

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 10 March 2011

Public Authority: The Information Commissioner's Office
Address: Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Note:

The complaint in this case was made against the Information Commissioner. Since the Commissioner is himself a public authority for the purposes of the Freedom of Information Act 2000 (the "Act"), he is under a duty to make a formal determination of a complaint made against himself. It should be noted, however, that the complainant has a right of appeal against the Commissioner's decision, details of which are given at the end of this Notice. For the sake of clarity, in this notice the term "ICO" is used to denote the ICO dealing with the *request*, and the term "Commissioner" denotes the ICO dealing with the *complaint*.

Summary

The complainant requested a copy of the Information Commissioner's Office's (ICO) Enforcement Referral Log. This was disclosed by the ICO with certain information redacted under section 31(1)(g) by virtue sections 31(2)(a) and (c) of the Freedom of Information Act 2000 (the Act). The redacted information comprised of live enforcement cases from 2007 where disclosure would be likely to prejudice the ICO's regulatory functions and all cases (whether live or not) where disclosure of the information provided by the public authority would be likely to prejudice the open dialogue of relevant enforcement issues. The Commissioner finds that the exemption in section 31(1)(g) is engaged and the public interest in maintaining it outweighs the public interest in disclosure.

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 information requested is contained in the ICO's Enforcement Referral Log. This is used by the ICO's Enforcement Team to record relevant examples of poor practice. The Enforcement Team is primarily concerned with monitoring two things in pursuance of the ICO's functions under the Freedom of Information ("FOI") Act:
 - a. public authorities' compliance with the Act, and the Environmental Information Regulations 2004
 - b. public authorities' conformity to the [section 45](#) and [46](#) Codes of Practice (Freedom of Information) and the [Regulation 16](#) Code of Practice (Environmental Information Regulations)
3. Working to the [FOI Enforcement Strategy](#)¹, the Enforcement Team seek, review and log examples of non-compliance and non-conformity with a view to identifying authorities which are failing to meet the expected standards of good practice. Complaints made to the Commissioner provide the primary source of such information, and the referral log is used to record examples of poor practice identified from those complaints where it is appropriate to do so.
4. Each example of non-compliance or non-conformity is considered on a case by case basis. The Enforcement Team will make the decision on whether a particular complaint merits inclusion in the log. As examples of poor practice are so varied, there are no formal criteria for an authority's inclusion. However, the types of issues which may be logged include:
 - serious or repeated failures to meet the requirements of section 10 (1)

1

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/enforcement_strategy_including_moj_update_30_05_07.pdf

- regular and / or unwarranted extensions to the time for compliance (e.g. Public Interest Test), with particular emphasis on those which exceed the [Commissioner's guidance](#)²
 - serious or repeated failures to issue refusals notices which comply with section 17
 - regular and / or unwarranted extensions to the timeframe for internal reviews, with particular emphasis on those which exceed the [Commissioner's guidance](#)³
 - failure to have an internal review procedure in place, or the failure to operate that procedure in accordance with the recommendations of the section 45 Code of Practice
 - internal review procedures of more than one stage
 - repeated or serious application of blanket, or obviously inappropriate exemptions (or exceptions)
 - repeated failure to engage with the ICO's investigations, or repeated delays in that engagement
 - repeated failure to explain why exemptions (or exceptions) apply
 - repeated failures to explain the balance of public interest when qualified exemptions (or exceptions) have been applied
 - evidence that the authority is failing to take its responsibilities seriously
 - record management failures (section 46 Code of Practice)
 - evidence that an authority does not have a sufficient understanding of the Act, the EIR or the Codes of Practice
5. Over time, entries in the referral log build up to give an indication of the authorities in which repeated or systemic incidences of poor practice appear to be occurring. When such authorities are identified, the Enforcement Team consider whether intervention is appropriate. The Enforcement Team may also intervene in a single case, provided the issues are sufficiently serious.

2

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/foi_guidance_4.pdf

3

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/foi_guidance_5.pdf

6. Some authorities appear in the log more regularly than others. In part this is because authorities in which problems have already been identified are subject to a greater level of scrutiny. Increased monitoring of those authorities results, and the ICO is more likely to record cases relating to those organisations in the referral log. This is why organisations such as the National Offender Management Service (NOMS) and the Department of Health (DoH), both of whom have been issued with practice recommendations, feature prominently.
7. Details of on the practice recommendations (section 48 (1) of the Act) the ICO's Enforcement Team has issued, may be found at:
http://www.ico.gov.uk/what_we_cover/freedom_of_information/enforcement.aspx

The Request

8. On 27 April 2009 the complainant requested a copy of the Enforcement Referral Log with any references to case officers, enforcement officers and other individuals being removed.
9. On 2 June 2009 the ICO disclosed a redacted version of the Enforcement Referral Log to the complainant with certain information withheld under sections 31(1)(g) and 31(2)(a) and (c) of the Act.
10. On 22 June 2009 the complainant requested an internal review.
11. On 23 July 2009 the ICO responded by disclosing further information from the Enforcement Referral Log (including that already published in Decision Notices) but upheld its decision in respect of the rest of the information under sections 31(1)(g) and 31(2)(a) and (c) of the Act.

The Investigation

Scope of the case

12. On 25 September 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the ICO's decision to redact certain information from the Enforcement Referral Log under sections 31(1)(g) and 31(2)(a) and (c) of the Act.

Chronology

13. On 22 March 2010 the Commissioner wrote to the complainant confirming that the scope of his investigation would be limited to the

ICO's decision to redact certain information from the ICO's Enforcement Referral Log under sections 31(1)(g) and 31(2)(a) and (c) of the Act.

14. On 24 March 2010 the Commissioner requested a copy of the redacted information from the ICO together with any further comments it wished to make in respect of its application of sections 31(1)(g) and 31(2)(a) and (c) of the Act.
15. On 19 April 2010 the ICO provided a copy of the redacted information and confirmed that it was being withheld under sections 31(1)(g) and 31(2)(a) and (c) of the Act for the reasons set out in its letter dated 23 July 2009.

Analysis

Exemptions

Section 31(1)(g) in conjunction with sections 31(2)(a) and (c) – Law enforcement (a full text of section 31 may be found in the legal annex)

16. In this case the ICO has argued that disclosure of the information redacted from the Enforcement Referral Log would prejudice the exercise of its functions under section 31(1)(g) by virtue of the purposes referred to in sections 31(2)(a) and (c). This redacted information comprised of live enforcement cases from 2007 where disclosure would be likely to prejudice the ICO's regulatory functions and all cases (whether live or not) where disclosure of the information provided by the public authority would be likely to prejudice the open dialogue of relevant enforcement issues.
17. Section 31(1)(g) provides that:

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

(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2)

18. Section 31(2)(a) and (g) provides that:

The purposes referred to in subsection (1)(g) to (i) are-

(a) the purpose of ascertaining whether any person has failed to comply with the law,

(c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,

19. Section 31(1)(g) constitutes both a prejudice based and qualified exemption. Accordingly, for the section to be applied correctly it is firstly necessary for the public authority to demonstrate that there would be at least a real likelihood that disclosure would prejudice the interest(s) set out at section 31(1). Secondly, if the likelihood of prejudice can be demonstrated, a public authority must then find that the public interest in maintaining the exemption would outweigh the public interest in disclosure in order to justify withholding the requested information.
20. The test of prejudice and the public interest test are addressed in turn by the Commissioner.

Prejudice

21. Following the information Tribunal decision in Hogan v ICO (EA/2005/0026, EA/2005/0030), the Commissioner uses a three step test to indicate whether prejudice would or would be likely to occur from the disclosure of the information in question. First there is a need to identify the applicable interest(s) within the relevant exemption. Second, the nature of the 'prejudice' being claimed must be considered. An evidential burden rests with the decision-maker to be able to show that some causal relationship exists between the potential disclosure and the prejudice and that the prejudice is... "real, actual or of substance". A third step for the decision-maker concerns the likelihood of occurrence of the prejudice.

Applicable interests

22. The ICO exercises a number of statutory functions for the purpose of ascertaining whether a public authority has failed to comply with provisions of the Act and the Environmental Information Regulations 2004 (EIR) and/or for the purpose of ascertaining whether circumstances exist or may arise which would justify regulatory action in pursuance of those enactments.
23. The ICO has pointed out that a considerable proportion of its regulatory work is concerned with ascertaining whether public authorities have complied with the statutory requirements placed upon them by the Act and the EIR and the associated Codes of Practice.
24. The ICO has argued that the disclosure of information in its Enforcement Referral Log relating to its regulatory work for live enforcement cases from 2007 would be likely to prejudice its regulatory functions. It has further argued that in all cases (whether live or not) disclosure would be

likely to prejudice its regulatory functions by inhibiting open dialogue between the ICO and public authorities.

25. In view of the above the Commissioner is satisfied that the applicable interests in relation to its regulatory action are relevant to sections 31(1)(g) in conjunction with 31(2)(a) and (c)

Nature of the prejudice

26. When considering the nature of the prejudice, the Commissioner has noted the Tribunal's further comments in *Hogan v the ICO and Oxford City Council* (paragraph 30):

"An evidential burden rests with the decision maker to be able to show that some causal relationship exists between the potential disclosure and the prejudice and that the prejudice is, as Lord Falconer of Thoronton has stated, "real, actual or of substance" (Hansard HL, Vol. 162, April 20, 2000, col. 827). If the public authority is unable to discharge this burden satisfactorily, reliance on 'prejudice' should be rejected. There is therefore effectively a de minimis threshold which must be met."

27. The Commissioner therefore takes the view that, for the exemption to be engaged, the disclosure of the information must have a causal effect on the applicable interest. This effect must be detrimental or damaging in some way and the detriment must be more than insignificant or trivial.
28. If the Commissioner concludes that there is a causal relationship between potential disclosure and the prejudice outlined in the exemptions *and* he concludes that the prejudice that could arise is not insignificant and is not trivial, he will then consider the question of likelihood. In doing so, he will consider the information itself and the arguments put forward by the public authority in this regard.
29. In order to carry out a cost effective, timely and efficient regulatory function the ICO has argued that it must maintain the trust and confidence of the public authorities it regulates to ensure their co-operation. It has argued that the best way to achieve this is by informal, open, voluntary and uninhibited exchange of information with these public authorities. The ICO believes that this informal exchange of information and co-operation by public authorities would be adversely affected if details of their failings, as discussed in those informal exchanges, were made public. The consequence of this would be that the ICO would be unable to provide an appropriate level of service and its regulatory functions would be prejudiced. In this case the Commissioner accepts that disclosure of the redacted/withheld information would prejudice the ability of the ICO to carry out its regulatory functions of monitoring the performance of public authorities

to ensure compliance with the relevant law and Codes of Practice. The Commissioner also accepts that this would prejudice the exchange of information between the ICO and public authorities which would become more guarded and cautious in proactively providing information if they thought it would be disclosed. This would prejudice the effectiveness of the ICO's regulatory processes. Therefore the Commissioner has gone on to consider the likelihood of this prejudice arising.

Likelihood of prejudice occurring

30. Where the public authority has claimed that disclosure is only *likely* to give rise to the relevant prejudice then, in accordance with the Tribunal's decision in the case of *John Connor Press Associates Limited v The Information Commissioner* (EA/2005/0005), "*the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk*". Where the public authority has claimed that disclosure *would* give rise to the relevant prejudice then the Tribunal has ruled, in the *Hogan v Information Commissioner and Oxford City Council* case, that there is a stronger evidential burden on the public authority, and the prejudice must be at least more probable than not.
31. Where a public authority has failed to specify the level of prejudice at which an exemption has been engaged the Commissioner will consider the lower threshold of "likely to prejudice" unless there is clear evidence that it should be the higher level.
32. In this case the ICO suggested in its initial response dated 2 June 2009 that the level of prejudice should be assessed at the higher level. However, in its internal review response dated 23 July 2009 the ICO suggested that the level of prejudice should be at the lower level. The Commissioner has therefore considered this case on the basis of whether disclosure would be likely to prejudice the exercise of the ICO's regulatory functions.
33. In *England v ICO and London Borough of Bexley* (EA/2006/0060 & 0066) the Tribunal stated that it was impossible to provide:

"evidence of the causal link between the disclosure of the list [of empty properties] and the prevention of crime. That is a speculative task, and as all parties have accepted there is no evidence of exactly what would happen on disclosure, it is necessary to extrapolate from the evidence available to come to the conclusion about what is likely".
34. The Commissioner takes the view that, although unsupported speculation or opinion will not be taken as evidence of the likelihood of prejudice, neither can it be expected that public authorities must prove

that something definitely will happen if the information in question is disclosed. Whilst there will always be some extrapolation from the evidence available, the Commissioner expects the public authority to be able to provide some evidence (not just unsupported opinion) to extrapolate from.

35. The Commissioner has considered all of the correspondence between the ICO and the complainant and is satisfied that there is sufficient evidence to demonstrate that disclosure of the information redacted from the Enforcement Referral Log would be likely to prejudice the ICO's regulatory functions under section 31(1)(g) in respect of the purposes in sections 31(2)(a) and (c).
36. The ICO has provided evidence that it has considered the age and content of the entries in the Enforcement Referral Log to assess whether disclosure would be likely to prejudice its regulatory functions. For example, it has pointed out that all entries in the Enforcement Referral Log for cases prior to 2007 may be disclosed as the passage of time would diminish any prejudice to any of the purposes listed in sections 31(2)(a) and (c). Furthermore, it has pointed out that some of the entries from 2007 to the date of the request may be disclosed as information is already in the public domain by being included in Decision Notices published on the ICO's website.
37. For entries in the Enforcement Referral Log from 2007 which relate to live enforcement cases (where a Decision Notice has not been issued) and in all cases (whether live or not) where disclosure of the information provided by the public authority would prejudice the open dialogue of relevant enforcement issues, the ICO has argued that disclosure is likely to prejudice its regulatory functions. It has pointed out that disclosure of this information would be likely to prejudice the effectiveness of its regulatory functions by making public authorities more cautious and guarded in engaging with the ICO and less pro-active and positive in respect of the provision of information concerning enforcement issues such as breaches of the relevant legislation and Codes of Practice as described above.
38. In all the circumstances of the case the Commissioner is satisfied that section 31(1)(g) is engaged, in that disclosure of the redacted information would be likely to prejudice the ICO's regulatory functions. He has therefore gone on to consider whether the public interest arguments lie in favour of disclosure or in favour of maintaining the exemption.

Public interest arguments in favour of disclosing the requested information

39. There is a clear public interest in the ICO being open and transparent in the way it monitors the performance of public authorities in relation to their duties and responsibilities under the relevant legislation and Codes of Practice. Such openness and transparency helps to promote public awareness and understanding of the ICO regulatory functions.
40. Further information over and above that already set out in published Practice Recommendations and Decision Notices about the way the ICO monitors the performance of specific public authorities would be of interest to those members of the public who have a particular interest in those public authorities. This might be because they already have been personally affected by the decision or actions of a particular authority or because the particular authority has already attracted media attention as a result of its failings.
41. There is also a public interest in the ICO publishing information which would help to demonstrate that it is complying with its statutory duties by overseeing the performance of public authorities with reference to the relevant legislation and Codes of Practice. The publication of this information would be evidence that the ICO is providing an appropriate standard and quality of public service and would demonstrate accountability.
42. Publication of the Enforcement Referral Log without redaction would provide fuller evidence as to whether the ICO was exercising its regulatory functions efficiently and effectively.
43. The complainant has argued that there is a very strong public interest in the ICO adopting a consistent, open and transparent approach to the information it publishes in respect of the performance of public authorities. He has pointed out that as the ICO already publishes details of public authorities' failures to comply with relevant legislation and Codes of Practice in Practice Recommendations and Decision Notices there is no reason why it should not disclose the same level of detail in relation to those cases which are resolved informally without the need for a Decision Notice.
44. The complainant has also argued that as the Act has been in force since January 2005 public authorities have had a number of years to understand and ensure compliance with the relevant legislation and Codes of Practice. Accordingly, he does not believe that it is in the public interest for public authorities not to have an open and transparent dialogue with the ICO at this time. The complainant takes the view that the routine and open disclosure by public authorities of problems they

are experiencing with information requests would cut down on the number of complaints being referred to the ICO and as a result reduce the cost and time of investigating them. Furthermore, he believes that the open disclosure of such problems would show the public if there were any shortcomings in the legislation, the ICO's procedures or the way public authorities deal with information requests.

Public interest arguments in favour of maintaining the exemption

45. There is public interest in the ICO complying with the law. For example, there is expectation that it will comply with section 59(1)(a) of the Data Protection Act 1998 (DPA) by ensuring that the details it receives about public authorities in the course of its investigations remain confidential. Section 59(1)(a) states, subject to certain conditions applying:

'No person who is or has been the Commissioner, a member of the Commissioner's staff or an agent of the Commissioner shall disclose any information which – (a) has been obtained by, or furnished to, the Commissioner under the purposes of the information Acts'.

In the light of section 59(1)(a) of the DPA there is generally an expectation on the part of public authorities that the information they disclose to the ICO will not normally be disclosed. If the ICO were to disclose all such information in every case this would inevitably hinder the flow of information in the future. This in turn would prejudice the effectiveness and efficiency of the ICO's regulatory functions.

46. There is a public interest in the ICO providing a cost effective, timely and efficient regulatory function of public authorities through co-operation and open dialogue to ensure compliance with the relevant legislation and Codes of Practice. To do this it has argued that it must maintain the trust and confidence of the public authorities it regulates and ensure their co-operation is maintained. The ICO has argued that this is best achieved by an informal, open, voluntary and uninhibited exchange of information with public authorities. The ICO believes that co-operation from authorities may be adversely affected if details of their failings were to be made public. This would in turn prejudice the ICO's ability to deliver the levels of service required of it. For example, if the ICO could no longer rely on the informal co-operation of authorities it might be forced to resort to regulatory intervention such as the use of Information Notices (under section 51 (1) of the Act) more often. Use of such measures diverts staff resource, and may have a cost implication for the ICO. This would have a detrimental impact upon the level of service the ICO is able to provide to the public it serves. Furthermore, the ICO has argued that recourse to these powers would, as an alternative to informal discussions, make the process of engagement

with public authorities more drawn out and less effectively by reducing open dialogue.

47. There is a public interest in having an effective and efficient regulator of public authorities to ensure compliance with the relevant law and Codes of Practice. Under section 47(1) of the Act:

'It shall be the duty of the Commissioner to promote the following good practice by public authorities and, in particular, so to perform his functions under the Act as to promote the observance by public authorities of –

- a. The requirement of this Act, and*
- b. The provisions of the codes of practice under sections 45 and 46'*

48. There is a public interest in encouraging public authorities in being open and honest about any difficulties they are experiencing, without fear that any such issues will be made public prematurely, or (where appropriate) at all. The ICO believes that publication of the information redacted from the Enforcement Referral Log may dissuade authorities from being open and honest with it going forward. For example, authorities may no longer proactively approach the ICO about the problems they are facing, prejudicing its ability to promote observance of the relevant legislation and the Codes of Practice.

Balance of the public interest arguments

49. The Commissioner accepts and has given weight to the public interest in the ICO being open and transparent in relation to its regulatory functions to provide the public with an awareness and understanding of what it does and is doing to monitor the performance of public authorities. However, the Commissioner believes that the ICO satisfies this public interest in the information it publishes on its website regarding its regulatory functions and the information contained in its Decision and Enforcement Notices.
50. The Commissioner accepts and has given weight to the ICO's argument that there is a public interest in it complying with the law. In particular, section 59(1)(a) of the Data Protection Act 1998 (as amended) by ensuring that the details it receives about public authorities in the course of its investigations normally remain confidential.
51. The Commissioner accepts and has given weight to the importance of the ICO encouraging an open and honest dialogue and exchange of information with public authorities. The Commissioner believes that this

would be thwarted by an unrestricted publication of all such information in very case.

52. The Commissioner accepts that there is a public interest in evidence being provided that the ICO is complying with its statutory duties by performing its regulatory functions in an effective and efficient manner. The Commissioner also accepts that this is already evidenced by the information it already publishes on its website regarding its regulatory functions and the information contained in its Decision and Enforcement Notices.
53. The Commissioner accepts that there is a strong public interest in the ICO providing a cost effective, efficient and timely regulatory function. However, he does not believe that the publication of the ICO's Enforcement Referral Log in its entirety would contribute to this. The Commissioner accepts the ICO's arguments that the effective and efficient regulation of public authorities is best served by maintaining an informal, open, voluntary and uninhibited dialogue and exchange of information with them, with formal coercive action, such as issuing Information Notices, being seen as a last resort. The Commissioner also accepts that the disclosure of such information would inhibit this dialogue and exchange and would therefore make the need to resort to formal action more likely. Such action could delay the ICO's enforcement activities and ultimately make them more expensive in the event of further legal process.
54. The Commissioner notes that where the ICO issues a Decision Notice any procedural breaches by the public authority of the relevant legislation and/or Codes of Practice are recorded and put in the public domain as well as being noted in the Enforcement Referral Log. He also accepts that not every complaint received by the ICO results in a Decision Notice being issued. He is aware that many complaints are resolved informally by the requested information being disclosed following the ICO's involvement or by the complainant withdrawing his complaint. The Commissioner acknowledges that in such cases there is little or no information in the public domain about the ICO's consideration or action in relation to possible procedural breaches of the relevant legislation and/or Codes of Practice. However, he does not attach a great deal of weight to the public interest in the ICO being consistent with the information it publishes as each case is assessed on its own merits. The discretion remains to consider a formal action if the breach is considered serious enough.
55. The Commissioner accepts that there is a public interest in reducing the number of complaints the ICO receives and the consequential time and money that is taken to investigate them. However, he does not accept

that this would be achieved by publishing the ICO's Enforcement Referral Log in its entirety.

56. The Commissioner does not accept a complete disclosure of the ICO's Enforcement Referral Log would necessarily provide evidence of shortcomings in the legislation, the ICO's procedures or the way public authorities dealt with information requests as the complainant has suggested.
57. Taking into account all the factors above the Commissioner is not persuaded that there is sufficient weight within the arguments to support disclosure. Principally, he considers the maintenance of the informal process is of considerable importance in carrying out an effective and efficient oversight of the legislation. To erode this would put undue strain on available resources and undermine the ability of the ICO to monitor activity, inform debate and influence behaviour. Accordingly, the Commissioner concludes that the public interest in maintaining the exception in section 31(1)(g) outweighs the public interest in disclosure.

The Decision

53. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

54. The Commissioner requires no steps to be taken.

Right of Appeal

55. 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

56. 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.
57. 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 10th day of March 2011

Signed

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

Legal Annex

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.

The exemption for law enforcement

Section 31(1) provides that –

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

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

- (i) any inquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.

Section 31(2) provides that –

The purposes referred to in subsection (1)(g) to (i) are–

- (a) the purpose of ascertaining whether any person has failed to comply with the law,
- (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,
- (c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,
- (d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on,
- (e) the purpose of ascertaining the cause of an accident,
- (f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration,
- (g) the purpose of protecting the property of charities from loss or misapplication,
- (h) the purpose of recovering the property of charities,
- (i) the purpose of securing the health, safety and welfare of persons at work, and
- (j) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work.

Section 31(3) provides that –

The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).

The exemption for 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.