

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 10 February 2011**

**Public Authority:** The Common Council of the City of London  
**Address:** PO Box 270  
Guildhall  
London  
EC2P 2EJ

### Summary

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The complainant requested all internal communications held by either the City Solicitor's Department or the Rates Collection Office that concern mandatory and discretionary rate relief for scientology organisations between two set dates. The public authority explained that it held recorded information and provided some of it. However, it withheld further information by virtue of sections 31(1)(d) [prejudice to the assessment and collection of any tax...], 40(2) [third party personal data], 41 [information provided in confidence] and 42(1) [legally privileged material]. The complainant approached the Commissioner as he remained dissatisfied with the amount of information disclosed.

The Commissioner has carefully considered the case and has decided that for the information covered by section 42(1) the exemption was engaged and the public interest favoured maintaining it. He has found that section 31(1)(d) was not engaged and section 41(1) was only partially engaged. He has found that section 40(2) applies for some of the redacted names but not to others. He has also found a breach of section 16(1) and procedural breaches of section 1(1)(a), 1(1)(b), 10(1) and 17(1).

The Commissioner requires that the information identified in the Decision section of this Notice is provided to the complainant within 35 calendar days.

### 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.

## General Background

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2. Paragraph 9 of Schedule 1 of the Act provides that the Common Council of the City of London is a public authority in respect of information held in its capacity as a local authority, police authority or port health authority. In this case the relevant information is held in its capacity as a local authority.
3. The City of London is the local authority for only the 'square mile' in London. This area constitutes the historic City of London.
4. The request concerns the Church of Scientology Religious Education College Incorporated's application for mandatory and discretionary relief from Council tax. This organisation is known by an acronym - COSREC.
5. An earlier decision on a similar subject matter was considered by the Information Tribunal (the "Tribunal") in *William Thackeray v Information Commissioner and The Common Council of the City of London* [EA/2009/0095]<sup>1</sup>.
6. The Tribunal stated at paragraph 46 that:

*'In [the Tribunal's] view the case for disclosure was likely to be stronger in relation to material that was not legally professionally privileged given the significant public interests that arise in this case. The Tribunal was aware however that the Council had refused disclosure of such information in response to Mr Thackeray's further requests under FOIA. The Tribunal wished to recommend to the Council that it reconsider its position in the light of this Tribunal's assessment of the public interests in favour of disclosure.'*

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<sup>1</sup> This decision can be found at the following link:  
[http://www.informationtribunal.gov.uk/DBFiles/Decision/i389/Thackeray%20v%20IC%20&%20City%20of%20London%20\(0095\)%20Decision%2014-05-2010%20\(w\).pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i389/Thackeray%20v%20IC%20&%20City%20of%20London%20(0095)%20Decision%2014-05-2010%20(w).pdf)

## Correspondence that preceded the request

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7. It is necessary in this case to include the correspondence that led up to the request to understand what has been asked for. On 9 June 2009 the complainant made his original request for information in accordance with section 1(1)(a) of the Act:

*'Please provide internal communications (including but not limited to emails, memos, letters, minutes and agenda) relating to Scientology organisations, for the past 5 years, as held by the following departments:*

- *City Solicitor's Department*
- *Rates Collection Office*

*By 'Scientology organisations', I mean organisations which promote, recruit members for, or raise money for, Church of Scientology Religious Education College Incorporated (an overseas corporation which has been denied charitable status in the UK).*

*To the best of my knowledge a list of such organisations would include:*

*Citizens Commission on Human Rights (United Kingdom) Ltd / Citizens Commission on Human Rights International / Jive Aces / Church of Scientology Inc / Greenfields School / Greenfields Educational Trust / Hubbard Foundation / ABLE / Applied Scholastics International / Narconon / Criminon / The Way to Happiness Foundation International / Church of Scientology Religious Education College Inc / Office of Special Affairs (OSA) / Sea Org / Youth for Human Rights International*

*I am aware that these communications may need to be redacted to protect the DPA rights of individuals mentioned in them; I do not consider this an acceptable reason for you to refuse to release the documents entirely.'*

8. On 8 July 2009 the public authority apologised for its delay in providing a response. It then issued a response. It explained that it was relying on section 14(1) [vexatious requests] and was not required to process the request. It said that the volume of requests and the aggregate effect of them led to this conclusion. In addition the breadth of the request was of concern and constituted a significant burden. It also

explained that it had issued a costs limits notice in respect to an earlier request for very similar information.

9. It also explained that even had it been obliged to process the request that a number of exemptions would apply. It said that section 31(1)(d) [prejudice to the assessment or collection of any taxes], section 41 [information provided in confidence] and section 40(2) [third party personal data would apply]. It explained its reasons for the reliance on those exemptions and conducted a public interest test in respect to section 31(1)(d), where it explained that the public interest in maintaining the exemption outweighed the public interest in disclosure. Further details about its position will be considered, where appropriate, in the analysis section of this notice.
10. On 10 July 2009 the complainant replied. He explained that he has a serious purpose and that in his view his request was not vexatious. He explained that he did not believe that the requests were broad or unfocussed in scope and that if it was a costs issue, the public authority should issue a section 12(1) notice. He asked for the public authority to consider redacting exempt third party personal data. He explained that he did not believe that section 31(1)(d) applied to this information and required an appropriate refusal notice to be issued so he could challenge it to the Information Commissioner. He also confirmed that he did not believe that all the documents would be confidential. He finally concluded by explaining that the single day delay did not concern him in this case. He also wrote a second email to correct a typographical error in the first. The public authority then acknowledged receipt of the two emails.
11. On 13 July 2009 the complainant replied to the acknowledgement to confirm that he was prepared to narrow down the scope of the request. He suggested that the public authority could break down the departments into subsections and asked the public authority to provide further assistance about how this could be done.

## The Request

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12. On 23 July 2009 the public authority responded and explained that there was a way it suggested that the request could be brought under the appropriate limit. Both parties understood that the modified request would concern communications about tax relief in relation to scientology organisations and the request should be read with that in mind:

*'...by limiting the request to internal communications held by the City Solicitor's Department and the Rates Collection Office between the date of the application for mandatory rate relief and the date when the relief was granted, ie 19 April 2005 and 19 October 2006. As you will be aware, the appropriate limit is concerned only with location and retrieval of information, and extracting it from information which has not been requested. Any request is still subject to the consideration of exemptions to disclosure.'*

13. On 24 July 2009 the complainant agreed to narrow the request as suggested. The public authority acknowledged receiving this email on 27 July 2009.
14. On 21 August 2009 the public authority responded explaining that it held relevant recorded information. It explained that it was considering the application of the public interest test for the exemptions sections 31(1)(d) and 42(1) [legal professional privilege] and needed more time as allowed by issuing a preliminary notice under section 10(3). It also said that it was relying on sections 40(2) and 41 in respect to some information and explained why. The Commissioner will consider these arguments further in the analysis section of this notice.
15. On 21 September 2009 the public authority apologised that there would be a further delay. On 25 September 2009 it then issued its final response to the complainant. It explained that it held a number of documents and provided a schedule to the complainant. It then explained that it believed that sections 31(1)(d) and 42(1) applied to some of the information and that the public interest in maintaining the exemptions outweighed that in disclosure. The Commissioner will consider these arguments below. It also explained that it was continuing to rely on section 40(2) and 41. It then disclosed redacted information that it did not believe it could withhold. It also provided an explanation of the role of those individuals whose names it had disclosed. It then provided its internal review procedure.
16. On 25 September 2009 the complainant thanked the public authority for the redacted information.

## The Investigation

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### Scope of the case

17. On 5 November 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 following points:
- He was dissatisfied that the redacted information was being withheld.
  - He particularly believed that the email dated 9 February 2006 should be provided because he disputed that any of the exemptions applied for the following three reasons:
    - (1) It was from an alderman and not a lawyer so section 42(1) should not apply to it;
    - (2) The unredacted parts of the email explained that the author envisaged that information would be part of the public record; and
    - (3) There is considerable public interest in the release of the information and the Commissioner has decided similar cases before where he found that this was so.
18. On 2 March 2010 the complainant confirmed to the Commissioner that he agreed that the scope of the Commissioner's investigation would only concern the recorded information that was:
- 'The internal correspondence held by either the City Solicitor's Department or the Rates Collection Office that relate to either mandatory and discretionary rate relief for scientology organisations between the two dates 19 April 2005 to 19 October 2006'*
19. Annex A, attached to the bottom of this Notice, is an index of all the relevant recorded information held that is relevant to the scope of the Commissioner's investigation.
20. The public authority has provided the complainant with full versions of item 1 and 2 of Annex A. It has also provided redacted versions of items 3, 8, 10, 14, 15, 16, 19, 20, 21, 31, 32, 33, 34, 36, 37, 38 and

39. In this notice the Commissioner will only consider the information that is being withheld by the public authority.

## **Chronology**

21. On 25 November 2009 the Commissioner wrote to the public authority to explain that he had received an eligible complaint and to ask for the information that was being withheld.
22. On 27 November 2009 the public authority wrote back to ask whether the complaint concerned the original request (dated 9 June 2009) or the refined request (dated 24 July 2009).
23. On 8 January 2010 the public authority explained its position in writing and provided the Commissioner with a copy of the correspondence in this case along with further submissions. It also explained that it wished for the Commissioner to take account of its submissions in connected cases.
24. On 12 January 2010 the Commissioner telephoned the public authority to explain that this investigation concerned the refined request. The public authority asked the Commissioner to reconsider the complaint's eligibility as it had not in its view been through internal review.
25. On 13 January 2010 the Commissioner telephoned the public authority to explain that he was prepared to investigate this case using his discretion in this case. However, it was open to the public authority to conduct an internal review should it want to. If it did not want to, the Commissioner asked for a copy of the information that was being withheld.
26. On 14 January 2010 the public authority emailed the Commissioner. It explained that in the circumstances it was prepared to waive the right to do an internal review. It explained that it would endeavour to provide the Commissioner with the withheld information as soon as possible.
27. On 2 February 2010 the Commissioner received a copy of the information that was being withheld. The public authority also identified a further piece of information and provided a modified schedule. The Commissioner acknowledged the receipt of the information.
28. On 26 February 2010 the Commissioner wrote to the complainant. He asked for him to clarify his understanding of what the request related to. This was necessary as there are a number of overlapping cases and

the public authority believed it concerned the mandatory rate relief correspondence only.

29. On 2 March 2010 the complainant expressed a preference that the request embraced both mandatory and discretionary rate relief. The Commissioner replied the same day to indicate that in his view the request can be read naturally to include both and he would proceed on that basis. He wrote a further email to make the scope of the investigation absolutely clear and the complainant confirmed the scope as stated above.
30. The Commissioner also telephoned the public authority to acquire the withheld information that related to discretionary relief. The public authority asked the Commissioner to ensure that the request was not even wider and the Commissioner confirmed this in writing.
31. On 9 March 2010 the Commissioner received submissions from the public authority about the application of sections 31(1)(d), 40(2) and 41 in a connected case. Some of the arguments are also relevant to understand its position in this case and the Commissioner has therefore considered them where appropriate.
32. On 1 April 2010 the Commissioner received a new response from the public authority explaining what the remainder of the information consisted of and providing copies. The Commissioner acknowledged its receipt.
33. On 2 June 2010 the Commissioner wrote to the public authority to get further detailed arguments about its position, after the Tribunal decision mentioned above in paragraphs 5 and 6 was promulgated.
34. On 19 July 2010 the Commissioner received a response from the public authority. It explained that in its view the Commissioner should ensure that he is aware that the contents of paragraph 6 was merely obiter and provided further arguments about why it believed the relevant exemptions were both engaged and why the public interest favours the maintenance of the exemptions.
35. On 21 July 2010 the Commissioner made further enquiries about the operation of section 40(2). He explained that he proposed to consider the arguments made in previous cases and asked for any further arguments that the public authority wished to specifically argue in respect to this case.
36. On 24 August 2010 the Commissioner received answers from the public authority. It explained its view about why it was relying on



section 40(2) and provided him with the appropriate policies. It reiterated its previous submissions in other cases and why it believed that its arguments were sufficiently robust. It confirmed that it did not wish to expend further public funds on this case and asked the Commissioner to come to a decision on the information he has.

37. On 26 August 2010 the Commissioner wrote to the complainant to ask if he wanted the Commissioner to look at the operation of section 40(2). This was not certain in light of some of his comments in earlier correspondence. The complainant responded on the same day. He said that he did not challenge its application to the names of junior employees or other applicants that were not COSREC, but he did not believe the exemption could be applied in respect to anyone else.

## Analysis

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### Substantive Procedural Matters

#### *Multiple objective readings of a request*

38. In this case the public authority interpreted the modified request to relate only to the internal correspondence held about mandatory rate relief.
39. The complainant explained that in his view the request also related to the internal correspondence held about discretionary rate relief as well.
40. The Commissioner's view is that in the context of the correspondence of the request both objective readings were possible. He has considered that this was so from the matrix of the requests that have been submitted by the applicant and believes that the inference made by the public authority was reasonable, although wrong. He has therefore investigated this case so that it embraces the relevant information for both objective readings.
41. In failing to process the complainant's objective reading of the request before the Commissioner's intervention, he finds a breach of section 1(1)(a)<sup>2</sup>. The items that were not originally considered are items 17, 25, 26 and 30 of Annex A. He also finds a breach of section 10(1) in failing to do this within 20 working days and 17(1) in failing to issue an appropriate refusal notice for this information.

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<sup>2</sup> The full wording of all relevant sections of the Act can be found in the Legal Annex attached to the bottom of this Notice.

42. The Commissioner's view is that in cases such as this, where the meaning of the request is not clear, a public authority is obliged to seek clarification from an applicant, in line with the requirements of section 16 (its obligation to provide advice and assistance). He refers to paragraphs 8 and 9 of the section 45 Code of Practice on this issue, which state that:

*8. 'A request for information must adequately specify and describe the information sought by the applicant. Public authorities are entitled to ask for more detail, if needed, to enable them to identify and locate the information sought. Authorities should, as far as reasonably practicable, provide assistance to the applicant to enable him or her to describe more clearly the information requested.'*

*9. Authorities should be aware that the aim of providing assistance is to clarify the nature of the information sought, not to determine the aims or motivation of the applicant. Care should be taken not to give the applicant the impression that he or she is obliged to disclose the nature of his or her interest as a precondition to exercising the rights of access, or that he or she will be treated differently if he or she does (or does not). Public authorities should be prepared to explain to the applicant why they are asking for more information. It is important that the applicant is contacted as soon as possible, preferably by telephone, fax or e-mail, where more information is needed to clarify what is sought.'*

43. The public authority failed to go back to the complainant to clarify the request where it had two meanings in this case. It is noted that this case is unusual in that the public authority suggested the wording of the request to the complainant. However, its suggestion was ambiguous and in the Commissioner's view the failure to go back to clarify an ambiguous request did not constitute reasonable advice and assistance and he therefore finds that the public authority has breached its obligations under section 16(1) of the Act. However, he does not require the public authority to take any further steps, as during the investigation he has processed the complaint on the complainant's interpretation and the remainder of his analysis will focus on it. He is also sympathetic and notes that the public authority was trying to be helpful in this case.

*What recorded information is held that is relevant for this investigation?*

44. The Act only applies to relevant recorded information that was held at the date of the request. The first step is to ensure that all the recorded information embraced by the wider objective reading has been located by the public authority. The Commissioner has been careful to ensure that all the relevant recorded information has been located that was relevant to the complainant's objective reading of the request.
45. In investigating cases involving a disagreement as to whether or not information is in fact held by a public authority, the Commissioner has been guided by the approach adopted by the Information Tribunal in the case of *Linda Bromley & Others and Information Commissioner v Environment Agency* (EA/2006/0072). In this case the Tribunal indicated that the test for establishing whether information was held by a public authority was not one of certainty, but rather the balance of probabilities.
46. He has also been assisted by the Tribunal's explanation of the application of the 'balance of probabilities' test in the same case. It explained that to determine whether information is held requires a consideration of a number of factors including the quality of the public authority's final analysis of the request, scope of the search it made on the basis of that analysis and the rigour and efficiency with which the search was then conducted. It also requires considering, where appropriate, any other reasons offered by the public authority to explain why the information is not held.
47. The Commissioner has listed the documents that fall within the request in a schedule found in Annex A of this Notice. He is satisfied that on the balance of probabilities all the relevant recorded information has been found because it reads as a complete record and the scope of the searches were clear due to the parameters of the modified request.

## **Exemptions**

48. As Annex A shows the public authority has relied on different exemptions for different information. The Commissioner will consider each exemption in turn. Where the public authority has appropriately applied an exemption to a piece of information, the Commissioner will not move on to consider the application of other exemptions to the same information. The reason for this approach is that each item of information only needs to be correctly withheld under one exemption.

*Section 42(1)*

49. Given the Information Tribunal's decision referenced in paragraphs 5 and 6 above the Commissioner has considered the operation of section 42(1) first.
50. Section 42(1) has been applied across items 4, 5, 6, 7, 9, 10, 11, 12, 13, 17, 18, 22, 23, 24, 27, 28 and 29. It has also been applied to one line of item 26.
51. The complainant has expressed particular concern about the application of section 42(1) to item 31. However, the public authority is not applying section 42(1) to this item.
52. Section 42(1) of the Act is worded as follows:

*"Information in respect of which a claim to legal professional privilege ...could be maintained in legal proceedings is exempt information"*

53. The application of section 42(1) of the Act was considered by the Information Tribunal in the decision of *Bellamy v The Information Commissioner (The Secretary of State for Trade and Industry [EA/2005/0023]* where legal professional privilege was described as: -

*"a set of rules or principles which are designed to protect the confidentiality of legal or legally related communications and exchanges between the client and his her or its lawyers, as well as exchanges which contain or refer to legal advice which might be imparted to the client."* (Paragraph 9)

54. The principle of legal professional privilege was considered in detail by the House of Lords in *Three Rivers District Council and others (Respondents) v. Governor and Company of the Bank of England (Appellants) [2004] UKHL 48*, where Lord Rodger explained the policy reasons for the principle in respect to legal advice:

*'If the advice given by lawyers is to be sound, their clients must make them aware of all the relevant circumstances of the problem. Clients will be reluctant to do so, however, unless they can be sure that what they say about any potentially damaging or embarrassing circumstances will not be revealed later. So it is settled that, in the absence of a waiver by the client, communications between clients and their lawyers for the purpose of obtaining legal advice must be kept confidential and cannot be made the subject of evidence. Of course, this means*

*that, from time to time, a tribunal will be deprived of potentially useful evidence but the public interest in people being properly advised on matters of law is held to outweigh the competing public interest in making that evidence available. As Lord Reid succinctly remarked in Duke of Argyll v Duchess of Argyll 1962 SC (HL) 88, 93, "the effect, and indeed the purpose, of the law of confidentiality is to prevent the court from ascertaining the truth so far as regards those matters which the law holds to be confidential."*

(at Paragraph 54)

55. Section 42(1) is a qualified exemption. This means that there is a two step approach that needs to be taken. The Commissioner must first consider whether the exemption is engaged and then, where it is, he will go on to consider whether or not the balance of public interest favours the maintenance of the exemption.

**(1) *Is the exemption engaged?***

56. There are two categories of legal professional privilege: advice privilege where no litigation is contemplated or pending and litigation privilege where litigation is contemplated or pending.
57. The category of privilege which the public authority is relying on to withhold this information is advice privilege. This privilege is attached to communications between a client and its legal advisers, and any part of a document which evidences the substance of such a communication, where there is no pending or contemplated litigation. It was considered in detail in the *Three Rivers* case above and it explained that there were three requirements for material to engage legal professional advice privilege. The Commissioner has adopted this approach in this case and these factors can be summarised as follows:
1. It must be between a qualified lawyer in their professional capacity and a client.
  2. It must be created with the sole or dominant purpose of obtaining or providing legal advice.
  3. It must be confidential.
58. The first requirement is a question of fact. In this case the eighteen pieces of withheld information were between the members of staff of the public authority and a qualified legal advisor. The information was also communicated in the legal advisor's professional capacity. The requirement is therefore satisfied.

59. The second requirement is also a question of fact. The determination of the dominant purpose can usually be found by inspecting the withheld information itself. The Commissioner has examined the withheld information and is satisfied that in all eighteen cases the sole purpose was obtaining relevant legal advice. The requirement is therefore also satisfied.
60. The Commissioner believes that the information contained in the eighteen items may be deemed confidential. This is because the information is of substance, was imparted in circumstances that led to an expectation of confidence (it was formal legal advice between a lawyer and their client) and the disclosure of the information could lead to an erosion of this confidence which would not accord with the expectations of the confider. This erosion of confidence could cause damage to the confider as its position may be prejudiced through unexpected disclosure. The final requirement is therefore satisfied.
61. The Commissioner's view is also that the information has not lost its confidentiality and therefore its privilege in this case. The Commissioner notes that this is a situation of advice privilege. He believes that, in circumstances other than litigation partial disclosure will not result in the loss of confidentiality of legal advice privilege. His view has been confirmed by the Information Tribunal in *FCO v Information Commissioner (EA/2007/0092)*<sup>3</sup> which stated:

*'There is an obvious reason of principle for placing such a limit on the rule, namely that, outside litigation, a party is entitled, provided, of course, he does not falsify, to advance his case in public debate to the best advantage; if so advised, by selective quotation. If he does so, an alert opponent will see what he is doing and demand disclosure of the whole advice, if he is to be persuaded. Such is the cut and thrust of public debate. Even a public authority, whose advice is funded by the taxpayer, is entitled to declare the final upshot of the advice received without running the risk of revealing every last counterargument of which it has been warned. Quite different is the position where the parties come to court; if evidence is adduced, it is there to be fully tested or scrutinised in relation to any relevant issue, whether it be witness, document or object.'* [at paragraph 22]

62. For completeness, the Commissioner wishes to confirm that the fact that the information was generated by in house lawyers does not

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<sup>3</sup> This decision can be found at the following link:  
[http://www.informationtribunal.gov.uk/Documents/decisions/FCO\\_vICDecision\\_amendedWebsite\\_290408.pdf](http://www.informationtribunal.gov.uk/Documents/decisions/FCO_vICDecision_amendedWebsite_290408.pdf)

change the fact that legal advice can be privileged. This issue was considered by the Information Tribunal in paragraphs 29 to 35 of *Calland v Financial Services Authority* [EA/2007/0136]. It explained that it believed that in-house lawyers deserved the same protection as external ones and the Commissioner endorses this view. The Tribunal stated that:

*'Such a result accords with the general policy giving rise to LPP. Just the same requirements for confidentiality and candour exist where an employed lawyer gives advice as when it comes from a member of the independent professions' (at paragraph 35).*

63. The Commissioner is satisfied that the information that has been provided to the public does not falsely represent the withheld information. He is also satisfied that on the facts of this case that the confidentiality of the advice remains and the exemption is engaged for all eighteen items. He will now move on to consider the public interest test.

## **(2) *The public interest test***

64. Section 42(1) is a qualified exemption and therefore subject to the public interest test under 2(2)(b) of the Act. Section 2(2) states that for the information not to be disclosed all the circumstances of the case must be considered and the public interest in maintaining the exemption must outweigh the public interest in disclosing the information. The Commissioner is only able to consider factors that are relevant to and inherent in the exemption being claimed when considering the maintenance of the exemption but can consider all public interest factors when weighing the public interest factors that favour disclosure.
65. It is important to note from the outset that the Act's default position favours disclosure. Therefore in the event that the public interest factors are of equal weight the information should be communicated. It is also important to note that just because a large section of the public may be interested in the information, does not necessarily mean that the release of the information would be in the public interest. The "public interest" signifies something that is in the interests of the public as distinct from matters which are of interest to the public<sup>4</sup>.

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<sup>4</sup> *Department of Trade and Industry v Information Commissioner* (EA/2006/0007) at paragraph 50.

## Public interest arguments in favour of maintaining the exemption

66. In arguing that the public interest favoured withholding this information, the public authority has highlighted the fact that the courts do not distinguish between private litigants and public authorities in the context of legal professional privilege. Just as there is a public interest in individuals being able to consult their lawyers, there is also a public interest in public authorities being able to do so. Therefore the need to be able to share information fully and frankly with legal advisers for the purposes of obtaining legal advice applies to public authorities just as much as it does to individuals.
67. It also explained that public authorities need high quality, comprehensive legal advice for the effective conduct of their business. This advice needs to be given in context and with the full appreciation of the facts. Legal advice provided may well include arguments in support of the final conclusion as well as counter arguments as a consequence legal advice may well set out the perceived weaknesses of the public authority's position. Without such comprehensive advice, the public authority's decision making process would be reduced because it would not be fully informed and this is contrary to the public interest.
68. It also stated that it believed that the disclosure of legal advice would have a significant prejudice to its ability to defend its legal interests, both directly by unfairly exposing its legal position to challenge and indirectly by reducing the reliance it can place on its advice having been fully considered and presented without fear or favour. Neither of these scenarios is in the public interest. The former could result in serious consequential loss or at least a waste of resources in defending unnecessary challenges. The latter may result in poorer decision-making because the decisions themselves may not be taken on a fully informed basis.
69. It explained that the consequence of routine disclosure of legal advice may even be a reluctance to seek legal advice. This could lead to decisions being taken that are legally unsound. Not only would this undermine the public authority's decision making ability, it would also be likely to result in successful legal challenges which could otherwise have been avoided. It explained that in its view there is an important public interest in the proper administration of justice and the concept of legal professional privilege plays an important role in maintaining this. The Commissioner believes that Lord Taylor of Gosforth CJ's dictum on this point in *R v Derby Magistrates Court, Ex p B* [1996] AC 487 is salient in this case:



*'The principle that runs through all of these cases... is that a man must be able to consult his lawyer in confidence, since otherwise he might hold back half the truth. The client [in this case, the Home Office], must be sure that what he tells his lawyer in confidence will never be revealed without his consent'.*

70. In addition it may be the case that wider considerations about the consequences in other situations will need to be considered. It is proper that the public authority is able to consider the wider picture and potentially rely on its advice in the future (both in this case and others). This is a further public interest in maintaining the exemption.
71. The public authority concluded that although section 42(1) is a qualified exemption, given the very substantial public interest in maintaining confidentiality of legal professional privileged material, this case is not one where there are public interest factors that outweigh it. It also explained that the advice was live at the date of the request. This is because it is actively being relied upon by the public authority.
72. The Commissioner acknowledges the strength of the arguments advanced by the public authority. Indeed, there is a significant body of case law to support the view that there is a strong element of withholding the public interest built into section 42(1). The Information Tribunal in *Bellamy* noted that:
- 'there is a strong public interest inbuilt into the privilege itself. At least equally strong countervailing considerations would need to be adduced to override that inbuilt public interest. It may well be that, in certain cases ...for example, where the legal advice was stale, issues might arise as to whether or not the public interest favouring disclosure should be given particular weight.'* (at paragraph 35)
73. In addition, the Commissioner notes that the Information Tribunal considered how the exemption of legal professional privilege applied to a very similar sort of information in EA/2009/0095. The Tribunal summarised the factors favouring the exemption in paragraph 26 and found particularly in paragraphs 37 and 44 that these had considerable weight.
74. To summarise, having viewed the withheld information, taken into account the circumstances of this case and the submissions from the public authority the Commissioner has determined that the following factors in favour of maintaining the exemption are relevant:

- a. Protecting the ability of the public authority to communicate freely with internal and external legal advisors in order to obtain advice in confidence regarding matters related to business rates;
- b. Preserving the public authority's general ability to seek and obtain informed legal advice about matters related to its general functions, duties and responsibilities;
- c. Ensuring that the public authority makes decisions on the basis of fully informed and thorough legal advice;
- d. Preserving the ability of the public authority to defend its decision in the event of legal challenge; and
- e. Preserving the general concept of legal professional privilege, particularly when the advice was 'live'.

**Public interest arguments in favour of disclosing the requested information**

75. However, it is important to remember that these factors are balanced against the arguments in favour of disclosing the legal advice which forms part of the requested information; Parliament did not intend the exemption contained at section 42 of the Act to be used absolutely. Indeed the Tribunal's decision in the case of *Mersey Tunnel Users Association v Information Commissioner and Merseytravel* [EA/2007/0052] ('Mersey Travel') underlines this point. In this case the Tribunal concluded that the public interest favoured disclosing legal advice received by Mersey Travel. In that case the Tribunal attached some weight to the fact that the legal advice related to an issue of public administration and therefore the advice related to matters which affected a substantial number of people.
76. In the Commissioner's opinion there is a strong public interest in people understanding the reasons for decisions made by public authorities, or in this case the reasoning behind the public authority's decision to provide a tax break to the organisation at issue. Disclosure of the legal advice may assist the public's understanding of why the public authority has made the decision it has. It is noted that disclosure would promote accountability and transparency for the decision in respect of scientology organisations which result in a cost to the public purse.
77. Furthermore, disclosure of the various pieces of legal advice would reassure the public that decisions had been made on the basis of good quality legal advice and thus increase public confidence in the public

authority's position. It would also enable the public to understand the legal basis for awarding mandatory rate relief to a scientology organisation and enable any challenge to be launched from a more informed perspective.

78. Moreover, the Commissioner accepts that there is a public interest in disclosure of information which aids the understanding of, and participation in, the public debate of issues of the day. The Commissioner notes that there has been a very considerable amount of public debate about public subsidy of scientology organisations and that disclosure would inform the debate about which organisations should benefit from reductions in their business rates and on what basis. Disclosure of the various pieces of legal advice could allow a more informed debate on these issues, particularly given the unusual complexity of the position for scientology organisations.
79. In addition the Commissioner has considered the number of people that would be affected by the measure at the heart of the legal advice and whether further weight should be given to the public interest factors that favour disclosure on that basis as was the case in *'Mersey Travel'*. It is also noted that the sum of money is not insignificant (around £274,000 annually), this is controversially met from central government funds and this issue affects a wider group of people than just the residents of the Council area. He is satisfied that the number of individuals affected is similar to that in *'Mersey Travel'* and therefore this factor adds some additional weight in this instance.
80. The complainant has also argued in a number of his other cases that the public were particularly interested to understand the decision to grant rate relief on account of, what he characterised as the improper and/or criminal activity of the Church of Scientology. The Commissioner is unable to make any finding on the veracity or otherwise of these concerns, it is clear, that the Tribunal in *EA/2009/0095* while taking into account activities within its jurisdiction explained that the concerns themselves showed that there was a general public interest in the affairs of the Church of Scientology. Whilst not all that is of interest to the public is in the public interest to disclose, in this case, the Tribunal was of the view that given this concerns public funds and sectors of Government had clearly been concerned as to the Church's conduct, a public interest factor in favour of disclosure definitely existed. The Commissioner is prepared to accept these arguments to the same extent as the Tribunal in this particular case.

81. In summary, the Commissioner has also considered the arguments in favour of disclosing the requested information. He considers the following factors to be relevant in this particular case:
- a. Disclosure would inform public debate about which organisations should benefit from reductions in their business rates and on what basis;
  - b. Releasing the information would help the public to understand the legal basis for awarding mandatory relief to this particular organisation and to challenge that decision from a more informed position;
  - c. Disclosure would promote accountability and transparency for the decision taken by the public authority in respect of scientology organisations that result in a cost to the public purse; and
  - d. The number of individuals whom the legal advice concerns and the amount of money increases the weight of public interest in disclosure.

### **Balance of the public interest arguments**

82. The Information Tribunal in *Calland v Information Commissioner and the Financial Service Authority* (EA/2007/0136)<sup>5</sup> explained the Tribunal's approach when considering the balance of public interest in this exemption (at paragraph 37):

*'What is quite plain, from a series of decisions beginning with Bellamy v IC EA/2005/0023 , is that some clear, compelling and specific justification for disclosure must be shown, so as to outweigh the obvious interest in protecting communications between lawyer and client, which the client supposes to be confidential.'*

83. This approach has been developed subsequently and the current approach was confirmed by the High Court in *DBERR v O'Brien & Information Commissioner* [2009] EWHC 164. In *Dr Thornton v Information Commissioner* (EA/2009/0071)<sup>6</sup>, the Tribunal usefully distilled the High Court's approach into six principles:

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<sup>5</sup>This decision can be found at:  
[http://www.informationtribunal.gov.uk/Documents/decisions/JCallandvsICO\\_0136\\_webdecision\\_080808.pdf](http://www.informationtribunal.gov.uk/Documents/decisions/JCallandvsICO_0136_webdecision_080808.pdf)

<sup>6</sup> At paragraph 15.

1. there is a strong element of public interest inbuilt into the exemption;
  2. there need to be equally strong countervailing factors for the public interest to favour disclosure;
  3. these countervailing factors do not need to be exceptional, just as or more weighty than those in favour of maintaining the exemption;
  4. as a general rule the public interest in maintaining an exemption diminishes over time but the fact that the advice is still 'live' is an important factor in the determination of the strength of the inbuilt public interest in the exemption;
  5. there may be an argument in favour of disclosure where the subject matter of the requested information would affect a significant group of people; and
  6. the most obvious cases where the public interest is likely to undermine LPP is where there is reason to believe that the public authority is misrepresenting the advice which it has received where it is pursuing a policy which appears to be unlawful or where there are clear indications that it has ignored unequivocal advice which it has obtained.
84. In this case the Commissioner believes that the strong inbuilt public interest argument concerning the protection of the concept of legal professional privilege is important. He notes when considering the fourth point that this legal advice was live at the time of the request and this intensifies the strength of protection that is to be expected. He believes that this case represents the sort of circumstances that were envisaged to be covered by the exemption in section 42(1).
85. The Commissioner has had the opportunity of seeing the withheld information. Clearly he cannot reveal its contents. In his view, however, it does not reveal any of the concerns potentially raised by the complainant, particularly that the public authority may have misrepresented the advice which it has received where it is pursuing a policy which appears to be unlawful or where there are clear indications that it has ignored unequivocal advice which it has obtained.
86. The Commissioner has considered the weight of the public interest factors in disclosure. In this case he notes that there are competing interests in disclosure in particular there are strong arguments around accountability of public funds and the number of people that this affects. However he has not been satisfied that taken together they are equally strong countervailing factors that would override the public

interest factors in maintaining the exemption on the circumstances of this case.

87. He believes he is supported by the decision in *EA/2009/0095*. As noted above, this decision was for very similar information as has been withheld in respect to this request. It explained:

*'After much consideration the Tribunal was of the view that this case lacked the clear compelling factor that would be required to outweigh the in-built weight accorded to maintaining the legal professional privilege exemption.'* [at paragraph 44]

88. The Commissioner is satisfied that the balance in respect to this category of information is the same. It follows that he is therefore satisfied that the public interest in maintaining the application of the exemption outweighs the public interest in disclosure.
89. He therefore determines that the exemption found in section 42(1) has been applied correctly and dismisses this aspect of the complaint.

*Section 31(1)(d)*

90. Section 31(1)(d) has been applied to items 3, 4 – 7, 9, 10, 11, 12, 13, 17, 18, 20 – 24, 26, 27 – 29 and 31.
91. The elements that remain to be considered (which were not covered by section 42(1)) are items 3, 20, 21 and 31. There is also one line of item 26 that was withheld only under this exemption.
92. Section 31(1)(d) is worded in the following way:

*'Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under the Act would, or would be likely to, prejudice –*

*...*

*the assessment or collection of any tax or duty or of any imposition of a similar nature.'*

93. For section 31(1)(d) to be applied correctly the public authority must show firstly that there would be, or would be likely to be, prejudice to the purpose specified in part (d) and secondly that the public interest in maintaining the exemption outweighs the public interest in disclosure. If one condition is not met, then the exemption has not been applied correctly. The Commissioner will consider the elements sequentially:

**(1) *Is the exemption engaged? – the prejudice test***

94. In *Hogan v the ICO and Oxford City Council* [EA/2005/0026 and EA/20005/0030] the Tribunal stated that "The application of the 'prejudice' test should be considered as involving a number of steps. 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 .....A third step for the decision-maker concerns the likelihood of occurrence of the prejudice." (paragraphs 28 to 34).
95. The relevant applicable interest in this exemption is the prejudice to the assessment or collection of any tax or duty or of any imposition of a similar nature and the Commissioner accepts that the arguments made by the public authority that will be considered below directly address this potential prejudice.
96. When considering the second step as set out in the *Hogan* case, the Commissioner must be persuaded that the nature of the prejudice that has been argued is 'real, actual or of substance' and not trivial nor insignificant. He must also be satisfied that some causal relationship exists between the potential disclosure and the stated prejudice. The Tribunal stated in *Hogan* that it is for the public authority to satisfy these requirements:
- "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 the prejudice is, as Lord Falconer of Thoroton 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."*
97. The Commissioner also endorses the decision in *R (on the application of Lord) v Secretary of State for the Home Department* [2003] that stated that 'a remote possibility of harm is insufficient, even if the risk can fall short of being more probable than not'.
98. The public authority provided the following arguments about why the nature of the prejudice was 'real actual or of substance' and why it believed there was an appropriate causal link to the disclosure of the withheld information:
1. Disclosure of information provided in relation to any application for mandatory or discretionary rate relief would affect the

openness of future discussions with applicants and that this would prejudice its assessment of applications. It stated that it considers that applicants would generally expect that their tax matters are private and confidential and therefore the relevant parties would have a reasonable expectation that the internal documents around its application for tax relief would remain private;

2. It explained that the public authority's decision making would be prejudiced if it received less than complete information from its applicants. If less or selective information is provided this would be likely to hinder the assessment process possibly leading to some applications being assessed incorrectly. If assessment failure became more frequent then the public may lose faith in the tax system as a whole; and
  3. It was necessary for discussions as to tax liability to take place in private, so as to avoid any impression that third parties could use the information to influence its decision making. It confirmed that it viewed the necessity for privacy as continuous because tax decisions are under regular review, this argument applies even after a decision has been taken because of the ongoing risk that disclosed information could be used by a third party to affect future decisions on tax liability. It stated that it viewed its concerns as real, significant and not a remote possibility.
99. Having carefully considered the above arguments the Commissioner has been satisfied that the public authority has adequately demonstrated a causal link between the disclosure and the prejudice. He is satisfied that the nature of the prejudice, should it apply to this information, is 'real and of substance'. He therefore finds that the second stage of the test from *Hogan* is satisfied.
100. When considering the third step as set out in *Hogan*, the Commissioner must consider the likelihood of occurrence of the prejudice claimed. The Commissioner notes that the statute provides for two limbs of potential prejudice where disclosure "would be likely to prejudice" and where disclosure "would prejudice".
101. The first limb places a lesser evidential burden on the public authority to discharge. "Would be likely to prejudice" was considered in the Information Tribunal hearing of *John Connor Press Associates Limited v The Information Commissioner (EA/2005/0005)*. The tribunal stated that:



*“the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk”.*

102. The second limb of the test “would prejudice” places a much stronger evidential burden on the public authority to discharge. Whilst it would not be possible to prove that prejudice would occur beyond any doubt whatsoever, it is the Commissioner’s view that prejudice must be at least more probable than not.
103. The public authority confirmed that it considers disclosure of the requested information would prejudice its assessment of tax, in this particular case the assessment of mandatory and discretionary rate relief. In the alternative, it wishes to argue that disclosure would be likely to have this effect and that any prejudice would be real, significant and not a remote possibility.
104. As the public authority has applied the higher threshold of “would prejudice”, the Commissioner will consider this limb of the prejudice test in the first instance. If he considers that it does not apply, he will then go on to consider the lower threshold of “would be likely to prejudice”.
105. The Commissioner has considered the prejudice claimed and the likelihood of it occurring. He has come to the conclusion that neither of the thresholds has been satisfied and he will now explain why.
106. The first thing he has considered is the process of making an application for relief. He notes that central government publicises the availability of this relief and actively encourages suitable organisations to apply for it. He notes that it is optional for an organisation to apply for relief and the benefits of applying for the relief are that it would not need to pay the rates and instead central government funds would cover them. The Commissioner accepts that there is considerable incentive for organisations to apply for relief and that the purpose of the relief is to encourage the thriving of organisations that have a benevolent rather than profit motive.
107. He believes that the relief enables important funds which are often already strained in such organisations to be directed to the specific causes they are set up to target. He believes that the relief will continue to be beneficial and for this reason they will continue to apply for such tax relief irrespective of any potential confidentiality.
108. The Commissioner accepts that for a majority of organisations it will be fairly obvious that they qualify for this type of tax relief. With the

- exception of special circumstances, organisations such as scouts and guides organisations, youth clubs, playgroups, village halls etc will more than likely qualify for 100% relief. For other organisations, however, a more detailed in depth assessment of individual circumstances and the organisation's set up will be required by the public authority they are applying to. The documentation that connects to this case concerns this more detailed assessment of the application.
109. The Commissioner also notes that the public authority in common with some others provides some guidance on their websites relating to rate relief for charities and non profit organisations. It is publicly known that charities and non profit organisations are entitled to 80% relief from business rates if they meet certain criteria (mandatory relief). The public authority does not appear to publish its set of criteria but the Commissioner notes that other public authorities do. He notes that there is also a further facility for such organisations to apply for the remaining 20% to be waived (discretionary relief). It is clear to the Commissioner that the criteria have uniformity and believes that any incentive to provide inaccurate information would be in order to appear to meet those criteria, rather than be a necessary result connected to disclosure.
110. The Commissioner has considered the public authority's arguments about the expectations of applicants for mandatory and/or discretionary relief [paragraph 98(1)]. He does not accept that charities and companies have an expectation that information about their tax affairs and particularly their application for mandatory and/or discretionary relief would necessarily be private. He notes that these organisations have reporting requirements that directly connect to their legal status. The organisations obtain benefits from the law due to their legal status, but these benefits give them consequential obligations that they must comply with. The Commissioner believes that it is true that an individual would have expectations that information about their tax affairs would be confidential, but that this reasoning does not extend to all of the withheld information withheld under this exemption. He will consider the operation of section 41(1) [confidentiality] later in this Notice.
111. As an extension to this point, the Commissioner also believes that there is a further distinction that can be made between organisations volunteering information to receive a benefit and those who are compelled to provide information. While he can see the argument that there are expectations of confidentiality in the second situation, he feels that the expectations are much weaker in respect to the first.

112. The Commissioner has also considered the public authority's arguments about the possibility of it receiving less voluntary information which would make its ability to assess tax relief more difficult and lead to errors [paragraph 98(2)]. He can appreciate that in some cases these arguments will have real strength. For example, it may be the case that some organisations would regard the provision of the information to be more harmful than the value of the claim. This would be where the provision of the information would be commercially sensitive. However, he has not received any arguments that this is the case here and believes that the withheld information that is being considered in this case has no such effect. He believes that the information relates to a particular circumstance of this specific application of the relief and that its disclosure would not have distinct wide effects that would prejudice its effectiveness as was alleged.
113. The Commissioner has considered the public authority's arguments about third party intervention inhibiting it conducting its duties [paragraph 98(3)]. He has asked the public authority whether third party input into the application process has meant that it would diverge from its criteria. He was told that it had not.
114. He has considered whether the interference of the third parties would still erode the safe space to make a decision and make the process less efficient. He has not been convinced that in respect to the withheld information he has received any arguments that show that this is the case. He also has received no convincing arguments about why the provision of the information withheld under this section would enable any other organisation to wrongly claim tax relief. It follows that if third party input would have no effect, then it cannot be that there would be likely prejudice to the assessment or collection of any tax or duty or of any imposition of a similar nature.
115. The Commissioner also notes that the public authority has disclosed information of the same sort into the public domain previously.<sup>7</sup> It has not provided any evidence that the disclosure of some of the withheld information led to the prejudices that it had identified in this case.
116. As stated above, for the Commissioner to accept that disclosure "would" prejudice the assessment of tax, the prejudice claimed must at least be more probable than not. In this case he has not been satisfied that this is so for all the reasons above.

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<sup>7</sup> The information that has been disclosed was discussed in following article (link correct as of 20/10/2010):  
<http://www.telegraph.co.uk/news/uknews/1536494/Scientologists-get-270000-subsidy.html>

117. The Commissioner accepts that tax decisions are under regular review, but has come to the decision that the disclosure of the withheld information would not create a real and significant risk of prejudice to the assessment or collection of any tax or duty or of any imposition of a similar nature. It follows that the Commissioner has not been satisfied that even the lower 'would be likely to prejudice' limb has been satisfied.
118. In conclusion, the Commissioner finds that section 31(1)(d) does not apply to any of the information. The Commissioner needs to consider the operation of all of the exemptions before deciding whether disclosure would be appropriate.

*Section 41(1)*

119. Section 41(1) has been applied to items 3, 11, 27, 28, 29, 31 and 35. The elements that remain to be considered (which were not covered by section 42(1)) are items 3, 31 and 35.

120. Section 41(1) provides that information is exempt where:

*'(a) it was obtained by the public authority from any other person (including a public authority); and*

*(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.'*

121. As stated above, a necessary condition of this exemption is that the information must be obtained from a third party. The Commissioner has considered item three and considers that it does not satisfy this condition. This is because in the Commissioner's view the public authority has not proved that the contents of the information were imparted by COSREC and he sees no evidence from other correspondence that this was so. Instead, this information is internally generated by the public authority to communicate its decision to COSREC. The Commissioner is satisfied that this item is not covered by section 41(1) and that the exemption was inappropriately applied to it.
122. The Commissioner is satisfied that the other items were provided to the public authority by a third party and therefore he has gone on to consider whether those items meet the requirements of section 41(1)(b). The detail of what is said in this part of the Decision Notice has been limited because the Commissioner has to be mindful of preserving the integrity of the withheld information. However, he has considered the situation thoroughly.

123. In this case, the Commissioner considers the appropriate test to determine whether there is an actionable breach of confidence, to be that set out in the case of *Coco v A N Clark (Engineering) Ltd* [1968] FSR 415 (the 'Coco' test):

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

124. When considering the first element of the *Coco v Clark* test he must consider whether the information has the necessary quality of confidence. In this case he is satisfied that the information withheld is neither trivial nor in the public domain. He is content that the information can be said to have a quality of confidence on the facts of this case. The public authority has explained that the information was created on the understanding that its circulation would be restricted to those to whom it was directed. The Commissioner having reviewed the withheld information is satisfied that each of the three items has the necessary quality of confidence.

125. The second element of the test requires the circumstances of the imparting to import an obligation of confidence. The Commissioner will consider each item in turn.

126. Item 31: The contents of item 31 relate to the reporting back of a meeting with COSREC. The Commissioner has been satisfied that the information was imparted in circumstances that would have imported an obligation of confidence and that this information satisfies the second element of this test.

127. Item 35: The Commissioner cannot summarise the contents of this item and maintain the integrity of the withheld information. However, he has been satisfied that the information was imparted in circumstances that would have imported an obligation of confidence and that this information satisfies the second element of this test.

128. The final element relates to detriment to the confider.

129. Item 31: The Commissioner has considered that the contents of this item and has come to the view that he is not satisfied that the disclosure of the first four paragraphs of this information would lead to any detriment to the confider. He has therefore come to the view that for those paragraphs the exemption is not engaged. For the final three paragraphs he is satisfied that the disclosure of the information would be likely to lead to there being detriment to the confider. Those paragraphs do satisfy the three stage test.
130. Item 35: The Commissioner has considered this item and is of the view that the disclosure of this information would lead to the detriment of the confider.
131. While the Commissioner has determined that some information was correctly thought to be confidential, this does not mean necessarily that the information can be withheld. Although section 41 of the Act is an absolute exemption and thus not subject to the public interest test contained at section 2 of the Act, the common law concept of confidence suggests that a breach of confidence will not be actionable in circumstances where a public authority can rely on public interest defence. The Commissioner must therefore consider whether the public authority would be able to rely on a public interest defence in respect to this information. If so, then the exemption would not be engaged.
132. It is necessary to highlight that the public interest test inherent within section 41 differs from the public interest test contained in the qualified exemptions contained within the Act; the default position for the public interest test in the qualified exemption is that the information should be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosing the information. With regard to the public interest test inherent within section 41, this position is reversed; the default position being that information should not be disclosed because of the duty of confidence unless the public interest in disclosure outweighs the interest in maintaining the confidence.
133. The Commissioner's approach is that a successful public interest defence against a breach of confidence does not require an exceptional public interest in disclosure. The Commissioner's reasoning is as follows: The Tribunal in *Derry City Council v Information Commissioner* [EA/2006/0014] found that:
- No exceptional case has to be made to override the duty of confidence that would otherwise exist; and

- All that was required is balancing of the public interest in putting the information into the public domain and the public interest in maintaining the confidence.

134. The Commissioner endorses this view and will consider the arguments for both sides in turn before explaining where he believes the balance lies for the remaining information. Disclosure would need to be justified by the content of the withheld information itself not simply on the basis of generic or abstract public interest arguments.

*The public interest in disclosing the information*

135. The Commissioner has explained in detail the public interest factors that favour the placing of this information into the public domain in 76-81 of this Decision Notice. The same reasons apply in respect to this information. The Commissioner has also noted the obiter comments of the Information Tribunal in *EA/2009/0095* (stated in paragraph 6 of this Notice) that explained that the Information Tribunal believed that there were '*significant public interests*' that favour disclosure in this case. These have been summarised in paragraph 81 above.

*The public interest in maintaining the confidence*

136. The Commissioner accepts the argument that there is weighty public interest in maintaining confidences. It would clearly not be in the public interest for discussions to be disclosed when the information was only generated on the understanding that it would be treated with a significant degree of confidence. Confidence is often required to allow information to be shared and acts as a catalyst to ensure that the right decision will be made.

137. The public authority has explained that there was a long standing expectation that potential disclosures by the rate payer would be treated in a confidential manner. The Commissioner notes that this is supported by the protection that Her Majesty's Revenue and Customs provides to information that identifies rate payers. Information about the tax situation of an organisation would be regarded as being confidential.

138. The public authority also explained that the information must be considered in its context. The information when considered with what is already known would be expected to be confidential. The Commissioner as noted above considers that there is an important distinction between information that was volunteered and information that was acquired through compulsion. In his view, in the particular

circumstances of this case, a greater level of protection should be provided to the latter.

*The balance*

139. The Commissioner has carefully considered the nature and content of the withheld information and has reached the conclusion that the public interest defence would be available in respect to the last two paragraphs of item 31. He has reached the conclusion that despite the weight of the public interest arguments in favour of withholding them, the nature of the information and the circumstances surrounding it are sufficiently important and significant that it should be disclosed. Consequently, the Commissioner has concluded that there would be a public interest defence if the requested information was disclosed. It follows that the public authority cannot withhold this information through reliance on section 41(1).
140. However, the Commissioner considers that there would be no public interest defence from the fifth paragraph of item 31 or the whole of item 35. It follows that the public authority has appropriately applied section 41(1) to these items.
141. The public authority should have therefore provided item 3 (although the arguments about section 40(2) will be considered below) and paragraphs 1, 2, 3, 4, 6 and 7 of item 31.

*Section 40(2)*

142. Section 40(2) has been applied to part of items 3, 7, 8, 9 - 11, 14 - 21, 23, 25 - 28, 30 - 39. In all of these cases the exemption has been applied to the names of individuals.
143. The elements that remain to be considered [which were not covered by section 42(1) or 41(1)] are elements 3, 8, 14 - 16, 19 - 21, 25, 30 - 34 and 36 - 39.
144. Section 40(2) is an exemption where the information requested was personal data and disclosure would contravene a data protection principle. To analyse the application of section 40(2) in this case, the Commissioner has considered:
- a) whether the information in question was personal data; and*
  - b) whether disclosure of the personal data under the Act would contravene the first data protection principle.*



*Is the information personal data?*

145. Personal data is defined in section 1 of DPA 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 intentions of the data controller or any other person in respect of the individual.'*

146. When considering whether the information is personal data, the Commissioner had regard to his own published guidance: "Determining what is personal data" which can be accessed at:  
[http://www.ico.gov.uk/upload/documents/library/data\\_protection/detailed\\_specialist\\_guides/personal\\_data\\_flowchart\\_v1\\_with\\_preface001.pdf](http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/personal_data_flowchart_v1_with_preface001.pdf)

147. The Commissioner notes that the withheld information in this case amounts to the name of specified individuals. He accepts that this data directly links actions to the individual in question. It is therefore personal data. The public authority was correct that the information would show an individual's employment and whereabouts, which would mean that it could be linked to them.

*Would disclosure contravene the first data protection principle?*

148. The first data protection principle has two main components. These are as follows:

- requirement to process all personal data fairly and lawfully; and
- requirement to satisfy at least one DPA Schedule 2 condition for processing of all personal data

149. 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 principle.

150. It is also important to note that any disclosure under this Act is disclosure to the public at large and not just to the complainant. If the public authority is prepared to disclose the requested information to the complainant under the Act it should be prepared to disclose the same information to any other person who asks for it.

The Tribunal in the case of *Guardian & Brooke v The Information Commissioner & the BBC* (EA/2006/0011 and EA/2006/0013) (following *Hogan and Oxford City Council v The Information Commissioner* (EA/2005/0026 and EA/2005/0030)) confirmed that, "Disclosure under FOIA is effectively an unlimited disclosure to the public as a whole, without conditions" (paragraph 52): [http://www.informationtribunal.gov.uk/Documents/decisions/guardian\\_news\\_HBrooke\\_v\\_infocomm.pdf](http://www.informationtribunal.gov.uk/Documents/decisions/guardian_news_HBrooke_v_infocomm.pdf).

151. In this case it is useful to divide up the names into three categories:

- (1) The name of the contact point at COSREC;
- (2) The name of the member of staff responsible for coordinating the work in this case (although not for making the decisions); and
- (3) Three other individuals. Two were members of staff and one was employed by a connected organisation. The Commissioner believes that these individuals are sufficiently junior to fall within the category of individuals that the complainant did not wish to challenge. However, he notes that what counts as a 'junior' member of staff is not something that is constant, so he has elected to consider these redactions under the Act.

*Would disclosure of the names be fair to the data subjects?*

152. For the category one information, the Commissioner is of the view that the individual's name and their position is in the public domain. The Commissioner does not think that the disclosure of the name of the individual would reveal anything new in this case. He does not believe that the attribution of the name to their position would be unfair to the data subject in this context.

153. For the category two and three information, the Commissioner has carefully considered the roles that the individuals hold within the public authority. He has determined that their seniority does not make the disclosure of their names automatically fair.

154. When deciding whether the disclosure of the information is fair, the important factors that required consideration for both categories are summarised below:

- *What are the reasonable expectations of the individual in relation to the handling of their personal data?*

*Including:*

- *What was the person told about what would happen to their personal data?;*
  - *The seniority of the individual and how that may affect their expectations;*
  - *Whether their role was of a public nature and whether the data concerned that role rather than their private life; and*
  - *The accompanying expectations of the public about individuals in that role.*
- *The type of information that has been requested and the consequences of its disclosure;*
  - *Whether disclosure would cause any unnecessary or unjustified damage or distress to the individual; and*
  - *Legitimate interests of the public in knowing the withheld information and obtaining transparency about the workings of the public authority in this area.*
155. When analysing individual's expectations, the Commissioner notes that what an individual has been told is not determinative. Instead, the Commissioner must consider two things:
- (1) What has the individual been led to expect; and
  - (2) Whether that expectation was reasonable.
156. The Commissioner has considered carefully what the expectations of the four individuals would have been at the date of the request. The public authority explained that individuals who work for it do not have the expectation that their information would be disclosed as a matter of course. Instead they would believe that their personal data would be handled in accordance with the public authority's policy.
157. Instead its policy was that the names of individuals with Divisional Head status and above are disclosed routinely but the information of others is not. The public authority has two sets of policy that inform the expectations of those individuals. They are:
- 1. The Freedom of Information (FOIA) policy – Managing Access to Personal Data; and
  - 2. Staff Data Protection Policy (B22).

158. The Commissioner has carefully considered these policies. The first policy explains that a data subject should expect to be consulted and also states the following:

*'Name and work contact details of staff*

*The City of London takes the view that the fact someone is employed by it is in the first instance personal information. This does not mean that names and work contact details necessarily cannot be disclosed. Staff with public facing roles and occupants of higher managerial posts should expect disclosure of their post titles and work contact details.'*

159. The policy also provides a non exhaustive list of information that it believes should not be expected to be disclosed. It did not include information of the type that has been requested in this case. The second policy does not contain anything that is material to this case.
160. The Commissioner has come to the conclusion that an individual's expectations would be informed by two different factors. The first is what was specified in the policy – so the seniority of the role and whether the role is public facing. The second is the way that the policy has been applied in practice is that the names of individuals below Divisional Head do not get released.
161. The Commissioner notes that the individual covered by category two is in a public facing role, is in a relatively senior position and that the details about her role are in the public domain already. When considering the two factors outlined above, the first would indicate that the information would be released and the second would suggest that it would not. The Commissioner is not convinced that the expectations of the individual would necessarily be that the information would not be disclosed.
162. The individuals covered by category three are different as their roles were less senior. When considering the two factors outlined above, both would indicate that the information would not be disclosed. The Commissioner accepts that their expectations would be that their names (and email addresses containing their names) would not be disclosed to the public in these circumstances. In respect to the category three individuals, their expectations provide a strong foundation for the argument that the disclosure of this information would be unfair.
163. When considering whether expectations would be reasonable in this case, it is necessary to understand that the individuals are all in roles

that are paid either directly or indirectly with public funds. He notes that the disclosure of this information would relate to each of the employees' public functions and that it is important where possible that these individuals should be accountable to the population they serve. This consideration suggests that any expectations of non disclosure may not be reasonable in this case.

164. The Commissioner believes that given the policy above, seniority is of crucial importance. Previous Decision Notices issued by the Commissioner have taken the line that there should be a lower expectation of privacy when information concerns a senior individual. In this case the individuals were midgrade employees at the date of the request, but the individual identified in the category two data was in a more senior role than all the others and therefore received more remuneration. The extra seniority of the individual specified within the category two information has three material effects in this case. It reduces the likelihood of the presence of any expectation against disclosure, makes any expectation (if it exists) less reasonable and adds weight to contention that the disclosure of the name to the public would be fair.
165. It is helpful to summarise the Commissioner's considered views on the expectations of the data subjects for these categories of information:
- Category two information – the Commissioner is not convinced that there was any expectation at the date of the request that this name would not be disclosed and, if there was, he believes that it would not be reasonable.
  - Category three information – the Commissioner is satisfied that there were reasonable expectations at the date of the request that this information would not be disclosed.
166. When considering the type of information that has been requested, the public authority has also explained that it has considered the Commissioner's own topic specific guidance.<sup>8</sup> From this guidance, it believed that the Commissioner's position was that the personal email addresses of individual staff deserved protection. It explained that it had come to a reasoned conclusion in light of the relevant factors specified in the guidance. The Commissioner has been satisfied that the public authority has put its mind to considering the correct kind of factors when making its decision to withhold these names. However, it

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<sup>8</sup> This guidance can be found at the following link:  
[http://www.ico.gov.uk/upload/documents/library/data\\_protection/detailed\\_specialist\\_guides/public\\_authority\\_staff\\_info\\_v2.0\\_final.pdf](http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/public_authority_staff_info_v2.0_final.pdf)

must be noted that the guidance does not say anything specific about email addresses.

167. When considering potential damage or distress, the Commissioner considers that information about the application by COSREC carries additional sensitivity in respect to the names of the individual officers at the public authority. The public authority has argued that the nature of COSREC could mean that the disclosure would have a significant impact on the lives of the individuals, despite them not having responsibility for the overall decision.
168. While the Commissioner appreciates the public authority's concerns, he is not satisfied that they are justified in this case as he does not believe that the disclosure by itself would cause unjustified damage or distress. However, he would suggest that the public authority considers the provision of a careful explanation alongside any information that would be fair to disclose. This will allow it to further mitigate its concerns.
169. The Commissioner notes that there is no suggestion of wrongdoing by any of the individuals contained within the withheld information. Had there been proven wrongdoing, then it would be likely to render any expectations about withholding the information unreasonable.
170. Assessing all the factors in paragraphs 153 to 169 in this case, the Commissioner has come to the conclusion that:
- The disclosure to the public of the name of the individual in the category two would be fair to the data subject; and
  - The disclosure to the public of the names of the individuals in the category three information would be unfair to the data subjects. He therefore finds that section 40(2) has been applied appropriately to those names.
171. He does not need to consider the category three information any further as section 40(2) has been correctly applied to it. This concerns some of the redactions in 14, 26 and 31. He needs to consider the further requirements of the exemption for the other categories.

*Can a condition of Schedule 2 of the DPA be satisfied?*

172. Now the Commissioner has determined that disclosure would be fair, it is necessary to go on to consider whether the disclosure of the information would be in accordance with a condition of Schedule 2 of the DPA.

173. There are two conditions of Schedule 2 that are generally relevant when considering disclosure under the Act. They are conditions 1 and 6.

174. Condition 1 requires the data subject to have given his consent to the processing of the data. The Commissioner notes that any consent must be sufficient to amount to permission to disclose the information to the public under the Act. The Commissioner finds that no consent of any sort has been provided by the data subjects in this case. It follows that condition 1 has not been satisfied in this case.

175. Condition 6 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."*

176. In deciding whether condition 6 would be met in this case the Commissioner has considered the decision of the Information Tribunal in *House of Commons v Information Commissioner & Leapman, Brooke, Thomas* [EA/2007/0060]. In that case the Tribunal established the following three part test that must be satisfied before the sixth condition will be met:

- there must be legitimate interests of the public in disclosure of the information;
- the disclosure must be necessary for a legitimate interest of the public; and
- even where disclosure is necessary it nevertheless must not cause unwarranted interference or prejudice to the rights, freedoms and legitimate interests of the data subject.

*The legitimate interests of the public*

177. The Commissioner believes that there is a legitimate public interest in transparency due to public money being granted from central government funds that affects a wider group of people than just the residents of the City of London.

178. When considering the legitimate interests of the public, the Commissioner notes that there is a legitimate public interest in understanding information about the process that led to COSREC being granted relief. He further believes that the Information Tribunal in the decision *EA/2009/0095* as cited above supports the view that there is a clear legitimate interest in the disclosure of as much information as possible in this case. However, the Commissioner agrees with the public authority that the disclosure of the individual names of its staff would provide limited further accountability in this case. It would merely confirm who gathered the evidence for the decision maker to come to the public authority's decision.
179. The complainant has also argued in a number of his other cases that the public were particularly interested to understand the decision to grant rate relief on account of, what he characterised as the improper and/or criminal activity of the Church of Scientology. As noted in paragraph 80 above, while the Commissioner cannot make any finding about these allegations, he supports the Tribunal's view that a legitimate public interest in favour of disclosure exists.
180. The Commissioner agrees that this part of the test is satisfied.

*Necessity for a legitimate interest of the public*

181. 'Necessity' functions as a threshold condition. The Commissioner's view is that when considering necessity disclosure must be necessary to meet some of the legitimate interests above. There must not be a less intrusive means of meeting that end. He has therefore taken into account existing mechanisms and whether they satisfy these interests.
182. The public authority has argued that the disclosure of these names would not provide any further information to the public. The public is aware that COSREC applied for relief and that the application was successful. The disclosure of the name of the individual that made the application and who provided the relevant evidence was not a necessary addition to the information that has already been provided. Neither was the disclosure of the name of its member of staff who gathered the evidence together.
183. The Commissioner has considered this matter carefully. His view is that the disclosure of the names is necessary in this case for reasons of transparency in a matter of public concern. He believes that the disclosure of this information would provide this accountability, without meaningful detriment to the individuals. He does not believe that the same accountability can be provided through a lesser disclosure.



184. The Commissioner therefore accepts that there is a necessity in disclosing the requested names and that the second part of the test is therefore satisfied.

*Unwarranted Interference*

185. The Commissioner must then go on to consider the collective weight of the legitimate interests and whether meeting them would cause an unwarranted interference with or unwarranted prejudice to the rights, freedoms and legitimate interests of the data subject. The Commissioner believes that the test in *House of Commons v Information Commissioner & Leapman, Brooke, Thomas* [EA/2007/0060] should be read in this way to accord with the verdict that was reached in that case and with the overriding purpose of the condition.
186. The Commissioner has found that there are a number of legitimate interests that carry weight on the facts of this case. While the names of the individuals and their positions are in the public domain, their possible involvement in this case is not already apparent.
187. The public authority has argued that any legitimate interests would not counteract the fact that further processing is unwarranted by reason of the ensuing prejudice to the data subject. It explained that the release of this information could lead to heightened media and unjustified public attention for an individual applicant and its member of staff. It explained that the impact of the disclosure would affect their private and professional lives and could lead to their targeting. The Commissioner has considered each remaining category of data in turn:

*Category one data*

188. The Commissioner accepts that the relevant individual's name, connection to COSREC and responsibilities are already in the public domain. He believes that the disclosure of their name would not lead to further prejudice to the data subject.
189. The Commissioner has carefully considered this case and has come to the conclusion that the weight of legitimate public interest factors is sufficient for the information to be disclosed in this case. He therefore finds that condition 6 would be satisfied in this instance.
190. The Commissioner notes that identifying the individual within his role is likely to make his name sensitive personal data (under section 2 of the DPA). This is because it would connect him to a series of religious beliefs. This means that the disclosure must also comply with one of

the conditions in Schedule 3. The Commissioner considers that the information about the individual's position has been put into the public domain by steps deliberately taken by the individual themselves. Therefore condition five has been satisfied in Schedule 3 and the first data protection principle would not have been contravened by the disclosure of this name.

*Category two data*

191. The Commissioner accepts that the COSREC decision was a controversial one. He appreciates that without an explanation there may be misunderstandings about the role that was conducted by this individual.
192. He has also considered carefully the necessity for accountability in this matter and believes that the disclosure of the individual's name in its context would not cause an unwarranted interference to the data subject. Instead he believes that disclosure is warranted in this case. He believes that the weight of legitimate public interest factors is sufficient for the information to be disclosed in this case. He therefore finds that condition 6 would be satisfied in this instance.
193. The Commissioner has also considered the other data protection principles and has not been satisfied that the disclosure of this name would be in contravention of them.

*Would disclosure of the name be lawful to the data subject?*

194. As the Commissioner has come to the view that disclosure would have been fair for the category one and category two data and satisfy schedule 2 conditions (and schedule 3 conditions, where appropriate), it is necessary to also consider whether disclosure would be lawful.

*Category one information*

195. The public authority has argued that the disclosure would not accord with the expectation that this data may remain confidential and the breach of confidence would be unlawful and the name should not be disclosed. The view of the Commissioner is that the information about this individual remains that as the information is in the public domain there cannot be an actionable breach of confidence. It follows that in his view the disclosure of this name would be lawful.

*Category two information*

196. The public authority provided no further arguments about the disclosure of this information being unlawful. The Commissioner has looked at the data protection agreement that was signed on appointment and does not believe that the disclosure of this information would be unlawful. It follows that in his view the disclosure of the name would be lawful.
197. The Commissioner has also considered the other data protection principles and has not been satisfied that the disclosure of this name would be in contravention of them
198. Section 40(2) has therefore not been appropriately applied to either of the category one or category two information. The information should therefore be disclosed.
199. The category one information relates to some of the section 40(2) redactions in relation items 3, 19, 20, 21, 30, 32, 33, 34 and 39.
200. The category two information relates to some of the section 40(2) redactions in relation to items 3, 8, 10, 14, 15, 16, 19, 20, 21, 25, 30, 32, 33, 34, 35, 36, 37, 38, 39.

**Procedural Requirements**

201. The Commissioner has found that some of the information that was originally withheld should be disclosed. This has led to there being a number of procedural breaches in this case. The Commissioner will conclude this Notice by listing them.

*Section 1(1)(b)*

202. Section 1(1)(b) requires that non-exempt information is communicated to the requester. The failure to provide the information that could not be withheld was therefore a breach of section 1(1)(b).

*Section 10(1)*

203. The consideration of section 10(1) is complicated by the public authority taking further time to consider the balance of public interest in this case. The public authority is permitted to take a reasonable time to consider the public interest. The Commissioner believes that it is not reasonable to take longer than the absolute maximum of 40 working days. The public authority's failure to comply with section 1(1)(b) (in

not providing the non-exempt information identified in this Notice) is a breach of section 10(1).

## The Decision

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204. The Commissioner decision is as follows: -

205. The following elements were dealt with in accordance with the Act:

- It correctly applied section 42(1) to the whole of the items 4, 5, 6, 7, 9, 10, 11, 12, 13, 17, 18, 22, 23, 24, 26, 27, 28 and 29 (the numbers are specified in Annex A of the Notice);
- It correctly applied section 41(1) to both the fifth paragraph of item 31 and item 35; and
- It correctly applied section 40(2) to the information that constituted the personal data of the category three staff (some of the redactions in items 14, 26 and 31).

206. However, there were a number of breaches of the Act in this case:

- It breached section 1(1)(a) by failing to process the complainant's objective reading of the request before the Commissioner's intervention;
- It breached section 10(1) in failing to comply with section 1(1)(a) in 20 working days in respect to the information that fell within the complainant's objective reading of the request;
- It breached section 17(1) in failing to issue an appropriate refusal notice in respect to this information that fell within the complainant's objective reading of the request in 20 working days;
- It breached section 16(1) by failing to provide appropriate advice and assistance in this case;
- It failed to prove that section 31(1)(d) was engaged and therefore applied it inappropriately to items 3, 20, 21 and 31 (and one line of item 26);
- It wrongly applied section 41(1) to item 3 and paragraphs 1, 2, 3, 4, 6 and 7 of item 31;

- It wrongly applied section 40(2) to the category one information (some of the redactions in items 3, 19, 20, 21, 30, 32, 33, 34 and 39);
- It wrongly applied section 40(2) to the category two information (some of the redactions in items 3, 8, 10, 14, 15, 16, 19, 20, 21, 25, 30, 32, 33, 34, 35, 36, 37, 38 and 39);
- It breached section 1(1)(b) by failing to provide the information that the Commissioner has ordered to be disclosed; and
- It breached section 10(1) in failing to comply with section 1(1)(b) in 20 working days in respect to the information that should now be disclosed.

## Steps Required

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207. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

- Disclose item 3;
- Disclose items 20 and 21;
- Disclose the one line of item 26 that was withheld under section 31(1)(d);
- Disclose paragraphs 1, 2, 3, 4, 6 and 7 of item 31; and
- Disclose the names that were not exempt under section 40(2) contained in items 3, 8, 10, 14, 15, 16, 19, 25, 30, 32, 33, 34, 35, 36, 37, 38 and 39.

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

## Failure to comply

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209. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court

pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Right of Appeal

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210. 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 10<sup>th</sup> day of February 2011**

**Signed .....**

**Gerrard Tracey  
Principal Policy Adviser  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Annex A

Document	Date	Time	Document Type	Exemption applied
1	19 October 2006	15:39	Email	N/A.
2	19 October 2006	15:29	Email	N/A.
3	19 October 2006	14:52	Email and attachment	31(1)(d), 40(2) and 41
4	19 October 2006	14:22	Email	31(1)(d), 42
5	19 October 2006	14:16	Email	31(1)(d), 42
6	19 October 2006	14:14	Email	31(1)(d), 42
7	19 October 2006	11:25	Email and attachment	31(1)(d), 40(2) and 42
8	17 October 2006	10:37	Email	40(2)
9	10 October 2006	09:05	Email	31(1)(d), 40(2) and 42
10	09 October 2006	17:14	Email	31(1)(d), 40(2) and 42
11	27 September 2006	x	Memo and attachment	31(1)(d), 40(2), 41 and 42
12	20 September 2006	x	Memorandum	31(1)(d), 42
13	13 September 2006	x	Memorandum	31(1)(d), 42
14	31 August 2006	11:31	Email	40(2)
15	23 August 2006	10:19	Email	40(2)
16	23 August 2006	10:15	Email	40(2)
17	x August 2006	x	Compliments slip and attachment	31(1)(d), 40(2) and 42
18	10 August 2006	16:23	Email and attachment	31(1)(d), 40(2) and 42
19	10 August 2006	16:08	Email	40(2)
20	10 August 2006	15:58	Email and attachment	31(1)(d), 40(2)
21	10 August 2006	15:47	Email and attachment	31(1)(d), 40(2)
22	07 August 2006	x	Memo and attachment	31(1)(d), 42
23	03 August 2006	12:31	Email and attachment	31(1)(d), 40(2) and 42
24	02 August 2006	x	Memorandum	31(1)(d), 42
25	20 July 2006	11:05	Email	40(2)
26	20 July 2006	11:00	Email	31(1)(d), 40(2) and 42
27	18 July 2006	x	Memorandum	31(1)(d), 40(2), 41 and 42
28	11 July 2006	x	Memorandum	31(1)(d), 40(2), 41 and 42
29	03 July 2006	x	Memorandum	31(1)(d), 41 and 42
30	02 June 2006	15:59	Email	40(2)
31	09 February 2006	18:01	Email	31(1)(d), 40(2) and 41
32	12 January 2006	13:41	Email	40(2)
33	21 December 2005	10:19	Email	40(2)
34	17 November 2005	13:25	Email	40(2)
35	07 July 2005	15:52	Email	40(2) and 41
36	23 June 2005	15:59	Email	40(2)
37	23 June 2005	13:57	Email	40(2)
38	21 June 2005	11:10	Email	40(2)
39	15 June 2005	15:30	Email	40(2)



## Legal Annex

### The Freedom of Information Act 2000

#### Section 1 - General right of access to information held by public authorities

(1) 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.

(2) Subsection (1) has effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.

(3) Where a public authority—

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.

...

#### Section 10 - Time for compliance with request

(1) 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.

(2) Where the authority has given a fees notice to the applicant and the fee is paid in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.

(3) If, and to the extent that—

(a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or

(b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.

(4) The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with, the regulations.

(5) Regulations under subsection (4) may—

(a) prescribe different days in relation to different cases, and

(b) confer a discretion on the Commissioner.

(6) In this section—

- “the date of receipt” means—
  - (a) the day on which the public authority receives the request for information, or
  - (b) if later, the day on which it receives the information referred to in section 1(3);
- “working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the [1971 c. 80.] Banking and Financial Dealings Act 1971 in any part of the United Kingdom

...

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

(1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.

## **Section 17 - Refusal of request**

(1) 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.

(2) Where—

(a) in relation to any request for information, a public authority is, as respects any information, relying on a claim—

(i) that any provision of Part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or

(ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and

(b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.

(3) A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming—

(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

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

(4) A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

(5) 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.

(6) Subsection (5) does not apply where—

(a) the public authority is relying on a claim that section 14 applies,

(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and

(c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.

(7) A notice under subsection (1), (3) or (5) must—

(a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and

(b) contain particulars of the right conferred by section 50.

### **Section 31(1) – Law enforcement**

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

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

### **Section 40 – Personal information**

“(1) 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.

(2) 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.

(3) 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 [1998 c. 29.] 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 [1998 c. 29.] Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

(4) The second condition is that by virtue of any provision of Part IV of the [1998 c. 29.] 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).

(5) 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 [1998 c. 29.] 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 [1998 c. 29.] 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).

(6) 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 [1998 c. 29.] Data Protection Act 1998 shall be disregarded.

(7) In this section—

- “the data protection principles” means the principles set out in Part I of Schedule 1 to the [1998 c. 29.] 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.”

## **Section 42 – Legal professional privilege**

“(1) Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.”

...

## **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;
  - “relevant filing system” means any set of information relating to individuals to the extent that, although the information is not processed by means of equipment operating automatically in response to instructions given for that purpose, the set is structured, either by reference to individuals or by reference to criteria relating to individuals, in such a way that specific information relating to a particular individual is readily accessible.
- (2) In this Act, unless the context otherwise requires—
- (a) “obtaining” or “recording”, in relation to personal data, includes obtaining or recording the information to be contained in the data, and
  - (b) “using” or “disclosing”, in relation to personal data, includes using or disclosing the information contained in the data.
- (3) In determining for the purposes of this Act whether any information is recorded with the intention—
- (a) that it should be processed by means of equipment operating automatically in response to instructions given for that purpose, or
  - (b) that it should form part of a relevant filing system,

it is immaterial that it is intended to be so processed or to form part of such a system only after being transferred to a country or territory outside the European Economic Area.

(4) Where personal data are processed only for purposes for which they are required by or under any enactment to be processed, the person on whom the obligation to process the data is imposed by or under that enactment is for the purposes of this Act the data controller.