

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 21 December 2010**

**Public Authority:** London Borough of Redbridge  
**Address:** Town Hall  
PO Box 2  
High Road  
Ilford  
Essex  
IG1 1DD

### Summary

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On 12 October 2009 the complainant requested financial information relating to two named Council officers from the public authority, including information on their annual salaries, expense claims and annual leave. The public authority provided a proportion of the information and withheld the remainder under section 12(1) and section 40(2) of the Act. It also stated that part of the information was not held. The complainant remained dissatisfied with the response, and particularly with the level of detail provided regarding the expense claims. The Commissioner has investigated and upheld the public authority's application of sections 12(1) and section 40(2); however, he also determined that it had failed to comply with its procedural obligations under sections 10(1), 17(1), 17(5) and 16(1). He requires no further steps to be taken.

## 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. On 12 October 2009 the complainant requested the following information:

*"Under the Freedom of Information Act I am requesting information to be provided to me about the following individuals who are employed by Redbridge Children's Trust:-*

1. **[Named Council officer]**

*Details of annual salary (including increases) paid from year 2005 to present, inclusive.*

*Bonuses given to him from year 2005 to present date, inclusive; any additional rewards and incentives received by him, financial and/or otherwise, from year 2005 to present date, inclusive.*

*Details of expenses and any other financial claims he made, to include approved and declined claims, for year 2005 to present date, inclusive.*

*Details of annual leave awarded and used from year 2005 to present date, inclusive.*

*Details of sickness absence taken from year 2005 to present date, inclusive.*

2. **[Named Council officer]**

*Details of annual salary (including increases) paid from year 2005 to present date, inclusive.*

*Bonuses given to her from year 2005 to present date, inclusive; any additional rewards and incentives received by her, financial or otherwise, from year 2005 to present date, inclusive.*

*Details of expenses and any other financial claims she made, to include approved and declined claims, for year 2005 to present date, inclusive.*

*Details of annual leave awarded and used from year 2005 to present date, inclusive.*

*Details of sickness absence taken from year 2005 to present date, inclusive."*

3. On 16 November 2009 the public authority acknowledged receipt of the request and apologised for the delay in responding.
4. On 17 November 2009 the public authority responded to the complainant disclosing part of the requested information. The public authority provided the following:
  - contractual details of the annual salaries;
  - explanation regarding neither officers being entitled to bonuses however one was entitled to benefits;
  - total amount of expense claims reimbursed for each year requested;
  - contractual annual and sick leave entitlement.
5. The public authority refused to disclose details of the actual annual and sick leave taken by both named officers on the grounds that the information constituted personal data and therefore was exempt under section 40(2) of the Act. The public authority also stated that no information regarding declined expense claims was held.
6. On 12 December 2009 the complainant requested an internal review of the public authority's decision. The complainant remained dissatisfied with the level of detail provided regarding the expense claims and the refusal to disclose part of the requested information under section 40(2). Following intervention from the Information Commissioner's Office over a period of months the public authority confirmed that it would carry out an internal review and communicate the outcome to the complainant by 20 April 2010.
7. On 16 April 2010 the public authority provided the outcome of the internal review to the complainant. The internal review only dealt with its refusal to disclose the requested actual annual and sick leave taken under section 40(2). The public authority did not address the complainant's dissatisfaction with the level of detail regarding the expense claims.

## **The Investigation**

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### **Scope of the case**

8. On 19 April 2010 the complainant contacted the Commissioner to complain about the way her request for information had been handled.

The complainant specifically asked the Commissioner to consider the following points:

- the delay in the public authority responding to the request;
- the level of detail provided regarding the expense claims;
- the public authority's refusal to disclose part of the information under section 40(2).

## **Chronology**

9. On 4 May 2010 the Commissioner wrote to the public authority regarding the fact that the level of detail provided for the expense claims had not been addressed in the internal review. He asked the public authority to consider this matter and clarify whether the information was held and whether it would be disclosed.
10. On 3 June 2010 the public authority responded to the Commissioner confirming that it had reconsidered the internal review. With regard to the level of detail provided for the expense claims the public authority stated that it was unable to disclose the information in full due to the costs it would incur in doing so. It therefore stated that section 12 was engaged as complying with the request in full would exceed the appropriate costs limit. It provided the Commissioner with an explanation as to the scale of work involved. The public authority again stated that information relating to declined expense claims was not held.
11. On 14 June 2010 the Commissioner wrote to the public authority seeking more evidence.
12. On 3 August 2010 the public authority responded to the Commissioner providing him with more detailed information regarding the way in which the requested information was held and the type of work which would be involved in locating, retrieving and providing it to the complainant. The public authority explained that a number of the claim forms could not be retrieved due to technical issues and confirmed its policy did not require it to record declined claims.
13. The public authority confirmed to the Commissioner that as part of its estimation into the costs it would incur by complying with the request in full it had carried out a sampling exercise. This exercise had located and retrieved a proportion of the monthly expense claim forms recorded for both named officers. The public authority stated that it would provide these to the complainant once the relevant redactions had been made.

14. On 23 August 2010 the public authority provided the information retrieved as part of the sampling exercise to the complainant. This constituted expense claim forms for both named officers processed in the financial years 2007-08, 2008-09 and 2009-10.
15. On 2 September 2010 the complainant wrote to the Commissioner to complain about the fact that the public authority had only disclosed part of the information and to restate that she did not accept the application of section 12.
16. On 6 September 2010 the Commissioner sent an acknowledgement.

## Analysis

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### Substantive Procedural Matters

17. The full text of the relevant provisions of the Act referred to in this section is contained within the Legal Annex.

### *Section 12 – cost of compliance exceeds appropriate limit*

18. Under section 12(1) of the Act, a public authority is not obliged to comply with a request for information if it estimates that to do so would exceed the appropriate cost limit. The appropriate limit is set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Regulations). The Regulations allow for £25 per hour to be attributed to time spent complying with a request for information. The cost limit is set at £450 for the public authority in this case, since it is a local authority, which amounts to 18 hours' work.
19. Regulation 4(3) of the Regulations provides that the following factors can be taken into account by a public authority when formulating a cost estimate:
  - (a) determining whether it holds the information;
  - (b) locating the information, or a document which may contain the information;
  - (c) retrieving the information, or a document which may contain the information; and
  - (d) extracting the information from a document containing it.

20. The Tribunal considered the issue of what constitutes a reasonable estimate in the case of *Roberts v Information Commissioner* (EA/2008/0050, paragraphs 9-13) and made the following comments:
- “[o]nly an estimate is required” (i.e. not a precise calculation);
  - the costs estimate must be reasonable and only based on those activities described in regulation 4(3);
  - time spent considering exemptions or redactions cannot be taken into account;
  - estimates cannot take into account the costs relating to data validation or communication;
  - the determination of a reasonable estimate can only be considered on a case-by-case basis; and
  - any estimate should be “*sensible, realistic and supported by cogent evidence*” as per the Tribunal’s findings in *Randall v Information Commissioner and Medicines and Health Care Product Regulatory Agency* (EA/2007/0004).
21. The public authority originally provided the complainant with the total amount of expense claims processed for each of the named officers for the financial years stated in the request. This information was readily available being determined from payroll records and took approximately one hour to undertake.
22. However, the public authority stated that providing the expense claims information in a greater level of detail would incur costs over that of £450 and it was to this exercise that it applied section 12.
23. The public authority informed the Commissioner that the expense claim forms for the years specified were held as manual paper records and accessing the information entailed retrieving each individual paper form and the use of an electronic archiving system. The claim forms were recorded by the public authority for auditing purposes; however, it explained that the forms are stored by the month in which they are processed and not by reference to whom they are paid.
24. As the costs limit is set at £450, meaning 18 hours’ worth of work can be undertaken, the public authority argued that searching 58 months in total would take a significant amount of time and, given that the expense claims formed part of a wider request, compliance in full would greatly exceed the appropriate limit.
25. The public authority went on to explain that records for the older years had to be located using a microfiche system. The experience of its payroll staff indicates that searching the microfiche system for a

specific record did not always prove determinative. The software system involved in accessing a portion of the older records had also been changed which meant that the public authority, to be certain that each claim had been located, would have to physically search each manual record for the month in question.

26. Part of the Commissioner's investigation required the public authority to state whether a sampling exercise had been undertaken in determining how much work was involved in complying with the request. The public authority confirmed that no sampling exercise had been undertaken originally when the request was received but it had relied upon its staff's prior experience to produce a calculation. It estimated that it would take one hour per month's worth of claims held in paper format and a little longer for those held by microfiche. Each month comprised approximately 1,500 claims, and the public authority claimed that it would take two seconds per record to determine whether information was held plus time taken to retrieve that actual record.
27. Following receipt of the Commissioner's letter of the 14 June 2010, the public authority undertook an extensive sampling exercise to aid its determination as to whether section 12 applied. The public authority searched 36 months of records as part of the sampling exercise. Owing to the problems caused by the change in software the public authority had to obtain the assistance of the software company in order to attempt the retrieval of a number of the records. Searching for, reviewing, checking and copying the information along with the assistance of the software company took approximately 15 hours to complete and only dealt with the most recent records.
28. The public authority confirmed that no records had been destroyed but that it was unable to locate and obtain the claim forms for 2005-06 and 2006-07 as further assistance from the software company would be needed. The company estimated that to locate and retrieve the final records, if this were indeed possible, would take a further three hours, with additional work from the public authority's staff in supporting the engineer taking an hour.
29. For the reasons detailed above the public authority argued that compliance with the request in full would exceed the appropriate costs limit. The Commissioner has concluded that the evidence provided by the public authority provides strong support to the application of section 12(1) to part of the request and accepts the public authority's position that the appropriate costs limit would be exceeded.

30. The Commissioner acknowledges that the information located and retrieved by the public authority as part of the sampling exercise was disclosed to the complainant, namely the claim forms for the years 2007-09, 2008-09 and 2009-10. However, his decision is that the remainder of the information can be withheld under section 12(1).

### ***Section 16 – Duty to provide advice and assistance***

31. Section 16(1) of the Act requires a public authority to provide reasonable advice and assistance to applicants who propose to make or have made requests for information. Section 16(2) of the Act states that any public authority which conforms with the Code of Practice issued under section 45 of the Act (the Code) is to be taken to comply with the duty imposed by section 16(1).
32. The Code outlines that an authority is not obliged to comply with a request for information if the cost of complying with it would exceed the “appropriate limit”. When this happens, the authority should consider providing an indication of what, if any, information could be provided within the appropriate limit. The authority should also consider advising the complainant that they may wish to narrow the scope of their request so that it might be possible to supply that more limited information.
33. In the case of *Barber v Information Commissioner* (EA/2005/0004), the Information Tribunal stated that it will generally be appropriate for the Commissioner to consider whether it was reasonable to expect a public authority to have provided more advice and assistance and, if it had done so, whether this might have had an impact upon how the request was handled.
34. In investigating this case the Commissioner notes that section 12(1) was not applied to a proportion of the information at the time of the request but following the completion of the reconsidered internal review. The public authority maintained originally that it had interpreted the request correctly and believed that the information initially provided fulfilled the scope of the request. Therefore it did not provide any advice or assistance to the complainant originally. However, the Commissioner takes the view in this case that the wording of the request for *“details of expenses and any other financial claims [he/she] made, to include approved and declined claims, for year 2005 to present date, inclusive...”* should have been more widely interpreted by the public authority as it ultimately did so following intervention from the ICO. Thus the possible engaging of section 12(1) would have triggered the duty under section 16(1).



35. Following the completion of the revised internal review which applied section 12(1) to part of the information the Commissioner notes that the public authority did not provide any advice or assistance to the complainant. In his letter of 14 June 2010 the Commissioner sought an explanation as to why section 16(1) had not been complied with and gave an example of one possible way the public authority could suggest narrowing the scope of the request, if it was acceptable to the complainant, in order to enable it to provide more information.
36. The public authority maintained that it had not provided further advice and assistance to the complainant as the sampling exercise it had undertaken had since located expense claim forms spanning three of the five years specified in the original request.
37. The approach taken by the public authority in this case does not adhere to the Commissioner's published guidance on section 16 of the Act. In cases where a public authority has applied section 12(1) with regard to requested information the Commissioner recommends that early contact is made with the applicant to engage with him or her to establish if there is a way in which the request can be brought under the appropriate costs limit. This provides the applicant with the opportunity to be specific about what information he or she is seeking and increases the likelihood that the public authority will be able to disclose the information. The Commissioner's guidance on section 16(1) of the Act can be accessed here:  
  
[http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/detailed\\_specialist\\_guides/advice\\_and\\_assistance\\_v1.0\\_171208.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/advice_and_assistance_v1.0_171208.pdf)
38. The Commissioner does not consider that it would actually be possible at this stage of the request to refine it further to bring more information within the cost limit. The Commissioner upholds the application of section 12(1) to the remainder of the information relating to the expense claims, and is mindful of the software changes affecting the location and retrieval of that information and the fact that the expense claims only form part of a wider request. Moreover he notes that the majority of the information which the request can be argued to cover has been provided to the complainant through the course of this investigation.

## **Exemptions**

39. In considering whether the exemptions are valid, the Commissioner has taken into account that the Act is designed to be applicant-blind and that disclosure should be considered in its widest sense, which is

to the public at large. If information were to be disclosed it would, in principle, be available to any member of the public.

***Exemption: Section 40(2)***

40. As noted above in the chronology the public authority withheld part of the information relating to the actual sickness and annual leave taken by the two named officers under section 40(2) of the Act.
41. Section 40(2) provides an exemption for information which is the personal data of an individual other than the applicant, and where one of the conditions listed in section 40(3) or section 40(4) is satisfied.
42. One of the conditions, listed in section 40(3)(a)(i), is where the disclosure of the information to any member of the public would directly contravene any of the principles of the Data Protection Act 1998 (the DPA).

*Is the information "personal data"?*

43. In order to rely on the exemption provided by section 40, the information being requested must constitute personal data as defined by section 1 of the DPA. It defines personal information as:

*"...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 intention of the data controller or any other person in respect of the individual".*

44. The Commissioner has considered the information that was requested and is satisfied that the information relates to identifiable living individuals, in this case the two named Council officers. The Commissioner accepts that information about an individual's holiday and sickness leave actually taken (rather than their contractual entitlement) is the personal data of that individual as defined by the DPA.
45. Having concluded that the information falls within the definition of "personal data" the Commissioner has gone on to consider if disclosure of the information would breach the requirements of the first data protection principle. The first data protection principle states:

*"Personal data shall be processed fairly and lawfully..."*

The term "processing" has a wide definition and includes disclosure of the information under the Act to a third party.

46. In deciding what is fair the Commissioner considers the possible consequences of any disclosure on the data subject along with the data subject's reasonable expectations of how the data controller will treat/use their personal data. He balances this with the more general freedom of information principles such as accountability and transparency as well as any legitimate interests which arise on the specific circumstances of the case.
47. The Commissioner has taken the following factors into account:
- the individuals' reasonable expectation of what would happen to their personal data;
  - balancing private and public life;
  - the individuals' seniority as employees of the Council;
  - balancing the rights and freedoms of the data subject with legitimate interests in disclosure.

#### *Reasonable expectations*

48. A data subject's expectations are likely in part to be shaped by generally accepted principles of everyday interaction and social norms, for example privacy. It is accepted that every individual has the right to some degree of privacy and this right is so important that it is enshrined in Article 8 of the European Convention on Human Rights.
49. However, expectations are also shaped by a society where transparency and the Freedom of Information Act's presumption in favour of disclosure of information form part of its culture. This was recognised by the Tribunal in the case of *The Corporate Officer of the House of Commons v Information Commissioner and Norman Baker MP* (EA/2006/0015 & 0016) where it was said that:
- "...The existence of the FOIA [Freedom of Information Act] in itself modifies the expectations that individuals can reasonably maintain in relation to the disclosure of information by public authorities, especially where the information relates to the performance of public duties or the expenditure of public money" (para. 43).*
50. The Commissioner has found no evidence in this case that the two named Council officers' expectations of privacy cannot be said to be

objectively reasonable. There is no evidence to suggest that the officers expected or agreed that details of their actual annual and sickness leave taken for the period in question would be disclosed to members of the public. There is also no evidence that the officers involved believed details of their actual annual and sickness leave taken were due to be or may be published at a future date.

51. It is a generally accepted norm that information of the type described above, usually considered human resources (HR) information, is always kept private and colleagues and members of the public are not permitted access to it. The Council did provide the complainant with details of each officer's annual entitlement for the period specified in the request. The Commissioner would not consider this type of generic contractual information to be personal data. However he draws a distinction between the generic information provided by the Council and the more detailed information originally requested, as the latter would directly relate to the named individuals and is therefore personal data of those individuals. The Commissioner holds that the Council officers' expectations of privacy regarding their personal data are reasonable, daily accepted norms and weigh significantly on this case.

#### *Private v Public Life*

52. The Tribunal in *The Corporate Officer of the House of Commons v Information Commissioner and Norman Baker MP* (EA/2006/0015 & 0016) also commented on the distinction between a data subject's private and public life and commented that:

*"...where data subjects carry out public functions, hold elective office or spend public funds they must have the expectation that their public actions will be subject to greater scrutiny than would be the case in respect of their private lives..."* (para. 78);

and further that:

*"...the interests of data subjects namely MPs in these appeals, are not necessarily the first and paramount consideration where the personal data being processed relate to their public lives"* (para. 79).

53. Therefore, if an applicant requested information relating to the public/professional life of the data subject rather than their private life then it is more likely that it will be fair to disclose this type of information. However, even if the information does relate to an individual's professional life, this does not mean that it will automatically be disclosed. For example, there may be little expectation of privacy with regard to the data subject's work duties but

there may still be an expectation that personnel details will not be disclosed.

54. In this case the Commissioner has considered whether information relating to the actual annual and sickness leave taken by the Council officers should remain private. The Commissioner holds that the information arguably relates to the employees' personal lives rather than their professional lives. It is true that the annual entitlement to both types of leave is governed by the Council's contracts with the officers and that ultimately they are paid from the public purse. However, the Commissioner holds that this information is a step too far removed from the officers' professional lives and is not an example of direct spending of public money over which they have autonomous control.
55. The information provided regarding the contractual entitlement is sufficient to illustrate how the Council allocates its resources and funds concerning its employees. The Commissioner is of the view that, although how public money is spent is obviously of interest to the public, it would be more likely to be deemed unfair to release details of an HR nature relating to Council employees' private lives.

### *Seniority*

56. The Information Commissioner's Office has produced *Awareness Guidance* on section 40 of the Act, which makes it clear that public authorities should take into account the seniority of employees when personal information about its staff is requested under the Act. The Commissioner takes the line that generally the more senior the role within the public authority the greater the weight in favour of disclosure will be.
57. The Commissioner's guidance "*The Exemption for Personal Information*" (version 3, 11 November 2008) on the application of 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:

*"Whether the information relates to the individual's public life (i.e. their work as a public official or employee) or their private life (i.e. their home, family, social life or finances) information about an individual's private life will deserve more protection than information about them acting in an official work capacity. You should consider the seniority of their position, and whether they have a public-facing role. 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 (e.g. the official's family)."*

58. The Information Tribunal in *Rob Waugh v the Information Commissioner and Doncaster College* (EA/2008/0038) considered the concept of fairness under the first data protection principle, and held that it was:

*"...necessary to consider in terms of fairness what would be [the data subject's] reasonable expectations about the use and subsequent release of the material."*

59. The Commissioner confirms that, in this case, although the Council officers held senior roles at the public authority, the expectations of privacy of the officers involved are still objectively reasonable and outweigh any arguments made for disclosure based around the connection to spending of public funds. Moreover, the named officers are not publically elected officials and as such are less likely to be held directly accountable than, for example, Members of Parliament regarding the use of public money.
60. The Commissioner has considered the nature of the requested information itself and as detailed in this Notice considers that it is the personal data of the named officers. The seniority of the officers involved does not justify disclosing personal information of the nature detailed in the request. The Commissioner is of the view that disclosure is not necessarily an automatic response to requests for information about senior officials. It is likely that the officers take this view as well and that it adds to their expectation of privacy.

*Balancing the rights and freedoms of the data subject with legitimate interests*

61. Although the exemption contained in section 40(2) is absolute and therefore not subject to the public interest test, the Commissioner will still consider legitimate interests in favour of disclosure when conducting an investigation.
62. Notwithstanding the data subjects' reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if there is a more compelling public interest in disclosure. This has been evident in Information Tribunal

cases involving MPs' expenses, for example, such as EA/2006/0015 & 0016 where on appeal the High Court stated:

*"The expenditure of public money through the payment of MPs salaries and allowances is a matter of direct and reasonable interest to taxpayers."*

63. It can be argued in this case that there is a public interest in knowing how Council resources are allocated and therefore how much public money is spent. However, as the Commissioner has noted previously, the requested information concerning annual and sickness leave taken by the named officers does not have a clear, direct correlation to Council expenditure for which the employees are accountable.
64. In the circumstances of this case the Commissioner finds that disclosure would contravene the first data protection principle. The Commissioner considers that the data subjects had a particular reasonable expectation of privacy in relation to the details of their actual annual and sickness leave taken. The Commissioner deems that to release the requested information, making it available to the wider world under FOI, would be unfair to the data subjects. He is therefore satisfied that the public authority were correct to refuse disclosure under section 40(2).

## **Procedural Requirements**

### ***Section 1 – General right of access***

65. The complainant remained dissatisfied with the public authority's claim regarding part of the request that it did not hold information relating to declined expense claims. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities. In other words, in order to determine such complaints the Commissioner must decide whether, on the balance of probabilities, a public authority held any information falling within scope at the time of the request.
66. The Commissioner questioned the public authority regarding its retention policy in relation to any declined expense claims which may have occurred. The public authority confirmed that the retention policy did not include specific direction regarding declined claim forms. Expense claim forms are only submitted for payment and therefore in recorded form following authorisation by a manager. The public authority explained it is normal practice for staff to discuss in advance

of lodging a claim whether it is valid. If a claim was made in good faith but was not valid within the public authority's procedures the claimant would be advised of this. The manager would return the form to the claimant to make the required correction if needed and not keep a copy. Therefore if for any reason the expense claim is not authorised then it is not submitted and is considered to be not held by the public authority.

67. The public authority went on to explain that only in extreme circumstances would a record be kept, for example if a member of staff lodged a fraudulent or incorrect claim, the manager would keep a copy and this would be dealt with in accordance with the public authority's disciplinary procedure. The public authority confirmed with direct regard to the two named officers, after going back to the managers involved, from memory and checking the individual record files that no invalid expense claim forms for either employee had been received. The public authority restated that if any forms had been received which were believed to be false they would keep a copy and deal with it as a disciplinary matter.
68. After considering the public authority's response the Commissioner is satisfied that on the balance of probabilities information requested relating to declined expense claims is not held by the public authority.

### ***Section 10 and 17 – Time for compliance***

69. Sections 10(1) and 17(1) of the Act state that a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
70. During the course of his investigation the Commissioner has been provided with evidence which demonstrates that the public authority responded to the request outside the statutory time period, and therefore breached sections 10(1), 17(1) and 17(5).

### **The Decision**

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71. The Commissioner's decision is that the public authority properly withheld part of the requested information in accordance with sections 40(2) and 12. However, he has also decided that the following elements of the request were not dealt with in accordance with the Act:
  - the public authority breached sections 10(1) and 17(1) in responding to the request outside the statutory time frame,



- the public authority breached section 17(5) in failing to cite section 12 by the completion of the internal review, and;
- the public authority breached section 16(1) in failing to provide advice and assistance to the complainant concerning the narrowing of her request.

## Steps Required

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72. The Commissioner requires no steps to be taken.

## Other matters

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73. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint.
74. As he has made clear in his *'Good Practice Guidance No 5'*, published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review.
75. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner is concerned that in this case, even allowing for the dispute concerning the date of receipt, it took over 50 working days for an internal review to be completed, despite the publication of his guidance on the matter.
76. The Code of Practice issued under section 46 of the Act (the "section 46 Code") sets out the practices which public authorities should follow in relation to the creation, keeping, management and destruction of their records.
77. During the course of the Commissioner's investigation the authority stated that it was unable to either locate certain claims forms, or to demonstrate that they had been destroyed in accordance with a

disposal schedule, owing to possible incorrect indexing of a number of expense claim forms. The public authority also stated that a change in computer hardware and software since part of the information had been archived meant that it was not accessible due to system incompatibility. The Commissioner expects that, in future, the authority will ensure that its records are retained in accordance with its own records management policy and that it will have due regard for the recommendations of the section 46 Code. The section 46 Code is published online at this address:

<http://www.justice.gov.uk/guidance/docs/foi-section-46-code-of-practice.pdf>

## Right of Appeal

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78. 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 21 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**

Section 1(1) provides that -

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

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

### **Section 10**

Section 10(1) provides that -

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

### **Section 12**

Section 12(1) provides that -

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

### **Section 17**

Section 17(1) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

(a) states that fact,

(b) specifies the exemption in question, and

- (c) states (if that would not otherwise be apparent) why the exemption applies.”

Section 17(5) provides that –

“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.”

## Section 40

**Section 40(1)** provides that –

“Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.”

**Section 40(2)** provides that –

“Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.”

**Section 40(3)** provides that –

“The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
  - (i) any of the data protection principles, or
  - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.”

**Section 40(4)** provides that –

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

**Section 40(5)** provides that –

“The duty to confirm or deny-

- (a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and
- (b) does not arise in relation to other information if or to the extent that either-
  - (i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or
  - (ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).”

**Section 40(6)** provides that –

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

**Section 40(7)** provides that –

In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;  
"data subject" has the same meaning as in section 1(1) of that Act;  
"personal data" has the same meaning as in section 1(1) of that Act.