

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 01 March 2011

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

### Summary

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The complainant asked the Information Commissioner to provide information with respect to four questions he had submitted. These questions related to entries in the Data Protection Public Register maintained by the Information Commissioner's Office (the 'ICO') and concerned previous complaints he had made to the Commissioner under the Data Protection Act 1998 (the 'DPA'). The Information Commissioner provided information in relation to the first two of the questions but considered that the other two were enquiries regarding a closed DPA case, to be dealt with in the normal course of business. They were therefore referred to the relevant DPA case officer. When the complainant submitted his request for an internal review, he clarified these last two questions and they have now been treated by the Commissioner as new requests for information. In failing to inform the complainant at the time of the request that he did not hold recorded information concerning the last two questions, the Commissioner finds some procedural breaches of the Freedom of Information Act 2000.

### 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.

## Background

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2. On 26 May 2004 the complainant had written to the Information Commissioner regarding a subject access request he had made to [company one]. This was handled as a Data Protection complaint.
3. On 26 January 2009 the complainant wrote to the Information Commissioner concerning the processing of his personal data by [company two]. He was informed that two case files had been created to handle his complaint.
4. On 30 July 2009 with regard to one of his complaints made on 26 January 2010, the complainant was informed by the Commissioner that in this case it was likely that [company two] had complied with the Data Protection Act 1998 (the 'DPA').
5. The Commissioner's assessment of 30 July 2009 led to further correspondence between the Commissioner and the complainant about the same issue which culminated in a further information request dated 4 February 2010. This concerned entries on the ICO's Data Protection Public Register and the processing of the complainant's staff records by [company one] and [company two].
6. The Data Protection Public Register is a public register of data controllers which is maintained by the ICO. Each register entry includes the name and address of the data controller and details about the types of personal information they process. A sample entry can be found on the ICO website at the following link:

<http://www.ico.gov.uk/ESDWebPages/SearchSample.html>

## The Request

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7. On 4 February 2010 the complainant made the following information request to the Information Commissioner:
  1. *Is [company one] now [company two] or [company three] in the ICO's "Data Protection Public Register"?*
  2. *What was the ICO registration date, number and address for [company one] when [complaint dated 26 May 2004] was assigned to [name one], assessed by her and reviewed by [name two]?*
  3. *Why and/or how did [company one] process my "staff records"*

*[complaint dated 26 May 2004 and associated information request] without being registered in the ICO's "Data Protection Public Register"?*

4. *Why and/or how are my "staff records" now being processed by [company two] [two complaints dated 26 January 2009 and the information request associated with one of them]?*
8. On 22 February 2010 the Information Commissioner wrote to the complainant. He answered questions 1 and 2. With regard to question 1, the Commissioner explained that the ICO does not hold information which would confirm that one company had become another company. However, he provided registration details for [company two] and [company three]. He also provided registration details for [company one], as requested in question 2.
9. The Commissioner explained that questions 3 and 4 appeared to relate to the handling of another complaint made by the complainant and informed him that it had been passed to the relevant DPA case officer for a response.
10. On 25 February 2010 the complainant raised concerns about the response he had received from the Commissioner and on 11 March 2010 the Commissioner wrote to him to clarify the information which had been provided.
11. On 15 March 2010 the DPA case officer informed the complainant that questions 3 and 4 did not relate to the assessment the Commissioner had made under the DPA on 30 July 2009 with respect to his other complaint, but that they raised new issues which should be treated as a new complaint. The complainant was asked to therefore submit a DPA complaint form.
12. On 6 April 2010 the complainant requested an internal review of the response he had received from the Commissioner. He also complained as he did not consider that he should be asked to complete a new complaint form in order to obtain a response to questions 3 and 4.
13. On 5 May 2010 the Information Commissioner provided an internal review of his response. He explained that the questions 1 and 2 had been treated as requests for recorded information and had been answered. He also explained that questions 3 and 4 had been passed to the relevant DPA case officer as they asked questions (rather than requesting information) relating to the handling of the complainant's case.

14. The Information Commissioner explained that a request which contains such an enquiry is treated as a 'normal course of business' enquiry rather than a formal request for information under the Act. The complainant had received a response from the DPA case officer on 15 March 2010 and this had explained that the questions 3 and 4 raised new issues and therefore required a new complaint. This response was upheld.
15. On 17 May 2010 the Information Commissioner wrote to the complainant with regard to the service complaint he had also made on 6 April 2010. The Commissioner explained that questions 3 and 4 were considered to be new complaints and separate to others that he had made before. It was explained that the Commissioner requests a new complaint form where this would allow a clarification of the issues which an individual wishes to raise.
16. In the interests of good customer relations, the Commissioner informed the complainant that with respect to question 3, it had not been established that [company one] were processing his records without being notified. As [company one] is currently notified, the Commissioner would not take any further action in relation to this matter. The Commissioner explained that he could not answer question 4. Such a question would have to be directed to [company two.]

## The Investigation

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### Scope of the case

17. On 22 June 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
  - He received information, but not within 20 working days.
  - The information he received was not what he requested.
  - He was refused information he had requested.
18. The complainant explained the background to his request and summarised events since 2004. He was not satisfied with the responses he had received from the Information Commissioner with regard to the entries that the ICO held on its Data Protection Public Register with respect to [company one] and [company two]. He was not satisfied with the assessments he had received from the Commissioner regarding his Data Protection complaints.

19. The complainant rephrased the four questions he had made in his information request:
- a) *Please forward me any information in the ICO's Data Protection Public Register that confirms that [company one]'s entry is either current or was superseded by that of either [company two] or [company three].*
  - b) *Please forward me the ICO registration date, number and address for [company one] when [complaint dated 26 May 2004] was assigned to [name 1], assessed by her and reviewed by [name 2]?*
  - c) *Please forward me full details of all the entries in the ICO's Data Protection Public Register that entitled [company one] to lawfully process my "staff records" [complaint dated 26 May 2004 and associated information request].*
  - d) *Please forward me full details of all the entries in the ICO's Data Protection Public Register that entitled [company two] to lawfully process my "staff records" [two complaints dated 26 January 2009 and the information request associated with one of them].*
20. The Commissioner has considered the response to the four questions as asked on 4 February 2010 within the scope of this case. Questions (a) and (b) above are effectively the same as the first two asked on 4 February 2010 and answered on 22 February 2010. The ICO does not hold information which confirms whether one company has been superseded by another. The complainant had been provided with current registration details for [company one], [company two] and [company three]. Questions (c) and (d) have now been answered as new requests.
21. The complainant asked the Commissioner to resolve the following issues with a Decision Notice; however, these issues are not addressed in this Notice because they are either not requirements of Part 1 of the Act or they have been addressed in another Decision Notice (FS50320656).
- He argued [company one] is guilty of an offence under section 21(2) of the DPA in unlawfully failing to notify the ICO of changes to its entry in the Register of Data Controllers.
  - He argued [company two] is guilty of an offence under section 55(3) of the DPA in unlawfully obtaining and processing his

personal data without the consent of the data controller [company one].

- He believed the ICO's past responses to his information requests were incomplete and inconsistent. (The issue of incomplete and inconsistent information is addressed in the Decision Notice FS50320656).
- He believed that some of the ICO's responses had "consciously and deliberately" referred to a generic name for [company one] rather than [company one] or [company two] or [company three].

## Chronology

22. On 5 October 2010 the Commissioner wrote to the complainant and asked him whether the four requests he had made in his complaint of 22 June 2010 labelled (a) to (d) constituted a revised information request, further to that made on 4 February 2010.
23. On 6 October 2010 the complainant replied to the Commissioner and informed him that his complaint of 22 June 2010 was an application for a Decision Notice to address the outstanding issues.
24. On 13 October 2010 and 15 October 2010 key individuals within the ICO met to discuss the requirements of this case. It was agreed that questions 1 and 2 (asked as part of the original request on 4 February 2010) were effectively the same as questions (a) and (b) (asked in the complaint made to the Commissioner on 22 June 2010). The ICO considered that these two questions had been answered on 22 February 2010. It was also agreed that questions (c) and (d) of this new complaint were clarified requests and should therefore be treated as new requests.
25. On 25 October 2010 the Commissioner confirmed to the complainant that he had forwarded question (c) and (d) to his Internal Compliance Department to be treated as a clarified or new request.
26. On 28 October 2010 the complainant confirmed that the four questions in his letter of 22 June 2010 should not be treated as routine correspondence. He also reminded the Commissioner that he had asked him to consider his information requests made on 11 March 2010 and 4 February 2010 within the framework of this case.
27. This Decision Notice addresses the information request of 4 February 2010. The issues raised in a further information request made by the complainant on 11 March 2010 cover the same ground and have

therefore also been addressed in this Decision Notice; however the actual response to that request has not been investigated here as this was a separate request and was answered on 24 March 2010.

28. On 8 November 2010 the Information Commissioner responded to the clarified request and provided a response to questions (c) and (d).

## Analysis

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### Substantive Procedural Matters

#### Section 1

29. 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."*

30. On 22 February 2010, the Information Commissioner responded to questions 1 and 2.

31. With respect to question 1, the Commissioner explained that he could not confirm that [company one] is now [company two] or [company three] as the ICO does not hold this information.

32. However, the Commissioner confirmed that [company two] is registered and he provided the registration number and expiry date for the entry. He confirmed that [company three] is registered and provided the registration number and expiry date for the entry.

33. With respect to question 2, the Commissioner provided the registration date, registration number and address for [company one] for the period May 2004 and May 2005 when the complaint dated 26 May 2004 was assigned and reviewed.

34. The Commissioner explained to the complainant that it considered questions 3 and 4 to be enquiries which related to the handling of a past complaint. These questions were therefore passed to the DPA case officer for a response.

35. The Commissioner is satisfied that questions 3 and 4 of the information request were questions regarding the processing of records by [company one] and [company two] and that they were questions asking for an explanation of the behaviour of these companies. They were general questions arising from the DPA assessment provided to the complainant on 30 July 2009.
36. However, the Commissioner considers that the questions should have been treated as a request for recorded information and that they were valid freedom of information requests as they satisfied the requirements of section 8(1) of the Act. In the case of *Richard Day v IC and the Department for Work and Pensions (EA/2006/0069)*, the Information Tribunal reiterated that the Act only extends to requests for recorded information; however it stated that if a general question can be answered by providing recorded information, a public authority is obliged to do so.
37. The Commissioner therefore considers that if the public authority does not hold recorded information which would answer the questions asked, then the proper response is to deny that the information is held, as required under section 1(1)(a).
38. In this instance, questions 3 and 4 were referred to the relevant DPA case officer who informed the complainant that these requests for explanations did in fact raise new issues which should be clarified in a new complaint form. When the complainant complained about this response, the Commissioner again considered the issues raised by the questions and wrote to him on 17 May 2010. This letter addressed the queries raised.
39. With respect to question 3, the Commissioner explained that it had not been established that [company one] had processed the complainant's records without being notified in 2004 and even if it was, no further action would be taken by the ICO. [Company one] was currently notified.
40. With respect to question 4, the Commissioner explained that it was not a question the ICO would be able to answer. Only [company two] would be able to explain why it was now processing the complainant's staff records.
41. However, when the complainant rephrased his questions as requests for recorded information, the Commissioner did provide two register entries from the Data Protection Public Register. This was an entry for [company one] in 2004 and an entry for [company two] in 2008. These



were the entries in the register at the time the complainant stated that [company one] and [company two] were processing his staff records.

42. The Commissioner considers that questions 3 and 4 of the information request of 4 February 2010 should have been treated by the ICO as requests for recorded information.
43. As the questions required an explanation of the behaviour of the companies concerned and did not relate to recorded information, the ICO should have informed the complainant that it did not hold the requested information.
44. The Commissioner therefore considers that in providing the requested information that it held regarding questions 1 and 2, the ICO has complied with section 1(1)(a) and (b).
45. However, with respect to questions 3 and 4, the Commissioner should have made it explicitly clear at the time of the request that no recorded information was held which would provide these explanations. He has therefore breached section 1(1)(a).

### **Procedural Requirements**

46. The request was made on 4 February 2010 and a response was sent on 22 February 2010. The Commissioner therefore considers that a response concerning questions 1 and 2 was provided to the complainant within 20 working days in compliance with section 10(1) of the Act.
47. However in failing to inform the complainant that it did not hold the requested information regarding questions 3 and 4 within 20 working days, the Commissioner is found to be in breach of section 10(1) of the Act.

### **The Decision**

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48. 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:
  - The Commissioner has complied with section 1(1)(a) and (b) in providing the requested information that it held regarding questions 1 and 2.

- The Commissioner has complied with section 10(1) in providing the information regarding question 1 and 2 within 20 working days.
49. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- The Commissioner failed to inform the complainant that no recorded information was held with regard to questions 3 and 4 and has therefore breached section 1(1)(a).
  - The Commissioner failed to provide a response to the complainant regarding questions 3 and 4 within the statutory time period contained within the provisions set out in section 10(1).

### **Steps Required**

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50. The Commissioner requires no steps to be taken.

## Right of Appeal

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51. 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)

52. 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.
53. 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 1<sup>st</sup> day of March 2011**

**Signed .....**

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

## Legal Annex

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### General right of access

**Section 1(1)** provides that –

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

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

### Request for information

**Section 8(1)** provides that –

“In this Act any reference to a “request for information” is a reference to such a request which –

- (a) is in writing,
- (b) states the name of the applicant and an address for correspondence, and
- (c) describes the information requested.”

### Time for Compliance

**Section 10(1)** provides that –

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

**Section 10(2)** provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is 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.”

**Section 10(3)** provides that –

“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.”

**Section 10(4)** provides that –

“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.”

**Section 10(5)** provides that –

“Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.”

**Section 10(6)** provides that –

“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 Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”