Northampton for University of Leicester accredited degrees?
26. [Your 21 July 2005 letter states the Students referenced in UCN's 9 October 2001 were enrolled for University of Leicester accredited degrees. Accordingly,

unless these Students studied for a University of Leicester accredited BA in Business Information Systems degree, FOI Section 77 confirms you committed an offence by wilfully disclosing altered information. Consequently, rectify this by confirming the Students edited out of UCN's 9 October 2001 letter studied for a University of Leicester accredited BA in Business Information Systems degree?] Consequently rectify this by confirming the Students edited out of UCN's 9 October 2001 letter studied for a University of Leicester accredited BA in Business Information Systems degree?

27. FOI Section 45 confirms the Secretary of State expects UCN to establish a Code of Practise that will make provision for the consulting of persons whose interests are likely to be affected by the disclosure of information. Accordingly, in view of the procedural irregularity that took place on 18 June 1998 and the chance that the two students edited out of UCN's 9 October 2001 letter also had their appeals misconducted by HEI employees intent on concealing this procedural irregularity, will you please explain why UCN have failed to contact the two students.
- We take this to mean [the complainant] wanted a statement from the University about their procedure to contact third parties and whether they have been contacted.

Letter 6 (Submitted 24 August 2005)

28. 'Reference University of Leicester accredited degree Students' [6 named students redacted, including name of the complainant]. How many of these students are recorded in the 18 June 1998 Business Information Systems' Board of Examiners minutes? **[Item 8]**

Letter 7 (Submitted 5 September 2005)

'I also request the following information from UCN under the FOI:

29. A copy of UCN Dr Clarke's document to UCN's Mr Halton of May/June 1997. If UCN have destroyed, lost or mislaid this document Shoosmiths solicitors Milton Keynes office will have a copy. **[Item 9]**
30. Nene College Northampton's 1997 Graduate to Success (or similarly titled) publication.
31. Nene-University Northampton's 10 July 1998 Degree Congregation (or similarly titled) publication. For the avoidance of doubt, I do not want a copy of the University of Leicester's 8 July 1998 Degree Congregation publication.

Letter 8 (Submitted 22 August 2007)

32. 'UoN's BA Business Information Systems' Board of Examiners (BABIS) minutes dated September 1998 and June 1999

My letters to University of Northampton (UoN) and their solicitor (Shoosmiths) dated 16 August 2005 and 23 July 2007 respectively, confirm I have requested copies of the above documents with all personal data redacted under Section 1 of the FOIA'

- This is a request for a redacted version of item five.

Annex B [Catalogue of the University's responses connected to each piece of information]

Letter 1 (Submitted 20 May 2005)

1. PA cited s40(2) exemption and did not release this information originally (9 August 2005).
PA released this letter without the third party names after a SAR by [the complainant] (1 December 2006).
PA released whole letter in response to a Disclosure Application within separate court proceedings (31 July 2007).
[The complainant] still wants to know if the PA should have released it in response to his request of June 2005.
2. PA cited s40(2) exemption and did not release this information originally (9 August 2005).
PA released this letter without the third party names after a SAR by [the complainant] (1 December 2006).
3. PA cited s40(2) exemption and did not release this information originally (9 August 2005).
PA released this letter without the third party names after a SAR by [the complainant] (1 December 2006).
4. PA cited s40(2) exemption and did not release this information originally (9 August 2005).
PA released this letter without the third party names after a SAR by [the complainant] (1 December 2006).
5. PA cited s40(2) exemption and did not release this information originally (9 August 2005).
PA indicated that this letter didn't contain any personal information of [the complainant] and released nothing except a list of those present at the Board of Examiners meeting (1 December 2006).
[The complainant] made a new request for a redacted version of this information (22 August 2007)
6. PA enclosed appropriate documentation redacted in accordance with s41 (16 June 2005).
[The complainant] informed this office that no further action was required (01 December 2006).
7. PA enclosed appropriate documentation redacted in accordance with s41 (16 June 2005).
[The complainant] informed this office that no further action was required (01 December 2006).
8. PA enclosed appropriate documentation redacted in accordance with s41 (16 June 2005).
[The complainant] informed this office that no further action was required (01 December 2006).
9. PA informed the complainant that the University did not hold this information anymore (16 June 2005).
This was confirmed in their internal review (9 August 2005).
[The complainant] indicated he was not satisfied (05 July 2007)
10. PA enclosed appropriate documentation redacted in accordance with s40 (16 June 2005).

- [The complainant] informed this office that no further action was required (01 December 2006).
11. PA enclosed appropriate documentation redacted in accordance with s40 (16 June 2005).
[The complainant] informed this office that no further action was required (01 December 2006).
 12. PA informed the complainant that the University did not hold this information anymore.
[The complainant] informed this office that no further action was required (01 December 2006).
 13. PA enclosed appropriate documentation (16 June 2005).
[The complainant] informed this office that no further action was required (01 December 2006).
 14. PA enclosed appropriate documentation (16 June 2005).
[The complainant] informed this office that no further action was required (01 December 2006).

Letter 2 (Submitted 27 May 2005)

15. PA informed the complainant that no such document exists, has existed or would have existed (16 June 2005)
The complainant indicated he was not satisfied (05 July 2007)

Letter 3 (Submitted 6 July 2005)

16. PA enclosed appropriate documentation (21 July 2005)
[The complainant] informed this office that no further action was required (25 July 2005).
17. PA answered 'answer is 17' (21 July 2005)
[The complainant] indicated that the Degree Congregation Notice meant the answer should have been six (01 December 2006)
[The complainant] learnt from the University of Leicester in a separate request that the answer was two with sixteen others being awarded Nene University Northampton accredited degrees (02 November 2005).
PA indicated that the consistent reasking of this question was seen as vexatious (9 September 2005)
18. PA answered 'yes they did' (21 July 2005).
[The complainant] learnt from the University of Leicester in a separate request that the answer was actually 'no' (02 November 2005).

Letter 4 (Submitted 25 July 2005)

19. PA answered that 'further comments are unnecessary as you have the answer'
[This is unclear as it could mean either 6 or 17 (09 August 2005)]
University of Leicester provided the revised response of two with 16 remaining applicants being awarded Nene University Northampton accredited degrees (02 November 2005).
20. Repeat of question 18.
PA is unclear too (09 August 2005).
21. PA answered that it wasn't prepared to confirm or deny in this case relying on s40(5) (09 August 2005).
The complainant indicated he was not satisfied (05 July 2007)

Letter 5 (Submitted 10 August 2005)

22. A repeat of no 17.
PA had already answered 17 (21 July 2005).
Second reply on 09 August 2005 is unclear
PA indicated that the consistent repeating of this question was seen as vexatious (9 September 2005)
23. A repeat of no 21.
PA indicated that the consistent repeating of this question was seen as vexatious (9 September 2005)
24. A repeat of no 18.
PA was unclear (09 August 2005).
PA indicated that the consistent repeating of this question was seen as vexatious (9 September 2005)
25. A repeat of no 21
PA had confirmed their previous answer (09 August 2005).
PA indicated that the consistent repeating of this question was seen as vexatious (9 September 2005).
26. PA answered that they were under no obligation to contact third parties and that their policy was that they did not (13 November 2005).
[The complainant] informed this office that no further action was required (01 December 2006).

Letter 6 (Submitted 24 August 2005)

27. A repeat of no 17.
Second reply on 09 August 2005 is unclear
PA indicated that the consistent repeating of this question was seen as vexatious (9 September 2005)

Letter 7 (Submitted 5 September 2005)

28. PA refused to answer initially claiming the complainant is vexatious (9 September 2005).
Information Commissioner invited the PA to answer this request.
University replied it had investigated and doesn't believe this information exists (9 March 2007).
[The complainant] indicated he was not satisfied (05 July 2007)
29. PA refused to answer initially claiming the complainant is vexatious (9 September 2005).
Information Commissioner invited the PA to answer this request.
Information was provided by the PA (24 April 2007).
30. PA refused to answer initially claiming the complainant is vexatious (9 September 2005).
Information Commissioner invited the PA to answer this request.
Information was provided by the PA (24 April 2007).

Letter 8 (Submitted 22 August 2007)

31. A repeat of no 5 – although with all personal data removed.
PA indicated that this was exempt on grounds of s14(2) (23 August 2007).
PA indicated that this letter didn't contain any personal information of the complainant and released nothing except a list of those present at the Board of Examiners meeting (1 December 2006).

Annex C [Catalogue of the letters sent by the complainant to the University]

The complainant wrote to the University regarding acquiring information on the following dates:

Pre FOI requests for Information.

- 27 August 1996.
- 29 October 1996.
- 19 November 1996.
- 31 January 1997.
- October 1998.
- January 1999.
- 21 February 2000.
- 05 April 2000.
- 13 October 2000.
- 18 December 2000.
- 5 January 2001.

Post FOI requests for Information.

- 20 May 2005.
- 27 May 2005.
- 6 June 2005.
- 14 June 2005.
- 6 July 2005.
- 25 July 2005.
- 8 August 2005.
- 10 August 2005.
- 16 August 2005.
- 24 August 2005.
- 5 September 2005.
- 12 September 2005.
- 11 October 2005.
- 17 July 2006.
- 23 July 2007.
- 22 August 2007.
- 24 August 2007.

Request to FOI for same information

- 22 February 2007.
- 29 March 2007.

Annex D [Responses by the University to the complainant's letters]

Pre FOI responses to requests for Information

- 21 October 1996.
- 13 November 1996.
- 12 December 1996.
- 7 January 1997.
- 23 May 1997.
- October 1998.
- January 1999.
- 30 March 2000.
- 12 October 2000.
- 12 December 2000.
- 20 December 2000.
- 11 January 2001.

Post FOI responses to requests for Information

- 16 June 2005.
- 14 July 2005.
- 21 July 2005.
- *08 August 2005 (Internal Review).*
- 09 August 2005.
- 22 August 2005
- 9 September 2005.
- 27 April 2007.
- 23 August 2007.

Annex E - Legal Annex

Freedom of Information Act 2000

Section 1

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

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

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

(3) Where a public authority –

- (a) reasonably requires further information in order to identify and locate the information requested, and
- (b) has informed the applicant of that requirement,

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

Section 3

“(1) In this Act “public authority” means –

(a) subject to section 4(4), any body which, any other person who, or the holder of any office which -

- (i) is listed in Schedule I, or
- (ii) is designated by order under section 5, or

(b) a publicly-owned company as defined by section 6.

(2) For the purposes of this Act, information is held by a public authority if –

(a) it is held by the public authority, otherwise than on behalf of another person,
or

(b) it is held by another person on behalf of the authority”.

Section 14

“(1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.

(2) Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request”.

Section 17

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

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

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

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

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

Section 40- Personal information

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

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

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

(3) The first condition is-

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

- (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
 - (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.
- (4) The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).
- (5) The duty to confirm or deny-
- (a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and
 - (b) does not arise in relation to other information if or to the extent that either-
 - (i) he giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or
 - (ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).
- (6) In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.
- (7) In this section-
- "the data protection principles" means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;
 - "data subject" has the same meaning as in section 1(1) of that Act;
 - "personal data" has the same meaning as in section 1(1) of that Act.

Section 77

“(1) Where –

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

any person to whom this subsection applies is guilty of an offence if he alters, defaces, blocks, erases, destroys or conceals any record held by the public authority, with the intention of preventing the disclosure by that authority of all, or any part, of the information to the communication of which the applicant would have been entitled”.