

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

25 June 2008

**Public Authority:** London Borough of Hounslow  
**Address:** The Civic Centre  
Lampton Road  
Hounslow  
TW3 4DN

### Summary Decision

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The complainants requested the Council to release the names and contact details of all staff at the Council, including the department in which they work and their head of department. The Council considered the request and refused to disclose the requested information citing sections 31, 36 and 40 of the Act. The Commissioner first considered the Council's application of section 36 of the Act. He concluded that the disclosure of the names and contact details of all staff would, or would be likely to, prejudice the effective conduct of public affairs. He also concluded that the public interest in maintaining this exemption outweighed the public interest in disclosing this information. In respect of the department in which each member of staff works, the Commissioner reached the decision that this information becomes meaningless without the name of each staff member to which it relates. As he concluded that the names of staff should not be disclosed, he decided not to consider this aspect of the complainants' request any further. Regarding the name of head of each department, the Commissioner decided that section 31 of the Act did not apply. Concerning the Council's application of section 40, the Commissioner concluded that the name of head of each department is personal data. However, he reached the view that disclosure would not contravene the Data Protection Act and therefore that this information should be released to the complainants within 35 days of this Notice.

## The Commissioner's Role

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

## The Request

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2. On 19 March 2005 the complainants made the following request for information in accordance with section 1 of the Act (the full text of this section of the Act and any other sections or exemptions referred to in this Notice can be found in the Legal Annex towards the end of this Notice):

"Please forward the directory of employees, working for the London Borough of Hounslow within the prescribed period as the Act allows.

The information should include the following:

which department they work for;  
who is their head of department;  
what are their email address; and  
their direct telephone and fax number(s)."

3. The Council first responded to this request on 8 April 2005. It advised the complainants that it had refused their request because the estimated cost of locating and retrieving the information would exceed the appropriate limit of £450.00 provided by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.
4. The complainants appealed against this decision to the Commissioner and requested that he conduct a thorough investigation into the Council's handling of this matter. As the Commissioner noted that the complainants had not exhausted the Council's internal complaints process, he informed the complainants to first request the Council to carry out a review of its initial decision.
5. The Council carried out an internal review on 21 November 2005. It informed the complainants that the requested information was not held in one single place or in any one understandable format. It therefore remained of the view that the cost of providing the information would exceed the appropriate limit under the Act.
6. As the Council had now issued its further response and it was apparent that the complainants' remained dissatisfied, the Commissioner wrote to the complainants on 2 December 2005 under case reference FS50097435 to advise them that their complaint would now be given formal consideration.

7. The Commissioner investigated the complaint and the Council's application of section 12 (cost limit) to the request. He concluded that the Council had incorrectly calculated the appropriate limit and failed to apply the provisions of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations appropriately to the request. Under reference FS50097435 the Commissioner issued a Decision Notice requiring the Council to reconsider the complainants' request in accordance with the Act within a period of 30 days.
8. The Council considered the complainants' information request afresh and issued a new Refusal Notice on 23 June 2006. It stated that although it remained of the view that the request exceeded the appropriate cost limit, it also wished to rely on sections 31 and 40 of the Act for the non disclosure of this information.
9. The complainants contacted the Commissioner on 5 July 2006 to advise him that they remained dissatisfied with the Council's further response. The complainants stated that they were of the view that the Council was not acting in a compliant manner by continuing to refuse to release the information.
10. As the complainants remained dissatisfied the Commissioner opened a new investigation under reference FS50125204 to consider the Council's more recent decision to withhold the requested information under sections 31 and 40 of the Act.

## **The Investigation**

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### **Scope of the case**

11. The Commissioner's investigation has sought to establish whether the Council complied with the requirements of section 1 of the Act and, in particular, whether it acted appropriately by withholding the requested information as outlined in paragraph 2 above under sections 31 and 40 of the Act. As will become apparent further on in this Notice, the Council also cited a further exemption, section 36 of the Act, during the Commissioner's investigation. He will therefore also be considering whether the requested information can be withheld under this exemption.

### **Chronology of the case**

12. The Commissioner wrote to the Council on 24 January 2007 to request some further information in relation to its application of sections 31 and 40 of the Act to the requested information.
13. The Council responded on 5 March 2007 providing further explanations of its application of section 31 and 40 of the Act. The Council also advised the Commissioner that it wished to rely on a new exemption, section 36 of the Act. It explained that it was of the view that disclosure of the requested information would be likely to cause a significant amount of disruption to the current systems

- in place at the Council and therefore that disclosure would be likely to prejudice its ability to conduct its public affairs effectively.
14. The Commissioner wrote to the Council on 2 April 2007 to request further more detailed explanations in relation to its application of sections 31 and 40 of the Act. As the Council had also raised a further exemption, it requested it to elaborate further on why it is of the view that the requested information is exempt from disclosure under section 36 of the Act.
  15. The Council provided its further response on 15 May 2007. It provided further explanations as requested and copies of its internal policy on Corporate Confidentiality and a Data Protection and Confidentiality factsheet in circulation amongst its employees.
  16. As the Commissioner remained unconvinced that the requested information was exempt from disclosure under the exemptions cited from the evidence provided, he requested the Council to provide further more detailed arguments for consideration.
  17. The Council responded further on 20 July 2007 providing the additional information requested.

## Analysis

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### Procedural issues

18. Section 17(1) of the Act states that if a public authority wishes to refuse a request on the basis that the requested information is exempt information under one or more exemptions outlined in Part II of the Act it must issue a Refusal Notice to the applicant within 20 working days 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.
19. The Commissioner notes that although the Council cited two of the exemptions it wished to rely on in the Refusal Notice it issued on 23 June 2006, it did not cite section 36 of the Act as the Council did not decide to rely on this section of the Act until a later date. As the Council claimed a late reliance on section 36 of the Act, it did not include its reasoning for applying this exemption in its Refusal Notice. The Commissioner has therefore found that the Council was in breach of section 17(1) of the Act in this case.

## Exemptions

20. Turning now to the requested information, the Commissioner will first consider the Council application of section 36(2)(c) of the Act.

### Section 36 – prejudice to the conduct of public affairs

21. Section 36(2)(c) of the Act allows for the exemption of information if its disclosure, in the reasonable opinion of a qualified person, would or would be likely to prejudice the effective conduct of public affairs. In order for the Commissioner to agree that this exemption is engaged the Council would first need to demonstrate that in the reasonable opinion of a qualified person disclosure would, or would be likely to, prejudice the Council's ability to offer an effective public service or meet its wider objectives or purpose due to the disruption caused by disclosure and the diversion of resources in managing the impact of disclosure.

22. The Information Tribunal stated in the case of *Guardian & Brooke v Information Commissioner and the BBC (EA/2006/0011 and 0013)* that a "reasonable opinion" for the purposes of this exemption is an opinion that is:

"reasonable in substance and reasonably arrived at".

The Commissioner accepts this view. The Council must therefore also demonstrate that the qualified person's opinion that disclosure would or would be likely to prejudice the effective conduct of public affairs is both objectively reasonable and reasonably arrived at.

23. When considering a prejudice based exemption it is also necessary to consider the interpretation of "likely to prejudice". In the case of *John Connor Press Associates Ltd v Information Commissioner (EA/2005/005)* the Information Tribunal outlined its interpretation of "likely to prejudice" and stated that:

"the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk".

In other words, the risk of prejudice need not be more likely than not, but must be substantially more than remote. The Commissioner accepts this view.

24. Secondly, and once the prejudice test is satisfied, the Council needs to consider the public interest test as this is a qualified exemption, weighing up the arguments for and against disclosure.

25. The Council confirmed that the qualified person whose opinion was sought in this case was the Director of Legal Services who also acts as the Council's Monitoring Officer. It advised that details of this request were passed to the Monitoring Officer who then took the decision that section 36 of the Act is engaged for the reasons the Commissioner will now explain.

26. The Council confirmed that it has 3499 employees and currently not all employees' names and contact details are readily available to the public. In

response to the complainants' information request it decided to release the names and contact details of senior management but refused to release the details of every member of staff below this level of seniority, as it considered this was inappropriate and would jeopardise its ability to conduct its functions and run its public affairs effectively.

27. In accordance with its existing internal policies, details of some individual members of staff, including names, telephone number and email address, are disclosed but only on a need to know basis. This piece meal disclosure only occurs when it is necessary for a particular member of the public to contact a specific member of staff who is at that time dealing with a particular matter or concern. The Council stated that in such a large organisation this is an acceptable method of communication and rarely is information freely available which would give a member of the public access to 3499 council employees when it would be appropriate to only contact one person.
28. The Council explained its current system and how this works effectively. Telephone calls are directed via the switchboard or via departmental numbers to the relevant member of staff trained to deal with that particular enquiry or matter. Incoming correspondence and emails are directed in a similar way to ensure that they are directed straight away to the relevant department and the staff trained to deal with such enquiries. The Council believes this system works effectively and ensures that it provides an efficient service to its constituents.
29. In terms of disruption, the Council confirmed that disclosure would potentially allow a member of the public to bombard the Council with numerous emails to various members of staff leading to the possible crash of its IT system. Disclosure would also further expose the Council to the current threats of IT viruses and it is of the view that its current system would be unable to cope with the demand on scanning that numerous malicious or unsolicited emails would cause.
30. The Council also argued that disclosure of all contact details would encourage some users to contact the incorrect member of staff or to copy in various staff members into email correspondence, particularly those users that are aggrieved or deemed to be vexatious.
31. The Commissioner asked the Council to elaborate further and to demonstrate exactly how disclosure would have such an impact and to what extent. The Council responded using vexatious users as an example. It stated that it accepted the Act was purpose blind. However, it felt the level of disruption disclosure would cause is clear, particularly if the requested information became readily accessible to users deemed to be vexatious or unreasonably persistent by the Council.
32. The Council explained, in relation to this case, that the complainants are council tenants and are well known to the Council, particularly for the level of complaints they have submitted over the last three years. It confirmed that it deemed the complainants to be vexatious in April 2004 due to the persistent and vexatious nature of the many complaints they had submitted over a period. The Council advised that this decision was supported by the Local Government Ombudsman and in accordance with its internal policy for such complainants/users the

- complainants were allocated a single point of contact for all issues within the Council. It explained that although it had advised the complainants that if this procedure was not followed it could not guarantee that their particular query would be addressed appropriately, the complainants abused this procedure on a number of occasions insisting on complaining to numerous employees.
33. The Council confirmed that the complainants have in the past often bombarded unsuspecting employees with sometimes up to 10 emails per day on the same matter. Emails relating to repairs and alterations to their council property would be directed to both the in house legal team and the Council's "Homes" team which is specifically designated to manage repairs. Emails have also been sent to "back office" staff that do not necessarily need to be contacted and whom have been upset by the "threatening" tones of their letters. The Council also confirmed that it had also received allegations of the complainants "spying" on some staff.
  34. As stated above, the Council confirmed that letters and emails have often been copied to various members of staff, including the Chief Executive. In some instances correspondence has also been directed to the Local Government Ombudsman, the BBC and Channel 4. It stated that it suspected that the complainants simply take the names of employees they are aware of and add them to the "To" field of a complaint email. In one particular case 10 employees received the same email when only one member of staff was dealing with the complaint. This resulted in nine members of staff wasting time and public resources trying to ascertain the nature of the complaint, time which should have been spent by one employee tasked to deal with the particular complaint.
  35. The Council stated that it is of the view that the level of disruption that would, or would be likely to, be caused by disclosure is therefore clear. Disclosure would provide members of the public, including those users deemed to be vexatious or persistent, with access to over 3000 employees' names and contact details. It stated that the concept that the complainants and other vexatious users could randomly email, write to and telephone any one or more of those employees would overwhelm many employees with emails, letters and calls that are not for them to deal with. This would impact on service levels and possibly lead to more complaints from vexatious users, as the service they receive diminishes. From past experience of these complainants and other vexatious users, it is envisaged by the Council that the service levels of a particular team bombarded with emails, letters and calls would therefore be significantly compromised.
  36. The Council is also of the view that disclosure would lead to an increase in contact from external organisations which try to target employees for marketing purposes. Not only would such contact be a nuisance to staff but it would or would be likely to impact on services levels throughout the Council.
  37. In conclusion the Council confirmed that it is of the view that disclosure would be likely to prejudice its ability to offer an effective public service for the reasons explained above. For the same reasons, it stated that the public interest in maintaining this exemption outweighs the public interest in disclosing the requested information.

38. Given the background to this particular case, the Commissioner is of the view that it may well have been more appropriate for the Council to consider the application of section 14 of the Act (vexatious and repeated requests.) This is further explained in the "Other Matters" section later on in this Notice. However he has also considered the Council's arguments for its application of section 36 to the requested information in all the circumstances of this case.
39. The Commissioner will first consider the complainants' request for employee contact details; each employee's email address, fax number and telephone number. He will then go on to consider the complainants' request for the names of all staff, the department in which they work and their head of department later on in this Notice.

#### Request for contact details

40. The Commissioner notes that a recent Tribunal hearing dealt with a similar request; the case of the *Ministry of Defence v Information Commissioner and Rob Evans (EA/2006/0027)*. Although the Tribunal stated at paragraph 86 that:

"... it is not setting any binding precedent.....Nor is the formula the Tribunal now suggests appropriate so as to be treated as in some way transmissible to or operable within the setting of any other Government Department....."

and the Commissioner notes that the facts and circumstances of this case are different, it is his view that some general parallels can be drawn from this decision which are directly relevant to this particular case.

41. The Commissioner notes that the tribunal was essentially making two decisions; one in relation to the disclosure of the names of employees and one concerning the disclosure of contact details. It is the decision relating to contact details that is of relevance here. The request related to the Defence Export Services Organisation (DESO) and that in many ways the decision wholly relates to the structure and nature of that department. However, the Commissioner also notes that the Tribunal ruled that no contact details of any staff other than those already in the public domain should be disclosed despite it accepting that there was a considerable public interest in the nature of the requested information in this case.

42. At paragraphs 88 the tribunal stated:

"....countervailing risks such as the speed of disruption, the fact that there is likely to be continuous interruption and the risk of inadvertent loss or leakage of information constitute in the Tribunal's view substantial factors militating against disclosure of such details."

43. The Commissioner accepts that the Council already has in place a system for fielding incoming telephone calls and correspondence to ensure that these are directed to the most appropriate member of staff for action. He also accepts that any less organised system where calls and correspondence are directed to no specific area or directed randomly to any member of staff would cause disruption,



inefficiency and prevent the Council from delivering the current level of service that users can expect.

44. The Council highlighted the disruption it envisaged if disclosure were ordered by using the complainants and other vexatious users as an example. The Commissioner notes that the complainants were deemed vexatious in April 2004 following the receipt of numerous complaints over a specific period. He also acknowledges that this decision was supported by the Local Government Ombudsman and that despite a system being put in place to handle their enquiries and specific instructions about future contact being given to the complainants, the complainants have continued to correspond in a vexatious manner.
45. According to the Council the complainants have a history of contacting various members of staff about a particular issue and copying in up to 10 other members of staff when one specific employee is already tasked to address their concerns. The Commissioner accepts that such activity causes disruption within the Council, can waste valuable public resources and impacts upon service levels across the Council. Despite being asked to contact one single point of contact, the complainants have continued to copy in various members of staff, often unnecessarily.
46. The Commissioner therefore accepts in this case that there is a likelihood that disclosure would cause further disruption. Disclosure would provide the complainants and other vexatious users who are aggrieved about a particular issue with over 3000 employees' contact details and the ability to randomly contact members of staff via various methods. It is reasonable under these circumstances to assume that more time and public resources would be diverted to managing the impact that disclosure would likely cause. The Commissioner accepts that the Council has a public function and must ensure that it provides an effective public service to all users. He therefore agrees that disclosure of contact details in this case would be likely to hinder the Council's ability to perform these functions effectively.
47. For employee contact details, the Commissioner is satisfied that, on the basis of the Council's submissions as outlined above, the opinion of the Monitoring Officer is reasonable in substance and reasonably arrived at. He has therefore concluded for this information that disclosure would be likely to prejudice the effective conduct of public affairs and that section 36 of the Act is engaged.

#### Request for the names of all staff

48. Concerning the complainants' request for the names of all staff, the Commissioner accepts that it is easy to work out a staff member's email address if you know their name and have prior knowledge of the structure of the Council's email address. It is clear from the Council's submissions that the complainants already have access to certain members of staff's email addresses as a result of previous complaints or enquiries. If the names of all employees were released, it would be possible for the complainants to work out every member of staff's email address within the Council.

49. For the reasons explained in paragraph 46 above, placing over 3000 employees' email addresses into the public domain could possibly lead to email correspondence being directed randomly to any member of staff instead of through the existing channels. Such activity would be likely to cause disruption within the Council and result in various members of staff dealing with one enquiry which would have been directed to one member of staff specifically trained to deal with that matter through the current system. It would also provide any member of the public with a tendency to copy in various members of the Council into one email additional names of staff at the Council that they can contact. Again, for the reasons explained above such activity can cause disruption. The Commissioner accepts that it is likely such disruption would increase with the level of detail about staff names in the public domain.
50. As stated in paragraph 47 above, the Commissioner is satisfied that, on the basis of the Council's submissions, the opinion of the Monitoring Officer is reasonable in substance and reasonably arrived at. Concerning the names of staff, the Commissioner is of the view that disclosure would be likely to prejudice the effective conduct of public affairs and therefore that section 36 of the Act is engaged.

Request for the department in which each member of staff works and the head of department

51. In respect of the complainants' request for the department in which each member of staff works and their head of department, it is the Commissioner's view that the Council has failed to demonstrate exactly how the disclosure of this information would, or would be likely to, prejudice the effective conduct of public affairs. He does not accept that disclosure would, or would be likely to, lead to disruption within the Council or would be of any assistance to, for example, vexatious users wishing to vent their dissatisfaction with a particular matter or just wishing to maliciously cause the Council disruption. He has therefore reached the decision that the exemption is not engaged for this specific information.

**Public interest test**

52. As the Commissioner is satisfied that section 36 of the Act applies to the names and contact details of all Council staff whose details are not currently in the public domain under its existing policy and this is a qualified exemption, it is now necessary to consider the public interest. This test involves weighing up the arguments for and against disclosure.

For disclosure

53. The complainants require access to the requested information, as they have experienced problems in the past with various employees when trying to resolve complaints they have raised. They stated that employees would often "pass the buck" and "willfully mislead, provide wrong information, confuse issues". Although these appear more personal reasons rather than a matter of public interest, the Commissioner accepts that disclosure may promote transparency and further

accountability within the Council. He also accepts that there is an obvious public interest in members of the public being able to contact their local authority.

### Against disclosure

54. As stated above, the Commissioner accepts that there is an obvious public interest in members of the public being able to contact their local council whether for assistance, information or to raise a complaint. However, the Commissioner notes that the Council already has a system in place that is designed to work efficiently and a system that ensures that telephone calls and any correspondence is directed to the relevant department and staff for attention, as explained previously in paragraph 28. It is the Commissioner's view that the public interest in members of the public being able to contact the Council is already met by the current systems in place and he can see no strong public interest in the mass disclosure of every member of staff's name and contact details.
55. The Commissioner accepts that disclosure would place over 3000 employee details into the public domain and provide those users of a persistent or vexatious nature the opportunity to randomly telephone, email and write to anyone or any number of employees. He agrees that, in this case, such activity is likely given the relationship between the Council and the complainants and that generally such activity could be adopted by other vexatious users. This would lead to disruption within the Council, diverting public resources to managing such disruption with a consequent adverse impact on service levels, which is not in the public interest.
56. The Commissioner notes that this view seems to be supported by the Information Tribunal in the case of the *Ministry of Defence v Information Commissioner and Rob Evans (EA/2006/0027)*. In this appeal the Tribunal found no strong arguments militating in favour of disclosure of contact details. It stated that:

“ If there is a public interest inherent in the public's ability to contact anyone,.... the same is outweighed first by the risk of increasing, if not undue, interference in carrying out of those individual's responsibilities”. (Paragraph 88).
57. The Tribunal also felt that electronic sabotage was a growing problem with electronic means of disrupting business continuously evolving and becoming more sophisticated. The Commissioner accepts that there is a public interest in reasonably restricting access to employee contact details to a need to know basis to mitigate this risk.
58. For the reasons explained in paragraphs 54 to 57 above, the Commissioner has concluded that the public interest in maintaining this exemption outweighs the public interest in disclosing the names and contact details of all staff.
59. As stated in paragraph 51 above, it is the Commissioner's view that the complainants' request for the department in which each member of staff works and their head of department is not exempt from disclosure under section 36 of the Act. Concerning the complainants' request for the department in which each member of staff works, the Commissioner notes that such information becomes

irrelevant and meaningless without the name of the staff member to which it relates. As the Commissioner has decided that the names of staff should not be disclosed, it is his view that this part of the complainants' request becomes redundant, considering the context in which the information was requested and the reasons why the complainants require access to the overall information. As this information alone would be meaningless, the Commissioner has decided not to consider any further this element of the complainants' request. The remaining sections of this Notice will therefore concentrate on the complainants' request for the name of head of each department and the Council's application of section 31 and 40 of the Act.

### **Section 31 – law enforcement**

60. Section 31 provides an exemption to the right to know if releasing the information would or would be likely to prejudice law enforcement, taxation and various types of regulatory activity as defined in subsections of 31(1) and 31(2) of the Act. In this case, the Council has argued that disclosure would, or would be likely to, prejudice the prevention or detection of crime (31(1)(a)).
61. For the Commissioner to agree that this exemption is engaged, the Council would first need to demonstrate that the disclosure of the name of head of each department would, or would be likely to, prejudice the prevention or detection of crime. As explained previously in paragraph 23 above, the risk of prejudice need not be more likely than not, but must be substantially more than remote.
62. Secondly and once the prejudice test is satisfied, the Council needs to consider the public interest test as this is a qualified exemption, weighing up the arguments for and against disclosure.
63. The Commissioner notes that the main arguments presented by the Council concern the theft or misuse of employees' identities. It stated that it is of the view that the requested information could be used by fraudsters to enable them to steal an individual's identity or the information could be used by criminals wishing to pose as a council employee to gain access to a particular property. The Commissioner does not agree this information alone could be used in this way or pose any such threat.
64. As the Council has failed to demonstrate exactly how and to what extent the disclosure of the name of head of each department would, or would be likely to, prejudice the prevention or detection of crime, the Commissioner has concluded that section 31(1)(a) is not engaged.

### **Section 40 – personal data**

65. The Commissioner will now consider whether the complainants' request for the name of head of each department is personal data and if so, whether disclosure of this information would contravene the Data Protection Act 1998 ('the DPA'). Personal data is defined in section 1 of the DPA as follows:

“personal data” means 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 or any other person in respect of the individual

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”.

66. The Commissioner has considered the remaining information. He notes that selective members of staff in the Council will hold the post of head of department and that to satisfy this element of the complainants’ request the Council would need to disclose the names of those staff. The Commissioner accepts that the name of an individual is personal data.
67. As the Commissioner has established that the name of head of each department is personal data, it is now necessary to consider whether disclosure would contravene any of the data protection principles outlined in the DPA. The principle of relevance here is the first data protection principle, which states:
- “Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless-
- (a) at least one of the conditions in Schedule 2 is met, and
  - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met”.
68. To determine whether personal data would be processed fairly in releasing the name of head of each department in the Council to the complainants, the Commissioner has considered whether there would be any unfairness to the subjects of those data.
69. It is the Commissioner’s view that there would be no unfairness to the data subjects if the general public were to learn of the name of head of each department. This is because the information relates to specific individuals acting in an official or work capacity, not their private lives. The data subjects concerned also hold a senior position within a public authority and are figureheads responsible for the functions and work carried out in their department. Staff of such a senior level are subject to further public scrutiny and accountability when compared to less senior members of staff. Very often, the names of these people are already in the public domain, for example, on the Council’s website, referred to in leaflets or publications or contained in Council minutes, which are also available on the Council’s website.
70. In term of lawfulness, the Commissioner is not aware and has not received any evidence from the Council to demonstrate that disclosure of the head of each department would be in breach of any law.

71. As the requested information is not sensitive personal data, Schedule 3 of the DPA is not relevant in the case. The Commissioner has therefore only considered whether there is a condition for processing under Schedule 2 of the DPA.
72. It is the Commissioner's view that condition 6 of Schedule 2 (full text of this section of the DPA can be found in the Legal Annex section at the end of this Notice) is satisfied in this case. The Commissioner is satisfied that the complainants have a legitimate interest in the requested information as members of the public and there is no obvious prejudice to the rights and freedoms of the data subjects, as he can see no unfairness to those data subjects if the information were disclosed for the reasons explained in paragraph 69 above.

## **The Decision**

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73. The Commissioner found that the Council was in breach of section 17(1) of the Act in this case.
74. Concerning the complainants' request for the names and contact details of all staff, the Commissioner concluded that the Council was correct to rely on section 36 of the Act in this case.
75. Regarding the complainants' request for the name of head of each department, the Commissioner decided that the Council was incorrect to rely on sections 31 and 36 of the Act. Although he concluded that the requested information is personal data, the Commissioner decided that section 40 of the Act did not apply. This is because he concluded that the disclosure of the heads of department would not contravene the DPA.

## **Steps Required**

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76. In view of the matters referred to above the Commissioner gives notice that in exercise of its powers under section 50 he requires the Council to disclose the following information to the complainants within 35 days of receipt of this Notice:
  - A list of all heads of department in the Council

## **Other matters**

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77. As previously stated in paragraph 36 above, the Commissioner is of the view that it may have been more appropriate for the Council to consider the application of section 14 of the Act in this case. Although he accepts the arguments presented by the Council concerning the behaviour of the complainants and other vexatious users were sufficient to engage section 36 of the Act, he notes that these submissions are also directly relevant to section 14 of the Act and its intended

purpose. The Commissioner therefore recommends that the Council reviews the circumstances of this case and the guidance available on the Commissioner's website for the application of section 14 of the Act, as this may be helpful when dealing with future requests of a similar nature.

78. The Commissioner wishes to highlight that this decision is not setting a precedent for any future requests he may be asked to consider concerning the names and contact details of Council staff. This decision is also not directly transferable to other public authorities which may receive a similar request, as the internal structure will vary between government departments and public authorities. There may be other cases in which there are circumstances that suggest wider disclosure of contact details should be made provided there is a legitimate interest for this information.

## Right of Appeal

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79. 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 25<sup>th</sup> day of June 2008**

**Signed .....**

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



## Legal Annex

### Freedom of Information Act (2000)

#### **Section 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 12(1)**

Provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

#### **Section 17(1)**

Provides 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 that would not otherwise be apparent) why the exemption applies.”

#### **Section 31(1)**

Provides that –

“Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice -

- (a) the prevention or detection of crime,

- (b) the apprehension or prosecution of offenders,
- (c) the administration of justice,
- (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,
- (e) the operation of the immigration controls,
- (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,
- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),
- (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
- (i) any inquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment."

### **Section 31(2)**

Provides that –

“The purposes referred to in subsection (1)(g) to (i) are-

- (a) the purpose of ascertaining whether any person has failed to comply with the law,
- (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,
- (c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,
- (d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on,
- (e) the purpose of ascertaining the cause of an accident,
- (f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration,
- (g) the purpose of protecting the property of charities from loss or misapplication,
- (h) the purpose of recovering the property of charities,
- (i) the purpose of securing the health, safety and welfare of persons at work, and
- (j) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work.”

### **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.

### **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.”

### **Data Protection Act 1998**

The first data protection principles states that –

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

- (a) at least one of the conditions in Schedule 2 is met, and
- (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

### **Schedule 2 condition 6(1) states-**

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