

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 15 December 2010**

**Public Authority:** City of London  
**Address:** PO Box 270  
Guildhall  
London  
EC2P 2EJ

### Summary

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The complainant requested the City of London ('the CoL') to release a copy of the Church of Scientology Religious Education College's ('COSREC') application for mandatory rate relief and any supporting documents or information submitted with it. The CoL released a redacted version of the application form but refused to disclose further information it held, as it considered that it was exempt from disclosure under sections 31(1)(d), 40(2) and 41 of the Act. As the complainant remained dissatisfied, he approached the Commissioner. During the Commissioner's investigation the CoL made the information withheld under sections 31(1)(d) and 41 of the Act available to the public via its website. It also confirmed that it was willing to send copies of some of the previously withheld information to the complainant via post or make it available for inspection at its offices. For this information, the complaint was informally resolved. During the Commissioner's investigation the CoL also claimed a late reliance upon section 21 of the Act for some of the remaining withheld information. This Notice has focussed on what information remains and the CoL's application of sections 21 and 40(2) of the Act. For section 21, the Commissioner considered the application of this exemption to each of the documents the CoL claimed it applied. He concluded that this information is exempt from disclosure by virtue of section 21 of the Act. In respect of the CoL's application of section 40(2) of the Act, the Commissioner concluded that all remaining information, except document 33, was exempt from disclosure under the Act by virtue of this exemption. For document 33, the Commissioner concluded that some of the information should be released. He has therefore ordered the CoL to agree to make a redacted version of this document available to the complainant either via post or inspection at its offices within 35 days of this Notice.

## The Commissioner's Role

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

## The Request

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2. The complainant contacted the CoL on 7 April 2009 to request that the following information is released under the Act:

"I refer to the recent Mandatory Relief application related to property at 146 Queen Victoria St. I believe it was submitted by the occupier of the property "Church of Scientology Religious Education College Inc". Please provide the application itself, plus any supporting documents or information which was submitted with it".

3. The CoL responded on 8 May 2009. It disclosed a redacted version of the application form to the complainant advising him that the redactions had been made under section 40(2) of the Act. It also confirmed that it wished to withhold additional information provided by COSREC in support of its application under sections 31(1)(d), 40(2) and 41 of the Act.
4. The complainant requested an internal review on 11 May 2009.
5. The CoL responded on 8 June 2009. It advised the complainant that it remained of the opinion that the withheld information was exempt from disclosure under sections 31(1)(d), 40(2) and 41 of the Act and referred him to the Commissioner.

## The Investigation

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### Scope of the case

6. On 8 June 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 whether the CoL had acted appropriately by withholding the requested information under sections 31(1)(d), 40(2) and 41 of the Act.

7. During the course of the Commissioner's investigation the CoL decided to release into the public domain the information it previously withheld under sections 31(1)(d) and 41 of the Act. As this element of the complainant's request was resolved informally, the Commissioner will not be considering the CoL's application of section 31(1)(d) and 41 in this Notice. The following documents listed in Annex A were released in their entirety:

- a), b), c), c) i, c) ii, c) vi, c) viii, d), e), f), g), h), h) i.

A small amount of documents previously withheld under sections 31(1)(d) and 41 of the Act have been released in a redacted form. All information within the following documents has now been disclosed except the names of three Scientologists, to which the CoL has applied section 40(2) of the Act:

- c) iii, c) iv, c) v, c) viii.

8. During the Commissioner's investigation the CoL also confirmed that it was willing to either send full copies of the following documents listed in Annex A to the complainant or make them available for inspection at its offices:

- Documents j) and l)
- Documents 11, 14, 16, 17, 27, 34, 35, 39, 53, 48, 50, 52, 53, 57, 60, 63, 64, 66, 67, 68, 69, 70, 71, 72, and 74.

9. As the CoL agreed to release this information to the complainant, the Commissioner will not be addressing these documents in any further detail in this Notice. He is aware that the complainant entered into further correspondence with the CoL with regards to the method by which this information is to be communicated to him. However, as the complainant made no preference for communication in his original request, this is not something the Commissioner can consider in this Notice.

10. The CoL also advised that it was willing to make redacted versions of the following documents available to the complainant:

- Documents 46, 54, 58, 62, 65 and 73.

The information redacted is the name or names of third parties, to which the CoL has applied section 40(2). The Commissioner will be considering the application of section 40(2) of the Act to the redacted

information in the 'Analysis' section of this Notice. For the same reasons explained in paragraphs 8 and 9 above, he will not be considering the parts of these documents the CoL is willing to make available to the complainant.

11. The rest of this Notice will concentrate on the remaining withheld information and the specific exemptions the CoL has claimed in support of its decision to withhold it under the Act. To clarify, the remaining withheld information consists of:
  - 1) Documents i) and k) to which the CoL claimed a late reliance on section 21.
  - 2) Documents 1 to 10, 12 and 13, 15, 18 to 26 and 28, to which the CoL has claimed a late reliance on section 21 of the Act.
  - 3) The names of three Scientologists referred to in documents c) iii, c) iv, c) v and c) viii. This information has been withheld under section 40(2) of the Act.
  - 4) The various photographs listed in Annex A. These being documents 29, 30, 31, 32, 36, 37, 38, 40, 41, 42, 44, 45, 27, 49, 51, 55, 56, 59, 61, and 75. The CoL has applied section 40(2) of the Act to this information.
  - 5) The names of third parties referred to in documents 46, 54, 58, 62, 65 and 73, to which the CoL has applied section 40(2) of the Act.
  - 6) Document 33, which has been withheld in its entirety under section 40(2) of the Act.
12. Referring to 1) and 2) specifically, the Commissioner notes that section 21 of the Act was first claimed by the CoL during his investigation. This was the result of further recorded information coming to light when the Commissioner clarified the scope of the complainant's request and reached the view that the request was wider in scope to the CoL's initial interpretation. In the Information Tribunal hearing of the *Department for Business, Enterprise and Regulatory Reform v Information Commissioner and Friends of the Earth (EA/2007/0072)* the Tribunal outlined certain situations when it would be reasonable to accept a late claim on an exemption not previously cited. One of these circumstances is when new information is discovered during the course of the Commissioner's and/or Tribunal's investigation. As this is the reason, in this case, for the late reliance on section 21, the Commissioner is satisfied that he can go on to consider the exemption.

## Chronology

13. The Commissioner wrote to the CoL on 17 June 2009 to inform it that he had received a complaint from the complainant and to request a copy of the withheld information.

14. The CoL responded on 14 July 2009 providing some useful background to the request and what it considered to be the withheld information.
15. The Commissioner wrote to the CoL on 9 December 2009 to clarify the scope of the complainant's request and to suggest that further recorded information may be held which falls into the Commissioner's wider interpretation of the request.
16. The CoL responded on 24 December 2009 outlining what additional information it held.
17. The CoL sent further correspondence to the Commissioner on 30 December 2009 and 8 January 2010. Attached to the CoL's letter of 8 January 2010 was further recorded information which fell into the Commissioner's interpretation of the complainant's request (documents a) to l) in Annex A). The CoL also provided additional arguments to support its application of sections 31(1)(d), 40(2) and 41 of the Act.
18. The Commissioner wrote to the CoL on 25 January 2010 to outline his view that further recorded information is held, which to date had not been provided to him.
19. The CoL responded in part on 7 February 2010. It provided copies of further recorded information it held (documents 1- 75 in Annex A) to the Commissioner. It also advised that it considered a number of these documents are available to the complainant by other means and are therefore exempt from disclosure by virtue of section 21 of the Act. It also confirmed that some of these documents (documents 1 – 75) contain third party personal data, which would be exempt from disclosure under section 40(2) of the Act. In respect of its application of sections 31(1)(d) and 41, it confirmed that it would forward its additional comments in due course.
20. The Commissioner reviewed documents 1 – 75 and wrote to the CoL to inform it that he considered a large number of these documents would be available to the complainant by other means. He therefore requested the CoL to demonstrate more clearly how section 21 of the Act applied to these documents. In addition, the Commissioner reminded the CoL that a response was still outstanding in relation to its application of sections 31(1)(d) and 41 of the Act.
21. The CoL replied on 19 February 2010 providing the additional information that was requested.

22. The Commissioner wrote to the CoL on 10 March 2010 to request further information in respect of its application of sections 21, 31(1)(d) and 41 to various documents outlined in Annex A.
23. The CoL responded in part on 31 March 2010. It advised the Commissioner that it was still making enquiries to COSREC in respect of some documents and would respond in full in due course.
24. The CoL responded to all outstanding issues on 15 April 2010 having now received the information it required from COSREC.
25. The Commissioner wrote to the CoL on 7 June 2010 to outline his preliminary view in respect of its application of sections 21 and 40(2) of the Act to some of the withheld information. He also asked the CoL to reconsider disclosing the requested information to the complainant in light of the recent Information Tribunal hearing of *Mr William Thackeray v Information Commissioner & The Common Council of the City of London (EA/2009/00958)*.
26. The CoL responded on 6 August 2010. It advised the Commissioner that it was unwilling to disclose the information which it considered was exempt from disclosure under sections 31(1)(d) and 41 of the Act at this stage and asked him to reach a decision. Regarding section 40(2) of the Act, it provided the additional information required. In respect of section 21, the CoL advised that it would be writing to the complainant shortly to provide links to the internet for each document it considers is exempt from disclosure by virtue of section 21 of the Act. For those documents which it considered are publicly available but not reasonably accessible to the complainant, it confirmed that it would provide the complainant with a list of these documents and advise him that it would make these available to him either by post or via inspection at its offices.
27. The CoL wrote to the complainant on 10 August 2010 in respect of section 21 of the Act, as outlined in the above paragraph.
28. Following the Decision Notice issued on the CoL in respect of case reference FS50265544, the Commissioner noted that the CoL disclosed the requested information the subject of this Notice. He therefore wrote to the CoL on 11 October 2010 to outline his preliminary view and to ask that it reconsiders disclosing further information to the complainant.
29. The CoL responded on 25 October 2010. It confirmed that it was now willing to disclose further information to the complainant in light of the recent Notice issued in respect of case reference FS50265544 and the

Commissioner's preliminary view in respect of this case. (Please refer to paragraphs 7 to 10 for more details on the additional information the CoL released. As paragraphs 7 to 10 explain, the CoL withdrew its reliance on section 31(1)(d) and 41 of the Act. The remainder of this Notice will therefore focus on sections 21 and 40(2) of the Act.)

## Analysis

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### Exemptions

#### **Section 21 – information accessible to the applicant by other means**

Documents i and k, 1 to 10, 12, 13, 15, 18 to 26 and 28 (items 1 and 2 of paragraph 11).

30. Section 21 of the Act states that information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.
31. Although information may be available elsewhere, it is the Commissioner's view that the relevant consideration here is whether the requested information is reasonably accessible to the complainant. For the Commissioner to agree that the requested information is accessible to the complainant, he must be satisfied that:
  - a) the complainant has already found the information; or
  - b) the CoL is able to direct the complainant precisely to the requested information i.e. the CoL must be reasonably specific about where the information can be found so the complainant can find it himself without difficulty.
32. The CoL provided a table of the documents to which section 21 of the Act had been applied to both the complainant and the Commissioner. This table provided individual links for each document to the location of this information on the internet.
33. The Commissioner is satisfied that the complainant has access to the internet and that the complainant is able to locate each of the documents in turn via the link provided by the CoL. He is therefore satisfied that this information is reasonably accessible to the complainant by other means and that section 21 of the Act applies in this case to this information.



## Section 40(2) – personal data.

34. Section 40(2) of the Act states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the Act would breach any of the data protection principles or section 10 of the Data Protection Act 1998 ('the DPA').
35. For each category of information currently being withheld under section 40(2) (items 3 to 6 of paragraph 11), the Commissioner must first consider whether the requested information is personal data. Personal data is defined in Section 1 of the DPA as follows:

“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.”

36. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the data protection principles under the DPA. The Commissioner notes in this case that the CoL argued that disclosure of items 3 to 6 of paragraph 11 above would breach the first data protection principle.
37. The first data protection principle 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.”
38. He will now address each category of information outlined in paragraph 11 in turn and decide whether this information is exempt from disclosure under section 40(2) of the Act.



The names of three Scientologists referred to in documents c) iii, c) iv, c) v and c) viii (item 3 of paragraph 11).

39. As explained above, the first consideration is whether the remaining withheld information in these documents is personal data. The remaining withheld information is the names of three Scientologists who were indirectly involved in the issues surrounding the CoL's decision to grant mandatory rate relief to COSREC. For obvious reasons, the name of an individual is personal data.
40. As the Commissioner is satisfied that the withheld information is personal data, he now needs to consider whether disclosure would breach the first data protection principle, as the CoL has claimed, i.e. would disclosure be unfair and/or unlawful.
41. It is the Commissioner's view that disclosure in this case would not only release the names of three individuals into the public domain but it would also release information about these individuals' private lives; that they are or were Scientologists, hold or held such beliefs and have or have had specific links to COSREC. In other cases he has considered, the Commissioner has made a general but clear distinction between information which relates to one's public life and information which relates to one's private life. He considers disclosure of information which relates to an individual's private life is in the main unfair and an unwarranted intrusion into those individuals' right to privacy.
42. The Commissioner notes that these individuals were indirectly involved in the decision taken by the CoL to grant mandatory rate relief. Referring to the description of these documents in Annex A, it is evident that these documents relate to other matters concerning COSREC, some of which took place several years ago (1979, 1996, 2000 and 2001). While this information may have been considered by the CoL during its decision making process in relation to COSREC's application for rate relief, it is quite clear that these individuals had no involvement in the actual decision that was taken or indeed the application made by COSREC to the CoL.
43. It is important to highlight that disclosure under the Act is disclosure to the world at large. Considering the age of these documents, the fact that the majority pre date the Act and that these individuals had no direct involvement in the application made by COSREC or the decision taken by the CoL to grant rate relief, it is the Commissioner's view that these individuals would have no expectation that their name and their

involvement in Scientology would be released into the public domain via an information request of this nature.

44. The Commissioner is satisfied that these individuals would have no expectation of public disclosure and therefore that disclosure in this case would be unfair and an unwarranted intrusion into their private lives. It is possible considering the age of this information that these individuals may no longer have any involvement with COSREC and may no longer be followers of Scientology. It is the Commissioner's view that disclosure of such involvement or beliefs from several years ago, at this stage, would also be unfair to those individuals concerned.
45. The Commissioner accepts that there is a legitimate interest in any information concerning the CoL's decision to grant mandatory rate relief to be released into the public domain, particularly following the Information Tribunal hearing of *Mr William Thackeray v Information Commissioner and the Common Council of the City of London (EA/2009/00958)*. In this hearing the Tribunal made some strong comments suggesting to the CoL that any information taken into account when reaching its decision to grant rate relief should be disclosed. He accepts that such information will enable the complainant and other members of the public to understand more clearly why this decision was taken and would add to the overall transparency and accountability of the CoL in respect of this decision.
46. However, it is the Commissioner's view that this interest has already been met in this case by the very fact that the CoL has now made available copies of all the information it did take into account when deciding to grant mandatory rate relief to COSREC. The only information redacted from documents c) iii, c) iv, c) v and c) viii is the names of three Scientologists who had no involvement in this decision. The Commissioner notes that these individuals only became indirectly involved following a decision taken by COSREC to send copies of dated correspondence it had with other public bodies some years ago relating to other matters.
47. As these individuals had no direct involvement in the application itself or during the decision making process, the Commissioner is satisfied that disclosure would not add anything further to the information which has already been disclosed or assist the complainant or other members of the public with an interest in this information understanding more clearly why the decision to grant rate relief was made. Any legitimate interest in the disclosure of the names of these individuals is outweighed by the prejudice disclosure would cause to the rights and freedoms of the individuals concerned.

48. For the reasons explained above, the Commissioner is satisfied that the names of the Scientologists referred to in documents c) iii, c) iv, c) v and c) viii are exempt from disclosure under section 40(2) of the Act, as disclosure of this information would be unfair and so in breach of the first data protection principle. As disclosure would be unfair there is no requirement to consider lawfulness or the condition outlined in Schedule 2 of the DPA.

The photographs listed in Annex A

49. The photographs are of a large number of individuals involved in the various activities of COSREC. Similar to the name of an individual, it is quite obvious that a person can be identified from a photograph and therefore that this information falls within the definition of personal data.
50. The Commissioner now needs to consider whether disclosure of this information would be unfair and/or unlawful.
51. The CoL specifically stated that disclosure of this information would be unfair to the data subjects concerned because they have not consented to such public disclosure and would have no expectation that this information would be used in this way. It further stated that the information would reveal that these data subjects follow Scientology and therefore hold such beliefs. It explained that some of the photographs also show Scientologists helping other individuals; individuals with physical or mental health conditions. Disclosure would therefore not only reveal that some individuals follow Scientology but it would also reveal the identity of other individuals, who have physical or mental health problems. The CoL stated that disclosure would be unfair and would be an unwarranted intrusion into the private lives of these individuals.
52. The Commissioner has given this matter careful consideration. He accepts that disclosure of this information would reveal personal information relating to a number of individuals; in some cases it would reveal the identity of individuals who follow Scientology and in others, it would reveal the identity of individuals with specific health problems accepting help from Scientologists. The Commissioner considers an individual's beliefs to be personal data of a private nature. He also considers an individual's physical or mental health to be sensitive personal data. As stated in paragraph 41 above, it is the Commissioner's view that disclosure of information relating to an individual's private life is unfair and an unwarranted intrusion to their right to privacy.

53. The Commissioner also accepts that these individuals will have no expectation that these photographs would be released into the public domain via the Act. He acknowledges that these individuals may have agreed to have their picture taken in certain circumstances. However, he does not accept that these individuals would have anticipated that this information could be the subject of a request under the Act and could possibly be released into the wider public domain. These individuals would have no expectation that this information could be disseminated in this way.
54. As outlined in paragraphs 45 to 47 above, the Commissioner acknowledges that there is a legitimate interest in the complainant and other members of the public obtaining information relating to the CoL's decision to grant mandatory rate relief to enable them to understand more clearly why this decision was reached. He notes that this decision is controversial and that the complainant has intimated that there are issues of fraud. He also notes that the decision to grant rate relief to COSREC involves a substantial amount of public funds. However, the CoL has confirmed that although it received this information from COSREC in support of its application, it did not use this information in anyway to reach its decision to grant rate relief. To clarify, the only information taken into account was documents a) to l), and this has now been released.
55. As this information was not taken into account by the CoL when making its decision to grant rate relief to COSREC, it is the Commissioner's view that disclosure would not aid the complainant or other members of the public interested in COSREC in understanding any further why this decision was reached. The Commissioner's view is that any legitimate interest in this information has already been met by the CoL's recent disclosure of documents a) to l). Disclosure of this information would therefore be an unwarranted intrusion into the rights and freedoms of the data subjects concerned.
56. For the reasons explained above, the Commissioner is satisfied that the photographs listed in Annex A are exempt from disclosure under section 40(2) of the Act, as disclosure of this information would be unfair and so in breach of the first data protection principle. As disclosure would be unfair there is no requirement to consider lawfulness or the conditions outlined in Schedules 2 and 3 of the DPA.

The names of individuals referred to in documents 46, 54, 58, 62, 65 and 73

57. As explained in paragraph 10, the CoL is willing to release to the complainant copies of these documents in a redacted form. The

information it wishes to redact is the names of third parties referred to in these documents.

58. There are several names; the names of Scientologists, the names of Volunteer Ministers and the names of individuals involved in specific projects or fundraising events organised by COSREC.
59. In respect of the application of section 40(2), the CoL provided similar arguments to those already detailed above. Overall the CoL's view is that disclosure would be unfair, an unwarranted intrusion into the private lives of these individuals and therefore in breach of the first data protection principle.
60. The Commissioner has already addressed the application of section 40(2) of the Act to the names of Scientologists in paragraphs 39 to 48 above. For those documents mentioned here where they do contain the names of Scientologists, the same arguments apply. As detailed above, the Commissioner concluded that this information is exempt from disclosure under section 40(2) of the Act, as disclosure of this information would be unfair and so in breach of the first data protection principle. The Commissioner explained that as disclosure would be unfair, there is no requirement to consider lawfulness or the condition outlined in Schedule 2 of the DPA.
61. Turning now to names of Volunteer Ministers and individuals involved in projects and fundraising events organised by the COSREC, the arguments presented in paragraphs 49 to 56 apply here. Again, the Commissioner reached the decision that disclosure would be unfair and so in breach of the first data protection principle and therefore section 40(2) of the Act applies.

Document 33 which has been withheld in its entirety under section 40(2) of the Act.

62. The Commissioner notes that a different approach was taken by the CoL for this document when it was considering disclosure. This document contains both a photograph of Volunteer Ministers and some text, which includes the names of these Volunteer Ministers and a description of the fundraising event and its success.
63. For similar documents, the CoL has confirmed that it is willing to provide a redacted copy i.e. all information except the names of the Volunteer Ministers referred to in this document and the photograph.

64. The Commissioner has considered this document. He considers a redacted version of this document should also be made available to the complainant.
65. For the reasons explained earlier in this Notice, he agrees the names of Volunteers Ministers and the photograph should be withheld under section 40(2). However, he does not agree that the remaining text should be withheld. Redaction of the names of the individuals concerned and the photograph anonymises the remaining text, making it impossible for any third party to identify from this text the individuals involved. The remaining text is therefore not personal data.
66. For this document, the Commissioner has concluded that section 40(2) of the Act does apply to the photograph and the names of Volunteer Ministers. However, he does not consider the remaining text constitutes personal data and therefore he has concluded that the remaining text is not exempt from disclosure under section 40(2) of the Act.

### **Procedural Requirements**

67. The Commissioner finds that the CoL breached section 17(1) of the Act in this case, as it failed to issue a refusal notice which identified an exemption on which it later relied; section 21 of the Act.

### **The Decision**

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68. The Commissioner's decision is that the CoL dealt with the following aspects of request for information in accordance with the Act:
  - it correctly relied upon section 21 of the Act for the non disclosure of those documents referred to in item 1 and 2 of paragraph 11;
  - it correctly relied upon section 40(2) of the Act for the non disclosure of those documents referred to in items 3, 4 and 5 of paragraph 11; and
  - it correctly relied upon section 40(2) of the Act for the non disclosure of the photograph and the names of Volunteer Ministers referred to in document 33 (item 6 of paragraph 11).
69. The Commissioner's decision is that the CoL did not deal with the following aspects of the request for information in accordance with the Act:

- it incorrectly relied upon section 40(2) for the remaining text in document 33 (i.e. the information which remains once the photograph and the names of Volunteer Ministers have been redacted); and
- it breached section 17(1) of the Act for failing to inform the complainant in its refusal notice that it wished to rely on section 21 of the Act, due to its late reliance on this exemption.

## **Steps Required**

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70. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- the CoL should make a redacted version of document 33 available to the complainant. All information should be disclosed in this document, except the photograph and the names of Volunteer Ministers, which the Commissioner has agreed is except from disclosure under section 40(2) of the Act.
71. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

## **Failure to comply**

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72. 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

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73. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). 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](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

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

**Dated the 15<sup>th</sup> day of December 2010**

**Signed .....**

**Andrew White  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## **Legal Annex**

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

Provides that -

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

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- (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 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 21(1)**

Provides that –

“Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.”

### **Section 31(1)**

Provides that –

“Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders,
- (c) the administration of justice,
- (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,
- (e) the operation of the immigration controls,
- (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,
- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),
- (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
- (i) any inquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment."

### **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 41(1)**

Provides that –

"Information is exempt information if-

- (a) it was obtained by the public authority from any other person (including another public authority), and
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person."