Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 21 March 2011

Public Authority: **UK Border Agency (an executive agency of the Home Office)**
Address: **11th Floor**
Lunar House
40 Wellesley Road
Croydon
CR9 2BY

Summary

The complainant asked the UK Border Agency (the "public authority") to provide information relating to the abolishment of the Working Holidaymaker Scheme (the "Scheme"). The public authority provided some information but refused the remainder using the exemption at section 36(2) (prejudice to effective conduct of public affairs) of the Freedom of Information Act 2000 (the "Act"). During the Commissioner's investigation it also cited section 40(2) (personal information) in respect of staff names contained within the withheld information.

The Commissioner's decision is that the exemption at section 36(2) is not engaged. He also finds that the exemption at section 40(2) is not engaged in respect of one unidentifiable member of staff. However, in other cases he finds that 40(2) is engaged, but that disclosure would not breach the Data Protection Act (the "DPA"), unless the staff are 'junior', where he concludes that disclosure would breach the DPA. Therefore the complaint is partially upheld.

The public authority's handling of the request also resulted in breaches of certain procedural requirements of the Act as identified in this Notice.

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 public authority provided the complainant with the following helpful background information:

> *"We can provide the following information on the process of policy development which led to the abolition of the old Working Holidaymaker scheme and the introduction last year of the new Youth Mobility Scheme under Tier 5 of the Point Based System (PBS). In 2004, the then Prime Minister announced a top-to-bottom review of managed migration routes. The review aimed to make the immigration system simpler, fairer to use, and ensure the integrity of the immigration controls, and it culminated in the five year strategy on asylum and immigration, published in February 2005*[1]*, which included the Government's initial ideas on a Points Based System (PBS) for managed migration."*
>
> *"Among the routes being rationalised were the then existing youth mobility schemes, which included the Working Holidaymaker scheme. These schemes had grown up over time and in differing circumstances, and were not consistent in their requirements and conditions. Recognising the importance of providing opportunities for youth mobility, the Government included among the published PBS proposals plans for an entirely new single, generic, youth mobility scheme (YMS) under Tier 5 of the new system, which would be fair and consistent, as its terms would be the same for all participating countries and all applicants would need to satisfy the same requirements, and be subject to the same conditions. Informed by the objectives set out above, and all available information relating to youth mobility policy, including all relevant responses to the PBS consultation, the detailed terms of the YMS proposals were developed in full, and approved by Ministers and across Government after lengthy and full consideration. These were published in the Tier 5 Statement of Intent in May 2008".*

[1] http://www.archive2.official-documents.co.uk/document/cm64/6472/6472.pdf

3. In the Immigration Rules HC 395, rule 95 provided:

> ***"Requirements for leave to enter as a working holidaymaker***
>
> *95. The requirements to be met by a person seeking leave to enter the United Kingdom as a working holidaymaker are that he:*
>
> *(i) is a national or citizen of a country listed in Appendix 3 of these Rules, or a British Overseas Citizen; a British Overseas Territories Citizen; or a British National (Overseas); and*
> *(ii) is aged between 17 and 30 inclusive or was so aged at the date of his application for leave to enter; and*
> *(iii) is unmarried or is married to a person who meets the requirements of this paragraph and the parties to the marriage intend to take a working holiday together; and*
> *(iv) has the means to pay for his return or onward journey; and*
> *(v) is able and intends to maintain and accommodate himself without recourse to public funds; and*
> *(vi) is intending only to take employment incidental to a holiday, and not to engage in business, or to provide services as a professional sportsperson, and in any event not to work for more than 12 months during his stay; and*
> *(vii) does not have dependent children any of whom are 5 years of age or over or who will reach 5 years of age before the applicant completes his working holiday; and*
> *(viii) intends to leave the UK at the end of his working holiday: and*
> *(ix) has not spent time in the United Kingdom on a previous working holidaymaker entry clearance; and*
> *(x) holds a valid United Kingdom entry clearance for entry in this capacity."*

4. The request makes reference to a case heard by the UK Asylum and Immigration Tribunal. This can be found online via the following link:

> http://www.ait.gov.uk/Public/Upload/j2112/00024_ukait_2008_ts_india.doc

The request

5. The Commissioner notes that the UK Borders Agency is not a public authority itself, but is an executive agency of the Home Office which is

responsible for it; therefore, the public authority in this case is actually the Home Office and not the UK Borders Agency. However, for the sake of clarity, this Decision Notice refers to the UK Borders Agency as if it were the public authority.

6. On 8 January 2010 the complainant made the following information request:

> *"I apply under the Freedom of Information Request as to any internal policy documents, memos and guidance concerning rule 95 of HC 395 to do with working holiday applications and appeals particularly in light of the decision of TS (working Holidaymaker : no third party support) India [2008] UKAIT 2004".*

7. On 26 January 2010 the public authority responded to the request. It provided some background information and also directed the complainant to information which was available online. It withheld further information under the exemption at section 36(2) (prejudice to the effective conduct of public affairs).

8. On 11 February 2010 the complainant sought an internal review. This was acknowledged on 2 March 2010 and he was advised that a response would be sent by 8 April 2010.

9. On 29 March 2010 the public authority sent its internal review. It did provide some information but upheld that the remainder was properly exempt.

The investigation

Scope of the case

10. On 20 April 2010 the Commissioner received the complaint.

11. On 18 August 2010 the Commissioner wrote to the complainant to advise him that he was ready to commence his investigation. He sought to clarify the extent of the complaint and was advised:

> *"I want to see all governmental documents which lead to the abolition of the working holiday rule which has been in place since the I think the 1970's designed to assist the youth from the commonwealth countries to come to the UK and the UK with transient short term work force".*

12. During enquiries with the public authority the Commissioner established that there were four documents which were deemed relevant to the request. Information had already been partially provided from two of these documents at internal review stage, the other two having been withheld in full. The Commissioner established that information from the two documents was partially disclosed because the remaining information was deemed to be 'outside the scope' of the request. Having viewed these two documents in full the Commissioner is satisfied that this is the case.

13. This Notice therefore only considers those two documents which have been fully withheld.

14. During his investigation the public authority also sought to introduce section 40(2) in respect of staff names, and some attributed contributions, in one of the withheld documents. As regulator of the DPA, the Commissioner considers it appropriate that he should consider the possible disclosure of 'personal information' and this will therefore be included in this Notice.

Chronology

15. On 1 September 2010 the Commissioner commenced his enquiries with the public authority.

16. On 30 September 2010 the public authority provided its full response. At this point it introduced reliance on section 40(2) (personal information) in respect of the names of staff who had attended a meeting. This included their association with some of the comments minuted at the meeting.

17. The Commissioner contacted the complainant to ascertain whether he required him to consider release of the staff names. The complainant confirmed that he did.

18. On 11 October 2010 the Commissioner asked the public authority to provide him with job titles and grades of the staff involved. On 13 October 2010 the public authority responded.

19. As two staff were not identified the Commissioner sought further clarification. The public authority provided a response on 10 November 2010.

Analysis

Exemptions

Section 36(2) – prejudice to the conduct of public affairs

20. The public authority confirmed that it had relied on the exemption at section 36(2)(b)(i) and (ii). This provides that:

> *"Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act …*
>
> *(b) would, or would be likely to, inhibit-*
> *(i) the free and frank provision of advice, or*
> *(ii) the free and frank exchange of views for the purposes of deliberation."*

21. These exemptions can only be cited where the opinion of a specified 'qualified person' (QP) is that the inhibition described in these sections would be at least likely to result through disclosure. The QP for each public authority is either specified in the Act, or is authorised by a Minister of the Crown. Consideration of these exemptions is a two-stage process; first, it must be established that the citing of the exemptions is based on the opinion of the specified QP for the public authority in question and that the opinion of the QP is objectively reasonable. Secondly, these exemptions are subject to the public interest test. This means that the information, if exempt, should nevertheless be disclosed if the public interest in the maintenance of the exemptions does not outweigh the public interest in disclosure.

22. Turning first to whether this exemption is engaged, in order to establish this the Commissioner will consider the following:

- whom the Act or a Minister of the Crown specifies as QP for this public authority;
- whether the QP gave an opinion in this case;
- when this opinion was given;
- whether the opinion given was objectively reasonable in substance and reasonably arrived at.

23. Section 36(5)(a) provides that the QP for central government is any Minister of the Crown. In this case the opinion of Phil Woolas, Minister for Borders & Immigration, was sought on 21 October 2010 prior to the refusal being issued and, again, on 23 March 2010 prior to the internal review being issued. The opinions were given on 25 January 2010 and

29 March 2010 in emails from the QP's private office which confirmed that the QP had noted and agreed to the submissions. The Commissioner therefore accepts that an appropriate person acted as QP in this case and that this person did give an opinion on the citing of this exemption.

24. At both refusal and internal review stages, and latterly to the Commissioner, the public authority confirmed that the inhibition *would* occur, rather than that it *would be likely* to occur. This point was also included in the submissions to the QP prior to him giving his opinion. The Commissioner has taken this as clarification that the opinion of the QP was that inhibition *would* occur.

25. Turning to whether this opinion was reasonable, the Commissioner has considered first whether it was *reasonably arrived at*. The public authority has stated that the opinion of the QP was based on a submission that he was provided with to assist with the formation of his opinion. This submission was dated 21 January 2010 and a copy of this has been provided to the Commissioner. The submission includes a description of the content of the withheld information, the anticipated harm that would result from disclosure and a draft response to the complainant; it does not include a copy of the withheld information.

26. Where the QP relies entirely on a submission as the basis for their opinion, rather than reviewing the content of the information in question, the Commissioner regards it as essential that this submission sets out the reasoning for the suggested citing of section 36 clearly and in detail. Having himself viewed the withheld information the Commissioner does not believe this to have been the case on this occasion.

27. The submission does not set out arguments relevant to sections 36(2)(b)(i) and (ii) in any detail. Instead, only general factors relating to the importance of officials providing uninhibited advice and exchanging uninhibited views are set out. The view of the Commissioner is that this submission should have explained how inhibition relevant to sections 36(2)(b)(i) or (ii) would have resulted through disclosure of the content of the information in question. The Commissioner also believes that the submissions should have addressed the age of the information at the date of the request as it was not clearly apparent why the matter could reasonably still be regarded as "live" and therefore sensitive. Furthermore, the Commissioner considers that the submission also fails to accurately describe the nature of the withheld information; rather, it makes general comments in which it describes the information as covering *"many sensitive issues"* and *"confidential communications"*. The

Commissioner does not agree that these descriptions accurately describe the withheld information.

28. Following its initial refusal the public authority made a further submission to the same QP prior to issuing its internal review. It advised the QP that it had reconsidered the scope of the request and had narrowed what it considered to be caught within the scope. It concludes that that there are four relevant documents, as previously identified by the Commissioner above, but does not include them with the submission. Once again, however, the submission does not set out arguments relevant to sections 36(2)(b)(i) and (ii) in any detail, only stating general factors relating to the importance of officials providing uninhibited advice and exchanging uninhibited views. Again, the Commissioner considers that the submission also fails to accurately describe the nature of the withheld information.

29. On the basis of the inadequacy of the submission and the representations from the public authority suggesting that this formed the entirety of the basis for the QP's opinion, the Commissioner cannot be satisfied that this opinion was reasonably arrived at. However, the approach of the Commissioner is that an opinion arrived at through a flawed process may still be accepted as reasonable if it is overridingly reasonable in substance. This is in line with the approach taken by the Information Tribunal in *McIntyre vs the Information Commissioner and the Ministry of Defence* (EA/2007/0068) in which it stated:

> *"…where the opinion is overridingly reasonable in substance then even though the method or process by which that opinion is arrived at is flawed in some way this need not be fatal to a finding that it is a reasonable opinion"* (paragraph 31).

30. In this case, the Commissioner has considered the content of the information in question and what this suggests about the reasonableness, or otherwise, of the QP's opinion. The Commissioner also has considered whether there were any other readily apparent factors e.g. the age of the information and current sensitivity that would make the opinion overridingly reasonable. If the Commissioner considers that the opinion were overridingly reasonable in substance, he will conclude that the exemption is engaged despite the flaws in the process of the formation of the opinion.

31. It is apparent that the reasoning for the QP's opinion was that disclosure would inhibit officials when providing advice and when exchanging views, although this had not been presented to the QP in any detail. Having viewed the withheld information alongside the submissions, the Commissioner is not convinced that the public

authority has specifically related this harm to the content of the information.

32. Some of the content of the information in question is of a free and frank nature, particularly the minutes of a meeting. However, this does not necessarily suggest that it is reasonable at the time of the request to hold the opinion that inhibition would result in future meetings were this information to be disclosed. The Commissioner here notes that the Scheme had already been abolished for over a year when the request was made and the information dates from 2005, five years after the request was made. This indicates that the opinion of the QP is likely to have been that disclosure would result in a general inhibitory effect in the future, rather than on any specific issue or topic at the time of the request.

33. As to whether it is reasonable to hold the opinion that disclosure here would cause a general inhibitory effect in future, such as to the candour of officials, the Commissioner does not believe that disclosing the content of the information at the time of the request is reasonably capable of supporting this suggestion. The Commissioner also notes the following comment made by the Information Tribunal in the case *Department for Education and Skills v the Information Commissioner* [EA/2006/0006] in response to the suggestion that disclosure of information would result in an inhibitory effect to the candour of officials:

> *" [principle] (vii) In judging the likely consequences of disclosure on officials' future conduct, we are entitled to expect of them the courage and independence that has been the hallmark of our civil services since the Northcote – Trevelyan reforms"* (paragraph 75).

34. The Commissioner does not, therefore, consider the QP's opinion to have been overridingly reasonable in substance, despite the flaws in the process of the application of the exemption. On the basis that the opinion was neither reasonably arrived at, nor overridingly reasonable in substance, the Commissioner concludes that the opinion of the QP that disclosure of the information in question here would result in inhibition to the free and frank provision of advice and to the free and frank exchange of views for the purposes of deliberation was not reasonable. The exemption provided by sections 36(2)(b)(i) and (ii) are not, therefore, engaged. As this conclusion has been reached at this stage it has not been necessary to go on to consider the balance of the public interest.

Section 40(2) – personal information

35. The public authority did not originally cite this exemption but introduced it during the Commissioner's investigation. It stated:

> *"Although this exemption has not thus far been engaged, it should be noted that the meeting minutes contain the names of junior officials. We do not consider that the disclosure of staff names in this case would be fair, in a general sense, given the expectations that these staff have about the disclosure of their identities and contact details. Therefore disclosure could not be made in compliance with the general "fairness" test within the first data protection principle, and it would therefore breach the DPA with the result that section 40(2) applies. In addition it is worth noting that even if disclosure could be regarded as being generally "fair" none of the more specific conditions enabling compliance with the first data protection principle contained within Schedule 2 of the DPA would be met in this case".*

36. The Commissioner asked for more information about the staff members, specifically requiring their job title and grade, and also confirmation as to whether or not their roles were public-facing. He was provided with some details but was also advised as follows:

> *"The details provided relate to their current roles, however it is likely that they may have been of a lower grade in 2005 when the meeting was held. In addition, due to the length of time that has passed, I am afraid that it was not possible to provide you with the information you requested for all individuals".*

37. It further explained in respect of two staff:

> *"As these are not Home Office staff I am unable to provide further details but I can confirm that their names appear to be in the public domain".*

38. Section 40(2) provides an exemption for information which is the personal data of an individual other than the applicant, and where one of the conditions listed in section 40(3) or section 40(4) is satisfied. One of the conditions, listed in section 40(3)(a)(i), is where the disclosure of the information to any member of the public would contravene any of the principles of the Data Protection Act (the "DPA").
39. The first principle of the DPA requires that the processing of personal data is fair and lawful and:

- at least one of the conditions in schedule 2 is met, and

- in the case of sensitive personal data, at least one of the conditions in schedule 3 is met.

Is the requested information personal data?

40. Section 1 of the DPA defines personal data as data which relates to a living individual who can be identified:

- from that data,
- or from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.

41. The information which the public authority has withheld on the basis of section 40(2) consists of the names of eight members of the public authority's staff and two staff from a different public authority. All have been identified as attending a meeting and some comments have been attributed to some named staff.

42. In one instance, the public authority has been unable to provide any further details about a member of its staff, i.e. their job role or grade. The Commissioner has also searched online to try to ascertain whether there is anything publically available about this person; he has been unable to locate any information. The public authority contends that, despite being unable to trace any further information about this party, it is nevertheless 'personal data'. The Commissioner has been unable to identify the person from searching the internet himself and he notes that although he has afforded the public authority the opportunity to match the name with any data which it has available to it, it has been unable to do so. It would therefore be possible to conclude that the information is not 'personal data'.

43. Nevertheless, the definition of personal data takes account of not only the information in the hands of the data controller but other information that may be available and the Commissioner is of the opinion that there will undoubtedly be other people who will be able to identify that person from their name and recognise them as being the person that is referred to as attending and contributing to the meeting in question. In light of this the Commissioner finds that the name of the 'unknown party' remains their 'personal data' and should be treated as such. However, he is disappointed that the public authority has been unable to identify what appears to him to a member of its staff from its own records.

44. The remaining staff are identifiable and the Commissioner therefore considers that both their names, and any comments attributed to them, are their *'personal data'*. However, for the section 40(2) exemption to apply the public authority would need to show that

disclosure would contravene one of the data protection principles as set out in the Data Protection Act 1998. The first data protection principle has been cited in this case.

The first data protection principle

45. The public authority has advised the Commissioner that it believes disclosure would contravene the first data protection principle. The first data protection principle provides that:

> *"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless-*
> *(a) at least one of the conditions in Schedule 2 is met, and*
> *(b) in the case of sensitive personal data, at least one of the conditions in schedule 3 is also met."*

46. The Commissioner's guidance on section 40, which can be accessed on his website[2], suggests a number of issues that should be considered when assessing whether disclosure of information would be fair.

- The individual's reasonable expectations of what would happen to their personal data.
- The seniority of any staff.
- Whether the individuals specifically refused to consent to the disclosure of their personal data.
- Whether disclosure would cause any unnecessary or unjustified distress and damage to the individuals.
- The legitimate interests in the public knowing the requested information weighed against the effects of disclosure on the individuals.

47. Furthermore, the Commissioner's guidance suggests that, when assessing fairness, it is also relevant to consider whether the information relates to the public or private lives of the third party. His guidance states:

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

[2]http://www.ico.gov.uk/~/media/documents/library/Freedom_of_Information/Detailed_specialist_guides/PERSONAL_INFORMATION.ashx

48. Having reviewed the information the Commissioner notes the following:

- two members of staff represented a different public authority;
- the grade and job title of one member of staff cannot be ascertained;
- seven members of staff were identified as having job grades from the grade of Executive Officer up to that of Assistant Director, none having public-facing roles.

49. As shown above, the public authority advised the Commissioner that it believed disclosure would be unfair because the staff were *'junior officials'*. The Commissioner believes that a distinction can be drawn between the levels of information which junior staff should expect to have disclosed about them compared with what information senior staff should expect to have disclosed. This is because the more senior a member of staff the more likely it is that they will be responsible for making influential policy decisions and/or decisions related to the expenditure of significant amounts of public funds.

50. The public authority has not apprised the Commissioner with the grades of the two staff representing a different public authority. However, from a simple internet search of the named individuals the Commissioner has found various internet sites which openly associate them with working for that public authority in the immigration field. The Commissioner is therefore of the view that, because this information is already widely in the public domain, it would not be unfair to the individuals concerned if disclosure of their names, together with any related comments, were ordered in this case.

51. The Commissioner has gone on to consider the seniority of the public authority's own employees. It is his view that, in the majority of cases, the public authority has set the threshold of seniority too high.

52. By way of comparison, it is the Commissioner's policy to release the names of those staff in his own structure from level D and above. It is the Commissioner's view that a Level D position within his own structure either involves some level of managerial responsibility and therefore seniority over other members of staff or a role that involves decision making for which the employee has accountability. He would equate this level with the grade of Higher Executive Officer (HEO) and above within this public authority's grading structure.

53. The Commissioner here notes that the public authority was unable to provide the grade of one member of its staff and it is not therefore known whether or not they were at the grade of HEO or above. In the absence of this information he therefore is unable to conclude that

disclosure of this particular name would be fair. However, for those other members of staff where the grade is known, the Commissioner considers that staff of the grade of HEO or above hold positions of sufficient seniority to warrant the further transparency and public scrutiny such roles attract, even where the involvement in the particular decision making is limited or indirect.

54. In other cases he has considered the Commissioner has drawn a distinction between information which relates to an employee acting in an official capacity and information which relates to their private life, the latter clearly requiring more privacy and protection. In this case, the requested information clearly relates to attendees at a meeting acting in an official or work capacity; it is not information which relates to their private life.

55. The Commissioner has seen no evidence to suggest that the abolishment of the Working Holidaymaker scheme (WHS) has been particularly controversial. Therefore, he cannot accept that disclosure in this case could possibly impact on the private lives of the attendees; the public authority has produced no evidence to demonstrate that this would occur or to suggest that this is even a remote possibility. Disclosure of the names of the attendees, if ordered in this case, would mostly only reveal that they attended a meeting to discuss changes to the WHS. Some then provide individually attributed comments or suggestions, none of which the Commissioner views as being particularly controversial but rather as responses to queries or to further debate. Despite the fact that disclosure would only result in a limited amount of information about the attendees becoming available, the Commissioner nevertheless considers that there is an interest in the additional transparency and openness that this would bring.

56. To comply with the first principle disclosure also needs to be lawful. The public authority has provided no arguments to suggest that disclosure would be unlawful in this particular case and the Commissioner therefore concludes that there is no such reason.

57. In conclusion, it is the Commissioner's view that it would not be unfair or unlawful to release the names of attendees at the grade of HEO or above, or any of their individual contributions to the meeting, in response to this request.

58. However, as outlined above, for third party personal data to be disclosed under the Act, disclosure not only has to be fair and lawful but it also has to meet one of the conditions for processing in schedule 2 of the DPA. In this case the Commissioner considers that the most relevant condition is Condition 6. This 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."*

59. The Commissioner considers that there is a significant legitimate public interest in obtaining information about the process that led to the abolishment of the WHS to enable the public to better understand the reasons for this taking place. According to the complainant, the WHS had: *"been in place since the 1960's for the benefit of young commonwealth citizens"*, and he was trying to ascertain how its abolishment had come about. The Commissioner believes that any explanations regarding the cessation of a scheme which has been in existence for a considerable length of time would therefore serve the public interest.

60. The Commissioner considers that – given the benefits of transparency and accountability – a legitimate interest arises from the disclosure on request of information by public bodies. More specifically, there is legitimate interest in the public knowing and understanding the reasoning behind the abolishment of the WHS.

61. The Commissioner further finds that disclosure is necessary for the public to be able to establish the seniority of those involved. He also finds, in this case, that there would be no unwarranted interference or prejudice to the rights, freedoms and legitimate interests of the senior-level individuals concerned.

62. In conclusion, it is the Commissioner's view that disclosure of the names and comments of the attendees in this case, at the level of HEO or above, would be fair, and that condition 6 of Schedule 2 of the DPA is met.

Procedural requirements

Section 1 – general right of access to information
Section 10 - time for compliance

63. Section 1(1)(b) of the Act requires a public authority to provide information to an applicant in response to a request. Section 10 of the Act states that a public authority must comply with section 1(1) promptly and, in any event, not later than 20 working days after the request has been received.

64. For the reasons set out above the Commissioner is of the view that the information, other than the names of any staff at grades lower than HEO, ought to have been disclosed to the complainant at the time of his request. As this information was wrongly withheld the Commissioner concludes that the public authority failed to comply with section 1(1)(b) of the Act. By failing to supply this information within 20 working days the Commissioner finds that the public authority also failed to comply with section 10(1) of the Act.

The Decision

65. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

- it correctly withheld the name/s of its junior and unknown staff under section 40(2).

66. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- it incorrectly withheld the names, and any comments, of its senior staff, and staff from another public authority, under the exemption at section 40(2);
- it incorrectly withheld information by virtue of section 36(2);
- in failing to disclose this requested information it breached sections 1(1)(b) and 10(1).

Steps required

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

- it should disclose the withheld information other than the names of its junior and unknown staff.

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

Failure to comply

69. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

70. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is sent.

Dated the 21st day of March 2011

Signed ……

Steve Wood
Head of Policy Delivery

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

Legal annex

Section 1(1) provides that -
"Any person making a request for information to a public authority is entitled-

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

Section 10(1) provides that -
"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt".

Section 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."