

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 24 March 2009

Public Authority: Caerphilly County Borough Council
Address: Council Offices
Ystrad Fawr
Ystrad Mynach
Hengoed
Mid Glamorgan
CF82 7WF

Summary

The complainant's first request was for a breakdown of costs charged by Caerphilly County Borough Council for repairs to his home, its general schedule of rates, and the name of the national reference guideline that it used to determine those rates. The Council provided some information but withheld the remainder under section 43 of the Freedom of Information Act 2000 ('the Act'). The complainant's second request was for an anonymous letter to the Council complaining about him, the envelope and details of the date on which it had been received. The Council withheld this by reference to section 38 of the Act, but gave a summary of the allegations it contained. At internal review the Council acknowledged that the information in the second request could constitute personal data, but failed to consider section 40 explicitly. The Commissioner decided that some of the withheld information in the first request had been properly withheld under section 43(2), but that the breakdown of costs had not, and should be released to the complainant. He also decided that the information in the second request constituted the personal data of the complainant, and was therefore exempt under section 40(1) of the Act (but that the Council should have treated the request for it as a subject access request under the Data Protection Act 1998).

The Commissioner's Role

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

The Request

2. The complainant had been in correspondence with Caerphilly County Borough Council ('the Council') regarding disputed charges for repairs which had been carried out at a block of flats which included his home and those of other leaseholders, of whom he stated he was the representative. On 1 June 2005 he obtained from the Council a breakdown of the costs relating to the repair work on the property.

The first request

3. On 4 June 2005 the complainant asked for some further information relating to the repair costs:
 - a) clarification of *'materials costing and installation costs separately'*;
 - b) an explanation as to *'why it is now possible to supply this information when it has been refused so many times'*;
 - c) *'a copy of the authority's schedule of rates to confirm your figures in your letter'*;
 - d) *'the name of the national reference guideline, that you use to determine your costs'*.
4. The Council treated this further enquiry as a freedom of information request and replied on 27 June 2005. It addressed point (d) by providing details of the national guideline (which it referred to as the 'national schedule of rates') used to develop the Council's own schedule of rates, and it offered to arrange for the complainant to view this national schedule at its offices. It did not specifically address point (b). In relation to (a) and (c) it claimed that the information was exempt by virtue of section 43. It provided the complainant with details of its internal review procedure and of the Commissioner.
5. The complainant wrote to the Commissioner on 9 July 2005 indicating that he wanted the breakdown of the material and installation costs, and the Council's schedule of rates. He claimed that a more detailed breakdown would not contain any information giving competitors an advantage, and that it would be in the interests of leaseholders to know the scale of possible future bills.
6. The Commissioner informed the complainant on 12 July 2005 that, owing to resource issues, the case had been forwarded to the Commissioner's main office in Wilmslow. In this letter and a further one he advised that in most cases he would not investigate until the complainant had exhausted the public authority's complaints procedure.
7. The complainant wrote to the Council on the same day, complaining about the standard and cost of the work carried out on the block of flats.

8. The Council acknowledged receipt of this letter on 22 July 2005.
9. The complainant indicated to the Commissioner on 28 July 2005 that he considered that the communication from the Council dated 27 June 2005 was the appeal decision, since he had previously been refused information on 10 March 2005.
10. The Council wrote to the complainant on 11 August 2005, stating that the complaint was now at the second stage of the Council's Corporate Complaints Procedure. It identified the correspondence from the complainant which it was considering (which included his letter dated 4 July 2005) and asked him whether there was any further information which he wished to be considered.
11. The Commissioner informed the complainant on 28 September 2005 that the letter from the Council dated 27 June 2005 constituted its initial decision in relation to the freedom of information request (rather than earlier correspondence querying the costs), and that the complainant should therefore request an internal review in an effort to give the Council an opportunity to resolve matters.
12. The Commissioner also wrote to the Council on the same day, raising concerns that the Council had not earlier recognised the complainant's queries as amounting to a freedom of information request.
13. The complainant wrote to the Council on 29 September 2005 indicating that he wanted to complete the second level of the complaints procedure. Amongst other things he stated that he was appealing the decision not to disclose the requested information on the grounds that it was exempt under section 43 of the Act.

The second request

14. On 22 August 2005 the complainant's mother had written to the Council asking it *'to clarify the details of this accusation'*, the accusation being an anonymous one made to the Council about the complainant, which was reported to his mother during a visit by a Council official on 22 August 2005.
15. The Council replied on 30 August 2005, stating that it had received an anonymous letter regarding alleged anti-social behaviour but did not intend to take any action because the complaint had not been signed.
16. The complainant's mother then requested on 1 September 2005 that the Council provide a copy of the letter and envelope, and details of the date on which the Council had received the letter. She stated that she wished further communications to be with her son, the complainant.
17. The Council replied on 30 September 2005 that the requested letter was exempt from disclosure by virtue of section 38 of the Act. However, it provided a summary of the allegations made about the complainant. It also informed the

complainant of its internal review procedure and of his right to contact the Commissioner.

18. The complainant wrote to the Council on 5 October 2005 asking for the decision to be reviewed.

Subsequent activity

19. The complainant wrote to the Council on 5 January 2006 in relation to a number of issues. He pointed out that he had been waiting for an acknowledgement of his letter of complaint for three months, even though the Council's own time limit for response was four working days.
20. The complainant later complained to the Local Government Ombudsman about the delay, and the complaint appears to have subsequently been upheld by the Public Services Ombudsman for Wales.
21. On 23 May 2006 the complainant contacted the Council regarding a number of matters. He asked the Council to reconsider its decision not to disclose the information which was the subject of his second request.
22. The complainant did not contact the Commissioner again until 10 October 2006. He stated that the Council had failed to complete its complaints procedure in spite of his approach to the Ombudsman.
23. The Commissioner contacted the Council, and then wrote to the complainant on 27 October 2006. He advised that the Council had explained that it had a system for dealing with general complaints and a separate one for conducting internal reviews in respect of freedom of information requests, and that in this case it had inadvertently addressed the matter through its system for general complaints. The Council had agreed to conduct internal reviews in respect of both requests and issue a formal response by 24 November 2006.
24. On 1 November 2006 the complainant expressed to the Commissioner his dissatisfaction with the various complaints-handling processes of the Council.
25. The complainant wrote to the Commissioner again on 7 December 2006 pointing out that he had not been contacted by the Council. He outlined a formal complaint in respect of each of the two freedom of information requests which he had made.
26. On 18 December 2006 the Council informed the complainant of the outcome of its internal review, which was to uphold the decisions which it had reached in relation to both requests.

The Investigation

Scope of the case

27. While the Council was dealing with the requests the complainant contacted the Commissioner on a number of occasions. His formal complaints were submitted on 7 December 2006. He specifically objected to the length of time which it had taken the Council to deal with the requests, and indicated that he was unhappy with the Council's refusal to provide all of the information.
28. The Commissioner has determined that the information which the complainant still requires comprises the *'materials costing and installation costs separately'* and *'a copy of the authority's schedule of rates to confirm your figures in your letter'* (points (a) and (c) from his letter of 4 June 2005); and a copy of the anonymous letter and its envelope together with details of the date on which the Council had received it (as requested initially by the complainant's mother in her letter dated 1 September 2005, and then at her request taken forward by the complainant).

Chronology

29. The Commissioner confirmed acceptance of the complaint on 18 December 2006.
30. On 29 March 2007 the complainant wrote to the Commissioner for some advice.
31. The Commissioner replied on 18 April 2007, explaining matters relevant to the complaint.
32. The complainant wrote back on 1 May 2007.
33. The Commissioner responded on 3 May 2007, reiterating the explanation which had already been provided.
34. On 8 May 2007 the complainant requested that the Commissioner issue a Decision Notice.
35. The Commissioner replied on 11 May 2007 asking for confirmation of the course which the complainant wanted to take.
36. The complainant sent a reminder that he required a Decision Notice on 4 June 2007, and a further reminder on 25 June.
37. The Commissioner acknowledged the request for a Decision Notice on 28 June 2007.
38. The complainant sent further reminders on 19 November 2007, and 7 February and 19 June 2008.

39. The Commissioner apologised on 26 June 2008 for the delay in providing a Decision Notice, explaining that staff changes and an office relocation had affected the handling of the case.
40. The Commissioner sought further clarification from the Council and the complainant on 6 November 2008.
41. The complainant replied on 10 November 2008, confirming which information he considered to be outstanding.
42. The Council replied on 20 November 2008, providing copies of the withheld information.

Analysis

First request: exemption – section 43

43. The outstanding items in the complainant's first request are the breakdown of the material and installation costs for the work done on the block of flats in which he lives, and the Council's general schedule of rates. On 4 June 2005 the Council had provided a breakdown by item of the repair costs for the complainant's property, but declined to break the costs down according to materials and installation costs on the grounds (given in its refusal notice dated 27 June 2005) that it was exempt under section 43 of the Act.
44. Section 17(1) of the Act places an obligation upon the public authority to ensure that its refusal notice provides full details of the exemption(s) being applied. The Commissioner's view is that the public authority is thereby required to refer to the specific part(s) of the relevant exemption(s). In this case the relevant sub-section was section 43(2), but the Council referred generally to section 43 without specifying which sub-section was being applied. (The Commissioner notes that the Council cited the relevant sub-section during its internal review.) The Council therefore breached section 17(1)(b) in failing to supply a notice compliant with the requirements of that section within 20 working days.

Engagement of the exemption

45. Section 43(2) provides that:

'Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).'

46. The Council pointed out that the information constituted the commercial basis on which its Direct Labour Organisation tendered for work, and that it would therefore apply to future work as well as to tenders which had already been determined. The Commissioner accepts that this is information which relates to the commercial interests of the Direct Labour Organisation and, therefore, the

Council. Accordingly, it relates to the buying or selling of goods and services and falls within the definition of *'the commercial interests of any person'* as required by section 43(2).

Prejudice test

47. To engage the section 43(2) exemption it is necessary for the public authority to demonstrate that disclosure of the information *'would, or would be likely to'*, cause some relevant prejudice. In this case the Council specified in its internal review decision that the relevant standard of proof was that the prejudice *'would be likely'* to occur. Where the public authority has claimed that disclosure is only likely to give rise to the relevant prejudice then, in accordance with the Tribunal's decision in the case of *John Connor Press Associates Limited v The Information Commissioner* (EA/2005/0005):

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

The Commissioner therefore considers that the prejudice test for this exemption requires that there *'may very well'* be prejudice to the commercial interests of the Council.

48. In its letter dated 27 June 2005 the Council claimed that disclosure of a breakdown of costs and the authority's schedule of rates would be likely to prejudice the commercial interests of the Council by *'potentially providing competitors in the private sector with a competitive edge'*, since the information *'would enable competitors to identify the precise costs that the Direct Labour Organisation would incur when bidding for work against the private sector'*. It pointed out that this would be an ongoing problem because the rates would apply to future work as well as to tenders which had already been determined.

49. The Commissioner notes that in the *John Connor* case cited above the Information Tribunal considered the public authority's claim that disclosure of commercial information about particular work which had already been commissioned (in that case, the work was from an artist) would be likely to prejudice its bargaining position during contractual negotiations in respect of other works in the future. The Tribunal concluded that, while:

'the commercial interests of a public authority might be prejudiced if certain information in relation to one transaction were to become available to a counterparty in negotiations on a subsequent transaction',

whether or not prejudice was likely *'would depend on the nature of the information and the degree of similarity between the two transactions'*. In the *John Connor* case, the likelihood of prejudice was not judged to be sufficient because of the nature of the information relating to the negotiations already disclosed, and because the types of work created by the named artist and those in subsequent negotiations were so different that they could not be treated as truly comparable.

50. In this case, however, the Commissioner recognises that the future contracts for which the Direct Labour Organisation might compete, including the charging regime which would be applicable, would be similar to that which gave rise to the request by the complainant. The Commissioner therefore believes that disclosure of the Direct Labour Organisation's schedule of rates could provide potential competitors with a commercial advantage, which would damage the ability of the Direct Labour Organisation to win future contracts and therefore prejudice its commercial interests. In relation to the breakdown of the material and installation costs for the work at the block of flats, the Commissioner likewise accepts that knowledge of the comparative costs of each element of the work could potentially be of commercial use to future competitors. He is therefore satisfied that a relevant prejudice to the Council's commercial interests would be likely to occur should the information be disclosed, and that the section 43(2) exemption is therefore engaged.

Public interest test

51. Since section 43(2) is a qualified exemption it is subject to a public interest test under section (2)(2)(b) of the Act. This favours disclosure unless, *'in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure of the information'*.

52. In its letter dated 27 June 2005 the Council assessed the public interest test. In favour of disclosure it identified the *'need to facilitate the accountability and transparency of public authorities for decisions taken by them and in the spending of public money'*. However, in its internal review it claimed that the public interest in this was met in part by the fact that the Wales Audit Office operated as the Council's independent external auditors and had the power to check whether the tendering processes were being operated properly.

53. In favour of maintaining the exemption the Council identified the public interest in *'protect[ing] the current and real commercial interests of the Council's Direct Labour Organisation'*.

54. The Commissioner accepts that there is a public interest in protecting the commercial operations of public authorities. Therefore, insofar as disclosure of the Council's charging regime would put the Council's Direct Labour Organisation at a competitive disadvantage that is a public interest factor which weighs relatively heavily in favour of maintaining the exemption.

55. On the other hand, the Commissioner appreciates that there are also public interest factors in favour of disclosure. He considers that there is clearly a public interest in financial transparency and accountability of public authorities, through scrutiny of the spending of public money. In this case, such scrutiny will contribute to public confidence in the integrity of the Council's commissioning procedures, and demonstrate that the Council is obtaining value for money. In this regard the Commissioner has taken into account the fact that the Wales Audit Office operated as the Council's independent external auditors and had the power to check whether the tendering processes were being operated properly, thereby somewhat diminishing the impact of this factor. However, he

considers that the public interest in scrutiny of the procurement policy of the Council is not satisfied by the auditing of accounts alone, and that an important element of such scrutiny is the availability of relevant information for consideration by the public themselves.

56. The Commissioner also considers that there is a public interest in tenants of properties owned by public authorities being able to access information about the basis on which they are subject to charges. He notes that tenants of public authorities are often in a different position to tenants of private landlords, particularly in that they may have a limited range of available options and therefore constitute something of a 'captive market'. The Commissioner believes that this increases the public interest in the Council's charging rates being open to greater public scrutiny.
57. The Commissioner is also mindful of the fact that market conditions will change and that information about costs will at some point become outdated. In considering whether that was so in relation to the schedule of rates and breakdown of costs in this case, he notes that the costs related to work completed in June 2004, whereas the request was made in June 2005.
58. Finally, the Commissioner notes in this case that, on 4 June 2005, the Council gave the complainant a breakdown of the costs of repairing his property by reference to each item. What it refused to do was to break each item down further by reference to material and installation costs. The Commissioner considers that, by giving the complainant a breakdown of the costs of each item of repair, the Council in fact disclosed some of the commercially sensitive information about the charging rates of its Direct Labour Organisation insofar as they related to this property. That information is now to be regarded as being in the public domain, and some of the potential prejudice to the Council's commercial operations has therefore already been incurred. The Commissioner does not believe that a further breakdown of material and installation costs relating to the complainant's own property is likely to cause significant further prejudice to the Direct Labour Organisation's commercial operations.
59. Having weighed up the public interest factors in favour of and against disclosure, the Commissioner has decided that the balance of the public interest favours disclosure of the information concerning the further breakdown of material and installation costs.
60. However, Commissioner considers that the balance of the public interest test is different for the general schedule of rates. First, while the further breakdown in respect of the complainant's property would be of relatively little additional utility to potential commercial rivals, the Commissioner accepts that the Direct Labour Organisation's general schedule of rates would be of direct value to potential competitors of the Direct Labour Organisation. Secondly, the mitigation of the public interest factors of accountability and transparency by the Wales Audit Office's involvement is a significant factor, since that body's role is to scrutinise general schedules of rates rather than charges made to individual tenants. Thirdly, the public interest in tenants of properties owned by public authorities being able to access information about the basis on which they may be subject

to charges is diminished when the information relates to the general basis for charging rather than to any specific charges made in respect of a particular property.

61. On the other hand, the factors which favour maintaining the section 43(2) exemption are stronger for information about the general charging regime compared with a repair to a specific property. The Commissioner accepts that disclosure of the general schedule of rates would be of direct value to potential competitors of the Direct Labour Organisation, whereas information about the charges incurred at one particular property would be of only marginal or inferential value to them.
62. In conclusion, the Commissioner considers that in this case the public interest in maintaining the exemption under section 43(2) outweighs the public interest in disclosure in respect of the information comprising the general schedule of rates. On the other hand, for the further breakdown of costs relating to repairs to the complainant's property, the Commissioner has decided that the public interest in maintaining the exemption does not outweigh the public interest in disclosure. Accordingly, the Council should now disclose to the complainant the information which the Commissioner has determined is not exempt, namely the breakdown of materials and installation costs. The Commissioner has concluded that, in failing to disclose the further breakdown, the Council breached the obligation in section 1(1)(b), which states that any person making a request for information is entitled *'to have that information communicated to him'*. The Council also breached section 10(1), by failing to provide the information within the statutory time limit of 20 working days.

Second request: exemption – section 40

63. The complainant's second request – originally made by the complainant's mother in her letter of 1 September 2005 – was for clarification of the accusation in the anonymous letter, which was subsequently specified as a request for a copy of the letter and its envelope, plus details of the date on which the Council had received it. The Commissioner has obtained the information held by the Council, and notes that the envelope was not retained by the Council, nor would he have expected the normal course of business to require it to do so. He therefore considers that the original envelope is information which is not held for the purposes of the Act. However as the Council made no reference to the envelope in its correspondence with the complainant, technically it has breached section 1(1)(a) of the Act, in that it neither confirmed nor denied that it held the information, and it breached section 10(1) for not confirming the information was not held within twenty working days, the time for statutory compliance.
64. Under section 40(1), information that constitutes the applicant's 'personal data' is exempt information. This exemption is absolute and requires no public interest test to be conducted.
65. In its internal review the Council noted that some of the information in the anonymous complaint letter was the personal data of the requestor in this case.

However, it considered that this personal data had been supplied in the letter to the complainant dated 30 September 2005, in which it had provided a summary of the allegations about the complainant. However, it declined to provide a copy of the letter. In its response it did not specifically address the issue of the date on which the letter had been received.

66. The Council also claimed that disclosure of the anonymous letter could potentially reveal the personal data of the author of the letter, but it did not go on to specifically consider the application of either section 40(1) or 40(2) of the Act.
67. The Commissioner takes the view that, where requested information contains the personal data of more than one individual, then both individuals are data subjects for the purposes of section 40 as there is no basis for suggesting that the individual whose data is more extensive or significant is the only data subject. In this situation, where a request is made by one of the data subjects, the information in its entirety should be considered under section 40(1).
68. In this case the Commissioner takes the view that all of the information in the anonymous letter is in fact the personal data of the complainant in the case, whether or not it is also the personal data of the author. The relevant exemption is therefore section 40(1), rather than section 40(2).
69. The Commissioner believes that the letter comprises the personal data of the complainant in this case because it is *'data which relate to a living individual who can be identified'* and *'includes any expression of opinion about the individual...'*. It therefore falls within the definition in section 1(1) of the Data Protection Act 1998:
70. Section 1(1) of the Data Protection Act 1998 defines 'data' as 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.'*

Section 1(1) of the Data Protection Act 1998 states that:

"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'.

71. Therefore the Commissioner considers that, as the personal data of the complainant, the information within the anonymous letter is exempt from disclosure under the Act by virtue of section 40(1). However the request should have been treated instead as a subject access request under section 7 of the Data Protection Act 1998.
72. In relation to the date on which the letter was received, the Council did not explicitly address this issue. However, the Commissioner considers that the date of receipt (the letter is undated but the date of receipt has been recorded on it by the Council) comprises the personal data of the complainant as it is only held in the context of the anonymous letter. Accordingly, this information is also exempt from disclosure under section 40(1) of the Act.
73. The Commissioner is conducting an assessment under section 42 of the Data Protection Act to determine whether the complainant instead has a right of access under section 7 of that Act to the information he has decided is exempt by virtue of section 40(1). The outcome of that assessment will be communicated to the complainant in due course.

Second request: exemption – section 38

74. The Council originally justified its refusal to provide the information requested about the anonymous letter by reference to section 38. Section 38(1) provides that:

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

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

75. Since the Commissioner has decided that the body of the anonymous letter and the date on which it was received by the council is exempt from disclosure by virtue of section 40(1), he has not deemed it necessary to go on to consider whether section 38(1) applied to that information.
76. However the Commissioner notes that the Council cited the exemption as being section 38, but failed to specify the relevant sub-section (section 38(1)) in either its refusal notice or the internal review. Section 17(1) of the Act places an obligation upon the public authority to ensure that its refusal notice provides full details of the exemption(s) being applied, and the Commissioner has concluded that the Council thereby breached section 17(1)(b) in not specifying the subsection of the exemption in question.

The Decision

77. The Commissioner's decision is that the following elements of the request were not dealt with in accordance with the Act:

- In incorrectly withholding information by reference to section 43(2), the Council breached section 1(1)(b) of the Act by failing to provide the information and section 10(1) by failing to provide it within the statutory time limit of 20 working days.
- In respect of the second request, the Council should have exempted the anonymous letter and the date on which it was received under section 40(1) (and should instead have considered the request under the Data Protection Act 1998)
- It breached section 1(1)(a) of the Act by neither confirming nor denying whether it held the envelope, and it breached section 10(1) for not providing that confirmation or denial within twenty working days, the time for statutory compliance
- The Council also failed to specify the relevant sub-sections of sections 38(1) and 43(2) in either of its refusal notices, in breach of its obligations under section 17(1)(b)

78. The Commissioner decided that some of the requested information was properly withheld by the Council under section 43(2) of the Act, namely the general schedule of rates.

Steps Required

79. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

- Disclose the breakdown of material and installation costs for the repair carried out on the property where the complainant lives

80. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

81. 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

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

Internal review delay

83. On 19 July 2005 the complainant requested an internal review regarding his first freedom of information request. The Council acknowledged receipt of this letter on 22 July 2005. However, it did not recognise the request as a freedom of information issue and instead directed the matter into its internal complaints procedure. After further correspondence the complainant made it clear to the Council on 29 September 2005 that he was appealing the decision not to disclose the requested information on the grounds that it was exempt under section 43 of the Act. Following the second freedom of information request, the complainant requested an internal review of that decision on 5 October 2005. Subsequently, the Commissioner also contacted the Council, and was advised by the Council that it had a system for dealing with general complaints and a separate one for conducting internal reviews of information requests, and that in this case it had inadvertently addressed the matter through the first system. The Council agreed to conduct internal reviews in respect of both requests and issue a formal response by 24 November 2006. In the event it did not communicate the result of the review to the complainant until 18 December 2006.

84. There is no timescale laid down in the Act for a public authority to complete an internal review. However, as he has made clear in his 'Good Practice Guidance No 5', the Commissioner considers that these internal reviews should be completed as promptly as possible. In the absence of exceptional circumstances, 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 the total time taken should not exceed 40 working days, and as a matter of good practice the public authority should explain to the requester why more time is needed. In this case the complainant's request for an internal review of the decision in his first freedom of information request was made on 19 July 2005, and of the second request on 5 October 2005. The Council issued its decision on 18 December 2006. The Council therefore took 360 and 305 working days respectively to complete the two reviews. The Commissioner recognises that the Council's internal review in this case was conducted prior to the issuing of the 'Good Practice Guidance No 5' in February 2007. He also accepts that the fact that the complainant was pursuing a number of issues, including through the Council's internal complaints procedure, led to some confusion in this case. Nevertheless, he takes the view that the Council was remiss in failing to recognise earlier that the complainant had requested internal reviews, and in taking a wholly unreasonable length of time to complete the reviews.

Right of Appeal

85. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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 24 day of March 2009

Signed

**Anne Jones
Assistant Commissioner**

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

Legal Annex

Freedom of Information Act 2000

Section 1(1) provides that -

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

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

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

Section 10(1) provides that –

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

Section 17(1) provides that -

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

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies.'

Section 38(1) provides that –

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

(a) endanger the physical or mental health of any individual, or

(b) endanger the safety of any individual.'

Section 38(2) provides that –

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

Section 40(1) provides that –

'Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.'

Section 40(2) provides that –

'Any information to which a request for information relates is also exempt information if-

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

Section 40(3) provides that –

'The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of 'data' in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-*
 - (i) any of the data protection principles, or*
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and*
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.'*

Section 43(1) provides that –

'Information is exempt information if it constitutes a trade secret.'

Section 43(2) provides that –

'Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).'