

## **Freedom of Information Act 2000 (Section 50)**

### ***Decision Notice***

**Date: 31 May 2011**

**Public Authority:** North West Strategic Health Authority  
**Address:** 4th Floor  
3, Piccadilly Place  
Manchester  
M1 3BN

### **Summary**

---

The complainant requested copies of the reports that followed inquiries after homicide ("the reports"). The North West Strategic Health Authority ("NHS NW") declined to provide the information on the basis of the exemptions contained in sections 21, 40(2), 41 and 44 of the Freedom of Information Act 2000 (the "Act"). During the course of the Commissioner's investigation NHS NW released further information to the complainant. The Commissioner has reached the decision that the information has been correctly withheld under section 40(2) of the Act by virtue of section 40(3)(a) and section 41. Therefore he has not gone on to consider the other exemptions cited by NHS NW. The Commissioner does not require NHS NW to take any further steps in relation to the complainant's request.

### **The Commissioner's Role**

---

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

### **Background**

---

2. The complainant described the information he sought as the "Reports after Inquiry into the care and treatment of a perpetrator where the perpetrator had been in the care and treatment provision of the local secondary mental health provision". The complainant has said on

several occasions that it is mandatory for Strategic Health Authorities to conduct an inquiry and to make the Reports that follow as public as possible. He stressed that the Chief Executive of the Department of Health wrote to all NHS Strategic Health Authorities in HSG (94) 27 requesting that they make these reports available. The complainant went on to say that all Strategic Health Authorities had published access to these reports on their websites apart from NHS NW.

## The Request

---

3. The complainant originally complained to the Commissioner on 15 January 2010 about a request he made on 4 July 2008.
4. The Commissioner wrote to the complainant on 5 February 2010 suggesting that he remake his original request to NHS NW as it was, in effect, a request for it to publish information rather than ask for specific information that it holds on the topic raised by him. On the same day the Commissioner also wrote to NHS NW explaining the position but stating that on receipt of Dr Yates' request it should provide a response within 20 working days as required by the FOIA. At this point the Commissioner closed the complaint. The complainant did not remake his request until 10 July 2010:

*"...I have made past requests to be able to read the reports that followed Inquiries after Homicide – the so-called legacy cases – that the Chief Executive of the NHS asked that you looked for. I then made Freedom of Information requests to the same end. The request has been denied. I believe wrongly.*

*Instead I have been pointed to a paper presented to the September 2009 Board meeting which summarises lessons that would be necessary for the Mental Health Trust involved, but which is heavily redacted for the details that I believe is required to satisfy legitimate public interest in the kind of NHS service system delivery at the time of the tragedies..."*

NHS NW took as its timescale reports from 2002 to 2007, as this had been the timescale requested earlier by the complainant.

5. However the Commissioner notes that on 12 March 2010 NHS NW sent a response to the complainant on the basis of his original request for information, as outlined in paragraph 13 below. The complainant was dissatisfied with this response and wrote again to NHS NW.
6. On 24 May 2010 the complainant contacted the Commissioner complaining about the lack of response from NHS NW. The

Commissioner wrote to NHS NW on 29 July 2010 requesting it respond to the complainant.

7. On 20 August 2010 NHS NW responded to the complainant setting out its final position in relation to the complainant's request for access to the Reports. It refused to disclose the requested information for the reasons outlined in paragraphs 14 and 15 below, following which the complainant reasserted his complaint to the Commissioner.
8. The Commissioner has investigated this complaint on the basis of the request made on 10 July 2010 and NHS NW's final response to the complainant on 20 August 2010.

## **The Investigation**

---

### **Scope of the case**

9. The Commissioner understands that the complainant considers that the NHS NW has incorrectly withheld access to the reports. The complainant specifically asked the Commissioner to consider the following points:
  - That an inquiry was mandatory and that access should be given to the reports after Inquiry.
  - That the Chief Executive from the Department of Health had written to all NHS strategic health authorities to make these reports available.
10. After a series of responses NHS NW sent a written response to the Commissioner on 3 March 2011. In this letter the following was clarified:
  - That NHS NW originally identified a total of 42 homicide cases that fell within the timescales identified by the Department of Health as those that required re-visiting to make sure they had received the appropriate level of scrutiny.
  - The '13' cases referred to in its letter of 5 November 2010 (see paragraph 19) refer to those cases (out of the 42) where either an investigation had been held or a pre-existing document had been traced by the Strategic Health Authority and/or where there had been publication.
  - One of the cases relates to the death of Child A – the Strategic Health Authority has published the Executive Summary and Recommendations and this has been sent to the complainant. The

reasons for not providing the complainant with a copy of the full document had been fully set out in the letter of 5 November 2010 and relate to the legal position regarding consent.

- Of the remainder - 6 are either in draft format and have never been finalised; or marked private and confidential for Strategic Health Authority only. The letter to the Commissioner of 31 March 2010 lists these and additionally identifies the reasons why NHS NW maintains that disclosure of these draft documents is inappropriate.
  - One was published (B2003/1151) and has been disclosed to the complainant.
  - One was never completed so was subsumed within the reports as published in the document *'Promoting Patient Safety: A review of Cases requiring independent investigation in the North West between January 2002-July 2006'*.
  - Four were not disclosed because of the issues set out in the response of 5 November 2010.
11. The complainant subsequently confirmed to the Commissioner on 15 March 2011 that he required the 12 reports that had been subject to external independent inquiry, albeit with possible redactions made. The complainant also pointed out that there must be personal data in the public domain because of the serious nature of the incidents.
12. During the course of the Commissioner's investigation NHS NW provided the complainant with the recommendations from the reports. As a result the Commissioner has not considered the application of the exemptions to this particular information any further in this Notice.

### **Chronology**

13. On 12 March 2010 NHS NW responded to the complainant's original request for information by providing him with a copy of *'Promoting Patient Safety'* and stating that the information was exempt under section 21(1) as reasonably accessible to the applicant.
14. After the Commissioner's intervention NHS NW wrote to the complainant on 20 August 2010 with the reasons for its refusal. NHS NW believed the requested information to be exempt under section 21(2)(b) of the FOIA. In publishing "*Promoting Patient Safety: A Review of Cases Requiring Independent Investigation in the North West between January 2002 – July 2006*" on its website NHS NW concluded that it had fulfilled its public duty.

15. NHS NW also explained that it would not be fair to publish the requested information as it contained large amounts of personal data, and cited section 40(2) saying that disclosure would be a breach of the DPA. Sections 41 and 44 were also cited as reasons for withholding the requested information. Arguments for section 21 were given as part of this review.
16. NHS NW has confirmed that the complainant was sent the lengthy appendices that accompanied *'Promoting Patient Safety'* on 7 September 2010.
17. On 18 October 2010 the Commissioner wrote to NHS NW asking for further arguments in relation to its application of sections 21(2)(b), 40(2), 41 and 44.
18. On 5 November 2010 NHS NW responded to the Commissioner. NHS NW enclosed an example of the requested reports and outlined its application of sections 21(2)(b), 40(2), 41 and 44.
  - The report enclosed was a copy of the Inquiry into the Death of Child A which was the only case where a full independent investigation had been completed. NHS NW has published the Executive Summary and Recommendations together with a covering report to the NHS NW Board. This is available on the website and has been provided to the complainant. However, NHS NW did not publish the full report due to lack of consent.
19. NHS NW explained that it had a total of 13 reports (the Commissioner was informed that one of the reports was never completed and formed part of the *'Promoting Patient Safety'* publication). Many of these had never had an independent investigation aimed at the production of a final report. NHS NW had decided to adopt an approach that did not commission individual, independent investigations but an independent panel that would review all the cases and "*draw out the totality of learning on a Trust by Trust basis*". The resulting document and appendices - *Promoting Patient Safety: a Review of Cases Requiring Independent investigation in the North West Between January 2002 – July 2006* is available on its website.
20. On 29 November 2010 the Commissioner wrote to NHS NW asking further questions. However, the following questions remained:
  - *Could you confirm exactly how many cases there were falling within the complainant's request for the dates he requested?*
  - *I note that one of the perpetrators is dead – is the Trust aware of any other perpetrators being deceased?*

- *Finally...the Commissioner is of the opinion that any recommendations reached [regarding the reports] should probably be disclosed on the basis that this is unlikely to be personal data or that any personal data contained could be redacted. Please let me have your views in this matter.*
21. After a series of delays the Commissioner phoned NHS NW on 19 February 2011 to try and elicit answers to the questions he had asked on 29 November 2010.
  22. On 8 March 2011 the Commissioner wrote to the complainant. Firstly, the Commissioner explained that he had to consider whether the information in question should be disclosed to the public at large. A large proportion of the information requested relates to the homicide cases that have not been subject to full independent review. Either these cases have been subsumed into 'Promoting Patient Safety' and/or NHS NW states that disclosure would potentially breach the Human Rights Act. The Commissioner also expressed his view that it was unlikely that he would order the requested information to be disclosed largely on the basis of section 40(2).
  23. On 26 April 2011 the Commissioner contacted NHS NW to ask it to consider disclosing the recommendations from the 10 draft reports. He excluded the 2 reports where the recommendations had already been provided to the complainant – *Report of the Inquiry into the death of Child A and B 2003/1151*. Assuming that NHS NW did not consider the recommendations to contain personal data, the Commissioner suggested that they should be released, particularly as it had argued that all the recommendations were accessible in '*Promoting Patient Safety*'.
  24. On 13 May 2011 NHS NW disclosed the recommendations from the draft reports to the complainant and copied in the Commissioner.

## Analysis

---

### Substantive Procedural Matters

### Exemptions

### Section 40(2)

25. The full text of sections 40(2) and 40(3)(a) can be found in the Legal Annex at the end of this Notice.

26. NHS NW's position is that it has no intention of publishing the reports. In most cases there has not been a finalised report. There have been recommendations made in several of these cases but they are in draft form. One of the exceptions is the Child A Report which NHS NW informed the Commissioner is now the subject of a court case. Some of this report is in the public domain whilst the entire report cannot be published as lawyers for the victim's father are challenging it. The case is likely to be heard in private and is subject to due process. It was explained that the information that the complainant is seeking remains in draft, not finalised, and contains very personal details that the Trust would consider subject to section 40. The other exception is B2003/1151 which had been published and subsequently disclosed to the complainant.
27. In its letter dated 3 March 2011 NHS NW addressed the Commissioner's question as to whether any of the perpetrators was deceased. NHS NW was aware that one of the perpetrators was deceased but did not hold information regarding the other perpetrators. However, NHS NW said that the issue was not that the perpetrator was deceased, which would mean that section 40 could not be applied to their personal data, but that harm could be applied by disclosure of the draft report some years after the event to the surviving children which might affect their rights under Article 8 of the Human Rights Act. The same argument applied to the surviving relatives of any other deceased perpetrators.
28. NHS NW went on to say that the decision not to disclose the requested information was based on several factors:
- The original health circular HSG (94) 27 was issued to ensure that the NHS properly scrutinised cases that fell within the criteria for independent investigation.
  - The process adopted by NHS NW took account of both the potential cost of holding individual independent investigations and the impact on the surviving relatives some time after the event.
  - The process adopted satisfied the criterion of independent scrutiny and the panel consisted of expert clinical professionals.
  - The cases identified as falling within the complainant's request were included and any recommendations were scrutinised carefully and independently by the Panel.
  - Finally, NHS NW said that it had published all the recommendations contained in the reports.



29. The Commissioner has first considered the applicability or otherwise of section 40(2) and, as a consequence, section 40(3)(a) to the requested information. As NHS NW disclosed the recommendations from the requested information on 13 May 2011, the Commissioner has subsequently considered the 12 reports distinct from any recommendations contained within them when considering the applicability of section 40(2).
30. Section 40(2) provides that a request for information is exempt if it constitutes personal data of which the applicant is not the data subject and that the first or second condition of section 40(3) is satisfied. This means that disclosure would contravene any of the data protection principles or a section 10 notice under the Data Protection Act 1998 (the "DPA").
31. In line with the provisions of sections 40(2) and 40(3)(a), the Commissioner has gone on to consider whether the information is personal data as stipulated in the DPA. Section 1(1) of the DPA defines personal data 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;'*
32. Having considered the information in question the Commissioner is convinced that much of it is personal data within the definition of the DPA for the following reasons:
- Living individual/s can be identified from the data (see paragraph 33). In some cases the name of the individual is clearly identified. Some of the information has been anonymised but the Commissioner has concluded that the living individuals involved are potentially identifiable from other information already in the public domain.
  - The data in each report has biographical significance and relates to a particular individual and provides information about that individual which could render them identifiable.
  - The data has the potential to impact on an individual, whether in a personal, family, or professional capacity.
33. The Commissioner is satisfied that the 12 reports relate to living identifiable individuals as outlined above. Each report is a compilation of a history of events centred on details of the perpetrators and their



interaction with a number of other individuals including their GPs, carers and family members. The Commissioner notes that not all the perpetrators were alive at the time of the request however he is satisfied that because of the nature of the interaction between the perpetrators and other individuals involved in the compilation of the reports they also contain personal data about these individuals as well. After considering the withheld information the Commissioner is of the view that the withheld information contains personal data which can fall into the following categories:

- (a) Information which relates directly to the perpetrator;
- (b) Information relating to statements given by healthcare/social care/other professionals which are attributable to that individual;
- (c) Comments on the actions or performance of healthcare/social care/other professionals; and
- (d) Information which relates to individual family members of the perpetrator and/or the victim, and statements given by them to the authors of the Report.

34. The Commissioner also considers that the small numbers of incidents involved and the violent nature of these incidents makes identification more likely than not.
35. The Commissioner has gone on to consider whether disclosure of the information would contravene the first data protection principle as has been alleged by NHS NW.
36. The first data protection principle says that personal data should be processed fairly and lawfully. The focus of any consideration of section 40 is on fairness. In reaching a decision as to whether disclosure of the information would contravene the first data protection principle the Commissioner has determined that much of the requested information falls under the category of sensitive personal data as it relates to the "physical or mental health or condition" of the perpetrators. Some of the requested information is sensitive personal data concerning other individuals.

### **The Consequences of Disclosure**

37. Whilst the Commissioner's guidance in relation to section 40 encourages the disclosure of personal information relating to senior officials acting within their professional capacity, the nature of interaction between them and the patients involved means there is no sensible way of separating the personal information about each one individually.

38. The Commissioner does not accept that it is possible to provide the complainant with a redacted version of the reports as they contain so much personal data that its removal would be likely to render them meaningless. He also does not consider that it would be possible to anonymise these reports given the singularity of these events and the small amount of data subjects involved.
39. The Commissioner acknowledges that these events were unusual and tragic and they were forced into the public domain by being newsworthy at the time. Despite this, he does not agree with the complainant that anything other than the recommendations contained in these reports need be disclosed. He considers that learning from these events does not require the revelation of personal data which would be unfair to the data subjects concerned. The Commissioner also notes that the revised later guidance to HSG (94) 27, refers to making 'findings' public, where appropriate to do so, and the original HSG (94) (27) states that it "will not always be desirable for the final report" to be made public, but thought should be given to making the "main findings" public.
40. He accepts the argument of NHS NW that further disclosure, so long after many of these events took place, would cause further damage and intrusion to the surviving relatives. The Commissioner agrees that publishing these reports in their entirety is intrusive and would potentially impact on the surviving relatives' ability to conduct a normal private life after the event.

### **The Reasonable Expectations of the Data Subjects**

41. Disclosure of a person's medical records is considered unfair as there is a clear expectation that medical information will remain confidential, both to preserve the relationship between doctor and patient and also because the disclosure will be damaging or distressing to the data subject. The reasonable expectations of the patient, as the data subject, are that such information would not be disclosed and that the consequences of any disclosure could be distressing to them.
42. Although the complainant has argued that some of the personal data is in the public domain and the Commissioner accepts that incidents of this nature are likely to have attracted publicity at the time, any such information was unlikely to have been disclosed by the data subjects themselves. NHS NW has argued that much of the information is confidential. There are disclaimers at the beginning of several of the reports to the effect that no consent has been given from the service user to publish and that these documents are intended for internal use only. Even in the event of a report that has been published in part on

NHS NW's website such as the '*Report of the Inquiry into the Death of Child A*' the whole report has not been published due to lack of consent from the perpetrator and ongoing legal proceedings. In its letter of 5 November 2010 NHS NW explained that the victim's father and individuals who had provided care were only able to read the full report in a supervised setting.

43. The Commissioner notes that the information in this case falls under section 2(e) of the Data Protection Act 1998, as it relates to the data subject's physical or mental health or condition. As such, by its very nature, this has been deemed to be information that individuals regard as the most private information about themselves. Further, as disclosure of this type of information is likely to have a detrimental or distressing effect on the data subject, the Commissioner considers that it would be unfair to disclose the requested information.
44. The Commissioner's conclusion is that:
- the data subjects either have not given consent to their personal data being disclosed or have only given permission for internal review.
  - the data subjects can have had no expectation that their sensitive personal data would be released into the public domain. The circumstances in which much of the personal data was collected was under normal doctor patient confidentiality which the Commissioner does not accept should be breached, except in the most extreme circumstances.
  - the events described in these reports have impinged on the lives of other individuals who have the right to carry on with their normal life. Any outcomes in the form of recommendations do not require the totality of the information to be disclosed.
45. The Commissioner is satisfied that the information contained in the reports which relates to the categories defined above is personal data and that disclosure would breach the first data protection principle. For this reason he agrees with NHS NW that the section 40 exemption is engaged. As this is an absolute exemption it is not subject to the public interest test.

## **Section 41**

46. In addition to the application of section 40(2) the NHS NW has also applied section 41 to the whole of the requested information. The Commissioner is satisfied that most, if not all, of the requested information is personal data. He considers it impracticable to consider any elements that might not be personal data separately due to the inextricably linked nature of this information. For completeness the

Commissioner has gone on to consider the application of section 41 to any information which is not personal data, because it concerns the medical records of deceased individuals.

47. The exemption in relation to information provided in confidence at section 41(1)(a) FOIA states that:

*41 – (1) Information is exempt information if –*

- ***it was obtained by the public authority from any other person (including another public authority) and***
  - ***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***
48. As the exemption for information provided in confidence is an absolute exemption there is no public interest test to be applied under the Act. However, in deciding whether the exemption applies it is necessary to consider whether an actionable breach of confidence would occur. Case law on the common law concept of confidence suggests that a breach of confidence will not be actionable in circumstances where a public authority can rely on a public interest defence.
49. Firstly, the Commissioner accepts that medical and social care records do represent information obtained from another person even though the notes not only record a patient or client's symptoms but also the assessment and interpretation of the professional concerned.
50. In considering whether disclosure would constitute an actionable breach of confidence the Commissioner has adopted the approach to confidentiality taken by the court in *Coco v A N Clark (Engineers) Limited [1968] FSR 415*. In that case it was decided that disclosure would constitute an actionable breach of confidence if:

the information has the necessary quality of confidence;

the information was imparted in circumstances importing an obligation of confidence; and

disclosure would be an unauthorised use of the information and to the detriment of the confider.

51. To establish an 'actionable' breach of confidence, the public authority must establish that an action for breach of confidence would, on the balance of probabilities, succeed. In order to determine this all three limbs of the test of confidence need to be established and whether or not the public authority has a public interest defence to the

claim. Information will have the necessary quality of confidence if it is not otherwise accessible, and if it is more than trivial. Information which is known only to a limited number of individuals will not be regarded as being generally accessible, though it will be considered so if it has been disseminated to the general public. Information which is of importance to the confider should not be considered trivial.

52. The Commissioner has considered whether the requested information would be actionable and he has followed the Tribunal's interpretation of Lord Falconer's view<sup>1</sup>:

*"... the word "actionable" does not mean arguable ... It means something that would be upheld by the courts; for example, an action that is taken and won. Plainly, it would not be enough to say, "I have an arguable breach of confidence claim at common law and, therefore, that is enough to prevent disclosure". That is not the position. The word used in the Bill is "actionable" which means that one can take action and win." (Hansard HL (Series 5), Vol.619, col. 175-176)*

This does not mean that it has to be established that an individual would be likely to bring a claim for breach of confidence but that, if they did, they would be likely to succeed.

53. In many cases relating to an individual's personal and private life it may be difficult to argue that disclosure will result in the confider suffering a detriment in terms of any tangible loss. The real consequence of disclosing personal and private information is an infringement of the confider's privacy and there is a public interest in protecting the privacy of individuals.
54. In *Bluck v IC & Epsom & St Helier University NHS Trust* – (EA/2006/0090) the Tribunal confirmed that even though the person to whom the information related had died, action for breach of confidence could still be taken by the personal representative of that person and that the exemption under section 41(1) therefore continued to apply. The Commissioner's view is that this action would most likely take the form of an application for an injunction seeking to prevent the disclosure of the information. It should be noted however that there is no relevant case law to support this position.

---

<sup>1</sup> Found at paragraph 25d  
: <http://www.informationtribunal.gov.uk/DBFiles/Decision/i360/Final%20Decision%2013.1.10%20without%20signature.pdf>

55. In the same Tribunal decision, Lord Keith of Kinkel found that it would be a sufficient detriment to the confider if information given in confidence were disclosed to persons to whom he "...*would prefer not to know of it, even though the disclosure would not be harmful to him in any positive way*" (paragraphs 7 and 8).
56. The duty of confidence public interest test assumes that information should be withheld unless the public interest in disclosure exceeds the public interest in maintaining the confidence. Arguments that similar information has previously been made publicly available are not decisive and will not prove that there is no duty of confidentiality. In the S case<sup>2</sup>, the complainant argued that the public authority had disclosed information provided by the complainant herself in similar circumstances, and that this demonstrated that there was no duty of confidentiality in the current case. However, the Tribunal rejected this argument at paragraph 86: "*The inconsistency of approach in this case appears to be indicative of a lack of good practice and/or understanding of the scope and remit of FOIA within the GRO [General Register Office] rather than evidence that there is no duty of confidentiality.*"

Similarly, arguments that, as part of the information had already been disclosed there would be no breach of confidence to disclose the rest, were rejected (at paragraph 76):

*"The Tribunal is satisfied that if information has been disclosed in breach of confidence (as the Tribunal finds that it was in this case), the GRO would not be entitled to rely upon that earlier breach of confidence to support an additional or subsequent breach of confidence."*

57. The importance of a right to privacy is recognised by Article 8 of the Human Rights Act 1998 which provides that "*Everyone has a right to respect for his private and family life, his home and his correspondence.*" The courts are obliged to interpret domestic law, including the law of confidence, in a way that respects this right to privacy and so Article 8 considerations are taken into account when determining whether information is confidential and are weighed against factors favouring disclosure when considering whether there would be a public interest defence against a breach of confidence. It is important to consider the real consequences of disclosing private,

---

<sup>2</sup> S v IC and GRO EA/2006/0030 (9 May 2007)



personal information and whether it is an infringement of the confider's privacy as there is a public interest in protecting the privacy of individuals.

58. There is a link between the impact disclosure would have on the confider and the wider public interest arguments discussed above. It is always possible that information made public to the detriment of the confider, whether this is a tangible loss or an invasion of privacy, deters someone from providing information to the public authority which might ultimately work against the public good by hampering the public authority in the performance of its functions.
59. In its letter of 5 November 2011 NHS NW explained that these reports draw on the patient record of confidential communication between doctors and patients, and that there is a strong public interest that the duty of confidence is respected. It argued that confidentiality is central to trust between doctors and patients. Service users had given consent for their patient record to be used for the internal review but no explicit consent has been given to publish outside that context.
60. The Commissioner agrees with NHS NW and the complainant that there is a public interest in understanding a chain of events leading to homicide on the part of those who had been using mental health services. However he disagrees with the complainant and accepts NHS NW's argument that this is met by the process of internal and independent reviews so that lessons can be learnt without breaking doctor patient confidence. It is the Commissioner's view that a duty of confidence is capable of surviving the death of the confider.
61. In view of the above, the Commissioner considers that disclosure of this information is exempt under section 41 of the Act, and that the Trust was correct to apply this exemption to the reports.
62. As the Commissioner has concluded that section 40 has been correctly applied to the categories of information defined in paragraphs 31 and 33 above, and the section 41 exemption has been correctly applied to the remainder of the information, he has not gone on to consider the application of sections 21 or 44.

## **The Decision**

---

63. The Commissioner's decision is that dealt with the request for information in accordance with the Act:



## **Steps Required**

---

64. The Commissioner requires no steps to be taken.

## Right of Appeal

---

65. 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: 0300 1234504

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)

66. 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.

67. 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 31<sup>st</sup> day of May 2011**

**Signed .....**

**Pamela Clements  
Group Manager, Complaints Resolution  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

---

### General Right of Access

**Section 40(2)** provides that –

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

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

**Section 40(3)** provides that –

“The first condition is-

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

### **Section 41 Information provided in confidence.**

(1) Information is exempt information if—

(a) it was obtained by the public authority from any other person (including another public authority), and

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

(2) The duty to confirm or deny does not arise if, or to the extent that, the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) constitute an actionable breach of confidence.