

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 10 August 2009

Public Authority: University of Oxford
Address: University Offices
Wellington Square
Oxford
OX1 2JD

Summary

The complainant requested information from the University of Oxford (the "University") concerning scientific experiments carried out on a macaque that was featured in a BBC television documentary. The University provided some information however withheld the remaining information on the grounds that it was exempt under section 38 of the Freedom of Information Act 2000 (the "Act"), and explained that to release it would be likely to endanger the health and safety of individuals. This decision was upheld at the internal review stage. During the investigation, the University disclosed some further information to the complainant. The Commissioner's decision is that the remaining disputed information is exempt from disclosure under section 38(1)(a) and (b) of the Act and that the public interest in maintaining the exemption outweighs the public interest in disclosure. The Commissioner has also recorded a number of procedural breaches of the Act.

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.

Background

2. The complainant made its request for information following the broadcast of a BBC television documentary entitled "*Monkeys, Rats and Me*", which featured one of the University's researchers, Professor Aziz. The programme specifically considered the experiments which would be carried out on a macaque named "Felix" and other aspects of Professor Aziz's work.

The Request

3. On 2 August 2007 the complainant wrote to the University and made the following request for information. The complainant indicated that it expected the information would be available on the project licence for the research, and set out which sections of the project licence would be relevant. The sections of the project licence cited are in brackets.

Request 1

- a. The intended duration of the project involving Felix (section 16);
- b. the scientific background of the work, including references where given (section 17);
- c. the expected benefits of the work and the likelihood of achieving them, including references where given (section 17);
- d. the detailed plan of the work and how the objectives of the project are intended to be achieved, including experimental designs and/or illustrative experiments (section 18);
- e. how the number of animals used will be kept to a minimum, why animals have to be used, why no other species is suitable or practicably available, and why the animal used is the least severe one that would produce satisfactory results (section 18);
- f. whether Felix was sourced from an overseas breeding centre or was wild-caught (section 18c);
- g. a list of each protocol to be applied to Felix under the project licence, including a description of the procedures, each step of the experimental protocol and for each step, the nature or the use of anaesthetic, the specific adverse events, their frequency, controls and endpoints (section 19).

Request 2

Which of the procedures specified in the licence have already been performed on Felix, and when?

Request 3

Please provide all available information about Felix's health status throughout the project, including details of veterinary care that he has received.

4. On 5 September 2007 the University contacted the complainant. It confirmed it held the requested information and answered request 1 parts (a) and (f) in full, and offered a summary of information in response to the remaining parts of the

- request. It refused to provide any further information in full on the grounds that the information was exempt from disclosure under section 38 of the Act, and explained that disclosure of the requested information would be likely to endanger the physical or mental health of any individual, or endanger the safety of any individual. The University found that the public interest in maintaining the exemption outweighed the public interest in disclosure.
5. The University also explained that it had noted guidance recently issued by the Commissioner on the subject of section 14(1) and vexatious requests; however, it did not elaborate on this point further.
 6. The complainant requested an internal review of the University's decision on 17 October 2007.
 7. On 15 November 2007 the University contacted the complainant with the outcome of the internal review. It upheld its decision to withhold the remaining requested information under section 38 of the Act.

The Investigation

Scope of the case

8. On 13 February 2008 the complainant contacted the Commissioner to complain about the way its request for information had been handled. The complainant specifically asked the Commissioner to consider the following point:
 - the University's failure of provide the requested information in full.
9. The Commissioner's usual policy is to require complainants to make their complaints to him within two months of the internal review being completed. However, the complainant explained that it had delayed making a complaint pending the outcome of the decision of the Information Tribunal (the "Tribunal") in the case of the British Union for the Abolition of Vivisection v Information Commissioner and Secretary of State for the Home Department (EA/2007/0059), the decision on which was promulgated on 30 January 2008. The Commissioner therefore agreed to investigate the outstanding requests for information.
10. During the course of the Commissioner's investigation the following matters were resolved informally and therefore these are not addressed in this Notice:
 - the University agreed to disclose some of the previously withheld information to the complainant. The Commissioner has therefore not considered this information further.
11. The remaining disputed information, to which this Notice relates, is as follows:

Request 1

- (b) References to publications where Professor Aziz has not authored, or co-authored, the publication;
- (c) References to publications where Professor Aziz has not authored, or co-authored, the publication;
- (d) detailed description of procedures;
- (e) detailed information describing the application of the reduction, refinement and replacement principles to this case; and
- (g) detailed description of procedures and adverse effects.

Request 2

As request 1(d) above.

Request 3

Initials of veterinary surgeons involved in Felix's care throughout the project.

The Commissioner has categorised this remaining information into 'names' and 'detailed information relating to experiments'. His position in relation to these two categories is outlined at paragraphs 37 onwards.

Chronology

12. The Commissioner wrote to the University on 15 December 2008 to begin the investigation into the complaint. He asked the University to provide him with a copy of the information that had been withheld from the complainant, and further information to explain its application of section 38.
13. The University requested an extension to the deadline for a response and subsequently replied to the Commissioner's letter on 2 February 2009. In this letter, the University also sought to withhold the requested information under section 43(2). The Commissioner expanded his investigation to consider whether section 43(2) applied to the requested information.
14. The Commissioner contacted the University on 13 February 2009 by telephone to discuss the complaint. He followed this with a letter dated 17 February 2009, in which he requested further information. The University responded in writing on 3 March 2009.
15. The Commissioner wrote again to the University on 11 March 2009; the University responded on 26 March 2009.
16. The Commissioner requested additional information on 27 March 2009, which the University provided on 7 April 2009.

Analysis

17. The provisions of the Act referred to below are set out in full in the Legal Annex to this Notice.

Substantive Procedural Matters

Section 14(1) – vexatious requests

18. Section 14(1) provides that –
- “Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious”.
19. The University had informed the complainant in its refusal notice of 5 September 2007 that it had noted the Commissioner’s guidance on section 14(1) of the Act in relation to vexatious requests. The University did not explain that it considered section 14(1) to apply to the request, nor did the internal review decision of 15 November 2007 seek to apply section 14(1). Therefore, the Commissioner has concluded that the University did not intend to refuse the request under section 14(1), and he has not considered this provision further.

Exemptions

Section 38(1)(a) and (b) – health and safety

20. 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.”
21. The Tribunal, in the case of Hogan v Information Commissioner and Oxford City Council (EA/2005/0030), explained that the application of the ‘prejudice’ test involved a number of steps: “first, there is a need to identify the applicable interest(s) within the relevant exemption...second, the nature of the ‘prejudice’ being claimed must be considered...a third step for the decision-maker concerns the likelihood of occurrence of prejudice” (paragraphs 28 to 34).

Identifying the applicable interests

22. The University explained that it considered disclosure of the requested information would be likely to increase the risk to individuals of violence and intimidation by animal rights activists.

23. The Commissioner asked the University to clarify whether it was relying on section 38(1)(a), section 38(1)(b) or both, as a means of withholding the requested information.
24. The University explained that it considered there was an overlap between sections 38(1)(a) and (b), in that “violence can be interpreted as a danger to both physical health and to safety... if someone suffers an injury as a result of an attack by an animal rights extremists, both their safety and their physical health have been endangered”. Further, the University explained that risk to mental health arises from the threat posed by animal rights extremists. It explained that “significant and durable damage” would be likely to be caused to mental health, “by the knowledge that a danger exists to oneself or to members of one’s family, which would impair one’s ability to function normally”.
25. The Commissioner has considered the University’s arguments and considers it would be artificial to draw a distinction between a threat to physical health and safety in this context. Further, the Commissioner accepts that, in this case, where individuals are under threat of attacks on their physical health, this is likely to affect their mental health. Therefore, where the Commissioner considers the exemption to be engaged, he considers both limbs of the section 38(1) exemption to apply.

The nature of prejudice

26. The Tribunal, in the case of Hogan, commented that “...an evidential burden rests with the decision-maker to be able to show that some causal relationship exists between the potential disclosure and the prejudice...” (paragraph 30).
27. In order to demonstrate that disclosure of the requested information would be likely to result in individuals’ health and safety being endangered, the University provided the following information to the Commissioner:
 - an extract from an animal rights organisation’s website (‘SPEAK’), available online at the following link

<http://speakcampaigns.org/sitepages.php?a=22>and
 - a table detailing attacks on the property of parties involved with the University, claimed to have been committed by animal rights extremists.
28. When considering the application of the exemptions and the public interest test, the Commissioner must assess the circumstances that were relevant at the time of the request or at the latest by the date of compliance with sections 10 and 17 of the Act. This is in line with the decision of the Tribunal in *Department for Business, Enterprise and Regulatory Reform v Information Commissioner and Friends of the Earth (EA/2007/0072)* (paragraph 110).

29. The table provided to the Commissioner detailed 12 attacks to property claimed to have been carried out by animal rights extremists between 4 November 2007 and 4 September 2008. All of these instances of violent behaviour post-date the request and therefore the University would not have been able to take them into account when deciding, at the refusal notice or internal review stages, to withhold the information. However, the information contained within the table clearly demonstrates the ongoing nature of the threat posed by animal rights extremists.
30. The Commissioner asked the University to explain whether, where it was not immediately clear, all of the parties listed on the table were contractors involved in the building of the new laboratory at Oxford.
31. The University explained that, to the best of its knowledge, none of the companies listed in the table were involved in the construction of the new Biomedical Sciences building. Further, the University explained that the table included details of arson attacks carried out on the vehicles of two retired members of its staff who had not used animals in their research prior to their retirement.
32. The article at the link set out above describes Professor Aziz as a “monster” who “abused and tortured” Felix whilst he was involved in the experiments.
33. The information the University has submitted demonstrates that individuals are prepared to use information that is known about the research in question to portray those involved in it in a negative way. The material on the website demonstrates how information is disseminated amongst animal rights campaigners and that it may therefore come to the attention of extremists. Further, the University has provided evidence that parties believed to be involved with the University in some way have been subject to attacks to their property by extremists. The Commissioner therefore believes that the University has demonstrated a causal link between the disclosure of information concerning this research and the endangerment to health and safety it has identified.

The likelihood of prejudice

34. The University has specified that it believes disclosure of the requested information would be likely to endanger the health and safety of individuals. The Tribunal, in the case of John Connor Press Associates Limited v Information Commissioner (EA/2005/0005) stated 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 interpreted this to mean that, in order for a public authority to satisfy him that disclosure of the requested information would be likely to endanger the health and safety of individuals, it must demonstrate that the risk of prejudice need not be more likely than not, but it must be substantially more than remote.
35. In this case, the name and some details about the research had been made available to the public by way of the television documentary. By participating in this programme, the University and Professor Aziz himself had accepted that a degree of risk to the health and safety of those associated with the experiments

carried out on Felix may occur. The University has explained, and the Commissioner has set out above, what it believes to be the consequences of its participation in the programme.

36. The Commissioner's duty in this case is to consider whether disclosure of the requested information would be likely to *increase* the risk to the health and safety of individuals, above that risk already accepted by the University when participating in the documentary.

Names of individuals

37. The Commissioner has considered whether academics' (whose publications are referenced in the project licence that comprises the withheld information in this case) and veterinary surgeons' (involved in Felix's care throughout the project) health and safety would be likely to be endangered by release of their names (in the case of the academics) or their initials (in the case of the veterinary surgeons).

Veterinary surgeons

38. In the case of veterinary surgeons, before assessing whether disclosure of their involvement in the project involving Felix would be likely to endanger their health and safety, the Commissioner must first consider whether they may be identified from their initials (their full names are not recorded in the withheld information). Clearly, if they may not be identified from this information, no risk to health and safety arises.
39. The University explained that these individuals were likely to be identified by their initials from information made available in the Register of the Royal College of Veterinary Surgeons. The University explained that animal rights extremists wishing to endanger the health and safety of individuals may refer to the hard copy version of the Register, and cross reference this with the initials of the veterinary surgeons in order to reveal their full names, and use this information to track their current locations. The University also provided a worked example to demonstrate that, outside of the Register, initials could be used to accurately identify individuals using an internet search engine.
40. From the explanations that have been provided, the Commissioner believes that veterinary surgeons may be identified by their initials.
41. The University has explained that Professor Aziz has received hate mail and death threats, and that he and his family were (and remain) under police protection.
42. The University has also explained that animal rights extremists have demonstrated their willingness to target vets who care for laboratory animals. It provided a link to the following news story detailing such attacks:

<http://www.newscientist.com/article/mg12617210.500-vets-targeted-in-bombing-attacks.html>

43. The Commissioner therefore considers it likely that, if the names of individuals who can be explicitly linked as being involved in the relevant experiments or in Felix's care, were disclosed, they would be subject to similar threats as Professor Aziz. The Commissioner considers that being subject to such threats would be likely to endanger the identifiable individuals' health and safety.

Academics

44. The academics' names appear in full in the withheld information, and therefore it is clear that they may be identified by disclosure of the requested information.
45. The Tribunal, in the BUAV case referenced at paragraph 9 above, stated:
- “we think...that it is already relatively easy to identify, from publicly available information, the individuals and organisations that are prominent in a particular area of research and have used animals in the past. We are not convinced that the disclosure of the bibliography... will therefore significantly increase the risk that those working in this area face from extremists”.
46. The Commissioner asked the University to comment on this quotation. The University explained that, whilst the particular journal articles are already in the public domain, it would take time and financial resources for extremists to identify the relevant academics if this information is not disclosed to them. It argued that “provision of references from a project licence would enable them to bypass these difficulties by providing them with a ready-made list of potential targets, which, in our view, would be likely to increase significantly the risk of endangerment”.
47. The Commissioner is not convinced by this particular argument, as he believes it unlikely that individuals or organisations intent on identifying those involved in scientific procedures using animals would be deterred by the time and cost implications of obtaining this information otherwise than by a request for information under the Act.
48. Far more persuasive, is the consideration that, whilst the names the academics cited in the withheld information are in the public domain, their inclusion in the withheld information gives a particular context, in that they may be seen to have inspired or motivated the present project licence-holder into conducting this research. Some of the academics may not have conducted experiments on animals at all, or may have not used non-human primates in their research. The information supplied by the University demonstrates that the involvement of non-human primates in research has attracted particular interest from animal rights groups. The Commissioner draws support for this argument from the evidence submitted by the University which demonstrates that animal rights extremists have been prepared to take direct action against individuals not involved or linked with its scientific research using animals.
49. Disclosure of the titles of journal articles is likely to lead to identification of the authors. The Commissioner therefore considers disclosure of the names of academics would be likely to endanger their health and safety.

50. The Commissioner would note at this stage that, following his intervention, the University has already disclosed the references of articles where Professor Aziz was the author, or the co-author of the articles, as his name is already publicly linked with the experiments conducted on Felix and therefore disclosure of this information is unlikely to increase the risk to the health and safety of Professor Aziz or his colleagues. The Commissioner has satisfied himself that references to these articles are returned easily in online searches.

Detailed information relating to the experiments

51. The project licence relevant to this case was granted on 30 March 2005 and will expire on 30 March 2010. Therefore, the project had been underway for a little over two years when the complainant made its request. The programme in which Felix featured was broadcast on 27 November 2006. The issues surrounding the experiments performed on him were therefore very much 'live' at the time of the request. The Commissioner has taken this into consideration when making a determination on this case.
52. The remaining disputed information contains very detailed explanations of the procedures carried out on Felix and the other primates that have been, or will be, included in the project. The Commissioner has reviewed this information and the information that has been provided to the complainant by the University during the course of his investigation, in addition to other information supplied by the University to the Commissioner in support of its application of exemptions.
53. The Commissioner has considered the information made available on the SPEAK website set out above. An article on the site describes procedures it believed had been carried out on Felix in detail. The researcher in question is described as having "abused and tortured" Felix and describes the procedures carried out as "barbaric and gruesome".
54. The University has explained that:
- "animal rights extremists view the release of any information relating to the University's animal-based research as an opportunity to increase the pressure on this organisation, and, there is therefore always a risk that their reaction to new information will pose a threat to health and safety, given their willingness to use violent and intimidating methods".
55. The Commissioner is unwilling to accept the University's argument above to allow it to use a 'blanket' exemption for information concerning animal-based research. However, as detailed at paragraph 53 above, the University has demonstrated that the release of information about the experiments carried out on Felix has led to strongly worded remarks being made about Professor Aziz, and threats to his safety being made. The Commissioner considers that, if additional, detailed information about the procedures to be carried out under the project licence had been made available at the time of the request, the risk to the health and safety of the researcher in question would have been likely to be increased.

Public interest arguments in favour of disclosing the requested information

56. The University identified the following public interest argument in favour of disclosing the requested information:
- the public interest in allowing a well-informed debate on controversial issues such as the use of animals in medical research.
57. The University explained in its refusal notice that it considered the above public interest factor had been met by the disclosure of information made available at that time. The Commissioner did not agree with the University, and, during the course of his investigation, the University provided additional information to the complainant.

Public interest arguments in favour of maintaining the exemption

58. The University has identified the following public interest arguments in favour of maintaining the exemption:
- the public interest in allowing Government-sanctioned scientific research to continue; and
 - the public interest in the University protecting the safety of staff, students and others connected with it.
59. The University has explained that animal-based research is recognised by the Government as necessary to contribute to the search for advances in the prevention, diagnosis and treatment of human disease, and that the University's ultimate aim in each instance of medical-based research is to acquire knowledge that will further efforts to prevent or alleviate human suffering caused by serious and life-threatening diseases. The University has explained that it considers this objective is less likely to be fulfilled if the information requested is disclosed. The University has therefore demonstrated that there is a public interest in animal-based research being allowed to take place.
60. The University has argued that, if it is in the public interest to carry out research involving the use of animals, information should not be released that makes it less likely that such research will take place. The University has argued that the threat of violence, intimidation and abuse is likely to deter scientists from engaging in animal-based research.
61. The University has confirmed that, despite the researcher's experience in this case, other scientists have since agreed for summaries of their animal-based research to be published on its website, available at the following link:
- http://www.ox.ac.uk/animal_research/research_case_studies/index.html
62. Further, the University has confirmed that it has not released the names of any individuals engaged in animal-based research without their consent.

63. The University has argued that disclosure of the information requested would be likely to endanger the health and safety of its staff and students and that there is a strong public interest in such risks being avoided.

Balance of the public interest arguments

64. The Commissioner considers there is a strong public interest in information which would add to the debate about the use of animals in scientific research being made available. However, he considers that the University has now provided the complainant with much more information than it had initially been willing to divulge, and that the information released is likely to enable greater participation in debates on the issue of the use of animals in scientific research. The Commissioner notes that the information need not necessarily be made available in full in order for this objective to be met.

65. The University has argued that disclosure of the requested information would be likely to deter scientists from engaging in important animal-based research, however it has demonstrated that the research in question remains ongoing and that other researchers have made information about their research available since the request was made. Given that the University does not make available information which would enable researchers to be identified without their consent, the Commissioner does not consider it likely that a reduction in or cessation of animal-based research at the University would be likely to occur, following disclosure of the remaining disputed information. Further, the Commissioner notes that the Act applies to all universities in England, Wales and Northern Ireland and therefore alternative educational establishments will be unable to provide researchers with assurances that information about their research will never be disclosed. He does not consider the University's argument in this regard to be a strong one.

66. The Commissioner considers there is a very strong public interest in individuals being able to live free from fear of threat to their physical and mental health and safety. The Commissioner has taken into account the comments made by Judge Patrick Eccles, the judge in the trial of an animal rights campaigner convicted of conspiracy to commit arson against the University:

“A real and profound sense of fear has pervaded the lives of very many people here in Oxford as a result of the campaign by individuals who have no care for the feelings or sense of security of the innocent men and women who happened to be associated with the laboratory”.

quoted in the *Oxford Mail* article, available online at the following link:

http://www.oxfordmail.co.uk/search/4124967.Broughton_gets_10_years_for_animal_rights/

67. The Commissioner considers that the University has demonstrated it was likely an increased risk to the health and safety of its staff, Professor Aziz in particular and other individuals who may be identified from the information, would arise following disclosure of the remaining disputed information. Given the severe

nature of the threats, the Commissioner does not consider that disclosing the information requested in order to inform public debate would justify the risk to individuals' health and safety.

68. The Commissioner's view in this case is that the public interest in maintaining the exemption outweighs the public interest in disclosure.

Section 40(2) – personal data

69. As he has found the remaining disputed information to be exempt under section 38(1)(a) and (b), and considers the public interest in maintaining the exemptions to outweigh the public interest in disclosing the information, the Commissioner has not gone on to consider whether the remaining disputed information, where individuals may be identified, is exempt under section 40(2).

Section 43(2) – commercial interests

70. As he has found all the remaining disputed information to be exempt under sections 38(1)(a) and (b), and that the public interest in maintaining the exemptions outweighs the public interest in disclosure, the Commissioner has not gone on to consider whether section 43(2) applies to the requested information.

Procedural Requirements

Section 1(1) – general right of access

71. The Commissioner has considered whether the University has complied with section 1(1) of the Act.
72. Section 1(1) provides –
- “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.”
73. The University confirmed to the complainant on 5 September 2007 that it held the information requested.
74. As set out above, the Commissioner considers that the University was correct to withhold the remaining disputed information.
75. The Commissioner therefore considers that the University has complied with sections 1(1)(a) and 1(1)(b) of the Act in respect of the remaining disputed information.

Section 10(1) – time for compliance

76. The Commissioner has considered whether the University dealt with the complainant's request for information on time.
77. Section 10(1) 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.”
78. The complainant made its request for information on 2 August 2007. The University has stated that it received this request on 6 August 2007. The twentieth working day following the date of receipt was therefore 4 September 2007. The University responded on 5 September 2007. It has therefore breached section 10(1) by complying with section 1(1) late.

Section 17 - Refusal of Request

79. The Commissioner has considered whether the University complied with the requirements of section 17 of the Act when issuing the complainant with its refusal notice dated 5 September 2007.
80. 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.”
81. As described at paragraph 78 above, the public authority responded to the complainant late. It has therefore breached section 17(1) of the Act by failing to issue the complainant with a refusal notice within twenty working days following the date of receipt of the request.
82. Further, the University introduced the exemptions in sections 40(2) and 43(2) during the Commissioner's investigation. Late reliance on exemptions constitutes a breach of section 17(1). In addition, the University failed to explain to the complainant that it considered these exemptions to apply or the reasons it considered them to be applicable. It has therefore breached sections 17(1)(a), (b) and (c) in respect of sections 40(2) and 43(2).

83. Following consideration of the decisions of the Tribunal in *King v Information Commissioner and Department for Work and Pensions (EA/2007/0085)* and *McIntyre v Information Commissioner and Ministry of Defence (EA/2007/0068)*, the Commissioner has determined that public authorities should be allowed up to the date of the internal review to correct mistakes in their handling of cases. Therefore, the refusal notice the Commissioner has reviewed for the purposes of assessing the University's compliance with section 17(1) is that which was in place following the internal review.
84. The University explained to the complainant that the information was exempt under "section 38" of the Act, however did not specify which subsection or paragraph it was relying upon to withhold the requested information. The Commissioner therefore considers that the University failed to comply with section 17(1)(b).

The Decision

85. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

- sections 1(1)(a) and (b)
- section 38 (1) (a) and (b)

However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- section 10(1);
- section 17(1);
- section 17(1)(a), (b) and (c).

Steps Required

86. The Commissioner requires no steps to be taken.

Other matters

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

During the course of the investigation, the University has responded to the Commissioner's correspondence in a timely fashion and has provided full and detailed arguments to support its application of the exemptions. The Commissioner is grateful for the University's assistance during the investigation of this complaint which has enabled him to reach his decision in a prompt manner.

Right of Appeal

88. 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 10th day of August 2009

Signed

**Anne Jones
Assistant Commissioner**

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

Legal Annex

General Right of Access

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 1(2) provides that –

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

Section 1(3) provides that –

“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.”

Section 1(4) provides that –

“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.”

Section 1(5) provides that –

“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).”

Section 1(6) provides that –

“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”.”

Time for Compliance

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 10(2) provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is 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.”

Section 10(3) provides that –

“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.”

Section 10(4) provides that –

“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.”

Section 10(5) provides that –

“Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and

- (b) confer a discretion on the Commissioner.”

Section 10(6) provides that –

“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 Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”

Vexatious requests

Section 14(1) provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious”

Refusal of Request

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 17(2) states –

“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.”

Section 17(3) provides that –

“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.”

Section 17(4) provides that –

“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.

Section 17(5) provides that –

“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.”

Section 17(6) provides that –

“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.”

Section 17(7) provides that –

“A notice under section (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.”

Health and safety

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).”

Personal information

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 40(4) provides that –

“The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).”

Section 40(5) provides 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), 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 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 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)."

Section 40(6) provides that –

"In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded."

Section 40(7) provides that –

In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to the 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.

Commercial interests

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)."

Section 43(3) 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, prejudice the interests mentioned in subsection (2)."