

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 30 July 2007

Public Authority: NHS Direct
Address: Marlborough Court
Sunrise Parkway
Linford Wood East
Milton Keynes
MK14 6DY

Summary

The complainant sought disclosure of the geographic telephone numbers for NHS Direct. NHS Direct refused to disclose the information on the basis that it was exempt by virtue of section 22 (future publication), section 38 (health and safety) and section 44 (prohibition on disclosure). Following correspondence with the Commissioner it withdrew the application of section 44. Having considered the complaint the Commissioner decided that the information was not exempt under section 22. However he decided that section 38 was engaged and that the public interest in maintaining the exemption outweighed the public interest in disclosure. The Commissioner also concluded that the public authority had breached section 1 of the Act by incorrectly claiming the information was not held and that it had breached the requirements of section 17 of the Act by failing to issue an adequate refusal notice.

The Commissioner's Role

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

The Request

2. On 12 January 2006 the complainant emailed NHS Direct requesting the following information:
 - a. Why do you use 0845 numbers?
 - b. What is the equivalent geographical numbers?

- c. What revenue do you receive per minute and in total from the use of 0845 numbers?
 - d. Are you aware of the revenue collected by your telecom provider, from your callers?
 - e. Have you considered the revised COI guidelines?
 - f. If so, what conclusions did you come to?
 - g. Are you aware of ASA/CAP rules on the use of these numbers
 - h. If so, what conclusions did you come to?
 - i. Do you realise that all calls (local/national) cost the same?
 - j. Do you realise that 0845 numbers now offer no cost advantage to callers, irrespective of their location, only disadvantages?
 - k. Are you aware of the cost implications to your callers, when using 0845 numbers?
 - l. Please supply the geographical number for NHS Direct relative to my area, North West Lancashire
3. **19 January 2006.** NHS Direct emailed the complainant and provided its answers to the various aspects of the request. In relation to the complainant's request for the geographic number behind the 0845 number (which is the focus of the complaint to the Commissioner) NHS Direct stated that it did not have geographic numbers into its contact centres for the core NHS Direct service. However it explained that "it was working towards the use of geographical numbers alongside the 0845 national number in 2006 but that it had to change some of its infrastructure to ensure that all its 22 contact centres could fully integrate with the passing of calls and medical records to less busy lines across the country". Until this has been completed it advised that it was not possible to provide this service with clinical safety.
4. **19 January 2006.** The complainant remained dissatisfied with certain aspects of NHS Direct's response and therefore emailed it again with his comments. He argued that there are geographical numbers for all 0845 numbers. He again requested the geographic number behind the NHS Direct's 0845 telephone number for his area, but this time asked to be supplied with the geographic number for any locality as a geographic number would not differentiate in cost.
5. **17 February 2006.** The complainant emailed NHS Direct again having received no reply to his email of 19 January 2006. Once again he repeated his request to be provided with the geographic number and stated that he would request an internal review.
6. **18 February 2006.** NHS Direct emailed a reply to the complainant explaining that it generated no revenue from the use of the 0845 number and provided responses to the other issues raised by the complainant in his letter of 19 January 2006. It explained that calls made to a geographic number did not go through its computerised system and if calls were made to these numbers they would be presented at the local site without being sorted for the next available line. It explained that the NHS Direct computerised system was built so that a call made through the 0845 number would be picked up by the next available operator at the caller's local centre and if there was not one available, the next available operator in the region. If this was still not immediate the system would then

search all national centres for an available operator. The system was devised to present calls to an operator as soon as possible in order that the caller can be prioritised and any emergency calls needing 999 response can be quickly diverted to the Ambulance Service. It explained that NHS Direct has a small percentage of such calls. It added that the system was there to improve clinical safety and to knowingly put calls into the NHS Direct system by other means would be clinically unsafe. However it explained that it was currently upgrading its systems to include new switches, computerised systems and recording systems and that once the upgrading of its systems was complete this would then allow all calls to go through the computerised searching system and the use and disclosure of the geographic numbers would be possible. However it explained that it had a legal duty of care to ensure the safety of the general public and to issue these numbers without the correct equipment in place would be a breach of this duty. The Commissioner has treated this letter as the NHS Direct's refusal notice. It did not however specifically cite an exemption under the Act as grounds for withholding the information.

7. **19 February 2006.** The complainant emailed NHS Direct again requesting an internal review of NHS Direct's decision not to disclose the geographic number.
8. **19 February 2006.** NHS Direct emailed the complainant asking him to explain what he meant by internal review as it did not have such a process.
9. **20 February 2006.** The complainant emailed NHS Direct and clarified his understanding of what constituted an internal review.
10. **24 February 2006.** NHS Direct emailed the complainant and provided its internal review of the request. It confirmed that it did hold the information requested and that it was in possession of the information at the time of the request. However it explained that it considered that the information was exempt from disclosure by virtue of section 22 (information intended for future publication), section 38 (health and safety) and section 44 (prohibitions on disclosure). In relation to section 38 it reiterated the points it had made in its refusal notice as described at paragraph 6 above. It stated that the geographic numbers that currently applied to its buildings were direct numbers to those buildings and did not pass through any computerised control systems. Therefore it believed that until the upgrading of its infrastructure was complete the issuing of geographic numbers would be clinically unsafe and could be dangerous to callers not using the 0845 system.
11. **27 February 2006.** The complainant emailed NHS Direct again expressing his opinion as to why he believed the exemptions had not been correctly applied. In particular he was unclear as to how disclosure of the information would be incompatible with a community obligation under section 44 of the Act. He was also not persuaded that disclosure would endanger the health and safety of an individual and could not see that there was evidence of an intention to publish the information in the future at the time he made his request.

The Investigation

Scope of the case

12. **10 March 2006.** The complainant contacted the Commissioner by email to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider NHS Direct's refusal to release the geographic number behind the 0845 4687 number. He argued that the information belonged to him as the taxpayer and that he did not consider any of the three reasons cited by NHS Direct for withholding the information to be relevant. As the complaint to the Commissioner was specifically about NHS Direct's refusal to provide the geographic number, the Commissioner has only investigated this particular aspect of the request.
13. Although the complainant did not raise the point, the Commissioner has also considered whether NHS Direct breached section 1 of the Act by incorrectly stating that it did not hold the information requested. He has also considered whether section 17 of the Act was breached by failing to provide either details of the exemptions it was relying upon or details of the complainant's right to appeal and to complain to the Commissioner in its refusal notice.

Chronology

14. The Commissioner wrote to NHS Direct on 17 November 2006 and commented on NHS Direct's handling of the request. He also asked NHS Direct to clarify the basis on which it sought to rely on the exemptions it cited at internal review.
15. NHS Direct replied on 3 January 2007. It acknowledged that there were shortfalls in the manner in which it handled the complainant's request and that it initially dealt with the request as an enquiry rather than an FOI request. This was because the organisation was in a state of change and at the time of the complainant's request it had not yet determined who within NHS Direct would handle FOI enquiries. It accepted however that a procedure needed to be put in place and this was now underway. The procedural issues surrounding NHS Direct's handling of the complainant's request are considered in more detail under the analysis section of this decision notice starting at paragraph 28 below.
16. NHS Direct then commented on its application of each of the exemptions it had cited at internal review. In relation to section 22 it confirmed that there was nothing in its publication scheme that indicates that there was, at the time the request was received, an intention to provide geographic numbers or to publish that information. It explained that whilst this had been discussed with its telecoms provider as a facility available from its new system there was, at the time of the request, no documented evidence to suggest that it was going to provide such a service or that it would publish the information. The application of section 22 is considered further in paragraphs 32 to 36 below.
17. As regards section 44 NHS Direct accepted that this had been misquoted and withdrew the application of this exemption.

18. In relation to the application of section 38 NHS Direct clarified why it believed disclosure of the information would or would be likely to endanger the safety of individuals. It explained that this was primarily due to inadequacies of the telecoms system it was currently operating which was being upgraded and once complete this upgrade should allow for the disclosure of the geographic numbers. It took the view therefore that to publish the geographic numbers at this stage would pose a safety risk. This was because the geographic numbers were not networked through its computerised system and therefore if a member of the public rang a geographic number there could be a delay in the call being answered, or being referred to a nurse or health information advisor or no answer of a call at all. The reasons for it reaching this conclusion are considered in more detail at paragraph 40 onwards. It also pointed out that it was waiting for guidance from OFCOM regarding the use of non-geographic numbers. According to NHS Direct OFCOM had indicated that it may introduce new number ranges starting with 03 which might provide an answer to this issue.
19. On 5 March 2007, the Commissioner contacted NHS Direct by telephone to seek clarification on a number of points in its letter. In particular he asked whether the new telephone system was now complete, and whether NHS Direct felt it was now able to safely disclose the geographic numbers. NHS Direct advised that the situation had not changed and therefore it could still not safely release the geographic numbers but confirmed that OFCOM had now completed its guidance and published its plans to introduce 03 numbers.
20. The complainant emailed the Commissioner on 5 and 23 April 2007 with his further comments as to why the information should be released. He summarised his comments as follows:
 - The 0845 number can cost up to 35p per minute from mobile networks so therefore acts as a “cost barrier” due to the excessive costs that may be involved.
 - The Central Officer of Information (COI) and Ofcom advise against the use of 084x/087x numbers and if they must be used then Ofcom recommends publishing an alternative geographical number for those on low incomes, ringing from mobiles etc.
 - It is entirely possible that the NHS Direct number cannot be dialled from abroad at all because the number is not the standard 11 digits long so foreign networks may interpret it as an incomplete number.
 - Numbers beginning 08x are generally excluded from inclusive call packages meaning those on low incomes may find themselves with huge bills being kept in a queue on the 0845 number
 - If someone needed to make a true 999 call they would just call 999 anyway rather than ring NHS Direct.
 - Anyone that did decide to ring an alternative geographical number and who gets an engaged tone if it's busy, can then ring the 0845 number if they choose or 999 if it's a possible emergency. This method gives the caller the choice beforehand.
 - There now appears to be a delay in the installation of NHS Direct's new systems and procedures which means its intention to publish geographic

numbers as stated in its email of 18 April 2006 has been delayed possibly to 2008.

- Some UK networks do not recognise the NHS Direct's 0845 number because the NHS Direct number is not the usual 11 digits therefore the 0845 number is not truly accessible unless telephone customers know to dial an override code first.
- 0845 is a revenue sharing number so that even if NHS Direct receives no revenue from the use of this number, the number provider does.
- Releasing a geographical number solves all these issues and because releasing the geographical number won't be as widely published compared to the 0845 number then probably more than 99% (approx) of the public will still ring the 0845 number as they won't know the geographical number until this is officially released.

Findings of fact

22. NHS Direct began operating in 1998. Its function is to provide 24 hour telephone and e-health information and advice about health, illness and health services, to enable patients to make decisions about their healthcare and that of their families.
23. The National Clinical Governance team of the Department of Health took over the running of NHS Direct on 1 April 2004. Prior to that date the service was operated from 22 local host NHS Trusts, each with its own information system and corporate and clinical governance system. NHS Direct used the 0845 number when it first started operating in 1998. It explained that the reason for using the 0845 system was to enable everyone to access the service on an equal basis and on the same basis that they would have had if NHS Direct had not been instituted. It also provided for a single point of contact for those businesses and public sector bodies which have a national presence and identity.
24. At the time of the request NHS Direct was undergoing a period of extensive review and transformation including its move from a regional to a national organisation and the establishment of a virtual contact centre allowing it to share calls seamlessly across the country. This led to the publishing of a transformation consultation document in July 2006:
http://www.nhsdirect.nhs.uk/NHS_Direct_Transformation_Consultation_Document.pdf
25. NHS Direct has also been awaiting guidance from Ofcom as to the way forward with government bodies using 0845 numbers. Ofcom is the independent regulator and competition authority for the UK communications industries, with responsibilities across television, radio, telecommunications and wireless communications services.
26. Ofcom carried out a consultation process between February and May 2005 about how telephone numbers will be managed over the next five to ten years. It announced its general strategic framework in July 2006 in which it confirmed it had decided to simplify the non-geographic numbers currently beginning with 08 and 09 used by certain businesses and public services. A summary document

can be found at:

<http://www.ofcom.org.uk/consult/condocs/numberingreview/statement/summary/>

27. These numbers also allow businesses and public sector bodies that make services available to the public to make charges using a micro-payment mechanism known as “revenue share” whereby they take a share of the charges paid by the caller. Ofcom recognises that members of the public have a poor awareness of the absolute level of call charges for these numbers and the nature of revenue-share. Further scams have emerged which has caused a substantial erosion of public trust in these arrangements. As a result Ofcom confirmed it would be introducing a 03 number for those businesses, public services and voluntary services who want a common national number but who do not wish to charge the public a premium for contacting them. Implementing some of the decisions set out in Ofcom’s July 2006 statement required further consultation as part of the process for making changes to the National Telephone Numbering Plan and to numbering application forms. The outcome of this further consultation was expected in September 2006 with a view to 03 numbers being in operation from early 2007 but it was not until February 2007 that Ofcom published details on how certain aspects of its plan for UK telephone numbering will be implemented, including the introduction of new UK-wide 03 numbers during 2007.

Analysis

Procedural matters

Section 1

28. Section 1(1)(a) of the Act states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request. This is referred to as the obligation to confirm or deny.
29. The Commissioner notes that in responding to the complainant on 19 January 2006, NHS Direct claimed that it did not hold the geographic telephone numbers behind the 0845 number but did later confirm that it did in fact hold this information.

Section 17

30. The Commissioner considered whether the refusal notice issued by NHS Direct on 18 February 2006 complied with section 17 of the Act.
31. Section 17(1) states that a public authority who is relying on an exemption(s) in order to withhold information must give the applicant a notice which:
- (a) states that fact,
 - (b) specifies the exemption in question, and
 - (c) states (if it would not otherwise be apparent) why the exemption applies.

32. Section 17(7) states:

“A notice under subsection (1), (3) or (5) must –

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (b) contain particulars of the right conferred by section 50.”

33. The refusal notice issued by NHS Direct on 18 February 2006 did not specify which exemptions it was relying upon as a basis for withholding the information in question, nor any reasoning as to why these exemptions applied. Furthermore, the notice did not contain details of the public authority's internal review procedure or the details of the right to complain to the Commissioner.

34. The full text of section 17 can be found in the Legal Annex at the end of this Notice.

Exemptions

Section 22 – Information intended for future publication

35. The section 22 exemption relates to information held by a public authority with a view to its publication, at some future date (whether determined or not).

36. In this case to be covered by the exemption, the information must therefore have been held by NHS Direct with the intention of publication at the time the request was made. It is not permissible to argue an intention to publish the information when that decision was taken after the request was made.

37. In this case, NHS Direct has accepted that there is nothing in its publication scheme to show that at the time of the request there was an intention to provide geographic telephone numbers. Furthermore there is no documented evidence to show that it was going to provide a service which would allow contact to be made via a geographic telephone number or that it would publish this information. In this case NHS Direct has therefore not convinced the Commissioner of an actual intention to publish the requested information.

38. In view of the above, the Commissioner has decided that the exemption was not engaged at the time the request was made.

39. Since it has not been established that, at the time the request was received there was an intention to publish the geographic telephone numbers, the Commissioner has not gone on to consider whether it was reasonable to expect the complainant to wait until the due publication date, or to consider the public interest in maintaining the exemption.

Section 38 – Health and Safety

40. Section 38(1)(b) provides that information is exempt if its disclosure under the Act would, or would be likely to endanger the safety of any individual.
41. Section 38 is a qualified exemption. This means that even if the information requested is information falling within the scope of the exemption NHS Direct must decide whether the public interest in maintaining the exemption outweighs the public interest in its disclosure. In other words the harm that would be likely to be caused to any individual by the disclosure would be greater than the public interest in the disclosure.
42. In assessing the application of section 38, the Commissioner firstly considered whether disclosure would or would be likely to endanger the safety of any individual. The Commissioner takes the view that the phrase “would or would be likely” to endanger means that there should be evidence of a significant risk to the physical or mental health, or the safety of any individual. In assessing whether this risk occurs the Commissioner considered the following arguments put forward by NHS Direct.
43. NHS Direct explained that it is currently divided into five regions and the networked system is set up on three levels, local; regional and national. It has three sets of staff working within each contact centre. The staff which answer the original telephone calls are termed health advisors. The second set of staff are nurse advisors and the third set are health information advisors. The process it has in place allows the health advisor to take the initial call and go through a computerised question and answer system that is designed to rule out any immediate transfer to the ambulance service for life threatening issues. For those calls that do not fit into this category it then allows it to prioritise the request for a call back from a nurse advisor or a health information advisor. Dependant on the severity of the needs of the caller/patient, the system allocates a priority rating on broad call back timeframes.
44. NHS Direct explained that when they took over the running of the service it had to amalgamate 22 of these staff sets into one united database accessible to all sites This involved bringing 22 corporate and clinical governance systems into one; moving from 22 information systems to one; take over 54 buildings while setting up a new headquarters and take over of 50 telephone systems connected to 22 individual hubs with over 20 recording systems and over 12 call logging equipment systems. Much of this telecoms equipment was not compatible and some badly in need of replacement.
45. It also explained that unlike most private call centre operations which operate from one or two large locations NHS Direct operate from 40 to 50 locations around the country. It explained that the main reason for this is NHS Direct employ skilled qualified nurses who are difficult to recruit and therefore if it were to concentrate its services in one or two areas, it would have a detrimental effect on local health economies that were already struggling to recruit staff.

46. NHS Direct explained in its letter of 3 January 2007 that at the time of the request the system it had in place did not link any of the telephone switches together. They operated as 22 independent systems. This meant that when someone called the 0845 number if all operators within that local centre were busy the caller would simply receive an engaged tone or a recorded message. The call would not be diverted to another centre within the region or nationally. However the Commissioner understands that by the time NHS Direct issued its refusal notice in February 2006 the telephone switches were now networked. This enabled searches to be made nationally through the computerised system if necessary for an available operator. Geographic telephone numbers however were still not connected to this computerised system.
47. In its letter of 3 January 2007 NHS Direct explained that each centre has its own set of geographic numbers which do not go into the contact centre itself. It is these geographic numbers that is the information required by the complainant. NHS Direct explained that when these numbers were originally established they were used as what was referred to as "fall back numbers". These fall back telephones were stand alone telephones with an integral handset. This was so that if the telephone switch system that controlled the telephones within that building went seriously wrong, the numbers would continue to ring on a small number of dedicated telephones within the building. Each centre would determine the location of its own dedicated fall back numbers which could be located in the contact centre itself or in the offices within the building. In the case where the telephone switch system failed these "fall back numbers" would have staff allocated to take the calls coming through on them. Although these fall-back geographic numbers are still available, because all contact centres are now networked the importance and use of these fall-back geographic numbers has declined.
48. NHS Direct explained that because these fall-back geographic numbers are still not connected to the computerised networked system and are situated in various locations within a contact centre there are dangers that calls will not be answered either because:
- The centre is closed and there are no staff present to answer the call e.g. a centre does close from time to time for training or systems upgrade reasons. This happens at each site at least one day every six weeks.
 - The telephones are in operation in which case the caller will simply get an engaged tone or recorded message.
 - The telephones are not in operation but are not in the contact centre itself and the place that the telephones are based is not staffed e.g. a training room or outside normal office hours.
 - The telephones are in the contact centre but all centre staff are busy.
49. Therefore NHS Direct explained that the chances of getting through to NHS Direct contact centre by using one of these numbers would be seriously inhibited by the use of that number. Furthermore it explained that although it does have plans to allow it to re-route calls should one of its centres fail or have to be evacuated this is currently not automatic as it involves telephone calls to the BT operations centre with code words and plan numbers to be specified.

50. NHS Direct explained that there is also the risk that the use of geographic numbers could delay the call answering process because:
- the telephones are in operation but are not in the contact centre; the call has then to be transferred to the call centre supervisor so that they can allocate it to a health advisor who is not engaged on calls. If a health advisor is not available a further wait will ensue
 - the telephone is not in use but the desk at which that telephone sits is not staffed at the time the call is received. This would mean that somebody has to identify that a call is coming in on an unattended telephone and move positions to answer it. This means logging out and reconnecting the headset at the new telephone and logging on the telephone before answering or picking up the handset. The time taken for this process would be dependant on the number of available staff in the vicinity of the ringing telephone
51. NHS Direct explained in its letter of 3 January 2007 that it was in the process of upgrading its system when the complainant made his request but delays have meant that the installation of its new networked telephone system was not yet complete. The benefits of this new system when complete will allow all the telephone switches in the buildings it operates to be connected to the same processor and system.
52. NHS Direct explained that the networked system it is currently installing will accept calls from people and identify which area the call is coming from (it explained that current fall back telephones do not have this provision). It will then look at the number of telephones in the local area that are recorded in its system as being available to accept calls and that are staffed by health advisors. It will also check to see if any of these telephones are not taking a call and are available to take another incoming call. If there is one available then the call will be routed to that telephone and the call answered. If there is not a telephone available at the local centre the system will go through the same process but this time looking across other centres in that local region. It will then route the call to the first telephone it finds within the region, but if it does not find one available, it will then look nationally. It explained that this whole process takes fractions of a second so there is no discernable delay in getting answered. Once the call has been answered the health advisor then asks a set of questions to establish that there isn't a need to transfer immediately to the 999 service. If this is not the case then they can take further details from the caller which creates a medical record and prioritises the call. The nurse or information advisor will then call back within the appropriate timeframe for the priority.
53. NHS Direct also explained that a small percentage of calls are referred immediately to the 999 system (between 4 to 6%) and another percentage that are referred for urgent attention by either a GP in the case of medical conditions or Accident and Emergency Departments for trauma cases. NHS Direct takes on average 26,000 calls a day on its telephone service and therefore while the percentage is small the actual numbers can result in hundreds of people being referred every day. It therefore argues that the disclosure of geographic numbers would result in a delay or no answer of a call from one of these more serious

callers. It is therefore strongly of the view that disclosure could endanger the health and welfare of individuals to the extent that its telephone system is unable to route the call properly.

54. NHS Direct argue that releasing the geographic numbers would result in congestion of the system. NHS Direct explained that the number of calls coming in through these numbers would inevitably increase and it would then need to allocate staff to each and every one of these numbers. This would have two effects. It would mean these numbers get priority over all other calls coming through the 0845 number and would result in people with relatively minor issues being taken first. It would also mean a reduced staffing level to enable these phones to be attended at all times 24 hours a day decreasing staffing on the 0845 number. The knock on effect of this would be longer answering times on the 0845 number and a possible increase in the use of the regional / national sorting of calls. It explained that NHS Direct does not have funding to increase staffing levels in its centres and is in the process of rationalising its centres in an effort to meet Department of Health funding targets that will mean less staff rather than more.
55. The Commissioner was also made aware of the website www.saynoto0870.com which actively seeks to promote the disclosure of geographic numbers for various well known organisations. NHS Direct confirmed that a geographic number for one of its centres is published on this site and this has led to an increasing number of calls to that number.
56. As regards the possible difficulties of calling from overseas, NHS Direct explained that it does not accept calls from overseas and does not provide an alternative number for this purpose. Neither does it take calls from the rest of the UK for the following reasons:
- NHS Direct is a referral service. It assesses patients and then refers them to the most appropriate source of care for their issue. It only holds information on the healthcare system in England.
 - Drugs in use in England are known and controlled by the UK Medicines Information Service. The contents of drugs and medicines used abroad can vary and names are often different. It would therefore be clinically unsafe for it to advise on the use of foreign drugs and medicines that it is unsure of and cannot reference.
 - There are equivalent services in Wales and Scotland that provide a similar service to NHS Direct.
57. Taking into account all the issues raised within the above analysis, the Commissioner is satisfied that disclosure of the requested information would, or would be likely to, endanger the safety of individuals.

Public interest test in relation to section 38

58. The Commissioner recognises that there is a public interest in the public being able to access public services in a cost effective manner and as cheaply as possible. He has noted Ofcom's concerns about the use of 0845 numbers by public bodies and that it believes that public bodies should consider carefully whether it is appropriate to use 084 and 087 numbers in place of Freephone or ordinary geographic numbers. Ofcom believes that, at present, it is inappropriate for public bodies to use 084 or 087 numbers exclusively (i.e. without at a minimum giving equal prominence to a geographic alternative) when dealing with people on low incomes or other vulnerable groups.
59. However the Commissioner also recognises that there is a public interest in maintaining confidence in the effective operation of the NHS Direct service and that the health and safety of the public should not be put at risk by disclosing geographic numbers at a time when it may be unsafe to do so. He recognises that at the time of the request measures were being taken by Ofcom and NHS Direct to address issues about the use and operation of non-geographic telephone numbers by public bodies and the Commissioner understands the installation of the upgraded system by NHS Direct is nearly complete which will enable it to disclose the geographic numbers.
60. Having taken into account all of the above the Commissioner believes that the increased likelihood of risk to the health and safety of an individual is in itself a powerful public interest argument against disclosure. In assessing the risk to the health and safety of individuals the Commissioner has to consider the systems operated by NHS Direct at the time of the request and not the existence of more advanced systems which were not being utilised at that time. In doing so the Commissioner is satisfied that the system utilised by NHS Direct at the time of the request enabled it to offer an efficient and effective service. He is satisfied there is a real risk that the disclosure of geographic numbers could damage that service and as a result endanger the health and safety of individuals.
61. The Commissioner is persuaded that in this case disclosure of the geographic numbers by NHS Direct could create delays in responding to and dealing with calls, however small that risk may be. The health and safety of the public must be paramount and it is therefore difficult to envisage public interest arguments so strong that would justify the disclosure of information which would or would be likely to endanger the health and safety of an individual. The Commissioner has therefore decided that the public interest in maintaining the exemption outweighs the public interest in disclosure.
62. The Commissioner is also satisfied that the steps currently being taken by NHS Direct are sufficient to address the public's concerns and loss of confidence in the use of non-geographic numbers. However he recognises that it is unfortunate that unavoidable delays have occurred in the installation of NHS Direct's new telephone systems preventing the safe disclosure of its geographic numbers.

The Decision

63. The Commissioner has decided that NHS Direct failed to comply with section 1(1)(a) of the Act by initially incorrectly claiming that it did not hold the geographic numbers.
64. Furthermore, the Commissioner has decided that NHS Direct has breached section 17(1) of the Act by failing to specify in its refusal notice the exemptions it was relying on and why it applied.
65. The Commissioner has also decided NHS Direct has breached section 17(7) of the Act by failing to provide details of its complaints procedure or explain the right to complain to the Information Commissioner.
66. The Commissioner has also decided that NHS Direct incorrectly applied section 22 of the Act.
67. However the Commissioner's decision is that the information requested is exempt under section 38 of the Act because disclosure of the information would or would be likely to endanger the health and safety of individuals and the public interest favours maintaining the exemption.

Steps Required

68. The Commissioner requires no steps to be taken.

Right of Appeal

69. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

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

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

Dated the 30th day of July 2007

Signed

**Richard Thomas
Information Commissioner**

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

Legal Annex

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.”

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.”

Section 17(2) states –

“Where–

(a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-

(i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or

(ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and

(b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate

of the date by which the authority expects that such a decision will have been reached.”

Section 17(3) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

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

Section 17(4) provides that -

“A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

Section 17(5) provides that –

“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.”

Information intended for future publication

Section 22(1) provides that –

“Information is exempt information if-

- (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),
- (b) the information was already held with a view to such publication at the time when the request for information was made, and
- (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).”

Section 22(2) provides that –

“The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which falls within subsection (1).”

Health and safety

Section 38(1) provides that –

“Information is exempt information if its disclosure under this Act would, or would be likely to-

- (a) endanger the physical or mental health of any individual, or
- (b) endanger the safety of any individual.”

Section 38(2) provides that –

“The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, have either of the effects mentioned in subsection (1).”