

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 9 December 2010

Public Authority: The Civil Service Commission
Address: 3rd Floor
35 Great Smith Street
London
SW1P 3BQ

Summary

The Civil Service Commission (CSC) can hear and determine complaints raised by civil servants under the Civil Service Code, the code of ethics which forms part of the terms and conditions of every civil servant. The complainant in this case requested details of any settled appeals, i.e. the appeals which the CSC had reached a decision on. The CSC provided the complainant with the final reports or concluding letters for the 9 relevant appeals but made the following redactions to each: the name of the individual who brought the appeal on the basis of section 40(2) and the name of the department about which the appeal was about, including any details which might identify the department, on the basis of section 41(1). Whilst the complainant did not dispute the decision to withhold the names of the individuals who brought the appeals on the basis of section 40(2) he did dispute the application of section 41(1) as a basis to redact the remaining information. Having considered the circumstances of this case carefully the Commissioner has concluded that section 41(1) has been correctly applied.

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. The complainant in this case submitted his request to the Civil Service Commissioners whose functions were set out in the Civil Service Order in Council 1995 and included the hearing and determining of appeals under the Civil Service Code (the Code). The Code, which was first published in 1996, forms part of the terms and conditions of every civil servant and outlines the four core values of the Civil Service: integrity; honesty; objectivity; and impartiality.¹ The Civil Service Commissioners published Annual Reports which included an account of the number of appeals made to them under the Civil Service Code together with summary information as to the nature of such appeals.
3. By the time that this Notice is being issued the roles and responsibilities of Civil Service Commissioners, including hearing and determining appeals under the Code, have been transferred to the Civil Service Commission (CSC) whose powers are derived from the Constitutional Reform and Governance Act 2010. In light of these changes the Commissioner is satisfied that it is appropriate to serve this Notice on the CSC.

The Request

4. The complainant submitted the following request to the CSC on 10 March 2009:

'Please provide details and the outcome of all valid appeals under the civil service code that you have investigated. I recognise that you will need to redact some information to protect the identity of the complainant, but there is a strong public interest in having

¹ A copy of this Code can be viewed here http://www.civilservicecommission.org.uk/admin/assets/spaw2/uploads/files/Civil_Service_Code.pdf

as much information as possible out in the open, particular [sic] in any cases where the appeal was upheld'.

5. The CSC responded on 17 April 2009 and provided the complainant with a digest of information. This digest explained that for the period 1996 to 2008 there were 12 settled appeals, 9 of which were upheld or partially upheld and 3 not upheld. The CSC explained that it had given each appeal description a brief heading to explain what the appeal was about, including confirming which of the values in the Code the appeal related to. In providing this digest the CSC explained that many approaches which it receives are not judged to be eligible under the Code; others are settled by mutual agreement before the CSC conclude their investigations. The CSC also explained that the details of individuals bringing the appeals were exempt from disclosure under section 40(1) (the CSC later confirmed that it meant section 40(2)) and the details of the departments involved were exempt under section 41(1).
6. The complainant contacted the CSC on 26 April 2009 in order to complain about this refusal. Firstly, he noted that as his request suggested he was happy to not be provided with the names of the individuals who complained but noted that this should presumably have been withheld on the basis of section 40(2) not 40(1) and thus the refusal notice was inadequate. Secondly, he disputed whether disclosure of anonymised complaints would constitute an actionable breach of confidence and thus disputed the application of section 41(1). Thirdly, he argued that the digest did not answer his request, for example what he wished to be provided with was details of what had been specifically alleged; what specific part of a department was involved and the positions found at fault; and the names of senior civil servants. Fourthly, the complainant also noted that the CSC failed to provide him with a response within 20 working days.
7. The CSC contacted the complainant on 28 April 2009 in order to acknowledge his request for an internal review. In doing so the CSC asked the complainant to confirm what sort of information he was seeking. The CSC noted that it had a significant amount of paperwork associated with these appeals.
8. The complainant provided the CSC with this clarification on the same day and confirmed that he was seeking information about appeals which were deemed valid for investigation and would be happy to be provided with a final report in relation to each of the appeals if such a document existed as he envisaged that this would contain the level of detail he was looking for.

9. The CSC informed the complainant of the outcome of the internal review on 17 August 2009. It noted that its delay in responding had been due to the need to scrutinise a large number of case files in order to identify individual appeal cases and locate specific documents. The CSC's response explained that for each of the appeal cases it had identified a final report or letter detailing the background to the appeal and the findings of the CSC, which formed the basis for the summary provided in the digest. The CSC provided the complainant with the 9 documents in question but explained that some information had been redacted: section 41(1) was used to withhold the details of the departments; the sections within the departments; and the names of the civil servants involved in the appeal cases – in effect any details that would identify the department about which the appeal had been made. The CSC explained that redactions had also been made to parts of the documents, disclosure of which would identify the complainant.

The Investigation

Scope of the case

10. The complainant contacted the Commissioner on 29 September 2009 in order to complain about the CSC's handling of his request. The complainant noted that although he accepted that some redaction may be necessary he believed that section 41 had been applied too widely, particularly in withholding the details of the departments involved.
11. The Commissioner subsequently contacted the complainant and explained that his understanding of the scope of the complaint was as follows:
 - The complainant was happy with the amount of information located by the CSC, namely the 9 documents.
 - Furthermore the complainant did not dispute the decision to withhold the names of the individuals who brought the appeals nor the names of the individuals who investigated these appeals.
 - However, the complainant did not accept the decision to withhold the names of the departments about whom appeals had been made (and by implication the redaction of information which could lead to the identification of a department).
 - Furthermore the complainant also disputed the redaction of the names of the senior civil servants at the departments in question.

12. The Commissioner asked the complainant to confirm that his understanding of the complaint was correct. The complainant subsequently did so.

Chronology

13. The Commissioner contacted the CSC on 26 October 2009 and asked to be provided with a copy of the information withheld from the complainant along with submissions to support its decision to redact certain sections.
14. The CSC responded on 26 November 2009 and provided the Commissioner with copies of the 9 documents falling within the scope of the complainant's request with the redacted sections underlined in red. Each document was accompanied by an index explaining which exemption – 40(2) or 41(1) – had been applied to each redaction. The CSC also provided the Commissioner with submissions to support its application of each of these exemptions.
15. Due to a backlog of complaints concerning public authorities' compliance with the Act there was regrettably a delay before the Commissioner could begin his substantive investigation into this complaint. When he was able to do so, the Commissioner contacted the CSC again on 24 September 2010 in order to seek clarification on the application of section 41(1).
16. The Commissioner received a response from CSC on 28 October 2010 in which it provided the Commissioner with the necessary clarification.

Analysis

Exemptions

17. The information that has been withheld and which falls within the scope of this complaint effectively consists of two separate types of information:
18. Firstly, the names of the department against which an appeal was made. Secondly, information which could, if disclosed, the CSC argues lead to the identification of the department. This latter category includes the names of the senior civil servants at the departments and further details about the nature of the appeals, including the business area of particular departments. Both classes of information have been withheld on the basis of section 41(1).

Section 41 – Information provided in confidence

19. This section states that:

‘41-(1) 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.’

20. Therefore for this exemption to be engaged two criteria have to be met; the public authority has to have obtained the information from a third party **and** the disclosure of that information has to constitute an actionable breach of confidence.

21. With regard to section 41(1)(b), in most cases the approach adopted by the Commissioner in assessing whether disclosure would constitute an actionable breach of confidence is to follow the test of confidence set out in *Coco v A N Clark (Engineering) Ltd* [1968] FSR 415 (the *Coco* test).

22. This judgment suggested that the following three limbed test should be considered in order to determine if information was confidential:

- Whether the information had the necessary quality of confidence;
- Whether the information was imparted in circumstances importing an obligation of confidence; and
- Whether an unauthorised use of the information would result in detriment to the confider.

23. The CSC has provided the Commissioner with detailed submissions to support its position that the three criteria above are met. The Commissioner has considered these submissions and also set out his conclusions in relation to their merit below:

Was the information obtained from a third party?

24. The CSC has explained to the Commissioner that the information contained in the reports and letters produced at the end of its investigations is drawn from written and oral evidence provided by both the appellant and the department in question. The amount of information obtained from the parties will differ in each case. However,

for each of the 9 documents that have been withheld, the CSC informed the Commissioner of the balance of the source of the redacted information. In all of the cases bar one the information came from both the appellant and the department; the exception was one case in which the information had simply been provided by the appellant.

25. The Commissioner has considered the redacted information and is satisfied that it was all clearly obtained by the CSC from a third party, or parties, in line with the process described above.

Does the information have the necessary 'quality of confidence'?

26. The Commissioner believes that information will have the necessary quality of confidence if it is not otherwise accessible to the requestor, is more than trivial and is of importance to the confider. Information will not have the necessary quality of confidence if it is already in the public domain.
27. The CSC has argued that given the nature of the appeal process it is clear that the information has an inherent quality of confidence about it. Having considered the redacted information the Commissioner agrees with this point of view: it is clear that the information is more than trivial given its content and the reasons why it was provided to the CSC, and moreover that it is of importance to the confider regardless of whether the confider was the appellant or the department. The Commissioner is also satisfied that the information is not in the public domain.

Does the information have the necessary obligation of confidence?

28. The Commissioner recognises that an obligation of confidentiality may be expressed explicitly or implicitly. Whether or not there is an implied obligation of confidence may depend on the nature of the information itself, and/or the relationship between the parties.
29. The CSC explained that the obligation of confidence in respect of the information provided to it – including withholding the name of the individual who brought the appeal and the name of the department in question from its Annual Report - was expressed explicitly in 'The Civil Service Code: A Guide to bringing an appeal to the Civil Service Commissioners':

'24. How will the result of my complaint be reported?

We will send the report of our investigation of your complaint to you and to your department in confidence.

The outcomes of all settled complaints are included in the Commission's Annual Report, which is usually published in July. The name of the department and the name of the civil servant who brought the complaint are not given in the Annual Report. Only a summary is given of the nature of the complaints.

We believe the complaints process works best when civil servants and departments understand that it is intended to be confidential. All sides can share information and, where appropriate, admit to errors.

The Civil Service Commission is mindful of the legal constraints that preclude an absolute assurance of confidentiality, for example, the Freedom of Information Act 2000. We do however believe that confidentiality is important and we will argue this to the Information Commissioner and other relevant authorities.

We might consider making more details public where this appears to us the only, or best, way to prevent further breaches of the Code.²

30. In light of this the Commissioner accepts that the individuals who submitted appeals to the CSC did so with the explicit expectation that the name of the department which they were complaining about, and details which would identify that department, would not be made public. Although the Commissioner recognises that some of the appeals date from a period before this guidance was issued (e.g. 1996), he accepts that the circumstances, and thus expectations under which the appeals were made were the same. Moreover, although the guidance quoted by the CSC is aimed at those who submitted appeals rather than the departments, the Commissioner accepts that the departments which provided information to the CSC did so with the similar expectation that such information would not be disclosed. This is because the guidance sent to appellants in effect creates the culture within which the appeals are considered.

Would disclosure be detrimental to any party?

31. The CSC argued that disclosure of the name of the department, or disclosure of information which could lead to the department being

² The current version of the Guide, dated October 2010, can be viewed here: <http://www.civilservicecommission.org.uk/admin/assets/spaw2/uploads/files/Guide-Complaint-Commissioners-Civil-Service-Code.pdf>

identified, and thus disclosure of the information subject to this complaint, could, alongside information already in the public domain such as the summaries included in its Annual Reports, lead to the identification of the individual who brought the appeal. The CSC noted that the risk was particularly acute in cases where the department was a small public body. Although the risk may not be as significant where the public body is a central government department, it is necessary to maintain a consistent approach – on the grounds of fairness as well as not to undermine the general approach – that the names of all departments are withheld, not just the smaller ones.

32. In respect of the detriment itself, the CSC explained that the individuals in question would be concerned that their colleagues – and more generally, anyone who could identify them – would be made aware of the nature and details of the appeal, much of which would be sensitive to them and possibly even distressing if disclosed.
33. The CSC also argued that disclosure simply of the name of the department, but not details of the appeal, would allow others to speculate about the details of the concern and draw conclusions which could have a detrimental effect on the credibility of the department as a whole, or on a section of the department, or on individuals within the section who may or may not have been involved with the case concerning the appellant. Furthermore the CSC argued that if all of the information withheld on the basis of section 41(1) was disclosed this would provide details of the nature of the work undertaken by the departments about whom appeals had been submitted, the names of units within the departments and titles of job holders within the units involved in the matters which were the focus of the appeals. Disclosure of such information would, in the CSC's opinion, enable people to pin point exactly where within an organisation a concern had originated and who was involved. As well as causing a detriment to the individual who has submitted the appeal, it could adversely affect (in some cases unfairly) the reputation of credibility of the department, section and individuals involved.
34. The Commissioner has considered these submissions very carefully. In respect of the detriment that may occur to the individuals that submitted the appeals, the Commissioner believes that before determining whether such a level of detriment is actually sufficient to engage the exemption, he has to accept that disclosure of the redacted information could actually lead to the identification of those who brought the appeals; if they are not likely to be identified by such disclosures, then the question of disclosure being detrimental to them is an irrelevant one. The same is also true of the other named individuals within the departments who may be identified if disclosure

of the names of the departments and further details about the appeals were disclosed.

35. Having considered the nature of the withheld information, along with the information already in the public domain, the Commissioner accepts that disclosure of the redacted information could lead the individuals who brought the appeals to be identified, most likely by their colleagues or others who know them. In reaching this decision the Commissioner has taken into account the manner in which the CSC has disclosed the 9 documents in question. That is to say, apart from the redactions which are the focus of this complaint (and the name of the appellant) the remainder of the documents were provided at the internal review stage. As a consequence the CSC has placed information into the public domain which provides a much more detailed understanding of the nature of each of the appeals than that provided by the summaries which were provided at the refusal notice stage.
36. For example in relation to the appeal submitted in 2000 regarding 'target reporting' the summary included in the digest provided to the complainant simply noted that this related to the distortion of figures indicating progress against a government target by including data of questionable relevance. However, the information disclosed at the internal review stage – i.e. the parts of the document that were not redacted – confirm that the target in question concerned the transfer of data on to magnetic tape and the dates in which the department in question delivered reports to Parliament about this target. In the Commissioner's opinion using the redacted information which is the subject of this appeal, along with the information already disclosed to the complainant, would result in a realistic prospect of the individual who brought the appeal being identified.
37. Therefore for the purposes of section 41(1) the Commissioner accepts that disclosure of the redacted information withheld under this exemption would not only result in the disclosure of the name of the department, but in effect would also result in the name of the individual who brought the appeal being identified. Furthermore, and for similar reasons, the Commissioner accepts that the disclosure of the name of the department may also result in the names of the other civil servants within the department being identified.
38. With regard to whether the identification of the individual would in fact be detrimental to them, the Commissioner is prepared to accept that it would be. This is because although the individuals raised the appeals in the context of their professional roles, the appeals themselves were clearly a personal decision by them which they would not necessarily

have wanted their colleagues or others who could identify them to be made aware of. The Commissioner can certainly envisage how disclosure of such information could therefore compromise the individuals in question and be detrimental to them. In reaching this conclusion the Commissioner has taken into account recent case law which has indicated that the consideration of section 41 of the Act needs to take into account the Human Rights Act. This has the result of broadening out the law of confidence to protect information which would not have previously been considered confidential. Where the withheld information is of a personal nature the test of detriment therefore has to take into account whether disclosure would infringe the confider's rights as set out at Article 8 of the Human Rights Act. Essentially Article 8 identifies the importance to individuals to have the privacy of their affairs respected and so in the Commissioner's opinion an invasion of privacy is sufficient for there to be an actionable breach of confidence. In the context of this case given the personal and private nature of the appeals, albeit that they were submitted in a professional context, the Commissioner accepts that disclosure of withheld information could infringe the individuals' right of privacy.

39. However, the Commissioner is not persuaded that disclosure of all of the redacted information would be detrimental to the departments in question. This is because the Commissioner does not accept that disclosure of the redacted information would notably or significantly affect their credibility or reputation given that there are a very limited number of settled appeals over significant period of time. It is not the case that the redacted information shows that there were, for example, 20 successful appeals against one particular department in a short space of time. Moreover, the 9 documents falling within the scope of the request clearly reflect detailed and considered investigations on the part of the CSC; any criticisms made of departments are clearly explained and evidenced and thus it is difficult to see how any disclosure of all of the redacted information could result in any speculation about the details of the concern and thus ultimately on the reputation of the department.
40. In the Commissioner's opinion it is difficult to reach a blanket decision as to whether disclosure of the names of the other civil servants named in the redacted information would be detrimental to them given the different circumstances of each appeal and the different positions, and actions taken, by each of the civil servants that are named. Whilst in some cases, particularly where the appeals focus on the personal decisions or actions of individuals the Commissioner could envisage how disclosing a civil servant's name would be detrimental, in other instances where a civil servant is simply named in passing or no criticism of them is made, it is difficult to see how any detriment would

occur. However, in light of the Commissioner's conclusion that disclosure of any of the information which is the focus of this complaint would be detrimental to the individuals who brought the appeals, he has not reached a decision in respect of the various redactions and whether disclosure would be detrimental to the other named civil servants.

Would disclosure of the confidential information be actionable?

41. Although section 41 of the Act is an absolute exemption and thus not subject to the public interest test contained at section 2 of the Act, the common law concept of confidence suggests that a breach of confidence will not be actionable in circumstances where a public authority can rely on a public interest defence. The Commissioner must therefore consider whether the public interest in disclosing the information overrides the duty of confidence that is owed.
42. In *Derry v Information Commissioner* (EA/2006/0014) the Information Tribunal clarified that the test to be applied in deciding whether the public interest provides a defence to a breach of a duty of confidence is that the duty should be maintained unless the public interest in disclosing the information outweighs the public interest in protecting confidences.

Public interest in maintaining the confidence

43. The CSC argued that the appeals process works best when civil servants and departments understand what information is going to be kept confidential. This gains the co-operation of all parties and achieved whole hearted implementation of recommendations made to address the situation and ensure that it is not repeated. The CSC also argued that individuals in future would be very reluctant to bring appeals if they knew they would be identified.

Public interest in disclosing the information

44. The CSC acknowledged that there was a public interest in knowing how public authorities investigate allegations of breaches of core values.
45. The complainant argued that there was a strong public interest in disclosure given that the appeals allege various forms of misconduct by public officials.

Balance of the public interest

46. The Commissioner accepts that there is a compelling public interest in public authorities being open and transparent about the work that they do and decisions that they have taken. In the context of this case the Commissioner believes that there is a strong public interest in the CSC disclosing the names of the departments against which it settled appeals. Such information would provide the public with details of which departments had received appeals about them and what the nature of these settled appeals were to a level of detail not disclosed in the CSC's Annual Reports or indeed in the information previously provided to the complainant.
47. Furthermore, whilst the Commissioner recognises the fact that the CSC's approach has always been not to reveal the names of departments about which it has received appeals, in the Commissioner's opinion following the introduction of the Act, which has brought with it a culture of greater openness, it would be reasonable to expect regulators and ombudsmen to publish the names of departments or bodies about which they had received complaints. The Commissioner does not believe the fact that it is only civil servants, rather than all members of the public, who can submit appeals to the CSC, should necessarily affect this expectation.
48. However, the Commissioner is conscious of the particular circumstances of the case, especially the amount of information disclosed by the CSC in the form of the redacted reports. As the Commissioner has set out above he believes that because of the disclosure of these redacted reports at the internal review stage, disclosure of the information which is the focus of the complaint would reveal not only the name of the departments about which appeals had been received but also the identities of the individuals who brought the appeals with a notable detrimental impact on the latter. The Commissioner agrees with the arguments advanced by the CSC that it is strongly against the public interest that the individuals who brought such appeals are identified, not simply because of the detriment that these individuals would suffer but also because of the realistic prospect that the civil servants would be dissuaded from bringing forward appeals in the future. The Commissioner is strongly of the view that the latter consequence would be very much against the public interest: the efficiency and effectiveness of the entire Civil Service depends on the values of the code being adhered to and part of ensuring that this happens includes having a robust system in which concerned civil servants can raise their concerns.

49. In light of this, and taking into account the inverse nature of the public interest test under section 41(1) when compared to the public interest test contained at section 2 of the Act, the Commissioner accepts that in this particular case, the public interest in protecting the confidence outweighs the public interest in disclosing the information. However the Commissioner has made a number of comments in the Other Matters section about how he may consider similar requests made in the future.

Procedural Requirements

50. Section 1(1) of the Act provides a right of access to information and is in two parts:

‘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.’

51. Section 10(1) of the Act requires that public authorities comply with the requirements of section 1(1) of the Act promptly, and in any event within 20 working days following the date of receipt of the request.
52. Section 17(1) of the Act requires that public authorities who rely on an exemption as a basis not to comply with either the duty contained at section 1(1)(a) or the duty contained at section 1(1)(b) must issue the applicant with a refusal notice stating which exemption it is seeking to rely on. Such a notice must be issued within the time for compliance set out at section 10(1) of the Act, namely 20 working days following the date of receipt.
53. In this case the complainant submitted his request on 10 March 2009 and the CSC did not respond until 17 April 2009, outside of the 20 working days required by section 10(1) of the Act. This delay in responding represents a breach of section 1(1)(a), 1(1)(b) and 10(1) in respect of the information that the CSC disclosed in its response of 17 April 2009. In respect of the information that the CSC was seeking to withhold, the delay represents a breach of section 17(1) because the refusal notice was not issued within the 20 working day deadline.

The Decision

54. 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
- The information falling within the scope of this complaint – i.e. the names of the department and information which would identify the department – is exempt from disclosure on the basis of section 41(1).
55. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- The CSC breached sections 1(1)(a), 1(1)(b) and 10(1) by failing to disclose the information that it did not consider to be exempt within 20 working days of the request.
 - The CSC also breached section 17(1) by failing to issue a refusal notice within 20 working days of the request.

Steps Required

56. The Commissioner requires no steps to be taken.

Other matters

57. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
58. The Commissioner has issued guidance on the time limits on carrying out internal reviews under the Act.³ This guidance explains that in the Commissioner's opinion 20 working days constitutes a reasonable amount of time to conduct an internal review. In exceptional circumstances it may be reasonable to take longer but in no circumstances should the total time taken exceed 40 working days. In this case, the CSC received correspondence from the complainant on 28 April 2009, asking it to conduct an internal review of its handling of his request. The CSC did not inform the complainant of the outcome of this review until 17 August 2009. In the future when the CSC conducts

³ [Freedom of Information Good Practice Guidance No. 5](#)

internal reviews the Commissioner expects it to adhere to the timelines set out in his guidance paper.

59. As the Analysis section in the main body of the Notice explains the Commissioner has reached the decision that section 41(1) applies partly because of the amount of information provided to the complainant at the internal review stage. In the Commissioner's opinion rather than provide the complainant with the 9 documents in question and then make limited redactions an alternative approach the CSC could have considered would have been to provide the complainant with the digest of information provided at the refusal notice stage and in addition to this also provide the name of the departments about which appeals had been received. If this approach had been adopted although less details about the appeals themselves would have been made public, it is likely that the names of the departments themselves could have been disclosed without the identities of the individuals who brought the appeals, or other civil servants in the respective departments, being identified.

Right of Appeal

60. 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.

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 sent.

Dated the 9th day of December 2010

Signed

**Alexander Ganotis
Group Manager – Complaints Resolution
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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."

Effect of Exemptions

Section 2(2) provides that –

"In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that –

(a) the information is exempt information by virtue of a provision conferring absolute exemption, or

(b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information"

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."

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."

Personal information.

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.”

Information provided in confidence.

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.”