

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 9 December 2010

Public Authority: Middlesbrough Council
Address: PO Box 99
Town Hall
Middlesbrough
TS1 2QQ

Summary

The complainant requested information about statistics relating to the Onestop service operated by Middlesbrough Council ('the Council') for its Elected Members through which they are able to submit enquiries and requests to the Council. The Council refused to disclose the information by virtue of sections 36(2)(c) and 40(2) of the Act. The Commissioner has investigated and found that sections 36(2)(c) and 40(2) are not engaged and accordingly has ordered release of the information.

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 request in this case relates to statistics on the use of the Council's Onestop service. The Council has advised that its Onestop service was introduced in 2001 and is an internal, electronic constituency casework and information service which was set up for Elected Members to help them manage their information and constituency and casework needs.

3. The Council advised that the Onestop service has a dual function in that it allows Councillors to submit enquiries to one central point in order that they can be allocated to the most appropriate department/officer. It also allows the Council to monitor requests within each service area for political sensitivity and to ensure that they are dealt with and responded to appropriately.
4. The Council has confirmed that a Councillor may submit a Onestop request for a number of purposes, including their own enquiries, complaints, information requests in relation to Council/ward work, or for their constituency casework.

The Request

5. On 9 February 2010, the complainant made a request to the Council for "the list of individual one stop requests (total submitted by each councillor) for the last financial year".
6. The Council responded on 17 February 2010 stating that the information could not be provided in the format requested because it was exempt under sections 36(2)(c) and 40 of the Act. The Council did provide some statistical information relating to the number of one stop requests, and the subject matter relating to the requests, but anonymised the data by redacting the names of the individual Councillors.
7. On 2 March 2010, the complainant wrote to the Council to complain about its refusal to disclose the names of the Councillors relevant to the statistics it had provided. The Council treated this as a request for an internal review of its decision.
8. The Council provided the outcome of its internal review on 30 March 2010 and upheld its decision not to release the information in the format requested, i.e. the Onestop statistics broken down by individual Councillors. The Council maintained that the information requested was exempt by virtue of section 36 of the Act.

The Investigation

Scope of the case

9. On 30 March 2010, 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 information he had requested should be disclosed.

10. The Commissioner notes that anonymised statistics on the use of the Onestop service have been disclosed and it is the names of the individual Councillors only which have been withheld. However, as the initial request was for the total number of Onestop requests made by each Councillor, the Commissioner has considered the withheld information in this context. The scope of the Commissioner's investigation has focused on whether the information requested on 9 February 2010, as a whole should be disclosed, i.e the Onestop statistics for the financial year 1 April 2009 to 1 April 2010 broken down by individual (ie named) Councillors.

Chronology

11. On 4 May 2010, the Commissioner wrote to the Council to confirm that the complaint had been deemed eligible for formal consideration and requested copies of the withheld information.
12. The Council wrote to the Commissioner on 2 June 2010 providing the withheld information and further representations to support its view that the information requested was exempt from disclosure.
13. The Commissioner wrote to the Council on 11 August 2010 and indicated that, in his view, the withheld information constituted personal data and, as such, he asked the Council for its further views in relation to the application of section 40 of the Act, which it had initially applied in its refusal notice. The Commissioner asked the Council to clarify the exemptions on which it was relying and for the reasoning behind its application of those exemptions.
14. The Council responded to the Commissioner on 24 June 2010 providing some background information relating to the Onestop service. The Council confirmed that it was seeking to rely primarily on section 36(2)(c) of the Act, but it also felt that Sections 36(4) and 40 of the Act might also apply to the requested information. The Council provided further representations in respect of its application of these exemptions.
15. As it remained unclear which specific exemptions the Council was relying on, the Commissioner telephoned the Council on 27 October 2010 to clarify the issue. The Council confirmed that it believed sections 36(2)(c) and 40(2) applied to the requested information. The Council clarified that it was not relying on section 36(4) of the Act

because it did not consider the requested information in its entirety to constitute statistical information.

Analysis

Exemptions

Section 36

16. Section 36 operates in a slightly different way to the other prejudice based exemptions contained in the Act. For section 36(2)(c) to be engaged, information is exempt only if, in the reasonable opinion of a qualified person, disclosure of the information in question would, or would be likely to, prejudice the effective conduct of public affairs. All sections of the legislation are reproduced in the attached legal annex.
17. In order to engage section 36(2)(c) some prejudice other than that protected by another limb of section 36 must be demonstrated. As explained in the Commissioner's awareness guidance on section 36¹, section 36(2)(c) is not intended to be a 'catch'-all', but instead to apply to those cases where it would be necessary in the interest of good government to withhold information that is not covered by another specific exemption.
18. In order to establish whether the section 36(2)(c) exemption has been applied correctly the Commissioner considers it necessary to:
 - (a) Ascertain who was the qualified person or persons for the public authority in question;
 - (b) Establish that an opinion was given;
 - (c) Ascertain when the opinion was given; and
 - (d) Consider whether the opinion given was reasonable.
19. Section 36(4) provides that if the withheld information is statistical, then engagement of the exemption does not require the opinion of the qualified person. The Commissioner notes that the Council is not relying on this part of the exemption, as in its view the information it had already released, ie the anonymised Onestop statistics, did constitute statistical information, but once it were to attribute councillor names to these statistics, then it believed this made the information personal, rather than purely statistical. In view of this, the

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http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/effectiveconductofpublic%20affairs.pdf

Council confirmed that it did not consider section 36(4) of the Act to apply. In his investigation, the Commissioner has not therefore considered this aspect of the exemption any further.

Is the exemption engaged?

20. In respect of local authorities within the meaning of the Local Government Act 1972, the qualified persons for the purposes of Section 36(5) of the Act for a principal local authority in England, are the Monitoring Officer and Chief Executive. The Council has confirmed to the Commissioner that its qualified person is the Council's Monitoring Officer, who is the Head of its Legal & Democratic Services department. The Commissioner is satisfied that, at the time of the request, this person was a qualified person for the purposes of section 36 of the Act.
21. The Council first claimed reliance on section 36(2)(c) in its refusal notice dated 17 February 2010 and upheld its decision to rely on this exemption following its internal review. However, the Commissioner notes that no reference was made to the qualified person's opinion in either the refusal notice or its letter to the complainant that contained the result of its internal review.
22. When the Commissioner wrote to the Council on 11 August 2010, he explained that, in order to determine whether section 36(2) had been correctly applied, he required further information about the opinion of the qualified person.
23. In its response to the Commissioner's question "when was this opinion sought and when was it given?", the Council advised that the same information as that requested in this particular case had been sought previously. Following those previous requests, the advice of the departmental Director (the qualified person) was sought owing to the political sensitivity of the requests. The Council confirmed that it did not hold any documentary records associated with the advice of the qualified person in relation to the previous requests, but it provided the Commissioner with copies of its responses dated 17 and 18 June 2009.
24. The Commissioner has considered the Council's responses to the previous requests for similar information. He notes that the previous requests appear to have been handled by the Council as 'normal course of business' requests, as opposed to information requests under the Act. As such, the Council did not apply section 36 to the requests and simply refused to disclose the information requested. Although reference is made in the Council's email dated 17 June 2009 that the matter had been discussed with the qualified person (the Council's

Monitoring Officer), there is no evidence that the opinion of the qualified person had been sought specifically in relation to any application of section 36 of the Act.

25. To date, the Council has not provided the Commissioner with any evidence that the opinion of the qualified person has been sought in relation to the request for information in this particular case. Further, although it appears that disclosure of similar information was considered by the qualified person in a previous case (not handled under the terms of the Act and some 8 months before the request in this case), the Council has not provided any evidence that the engagement of the section 36 exemption has been discussed or considered by the qualified person, either in relation to previous requests or the request in this particular case.
26. After careful consideration of the facts of this case, the Commissioner's view is that the Council has not adequately demonstrated that the reasonable opinion of the qualified person has been sought in relation to this request. Therefore, the Commissioner has determined that section 36(2) is not engaged in this case.

Section 40

27. Section 40(2) of the Act provides an exemption for information that is the personal data of an individual other than the applicant, and where one of the conditions listed in sections 40(3) or 40(4) is satisfied. In this particular case the condition in question is contained in section 40(3)(a)(i), which applies where the disclosure of the information to any member of the public would contravene any of the data protection principles as set out in Schedule 1 to the Data Protection Act 1998 ('the DPA').
28. The Council considers that the information requested constitutes the personal data of the individual Councillors, that disclosure would be unfair and would therefore breach the first data protection principle. The Commissioner agrees that the relevant principle here is the first principle; the requirement that any processing should be fair and lawful.

Is the information personal data?

29. 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 relates to a living individual who can be identified:

- from that data,
 - or from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.
30. The withheld information in this case comprises the names of the individual Councillors associated with the anonymised list of statistics relating to Onestop requests (which the Council has disclosed). The Commissioner is satisfied that living individuals (the Councillors) can be identified from the information. The Commissioner therefore accepts that the information in the context of this request is personal data as defined by the DPA.

Would disclosure contravene any of the principles of the DPA?

31. As the Commissioner is satisfied that the information requested constitutes the personal data of the individual Councillors, he has gone on to consider whether disclosure would breach any of the data protection principles. As stated in paragraph 28 above, the Council claimed that disclosure of the withheld information in this case would breach the first data protection principle.

The first data protection principle

32. The first data protection principle has two main components. They are as follows:
- the requirement to process all personal data fairly and lawfully; and
 - the requirement to satisfy at least one DPA Schedule 2 condition for the processing of all personal data.
33. Both requirements must be satisfied to ensure compliance with the first data protection principle. If even one requirement cannot be satisfied, processing will not be in accordance with the first data protection principle. The Commissioner's general approach to cases involving personal data is to consider the fairness element first. Only if he believes that disclosure would be fair would he move on to consider the other elements of the first data protection principle.

Would disclosure of the information be fair?

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

a) Expectations of the individuals concerned

35. The Council advised the Commissioner that when the Onestop was first established, and following extensive consultation with Councillors, general consensus regarding an informal protocol was reached. This provided that the Council would not supply any elected Member with Onestop Statistics relating to another elected Member, in order that use of the service was not seen as a measure of a Councillor's performance.
36. The Council's view is that whilst Councillors' names, photographs and details of expenses are published on the Council website, there is a general expectation that their names will not be provided to members of the public in response to specific enquiries. The exception to this is where a specific written request is made to the Council. Any such request would be considered on its own merits in accordance with the provisions of the Act. The Council stated that one of the main reasons for this approach is in relation to personal safety of Councillors and it used an example of a Councillor reporting acts of anti-social behaviour, such as fly tipping, by a person in their ward. If a request were to be made for the name of the person who reported such incidents, the Council's approach would be to withhold the Councillor's name, as to disclose it could have personal safety consequences.
37. The Council has confirmed that, following attacks which were considered by the Council to have resulted from Councillors reporting antisocial or illegal behaviour, it had to install CCTV equipment at the homes of two Councillors. The Council has provided the Commissioner with other excerpts from a Councillor's letters in which they expressed concern that their name had been disclosed in similar circumstances which led to similar attacks.
38. The Council agrees that the information relates to the individual Councillor's public lives. However, the Council has advised that Elected Members can submit enquiries through the Onestop service in relation to any of their roles; including enquiries for their own purposes (for example for political purposes), as well as enquiries made to assist their constituents. The Council confirmed that Councillors are not asked to identify the purpose of the information request when utilising the Onestop service so it is unable to establish the numbers of requests for personal purposes contained within the statistics.
39. The Council advised that it has not sought consent from the individual Councillors. However, the Council advised that the issue of Onestop statistics was discussed at a recent workshop reviewing the Onestop service and those Councillors who attended expressed the view that

they did not want publication of such statistics to be broken down to show individual Councillor figures.

40. The Commissioner's awareness guidance on section 40² suggests that when public authorities consider the disclosure of third party personal data, a distinction should be drawn as to whether the information relates to the third party's public or private life. Although the guidance acknowledges that there are no hard and fast rules it states that:

'Information which is about the home or family life of an individual, his or her personal finances, or consists of personal references, is likely to deserve protection. By contrast, information which is about someone acting in an official or work capacity should normally be provided on request unless there is some risk to the individual concerned.'

41. The Commissioner's guidance on the section 40 exemption therefore makes it clear that where the information relates to the individual's private life (i.e. their home, family, social life or finances), as opposed to their public life (i.e. their work as a public official or employee), it will deserve more protection than information about them acting in an official or work capacity.
42. In this case, the Commissioner is satisfied that the withheld information relates to the individuals' professional work life and was generated in relation to their roles as Elected Members of the Council.
43. The Commissioner accepts that some of the requests included within the Onestop statistics may have been made by individual Councillors for their own private or political purposes. The Commissioner has considered his own guidance in relation to information produced or received by Councillors³. However, in this case, the requested information is for statistics which the Council has produced based on requests received from Councillors, and not for the actual information received from Councillors i.e. the number of Onestop requests each Councillor has submitted and not the detail of each request. The Commissioner is therefore satisfied that the information requested is held by the Council.

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

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http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/fep109_information_produced_or_received_by_councillors_v1.0.pdf

44. The Commissioner accepts the Council's view that Elected Members would not expect to have their name provided to members of the public in relation to specific enquiries, for example, where a Councillor has reported a specific incident of antisocial behaviour. However, the request in this case is for the total number of Onestop requests submitted over a specified time period by each Councillor and not for details of specific enquiries. The Commissioner therefore considers that the Council's arguments on this issue carry little weight in relation to this specific case.
45. The Commissioner considers that Elected Members of a local authority should be open to scrutiny and accountability because their jobs are funded by the public purse, and as such they should expect to have some personal data about them released. In his guidance on the section 40 exemption, the Commissioner suggests that 'if the information requested consists of names of officials, their grades, jobs or functions or decisions made in their official capacities, then disclosure would normally be made'. However, the Commissioner also considers that information which might be deemed 'HR information' (for example details of pension contributions, tax codes, etc) should remain private, even though such information relates to an employee's professional life, and not their personal life.
46. The Commissioner believes that the Councillors in this case should expect that some information regarding their role as Elected Members may be disclosed into the public domain. The complainant's view is that there is already a considerable amount of personal information relating to Councillors which is readily available, such as details of their expenses and allowances and advice surgeries which they hold. The complainant feels that the availability of such information negates the arguments put forward by the Council for refusing to disclose the information he has requested.
47. When considering the Councillors' reasonable expectations, the Commissioner has been conscious of their public roles as Elected Members and that the public can expect real accountability to enable democracy to thrive. He has also considered that Elected Members have a senior role within the Council and that they have direct responsibility for overseeing how public money is spent.
48. The Commissioner acknowledges that some personal information about Councillors is readily available, for example, names, home addresses, home telephone numbers and details of expenses but accepts that this does not mean they would necessarily have expected information about their use of the Onestop service to them to be disclosed.

49. The Commissioner's view is while Councillors may have had a reasonable expectation that not all the information relating to their work as Elected Members would be disclosed, this does not automatically mean that disclosure of the information requested would be unfair.

b) Consequences of disclosure to the individual

50. The Council has referred to a conversation that it had with the complainant during which the complainant explained the reason for his request was partly to establish whether Councillors were obtaining 'value for money' and representing their communities effectively.
51. As it is unable to breakdown the statistics into the type of requests that may be of a legitimate interest to members of the public and those that may be exempt (i.e. those requests made for a personal or political reason), the Council considers that disclosure could cause unwarranted harm to the political interests of Councillors.
52. The Council is also concerned that the information requested would be used out of context and perceived as a measure of performance of individual Councillors. It believes that disclosure could seriously prejudice the rights of the Councillors as the information requested could be used to damage the standing and reputation of individual Councillors.
53. The Council has confirmed that usage of the Onestop service is not mandatory except for one particular Councillor. The Onestop statistics are not used by the Council to evaluate individual Councillor performance and are not an accurate reflection of the amount of work each Councillor undertakes. The Council explained that Councillors represent their communities in a number of different ways, many of which were not administered by the Council, for example, by attending meetings and events such as community council and school governor meetings. The Council added that the Onestop service is just one method for dealing with constituency casework and that not all casework undertaken by Councillors would necessarily involve utilising the Onestop service, for example housing association or utility queries. Further, the Council state that Onestop statistics are used, in part, by Councillors as a tool to identify casework trends, highlight emerging issues within their ward and possibly lobby for improvements in specific budgets, processes or policies.
54. The Council explained that the Onestop statistics for each Councillor could also be influenced by the types of enquiries submitted and how staff processed the query. For example, one query from a Councillor

could create three separately logged requests if the request involved different locations or multiple tasks carried out by different departments within the Council, or where a Councillor re-opens a previously submitted request.

55. The Commissioner notes the Council's comments concerning its discussion with the complainant about his reasons for the request but wishes to make it clear that this is not an issue that can be taken into account when dealing with a request under the Act. The Act is applicant and motive blind. He notes that the Council has accepted this point in its letter to him dated 2 June 2010.
56. The Commissioner notes that usage of the Onestop service is for the most part not mandatory. He also notes that there are a number of factors which can affect usage of the service and the statistics produced, including the type of enquiry submitted, how the enquiry is logged, and re-opened requests. The Commissioner also acknowledges the Council's statement that usage of the Onestop service can be affected by the ward which a Councillor represents, for example some wards have more needs than others, the demographics of the ward, and localised issues which only affect one particular ward.
57. The Council's views regarding the consequences of disclosure are largely based on how the Onestop service statistics could be interpreted as a measure of a Councillor's performance and the damaging effect that this could have on the standing and reputation of Councillors. The Commissioner acknowledges these views but believes that the concerns could be largely resolved by the Council making this point clear should the information be disclosed.

c) General principles of accountability and transparency

58. The Council acknowledge that there is a legitimate public interest in the activities of democratically elected representatives. However, as stated above in paragraph 52 above, the Council believe that disclosure of the information requested in this case could be taken out of context, and used "at best unknowingly, and at worst mischievously to damage the standing and reputation of other Councillors". The Council argue that any legitimate interest has already been met by the disclosure of the anonymised Onestop statistics.
59. The Commissioner believes there is a legitimate public interest in disclosure of information which would promote accountability, transparency and participation. The Commissioner considers that this is particularly relevant in relation to the activities of Councillors who are democratically elected.

60. The Onestop service is a service provided by the Council to its Elected Members and deals with approximately 3500 enquiries each year. The Onestop service therefore involves a significant cost to the tax payer and the Commissioner considers there to be a legitimate interest in the disclosure of information which would promote accountability and transparency in the spending of public money.
61. Whilst the Commissioner acknowledges that the public interest has, to an extent, been satisfied through disclosure of the anonymised Onestop statistics, he does not consider that publication of this information alone satisfies the legitimate interests of the public in disclosure of the information requested. The Commissioner accepts that usage of the Onestop service cannot be seen as a measure of individual Councillor's performance but he believes that disclosure of the requested information will allow members of the public an insight into some of the work carried out by individual Councillors. The Council's concerns regarding how the information requested will be perceived and used by members of the public have already been addressed by the Commissioner in paragraph 57 above.
62. The Commissioner has weighed the nature of the expectations and the consequences of disclosure in this case against the legitimate interest in disclosure and considers that releasing the information requested would not be unfair.

Schedule 2 Condition 6 of the DPA

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

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

64. The Commissioner's awareness guidance on section 40⁴ states that following the Information Tribunal decision in Corporate Officer of the

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

House of Commons v Information Commissioner and Leapman, Brooke and Thomas (EA/2007/0060 etc.; 26 February 2008) public authorities should approach condition 6 as a three-part test:

1. there must be a legitimate public interest in disclosure;
 2. the disclosure must be necessary to meet that public interest; and
 3. the disclosure must not cause unwarranted harm to the interests of the individual.
65. As stated above at paragraphs 59 and 60, the Commissioner considers there is a legitimate public interest in the disclosure of any information which would promote accountability, transparency and participation in either the spending of public money or the work undertaken by Elected Members of a Council. As explained in paragraph 61 above, the Commissioner considers that disclosure of the information requested in this case is necessary to satisfy this public interest.
66. The Commissioner recognises that the legitimate interests of the public must be weighed against any unwarranted prejudice to the rights and freedoms or legitimate interests of the data subjects (the Councillors). The Commissioner accepts that the data subjects may not necessarily have had any expectation that the information requested would be disclosed into the public domain. However, given the fact that the information requested relates to the individuals' public lives (i.e. their role as Elected Members), and the Commissioner's view that any misinterpretation of the information requested could be addressed by the Council, he does not consider that any significant prejudice would arise for the individuals concerned. He therefore maintains that disclosure would not represent an unwarranted interference into the individuals' private lives.
67. On balance, the Commissioner accepts that disclosure of the information requested would be necessary to satisfy a legitimate interest of the public and considers that this outweighs any unwarranted prejudice that might be caused to the individuals' own rights, freedoms and legitimate interests.

Lawfulness

68. In the context of freedom of information requests, the Commissioner considers it is likely that it will be unlawful to disclose personal information where it can be established that the disclosure would be a breach of a statutory bar, a contract or a confidence. In the current case he has seen no evidence that any of these breaches would occur, and as a consequence he has concluded that disclosure would not be unlawful.

69. For the above reasons, the Commissioner is satisfied that disclosure of the withheld information would be neither unfair nor unlawful and would not breach the first data protection principle. As such, the Commissioner is not satisfied that the information requested was correctly withheld by the Council under section 40(2) of the Act.

Procedural Requirements

Section 10

70. As the Commissioner has decided that the withheld information is not exempt from disclosure under sections 36(2)(c) or 40(2), he believes the information should have been provided to the complainant in line with the duty at section 1(1)(b). By failing to provide this information within 20 working days of the request the Council breached section 10(1).

The Decision

71. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act:
- i. It incorrectly applied section 40(2) to withhold the information requested.
 - ii. It incorrectly applied section 36(2)(c) to withhold the information requested.
 - iii. It breached section 1(1)(b) for failing to provide information that the Commissioner has concluded should have been released, and section 10(1) for failing to provide the information requested within 20 working days of the request.

Steps Required

72. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- To disclose the information previously withheld under sections 36(2)(c) and 40(2); namely the Onestop statistics for the financial year 1 April 2009 to 1 April 2010 broken down by individual Councillor name.

73. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

74. 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

75. 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

**Anne Jones
Assistant Commissioner**

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

Legal Annex

General Right of Access

Section 1(1) provides that –

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

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him”.

Time for Compliance

Section 10(1) provides that –

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

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.

Prejudice to effective conduct of public affairs.

Section 36(1) provides that –

“This section applies to-

- (a) information which is held by a government department or by the National Assembly for Wales and is not exempt information by virtue of section 35, and

- (b) information which is held by any other public authority.

Section 36(2) provides that –

“Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act-

- (a) would, or would be likely to, prejudice-
 - (i) the maintenance of the convention of the collective responsibility of Ministers of the Crown, or
 - (ii) the work of the Executive Committee of the Northern Ireland Assembly, or
 - (iii) the work of the executive committee of the National Assembly for Wales,
- (b) would, or would be likely to, inhibit-
 - (i) the free and frank provision of advice, or
 - (ii) the free and frank exchange of views for the purposes of deliberation, or
- (c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

Section 36(3) provides that –

“The duty to confirm or deny does not arise in relation to information to which this section applies (or would apply if held by the public authority) if, or to the extent that, in the reasonable opinion of a qualified person, compliance with section 1(1)(a) would, or would be likely to, have any of the effects mentioned in subsection (2).”

Section 36(4) provides that –

“In relation to statistical information, subsections (2) and (3) shall have effect with the omission of the words “in the reasonable opinion of a qualified person”.

Personal information.

Section 40(1) provides that –

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

Section 40(2) provides that:

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

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

Section 40(3) provides that –

"The first condition is –

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

Section 40(4) provides that –

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

Data Protection Act 1998

Section 1 - Basic interpretative provisions

- (1) In this Act, unless the context otherwise requires—
 - "data" means information which—
 - (a) is being processed by means of equipment operating automatically in response to instructions given for that purpose,
 - (b) is recorded with the intention that it should be processed by means of such equipment,
 - (c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system, or

(d) does not fall within paragraph (a), (b) or (c) but forms part of an accessible record as defined by section 68;

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

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

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

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

(a) from those data, or

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

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

(a) organisation, adaptation or alteration of the information or data,

(b) retrieval, consultation or use of the information or data,

(c) disclosure of the information or data by transmission, dissemination or otherwise making available, or

(d) alignment, combination, blocking, erasure or destruction of the information or data

Schedule 1

The first data protection principle

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

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

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

Schedule 2

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

- "1. The data subject has given his consent to the processing. 2. The processing is necessary-
 - (a) for the performance of a contract to which the data subject is a party, or
 - (b) for the taking of steps at the request of the data subject with a view to entering into a contract.
3. The processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract.
4. The processing is necessary in order to protect the vital interests of the data subject.
5. The processing is necessary-
 - (a) for the administration of justice,
 - (b) for the exercise of any functions conferred on any person by or under any enactment,
 - (c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department, or
 - (d) for the exercise of any other functions of a public nature exercised in the public interest by any person.
6. - (1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

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