

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 3 August 2009

**Public Authority:** The Governing Body of Brownhills Community Technology College  
**Address:** Deakin Avenue  
Walsall  
West Midlands  
WS8 7QG

### Summary

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The complainant requested a large quantity of information from the public authority to assist in his case against dismissal. The Commissioner has determined that some of the information requested was the complainant's personal data and is exempt under section 40(1) of the Freedom of Information Act 2000 (the Act). He has referred it for an assessment under section 42 of the Data Protection Act (the DPA). Of the remaining information the Commissioner is satisfied that it has either now been disclosed to the complainant or else is exempt under section 40(2) of the Act. The Commissioner has, however, found numerous breaches of section 1(1)(a) and section 1(1)(b). He has also found breaches of section 9(3), section 10, section 17(1) and section 17(1)(a). The Commissioner does not require any remedial steps to be taken as he has already asked for information not previously provided to be released to the complainant and is satisfied that this has been done.

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision. For clarity the Commissioner will refer to the Data Protection Act as 'the DPA' throughout this notice.

### The Request

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2. The complainant requested a substantial quantity of documentation from the public authority in a private arrangement prior to his dismissal appeal committee hearing. The information requested was supplied by the public authority on 27 May 2005. The Commissioner has not looked at the earlier requests.

3. The public authority in this case is the College. The Local Education Authority assisted the College in some instances and will be referred to as the LEA in this Notice.
4. On 4 July 2005, the complainant's solicitor requested, on his behalf, the following information from a member of staff of the LEA in her capacity as the clerk to the Governing Body Dismissal Appeal hearing in accordance with section 1(1) of the Act.
  1. *'The terms of Reference for all governing body committees at Brownhills Community Technology College. ['Element 1'].*
  2. *The standing orders for the procedural workings of the governing body at Brownhills Community Technology College. ['Element 2'].*
  3. *Any specific DFES or LEA guidance that has been issued in particular about the proceedings and clerking arrangements of staff dismissal committees and dismissal appeal committees.'* ['Element 3'].
5. On 16 November 2005 the LEA informed the complainant that it had passed this request to the public authority in accordance with the Code of Practice and section 16 of the Act. It also informed the complainant that the public authority had told it that the information had been provided to the complainant already. Later on that day the complainant informed the LEA that neither he nor his solicitor had received this information from the public authority.
6. On 11 November 2005, the complainant requested the following information from a different member of staff of the LEA in accordance with section 1(1) of the Act. This member of staff was the Governor Service Manager of the LEA and also the Clerk to the Governors of the public authority and the request was made to them in this second capacity.
  4. *'Copies of the agendas, signed minutes and all reports, papers or documents considered by the dismissal appeal committee of Brownhills Community Technology College (that met on Monday 3<sup>rd</sup> October 2005 and Tuesday 4<sup>th</sup> October 2005). ['Element 4'].*
  5. *Copies of the agendas, signed minutes and all reports, papers and other documents considered by any committee of the governing body of Brownhills CTC as well as those of any and all full governing body meetings of Brownhills CTC that have taken place in the calendar year beginning 1 January 2005. ['Element 5'].*
  6. *Copies of any transcripts received from Education Walsall for the dismissal appeal committee meetings that took place on Monday 3 October 2005 and Tuesday 4 October 2005'* ['Element 6'].

## The Investigation

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### Background to the complaint

7. On 19 December 2005 the complainant first contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to ensure that he was provided with an adequate response from the public authority that complied with the Act.
8. On 23 December 2005 the Commissioner called the public authority and asked it to provide a response in accordance with the Act. On 11 January 2006 the Commissioner sent the public authority a letter. He asked the public authority to confirm that all the relevant recorded information was provided to the complainant or else issue a refusal notice compliant with section 17 of the Act. He asked for this to be done within twenty working days from the date of receiving his letter. He also used this opportunity to provide information about how to comply with the Act.
9. On 28 January 2006, the public authority provided information for Element 1 of the request dated 4 July 2005 and also provided some relevant recorded information for Elements 4 and 5 of the request dated 11 November 2005. It withheld some information in relation to Elements 4 and 5 as being exempt under 'absolute exemptions under the [Act] because they contain personal information about the staff or pupils.' It informed the complainant of its internal review process.
10. On 2 February 2006 the complainant contacted the Commissioner and complained about the sufficiency of the material provided on 28 January 2006 and also suggested that other information was missing. On 10 February 2006 the Commissioner advised that he would expect the complainant to request and receive an internal review if he felt that the response was not compliant with the Act. On 12 February 2006 the complainant responded that he would like the Commissioner to look at everything immediately. On 14 February 2006 the Commissioner advised the complainant to request an internal review.
11. On 16 February 2006 the complainant requested an internal review from the public authority about the handling of his request for information. On 23 February 2006 the local education authority informed the Commissioner that it was providing advice to the public authority in relation to this case.
12. On 13 March 2006, the public authority wrote to the complainant and conducted an internal review in relation to its response to both the 4 July 2005 and 11 November 2005 requests. It confirmed that it felt it had released all the information the complainant was entitled to for elements 1, 4 and 5. It stated that it did not hold relevant recorded information in relation to Elements 2, 3 and 6. It finally informed the complainant that it would charge £0.50 per page in responding to any future information requests from him.

13. On 17 March 2006 the Commissioner received a complaint from the complainant's solicitor that indicated that the complainant was not satisfied with the delays or the information provided after the internal review dated 13 March 2006.

### **Scope of the case**

14. On 19 December 2005 the complainant contacted the Commissioner to complain about the way his requests for information had been handled. He was particularly concerned about the delay in the public authority responding to his requests for information. The Commissioner will look at the issues of delay in this Notice.
15. On 17 March 2006 the complainant's solicitor indicated that the complainant was not satisfied with the substance of the response to his requests for information. The Commissioner therefore opened this case to look at whether information was correctly withheld from disclosure by the public authority under the Act. The Commissioner will also investigate the public authority's decision in this Notice.
16. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act. These include a dispute about the creation of information by the local education authority, about interception of emails (dealt with as a DPA matter) and issues around the complainant's dismissal from employment. The Commissioner also notes that he can only investigate recorded information held by the authority and not compel the public authority to create information that it might be required to hold under other legislation.

### **Chronology**

17. On 27 June 2007 the Commissioner invited the complainant to indicate what part of the public authority's response he was dissatisfied with. On 30 June 2007 the complainant responded that he was deeply unhappy with the way his requests of information were handled and expected the Commissioner to conduct a detailed investigation. He also forwarded correspondence from the past. On 18 July 2007 the Commissioner noted from this letter that the scope was the 6 Elements and nothing else.
18. On 19 July 2007 the Commissioner asked the public authority to inform him what information had been provided to the complainant, requested the withheld information and invited further comments, including its detailed justification of its charging policy.
19. On 20 July 2007 the public authority expressed its dissatisfaction that the Commissioner had not written to it earlier as the summer holidays were commencing. On 24 July 2007 the local education authority wrote to the Commissioner and explained that the public authority would have difficulty responding to the Commissioner within the time he had specified. It did inform the Commissioner that the public authority would reduce the amount it charged to 10 pence per page after the Commissioner pointed out the flaws in its charging policy. It asked for an extension to the Commissioner's deadline. The

Commissioner responded by indicating that it should try to meet its deadline, but that he was pleased it had reconsidered its charging policy.

20. On 13 August 2007 the LEA responded on the public authority's behalf. It provided the Commissioner with the information that it claimed to have had redacted in its response dated 28 January 2006 for Element 5. It failed to provide answers to the Commissioner's other questions, however.
21. On 15 August 2007 the Commissioner wrote to the LEA and asked it to provide the answers to these other queries. On 21 August 2007 the LEA telephoned the Commissioner and explained that it could not answer the questions within the time limit provided because the public authority was closed for the summer. The Commissioner agreed to extend the deadline for a comprehensive response.
22. On 4 September 2007 the LEA responded on the public authority's behalf. It stated that it felt that the withheld information in relation to Element 5 was exempt under section 40(2) of the Act. It told the Commissioner that the reports contained personal information of the pupils and that the public authority felt that it would contravene section 7(4) of the DPA to disclose this information.
23. On 26 September 2007 the Commissioner telephoned the LEA that was acting on behalf of the public authority to inform it of the present position. He indicated his view that the public authority should consider releasing redacted versions of the information for Element 5 that was not personal data. He consolidated this call with an email on the same date.
24. Between 2 and 15 November 2007 the Commissioner telephoned the public authority five times to try to obtain a response to his email of 26 September 2007.
25. On 23 November 2007 the public authority provided a new response to the complainant and supplied redacted versions of the information for Element 5 that it previously felt was completely exempt under section 40(2). It provided a copy to the Commissioner. This information was not received by the complainant at this time. On 27 November 2007 the Commissioner wrote to the complainant and asked whether he was content to withdraw his complaint. On 6 December 2007 the complainant informed the Commissioner that he was not satisfied that he had received all the requested information that was relevant to his request. He would not withdraw his complaint and also expressed other concerns about the public authority. He also asked the Commissioner to see if the public authority had a signed and confirmed version of the minutes of a meeting that was conducted on 19 July 2005.
26. On 11 January 2008 the Commissioner wrote to the public authority and asked whether these minutes were held by it. He also asked the public authority to conduct a thorough search for any information that was relevant to the request, in particular elements 4 and 5, and to provide it to the complainant if it was not exempt. The Commissioner also wrote a letter to the complainant addressing some of the concerns expressed in his letter dated 6 December 2007.

27. Between 5 and 7 February 2008 the Commissioner telephoned the public authority on three occasions to obtain a response to his letter dated 11 January 2008. It became clear that there was confusion about what searches were conducted and who held information that was relevant to the request. On 7 February 2008 the Commissioner wrote an email to the LEA to express his concerns about the public authority and to ask what could be done to remedy them.
28. On 5 March 2008 the LEA called the Commissioner. It outlined the steps it had taken to search for relevant information. It informed the Commissioner that it had found the missing minutes but was concerned it could not disclose them under the Act as they contained personal information. The Commissioner advised that the public authority should provide a redacted version.
29. On 18 March 2008 the public authority conducted a second internal review into the handling of the six Elements that made up the request for information. This focussed especially on specific complaints the complainant had raised in an effort to work towards an informal resolution of the complaint. It informed the complainant that the public authority held the relevant information and not the LEA. It told him that a great deal of information was provided both privately and under the Act. It said that it had provided the redacted papers for Element 5. It also provided a redacted version of the minutes of 27 June 2005 and 19 July 2005 that it had obtained from the LEA albeit that these were provided as a result of its obligations under the DPA. It indicated that, in hindsight, it felt section 12 (relating to the request exceeding the appropriate costs limit) should have been applied to the requests for information. It provided a copy of this response to the Commissioner.
30. On 10 April 2008 the public authority called the Commissioner. It claimed that all relevant information had now been found, and stated that the LEA had now proactively organised training for all schools in its jurisdiction to avoid such problems in the future.
31. On 16 May 2008 the complainant wrote to the Commissioner and informed him that he was still dissatisfied with what he had been provided. He was not satisfied that the 19 July 2005 minutes were authentic. He also asked the Commissioner to do more about his general complaints. On 30 May 2008 the Commissioner made enquiries about the exact scope of the complaint and the complainant replied on 1 June 2008 without clarifying exactly what was outstanding. On 2 June 2008 the Commissioner also provided responses to questions raised by the complainant.
32. On 4 June 2008 the Commissioner asked the public authority to provide versions without redactions of all the information it held (for Elements 1 - 6) and to detail the steps it had taken to establish that this was all the information it held (particularly for Element 5). He also asked for its comments regarding the exempt information (withheld for Element 5). On 10 June 2008 the public authority telephoned to discuss the case. It informed the Commissioner that it had located further minutes.

33. On 4 July 2008 the public authority provided the Commissioner with further comments and the recorded information that it believed it held for all Elements of the request.
34. On 8 July 2008 the Commissioner telephoned the public authority for further clarification.
35. On 17 July 2008 the Commissioner wrote to the public authority with further enquiries. He particularly focussed on six sets of 'confidential' private minutes. He asked the public authority to consider whether they should be provided under the Act.
36. On 3 August 2008 the public authority responded to the Commissioner. It informed him that it felt all six sets of 'confidential' minutes were no longer confidential and would be made available to the public. It provided one set to the complainant as part of his rights of Subject Access under the DPA. On 7 August 2008 the Commissioner asked the authority to provide the other five sets of minutes to the complainant. The public authority did this on 11 August 2008.
37. On 22 October 2008 the Commissioner wrote to the complainant. He confirmed that this investigation would not look at personal data and provided a checklist of documentation, so that he could understand what information had been received by the complainant. He resent this letter on 6 November 2008 when he was made aware that the complainant had not received it.
38. On 26 November 2008 the Commissioner received a response from the complainant. On 3 December 2008 he informed the public authority that there were elements of non-exempt information, which he identified, that had not yet been provided to the complainant.
39. After further communication, on 15 January 2009 the public authority provided the outstanding non-exempt information to the complainant by recorded delivery (this concerned all the information it held for elements 1 and 5, except for personal information in element 5). The personal information in relation to Element 5 was withheld under section 40(2) and the Commissioner has gone on to consider the application of that exemption from paragraph 117 of this notice. The public authority also provided to the Commissioner a copy of what was sent and the Commissioner is satisfied that all the non-exempt information has now been provided to the complainant.

## Analysis

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### Procedural matters

40. In light of the Information Tribunal decision in *King v Department for Work and Pensions* [EA/2007/0085] the Commissioner now determines whether there have been procedural breaches at the time of the internal review and, if there has been no review, then at 20 working days from the date of the request.

41. The statutory date for compliance is generally determined by section 10(1) of the Act that provides:

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

42. There is a special Statutory Instrument for the time allowed for the governing body of a maintained school to comply with the Act. This is Statutory Instrument 2004 No. 3364: The Freedom of Information (Time for Compliance with Request) Regulations 2004. Regulation 3(2) states that for this sector:

*'Where this regulation applies, subsections (1) and (2) of section 10 of the Act have effect as if any reference to the twentieth working day following the date of receipt were a reference to either-*

*(a) the twentieth working day following the date of receipt, disregarding any working day which, in relation to the school referred to in paragraph (1), is not a school day, or*

*(b) the sixtieth working day following the date of receipt,*

*whichever occurs first.'*

43. A response may take the form of the supply of the requested information, confirmation that the information is not held, a formal refusal or an indication that additional time is required to consider the public interest in relation to specific exemptions.
44. The Commissioner will look at the response to each request when assessing procedural breaches. For the avoidance of doubt he is taking the starting dates as the date the information was first requested by the complainant.

### **Section 10(1)**

45. On 19 December 2005, the complainant complained to the Commissioner about the delays he was experiencing in receiving the information that he requested on 4 July 2005 [Elements 1 to 3].
46. The Commissioner is satisfied that the information request dated 4 July 2005 was a valid request to the public authority, as the member of staff of the local education authority that the request was made to was engaged on the public authority's behalf and was an agent of it.
47. The Commissioner also notes that the public authority maintained that it provided the information prior to his involvement and perhaps within the time limit. The Commissioner is satisfied however that the information (or Notice informing the complainant that it did not hold the relevant information) was not received by



either the complainant or his solicitor until 31 January 2006. He notes that a considerable amount of other documentation had however been provided.

48. The Commissioner is therefore satisfied that the provision of a response on 28 January 2006 (that arrived on 31 January 2006) was well beyond the time limits laid down in section 10(1) as interpreted in the light of The Freedom of Information (Time for Compliance with Request) Regulations 2004.
49. The Commissioner therefore finds a breach of section 10(1) of the Act. He does not however require any remedial action to be taken in relation to this breach.
50. On 11 November 2005 the complainant made a second request of information to the public authority [Elements 4 to 6]. On 28 January 2006 the public authority made its first response to the information request.
51. The Commissioner notes that there was a Christmas holiday at the public authority between 22 December 2005 and 3 January 2006. The public authority therefore took 27 school working days prior to the holiday and 15 further school working days after this holiday. This is a total of 42 school working days.
52. The Commissioner is satisfied that the public authority breached section 10(1) of the Act in not providing a response within twenty school working days as required by the Act.

### **Section 1(1)(a)**

53. Section 1(1)(a) (the full wording is provided in the attached legal annex) requires a public authority to confirm or deny whether requested information is held.
54. The public authority did not indicate explicitly that it held any information that is relevant to either of the two requests within the statutory time limit.
55. The Commissioner therefore finds two breaches of section 1(1)(a) of the Act as the public authority failed to confirm or deny whether it held information falling within the scope of the requests within the statutory time limits.

### **Section 1(1)(b)**

56. Section 1(1)(b) (full wording in the legal annex) requires that, if the requested information is held by the public authority, it must be disclosed to the complainant unless a valid refusal notice has been issued. The public authority exceeded the timescales of the Act and failed for both requests to either disclose the requested information or provide a valid refusal notice.
57. As disclosable information that was relevant to the request was held by the public authority, and was not provided within the statutory timescales then the Commissioner also finds that the public authority has breached section 1(1)(b) of the Act twice.

## Section 17(1)

58. In *Bowbrick v Information Commissioner* [EA/2005/2006] at paragraph 69, the Tribunal confirmed that failing to issue a refusal notice within twenty working days is a breach of section 17(1) of the Act. It stated in relation to the case it was looking at that:

*“the Council failed to identify within 20 working days of the request the exemptions upon which it relied in respect of certain documents falling within the scope of [the] request. It therefore failed to comply within its duty under s17(1) of FOIA within the time limit prescribed by that section.”*

59. In failing to provide a refusal notice for the second request (Elements 4 to 6) within the statutory timescales the Commissioner also finds a breach of section 17(1).

## Section 17 (1)(a)

60. In relation to the second request, the public authority also breached section 17(1)(a) in not specifying to the complainant what exemption it was applying to the information that it felt was exempt because it was personal data until 23 November 2007.

## What is held by the public authority?

61. The complainant has maintained that the public authority has failed to provide all the recorded information that is relevant to his request. The Commissioner notes that he can only investigate what recorded information is held by the public authority and cannot ensure that documentation is created, even if the public authority had an obligation to hold it (for example, under other legislation). He can, however, investigate if a public authority holds additional information that has not been previously provided.
62. In investigating cases involving a disagreement as to whether or not information is in fact held by a public authority, the Commissioner has been guided by the approach adopted by the Information Tribunal in the case of *Information Commissioner v Environment Agency* [EA/2006/0072]. In this case the Tribunal indicated that the test for establishing whether information was held by a public authority was not certainty, but rather whether on a balance of probabilities the information is held. The Commissioner will only investigate what information is held for the requests in so far as it is not the complainant's personal data as outlined below in paragraphs 106 - 116.

### *'Element 1'*

63. The public authority has indicated to the Commissioner that there are three sets of terms of reference that it holds. It informed the Commissioner that this is a live document and this accounts for the changes within it.
64. These three documents are called:

- 'BCTC Governors sub-committees – updated November 2004';
- 'BCTC Governors sub-committees – updated January 2005';
- 'BCTC Governors sub-committees – updated November 2006'.

65. The Commissioner is satisfied that these three documents on the balance of probabilities amount to all the recorded information that is held by the public authority. Further he considers that the first two terms of reference fall within the scope of the request.
66. On 17 July 2008 the Commissioner asked the public authority to confirm that all three sets of terms of reference were provided to the complainant under the Act. On 3 August 2008 the public authority sent all three sets of terms of reference to the complainant. The Commissioner is therefore satisfied that this information has been disclosed to the complainant.

*'Element 2'*

67. On 28 January 2006 the public authority informed the complainant that it did not hold any standing orders for the procedural workings of the Governing Body at BCTC.
68. It informed the complainant that procedurally it is guided by the *Guide to Law for School Governors, Annex 2, The School Governance (Procedures) (England) regulations S1 2003 No 1377*. It also informed the complainant that this was available from [www.governor.net.gov.uk](http://www.governor.net.gov.uk).
69. The Commissioner is satisfied that the governing body does not hold any standing orders for its procedural workings.
70. In reaching this conclusion he notes that the alternative source of information serves the same purpose as standing orders would and that he is not aware of any evidence that indicates that the public authority holds what was specified. He also notes that the public authority has checked with its local education authority about this matter and the Commissioner is satisfied that the steps taken are sufficient for him to reach a conclusion.
71. The Commissioner also notes that by providing the alternative source of information the public authority complied with its obligations under section 16 of the Act in relation to this Element.

*'Element 3'*

72. On 28 January 2006 the public authority indicated that it held one policy 'Walsall Policy of Disciplinary Procedure' that was recorded information that was relevant to this request and provided it to the complainant.
73. In its internal review dated 13 March 2006 the public authority informed the complainant that it did not hold anything that was specific guidance on the clerking of dismissal and dismissal appeal meetings, because there was no such guidance.

74. It also informed the complainant that the arrangements in his case were unique to try and ensure at his request that they were independent and unprejudiced. It would not expect there to be guidance in relation to these arrangements.
75. The public authority also informed the Commissioner that it had checked with the local education authority.
76. The Commissioner is satisfied that on the balance of probabilities there is no further recorded information that is relevant to this request.

*'Element 4'*

77. This Element is addressed in the part of this Decision Notice dealing with section 40(1) below.

*'Element 5' (except for the part of it that is the complainant's personal data and overlaps with Element 4)*

78. On 28 January 2006 the public authority provided its first response to the complainant in relation to this Element.
79. In this response it provided an annex that indexed the series of minutes that it provided to the complainant at this time. It indicated that it felt this was all the recorded information that was relevant to this request.
80. With this annex it provided to the complainant its publicly available minutes, some confidential minutes that related to his appeal (as part of an agreement between itself and the complainant and not under the Act) and the headteacher's reports without the annexes that it felt were the personal data of the staff and/or children. For clarity, in this Notice the Commissioner has produced his own table of what information is held that falls within the scope of Element 5. This is the appendix.
81. On 18 March 2008 the public authority provided the complainant with a redacted copy of the minutes from the meetings dated 27 June 2005 and 19 July 2005. It informed the complainant that originally only the Local Education Authority held a copy and that it had obtained this copy from it. It also informed the complainant that this copy was felt to be confidential and was provided to the complainant under the DPA. As addressed below in paragraph 113, the Commissioner believes the public authority was correct to conclude that these minutes were exempt under section 40(1) of the Act.
82. On 10 April 2008 the public authority telephoned the Commissioner and informed him that it felt it had provided all the recorded information that was relevant to this request.
83. The Commissioner at this stage was not convinced that the public authority had conducted thorough enough searches. On 4 June 2008 he asked the public authority to provide him with all the relevant recorded information that related to this request and to provide detail about the steps taken by the local authority to

- locate everything. He asked for copies of the complete versions of all the documentation so that he could make a judgment on the application of section 40(2).
84. On 4 July 2008 the public authority provided the Commissioner with a detailed outline of the steps it had taken to locate relevant recorded information. It also provided all the relevant recorded information that it held, and a set of private 'confidential' minutes that it previously felt was exempt.
85. It told the Commissioner that:
- 'thorough checks have been carried out by the public authority to verify that this is all the information held. Records are held on a secure password protected computer, and paper copies (confirmed and signed) are held in a file in a secure cupboard in the Head teacher's office, which have been searched diligently.'*
86. The public authority also approached the Local Education Authority to obtain the minutes dated 27 June 2005 and 19 July 2005 and the Commissioner notes that the LEA has also conducted detailed searches to work out what it held on the public authority's behalf.
87. The Commissioner is satisfied now that all the information that is held has been found and provided to the complainant, unless considered to be exempt. He has ensured this by providing a list to the complainant to confirm what he had received and then by ensuring that the public authority provided the remainder to the complainant.
88. He notes that in the initial line of questioning he was uncertain about whether all the information was provided in relation to Element 4 (which would be the complainant's personal data in any event). In relation to this the public authority informed the Commissioner that the three governors who made up the Committee had been approached by the public authority. Two had subsequently retired and, prior to this investigation, the public authority ensured that all recorded information that they held about it had been shredded as part of its normal procedures. The third had checked his private residence and his loft to ensure that the public authority had provided all the recorded information that it held which was relevant to this request.
89. The public authority has also indicated to the Commissioner that the searches it had conducted would have attracted the section 12 costs limit had they been considered in combination agglomerated prior to it answering the request. The Commissioner considers that even if he had concluded that further information was likely to be held, searching further to confirm whether that was the case would have exceeded the appropriate limit in section 12 of the Act. This provides that public authorities can refuse to comply with section 1(1)(a) if locating the information would exceed the appropriate limit. In this case, the limit for the public authority would have been £450 based on a cost of £25 per hour. The public authority's estimate, taking into account only those matters that can be legitimately charged for by reference to the Commissioner's Fees Regulations, was that the costs would be £550.

90. The Commissioner has also not been provided with any compelling evidence from the complainant that further recorded information is held by the public authority that is relevant to this Element of the request.
91. The Commissioner is therefore satisfied on the balance of probabilities that no further information is held by the public authority that is relevant to this Element of the request.

*'Element 6'*

92. This Element is addressed in the part of this Decision Notice dealing with section 40(1) below.

**Charging for freedom of information responses: section 9(3)**

93. On 13 March 2006 the governing body decided that it would charge the complainant 50 pence per single A4 page to respond to his Freedom of Information requests in the future, payable in advance.
94. This amounted to a Fees Notice under section 9 of the Act. The Fees section is qualified by section 9(3). This states that that the public authority must issue a Fees Notice in accordance with the regulations made by the Secretary of State. The appropriate regulations are Statutory Instrument 2004 No. 3244 'The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004'.
95. The Regulation that is most relevant to this case is Regulation 6 reproduced below:

*'(1) Any fee to be charged under section 9 of the 2000 Act by a public authority to whom a request for information is made is not to exceed the maximum determined by the public authority in accordance with this regulation.*

...

*(3) Costs which may be taken into account by a public authority for the purposes of this regulation include, but are not limited to, the costs of-*

*(a) complying with any obligation under section 11(1) of the 2000 Act as to the means or form of communicating the information,*

*(b) reproducing any document containing the information, and*

*(c) postage and other forms of transmitting the information.*

*(4) But a public authority may not take into account for the purposes of this regulation any costs which are attributable to the time which persons undertaking activities mentioned in paragraph (2) on behalf of the authority are expected to spend on those activities.'*

96. The Commissioner does not consider that 50 pence per page complies with the regulations as it obviously exceeds the costs incurred by the public authority in the activities it is allowed to include in making this determination.
97. The Commissioner therefore finds that the public authority breached section 9(3) of the Act in attempting to charge the complainant 50 pence per A4 page.
98. To remedy this, the Commissioner wrote to the public authority on 19 July 2007 to indicate that he failed to see how this charging policy was justifiable. On 24 July 2007 the local education authority informed the Commissioner that the public authority would reduce the amount it charged to 10 pence per page after the Commissioner pointed out the flaws in its charging policy.
99. The Commissioner must also go on to investigate whether he considers that 10 pence per page complies with the regulations. In assessing this he has taken into account the volume of correspondence previously provided, the public authority's general costs and its efforts to provide information even though the section 12 limits may in fact have been applicable.
100. The Commissioner has found that the public authority has not contravened section 9(3) of the Act in charging 10 pence per A4 page, although it is the very upper limit of what he would expect can be charged.
101. The Commissioner is satisfied that the plans to charge were not implemented in relation to the requests for information that he is considering and that the information was provided to the complainant free of charge in this case. He is therefore satisfied that no further remedial steps are required in relation to this breach.

## Exemptions

### Section 40

102. The Commissioner is the regulator of both the Data Protection Act (DPA) and the Freedom of Information Act (the Act). The way the Act is worded means that the rights under it cannot prejudice or take precedence over a data subject's rights under the DPA. This interpretation was confirmed in the recent House of Lords decision: *Common Services Agency (Appellants) v Scottish Information Commissioner (Respondent) (Scotland)* [2008] UKHL 47. While that judgment considered the application of the Freedom of Information (Scotland) Act, the Commissioner considers that the principles and wording are relevant to the issues in this case.
103. In *Bowbrick v Information Commissioner* [EA/ 2005/ 0006] in paragraph 51 the Information Tribunal confirmed that the Commissioner had discretion under the Act to look at personal data issues when considering cases under the Freedom of Information Act:

*'If the Commissioner considered that there was a section 40 issue in relation to the data protection rights of a party, but the public authority, for whatever reason,*

*did not claim the exemption, it would be entirely appropriate for the Commissioner to consider this data protection issue because if this information is revealed, it may be a breach of the data protection rights of data subjects....Section 40 is designed to ensure that freedom of information operates without prejudice to the data protection rights of data subjects.'*

104. The Commissioner does not proactively seek to consider exemptions in all cases before him, but in cases where personal data is involved the Commissioner believes he has a duty to consider the rights of data subjects. These rights, set out in the DPA are closely linked to Article 8 of the Human Rights Act and the Commissioner would be in breach of his obligations under the Human Rights Act if he ordered disclosure of information or confirmation/denial without having considered these rights, even if the public authority has not cited the section 40 exemption.
105. The Commissioner has therefore considered what information is the complainant's personal data and what information is the personal data of third parties.

### **Section 40(1)**

106. Under section 40(1) information that is requested that constitutes the applicant's 'personal data' is exempt information. This exemption is absolute and requires no public interest test to be conducted.
107. 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) 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)".*

108. In order to rely on the exemption provided by section 40, the information being requested must constitute personal data as defined by the DPA. It 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'.*



109. The Commissioner's understanding of the nature of personal data has been informed by the recent release of an opinion by the Article 29 Working Party (a European advisory body on data protection and privacy). The Working Party worked to harmonize the understanding of the definition of the nature of personal data.
110. In August 2007 the Commissioner reissued his guidance, which 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 information being sought by the complainant alongside these questions. The Commissioner's Guidance can be viewed in full at the following link:  
  
[http://www.ico.gov.uk/upload/documents/library/data\\_protection/detailed\\_specialist\\_guides/personal\\_data\\_flowchart\\_v1\\_with\\_preface001.pdf](http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/personal_data_flowchart_v1_with_preface001.pdf)
111. The Commissioner is satisfied in this case that the recorded information that is held by the public authority that relates to all of Element 4 (and the part of Element 5 that overlaps with Element 4 relating to the dismissal appeal committee), the part of Element 5 that covers other minutes relating to the dismissal hearing committee, and all of Element 6 would be the complainant's personal data.
112. In relation to Element 4, the Commissioner is satisfied any information that was considered in the complainant's dismissal appeal committee is the complainant's personal information within the meaning of section 1 of the DPA. The information was used in the context of discussing the complainant's appeal so relates to him. The Commissioner is not required to consider this Element of the request further as the information is exempt from disclosure under section 40(1) of the Act.
113. As part of Element 5, the other minutes that related to the staff dismissal appeal committee that considered the complainant's case, are also exempt from disclosure under section 40(1). These are the minutes dated 27 June 2005, the unsigned minutes dated 19 July 2005 and 23 September 2005. As the Commissioner is satisfied that they are exempt entirely under section 40(1), he has not gone on to consider whether the redactions made by the public authority were correct under section 40(2) of the Act.
114. In relation to Element 6, the Commissioner is satisfied that any transcripts about the same dismissal appeal committee would be the complainant's personal information within the meaning of section 1 of the DPA. The information would contain sensitive personal information of the complainant and would be exempt from disclosure to the public under section 40(1) of the Act.
115. On examining the private minutes dated 28 November 2005 of the full governing body, the Commissioner was also satisfied that one paragraph of them was the complainant's personal data under section 40(1). On 17 July 2008 he asked the public authority to consider providing this paragraph to the complainant under the Data Protection Act. On 3 August 2008 the public authority did this.

116. The Commissioner has determined that, in view of the above, the public authority was in fact not obliged to confirm whether or not it held the information sought by the complainant, by virtue of section 40(5). However the request should have been treated as a Subject Access Request under section 7 of the DPA 1998. The Commissioner has gone on to make an assessment under section 42 of the DPA of the public authority's compliance with that Act. The Commissioner will therefore not look at these Elements of the request in relation to this freedom of information complaint.

### **Section 40(2)**

117. Section 40(2) provides an exemption for information which is the personal data of a third party. It requires firstly that the information be personal data under the DPA and secondly that disclosure would contravene a data protection principle. The public authority has relied on the exemption in section 40(2) of the Act to withhold some relevant recorded information in relation to Element 5.
118. On 28 January 2006 the public authority indicated that it would not supply fourteen entire documents because it felt they contained personal data. On 4 September 2007 the local education authority informed the Commissioner on the public authority's behalf that it was applying section 40(2) to this information that it would not disclose it under the Act.
119. On 26 September 2007 the Commissioner asked the public authority to reconsider the blanket application of the exemption to all the documents and to redact what was not personal data. On 23 November 2007 the public authority provided redacted versions to the Commissioner. On 15 January 2009 the public authority also provided this information to the complainant. The public authority also provided other information to the complainant. It elected to redact information from two other documents, the Physical Education reports. This meant there were sixteen documents in all that it applied section 40(2) to.
120. The Commissioner finds a breach of section 1(1)(b) of the Act because initially the public authority did not correctly redact the exempt information and provide the complainant with the non-exempt parts. He has not asked for any remedial steps to be taken because the public authority has subsequently done this.
121. The Commissioner for clarity will number the sixteen items of information that he has considered under section 40(2) in the following way.
1. Reports on exclusions (from the Head Teacher's report March 2005).
  2. Reports on exclusions (from the Head Teacher's report July 2005).
  3. Reports on exclusions (from the Head Teacher's report October 2005).
  4. Report on admissions and deletions / arrivals and migrations (from the Head Teacher's report March 2005).
  5. Report on admissions and deletions (from the Head Teacher's report July 2005).
  6. Report on admissions and deletions (from the Head Teacher's report October 2005).

7. Special Educational Needs (SEN) (from the Head Teacher's report March 2005).
8. Special Educational Needs (SEN) (from the Head Teacher's report July 2005).
9. Learning Support Unit (LSU) (from the Head Teacher's report March 2005).
10. Learning Support Unit (LSU) (from the Head Teacher's report July 2005).
11. Reports on SEN/LSU (from the Head Teacher's report October 2005).
12. Private minutes from the Pupil Disciplinary committee dated 22 March 2005.
13. Private minutes from the Pupil Disciplinary committee dated 14 June 2005.
14. Private minutes from the Pupil Disciplinary committee dated 18 October 2005.
15. P.E. report dated 4 July 2005.
16. P.E. report dated 28 November 2005.

***Does each item of the exempted information constitute personal data?***

122. In order to rely on the exemption provided by section 40(2), the information being requested must constitute personal data as defined by the DPA. The Commissioner has already indicated how he determines what information is personal data in paragraphs 106 - 110 of this Notice.
123. The public authority in its submissions to the Commissioner informed him that it believes that all the information not disclosed to the complainant in the redacted copies was the personal information of the children of the school or alternatively the personal information of junior members of staff. This is because it is factual information about living individuals, who can be identified from that data.

*Number 1 to 3*

124. This information is in the form of a table which indicates which children have been suspended from the public authority and for how long. The Commissioner has no doubt that this is personal data as defined in section 1 of the DPA.
125. On 23 November 2007 the public authority provided the Commissioner with a copy of this table without the names of the children. This was forwarded to the complainant on 15 January 2009.

*Number 4 to 6*

126. This information is in the form of a table which indicates which children have arrived into and left the UK, by name, class and address. The Commissioner is satisfied that this is also personal data as defined in section 1 of the DPA.
127. On 23 November 2007 the public authority provided the Commissioner with a copy of this information without the names, dates of birth or addresses of the children. This was forwarded to the complainant on 15 January 2009.

*Number 7 and 8*

128. This information is in a report form with the objectives of the report laid out at the beginning. Then there the numbers of pupils detailed against the levels of extra teaching support that is required and a list of staffing provision (including

volunteers), financial background, inclusion (including pupils names), information about the LEA's policy (in relation to some specific pupils) and development issues of the department.

129. On 23 November 2007 the public authority provided to the Commissioner a redacted version of this information without the names of volunteers or pupils. This was forwarded to the complainant on 15 January 2009. The Commissioner is satisfied that the information that was redacted is the personal data of the relevant people as determined by section 1 of the DPA.

*Numbers 9 to 11*

130. This information is in report form with the strategies and support offered to pupils outlined in the main text and a table outlining sample pupils, followed by a report about short term and long term goals of the public authority. It also contains information about incidents of bullying/harassment (with some names), incidents about drug awareness, citizenship and behaviour incidents.
131. On 23 November 2007 the public authority provided a redacted version of this information with the names of the pupils blacked out. This was forwarded to the complainant on 15 January 2009. The Commissioner is satisfied that the outstanding information is the personal data of the relevant people as determined under section 1 of the DPA.
132. In relation to number 11 the name of a member of staff was also redacted in the context of his health. The Commissioner is satisfied that this is the personal information of that member of staff as determined under section 1 of the DPA. He believes that this information is also sensitive personal data as determined by section 2(e) of the DPA.

*Numbers 12 to 14*

133. These minutes were the same as the publicly available minutes but also contained the names of the children and parents (instead of these names being redacted).
134. The Commissioner is satisfied that this extra information is the personal information of both the children and the parents as determined under section 1 of the DPA.

*Numbers 15 to 16*

135. This information is a report about sports attainment. The redacted information is the names of the children who have achieved something in sport. The Commissioner is satisfied that this information is the personal information of the children as determined under section 1 of the DPA.

### *Conclusion*

136. Having examined each element of the requested information the Commissioner is satisfied that the relevant recorded information for each of the sixteen elements is personal data as defined by section 1 of the DPA. He is also satisfied that one item is sensitive personal data as defined by section 2 of the DPA.
137. The Commissioner will now go on to consider whether section 40(2) applies in relation to the each piece of relevant recorded information.

### ***Would disclosure of the information contravene any of the data protection principles?***

#### *The first data protection principle*

138. The public authority has argued that disclosure of the requested information would also breach the first data protection principle and therefore it is exempt from disclosure under the Act.
139. The first data protection principle has two components:
1. the personal data must be processed fairly and lawfully; and
  2. personal data shall not be processed unless one of the conditions in the Schedule 2 of the DP is met, and with sensitive personal data unless one of the conditions of Schedule 3 is also met.

#### *Is the release of the requested information unfair?*

140. The public authority argues that the release of the requested information would be unfair and therefore would contravene the first data protection principle.
141. The Commissioner notes that he must investigate whether the requested information can be released to the public and the identity of the requestor is not a relevant consideration when assessing whether or not section 40(2) applies.
142. Each case will be considered on its merits. The Commissioner accepts that there are cases in which there would be clear unfairness to individuals in the disclosure of their names alone. For instance, it may be unfair (and therefore a breach of the first data protection principle) to disclose the names of staff working in the prison service or in controversial scientific research.
143. In this case the Commissioner is satisfied that the release of the redacted information in all sixteen elements would clearly be unfair in this context. This is because the people who would be identified would never expect this personal data to be released to the public and there is no apparent and overriding reason why releasing the data would serve a wider public interest. The Commissioner has also considered the data subjects' rights under Article 8 of the Human Rights Act and considers that releasing this information would affect their privacy rights and would, with the possible exception of numbers 15 and 16 be likely to cause

damage and distress. This is highly persuasive and underlines the position that release of this information would be unfair.

144. Since disclosure would be unfair and therefore breach the first data protection principle, the Commissioner does not need to go on to consider whether disclosure of this information would also be unlawful or would meet a condition in schedule 2.
145. Section 40(2) is engaged because the first data protection principle would be contravened in releasing this information to the public. The Commissioner has therefore determined that the public authority has correctly applied the section 40(2) exemption in relation to these sixteen items.

## The Decision

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146. The Commissioner's decision is that the public authority did not deal with the requests for information in accordance with the requirements of the Act. In particular the Commissioner has noted a number of breaches in relation to the following parts of the requested information:

*Generally:* section 9(3).

*Both requests:* sections 1(1)(a), 1(1)(b) and 10(1).

*Request two:* sections 17(1) and 17(1)(a).

The Commissioner does not require any remedial steps in relation to these breaches as he is satisfied that all the information that the complainant is entitled to under the Act has now been provided to him.

147. The public authority has correctly exempted the sixteen items identified in paragraph 121 of this Notice on the grounds of section 40(2).

## Steps Required

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148. The Commissioner requires no steps to be taken.

## Other matters

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149. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.
150. Section 7 of the DPA gives an individual the right to request copies of personal data held about them – this is referred to as a right of Subject Access.

151. The Commissioner notes that elements of this request should have been dealt with as a Subject Access Request under section 7 of the DPA. He would encourage public authorities to consider requests under the correct regime at the first instance.
  
152. The Commissioner will go on to make an assessment under section 42 of the DPA of the public authority's compliance with that Act. This assessment will be dealt with separately and will not form part of this Decision Notice, since an assessment under section 42 of the DPA is a separate legal process from the consideration under section 50 of the FOI Act.

## Right of Appeal

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153. 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](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

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 3<sup>rd</sup> day of August 2009**

**Signed .....**

**David Smith  
Deputy Commissioner**

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



Appendix of all the information held by Brownhills Community Technology College (BCTC) for 'Element Five'

<b>Date of Document</b>	<b>Description (title of document)</b>	<b>Does it have exempt elements? (and which exemption)</b>	<b>Has it been provided to the complainant under FOIA?</b>
21/12/2004 (04/01/2005)	Agenda of Full Governor's meeting	No	Yes
04/01/2005	Minutes of Full Governor's meeting	No	Yes
13/12/2004 (05/01/2005)	Agenda of Pupil Disciplinary committee meeting (was cancelled so no minutes).	No	Yes
12/01/2005 (27/01/2005)	Agenda of Sites & Building committee meeting.	No	Yes
27/01/2005	Minutes of Sites & Building committee meeting.	No	Yes
02/02/2005 (04/02/2005)	Agenda of Appointments committee meeting.	No	Yes
04/02/2005	Minutes of Appointments committee meeting.	No	Yes
12/01/2005 (07/03/2005)	Agenda of Finance Committee meeting.	No	Yes
07/03/2005	Minutes of Finance Committee meeting.	No	Yes
08/03/2005	Agenda of Staff Dismissal Committee	Yes: s40(1) in entirety.	No.
08/03/2005	Minutes of Staff Dismissal Committee	Yes s40(1) in entirety.	No.
10/03/2005	Minutes of Staff Dismissal Committee	Yes s40(1) in entirety.	No.
25/02/2005 (14/03/2005)	Agenda of termly Full Governor's meeting	No	Yes
14/03/2005	Minutes of termly Full Governor's meeting.	No	Yes
14/03/2005	Headteacher's report	No	Yes
14/03/2005	Interim Development and Improvement Plan	No	Yes
14/03/2005	Finance	No	Yes
14/03/2005	Exclusion	Yes – s40(2) for the names of excluded.	Yes (except the names).
14/03/2005	Admissions and Deletions	Yes – s40(2) for the names of the children.	Yes (except the names).
14/03/2005	Visits	No	Yes
14/03/2005	Performance management	No	Yes

14/03/2005	SEN report	Yes – s40(2) for the names of excluded.	Yes (except the names).
14/03/2005	LSU report	Yes – s40(2) for the names of the children.	Yes (except the names).
14/03/2005	P.E. and school sport report	No	Yes
14/03/2005	Sites and Buildings	No	Yes
14/03/2005	Ax B Admission Arrangements	No	Yes
14/03/2005	Ax C Special Educational Needs	No	Yes
14/03/2005	Ax D School Absence.	No	Yes
17/03/2005	Minutes of Staff Dismissal Committee	Yes s40(1) in entirety.	No
10/03/2005 (22/03/2005)	Agenda of Pupil Disciplinary committee meeting.	No	Yes
22/03/2005	Public minutes of Pupil Disciplinary committee meeting.	No	Yes
22/03/2005	Private minutes of Pupil Disciplinary committee meeting.	Yes: s40(2) for names of children.	No: but public minutes contain everything except names of children.
23/03/2005	Minutes of Staff Dismissal Committee	Yes s40(1) in entirety.	No
05/04/2005	Minutes of Staff Dismissal Committee	Yes s40(1) in entirety.	No
13/04/2005	Minutes of Staff Dismissal Committee	Yes s40(1) in entirety.	No
April 2005 (14/04/2005)	Agenda of Full Governor's meeting	No	Yes
14/04/2005	Minutes of Full Governor's meeting	No	Yes
27/03/2005 (21/04/2005)	Agenda of Sites & Building committee meeting.	No	Yes
21/04/2005	Minutes of Sites & Building committee meeting.	No	Yes
17/04/2005 (25/04/2005)	Agenda of Finance Committee meeting.	No	Yes
25/04/2005	Public minutes of Finance Committee meeting.	No	Yes
25/04/2005	Private minutes of Finance Committee meeting.	No.	Yes.
02/05/2005 (04/05/2005)	Agenda of Staff Dismissal Appeal Committee (not issued by BTHC)	Yes: s40(1) in entirety.	No
04/05/2005	Minutes of Staff Dismissal	Yes s40(1) in	No

	Appeal Committee (not issued by BTHC)	entirety.	
03/05/2005 (12-13/05/2005)	Agenda of Staff Dismissal Appeal Committee (was cancelled so no minutes)	Yes: s40(1) in entirety.	No
14/05/2005 (24/05/2005)	Agenda of Staff Dismissal Appeal Committee	Yes s40(1) in entirety.	No
24/05/2005	Minutes of Staff Dismissal Appeal Committee (not issued by BTHC)	Yes s40(1) in entirety.	No
28/05/2005 (13/06/2005)	Agenda of Finance Committee meeting.	No	Yes
13/06/2005	Public Minutes of Finance Committee meeting.	No	Yes
13/06/2005	Private Minutes of Finance Committee meeting.	No	Yes
09/06/2005 (14/06/2005)	Agenda of Pupil Disciplinary committee meeting.	No	Yes
14/06/2005	Public minutes of Pupil Disciplinary committee meeting.	No	Yes
14/06/2005	Private minutes of Pupil Disciplinary committee meeting.	Yes: s40(2) for names of children.	No: but public minutes contain everything except names of children.
June 2005 (27/06/2005)	Agenda of Staff Dismissal Appeal Committee (not issued by BTHC)	Yes: s40(1) in entirety.	No.
27/06/2005	Minutes of Staff Dismissal Appeal Committee (not issued by BTHC)	Yes s40(1) in entirety.	No.
04/06/2005 (04/07/2005)	Agenda of termly Full Governor's meeting	No	Yes
04/07/2005	Minutes of termly Full Governor's meeting.	No	Yes
04/07/2005	Headteacher's report	No	Yes
04/07/2005	Finance	No	Yes
04/07/2005	Exclusions	Yes – s40(2) for the names of excluded.	Yes (except the names).
04/07/2005	Admissions and Deletions	Yes – s40(2) for the names of the children.	Yes (except the names).
04/07/2005	Visits	No	Yes
04/07/2005	Performance management	No	Yes
04/07/2005	SEN report	Yes – s40(2) for the names of excluded.	Yes (except the names).

04/07/2005	LSU report	Yes – s40(2) for the names of the children.	Yes (except the names).
04/07/2005	P.E. report	Yes - s40(2) for the names of the children	Yes (except the name).
04/07/2005	Key stage 3 analysis	No	Yes
04/07/2005	Investors in People Report.	No	Yes
04/07/2005	Review of School Staffing structure	No	Yes
04/07/2005	Ax B School self evaluation	No	Yes
04/07/2005	Ax C Workforce remodelling	No	Yes
04/07/2005	Ax D Teaching and learning	No	Yes
04/07/2005	Responsibility payments	No	Yes
04/07/2005	Ax E The Children Act	No	Yes
19/07/2005	Minutes of Staff Dismissal Appeal Committee (not issued by BTHC)	Yes s40(1) in entirety.	No.
14/09/2005 (22/09/2005 rearranged)	Agenda of Staff Dismissal Appeal Committee	Yes s40(1) in entirety.	No.
23/09/2005	Minutes of Staff Dismissal Appeal Committee (not issued by BTHC)	Yes s40(1) in entirety.	No.
19/09/2005 (29/09/2005)	Agenda of Personnel Committee meeting	No	Yes
29/09/2005	Public minutes of Personnel Committee meeting	No	Yes
29/09/2005	Private minutes of Personnel Committee meeting	Yes but dropped	Yes.
03/10/2005	Minutes of Staff Dismissal Appeal Committee (not issued by BTHC)	Yes s40(1) in entirety.	No.
04/10/2005 (13/10/2005)	Agenda of Finance Committee meeting.	No	Yes
13/10/2005	Public minutes of Finance Committee meeting.	No	Yes
13/10/2005	Private minutes of Finance Committee meeting.	No.	Yes.
29/09/2005 (17/10/2005)	Agenda of Sites & Building committee meeting.	No	Yes
17/10/2005	Minutes of Sites & Building committee meeting.	No	Yes
10/10/2005 (18/10/2005)	Agenda of Pupil Disciplinary committee meeting.	No	Yes
18/10/2005	Public minutes of Pupil Disciplinary committee meeting.	No	Yes

18/10/2005	Private minutes of Pupil Disciplinary committee meeting.	Yes: s40(2) for names of children.	No: but public minutes contain everything except names of children.
02/11/2005 (10/11/2005)	Agenda of Personnel Committee meeting	No	Yes
10/11/2005	Public minutes of Personnel Committee meeting	No	Yes
10/11/2005	Private minutes of Personnel Committee meeting	Yes (but dropped)	Yes.
October 2005 (28/11/2005)	Agenda of termly Full Governor's meeting	No	Yes
28/11/2005	Public minutes of termly Full Governor's meeting.	No	Yes
28/11/2005	Private minutes of termly full governor's meeting	No	Yes.
28/11/2005	Headteacher's report	No	Yes
28/11/2005	Finance	No	Yes
28/11/2005	Exclusions	Yes – s40(2) for the names of excluded.	Yes (except the names).
28/11/2005	Admissions and Deletions	Yes – s40(2) for the names of the children.	Yes (except the names).
28/11/2005	Visits	No	Yes
28/11/2005	Performance management	No	Yes
28/11/2005	SEN/LSU report	Yes – s40(2) for the names of the children.	Yes (except the names).
28/11/2005	P.E. Report	Yes – s40(2) for the names of the children.	Yes (except the names).
28/11/2005	Whole School Development Plan	No	Yes
28/11/2005	Summer Examination Results	No	Yes
28/11/2005	KS3 Target sheets.	No	Yes
28/11/2005	KS2 to KS4 Value Added.	No	Yes

28/11/2005	Annex C: Delegation of Powers.	No	Yes
28/11/2005	Annex D: Annual Review of Membership and Terms of reference	No	Yes
28/11/2005	Annex E: Admissions Arrangements	No	Yes
28/11/2005	Annex F: Hard to Place Pupils.	No	Yes
28/11/2005	Annex G Teaching and Learning Responsibility Payments	No	Yes
28/11/2005	Annex H Managing Headteacher Work/Life Balance	No	Yes
28/11/2005	Annex I: Formal Reporting to Parents.	No	Yes
30/11/2005 (06/12/2005)	Agenda for Appointments Committee meeting.	No	Yes
06/12/2005	Minutes for Appointments Committee meeting.	No	Yes
08/12/2005	Agenda for Finance	No	Yes
December 2005 (08/12/2005)	Agenda for extra ordinary Full Governor's meeting	No	Yes
08/12/2005	Minutes of extra ordinary Full Governor's meeting	No	Yes
30/11/2005 (13/12/2005)	Agenda for Appointments Committee meeting.	No	Yes
13/12/2005	Minutes for Appointments Committee meeting.	No	Yes

## **Legal Annex**

### **Freedom of Information Act 2000**

#### **Section 1 - General right of access to information held by public authorities**

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.

(4) The information—

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.

(5) A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).

(6) In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.

#### **Section 9 - Fees**

(1) A public authority to whom a request for information is made may, within the period for complying with section 1(1), give the applicant a notice in writing (in this Act referred to as a “fees notice”) stating that a fee of an amount specified in the notice is to be charged by the authority for complying with section 1(1).

(2) Where a fees notice has been given to the applicant, the public authority is not obliged to comply with section 1(1) unless the fee is paid within the period of three months beginning with the day on which the fees notice is given to the applicant.

(3) Subject to subsection (5), any fee under this section must be determined by the public authority in accordance with regulations made by the Secretary of State.

- (4) Regulations under subsection (3) may, in particular, provide—
- (a) that no fee is to be payable in prescribed cases,
  - (b) that any fee is not to exceed such maximum as may be specified in, or determined in accordance with, the regulations, and
  - (c) that any fee is to be calculated in such manner as may be prescribed by the regulations.
- (5) Subsection (3) does not apply where provision is made by or under any enactment as to the fee that may be charged by the public authority for the disclosure of the information.

### **Section 10 - Time for compliance with request**

- (1) Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
- (2) Where the authority has given a fees notice to the applicant and the fee is paid in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.
- (3) If, and to the extent that—
- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
  - (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,
- the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.
- (4) The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with, the regulations.
- (5) Regulations under subsection (4) may—
- (a) prescribe different days in relation to different cases, and
  - (b) confer a discretion on the Commissioner.
- (6) In this section—
- “the date of receipt” means—
    - (a) the day on which the public authority receives the request for information, or
    - (b) if later, the day on which it receives the information referred to in section 1(3);



- “working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the [1971 c. 80.] Banking and Financial Dealings Act 1971 in any part of the United Kingdom

## **Section 12 - Exemption where cost of compliance exceeds appropriate limit**

(1) 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.

(2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.

(3) In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.

(4) The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority—

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.

(5) The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are to be estimated.

## **Section 16 - Duty to provide advice and assistance**

(1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.

## **Section 17 - Refusal of request**

(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.

(2) Where—

(a) in relation to any request for information, a public authority is, as respects any information, relying on a claim—

(i) that any provision of Part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or

(ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and

(b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.

(3) A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming—

(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

(4) A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

(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.

(6) Subsection (5) does not apply where—

(a) the public authority is relying on a claim that section 14 applies,

(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and

(c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.

(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**

**Section 40** provides 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.'

(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 [1998 c. 29.] 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 [1998 c. 29.] 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 [1998 c. 29.] 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) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the [1998 c. 29.] 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 [1998 c. 29.] 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).

...

(7) In this section—

"the data protection principles" means the principles set out in Part I of Schedule 1 to the [1998 c. 29.] 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.

## **Data Protection Act 1998**

### **Section 1 - Basic interpretative provisions**

(1) In this Act, unless the context otherwise requires—

- “data” means information which—
  - (a) is being processed by means of equipment operating automatically in response to instructions given for that purpose,
  - (b) is recorded with the intention that it should be processed by means of such equipment,
  - (c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system, or
  - (d) does not fall within paragraph (a), (b) or (c) but forms part of an accessible record as defined by section 68;
- “data controller” means, subject to subsection (4), a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed;
- “data processor”, in relation to personal data, means any person (other than an employee of the data controller) who processes the data on behalf of the data controller;
- “data subject” means an individual who is the subject of personal data;
- “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,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;
- “processing”, in relation to information or data, means obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data, including—
  - (a) organisation, adaptation or alteration of the information or data,
  - (b) retrieval, consultation or use of the information or data,
  - (c)

disclosure of the information or data by transmission, dissemination or otherwise making available, or

(d)

alignment, combination, blocking, erasure or destruction of the information or data;

- “relevant filing system” means any set of information relating to individuals to the extent that, although the information is not processed by means of equipment operating automatically in response to instructions given for that purpose, the set is structured, either by reference to individuals or by reference to criteria relating to individuals, in such a way that specific information relating to a particular individual is readily accessible.

(2) In this Act, unless the context otherwise requires—

(a) “obtaining” or “recording”, in relation to personal data, includes obtaining or recording the information to be contained in the data, and

(b) “using” or “disclosing”, in relation to personal data, includes using or disclosing the information contained in the data.

(3) In determining for the purposes of this Act whether any information is recorded with the intention—

(a) that it should be processed by means of equipment operating automatically in response to instructions given for that purpose, or

(b) that it should form part of a relevant filing system,

it is immaterial that it is intended to be so processed or to form part of such a system only after being transferred to a country or territory outside the European Economic Area.

(4) Where personal data are processed only for purposes for which they are required by or under any enactment to be processed, the person on whom the obligation to process the data is imposed by or under that enactment is for the purposes of this Act the data controller.

## **Section 7 - Right of access to personal data**

**Section 7** of the DPA 1998 provides that -

(1) Subject to the following provisions of this section and to sections 8 and 9, an individual is entitled—

(a) to be informed by any data controller whether personal data of which that individual is the data subject are being processed by or on behalf of that data controller,

(b) if that is the case, to be given by the data controller a description of—

(i) the personal data of which that individual is the data subject,

(ii) the purposes for which they are being or are to be processed, and

(iii) the recipients or classes of recipients to whom they are or may be disclosed,

(c) to have communicated to him in an intelligible form—

(i) the information constituting any personal data of which that individual is the data subject, and

- (ii) any information available to the data controller as to the source of those data, and
- (d) where the processing by automatic means of personal data of which that individual is the data subject for the purpose of evaluating matters relating to him such as, for example, his performance at work, his creditworthiness, his reliability or his conduct, has constituted or is likely to constitute the sole basis for any decision significantly affecting him, to be informed by the data controller of the logic involved in that decision-taking.

## **Section 42 - Request for assessment**

**Section 42** of the DPA provides:

‘(1) A request may be made to the Commissioner by or on behalf of any person who is, or believes himself to be, directly affected by any processing of personal data for an assessment as to whether it is likely or unlikely that the processing has been or is being carried out in compliance with the provisions of this Act.

(2) On receiving a request under this section, the Commissioner shall make an assessment in such manner as appears to him to be appropriate, unless he has not been supplied with such information as he may reasonably require in order to—

- (a) satisfy himself as to the identity of the person making the request, and
- (b) enable him to identify the processing in question.

(3) The matters to which the Commissioner may have regard in determining in what manner it is appropriate to make an assessment include—

- (a) the extent to which the request appears to him to raise a matter of substance,
- (b) any undue delay in making the request, and
- (c) whether or not the person making the request is entitled to make an application under section 7 in respect of the personal data in question.

(4) Where the Commissioner has received a request under this section he shall notify the person who made the request—

- (a) whether he has made an assessment as a result of the request, and
- (b) to the extent that he considers appropriate, having regard in particular to any exemption from section 7 applying in relation to the personal data concerned, of any view formed or action taken as a result of the request.’