

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 19 April 2010

Public Authority: Borough of Poole Council
Address: Civic Centre
Municipal Road
Poole
BH15 2RU

Summary

The complainant requested information concerning the results of a job evaluation process which the Council had undertaken. The Council refused the request citing section 40(2) of the Act. The Commissioner has investigated and decided that section 40(2) is not engaged and accordingly has ordered the release of the information. The Commissioner also found that the Council failed to meet the requirements of sections 1(1)(b) and 10(1) 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 Freedom of Information Act 2000 ('the Act'). This Notice sets out his decision.

Background

2. In 1997 a key agreement was signed between trade unions and employers in local government. The Agreement is more commonly known as the "Single Status Agreement" and committed councils to undertaking equal pay reviews to introduce non-discriminatory pay and grading structures. The 2004-6 National Joint Council (NJC) pay

settlement for England, Wales and Northern Ireland committed councils and the trade unions to completing job evaluation and achieving new pay structures by April 2007. To meet its obligations under the NJC 2004 Agreement, the Council has used the Greater London Provincial Council Job Evaluation Scheme ('the GLPC Scheme') to evaluate the posts within the Council to which this request relates.

3. The GLPC Scheme uses 11 factors to evaluate a post. Each factor has different levels with definitions for each level. Under the GLPC scheme, a job description is assessed against 11 different criteria, or factors:
 - supervision/management of people
 - creativity and innovation
 - contacts and relationships
 - decisions – discretion
 - decisions – consequences
 - resources
 - work demands
 - physical demands
 - working conditions
 - work context
 - knowledge and skills.
4. There are a differing number of levels for each factor, ranging from the most basic level to the most complex. Every factor level has a points value, and these points are added up to give an overall total for the job in question. The score is an objective measure of how the job role has been mapped against the factors and different levels within each factor, within the GLPC Scheme. The scores are then mapped onto a pay and grading structure and a pay band is allocated based on the overall scoring for each post.

The Request

5. On 4 August 2008 the complainant requested the following information from the Council:

"A full list of job evaluation scores recently released to by [sic] the Council. The list should include: Job Title Post Number Service Unit Job Evaluation Score Factors Factor Level Scores".

The complainant asked that the information be provided on an Excel spreadsheet or if this was not possible, that the information be provided in both departmental and job title order.

6. The Council responded to the request on 27 August 2008 confirming it held the information requested, but that the information was exempt by virtue of sections 40(2) and 40(3)(a) of the Act. The Council stated that disclosure would be in breach of data protection principles 1, 2 and 6.
7. The complainant requested an internal review of the Council's decision on 29 October 2008, stating that in his view, the information requested did not constitute personal data.
8. The Council provided the outcome of its internal review on 17 November 2008 and upheld its decision not to release the information requested by virtue of sections 40(2) and 40(3)(a) of the Act.

The Investigation

Scope of the case

9. On 13 January 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
 - a. Whether the information requested constituted personal data as job evaluation schemes refer to the post and not the post holder.
 - b. Whether the Council was correct in its application of section 40 to his request.
10. The scope of the Commissioner's investigation has therefore been to determine whether the Council was correct to refuse to disclose the information requested by virtue of section 40(2) of the Act.

Chronology

11. The Commissioner wrote to the Council on 22 July 2009 requesting a copy of the withheld information and further clarification in respect of its application of section 40.
12. The Commissioner contacted the Council by telephone on several occasions between 25 and 27 August 2009 and agreed an extension for the deadline for response to 4 September 2009.

13. The Council responded to the Commissioner on 1 September 2009 providing a copy of the withheld information and representations in respect of its application of section 40(2).
14. The Commissioner wrote a further letter to the Council on 28 September 2009 advising that his preliminary view was that the information was not exempt by virtue of section 40(2) and invited the Council to consider informal resolution.
15. The Council responded to the Commissioner on 9 October 2009 providing further arguments to support its view that section 40(2) was applicable to the information requested.
16. The Commissioner telephoned the Council on 9 November 2009 to advise of his view that it had still failed to demonstrate how the exemption was engaged. He also advised the Council that it had failed to provide detailed arguments in relation to how some of the information requested constituted personal data and how disclosure would breach the data protection principles. The Commissioner explained that, in the absence of such detailed arguments, he would be likely to find that the information should be disclosed, and encouraged the Council to informally resolve the complaint. The Commissioner also referred the Council to two previous Decision Notices issued on cases involving requests for job evaluation information¹.
17. On 13 November 2009 the Council requested an extension to 30 November 2009 to allow it consider whether or not it would be prepared to disclose the information by way of an informal resolution to the complaint. The Commissioner agreed an extension to 30 November 2009.
18. On 1 December 2009 the Council contacted the Commissioner to advise that it was maintaining its position that the information was exempt, and as such it was not prepared to release the information voluntarily.

Analysis

Exemptions

19. Section 40(2) of the Act provides an exemption for information which is the personal data of an individual other than the applicant, and where

¹ Decision Notices – case reference numbers FS50078603 and FS50085777

one of the conditions listed in sections 40(3) or 40(4) is satisfied. In this case the condition in question is contained in section 40(3)(a)(i), which applies where the disclosure of the information to any member of the public would contravene any of the data protection principles as set out in Schedule 1 to the Data Protection Act 1998 ('the DPA'). All sections of the legislation are reproduced in the attached legal annex.

The Council's position

20. The Council has argued that the requested information constitutes the personal data of its employees and disclosure would breach the first, second and sixth data protection principles. Its basis for this is, whilst there are a number of categories of jobs within the Council held by a significant number of people, there are many posts, particularly office based ones, which are highly specialised and effectively unique. Because the information requested includes job titles, the Council believes it would be easy to identify a significant number of individuals from the withheld information and other information already in the public domain, such as the names of people occupying certain posts within the Council. The Council provided some examples of job titles which it considered fell into this category as being specialised, unique and easily identifiable. In its response to the Commissioner dated 1 September 2009, the Council also argued that the withheld information constituted sensitive personal data.
21. The Council stated it did not consider there to be a legitimate public interest in disclosure, particularly as the pay and grading process was not complete. The Council also believes that as the process had not been completed, disclosure could harm and destabilise its negotiations with the relevant Unions and prevent agreement being reached. The Council confirmed that it is aware of the debate over whether the pay and conditions of certain public sector officials should be disclosed but believes this public interest applies to more senior staff.
22. The Council explained that the information requested had not been disclosed to staff and to release such information into the public domain before it was released to staff could harm the fundamental relationship of trust and confidence between employer and employee. The Council believes that its employees would have a reasonable expectation that the information in question would not be released into the public domain, particularly when the pay and grading restructuring process has not been completed. The Commissioner understands however that the job evaluation part of the process had in fact been completed by the time of the request.

23. The Council advised the Commissioner that the job evaluation process in this particular case only considered posts below senior management level and as such it believes disclosure of the information requested would lead to the publication of a considerable amount of detail relating to more junior staff who have a greater legitimate expectation of privacy. The Council's view is that whilst job evaluation relates to the post and not the post holder, disclosure of the information requested would be perceived as a "score" on the individual carrying out a particular post.
24. The Council argued that, as the overall job evaluation scores will determine each employee's new salary scale, if the withheld information was disclosed, it would in due course be possible to link the withheld information with the Council's new pay scales and determine what salary is paid to an individual who could be identified from the withheld information. The Council has not provided any specific detail as to how this would be possible or which individuals would fall into this particular category. The Council has however stated that where an employee is assigned a new grade as a result of any job evaluation process, they would normally start at the lowest point of that new pay scale, and therefore it would be possible to deduce the actual salary payable to certain employees.

The complainant's position

25. The complainant's view is that the information does not constitute the personal data of the Council employees as job evaluation exercises relate to the post itself and not the post holder, or how well the post holder undertakes a particular job.

The Commissioner's position

26. In his consideration of both the Council's and the complainant's representations, the Commissioner has considered the following issues:
 - Whether the information requested constitutes personal data as defined in section 1(1) of the DPA;
 - Whether disclosure would breach any of the data protection principles.
27. The Commissioner notes but does not accept the Council's argument that disclosure could harm and destabilise its negotiations with the relevant Unions and prevent agreement being reached, as he does not believe this is a valid argument for withholding information under section 40 of the Act.

Is the information personal data?

28. In order to rely on the exemption provided by section 40(2), the information being requested must constitute personal data as defined by the section 1(1) of the DPA.
29. The two main issues to consider when determining whether information constitutes personal data are that the data must 'relate' to a living individual and that living individual must be identifiable.
30. The withheld information in this case consists of a spreadsheet with each row showing the job reference number, department, job title, job family, job evaluation score factors and the factor level scores of the jobs which were considered in the job evaluation exercise. The Commissioner is satisfied that where individuals carrying out a specific role could be identified from the withheld information, the data would relate to those persons as identifiable living individuals.
31. The Commissioner has therefore gone on to consider whether disclosure of the actual information to the public would lead to the identification of the individuals to whom the data relate. This is because if disclosure of the information requested could not lead to the identification of the data subjects, then it would be unlikely that any disclosure could be considered 'unfair'.

Can living individuals be identified from the data?

32. The Commissioner has drawn a parallel with the concept of an 'identifiable person' as set out in the European Data Protection Directive (95/46/EC), which is implemented in the UK by the DPA:

"personal data" shall mean any information relating to an identified or identifiable natural person ...; an identifiable person is one who can be identified, directly or indirectly ..."

33. The Commissioner's technical guidance on 'Determining What is Personal Data' referred to in paragraph 26 above states:

"Sometimes it is not immediately obvious whether an individual can be identified or not, for example, when someone holds information where the names and other identifiers have been removed. In these cases, Recital 26 of the Directive states that, whether or not the individual is nevertheless identifiable will depend on "all the means likely reasonably to be used either by the controller or by any other person to identify the said person".

Therefore, the fact that there is a very slight hypothetical possibility that someone might be able to reconstruct the data in such a way that the data subject is identified is not sufficient to make the individual identifiable for the purposes of the Directive. The person processing the data must consider all the factors at stake.

The starting point might be to look at what means are available to identify an individual and the extent to which such means are readily available. For example, if searching a public register or reverse directory would enable the individual to be identified from an address or telephone number, and this resource is likely to be used for this purpose, the address or telephone number data should be considered to be capable of identifying an individual.

When considering identifiability it should be assumed that you are not looking just at the means reasonably likely to be used by the ordinary man in the street, but also the means that are likely to be used by a determined person with a particular reason to want to identify individuals. Examples would include investigative journalists, estranged partners, stalkers, or industrial spies”.

34. On the one hand, the withheld information simply details the job evaluation information and scoring in relation to a particular post, and does not show the identity or name of the post holder. However, in order to determine whether the withheld information in this case can identify individuals the Commissioner has considered other factors, including other information already in the public domain (whether published by the Council or others, or information known in the community).
35. On the Council's own website, the names of some individuals carrying out certain roles within the Council are published, for example the name of the Library Services Manager. This would allow members of the public to identify a number of individuals from the withheld information. In addition, the Commissioner considers it would also be relatively easy for employees of the Council who have a wider knowledge of the Council staffing structure to identify individuals working within the various roles listed on the spreadsheet of withheld information.
36. Taking all the factors above into account the Commissioner believes that it would be possible for certain individuals to be identified if the withheld information were disclosed and that this is more than a slight hypothetical possibility. Accordingly, the Commissioner is satisfied that

at least some of the information requested does constitute personal data, within the definition at section 1(1) of the DPA.

37. As it is difficult to determine the exact number of individuals who could be identified from the withheld information, the Commissioner considers it appropriate to treat all of the withheld information as potentially falling within the definition of personal data.

Would disclosure breach any of the data protection principles?

38. As the Commissioner is satisfied that at least some of the information constitutes personal data, the next question for him to consider is whether disclosure of the information would breach any of the data protection principles. The Council has claimed that disclosure of the information requested would breach the first, second and sixth data protection principles.

The First Data Protection Principle

39. The Commissioner considers the first data protection principle to be highly relevant in this case. It states that:

“Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.”

40. In this context, ‘processing’ is construed broadly and includes disclosure of the information requested. In considering whether disclosure of the information requested would comply with the 1st Principle, the Commissioner has first considered the fairness aspect. He has then considered whether a Schedule 2 condition can be met, and finally whether such a disclosure would be lawful.

Fairness

41. In assessing fairness, the Commissioner has considered the reasonable expectations of the individuals concerned, the nature of those expectations and the consequences of disclosure to the individuals. He has then balanced against these the general principles of accountability, transparency and legitimate public interest.

a) Expectations of the individual

42. From the evidence provided, the Commissioner has no reason to believe that Council employees had any expectation that the information requested would be disclosed into the public domain. However he considers that expectation levels will often be set by an organisation itself, for example in its initial communications with staff over an issue, with the result that their expectations may to an extent reflect the culture of the organisation rather than be based on any objective reasonableness.
43. The Commissioner's Awareness Guidance on section 40 suggests that when considering what information third parties should expect to have disclosed about them, a distinction should be drawn as to whether the information relates to the third party's public or private life. Although the guidance acknowledges that there are no hard and fast rules it states that:
- 'Information which is about the home or family life of an individual, his or her personal finances, or consists of personal references, is likely to deserve protection. By contrast, information which is about someone acting in an official or work capacity should normally be provided on request unless there is some risk to the individual concerned.'*
44. The Commissioner's guidance therefore makes it clear that where the information relates to the individual's private life (ie their home, family, social life or finances) as opposed to their public life (ie their work as a public official or employee) it will deserve more protection than information about them acting in an official or work capacity.
45. The Commissioner considers that employees of public authorities should be open to scrutiny and accountability because their jobs are funded by the public purse and should expect to have some personal data about them released. In his guidance on the section 40 exemption, the Commissioner suggests *'if the information requested consists of names of officials, their grades, jobs or functions or decisions made in their official capacities, then disclosure would normally be made'*. However, the Commissioner also considers that information which might be deemed 'HR information' (for example details of pension contributions, tax codes, etc) should remain private, even though such information relates to an employee's professional life, and not their personal life.
46. In this case, as the job evaluation process relates to the post and not the post holder (or how well the post holder performs his or her

duties), the Commissioner does not consider the information to fall within the category of 'HR information' and could be considered to be corporate information. The Commissioner acknowledges the Council's view that the information may be perceived as a score on individuals but believes that this issue could be largely resolved by the Council making this point clear should the information be disclosed.

47. The Commissioner is satisfied that the withheld information relates to the individuals' professional work life and was generated in relation to their roles as public sector employees.
48. The Commissioner's Awareness Guidance on section 40 of the Act also makes it clear that public authorities should take into account the seniority of employees when personal information about their staff is requested under the Act. The more senior a person is, the less likely it is that disclosing information about their public duties will be unwarranted or unfair. Information about a senior official's public life should generally be disclosed unless it would put them at risk, or unless it also reveals details of the private lives of other people (eg the official's family).
49. In this case, the Commissioner has taken into account the fact that the job evaluation process in this particular case only considered posts below senior management level, and therefore the positions and roles were not public facing or particularly senior. The Commissioner would reiterate the point however, that the withheld information relates to the posts themselves and not to the individual post-holders.

b) Consequences of disclosure to the individual

50. The Council has not provided any evidence to the Commissioner to support its view that disclosure of the information requested will in due course lead to individuals being able to deduce the actual salary is paid to a particular employee. The Commissioner does however, accept the possibility that disclosure of the information may lead to the identification of a particular salary band relating to certain members of staff at the Council.
51. In terms of the release of details of salary information for public sector employees, the Commissioner's view is that those who are paid from the public purse should expect some information about their salaries to be made public. The Commissioner also considers that salary scales should usually be published as a matter of routine. However, salary information also relates to a person's financial circumstances and this deserves some protection.

52. The Commissioner has concluded in a number of Decision Notices that senior executives of public authorities should expect that details of their gross salaries would be disclosed under the Act². The Commissioner reached these conclusions on the basis that for some time the salaries of senior executives have been included in the financial statements of public authorities.
53. However, the Commissioner recognises that not all staff should be subject to such a level of scrutiny and draws a distinction between what information should be released about junior staff compared to more senior staff. This is line with the Commissioner's own guidance on section 40 which suggests that *'it may also be relevant to think about the seniority of staff: The more senior a person is the less likely it will be unfair to disclose information about him or her acting in an official capacity would be unfair'*.
54. Given the relatively junior role of some of the data subjects in this case, the Commissioner considers that they would have had a reasonable expectation that details of their exact salary would not be disclosed and to do so would be unfair. However, the same would not apply to salary bands, as the Commissioner believes this information should be routinely published and such details are normally provided when a particular post is advertised for recruitment. The point has already been made above that disclosure of the requested information would in the Commissioner's view only lead to identification of a particular salary band.
55. In respect of the Council's concerns about disclosing the job evaluation information into the public domain when it has not previously been released to its staff, the Commissioner's view is that there is nothing to prevent the Council from releasing the information to staff at the same time.

c) General principles of accountability and transparency

56. The Commissioner believes there is a legitimate public interest in disclosure of information which would promote accountability and transparency in the spending of public money. A major component of a local authority's annual expenditure is the cost of its employee's wages and salaries. Disclosure of information which would allow individuals to assess whether the amount of salaries paid to public sector employees reflect the roles and responsibilities of the posts undertaken is in the public interest in ensuring value for public funds. The Commissioner

² Decision Notices on case reference numbers FS50062124 and FS4009373

also considers that there is a general public interest in public authority processes such as job evaluation exercises to be transparent.

57. The Commissioner also considers that there is a public interest in knowing how a public authority is structured, what roles are undertaken and what value is given to those roles. There is also a legitimate public interest in knowing how the Council fulfilled its obligations under the National Joint Council 2004 Agreement in terms of the commitment to the implementation of local pay and grading reviews. Further, the Commissioner considers that equal and fair pay is a fairly controversial but important issue which has received significant media attention.
58. The Commissioner has weighed the nature of the expectations and the consequences of disclosure in this case against the legitimate public interest in disclosure and considers that releasing the job evaluation information would not be unfair.

Schedule 2 Condition 6 of the DPA

59. There are six conditions in Schedule 2 of the DPA, but only condition 1 (consent) or condition 6 (legitimate interests) would usually be relevant to disclosures under the Act. The Commissioner considers that the relevant condition in Schedule 2 in this particular case is the sixth condition. This condition states that:

“The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject”.

60. The Commissioner’s awareness guidance on section 40³ states that following the Information Tribunal decision in *Corporate Officer of the House of Commons v Information Commissioner and Leapman, Brooke and Thomas (EA/2007/0060 etc.; 26 February 2008)* public authorities should approach condition 6 as a three-part test:

1. there must be a legitimate public interest in disclosure;
2. the disclosure must be necessary to meet that public interest; and
3. the disclosure must not cause unwarranted harm to the interests of the individual.

3

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/personal_information.pdf

61. As stated above at paragraphs 56 and 57, the Commissioner considers there is a legitimate public interest in the disclosure of any information which would promote accountability and transparency in either the spending of public money or the undertaking of any exercise which will have significant impact on the business of an organisation or its employees. He considers in particular that the issue of fair pay and grading structures is a controversial but important one which has received significant media attention.
62. The Commissioner considers that disclosure of the information requested is necessary to satisfy this public interest.
63. The Commissioner recognises that the legitimate interests of the public must be weighed against any unwarranted prejudice to the rights and freedoms or legitimate interests of the data subjects. The Commissioner accepts that the data subjects would not necessarily have had any expectation that the information requested would be disclosed into the public domain. However, given the fact that the information requested (i.e. job evaluation scores attributed to posts within the Council) relates to the individuals' public life (i.e. their role as a public employee), he does not consider that any prejudice would arise for the individuals concerned. He therefore maintains that disclosure would not represent an unwarranted interference into the individuals' private lives.
64. On balance, the Commissioner accepts that disclosure of the information requested would be necessary for a legitimate interest of the public and considers that this outweighs any unwarranted prejudice that might be caused to the individuals' own rights, freedoms and legitimate interests.

Lawfulness

65. In the context of freedom of information requests, the Commissioner considers it is likely that it will be unlawful to disclose personal information where it can be established that the disclosure would be a breach of a statutory bar, a contract or a confidence. In the current case he has seen no evidence that any of these breaches would occur, and as a consequence he has concluded that disclosure would not be unlawful.
66. For the above reasons, the Commissioner is satisfied that disclosure of the withheld information would be neither unfair nor unlawful, and therefore disclosure would not breach the first data protection principle.

The Second and Sixth Data Protection Principles

67. The second data protection principle provides that personal data shall be processed only for one or more specified and lawful purposes. The argument of the public authority is that disclosure here would be incompatible with the purpose for which this information was created and the purposes which were outlined to staff at the time the job evaluation exercise was carried out. The Council's view is that staff would have been reluctant to complete the job evaluation forms had they known that the withheld information may be released into the public domain.
68. The Commissioner does not consider the disclosure of personal data in response to an FOI request to be a specific purpose for which such information is processed. In responding to an FOI request a public authority is not fulfilling one of its business purposes; it is simply complying with a legal obligation. It would be difficult to argue that, as a rule, compliance with a legal obligation, such as that imposed by the Act, would be incompatible with the other purposes for which personal data may be processed. Therefore the Commissioner rejects the argument that a disclosure in response to an FOI request would, in itself, breach the second data protection principle.
69. The sixth data protection principle requires that personal data shall be processed in accordance with the rights of data subjects under the DPA. The argument of the public authority here is that, it has not received any notices from staff members under sections 7, 10, 11 and 12 of the DPA as staff were unaware that the withheld information was under threat of not being held confidentially by the Council.
70. It is not the case that the sixth principle refers to the raft of ways in which the DPA protects personal data as a 'right'; rather Schedule 1 Part II(8) of the DPA sets out the only circumstances in which the sixth principle can be breached. The circumstances specified are where personal data are not processed in accordance with the rights provided by sections 7, 10, 11 and 12 of the DPA. The public authority's argument as to why the sixth principle would be breached through disclosure here do not refer to the rights provided by these sections and it is incorrect, therefore, in its belief that the sixth data protection principle would be breached through disclosure. The Commissioner does not feel that this principle would be breached if the information requested is disclosed as the rights of the data subjects under the DPA would not be infringed.
71. As he does not consider that any of the data protection principles would be breached by disclosure, the Commissioner is not satisfied

that the information requested was correctly withheld by the Council under section 40(2) of the Act.

Procedural Requirements

Section 10

72. Section 1(1) of the Act states 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.”

73. Section 10(1) of the Act states 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.”

74. As the Commissioner has decided that the withheld information is not exempt from disclosure under section 40(2) the Commissioner believes that this information should have been provided to the complainant in line with the duty at section 1(1)(b). By failing to provide this information within 20 working days of the request the Council breached section 10(1).

The Decision

75. The Commissioner’s decision is that the public authority did not deal with the request for information in accordance with section 1(1)(b) of the Act, in that it inappropriately relied upon section 40(2) of the Act in respect of the information.

76. In failing to comply with the requirements of section 1(1)(b) within twenty working days it also breached the time for compliance set out at section 10(1) of the Act.

Steps Required

77. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- To disclose the requested information to the complainant.
78. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

79. 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.

Right of Appeal

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

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

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 19th day of April 2010

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”.

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.”

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).”

Data Protection Act 1998

Section 1 - Basic interpretative provisions

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

“data” means information which—

- (a) is being processed by means of equipment operating automatically in response to instructions given for that purpose,
- (b) is recorded with the intention that it should be processed by means of such equipment,
- (c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system, or
- (d) does not fall within paragraph (a), (b) or (c) but forms part of an accessible record as defined by section 68;

“data controller” means, subject to subsection (4), a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed;

“data processor”, in relation to personal data, means any person (other than an employee of the data controller) who processes the data on behalf of the data controller;

“data subject” means an individual who is the subject of personal data;

“personal data” means data which relate to a living individual who can be identified —

- (a) from those data, or
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;

“processing”, in relation to information or data, means obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data, including—

- (a) organisation, adaptation or alteration of the information or data,
- (b) retrieval, consultation or use of the information or data,
- (c) disclosure of the information or data by transmission, dissemination or otherwise making available, or
- (d) alignment, combination, blocking, erasure or destruction of the information or data

Schedule 1

The first data protection principle

“Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

- (a) at least one of the conditions in Schedule 2 is met, and
- (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.”

The second data protection principle

“Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.”

The sixth data protection principle

“Personal data shall be processed in accordance with the rights of data subjects under this Act.”

Schedule 1 Part II(8) states:

“A person is to be regarded as contravening the sixth principle if, but only if

–

(a) he contravenes section 7 by failing to supply information in accordance with that section.

(b) he contravenes section 10 by failing to comply with a notice given under subsection (1) of that section to the extent that the notice is justified or by failing to give a notice under subsection (3) of that section,

(c) he contravenes section 11 by failing to comply with a notice given under subsection (1) of that section.

(d) he contravenes section 12 by failing to comply with a notice given under subsection (1) or (2)(b) of that section or by failing to give a notification under subsection (2)(a) of that section or a notice under subsection (3) of that section.”

Schedule 2

Conditions relevant for purposes of the first principle: processing of any personal data:

“1. The data subject has given his consent to the processing. 2. The processing is necessary-

- (a) for the performance of a contract to which the data subject is a party, or
- (b) for the taking of steps at the request of the data subject with a view to entering into a contract.

3. The processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract.

4. The processing is necessary in order to protect the vital interests of the data subject.

5. The processing is necessary-

- (a) for the administration of justice,
- (b) for the exercise of any functions conferred on any person by or under any enactment,

(c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department, or

(d) for the exercise of any other functions of a public nature exercised in the public interest by any person.

6. - (1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

(2) The Secretary of State may by order specify particular circumstances in which this condition is, or is not, to be taken to be satisfied."