

Freedom of Information Act 2000 (Section 50)

Decision Notice

18 December 2008

Public Authority: Queen's University Belfast
Address: University Road
Belfast
BT7 1NN

Summary Decision

The complainant requested information from Queen's University, Belfast (the 'University') relating to the admissions test to the Institute of Professional Legal Studies (the 'Institute'). The University withheld most of the information, relying on the exemptions under sections 36(2)(c) and 40(2) of the Act.

The Commissioner's decision is that the University correctly withheld the requested marking schemes in reliance on the exemption under section 36(2). However the University wrongly withheld the names of internal and external examiners under section 40(2). The Commissioner therefore requires that the University disclose the names of the examiners to the complainant.

The Commissioner also finds that the University breached sections 10(1) and 17(1) in that it did not provide an adequate refusal notice to the complainant within the specified time limit.

The Commissioner's Role

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

2. The complainant, on 5 April 2006, requested the following information from the University:

- “(i) The various marking schemes used over the past five years (2000 – present) in marking the admissions test to the Institute of Professional Legal Studies
- (ii) Any guidance issued over the past five years (2000 – present) to the examiners/markers of the admissions test to the Institute of Professional Legal Studies
- (iii) The names of any individuals who have acted as examiners or external examiners of the admissions test to the Institute of Professional Legal Studies”.
3. The University responded on 19 May 2006, confirming that it held the information requested. The University provided the complainant with some of the information he requested, namely that falling within part (ii) of his request. However, the University refused to provide the information falling within parts (i) (the ‘marking schemes’) and (iii) (the ‘examiners’ names’) of the complainant’s request.
 4. With regard to the marking schemes, the University advised the complainant that it was withholding this information in reliance on the exemption under section 36 of the Act. This exemption relates to information if disclosure would, or would be likely to prejudice, the effective conduct of public affairs. With regard to the examiners’ names, the University advised the complainant that this information constituted personal data under the Data Protection Act 1998 (the ‘DPA’) and would not therefore be provided to him.
 5. On 13 June 2006 the complainant advised the University that he intended to appeal its decision, and asked for details of the appeal process. The University responded on 15 June 2006, providing the complainant with details of its complaints procedure. The complainant contacted the University again on 23 June and 28 July, and the University offered the complainant an informal meeting to discuss his request, which took place on 24 August 2006.
 6. The University wrote to the complainant’s representative on 4 October 2006 advising that a review had now been conducted, and that the University had nothing to add to its original response.
 7. By letter dated 19 October 2006, the complainant requested a formal appeal against the University’s decision. The University treated this as a request for an internal review.
 8. On 16 January 2007 the University advised the complainant that it had now completed the internal review. In relation to the marking schemes, the University advised the complainant that its original response of 19 May 2006 was inadequate in a number of respects. The University clarified that it did not in fact hold marking schemes relating to the period 2000-2003. The University also acknowledged that it had not fully explained why the exemption under section 36 was engaged in relation to some of the withheld information. The University clarified its reliance on section 36(2)(c), and gave details of the public interest test it had carried out in relation to this exemption. The University advised the complainant of its view that the exemption was engaged, and that the public interest in maintaining the exemption outweighed the public interest in disclosure.

9. In relation to the examiners' names, the University again advised the complainant that the refusal notice was inadequate in that it did not cite any exemption. The University clarified its view that the information was personal data of individuals other than the applicant (therefore it was third party personal data), and that it was exempt under section 40(2) of the Act. The University expressed the view that disclosure of the names of the examiners would be unfair to those individuals.

The Investigation

Scope of the case

10. On 12 March 2007 the complainant asked the Commissioner to consider whether or not the University had acted correctly in withholding the information requested in parts (i) and (iii) of his request (the 'withheld information'). The complainant did not ask the Commissioner to investigate the information which the University advised it did not hold (ie the marking schemes for 2000-2003), so this does not form part of this Decision Notice.

Chronology of the case

11. The Commissioner wrote to the University on 17 August 2007 regarding the complaint. The Commissioner advised the University of his view that the refusal notice dated 19 May 2006 did not comply with the requirements set out in section 17 of the Act, although he noted that the University had remedied these shortcomings in its letter to the complainant of 16 January 2007.
12. The Commissioner asked the University for further information about the internal review, as it did not appear that the University had conducted a review in accordance with the Code of Practice issued under section 45 of the Act. The complainant had expressed his dissatisfaction with the University's response to his request on 13 June 2006, and although a meeting had apparently been held in August a full internal review was not conducted until November 2006, and the complainant informed of the outcome in January 2007. The Commissioner also asked the University for further details of its application of the exemptions to the withheld information.
13. The University responded to the Commissioner's enquiries on 14 September 2007. With regard to the internal review, the University provided the Commissioner with a copy of its complaints procedure, which indicated that complaints would be handled informally in the first instance, and that if the applicant remained dissatisfied, then a formal internal review would be conducted.
14. In this particular case the University advised the Commissioner that it had emailed the complainant on 8 August 2006 to initiate the review process, but had received no response. The University was then contacted on 17 August by an

individual who claimed to represent the complainant. The University agreed to meet with the complainant's representative on 24 August 2006. The University agreed at this meeting that it would review the complainant's request.

15. The University advised the Commissioner that it did discuss the complainant's request at an internal meeting on 28 September 2006, although this was part of a wider discussion about complaints received by the University in relation to the Institute admissions test. On 4 October 2006 the University advised the complainant's representative that the refusal was upheld. The University indicated that its informal process was now complete, and the complainant could request an internal review if he desired. The complainant duly requested an internal review. The University advised the Commissioner that it conducted the internal review at a meeting on 28 November 2006. The meeting was attended by the Pro Vice Chancellor and relevant University staff, and it was agreed that the original refusal should be withheld.
16. The Commissioner inspected the withheld information on 18 October 2007. In addition, the University provided the Commissioner with further submissions in relation to the exemptions claimed, dated 3 December 2007 and 13 February 2008.

Section 36(2)(c) exemption

17. Section 36(2)(c) provides that information is exempt if, in the reasonable opinion of a qualified person, disclosure of the information would prejudice, or be likely to prejudice, the effective conduct of public affairs. The "qualified person" is set out in section 36(5) of the Act. The University confirmed to the Commissioner that the "qualified person" in this instance was the Registrar and Chief Operating Officer (the 'Registrar'). The University advised the Commissioner that in response to the complainant's request, it had sought and obtained verbally the Registrar's opinion on the requested information. The Registrar was further consulted during the internal review process, and attended the meeting on 28 September 2006 (referred to at paragraph 15 above).
18. The University advised the Commissioner that the Registrar was of the view that the marking schemes for the admissions test ought not to be disclosed because the release of the schemes would undermine the premise of the test. This was because the marking scheme could potentially separate candidates by such a small margin, and would be much less effective if candidates were able to see how marks were awarded.
19. The University also felt that disclosure of the marking schemes would prejudice examiners' ability to set the marking scheme each year, and could potentially expose the University to undue influence from third parties. The University was concerned that this could lead to academic judgment being the subject of discussion and interpretation, particularly within a legal setting. The University was therefore of the view that if the marking schemes were disclosed, the Institute would need to introduce a new way of selecting candidates. This would be costly and time-consuming.

20. The University also provided the Commissioner with full details of its public interest considerations in relation to the marking schemes, which can be summarised as follows:
21. In favour of disclosure:
 - There is a general public interest in accountability and transparency
 - Disclosure of marking schemes could provide a better understanding of how candidates' abilities are assessed.
 - Disclosure may also help to ensure that only the best candidates are selected by the Institute
22. In favour of maintaining the exemption:
 - Disclosure would undermine the University's ability to assess candidates objectively
 - Candidates were already provided with sufficient information about the core skills assessed by the admissions test
 - Disclosure would only benefit applicants to the Institute, there would be no wider public benefit
 - Disclosure could lead to academic judgment being challenged unfairly
23. The University advised the Commissioner that it had considered the competing arguments, and had reached the conclusion that the public interest in maintaining the exemption did outweigh that in disclosing the information.

Section 40(2) exemption

24. This exemption applies where the information is personal information of a third party (ie someone other than the applicant) and where disclosure would contravene any of the data protection principles¹, or section 10 of the DPA.
25. The University advised the Commissioner of its view that disclosure of the examiners' names would be unfair, and would therefore contravene the first data protection principle (which provides that data must be processed fairly and lawfully). The University argued that disclosure of examiners' names might lead to those individuals coming under pressure from candidates and other legal professionals.
26. The Commissioner asked the University whether it had sought consent from any of the examiners in relation to disclosure of their names. The University confirmed that it had not sought consent from any individual in writing, but that it had asked three examiners verbally for their views. According to the University one individual advised that they would not be willing to consent, as they felt they would come under pressure over their involvement in the process.

¹ As set out in Schedule 1 to the DPA

Findings of fact

27. The admissions test is administered by the Institute, and while the actual questions vary, the format remains the same each year. The marking scheme for each test provides detailed instructions for the examiners to follow; there is no room for discretion in the marking process. The University has stated to the Commissioner it holds marking schemes for the admissions tests held in 2004 and 2005, but it does not hold marking schemes for previous years.
28. The University holds the names and addresses of internal and external markers who were involved in the admissions test between 2002 and 2005. The number of internal examiners varied year on year, ranging from 7 to 21 individuals. During this period, nine individuals acted as external examiners, four at any one time.
29. Internal examiners are selected by the Institute Director from internal staff and those tutors who have expressed an interest in undertaking this role. External examiners are nominated by the Law Society of Northern Ireland, the Inn of Court Northern Ireland, the Law Society of Ireland and the Inns of Court School in London.

Analysis

Procedural breaches

Section 17: refusal notice

30. Where a public authority refuses a request for information it is required under section 17(1)(c) of the Act to provide the applicant with a "refusal notice" detailing the refusal and explaining the exemption or exemptions relied upon.
31. In addition, where the public authority is seeking to rely on a qualified exemption (one subject to the public interest test) it must provide details of the public interest arguments considered in favour of maintaining the exemption and those in favour of disclosure of the requested information. The authority must also explain the balance of these competing arguments.
32. The Commissioner noted that the University's refusal notice of 19 May 2006 did not provide sufficient detail on the application of the exemptions to the withheld information. The University did identify the exemption under section 36 of the Act as being applied to the some of the withheld information. However, the University did not explain why this particular exemption applied to the marking schemes, nor did it provide details of the public interest considerations. The University also failed to explain which exemption was being applied to the examiners' names.
33. The Commissioner notes that the University accepted that it did not provide an adequate refusal notice, and remedied this at the internal review stage. The Commissioner is of the view that this demonstrates the value of conducting an

effective internal review, as it provides an opportunity for a public authority to learn from initial handling errors and correct these before a complaint is made to the Commissioner. The Commissioner also notes that the University has provided assurances that it has taken steps to ensure that future refusal notices comply with the requirements of the Act.

Exemptions

Section 36(2)(c): prejudice to effective conduct of public affairs

34. Section 36(2)(c) is engaged where in the reasonable opinion of the qualified person, disclosure would or would be likely to prejudice the effective conduct of public affairs. When considering whether section 36(2)(c) is engaged, the Commissioner will take into account:

- whether an opinion was given;
- whether the person who gave that opinion is the qualified person for the public authority in question;
- when the opinion was given;
- whether the opinion is reasonable.

The reasonable opinion of a qualified person

35. The University has stated that the opinion was given by the Registrar between 5 April and 19 May 2006. The Commissioner is satisfied that the Registrar was authorised to act as the qualified person in this case (as set out at paragraph 17 above). It has been established, therefore, that an opinion was given and that this opinion was given by the qualified person for the University.

36. The Commissioner also needs to be satisfied that the qualified person has expressed a reasonable opinion, and in deciding whether or not this exemption is engaged, the Commissioner must have regard to the means by which the qualified person reached the opinion that the exemption was engaged. The Commissioner is mindful of the Information Tribunal's decision in the case of *Guardian & Brooke v The ICO & The BBC*², and in particular paragraph 64, which states that in relation to section 36

“in order to satisfy the sub-section the opinion must be both reasonable in substance and reasonably arrived at.”

37. The Commissioner notes that the University has been unable to provide him with evidence of the process by which the Registrar reached his opinion in relation to the marking schemes. However, the Act does not require documentary evidence of the qualified person's decision-making process, and the absence of this does not render the opinion invalid. The Commissioner is satisfied that the Registrar was asked to provide an opinion in relation to the complainant's request, and that

² Appeal Nos EA/2006/0011 and EA/2006/0013

he did have sight of the withheld information at this stage. Further, the Commissioner notes that the Registrar attended a meeting where the University's response was discussed, and was consulted at the internal review stage. In the light of this and the absence of a detailed explanation as to what advice was provided to the qualified person, the Commissioner is not aware of the factors taken into account by the qualified person when forming their opinion and so cannot verify whether these were relevant. Without this verification, the Commissioner is not able to conclude that the opinion was reasonably arrived at. However, even where the Commissioner does not find that the opinion of the qualified person was reasonably arrived at, he may conclude that the exemption provided by section 36(2)(c) is engaged where the opinion is overridingly reasonable in substance. This approach is supported by the Information Tribunal in *McIntyre v the Information Commissioner (EA/2007/0068)*, where it stated:

“where the opinion is overridingly reasonable in substance then even though the method or process by which that opinion is arrived at is flawed in some way this need not be fatal to a finding that it is a reasonable opinion” (paragraph 31)

38. In the absence of a submission or detailed explanation of the advice provided to the qualified person, the Commissioner has been unable to conclude that the opinion was reasonably arrived at and, therefore, has also been unable to conclude that the opinion was objectively reasonable. However, the content of the withheld information has been examined and the representations of the University considered. The Registrar's view (set out at paragraph 18 above) is that disclosure of the marking schemes would be likely to prejudice the effective conduct of public affairs in that it would undermine the Institute's admissions process. The Commissioner is satisfied that disclosure of the marking schemes would give candidates detailed information about the design of the admissions test, and would be likely to make it easier for many candidates to gain higher marks, which would undermine the basis of the admissions test. Consequently the Commissioner is satisfied that there is evidence of the likelihood of prejudice and it is reasonable to conclude that disclosure of this information would be likely to prejudice the future effective conduct of public affairs. The Commissioner concludes, therefore, that the opinion of the QP was overridingly reasonable in substance and that the exemption provided by section 36(2)(c) is engaged in relation to this information.

Public Interest Test

39. As the Commissioner is satisfied that the exemption under section 36(2)(c) is engaged, he must then consider whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
40. The University advised the Commissioner that it did consider arguments for and against release of the marking schemes. The University acknowledged the benefits of openness and transparency, especially in the context of a competitive admissions test. However, the University argued to the Commissioner that

disclosure of the marking schemes would effectively defeat its purpose as a test of candidates' ability, and that this would not be in the public interest.

41. The Commissioner is mindful of the particular circumstances in this case. The Institute admissions test is used to select 90 candidates out of several hundred, and candidates are ranked in order of merit. Competition for places is fierce, and the difference between gaining and failing to gain a place may come down to a difference of a few marks. The majority of candidates each year fail to gain a place at the Institute, and it is understandable that unsuccessful candidates will be disappointed. The Commissioner is aware that concerns about the admissions test have been raised with the University by a number of interested parties. The Commissioner accordingly appreciates that there is an argument for publishing the marking schemes, so that the public can be better informed as to the method of selecting candidates. This might serve to address concerns about the admissions test as a selection tool.
42. However, the Commissioner is also mindful that the public interest test as set out in the Act relates to what is in the best interests of the public as a whole, as opposed to interested individuals or groups. The Commissioner is aware that disclosure of the marking schemes into the public domain would lead to increased debate about the admissions test, but is of the view that this would not necessarily serve the public interest. The adequacy of the admissions test is not for the Commissioner to comment on: his decision must relate solely to where the balance of the public interest lies. The Commissioner has therefore to consider the likely impact of disclosure on the Institute's admissions system, and decide whether it would cause sufficient harm for that balance to lie in maintaining the exemption.
43. In considering this sensitive issue, the Commissioner has had regard to the nature of the information contained within the marking schemes. The questions and answers used in the admissions test vary from year to year, but the structure and format of marking schemes does not vary significantly, and the marking schemes are sufficiently detailed that candidates may often be separated by small margins. The Commissioner is of the view that, if the marking schemes were publicly available, more candidates would be likely to gain similar marks, and the University would have increased difficulty in selecting candidates. The Commissioner accepts that the relatively small number of places available at the Institute means that the University needs to be able to select candidates effectively, and the admissions test is the University's method of selection for this purpose.
44. However, the Commissioner also accepts that candidates are necessarily interested in the marking criteria. Given that places at the Institute are so limited, candidates will want to ensure that they have an opportunity to prepare effectively for the admissions test. The Commissioner notes that the University currently provides candidates with information about the core skills evaluated by the admissions test, and past question papers are also publicly available.
45. The Commissioner is mindful that there is a presumption of openness running through the Act, and if the public interest test is evenly balanced, the public

interest favours disclosure. However, the Commissioner is of the view that the argument for maintaining the exemption in this case is stronger than the opposing arguments for disclosure of the information requested. Although it is important for educational institutions to be accountable and transparent with regard to their selection processes, it is clear that these processes must be effective. The Commissioner is satisfied that disclosure of the marking schemes would undermine the value of the admissions test, and given that the test is the University's chosen selection method, disclosure would significantly harm the effectiveness of the University in selecting suitable candidates.

46. In light of the above, the Commissioner finds that the public interest in maintaining the exemption, and therefore withholding the marking schemes, outweighs the public interest in disclosure. Therefore the Commissioner is satisfied that the marking schemes were correctly withheld by the University.

Section 40(2): personal information

47. The exemption under section 40(2) of the Act applies to personal information relating to third parties, ie people other than the applicant. The exemption is engaged if disclosure of the personal information would breach any of the data protection principles, or section 10 of the DPA.
48. The University applied the exemption under section 40(2) to the identities of internal and external examiners in relation to the admissions test. The Commissioner is satisfied that this information constitutes personal information, as it meets the definition set out at section 1(1) of the DPA:

“personal data’ means data which relate to an 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”

Therefore the Commissioner is required to consider whether disclosure would contravene any of the data protection principles, or section 10 of the DPA.

First data protection principle

49. The University has claimed that disclosure of the examiners' names would breach the first data protection principle, which has three components:
1. Personal data shall be processed fairly
 2. Personal data shall be processed lawfully and
 3. Personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met.

50. In considering whether disclosure of the examiners' names would be unfair and therefore contravene the requirements of the first data protection principle, the Commissioner has taken the following factors into account:

- The individuals' reasonable expectations of what would happen to their personal data;
- The seniority of the individuals;
- Whether the individuals specifically refused to consent to the disclosure of the requested information;
- Whether disclosure would cause any unnecessary or unjustified damage to the individuals; and
- The legitimate interests of the public in knowing the names of the individuals.

The University claimed to the Commissioner that disclosure would be unfair to those individuals who acted as examiners, for two reasons: firstly, there is an expectation of confidentiality on the part of the examiners; and secondly, disclosure of the examiners' names could lead to those individuals being 'pressured' about their decisions. The University did not put forward any arguments about section 10 of the DPA, so the Commissioner has not considered this part of section 40.

51. The Commissioner's guidance on section 40 indicates that when considering what information third parties should expect to have disclosed about them, among the factors to take into account is the distinction between information relating to the third party's public or private lives:

'Information about an individual's private life [ie their home, family, social life or finances] will deserve more protection than information about them in an official or work capacity.'

52. The Commissioner notes that the University does not provide examiners with any information in relation to the potential disclosure of their identities, and it argues that examiners have an expectation of confidence. However, on the basis of the guidance referred to above the Commissioner considers that public sector employees should expect some information about their roles and the decisions they take to be disclosed under the Act. This approach is supported by the Information Tribunal decision in the Baker case³. This decision involved a request for information about the details of the travel allowances claimed by MPs. In its decision the Tribunal noted that:

'where data subjects carry out public functions, hold elective office or spend public funds they must have the expectation that their public actions will be subject to greater scrutiny than would be the case in respect of their private lives'. (para 78).

53. The Commissioner accepts that individuals might have had an expectation that their names, in the context of this information, would not be placed in the public

³ House of Commons v Information Commissioner and Norman Baker MP EA2006/0015 and 0016

domain. However, simply because an individual has an expectation that information held about them will not be disclosed, this does not necessarily mean that this expectation is a reasonable one. In this particular case the Commissioner is not satisfied that the examiners had a reasonable expectation that their names would not be disclosed. This is partly because the internal examiners are drawn from the Institute staff and the pool of tutors, so the individuals in question are already publicly known to be involved with the Institute.

54. The Commissioner notes that the external examiners are likely to be practicing professionals, and are nominated by various professional legal bodies (see paragraph 29 above). The Commissioner notes further that the external examiner nominated by the Inn of Court Northern Ireland is listed as such on that body's website⁴. Therefore the Commissioner is not inclined to accept that the external examiners would automatically expect their names not to be disclosed, or that it would be unfair to do so.
55. The Commissioner further notes that the University has only consulted three internal examiners verbally as to their views on whether or not their names should be disclosed. However the Commissioner is not satisfied from this that all the individuals who agreed to act as examiners would have a reasonable expectation that their names would not be disclosed.
56. The Commissioner has also considered carefully the University's argument that disclosure of the examiners' names could lead to pressure being put on those individuals. The Commissioner is mindful of the fact that the names of tutors are already in the public domain, so the issue is whether it is fair to confirm which of the tutors acted as internal examiners in particular years, in addition to the names of the external examiners. Several different individuals have acted as internal and external examiners during the period in question, and the fact that an individual has acted as an examiner in the past does not necessarily mean that he or she would do so in the future. It cannot necessarily be assumed that undue pressure might be brought to bear on an individual examiner as there would be no guarantee that he or she would act as examiner again anyway.
57. The Commissioner asked the University for its reasoning behind the argument that examiners could come under pressure. The University provided one example of an instance when the Director of the Institute experienced criticism of the admissions process. However the Commissioner is not satisfied, on the basis of this information, that pressure on examiners would be likely to occur. As the names of the tutors are already in the public domain, there is existing potential for the tutors to come under pressure from individuals who feel aggrieved with the admissions process, but no evidence has been provided that this is in fact the case.
58. In reaching a view on this issue, the Commissioner has also considered the nature of the work carried out by the examiners. The Commissioner notes that the marking scheme is very detailed, and generally does not allow for discretion

⁴ <http://www.barlibrary.com/about-us/committees-and-membership/#adtest>

on the part of the examiners. Given that scripts are marked anonymously, there can be no clearly identifiable link between an individual examiner and an individual's mark. Therefore the Commissioner considers it to be unlikely that an individual examiner could be perceived as influencing a candidate's mark and subsequent rank in the admissions test. The Commissioner is also mindful of the fact that the complainant in this case has requested a list of examiners, not a breakdown of examiners by year. This further reduces the risk that individual examiners could be associated with a candidate's ranking in the admissions test.

59. The Commissioner considers that this is a finely-balanced issue, but that the University has not provided enough evidence to satisfy him that disclosure of the names of the internal and external examiners would be unfair, and that the first data protection principle would be breached. Therefore the Commissioner is satisfied that the University wrongly withheld the examiners' names in reliance on the exemption under section 40(2).

The Decision

60. The Commissioner's decision is that the University did not deal with the request for information in accordance with the Act in a number of respects:
- section 1(1)(b), in that the University failed to communicate some of the information requested to the complainant (ie the examiners' names);
 - section 10(1), in that the University failed to confirm that it held the information in relation to parts (i) and (iii) of the request within the specified time limit;
 - section 17(1), in that the University provided a refusal notice in respect of parts (i) and (iii) of the request outside the specified time limit
61. The Commissioner is satisfied that the marking schemes are exempt under sections 36(2)(c), and that the University correctly withheld this information. However, the Commissioner is also satisfied that the names of the examiners are not exempt under section 40(2), and requires that the University release this information to the complainant.

Steps Required

62. The Commissioner requires the University to release the names of the internal and external examiners to the complainant within 35 calendar days of the date of this notice.

Failure to comply

63. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session

in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Other matters

64. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matter of concern:

Internal review

65. The Commissioner notes that this case was complicated by the fact that the complainant apparently gave permission to an individual to represent him at a meeting with the University. The representative was also part of a group which was in correspondence with the University in relation to concerns about the admissions test.
66. The University did not seek to establish whether or not the representative had the authority to act on the complainant's behalf, which led to confusion as to whether or not the meeting of 28 September (referred to at paragraph 15 above) was part of the internal review process.
67. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information. As he has made clear in his *'Good Practice Guidance No 5'*, published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. Whilst he recognises that in this case, the delay occurred before the publication of his guidance on the matter, the Commissioner remains concerned that it took almost seven months for an internal review to be completed.
68. The Commissioner has raised this issue with the University and has received assurances that steps will be taken to avoid such confusion and the resultant delays in the future.

Right of Appeal

69. 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

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 18th day of December 2008

Signed

**Gerrard Tracey
Assistant Commissioner**

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

Legal Annex: Relevant statutory obligations

1. **Section 1(1)** provides that:

(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. **Section 17(1)** provides that:

“A public authority which ... is to any extent relying:

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

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

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

3. **Section 36(1) and (2)** provide that:

(1) This section applies to-

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

(2) 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.

4. **Section 40(2)** provides that:

(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).