

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 26 September 2011

Public Authority: The National Patient Safety Agency
Address: 4-8 Maple Street
London
W1T 5HD

Summary

The complainant requested a considerable amount of information about the public authority's relationship with a Strategic Health Authority and its interaction with him.

The public authority provided some information and withheld other information. The complainant referred a number of items to the Commissioner. The Commissioner has already considered **FS50314583** that looked at similar information.

During the course of the Commissioner's investigation the public authority reprocessed some of the requests in light of the Commissioner's comments and gave the complainant another copy of its file about him.

The Commissioner is satisfied that the complainant has now received all the relevant recorded information that was held at the date of request. He therefore upholds the public authority's position. He did find some procedural breaches of the Act, but requires no remedial steps to be taken.

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 National Patient Safety Agency (NPSA) is a Special Health Authority established by the Secretary of State under the National Health Service Act 1977, by the National Patient Safety Agency (Establishment and Constitution) Order 2001. It is a public authority under the Act because it is covered by paragraph 38 of Schedule One. It will be referred to as 'the public authority' for the remainder of this Notice.
3. The complainant was an unpaid volunteer lay member of his local research ethics committee (REC) and was appointed by the Strategic Health Authority (SHA) to this role. The decision to appoint somebody to a REC sits with the SHA, as do decisions to renew appointments. Any appointment letter is issued and signed by the SHA. The SHA decided not to renew the complainant's appointment after an original five year term and the complainant was dissatisfied about this. The normal route of complaint is to appeal to the SHA itself which was the action taken by the complainant.
4. The National Research Ethics Service (NRES) is a division within the public authority. Part of NRES' responsibilities relate to providing an advisory and operational support role to SHAs in making decisions about the membership of RECs. In addition, it provides national systems to support the work of RECs.
5. For clarity, the SHA has the power to appoint people to serve on RECs. NRES can provide advice to the SHA, but the SHA need not abide by that advice. In this case the SHA did not wish to renew the appointment and NRES did not recommend that it should vary its decision.
6. The complainant asked the public authority to review its or the SHA's treatment of him or both and to ensure that it complied with the Seven Principles of Public Life¹. The complainant then requested information to find out, amongst other things, what had been considered by the public authority when reviewing his treatment.

¹ They can be found here: http://www.public-standards.org.uk/About/The_7_Principles.html

The Request

7. On 8 October 2010 the complainant requested the following information to be provided in accordance with the Act:
- (1) *The NRES documents describing the advisory and operational support role to SHAs in making decisions about REC Committee membership;*
 - (2) *The record of the process used by the Chair of the REC committee and NRES head office staff in my potential reappointment with full description of the content;*
 - (3) *The job description of the Chief Executive of NPSA including a description of her functions and responsibilities;*
 - (4) *The bodies to whom the Chief Executive of NPSA is directly responsible;*
 - (5) *The bodies to whom complaints about NRES and NPSA can be directed;*
 - (6) *The brief given to [Named Individual A] with the questions posed and the answers received.*
 - (7) *The documents [Named Individual A] used to review the process by which NPSA staff developed their initial advice on my potential reappointment by the SHA and his conclusions developed from them;*
 - (8) *The documents [Named Individual A] used to determine how NPSA staff conducted themselves in their dealings with me after their decision and how his conclusions were developed from them;*
 - (9) *A copy of [Named Individual A]'s independent assessment with any accompanying documents;*
 - (10) *Which documents [Named Individual A] used to determine that NRES and NPSA had not behaved contrary to the Seven Principles of Public Life;*
 - (11) *The name and address of the body responsible for monitoring or regulating public bodies in terms of the 'Seven Principles';*
 - (12) *The NRES internal and external costs of dealing with my claim to*

the Employment Tribunal; and

(13) *The NPSA internal and external costs of dealing with my claim to the Employment Tribunal.*

8. The public authority provided its response on 19 November 2010. Its position was as follows:
 - It believed that questions (1) and (2) were already being considered by the Commissioner in case **FS50314583** and did not require further input at this stage;
 - It answered questions (3) to (5) – it originally provided the names of the bodies for (4) and (5), but not their postal addresses or a contact number;
 - It answered questions (6) to (10) and explained the process and that there were no further documents;
 - For question (11) it explained its understanding about the matter which the request related; and
 - It provided the complainant with the external costs and explained that it did not have the internal costs for questions (12) and (13).
9. On 20 November 2010 the complainant requested an internal review. He did not give any reasons as to why he wanted an internal review.
10. On 13 December 2010 the public authority conducted its internal review. It provided a further explanation and maintained its position.

The Investigation

Scope of the case

11. On 28 December 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He explained that he felt information should have been provided for questions (1) and (2). He also explained that he was not content with the detail of the answers to requests (6) to (10) and about the quality of the information provided for them.

12. Over the course of the investigation the complainant made it clear that he believed that the scope of the investigation was for the Commissioner to determine the following five things:

(1) Whether the names, addresses and contact details of the heads of the bodies for requests (4) and (5) were embraced by his requests, and if so, whether this information should be disclosed under the Act.

(2) Whether the Data Protection Act is the appropriate access regime for any of the complainant's outstanding requests [elements (1) to (2) and (6) to (10)] and if so, to ensure that the complainant's access rights under that regime are respected;

(3) Whether further relevant recorded information is held for elements (1), (2) and (6) to (10) of the request dated 8 October 2010;

(4) If so, whether this information can be disclosed to the public or not under the Act;

(5) To consider any issues about timeliness – for example whether the response was issued in twenty working days.

13. Section 7 of the DPA gives an individual the right to request copies of personal data held about them – this is referred to as the right of Subject Access. Some of the information consisting of a reference to the complainant and his complaints was embraced by requests (2), (6), (7), (8), (9) and (10). This information needed to be considered under the DPA and the Commissioner has conducted an assessment under section 42 of the DPA into the public authority's compliance with the DPA. This does not form part of this Decision Notice. This is because an assessment under section 42 of the DPA is a separate legal process from the consideration under section 50 of the Act. The complainant will receive this assessment in a separate letter.

14. During the course of the Commissioner's investigation, the public authority took the following steps to allow this case to progress:

- It issued a new more detailed response to explain the process that was undertaken to help answer requests (6) to (10). This included the email that communicated its verdict and a copy of the Seven Principles of Public Life;
- It disclosed its whole file about the complainant to him;
- It disclosed the names, addresses and contact details of the bodies for requests (4) and (5);

- It also disclosed a copy of its 'Code of conduct for NHS managers'; and
 - It also disclosed its new working policies that it developed with the SHAs that were developed after the request.
15. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act. For clarity, the Commissioner cannot adjudicate on the public authority's processes regarding how it handles complaints and/or reviews. All he can consider in this Notice is its compliance with the Act. The Act only applies to relevant information that is held in recorded form.

Chronology

16. The Commissioner has previously considered **FS50314583** for similar information about a similar matter. He has therefore considered the submissions that he obtained in that case where they are relevant to this case. The remainder of the chronology is a list of the key items of correspondence considered in this case.
17. On 27 January 2011 the Commissioner wrote to the public authority to confirm that he had received another eligible complaint from the complainant.
18. On 31 January 2011 the Commissioner wrote to the complainant to establish the scope of this new investigation.
19. On 7 February 2011 the complainant replied. He explained he understood the Commissioner's remit and accepted his proposed scope with one reservation.
20. On 9 February 2011 the Commissioner explained his view about the reservation to the complainant. He then wrote to the public authority in order to obtain detailed arguments about why there was no further relevant recorded information and to determine whether the information was personal data.
21. Between 14 February 2011 and 10 March 2011 the Commissioner and the public authority exchanged a number of items of correspondence and spoke on the telephone. As a result, the public authority agreed that the Commissioner could communicate a more detailed response to requests (6) to (10) to the complainant, in order to increase his understanding of the public authority's processes. The public authority also agreed that the Commissioner could provide the complainant with the new processes that had been developed and the seven principles of public life.

22. On 7 March 2011 the complainant called the Commissioner. The Commissioner discussed the operation of the two separate regimes the FOIA and the DPA.
23. On 10 March 2011 the Commissioner wrote to the complainant. He included the new information noted in paragraph 21 above. He asked the complainant whether he wanted the investigation to continue and if he did, to provide arguments about why he believed further relevant recorded information would be held.
24. On 14 March 2011 the complainant told the Commissioner that he wanted a formal Decision Notice and provided some further arguments about why he believed that more information was held. He explained that he disputed the Commissioner's preliminary verdict about items (4) and (5). He also said that he believed that the public authority was incorrect in stating that some of the information held was his own personal data and some was not. He also explained that he believed that more relevant recorded information was held for items (1), (2) and (6) to (10).
25. On 21 March 2011 and 22 March 2011 the Commissioner contacted the public authority. He asked it to disclose again all the information it held in the complainant's file and provide a copy of that file to the Commissioner. He also asked for it to consider providing the names, contact details and addresses of the bodies mentioned in questions (4) and (5) outside the Act. Additionally he asked the public authority to provide the complainant with a copy of the "Code of conduct for NHS managers" because he considered it fell within the scope of question (8) of the complainant's request.
26. On 29 March 2011 the public authority disclosed this information to the complainant and provided a copy of what it released to the Commissioner.

Analysis

Substantive Procedural Matters

Was the public authority's reading of requests (4) and (5) objective?

27. The complainant maintains that the public authority has misread requests (4) and (5). He explained:

'Regarding the scope of your investigation and element 4, your understanding of my request is that I only asked for the names of the bodies. But I did not refer to 'names', I referred to bodies. I

believe that the name does not refer adequately to identify the body for a specific address would be required to distinguish it from apparently similar bodies. And under element 5, I requested information on bodies, not merely on a body'.

28. As noted above the requests were worded as follows:

a. The bodies to whom the Chief Executive of NPSA is directly responsible;

b. The bodies to whom complaints about NRES and NPSA can be directed;

29. The public authority provided the names of some organisations. It was content that the names would identify the body and therefore answer the request.

30. The complainant explained that in his view the request also required further information to enable the bodies to be identified from other bodies.

31. The Commissioner has considered whether the complainant's proposed interpretation is an objective reading of the requests. He has concluded that it is not. He notes that the bodies mentioned are well known. There are no bodies that conduct similar functions with the same names. Indeed the purpose of the name of a body is to identify it. The Commissioner notes that request (11) is worded to ask for the address of a relevant body and therefore the wording of the requests would have been inconsistent, had the complainant intended addresses to be provided for requests (4) and (5) too. He also notes that the complainant did not take the opportunity of correcting the public authority's interpretation of the request at the internal review stage. Therefore, the Commissioner finds that the public authority was correct that the only reasonable objective reading was that the request was asking for the name of the bodies in question.

32. It follows that there was no obligation for the public authority to provide the addresses or contact details in response to the request dated 8 October 2010. However, to assist the complainant, the public authority provided this information outside of the Act on 29 March 2011.

Did the public authority hold further relevant recorded information that is relevant to the requests for information?

33. Section 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.
34. It follows that it is necessary for information to be held in a recorded form at the date of the request for it to be subject to the Act. For the avoidance of doubt, the Act imposes no obligation to generate 'descriptions' or explanations. The only obligation is to consider providing the relevant recorded information that is held at the date of the request.
35. It is important to note the standard of proof that the Commissioner uses to determine whether relevant recorded information is held. In *Linda Bromley & Others v Information Commissioner and Environment Agency* [EA/2006/0072] ('Bromley'), the Information Tribunal confirmed that the test for establishing whether information was held by a public authority was not one of certainty, but rather the balance of probabilities.
36. He has also been assisted by the Tribunal's explanation of the application of the 'balance of probabilities' test in *Bromley*. To determine whether information is held requires a consideration of a number of factors, including the quality of the public authority's final analysis of the request, the scope of the search it made on the basis of that analysis, the rigour and efficiency with which the search was then conducted and any other relevant reasons offered by the public authority to explain why the information is not held.
37. The Commissioner has applied this test to this case and has also considered the arguments of both sides.

Element (1)

The NRES documents describing the advisory and operational support role to SHAs in making decisions about REC Committee membership;

38. In **FS50314583**, the Commissioner considered a request dated 14 April 2010. Part of this request asked for 'the guidelines that relate to the relationship between the SHA and the NRES.'
39. In the Commissioner's view this request would have covered element (1) of this new request dated 8 October 2010, providing no further recorded information was generated between the two dates. From the public authority's response, it is clear that it had the same view (although there is uncertainty about whether this decision was taken

while considering if further relevant recorded information had been generated between the requests).

40. The public authority has reconfirmed that the complainant's complaint remains the only time that it had considered complaints about the non-reappointment of an individual to volunteer in a REC.
41. It confirmed that no further information was generated between the 14 April 2010 and 8 October 2010. It said at the date of the new request, it did not hold specific information about the 'documents describing the advisory and operational support role to SHAs in making decisions about REC Committee membership.' It only held the general guidelines that were discussed at length in paragraphs 50 to 64 of **FS50314583**.
42. The Commissioner is satisfied that on the balance of probabilities no further relevant recorded information is held for element (1) of the request dated 8 October 2010 for the same reasons as outlined in paragraphs 50 to 64 of **FS50314583**. The decision of the Commissioner was subsequently upheld by the First Tier Tribunal (Information Rights) in EA/2011/0066.² He is satisfied from his enquiries that the public authority has searched the relevant places and would know if relevant recorded information is held.
43. During the course of the investigation, the public authority explained that it had finalised two new processes that would relate to its conduct in similar situations. These were not held at the date of the request because they had only been finalised at a meeting in February 2011. The public authority agreed that the Commissioner could provide the complainant with copies of them. They were:
 - Process for dealing with serious concerns or ongoing issues that prove difficult to resolve with NRES committee membership; and
 - NRES process for offering structured support and advice to NRES committee members and officers when conducting their role on a Research Ethics Committee (REC).
44. In the Commissioner's view the creation of these new processes adds further support that no such information was held at the date of the request. This is for two reasons. Firstly, the public authority was responsible for drafting these new processes and it would be a waste of resource for it to draft a new policy when it already had one. Secondly, it shows that the correct process was followed. As a result of the

²[http://www.informationtribunal.gov.uk/DBFiles/Decision/i558/\[2011\]_UKFTT_EA20110066_\(GRC\)_2011-08-26.pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i558/[2011]_UKFTT_EA20110066_(GRC)_2011-08-26.pdf)

complainant's multiple complaints, it realised that it would be appropriate for it to develop written processes to ensure accountability in the future. It then agreed the processes with its strategic partners so that everything was clear.

45. The public authority failed to issue any proper response, saying that the issue was already being looked at by the Commissioner. The correct approach would have been to have confirmed that it held relevant recorded information and that it had already provided it to the complainant [so to apply section 21(1)]. The failure to specifically confirm that it held relevant recorded information was a breach of section 1(1)(a) and the failure to comply with section 1(1)(a) in twenty working days was a breach of section 10(1).

Element (2)

(2) *The record of the process used by the Chair of the REC committee and NRES head office staff in my potential reappointment with full description of the content;*

46. Also in **FS50314583**, another part of the request dated 14 April 2010 asked for *'the information considered in the review procedure of the complainant's case conducted by the NRES Director on 1 March 2010'*. This review related to the complainant's complaint about the process that was used by the SHA and NRES in relation to the complainant's reappointment. In the Commissioner's view, the complainant was requesting the same information in that request as he was in this request that asks for *'the record of the process used by the Chair of the REC committee and NRES head office staff in my potential reappointment with full description of the content.'* From the public authority's response, it is clear that it had the same view (although there is uncertainty about whether this decision was taken while considering if further relevant recorded information had been generated between the requests).
47. In the Commissioner's view element (2) of this new request dated 8 October 2010 would have been covered by his analysis of the request dated 14 April 2010, providing no further recorded information was generated between the two dates.
48. The public authority has confirmed that it had not gone back to the SHA about the complainant's complaint between the two requests. It explained that the Commissioner had discussed whether it had further information at length in paragraphs 33 to 39 of **FS50314583**.
49. The complainant explained that he was not content that he had received all the relevant recorded information that the public authority held about

his potential reappointment. In particular, he explained that he had not been provided with documents he himself had sent to the public authority. He expressed particular concern that he had not received a copy of a report that he had sent to it about his impression of a meeting that was held on 30 June 2009.

50. The Commissioner asked, and the public authority agreed, to resend the complainant everything that it held in its file marked with the complainant's name. This was to provide further evidence that the incremental disclosure previously meant that some information might have been accidentally not provided. It did this on 29 March 2011. It also confirmed, for the avoidance of doubt, that it did not hold and had not considered the report that the complainant had sent to it about his impression of a meeting that was held on 30 June 2009.
51. The Commissioner is satisfied, on the balance of probabilities, that the public authority does not hold any further relevant recorded information for element (2). He relies upon paragraphs 33 to 39 of **FS50314583** and the additional enquiries made in this case.
52. However, it is noted that the public authority once again failed to issue any proper response saying that the issue was already being looked at by the Commissioner. The correct approach would have been to have confirmed that it held relevant recorded information and that it had already given him it [so apply section 21(1)]. The failure to specifically confirm that it held relevant recorded information was a breach of section 1(1)(a) and the failure to comply with section 1(1)(a) in twenty working days was a breach of section 10(1).

Elements (4) and (5)

(4) The bodies to whom the Chief Executive of NPSA is directly responsible;

(5) The bodies to whom complaints about NRES and NPSA can be directed;

53. The issue about how to read the requests was considered above in paragraphs 27 to 34. However, the Commissioner did not consider the accuracy of the responses in that part of the Notice and whether those lists were complete.
54. It became apparent during the course of the Commissioner's investigation that the list of bodies was incomplete. The Commissioner asked the public authority to reprocess this part of the request and provide the full information. It did so on 29 March 2011.

55. The Commissioner is satisfied that the new list of bodies is complete. He is satisfied that the public authority would know who it was responsible for and who it receives complaints from. He is also satisfied from his detailed knowledge of its constitutional documents outlined in paragraphs 52 to 57 of **FS50314583**.
56. However, it is noted that the public authority issued an incomplete response in respect to these elements. The failure to provide all the relevant recorded information embraced by these requests was a breach of section 1(1)(b) and the failure to comply with section 1(1)(b) in twenty working days was a breach of section 10(1).

Element (6)

(6) *The brief given to [named individual A redacted] with the questions posed and the answers received.*

57. The public authority explained that it held no relevant recorded information for this element. The Chief Executive explained in her original response that:

'Following receipt of your letter dated 13 October 2010, I discussed the matter with [Named Individual A redacted] and asked him to conduct a review of your complaint about NRES. I have recently asked [Named Individual A redacted] about the process adopted following that meeting. [Named Individual A redacted] advised that although he drafted structured questions for the interview with [Named Individual B redacted], he did not transcribe her answers as this was not a formal process. [Named Individual A] has confirmed that he has not kept records of the questions that he discussed with [Named Individual B redacted]'

58. The Commissioner discussed this case with [Named Individual A redacted] and asked him to confirm in writing what the situation was in relation to element (6). He issued a new response that he allowed the Commissioner to share with the complainant that stated:

'The brief from my Chief Executive was verbal. I did not keep a record of questions posed or answers received.'

59. The Commissioner has also ensured that [Named Individual B redacted] has considered whether any recorded information was held and has been informed that there is none.
60. The Commissioner is satisfied that it was appropriate for him to direct these enquiries to [Named Individual A]. He is the person that was responsible for reviewing the complaint and he would know the evidence

that he considered when conducting that review. The request embraces no other information than that which was considered in that review.

61. It follows that the Commissioner is satisfied that on the balance of probabilities no further recorded information is held. He has concluded that the right individuals have put their minds to the request and that the outcome is sustainable on the evidence. As noted above, the complainant only has a right to relevant information held in recorded form.

Elements (7), (8) and (10)

(7) The documents [Named Individual A redacted] used to review the process by which NPSA staff developed their initial advice on my potential reappointment by the SHA and his conclusions developed from them;

(8) The documents [Named Individual A redacted] used to determine how NPSA staff conducted themselves in their dealings with me after their decision and how his conclusions were developed from them;

(10) Which documents [Named Individual A redacted] used to determine that NRES and NPSA had not behaved contrary to the Seven Principles of Public Life.'

62. This request also solely concerns the specific review by [Named Individual A] of how the public authority handled the complainant's complaint. The public authority explained that it believed that the complainant had received all the information that was considered by it in this case. In its original response it explained:

[7] '[Individual A redacted] borrowed the NRES file that contained correspondence between yourself, the StHA, NRES colleagues and [Individual B redacted] about this matter.

The content of the NRES file forms part of the ongoing ICO case.'

[8] '[Individual A redacted] has confirmed that his conclusions were developed on the basis of his understanding of how public sector staff should conduct themselves, and his review of the NRES file. Plus relevant guidance, including Governance Arrangements for Research Ethics Committees (GafREC).

...

[10] '[Individual A redacted] used the NRES file and also referred to the Seven Principles of Public Life documentation''

63. The Commissioner discussed this case with [Named Individual A redacted] and asked him to confirm in writing what the situation was in relation to elements (7), (8) and (10). He issued a new response that he allowed the Commissioner to share with the complainant that stated:

[7] Part of the basis of my decisions was a consideration of NRES's file on [the complainant]'s correspondence. To my knowledge there is no information in this file that has not previously been released to [the complainant].

[8] The documents I used are the "Code of conduct for NHS managers" and "GafREC" which are DH documents and "The Seven Principles of Public Life" from the Committee on Standards in Public Life. I did not make a record of my thought processes in reaching my decisions.

...

[10] I used, "The Seven Principles of Public Life" from the Committee on Standards in Public Life.'

64. As noted for element (2) above, the Commissioner is satisfied that the complainant is in possession of all the information in the NRES file and the complainant is not content that this is so. For completeness, the public authority agreed to resend the complainant everything that it held in its NRES file marked with the complainant's name. This was to provide further evidence that there was no information over which there was any misunderstanding about in this case. It did this on 29 March 2011.
65. The Commissioner notes that [Named Individual A redacted] conducted the review and he would know what recorded information that he considered. The Act imposes no obligation for further information to be generated when undertaking its functions and there are no other legal or business reasons why further relevant recorded information is held. Overall, the Commissioner is satisfied that, on the balance of probabilities, the public authority does not hold any further relevant recorded information for elements (7), (8) and (10).
66. He relies upon paragraphs 33 to 39 of **FS50314583** and his additional enquiries in this case and its provision of the full file to the complainant again. There is no obligation to generate information that is not recorded and the Commissioner knows that the complainant has received both Gafrec and the Seven Principles of Public Life because he has provided them to the complainant himself. He has also ensured that the complainant has received the document Code of Conduct for NHS Managers on 29 March 2011, as he believes this information was caught by the request.

67. However, it is noted that the public authority once again failed to issue any proper response saying that the issue was already being looked at by the Commissioner. In addition, it failed to originally provide a copy of the Code of Conduct for NHS Managers. The correct approach would have been to have confirmed that it held relevant recorded information and considered what had been provided to the complainant. The failure to provide copies of the guidelines or explain where they could be found was a breach of section 1(1)(b) and the failure to comply with 1(1)(b) within twenty working days was a breach of section 10(1).

Element (9)

(9) A copy of [Named Individual A]'s independent assessment with any accompanying documents;

68. Element (9) asks for [Named Individual A]'s communication to the Chief Executive about the findings in this case.

69. The Chief Executive confirmed on 25 October 2010:

'[Individual A redacted] planned and conducted the interview and briefed me on 18 August 2010. I can confirm that there were no accompanying documents attached to the email outlining his assessment'

70. It was not clear whether this email was disclosed to the complainant at this time.

71. The Commissioner asked [Named Individual A] about what the contents of this communication consisted of. He said:

'There is no "independent assessment" document but I included a summary of my findings in an email to our Chief Executive.'

72. The Commissioner ensured that a copy of the email dated 18 October 2010 was provided to the complainant on 10 March 2011.

73. The complainant contends that the email dated 18 October 2010 provides an incomplete record of the assessment and told the Commissioner that he expected more. The Commissioner considers that the email dated 18 October 2010 reads as complete. He notes that the Chief Executive and [Named Individual A] by the nature of their roles have detailed knowledge about the statutory provisions in which they operate. It would not therefore be necessary for any more detail in the note. In addition, the public authority was of the view that the issue fell outside its complaints policy and the Commissioner is satisfied that this view was genuinely held. Further it must be noted that the main issue that the complainant has been concerned with, the failure of the SHA to

reappoint him as a volunteer, was not an issue that the public authority could help him with and the Commissioner can see how it would not be proportionate for there to be anything else.

74. In addition, the Commissioner has asked the two parties that generated the communication and checked the all the locations where information may be held. In conclusion, he is satisfied on the balance of probabilities that no further relevant recorded information is held for element (9). The complainant's contrary views are not supported by the evidence.

Other Procedural Issues

75. The Commissioner has already noted that there have been procedural breaches in the handling of a number of the requests that he has considered. The purpose of this section is to discuss other concerns that were brought to him by the complainant.
76. The complainant contended that he first submitted the request for information on 13 August 2010. The public authority confirmed that it never received the correspondence until it was resent on 8 October 2010.
77. The Commissioner has received evidence of everything that was received and the processes in place at the public authority to ensure that requests are dealt with. He has been satisfied that on the balance of probabilities the original request was lost in post as it was never received by the public authority.
78. The public authority explained that it sends email responses to 98% of requests that it answers. It explained that it has not previously experienced problems of delayed or missing post. However, it confirmed that it had received the letter dated 8 October 2010 on 11 October 2010. It was then processed and the letter sent out on 25 October 2010, but it was unable to confirm when it was received by the complainant.
79. The complainant has also complained about correspondence being delayed or lost in the post. The public authority has offered to email everything to the complainant in the future. The complainant has refused this offer.
80. Overall, the Commissioner considers that it is not appropriate to make any comment about the original request potentially getting lost and/or responses being delayed. The public authority has offered to amend its processes and the complainant is not amenable to it. However, the Commissioner does not consider that the complainant has been prejudiced by the delay. The verdicts that he has made about the situation on 8 October 2010 are equally valid for what the situation was on 13 August 2010.

The Decision

81. The Commissioner's decision is that the public authority holds no further relevant recorded information for elements [1], [2], [4], [5], [6], [7], [8], [9] and [10] and that all of the recorded information that it held at the date of the request has been provided to the complainant. He also supports the public authority's original interpretation of requests [4] and [5].
82. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- *It breached section 1(1)(a) because it did failed to confirm whether it held relevant information for elements [1] and [2];*
 - *It breached section 1(1)(b) because it failed to provide a number of items of information prior to the Commissioner's intervention; and*
 - *It breached section 10(1) because it failed to fully comply with section 1(1) within twenty working days of receiving the request.*

Steps required

83. The Commissioner requires no steps to be taken because he is satisfied that the only relevant recorded information that was held has now been provided to the complainant.

Right of Appeal

84. 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,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

85. 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.
86. 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 26th day of September 2011

Signed

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

Legal Annex

*** Freedom of Information Act 2000**

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

(1) Any person making a request for information to a public authority is entitled—

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.

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

(3) Where a public authority—

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

(b) has informed the applicant of that requirement,

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

...

Section 10 - Time for compliance with request

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

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

(3) If, and to the extent that—

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

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

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

(4) The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later

than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with, the regulations.

(5) Regulations under subsection (4) may—

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

(6) In this section—

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

Section 40 – Personal information

Section 40 of the Act provides that:

“(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

...

(7) In this section—

- “the data protection principles” means the principles set out in Part I of Schedule 1 to the [1998 c. 29.] Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;
- “data subject” has the same meaning as in section 1(1) of that Act;
- “personal data” has the same meaning as in section 1(1) of that Act.”

Data Protection Act 1998

Section 1 - Basic interpretative provisions

(1) In this Act, unless the context otherwise requires—

- “data” means information which—
 - (a) is being processed by means of equipment operating automatically in response to instructions given for that purpose,
 - (b) is recorded with the intention that it should be processed by means of such equipment,
 - (c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system, or
 - (d) does not fall within paragraph (a), (b) or (c) but forms part of an accessible record as defined by section 68;
- “data controller” means, subject to subsection (4), a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed;
- “data processor”, in relation to personal data, means any person (other than an employee of the data controller) who processes the data on behalf of the data controller;
- “data subject” means an individual who is the subject of personal data;
- “personal data” means data which relate to a living individual who can be identified—
 - (a) from those data, or
 - (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;
- “processing”, in relation to information or data, means obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data, including—
 - (a) organisation, adaptation or alteration of the information or data,
 - (b) retrieval, consultation or use of the information or data,
 - (c) disclosure of the information or data by transmission, dissemination or otherwise making available, or

(d) alignment, combination, blocking, erasure or destruction of the information or data;

- “relevant filing system” means any set of information relating to individuals to the extent that, although the information is not processed by means of equipment operating automatically in response to instructions given for that purpose, the set is structured, either by reference to individuals or by reference to criteria relating to individuals, in such a way that specific information relating to a particular individual is readily accessible.

(2) In this Act, unless the context otherwise requires—

(a) “obtaining” or “recording”, in relation to personal data, includes obtaining or recording the information to be contained in the data, and

(b) “using” or “disclosing”, in relation to personal data, includes using or disclosing the information contained in the data.

(3) In determining for the purposes of this Act whether any information is recorded with the intention—

(a) that it should be processed by means of equipment operating automatically in response to instructions given for that purpose, or

(b) that it should form part of a relevant filing system,

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

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