

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 31 March 2009

Public Authority: University College London
Address: Gower Street
London
WC1E 6BT

Summary

The complainant requested information held by several Universities, including University College London (the “public authority”) in relation to research it may have undertaken or be undertaking with primates. This included numbers and species of primates used in previous returns already provided to the Home Office along with a summary of any current research and the species being used.

The public authority originally decided to neither confirm nor deny that information was held citing section 38 of the Freedom of Information Act 2000 (the “Act”). It later varied this by confirming that it held the information but still withholding it under section 38.

The Commissioner finds that the exemption is not engaged and the complaint is therefore upheld. He further finds that the public authority breached sections 1(1)(a), 10(1) and 17(1)(b).

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 Act. This Notice sets out his decision.

The Request

2. On 31 July 2006 the complainant wrote to the public authority and made the following request for information:-

“... under section 1 (1)(b) of the Freedom of Information Act 2000:

- 1. please explain how many primates were held under licences and certificates under the Animals (Scientific Procedures) Act 1986 by or at your university, as provided to the Home Office in the last two returns of annual statistics, breaking the figure down by species*
- 2. please provide a summary of the research primates are currently used for at the university, again by species*

We are contacting a number of universities in the UK in order [to] collate an accurate and up-to-date picture of primate experimentation at UK universities. Published work by researchers at your institution suggests that primates are being used there. We think it is in the public interest that more information is given about the nature of such use, so that a more complete picture can be obtained about overall primate use in the UK than is currently available.”

3. On 24 August 2006 the public authority responded stating:

“UCL declines to provide the information that you have requested as we believe that this information is exempt from the provisions of the Act, under Section 38: Health and Safety.”

4. On 12 December 2006 the complainant requested an internal review.
5. On 23 March 2007 the public authority responded to the request for an internal review. It varied its original refusal in that it stated that it was relying on section 38 to withhold any confirmation or denial that the information was held.

The Investigation

Scope of the case

6. On 25 April 2007 the complainant wrote to the Commissioner about this and the other refusals it had received from other public authorities in respect of this request. (Each request has been dealt with under a separate Decision Notice). It included a statement of complaint common to all the cases and a further complaint specific to this public authority.
7. In its submissions it set out the reasons why it considered the public authority had inappropriately relied upon section 38 as the basis for refusing the request.

8. The Commissioner notes that in its original refusal notice the public authority only cited section 38. It was not until its internal review that this was varied to neither confirm or deny that the information was held on the basis of section 38. This was further varied during the Commissioner's investigation when it decided to confirm that information was in fact held but that it was, nevertheless, exempt under section 38. The notice therefore considers the public authority's position on the basis that it had confirmed that it held the requested information.
9. The complainant's request was made on 31 July 2006 and therefore covers the Home Office returns for 2004 and 2005. It also requested a summary of research that primates were currently being used for broken down by species. This therefore covers research being carried out on 31 July 2006.
10. The complainant has not asked for numbers of current primates being held for research. It has also not asked for details of the research that was undertaken using the primates in the two previous returns. The only common factor to both questions is the species in use.

Chronology

11. On 11 September 2007 the Commissioner wrote to the public authority to advise it that he had commenced his investigation. He pointed out that the requests had been fully answered by other Universities, i.e. some had confirmed that primates were in use and the nature of the research, yet the public authority had cited that it believed the information was exempt under Section 38. He raised various issues and asked for a response within 20 working days.
12. At the same time, the Commissioner wrote to the complainant to advise it that he was now investigating all six complaints.
13. Following a joint request from all six universities the Commissioner met with them on 18 October 2007 to discuss some of their concerns prior to them answering his initial questions.
14. The public authority sent in further arguments in respect of its continued reliance on section 38 on 31 October 2007, including its continued stance to neither confirm nor deny that the information was held.
15. On 27 February 2008 the Commissioner drew the public authority's attention to information held on its own website at <http://www.ucl.ac.uk>. On 28 February 2008 the public authority advised the Commissioner that in view of this it was no longer relying on its earlier decision to neither confirm nor deny that the information was in fact held. However, it

- maintained that it believed that disclosure of the information remained unwarranted because of increased risks to staff, students and others using its premises.
16. During the course of his investigation the Commissioner also sought further information in respect of the other related cases he was considering which raised similar issues.
 17. As part of his investigation the Commissioner conducted broad internet searches in order to identify what information was already in the public domain about the public authority's research using primates.

Background Information

18. The Animals (Scientific Procedures) Act 1986 (ASPA) came into force on 1 January 1987 and made provision for the protection of animals used for experimental or other scientific purposes in the United Kingdom. ASPA regulates any experimental or other scientific procedure applied to a "protected animal" that may have the effect of causing that animal pain, suffering, distress or lasting harm.
19. ASPA requires that before any regulated procedure is carried out, it must be part of a programme specified in a project licence and carried out by a person holding an appropriate personal licence authority. In addition, work must normally be carried out at a designated scientific procedure establishment. The personal licence is issued to an individual who could be carrying out research at more than one establishment. The personal licence holder, not the institution, is responsible for submitting an annual return to the Home Office stating, amongst other things, the number of animals used in that year under the terms of their licence.
20. The Home Office publishes annual statistics of scientific procedures on living animals which are available on-line at <http://scienceandresearch.homeoffice.gov.uk/animal-research/publications-and-reference/statistics/?view=Standard>
These are compiled from yearly returns submitted by licence holders which are a necessary condition of being granted a licence under ASPA. A nil return is required if no work is undertaken.
21. All Universities have to report to the Home Office before 31 January each year. For example, in January 2008 the figures returned will be those for animals used in 2007 which will then be used to compile the report issued in July 2008. This request was made on 31 July 2006 and therefore covers the returns for 2004 and 2005.

22. The statistics subject to this request cover returns for 2004 and 2005 which were published in December 2005 and July 2006 respectively.
23. According to the published statistics, the total number of non-human primates used for licensed research in 2005 was 2472 macaques and 643 tamarins or marmosets. The figures for 2004 were 2045 and 747 respectively.
24. Whilst there is no legal obligation for licence holders to provide abstracts about their research the Government actively encourages their publication. As such, many are 'anonymously' published on the Home Office website at: <http://scienceandresearch.homeoffice.gov.uk/animal-research/publications-and-reference/001-abstracts/> The lists are not complete though there appears to be a high return from establishments. This scheme was fully implemented in January 2005.
25. After its completion, research of the type related to the request may be published and thereby made available to the general public. The published papers indicate the types of research undertaken, the types of animals used, the names of those involved, and sometimes the specific location of the research. Summaries of such research are readily available online via PubMed's website <http://ukpmc.ac.uk/>, which is a service that includes citations from biomedical articles; or the whole research paper can be purchased from the associated publisher (which is identified on this site).
26. There are previous published papers which reveal that primate research has been undertaken either at this establishment and/or by its academics. This includes some specifically referred to on its own website.
27. The complainant requested the same information from several universities. Nine of these complied with the request in full, either stating that they held the information and supplying it or, conversely, stating that they did not hold it. Originally six universities did not reply to the complainant's satisfaction and complaints were made to the Commissioner. During the course of his subsequent investigations one further university responded in full to the complainant and the complaint was therefore withdrawn. The other five complaints have all been dealt with by separate Decision Notices.
28. The Commissioner feels it is important to reiterate his stance of impartiality. He acknowledges that the use of animals in research is highly emotive and it is a matter that many members of the public have strong feelings on all sides of the argument.. However, it is not the Commissioner's role to take sides in this debate. Instead he has to consider each complaint in accordance with the requirements of the Act.

Analysis

Procedural Issues

Section 17 – refusal of request

29. Section 17(1) of the Act requires that, where a public authority is relying on a claim that an exemption in Part II of the Act is applicable to the information requested, it should in its refusal notice:-
 - (a) state that fact,
 - (b) specify the exemption in question,
 - (c) state why the exemption applies.
30. In both its original refusal notice and internal review the public authority only cited section 38 and failed to include the relevant subsection. This is in breach of section 17(1)(b). The Commissioner also notes that the public authority did not inform the complainant of its change from subsection (2) to subsection (1), however he further notes that this was due in part to the public authority's belief that a Decision Notice was imminent and it felt that it would be more 'efficient' for the confirmation to be given in this notice.
31. As section 38 is a qualified exemption the public authority should have carried out a public interest test. Whilst it did not do so in its original refusal notice, this was rectified at the internal review stage, although the arguments supplied were very brief. In view of this later rectification the Commissioner finds that there is no breach of section 17(3)(a).
32. The public authority should have included details of any complaints procedure it has and should also have informed the complainant of its right to ask the Commissioner to make a decision. Whilst it did not do so in its original refusal notice, this was rectified at the internal review stage. In view of this later rectification the Commissioner finds that there is no breach of section 17(7)(a).
33. In addition, by not providing the requested information to the complainant within 20 working days of the request, the public authority breached section 10(1). By not providing it to the complainant by the time of the completion of the internal review, it breached section 1(1)(b).

Exemption

Section 38 – Health & Safety

34. 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.
35. The public authority did not specify whether it was relying on the argument that disclosure of the information *would have* endangered the physical health, mental health or safety of any individual or whether disclosure *would have been likely* to endanger the physical health, mental health or safety of any individual. On this matter the Commissioner has noted the comments of the Tribunal in *McIntyre V ICO & the Ministry of Defence*, [EA/2007/0068] in which the Tribunal explained, at paragraph 45 that:
- “We consider that where the qualified person does not designate the level of prejudice, that Parliament still intended that the reasonableness of the opinion should be assessed by the Commissioner but in the absence of designation as to level of prejudice that the lower threshold of prejudice applies, unless there is other clear evidence that it should be at the higher level.”*
36. It is the Commissioner’s view that where a public authority has not specified the level of prejudice, or in this case endangerment, at which an exemption has been engaged, the lower threshold of “likely to endanger” should be applied, unless there is clear evidence that it should be the higher level. In the absence of any such evidence, he has therefore applied the lower threshold in this case.
37. In dealing with the issue of whether disclosure would have been likely to endanger the physical health, mental health or safety of any individual, the Commissioner notes the comments of the Information Tribunal in the case of *John Connor Press Associates Limited v The Information Commissioner* (EA/2005/0005). Whilst this decision related to the likelihood of prejudice to commercial interests, the Commissioner believes that the test is equally applicable to assessing the likelihood of endangerment under section 38. In its decision the Information Tribunal confirmed that “the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk.” (paragraph 15). The Commissioner has viewed this as meaning that the risk of prejudice or endangerment need not be more likely than not, but must be substantially more than remote.
38. In support of its contention that section 38 was engaged at the time of the request, whilst still maintaining its stance of neither confirming nor denying that it held any information, the public authority informed the complainant

- that: *“there is clear evidence that organisations and individuals conducting research involving animals have been targeted by militant animal rights activists and information regarding the use of animals in research would be liable to increase the likelihood of any organisation and its staff being targeted for such attacks. I believe that the potential risks are neither trivial nor speculative and do not accept your argument that the existence of published research which may appear to link institutions or individuals with research involving animals means that the release of unpublished information concerning such work would not add to whatever risks might pre-exist.”*
39. It further advised the complainant that it had: *“... taken into account the public interest in there being an ongoing informed public debate on the issue of research involving animals and indeed academics at UCL have been constructively engaged in this debate”* and had decided that: *“... the information ... sought, assuming it were available, would if made public create potential health and safety risks for the institution and its staff that the public interest in the release of this particular type of information does not outweigh.”*
40. The Commissioner notes the points made by the public authority and he has considered very carefully the extent to which the disclosure of the information that was requested in this case might have led to an increase in the risk to the physical health, mental health or safety of any person.
41. The public authority provided the Commissioner with further arguments which were applicable to both parts of the complainant’s request. He has considered each of its arguments in turn in the following paragraphs. The Commissioner also notes that these arguments were given to him whilst the public authority was still maintaining its stance of neither confirming nor denying that it held any information.
42. The public authority stated to the Commissioner that *“Issues of experimentation on animals in general, but on primates in particular, are highly emotive. Disclosing ostensibly innocuous statistics, as well as research plans, would be likely to expose UCL to risks of harm by militant animal rights groups.”*
43. The Commissioner notes that the public authority itself has stated that the information requested amounts to *ostensibly innocuous statistics* and that it has not further demonstrated how the release of such statistics could actually lead to health and safety risks to any individual. He also notes that the second request was for a summary of current research rather than a *research plan* so he does not consider the reference to such plans to be relevant.

44. The public authority has stated that emotive issues connected with animal experiments are likely to expose it to harm by militant animal rights groups were any further information disclosed. However, the Commissioner does not consider that the information requested is likely to cause any additional risk. Published research papers already associate the public authority with primate research from the time the requested statistics were compiled and the public authority has additionally confirmed that it was undertaking research at the time of the request. The Commissioner considers that animal rights extremists (AREs) would have enough information available to consider it a target if they so wished.
45. The public authority has also advised that it understands the complainant does not intend to further promulgate the information requested and that it *"campaigns peacefully"*. However, it has said to the Commissioner that such assurances are irrelevant as *"Once information is disclosed under the Act, it is regarded as a disclosure to the public at large and its use passes out of UCL's control. The information may therefore fall into the hands of militant groups, notwithstanding that [the complainant]'s aims and motives are peaceful opposition."*
46. The Commissioner accepts the point that disclosure to the complainant is not to it personally and, as such, the complainant cannot control how the information is used in future if it were disclosed.
47. The public authority has told the Commissioner that its *"... assessment of risk to its staff and students is based neither on mere speculation nor on generalisations, but on concrete experience of a sustained campaign of intimidation by animal rights activists"* and that this is *"... based on the information disseminated by the police concerning campaigns currently being conducted and tactics used"*.
48. It went on to provide evidence that it had previously been targeted by Stop Huntingdon Animal Cruelty (SHAC) in 2003 because of its association with a research company whose parent company had previously dealt with Huntingdon Life Services who were the main target of the SHAC campaign. This had led to the removal of protesters from its premises by the police and had also resulted in the intimidation of a staff member who had to have security measures taken at their home.
49. The Commissioner therefore understands that by associating with parties who are deemed as 'unsuitable' by AREs the public authority suffered from threats and intimidation prior to the date of the request. However, he further notes that this has not resulted in it ceasing to undertake animal research and that it has confirmed during this investigation that it currently undertakes primate research. The Commissioner does not accept that

- provision of the requested information will add to this inherent risk. He believes that the risk clearly pre-dates and post-dates the request.
50. The public authority has further advised that *“There is clear evidence that organisations and individuals conducting research involving animals have been targeted by militant animal rights activists and providing further information regarding the use of animals in research would increase the likelihood of any organisation and its staff being targeted for such attacks. Support staff in research departments at UCL feel particularly vulnerable and look to UCL to ensure that they are not unreasonably exposed to risks to their safety as a result of the lawful and regulated work they are required to carry out by researchers”*.
51. The Commissioner again notes that the public authority has confirmed that it holds information relative to the request and had placed some information relating to primate research into the public domain prior to the request. The Commissioner believes that risks to the health and safety of its staff already existed prior to the request, including through association with material placed into the public domain at its own volition.
52. The public authority has also pointed out to the Commissioner that advice given by the National Extremism Tactical Coordination Unit (“NETCU”) demonstrates that *“... to animal rights extremists, any organisation and individual with links, however tenuous, to the animal research industry, are justifiable targets”* and also that *“such [ARE] groups conduct a sustained campaign of harassment and intimidation ... seeking to achieve their objectives by creating a climate of fear.”* It also stated that *“Putting specific information relating to UCL’s housing and use of animals in research into the public domain is very likely to provide such [ARE] groups, or those who are influenced by their rhetoric, with a target or violent opposition.”*
53. The Commissioner believes that animal rights campaigns have been going on for many years. Presumably, any group intent on pursuing its campaign will be avidly checking publications to assess what has been happening recently and would be readily able to target those involved if this was their desired course of action. The public authority has already demonstrated that it has been a target in the past because of its indirect association with the SHAC campaign, however, this has not caused it to maintain its stance of neither confirming nor denying its active involvement in primate research. The public authority has argued above that putting information about housing and use of animals in research into the public domain will increase the likelihood of it becoming a target. However, the Commissioner notes that no information about the housing of animals has been requested. He further notes that only a summary of areas of current research has been asked for, along with species but not numbers. He does not consider that this limited release of further limited information

- would escalate risks any higher than actually confirming that such research is actually on-going.
54. The public authority has further advised that *“Intelligence gathering to gain more knowledge of a primary target and to identify new targets is a known tactic of militant groups”* and that *“disclosing the requested information would enable activists to build up a profile of UCL and its use of primates in research”*.
55. The Commissioner accepts the fact that intelligence gathering could lead to identification of a new target by AREs, but considers that this will be on-going regardless of this information request. He further notes that the public authority by its own admission had already been targeted in the past and that it has also confirmed that it has been, and still is, undertaking research using primates. The Commissioner therefore considers that the public authority was a potential target at the time of the request. Whilst the provision of historical information may enable interested parties to build a more detailed profile of primate research undertaken by the public authority the Commissioner believes that the information is only limited. He also notes that other universities have already released this information and no apparent detriment has been forthcoming.
56. The public authority has further contended that *“... the potential risks are neither trivial nor speculative”* and that it does not accept the argument that *“... the existence of published research which may appear to link institutions or individuals with research involving animals means that the release of unpublished information concerning such work would not add to whatever risks might pre-exist [the request]....”*
57. As he has previously indicated, the Commissioner is not convinced by such arguments as the public authority has already linked itself with both previous and current research.
58. The public authority also advised the Commissioner that *“To the extent that published research discloses information concerning the use of primates, it does not disclose an institution’s current arrangements for the use and number of primates. There is a significant interval between conducting the research, collating and elucidating the results, submitting the research paper to the academic journal and ultimate publication. The accessibility of such research to the public is not, therefore, material in assessing the risk attendant on disclosure of the requested information... On the other hand, providing information as to whether UCL currently houses primates could pose a significant risk to safety at UCL. It is clear ... activists oppose keeping animals in a research environment. Therefore, confirming that it holds information relating to primates currently being*

housed at UCL renders UC a target for those who are opposed to universities housing primates and whose objective is to frustrate research projects.”

59. The Commissioner understands that there may be a *significant interval* between the research being completed and its subsequent publication. However, he considers that the contents of published research which was already available would nevertheless allow the public authority to be considered as a ‘target’ by animal rights activists if historical data, such as that requested, carried any associated risk. Even though it has not disclosed what research was being undertaken at the time of the request the public authority has also now confirmed that research was underway. The Commissioner believes that a risk exists even if publication of current research were not done until some time after its completion. Research which was available at the time of the request, as well as the research which will presumably be published at the end of the on-going work, obviously contains much more detail than the information that has been requested. However, this is viewed as an acceptable risk. Any risk to health and safety has not been deemed to override the importance of promulgating the research findings. As the public authority has now in fact confirmed that it was currently undertaking primate research at the time of the information request the Commissioner is not persuaded by the above arguments.
60. The public authority has said that published research papers do not establish authoritatively whether or not specific research was actually carried out by or on its behalf, although the work may have been done by academics which are normally based at its premises. It advised the Commissioner that “...*the existence of published research together with the requested information could lead to erroneous inferences being drawn. For example, academic staff ... have published papers involving research on primates that was not undertaken at UCL. Disclosure of information about primates housed in the last two years may provide a false confirmation of a link between UCL and the use of primates by those members of staff, thereby increasing the risk to UCL.*”
61. The risk that is generated by those of its academics who carry out this type of work may also lead to risks to other staff or associates of the public authority. This would presumably still be the case if research were carried out by its academics elsewhere or on behalf of others. Even if some of the published work has been done on behalf of other parties the Commissioner believes that individuals still risk being targeted irrespective of where they carried out their research or who it was for. He also believes that they would remain a ‘target’ irrespective of where or when the work was done. This risk is likely to remain as long as the academics concerned continue to carry out and publish this type of research. In any

- event, the public authority has confirmed that it undertakes such work and the Commissioner cannot therefore see any further risk from disclosing the requested information.
62. The Commissioner again notes that the public authority has now decided to confirm that it holds information relevant to the request and that it therefore does confirm that it participated in primate research at the time of the request and had also done so for the previous two Home Office returns. He is therefore of the opinion that if the main risk is carried by the institution itself then it already existed at the time of the request. If the risk is with the academics undertaking the research then it 'moves' with them to whichever institution they work at. The Commissioner believes that such associations are no different to that evidenced to him in paragraph 48 above where association with a third party resulted in the public authority being targeted. He therefore considers that the speculative identity as to who may or may not have conducted the research, or where it actually took place, is irrelevant. The public authority has confirmed its own link with this type of research and the Commissioner does not accept that provision of the information requested would allow for the accurate identification of any individual or further add to any risk that confirmation alone already provides. The public authority has shown that it has previously been a target because of its work in the past and the risk therefore pre-exists this request.
63. The public authority has stated to the Commissioner that *"animal rights extremists normally identify a target institution first, and then identify individuals working there for their campaigns of harassment."* It further argued that the Commissioner had already accepted that disclosing information revealing the location of research laboratories would endanger the health and safety of individuals on page 4 of his Decision Notice FS50082474.
64. In respect of his own earlier Decision Notice, he would point out that he may have previously accepted that information currently published by the Home Office was sufficient to facilitate public debate of the pros and cons of animal experimentation. However, it is important to reinforce that Decision Notices are written on a case-by-case basis and whilst previous decisions can be useful they do not necessarily set a precedent. The particular case referred to concerned a request made to the Home Office for the names of those holding licences at all of the 35 licensed establishments in Scotland. The Commissioner was satisfied that disclosure of information revealing the identities of individuals holding licences would or would be likely to endanger the health and safety of them as individuals. This previous request is not the same as the current request which specifically does not seek to obtain any names.

65. The public authority further argued to the Commissioner that it was *“under a statutory duty to ensure in so far as is reasonably practicable, the health, safety and welfare at work of all its employees”* and that it had a further duty *“to ensure that students, visitors and contractors are not exposed to risks to their health and safety”*. It further included that although it was aware that other institutions had decided to comply with the request that this would have no bearing on its own risk assessment and that *“merely to emulate other institutions would effectively amount to a failure on UCL’s part to discharge its duty under health & safety law”*. It went on to conclude that confirming that it held the requested information, and disclosing it, *“would be likely to pose an unnecessary risk to the health, safety and welfare of its staff, students and others.”*
66. The Commissioner understands that the public authority does have a duty to safeguard its staff and other parties with which it associates. He also believes that it will already be complying with its duty as it is already aware of the incumbent risks which are associated with animal research. Whilst he appreciates that these risks are both real and on-going he also understands that such risks are very likely to continue as long as the public authority, or its staff, participate in animal research. He has not therefore been persuaded that disclosure of the information requested will increase this risk.
67. There is also an argument given that adequate provision of information for fulfilling the public interest in debating animal research has already been served by way of Parliament’s statutory licensing regime and information about projects and detailed annual statistics provided by the Home Office. However, the Commissioner notes that whilst such comments can be helpful when considering the public interest for or against disclosure, they are not relevant when considering the likelihood of endangerment to the health and safety of any individual. He has not therefore considered such arguments.
68. The Commissioner cannot accept that the release of the information requested could in itself create any more harm to any individual than currently exists. In any event, there is a likelihood that the findings of any current research will be published eventually with much more detail than currently requested. The names of the researchers will also be published at this stage and could make them a target for the ARE campaigns suggested by the public authority – as is presumably the case for recently published articles. Even if the researchers were, at the time of the request, no longer sited at the particular establishment, they will either carry the perceived risk with them to their latest establishment or leave the risk behind them at the previous establishment.

69. The Commissioner is additionally of the view that information in the public domain may be relevant as an indication that no harm has occurred as a result of it being widely known. In this particular request he also accepts this to be the case.
70. For the reasons set out in the paragraphs above, the Commissioner finds that in the specific circumstances of this case, and with considerable weight placed on the information already in the public domain, the exemption is not engaged.

The Decision

71. The Commissioner's decision is that the public authority has not dealt with the request for information in accordance with the FOI Act in that:
72. The public authority failed to satisfy the requirements of sections 17(1)(b) in that it failed to cite the correct sub-section of section 38 in its refusal notice and also in its internal review.
73. The public authority inappropriately withheld the requested information under section 38(1)(a) & (b). In doing so it breached sections 1(1)(b) and 10(1).

Steps Required

74. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act.
75. The requested information should be released to the complainant.
76. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Other Matters

77. The Commissioner notes that although the public authority advised the complainant of its rights to appeal to him for a decision notice it did not include detail of how to contact his office. Whilst this is not a breach of the Act as a matter of good practice he considers that his contact details should be provided.

78. The Commissioner would like to acknowledge help he has been given by the Animals Scientific Procedures Division of the Home Office. Staff gave helpful advice which has assisted in compiling this Notice.

Right of Appeal

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

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX
Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 31st day of March 2009

Signed (on behalf of the Commissioner and with his authority)

.....

**Peter Bloomfield
Senior Corporate Governance Manager**

**For and on behalf of
Richard Thomas
Information Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

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 –

...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 provides that -

- (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.
- (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.
- (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 38

- (1) 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.
- (2) 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).