

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 14 March 2011**

**Public Authority:** Northamptonshire County Council  
**Address:** County Hall  
Northampton  
NN1 1ED

#### Summary

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The complainant requested a copy of the successful bid for the Centre of Independent Living Northampton as well as a copy of the awarded contract. Northamptonshire County Council ("the Council") decided to make a discretionary disclosure of the successful bid (outside the terms of the Freedom of Information Act ("the FOIA")). It also provided some information from the contract but withheld other information using the exemption under section 43(2) of the FOIA. At the end of the Commissioner's investigation, the Council also sought to rely on section 40(2) in relation to a small amount of the withheld information. The Commissioner decided that the exemption under section 43(2) was engaged. He found that some information had been correctly withheld upon application of the public interest test but he also considered that some should have been disclosed. The Commissioner found that section 40(2) was engaged. He found breaches of section 1(1)(b), 10(1), 17(1) and 17(1)(a)(b) and (c) of the FOIA. The Commissioner has ordered the disclosure of information within 35 days.

#### The Commissioner's Role

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

## Background

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2. In January 2005, the Cabinet Office published a report entitled "Improving the Life Chances of Disabled People". The report set out a 20 year vision to improve the quality of life of disabled people in Britain. The report recommended that by 2010, each locality (defined as the area covered by a council with social services responsibilities) should have a "user-led organisation" modelled on existing Centres for Independent Living. In order to achieve this, the Council invited tenders in August and September 2009 for a user-led organisation to act as a partner to develop and run a Centre for Independent Living ("CIL") in Northamptonshire over 3 to 5 years.
3. The complainant is a trustee of an organisation called Open Roads. Open Roads entered into a partnership with the Disability Resource Centre ("DRC") in a bid to run the CIL. Following the award of the contract in December 2009, the partnership broke down and ceased to exist in February 2010 resulting in the Council entering into a final contract only with DRC in April 2010 following negotiations.

## The Request

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4. On 7 April 2010, the complainant wrote to the Council and requested information in the following terms:

*"I am an Open Roads Trustee, and I would like to request for a copy of the tender of Centre of Independent Living Northampton and also a copy of the awarded contract".*

5. The Council responded on 7 May 2010. It stated that it had enclosed "a copy of the invitation to tender" although it had redacted some information using section 40(2) of the FOIA. It also enclosed a redacted version of the awarded contract. It stated that the redacted information was exempt under section 43(2) and that the public interest favoured maintenance of the exemption.
6. The complainant requested an internal review of the refusal on 6 May 2010.
7. The Council provided the complainant with a copy of its internal review on 2 July 2010. It stated that it wished to maintain its position.

## The Investigation

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### Scope of the case

8. On 22 July 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 whether the Council had correctly refused to provide the information he requested.
9. During the course of the Commissioner's investigation, the Council decided to make a discretionary disclosure to the complainant outside the terms of the FOIA because Open Roads had originally been in partnership with the DRC. This disclosure related to the successful bid (which was the information that the complainant actually wanted rather than the invitation to tender document that was provided by the Council initially). Following this disclosure, the complainant agreed to limit his complaint only to the information that had been withheld from the contract. The Council disclosed additional information from the contract as it decided that this could be disclosed due to the passage of time since the original request had been made. The Commissioner considers that the complaint relating to this information has been informally resolved by the disclosure and it has not therefore been addressed in the Analysis or Decision sections of this notice.

### Chronology

10. On 15 September 2010, the Commissioner sent a standard letter to the Council in which he asked for a copy of the withheld information to be provided to him.
11. On 20 September 2010, the Commissioner wrote to the complainant. He noted that the Council had provided a copy of the "invitation to tender" however comments made by the complainant suggested that this was not what he required. The Commissioner asked for clarification regarding the nature of the complainant.
12. On the same day, the complainant telephoned the Commissioner. He confirmed that he was acting on behalf of Open Roads. He also explained that he had not wanted the invitation to tender. He wanted a copy of the successful bid. He confirmed that he wished the Commissioner to consider the Council's decision to withhold the information he had requested.

13. On 21 September 2010, the Commissioner wrote to the Council. The Commissioner explained that the complainant was seeking a copy of the successful bid and he asked the Council to consider whether it was able to disclose a copy of this to the complainant. In relation to the information withheld from the contract, he asked for further arguments to support the Council's reliance on section 43(2). In particular, the Commissioner explained that in relation to the successful bidder's interests, he would only accept arguments that had originated from them as opposed to speculative arguments on their behalf.
14. On 11 October 2010, the Council telephoned the Commissioner to confirm that it had decided to make a discretionary disclosure to the complainant outside the terms of the FOIA. It explained that it felt it was fair to make a copy of the successful bid available to the complainant because Open Roads were originally in partnership with the successful bidder. It added that it still wished to maintain that parts of the contract were exempt under section 43(2) however. It explained that it was not willing to disclose this information to the complainant outside the terms of the FOIA because Open Roads was not in a partnership with the successful bidder by the time the contract was finalised.
15. The Council provided a partial response to the Commissioner on 20 October 2010. It enclosed a copy of the withheld information and provided background details to help the Commissioner to understand the context of the request.
16. The Council provided a full response to the Commissioner on 26 October 2010. It stated that it had asked the DRC for its views and it provided arguments in support of withholding the information as well as arguments in relation to the public interest test. The Council also added that it believed that its own interests and those of other local authorities would be prejudiced. It stated that it did try to obtain the views of other councils in this matter however no responses had been received. Finally, the Council said that it would shortly be disclosing a copy of the successful bid to the complainant outside the terms of the FOIA. It stated that this would include all the information apart from bank details, details of other contracts held by DRC, the contract costs and the full CV of an employee of DRC.
17. On 27 October 2010, the Council wrote to the complainant supplying the information relating to the successful bid outside the terms of the FOIA. It pointed out that it had withheld some information as described above.

18. On 1 November 2010, the Commissioner wrote to the complainant. He asked the complainant to confirm whether, in view of the information disclosed from the successful bid, he was happy for the Commissioner to limit his investigation at this stage only to the information withheld from the contract using section 43(2).
19. On the same day, the complainant replied to the Commissioner. He confirmed that he had received the information and he said he was happy for the investigation to focus on the withheld information from the contract. He said he was only interested in matters concerning Open Roads.
20. On the same day, the Commissioner emailed the complainant asking him what was meant by his statement that he was only interested in matters concerning Open Roads.
21. The complainant telephoned the Commissioner following receipt of the email. He explained that in his view, because of the original partnership between Open Roads and DRC, the withheld information relates to Open Roads. He confirmed that his comment was not intended to suggest that not all of the withheld information would be relevant to his complaint. The complainant sent a follow-up email to the Commissioner explaining why he felt the information relates to Open Roads.
22. Following a telephone discussion on 9 November 2010, the Commissioner wrote to the Council the following day asking for some clarification. In particular, in an attempt at informal resolution of this case, he asked whether the Council was now able to disclose any of the withheld information due to the passage of time.
23. The Council replied to the Commissioner on 24 November 2010. It confirmed that it was able to disclose more information from the contract because, with the passage of time, much of the information was no longer exempt. It also responded to other queries posed by the Commissioner and provided more detail regarding its reasons for wishing to withhold the remaining information. The Council also sought to rely on section 40(2) in relation to a small amount of the information.

## Analysis

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### Exemptions

#### Section 40(2) – Third party personal data

24. This exemption provides that third party personal data is exempt under the FOIA if its disclosure would breach any of the Data Protection Principles set out in Schedule 1 of the Data Protection Act 1998 (“the DPA”). The first principle is the most relevant in this case and it provides that personal data shall be processed fairly and lawfully.

#### Is the withheld information personal data?

25. The Council redacted some figures from the bottom of page 66 and the top of page 67 of the withheld information using this exemption. It stated that disclosure of the redacted information would allow for a particular employee’s wages to be calculated. The Council also stated that the remaining information withheld under section 40(2) is exempt as it would reveal personal information about a particular employee’s employment.
26. “Personal data” is defined by the DPA as any information relating to a living and identifiable individual. Having considered the nature of the information, the Commissioner accepts that it is the personal data of the employee concerned as it clearly relates to them.

#### Would it have been fair for the Council to disclose the information?

27. The Commissioner focused on the issue of whether the disclosure would have been fair. In doing so, the Commissioner found it useful to consider the data subject’s reasonable expectations as well as what the consequences could be of disclosing the information. The Commissioner then balanced these issues against the legitimate interests of the public. Unfortunately, the Council failed to present any arguments of its own in this respect. However, because the Commissioner’s role is in part to ensure that personal data is dealt with in accordance with the DPA, the Commissioner felt that it was appropriate to consider relevant arguments on behalf of the Council.
28. The Commissioner considered the nature of the information and he considers that an individual employee would not expect such details to be put into the public domain in the context of this request. Although the Commissioner considers that disclosure of a salary band or other employment terms may be appropriate in certain circumstances, he

does not consider that disclosure of the precise payment being made by the Council to employ a particular individual or the terms of their employment in this context would be within their reasonable expectations.

29. As already set out, it is not the Commissioner's view that disclosure would have been within the employee's reasonable expectations. The Commissioner therefore considers that disclosure may cause distress to the individual as it would represent an unwarranted invasion of their privacy.
30. There is always some legitimate interest in information that is held by public authorities being disclosed to the general public. This is because the disclosure in itself promotes transparency and accountability. There is also a more specific public interest in the public accessing information about how public money is being spent in relation to contracts entered into with third parties. However, ultimately the Commissioner considers that the legitimate public interest could be satisfied in a more proportionate way without disclosing the precise details of a specific individual's employment.
31. For the above reasons, the Commissioner decided that section 40(2) had been correctly applied by the Council because disclosure of the information would not have been fair and it therefore would have breached the first principle of the DPA.

### **Section 43(2) – Commercial interests**

32. This exemption provides that information is exempt under the FOIA if its disclosure would or would be likely to prejudice the commercial interests of any person, including the public authority itself. The Council sought to withhold some details from the contract it had entered into with DRC, in particular the service specification written by the contractor and the price structure.
33. The Information Tribunal has established in a number of previous decisions that the word "would" in this context means "more probably than not" and the term "would be likely to" means that there is a real and significant risk of prejudice which is substantially more than a remote possibility.
34. The Information Tribunal has also established that in order to engage this exemption it is not sufficient for a public authority to speculate on the behalf of third parties. Any arguments about prejudice to a third party's interests must originate from the third party itself. This line comes from the case of *Derry City Council v Information Commissioner*

(EA/2006/0014) and has been set out in the Commissioner's published guidance.<sup>1</sup>

35. As the Council was not initially clear about whether it was relying on the "would" or "would be likely to" threshold, the Commissioner asked for clarification. The Council then clarified that it wished to argue that disclosure of the withheld information *would* prejudice the interests of DRC and would be likely to prejudice its own interests and those of other authorities.
36. The Council also failed to appreciate that it must present arguments that genuinely reflect the concerns of the third party. When the Commissioner reminded the Council of this, it consulted DRC. DRC confirmed that they were not happy for the information to be disclosed for the reasons presented by the Council. The Commissioner has considered these arguments below.
37. The Council explained that although the contract had been finalised by the time of the request in April 2010, it did not commence until July 2010. The Council said that DRC wrote the detailed service specification themselves and created the price structure. Given that many local authorities had not begun the process of satisfying the Cabinet Office's recommendations at the time of the request and were unsure about how to implement the recommendations, the Council felt that disclosure would have prejudiced DRC's commercial interests because it would have provided its competitors with information that would have been useful to them in the bidding process for other contracts. The Council said that DRC's competitors could copy the methodology and undercut prices. The Council added that DRC had confirmed that there had been unprecedented interest in the contract from its competitors and it has previously refused all requests for the information in order to preserve the value of the information. It also confirmed that DRC was considering bidding for the same or similar contracts at other local authorities.
38. The Council provided a copy of the information to the Commissioner with the withheld parts highlighted. It stated that it was seeking to withhold information of the following description:
  - Information that would reveal how DRC are going to reach a particular goal or outcome by way of a unique or new approach which is not in the public domain and which is not common practice within the sector.

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[http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/detailed\\_specialist\\_guides/commercialdet\\_rimentof3rdparties.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/commercialdet_rimentof3rdparties.pdf)

- “Output figures and timetables” that could be used by competitors in rival bids
  - Sustainability or costing details that show how DRC are able to deliver the service
  - Some of the technology details that show how DRC can manage the service in the future.
  - The staff structure chart which is a new and unique model created by DRC to make the best use of its resources based upon their experiences of the sector
  - The costs breakdown
39. The Council explained to the Commissioner that in order to encourage innovation, flexibility and independence in designing solutions to support independent living, the Council took a non-prescriptive approach to the types of activities and outputs required to achieve the desired outcomes. Tenderers were required to propose specific activities and indicate the levels of output that they will deliver to achieve the desired outcomes. Effectively the Council took the unusual step of asking tendering organisations to write the detailed service specification. The Council and DRC also stressed to the Commissioner that the Council was ahead of many local authorities in implementing the Cabinet Office report’s recommendations and that many authorities were uncertain at the time about how to undertake such a scheme. For this reason, DRC’s ideas were likely to be particularly valuable and novel.
40. The Commissioner notes that the Council argued that the disclosure *would* prejudice the commercial interests of DRC. This places a significantly stronger evidential burden on the authority to demonstrate that prejudice would be more probable than not. The public authority did not provide any specific argument to justify its position that it was able to discharge the high evidential threshold required for this part of the test to be met. In other words, it did not demonstrate that the arguments it was making clearly went beyond demonstrating that prejudice was likely. In view of this, the Commissioner felt that it was appropriate to consider the lower test of “would be likely to prejudice”.
41. In view of the above evidence, the Commissioner was satisfied that there was a real and significant risk that DRC’s competitors would have tried to copy some or all of DRC’s ideas in order to try to win contracts and that the withheld information would be likely to be useful to them in this respect. The Commissioner accepts that this would be

likely to put DRC at a disadvantage in any competitive process for similar projects in the future.

42. The Council also argued that disclosure of the information would be likely to prejudice its own interests. It argued that the disclosure would be likely to reduce the confidence of contractors in the tender and contract process because it would cast doubt on the ability of the Council to keep commercial information secure. This would be likely to reduce the willingness of contractors to contract with the Council or it would be likely to result in standard bids (i.e. bids without sufficient detail). The Council also argued that at the point of re-tendering, bidders could use the current contract as a model and this would be likely to stifle innovation. The Council added that for this reason, it also felt that disclosure would be likely to prejudice the interests of other local authorities tendering for a similar contract in the future.
43. The Commissioner carefully considered the above arguments but ultimately, he was not persuaded that the prejudice described was likely to occur. The Commissioner's published guidance on the exemption points out that public authorities should be wary of making the argument that the potential for commercial information to be released would reduce the number of companies willing to do business with the public sector or result in less innovative ideas, leading to reduced competition and increased costs. The guidance states the following:
- "In practice, many companies may be prepared to accept greater public access to information about their business as a cost of doing business with the public sector. And the overall value of public sector contracts is a great incentive to tender for them. Increasing access to information about the tendering process may in fact encourage more potential suppliers to enter the market. A better understanding of the process, the award criteria, knowledge of how successful bids have been put together, could also lead to improved bids being submitted in the future. This will lead to more competition and so decrease costs to the public authority. Indeed where a contract comes up for renewal, limiting this kind of information may well favour the current contractor and reduce competition".*
44. Further to the above, since the introduction of the FOIA, there is no longer any guarantee that contractual information will not be disclosed and organisations entering into public sector contracts should appreciate that there is a greater expectation of transparency and accountability and that commercial information will be disclosed unless the public interest in maintaining the exemption is stronger than the public interest in disclosing it.

45. For the reasons above, the Commissioner was prepared to accept that section 43(2) was engaged because it would be likely to prejudice the commercial interests of DRC. However, the Commissioner was not prepared to accept that the disclosure would be likely to prejudice the commercial interests of the Council or other local authorities tendering for similar contracts in the future.

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

46. There is always some public interest in the disclosure of information for its own sake. This is because disclosure of information serves the general public interest in promotion of better government through transparency, accountability, public debate, better public understanding of decisions, and informed and meaningful participation by the public in the democratic process.
47. There is also a more specific public interest in understanding how public money has been spent when a contract is awarded to a third party and understanding what the contractor is doing or is going to do in order to provide the most effective and value-for-money service possible. It is also the Commissioner's view that the disclosure of information of this nature should to some extent be within the reasonable expectations of contractors when they agree to perform services on behalf of a public body, using public money.
48. In the Commissioner's view it is an important part of the process that the public are informed about how a contractor is going to offer the contracted services once the tender stages are complete. The Commissioner considers that this public interest argument carries particular weight in this case because of the complainant's contention that the tender was originally submitted on the basis of joint delivery by DRC and Open Roads but the contract was actually awarded on the basis of sole delivery by DRC. Whilst the Commissioner does not comment on the rights or wrongs of the Council's decision in this respect he does consider that where such issues arise there is an increased public interest in being transparent about the details of the final contract.

### **Public interest arguments in favour of maintaining the exemption**

49. The exemption under section 43(2) is designed to recognise that there are certain circumstances in which it is appropriate to withhold information that would harm the commercial interests of a third party. There is a public interest in ensuring that the commercial interests of a

third party are not prejudiced in circumstances where it would not be warranted and proportionate.

50. In this case, the Council has demonstrated that it is likely that DRC's ideas are to some extent novel and would therefore be useful to competitors. The Council has also demonstrated that because local authorities were asked to implement a specific recommendation, it was likely that DRC would be bidding for similar projects in the near future. This means that although the contract had been finalised at the time of the request, the harm to commercial interests had not diminished as much as it could have done if the project had been more of a "one-off".
51. However, the Commissioner was not persuaded that the prejudice to the contractor's interests would be as severe as the Council has indicated. In the Commissioner's view, the descriptions of the nature of the withheld information provided by the Council set out in paragraph 38 of this notice suggest that the information is of a more sensitive nature than the Commissioner considered was the case following his inspection of the withheld information. Although the Commissioner accepts that the withheld information reveals DRC's proposed methods of delivering the contract, the level of detail it provides is more revealing of what DRC will do rather than exactly how it will achieve those specific outputs. In the Commissioner's view the prejudice would have been more severe had the information revealed exactly how DRC were able to deliver the specified outputs at the agreed cost.

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

52. The Commissioner's general position is that information concerning contracts will be more sensitive before the contract is signed. After that, it is generally the case that the competition element will diminish. It is also important at that stage for public authorities to make details of the contract transparent because contracts involve the investment of a sum of public money, usually over a few years.
53. The Commissioner appreciates that in the circumstances of this case, the risk of competitors copying ideas and trying to undercut bids had not diminished significantly by the time of the request for the reasons explained in paragraph 39. However, he also considers that the prejudice that would be likely to result from this is not as severe as argued by the Council. The Commissioner considers that when public authorities have committed public funds within a contract, there is a strong public interest in ensuring that the public authority is as accountable as possible in relation to that decision and that it is clear what the contractor is promising to deliver once a contract has been entered into. He considers that this argument carries particular weight

in this case because of the alleged difference between the basis on which the tender was submitted and the contract agreed. In the Commissioner's view, being exposed to the possible risk of some commercial harm is often the price that organisations have to pay for securing lucrative and valuable public sector contracts. The FOIA has been in place for some time and organisations entering into agreements with public authorities should be aware of their obligations to be as transparent and accountable as possible. Disclosing information of this nature could also have a range of other benefits as described in paragraph 43.

54. In the circumstances of this case, the Commissioner felt that there was a greater public interest in disclosing the details of the contract now that it has been entered into, the only exception being the costs breakdown in Schedule 2 of the contract. The Commissioner appreciates that in relation to any future bids the costs are likely to form a very significant part of the bid and would be highly useful to other competitors. He also notes that the total costs of the contract over the three year period have been disclosed by the Council. The Commissioner felt that this was a proportionate disclosure in the circumstances which strikes a fair balance between being transparent and accountable about the contract costs and limiting the possible commercial harm to DRC when bidding for other contracts.
55. In view of the above, overall the Commissioner felt that the public interest in maintaining the exemption under section 43(2) did not outweigh the public interest in disclosing the majority of the withheld information. The only exception was the costs breakdown. In relation to this information, the Commissioner felt that the public interest in maintaining the exemption outweighed the public interest in disclosing it.

### **Procedural Requirements**

56. The Commissioner considers that the Council should have disclosed some of the withheld information because although it was exempt under section 43(2), the public interest favoured disclosure. This means that the Council breached section 1(1)(b) and 10(1) for the failure to disclose this information within 20 working days or by the date of its internal review.
57. The Council did not rely on section 40(2) in relation to some information from the contract until the later stages of the Commissioner's investigation. Even then, it failed to provide adequate rationale for applying the exemption. The Commissioner considers that the Council breached section 17(1) and 17(1)(a)(b) and (c) for the

failure to rely on section 40(2) within 20 working days or by the date of its internal review.

## The Decision

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58. The Commissioner's decision is that the Council dealt with the following elements of the request in accordance with the requirements of the FOIA:
- The Council correctly determined that section 40(2) was engaged.
  - It also correctly determined that section 43(2) was engaged and that in respect of the costs breakdown in Schedule 2 of the contract, the public interest favoured maintaining the exemption.
59. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the FOIA:
- Although section 43(2) was engaged, the Council incorrectly concluded that the public interest favoured withholding the majority of the information. It therefore breached section 1(1)(b) and 10(1) of the FOIA.
  - Although section 40(2) was engaged, the Council relied on it at a late stage in the Commissioner's investigation. It therefore breached section 17(1) and 17(1)(a)(b) and (c).

## Steps Required

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60. The Commissioner requires the public authority to take the following steps to ensure compliance with the FOIA:
- Disclose to the complainant all of the withheld information except the information withheld under section 40(2) and the costs breakdown in Schedule 2 of the contract.
61. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

## Failure to comply

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62. 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.

## Other matters

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63. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

### Time taken to conduct an internal review

64. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his *'Good Practice Guidance No 5'*, published in February 2007<sup>2</sup>, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner is concerned that in this case, it took over 40 working days for an internal review to be completed, despite the publication of his guidance on the matter. The Commissioner trusts that the Council make improvements in the future.

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[http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/detailed\\_specialist\\_guides/time\\_limits\\_internal\\_reviews.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/time_limits_internal_reviews.pdf)

## Right of Appeal

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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: 0845 600 0877

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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

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

**Dated the 14<sup>th</sup> day of March 2011**

**Signed .....**

**Lisa Adshead  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

### Freedom of Information Act 2000

#### 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.”

#### Effect of Exemptions

**Section 2(2)** provides that –

“In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that –

(a) the information is exempt information by virtue of a provision conferring absolute exemption, or

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

#### 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.”

## Refusal of Request

**Section 17(1)** provides that –

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

## Personal information

**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.”

### **Commercial interests**

**Section 43(2)** provides that –

“Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).”