Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 19 November 2007

Public Authority: Office for Standards in Education
Address: Alexandra House
33 Kingsway
London
WC2B 6SE

Summary

The complainant requested the Office for Standards in Education (“”Ofsted”) to provide the following information: a list of all providers of childcare to whom notices of intention to cancel their registration had been issued since September 2001: a list of those whose notices of intention had subsequently been cancelled, and copies of any unpublished inspection reports in respect of providers whose notices of intention had been so cancelled. Ofsted refused to provide the information sought in the first two requests on the grounds that releasing the information would cause prejudice to the commercial interests of those providers: Ofsted said also that it could not in any case produce the information sought without undertaking new work and creating new information, which it was not obliged to do under the Act. Ofsted said that it could not provide the information sought in the third request because to do so would breach the statutory cost limits as set out in section 12. It further said that it could not release information relating to individual childminders as to do so would breach the data protection legislation. In respect of the first two requests, the Commissioner did not accept the argument that providing what had been requested would effectively involve the creation of new information but did accept that provision of the information sought in the third part of the request would breach the statutory cost limits. The Commissioner accepted that providing the information sought in respect of childminders would breach section 40 (2) of the Act and that Section 43(2) had been correctly applied to withhold the information sought in the first two parts of the request.

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. In an undated request the complainant asked the Office for Standards in Education ("Ofsted")for the following information:

a a list of all nurseries, nursery schools, playgroups or childminders on which notices of intention to cancel the provider's registration have been served since September 2001:

b a list of those providers which have received such a notice where the notice has not been enforced (ie where cancellation has not happened):

c. copies of any unpublished inspection reports on those providers who have received notices of intention to cancel their registration but have not had their registration cancelled.

3. Ofsted responded to this request on 1 March 2005. Ofsted said that section 12 of the Act made it clear that there was no obligation to release information where the cost of complying with the request would be over the statutory limit of £600, which was the case here. Ofsted also said that it was withholding information relating to the first two elements of the request under section 43 (Commercial interests) as it believed that releasing information about providers who had been served with a notice but where that notice was not subsequently put into effect would prejudice the commercial interests of those providers. Many notices were issued simply because of a delay in paying registration fees. Ofsted had applied the public interest test in relation to this exemption but did not believe in this case that it operated in favour of disclosure. In relation to the third element of the request Ofsted believed that section 43 would also apply unless the information could be provided on an anonymous basis but that, given the number of reports involved, the cost of doing that work would be in excess of the statutory limit. Ofsted offered the complainant an internal review of this decision.

4. In a letter dated 6 March 2005, the complainant sought such a review. She argued that making information of this kind available to parents was of `paramount public interest'. She went on to say that, if the reports were to be published as they stood, there would then be no need to divert resources in order to anonymise them. Full publication would also make clear which providers had given serious cause for concern.

5. Ofsted replied on 4 April 2005. Ofsted concluded that its original decision had been correct, although in this letter section 12 was now applied only to the third element of the request rather than, as had appeared to be the case in its first letter, to the request in full. While recognising the potential public interest in the details of notices of intention involving more serious breaches, Ofsted said that provision of the information sought would not enable such cases to be distinguished. In addition, although no direct reference was made to section 40(2) of the Act, Ofsted said that it had a legal duty to protect the personal data of childminders which was why, when inspection reports relating to childminders were published, any material which might lead to their identification was removed.

In recognition, however, of the level of public interest in this matter Ofsted offered to hold a meeting with the complainant and to make available to her some statistical information as well as a sample of inspection reports where personal information had been redacted. The statistical information consisted of charts identifying the percentage of Notices issued where the word `fees' could be identified as a reason for issuing the Notice, divided between daycare providers and childminders. At that meeting, which took place on 6 May 2005, this information was released to the complainant.

The Investigation

Scope of the case

6. On 10 May 2005 the complainant contacted the Commissioner to complain about the failure to provide her with the full information she had requested. The complainant reiterated her view that parents seeking potential childcare providers had a strong interest in having access to full information about them.

Findings of Fact

7. Notices of Intention to cancel the registration of a provider of childcare, which are legal notices issued under the provisions of the Children Act 1989, may be issued in a number of different circumstances. Figures provided by Ofsted suggest that at least half of them are issued because of a late payment of fees by the provider concerned. It is primarily because of this that there is a significant difference between the number of notices that are issued and the number that subsequently lead to the actual cancellation of a registration, as most fees are paid following the issuing of the notice.

8. Oftsed does not normally put the issuing of a notice into the public domain. This is because providers are permitted to continue operating after the issuing of a notice while the appropriate procedures are carried out: publicising the notice could therefore have an adverse, possibly quite unjustified, effect on the provider's business.

Chronology

9. The Commissioner obtained from Ofsted examples of the information provided to the complainant. On 14 February 2006 a member of the Commissioner's staff visited Ofsted where he was provided with sample copies of inspection reports. He was also shown the Ofsted database on which information relating to Notices of Intention is stored. The Commissioner has noted that, while it would be possible to establish the number of such Notices issued, it would not be possible to establish with full accuracy the reasons for issuing all of the Notices as this information, in any given case, is recorded on the database in a free text field the completion of which is non-mandatory. Ofsted had told the complainant, on the basis of the information that was recorded, that approximately half of the Notices issued were related to the non-payment of fees. As payment of the outstanding

fees usually occurred soon after the issue of the Notice, this explained why there was quite a significant difference between the number of Notices issued and the number of registrations subsequently cancelled. Notices not relating to the failure to pay fees might cover a number of issues: those resulting from an inspection were quite likely to relate to breaches of the National Standards (of which there are fourteen).

10. Ofsted also informed the Commissioner that, although all inspection reports relating to childcare provision had been routinely published on its website since 2003 (apart from exceptions in one or two very limited categories), this was not the case with inspections prior to that date, some of which would fall within the parameters of the complainant's request. Substantial work would be involved in going through those reports in order to carry out the necessary anonymisation.

11. In further correspondence with the Commissioner Ofsted confirmed that `locating, retrieving and possibly redacting over 1,000 reports would comfortably exceed the £600 (or 24 working hours).' Ofsted also had a duty under the data protection legislation to protect the privacy of childminders, although Ofsted did not directly cite section 40 of the Act at that stage. Ofsted also said that the complainant had specifically argued that release of the information sought would be of benefit to parents. Ofsted said that, in respect of childminders, where full information was not published on the website, parents had access to information linking Ofsted reports to individual childminders through the local authority Children's Information Service (CIS), which also provided information to parents about childcare provision in general. There was also other information that Ofsted was statutorily obliged to provide, for example under `The Childminding and Day Care (Disclosure Functions) (England) Regulations 2004.' ("The Childminding Regulations"). These regulations covered all childcare providers and set out the circumstances in which information should be disclosed by Ofsted about such providers to, among others, parents.

12. During the course of the Commissioner's investigation it became apparent that further discussion was required with Ofsted on two specific matters. As indicated earlier, Ofsted had cited the statutory limits as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Regulations) as justification for not providing some of the information sought by the complainant in this case. As stated in paragraph 9 above, Ofsted's calculation was based on the understanding that the cost of carrying out any redaction of reports that might prove necessary in dealing with this request was a cost that could be included in the calculation to determine whether or not the fees limit set out in the Regulations had been breached. The Commissioner's interpretation of the Regulations is that any calculation made in respect of the cost limits should **not** take into account any cost that there might be in redacting any information that was considered to fall within one of the exemptions of the Act. The Commissioner's view of the Regulations was conveyed to Ofsted in an email dated 18 January 2007.

13. Secondly Ofsted said, in respect of the information sought in the first two parts of the request, that it did not actually hold the information asked for by the complainant in the form in which it had been requested. Work would be required

in order to create the lists that had been sought: at present the information existed only as `unanalysed and invalidated data within our childcare database'. Ofsted believed that producing those lists would constitute the creation of new information, which the Act did not require it to do.

14. In relation to this particular point the Commissioner sought further clarification from Ofsted. Ofsted said that the system on which it stored information relating to Notices of Intention collected and presented that information in relation to individual providers: it was the individual provider, as a separate entity, who was the keystone of the system. The system was not designed to respond to attempts at aggregation. In order to deal with the request made in this case normal search methods would not work: a customised request, written in Structured Query Language (SQL), would be needed. All such requests were different in nature, resulting in outcomes that were, by definition in each case, both new and unique. While accepting that it would be possible to create a programme to produce the information sought by the complainant, Ofsted argued that the complexity and level of analysis required to develop that programme exceeded its obligations under the Act. Given that aggregated information of this kind was neither routinely generated nor required by Ofsted in the course of its normal business, Ofsted took the view that to carry out this work would effectively constitute the creation of new information. Ofsted accepted that it had provided some information to the complainant of the kind requested but emphasised that it had done so only outside the formal remit of the request (and thereby of the Act) in order to be helpful. However, this work had only enabled Ofsted to determine the number of providers to whom Notices of Intention had been issued and how many of them were currently described as holding a registration other than `cancelled'. The work had not delivered the list sought by the complainant as it was not possible to link the issuing of a Notice of Intention to the names of individual providers without additional work being done.

15. The Commissioner subsequently gave further consideration to the question of whether or not Ofsted could be said to hold the information requested, an issue that had also arisen in other cases. The outcome of that consideration was that the Commissioner concluded that Ofsted could be said to hold the information, albeit not in the specific form requested, and wrote to Ofsted on 21 June 2007 to that effect.

16. There was subsequent correspondence on this matter from Ofsted on 18 September 2007. Ofsted noted the Commissioner's view that it did hold the information requested but repeated its earlier point, that to produce it would require the application of both specialist knowledge and a specialist programme. In that letter Ofsted also confirmed its view that complying with the third part of the request would in itself exceed the cost limits set out in the Regulations and that, although it had not performed the calculations in respect of the first two parts of the request (a fact confirmed in a subsequent letter of 16 October 2007), it was evident that compliance with all three parts of the request, when regarded as a continuous exercise, `would clearly exceed the appropriate limit.'

17. In that letter of 18 September 2007 Ofsted also reiterated its arguments in support of those exemptions it had previously cited. In respect of section 40 (2) (see

paragraph 5 above) Ofsted said that a distinction needed to be drawn between childminders and other providers of daycare as the majority of the former operated from their own homes. Much of the information held about them therefore constituted personal data. Ofsted confirmed its view that disclosure of information about childminders outside the arrangements set out in the Childcare Regulations would constitute a breach of the first Data Protection principle: nor would any of the conditions of Schedule 2 of the Data Protection Act 1998 ("the DPA") be met. Ofsted also set out again its arguments for withholding all of the information sought under section 43(2) of the Act.

18. Finally, in that same letter, Ofsted set out what it saw as the general public interest arguments operating in favour of disclosure. These included: increasing public understanding as to why Ofsted might cancel a registration: furthering the public debate on the quality of childcare: increasing transparency and accountability in the way in which public money was spent, and a recognition that greater publicity might encourage providers to improve the quality of their services. Ofsted went on to say that it was important to recognise that in some cases more information needed to be made available to parents, who were the group directly accessing childcare services, rather than to the public at large. However, Ofsted took the view that releasing the information sought in this instance would not serve to increase public understanding and could indeed cause unnecessary confusion and alarm.

Analysis

Procedural Matters

Section 1

19. The Commissioner has referred above (paragraphs 11 - 14) to the issue of whether or not the information sought in the first two parts of this request can be said to have been held by Ofsted. Ofsted has said that it does not hold the information in its database in the form requested by the complainant. While accepting that it could produce the information in the form requested, it could only do so through writing a specifically tailored programme in SQL. Ofsted has argued that this is, in effect, creating new information and that this is something that public authorities are not required to do under the Act.

20. The Commissioner does not accept this view. The legislation requires public authorities to consider the release of information that they hold. If information has been input into a database, it is clearly held. If it is held, it can be extracted. The Commissioner recognises that there may be no compelling business reason for Ofsted to hold information in the form requested by the complainant and that producing it in that form may require the application of a special programme (and, indeed, that the cost of carrying out that process may be such as to allow Ofsted to invoke Section 12 and the Regulations). He notes, however, that Ofsted has confirmed that such a programme could be devised to provide the information in the form requested. On that basis, it is the Commissioner's view that the

information is held. In coming to that view the Commissioner has taken into account the Information Tribunal decision in the case of *Johnson v ICO and MOJ (EA/2006/0085)*, while noting that the decision in that case relates to the operation of manual filing systems.

Section 12

21. Section 12 of the Act states that a public authority is not obliged to comply with a request for information if it estimates that meeting the request would exceed the appropriate cost limit. The appropriate limit is currently set out in the Regulations. A public authority may take into account the cost of locating, retrieving and extracting the requested information in performing its calculation. The cost limit is currently set at £600 and equates to three and a half days work or £25 per hour.

22. In its early responses to the complainant Ofsted expressed the view that providing the information sought would exceed the above cost limits. However, at that stage Ofsted had provided no calculations to support this contention and, as seen above, it had incorrectly taken into account the cost of redaction (effectively, in this case, this equates to anonymising the childminders reports). At this stage too, Ofsted was only applying section 12 to the third part of the request, having applied one exemption (S43) to the first two parts of the request and another (S40) to any information relating specifically to childminders. Subsequently, at the request of the Commissioner, Ofsted provided some calculations to support its view that complying with the third part of the request would exceed the cost limits set out in the Regulations. (It should be noted that Ofsted continued to make the point that, even if it was a cost that could not be included in the calculation, there nevertheless was a cost involved in carrying out the redactions necessary to preserve the anonymity of childminders).

23. In respect of the question of redaction, the Commissioner is of the view that the Regulations do not permit public authorities to include in their cost limit calculations any work carried out for the purposes of redacting a document when that redaction relates to the blanking out of exempt information. Such activity does not fall within regulation 4(3(d), which is meant only to cover the extraction of requested information from a document containing other information that has not been requested. Information in the context of this part of the regulation, therefore, means the information requested, not the information to be disclosed. The Commissioner notes that this interpretation of the regulation has now been endorsed by the Information Tribunal in the case of *Jenkins v the Information Commissioner and DEFRA (EA/2006/0067)*, in particular paragraphs 47 – 50 inclusive.

24. Ofsted has now calculated that the number of reports encompassed by the complainant's request totals 1,063 and that the time taken to locate, extract and retrieve those would exceed the requirements set out in the Regulations. The Commissioner has examined those calculations and is satisfied that this is the case. The Commissioner is therefore of the view that Section 12 has been correctly applied to the third part of the request.

Exemptions

Section 40

25. Ofsted has said that providing the information sought in this request in respect of childminders would mean having to release personal data as much of the information held by Ofsted about childminders falls into that category: this was because the vast majority of childminders worked from their own homes. Under the general provisions of the DPA (within the principles of which Ofsted operates, as it makes clear in the guidance notes for those registering for childminding) the release of the information sought in this request would therefore not constitute fair and lawful processing under the first data protection principle as it would clearly identify both individuals and their private addresses. While Ofsted accepted that the Childminding regulations required it to release information to certain classes of person in specific circumstances (which are also set out in the guidance notes) this did not include the circumstances of this particular information request. However, those classes of persons to whom information had from time to time to be released did include parents, and parents could also obtain information about individual childminding provisions through the CIS (see paragraph 9). Given that the complainant had specifically referred to parents as the particular group who would benefit from the release of the information sought, Ofsted was satisfied that existing statutory arrangements, plus the availability of the CIS, would be sufficient to ensure that parents could find out what they needed to know in respect of any given childminding provision. Ofsted also said that there would be an additional unfairness in releasing the specific information requested given that many of the Notices of Intention that had been issued were subsequently cancelled, and that many in any event related only to a late payment of fees. Release of the information could therefore lead to the incorrect inference that an individual provision was unsuitable when this was not, in fact, the case.

26. The complainant, while recognising the possibility that childminders might be put at risk by the publication of their full addresses, nevertheless thought that the publication at least of the names and postcodes of childminders would be acceptable.

27. The Commissioner recognises that, in processing information relating to childminders, Ofsted acts in accordance with the requirements of the DPA and of other regulations when they apply. He is satisfied that releasing the information requested here would publicly identify childminders in a way that would not, in his view, constitute fair and lawful processing as release of the information as requested would put into the public domain personal information about childminders in a way not envisaged either by Ofsted or the childminder as part of the arrangement entered into when a childminder registered. The Commissioner notes that the request, as phrased by the complainant, clearly envisages the identification, for the benefit of parents, of provisions to which an NOI had been issued which suggests that anonymised reports (some of which have already been provided to the complainant as examples) would not meet her requirements.

28. The Commissioner has noted the complainant's view that publication only of the names and postcodes of childminders would afford them sufficient protection. However, given modern technology, it would not be difficult for anyone sufficiently interested to use even that limited information as a basis for obtaining an actual address. Thus, it is the Commissioner's view that releasing information that puts the identities of childminders into the public domain would be a clear breach of section 40 (2) of the Act ,and that the Act has been correctly applied. This is an absolute exemption and no question of the public interest therefore applies.

Section 43(2)

29. Ofsted is of the view that section 43(2) is potentially applicable to all three parts of the complainant's request. This section, the full text of which appears in the Legal Annexe, protects information the release of which would prejudice the commercial interests of any person, or of any public authority, holding it.

30. Following the refusal of her initial request for information the complainant sought a review. In her letter seeking that review the complainant argued that Ofsted's primary purpose was to publish information about educational establishments and that this should take priority over any commercial considerations. She also said that making the reports available as they stood would obviate the need for (and the cost of) anonymisation, and that providing the reports relating to those who had received a Notice solely in respect of non-payment of fees would serve to highlight the more serious offenders. In further correspondence with the Commissioner, the complainant said that commercial interests would not be affected if the reasons for issuing a Notice turned out to be trivial and she thought that the providers of childcare were being treated differently to schools, where full information was released and where it was not possible to hide behind a plea of commercial prejudice.

31. Ofsted accepted that there were a number of public interest arguments in favour of releasing the information requested. Aside from the general desirability of greater transparency, it was recognised that there was a public interest in understanding the reasons why Ofsted might cancel the registration of a childcare provider and that the provision of such information might enhance public debate about issues relating to the provision of childcare. Additionally, publication of the information might help to improve the general standard of childcare provision. However, overall, Ofsted did not think public understanding would be significantly improved by the publication of this information because, fundamentally, the issuing of a Notice of Intention was not in itself a reliable indicator of the quality of the provision concerned.

32. In addition, in its responses both to the complainant and to the Commissioner, Ofsted argued that, if it was known that a provider had been issued with a Notice, even if its registration had not been subsequently cancelled, it would prejudice the commercial interests of that provider. This was because it was not possible to distinguish, on the basis of the information sought, cases where a Notice had been issued for a serious reason as opposed to a relatively minor one. The Ofsted database, while it could identify the fact that a Notice had been issued, could not automatically say why, although the free text field might provide that

reason: if not, then manual examination would be necessary. Although Ofsted recognised that Notices were often issued for relatively minor infringements, most frequently for a failure to pay registration fees, parents might assume that a Notice had been issued because of a serious breach of the childcare standards. They might then withdraw their child from that particular provision, or not elect to send their child there in the first place, despite having no direct knowledge of the reason for the issuing of the Notice. It was for this reason that Notices were not placed in the public domain when issued and why provisions were allowed to continue to operate even though a Notice had been issued. Ofsted also noted that the complainant had particularly emphasised the importance of full information being made available to **parents**. Ofsted took the view that the requirements of the Childminding Regulations and the access provided by the CIS were sufficient to ensure that parents could be adequately informed about particular providers whereas release of the particular information sought under the Act, which was by definition to the public at large, was likely to cause prejudice of the kind covered by this particular exemption.

33. Ofsted went on to say that the market for childcare provision was extremely competitive. The knowledge that a particular provider had received a Notice, even if it only related to late payment of fees, might lead to a withdrawal which would clearly cause commercial prejudice to the provider. Release of this kind of information would be particularly prejudicial to daycare providers if the operation of the data protection legislation were to prevent the release of this kind of information in respect of childminders, as the daycare providers would not then be afforded the same level of protection. For these reasons Ofsted took the view that the public interest in the release of the information sought did not outweigh the potential prejudice to commercial interests.

The Commissioner's View

34. Having accepted (see paragraph 28) that the release of information which would enable the identity of childminders to be established is a breach of section 40(2) of the Act, the Commissioner is only concerned in respect of this exemption to consider the applicability of it to other providers of childcare who are not individuals operating from a private address. In the first instance, therefore, is the exemption engaged? In order to answer that, the Commissioner has to determine whether or not the release of the information sought would, or would be likely, to prejudice the commercial interests of any person or public authority holding it. Ofsted has argued that release of the information sought would cause such prejudice to childcare providers because it might not be possible to distinguish, for reasons set out earlier, whether or not a Notice of Intention had been issued as a result of serious concerns about childcare; as a result, parents might unjustifiably take an adverse view of a particular provider to that provider's commercial detriment.

35. In coming to a view on that, the Commissioner has taken into account the Information Tribunal case EA2005/005 in which the Tribunal considered whether or not the release of information would, in its view, be likely to cause a similar kind of prejudice and, in the course of its judgement, cited the words of Mr Justice Munby in the case of *R (on the application of Lord) v Secretary of State for the*

Home Office [2003] EWHC 2073 (Admin), to the effect that, in order for the criterion of 'likely to prejudice' to be met, it needed to be shown that there was `a very significant and weighty chance of prejudice'. Has that test been met in this case? The Commissioner has noted that Ofsted does not put into the public domain Notices of Intention when they are issued, nor are providers who have been issued with such a Notice required to suspend their operations. These practices appear to reflect the fact than a substantial number of Notices are issued for minor infringements or oversights which are likely to be remedied fairly rapidly. However, Ofsted has indicated that release of the information sought by the complainant would not necessarily identify the reasons for the issuing of the Notice and that parents might therefore assume, for example, that a Notice had been issued for a serious breach of childcare whereas it had only been issued because of a delay in paying a registration fee. The Commissioner accepts that, in such circumstances, there would be a very strong likelihood that prospective parents searching for childcare provision would be likely to choose a provider unencumbered by a Notice of Intention rather than a provider who was. On that basis it seems to me that the prejudice test has been met and that the exemption can be regarded as engaged.

36. Section 43, however, does attract the public interest test. In the case of childcare provision there is a general public interest, which Ofsted has recognised, in ensuring that standards are as high as possible and it therefore follows that the release into the public domain of any information which would assist that process should be supported. However, the complainant has drawn particular attention to the public interest in this information being released because of its value to parents. The Commissioner is of the view that, if release of the information requested here were to be unambiguously of assistance to parents, then there would be a strong case for supporting it, even allowing for its potentially adverse effect upon individual providers. But Ofsted has made it clear that the information as it stands would not do that: in fact, that it might actively mislead parents rather than assist them. Given that fact, and the fact that parents can obtain through other avenues information which will assist them in making an accurate choice in respect of childcare provision, the Commissioner is therefore of the view that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

The Decision

37. The Commissioner's decision is that, although the work that Ofsted would be required to carry out in order to meet the first two parts of the information request could not be done without having to create a tailored programme which would need to be applied to the raw data held on its database, this does not mean that Ofsted does not hold the information. The Commissioner is also of the view that section 12 was applied correctly to the third part of the complainant's information request. In respect of the identities of childminders, the Commissioner is satisfied that section 40(2) of the Act has been correctly applied to protect those identities from disclosure. In respect of section 43(2), the Commissioner is also satisfied that the public interest operates in favour of withholding the information sought in

the first two parts of the request where that information relates to providers of childcare other than childminders.

Steps Required

38. The Commissioner requires no steps to be taken.

Right of Appeal

39. 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 19th day of November 2007

Signed ……..

Richard Thomas
Information Commissioner

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

Legal Annex

General right of access to information held by public authorities

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."

Exemption where cost of compliance exceeds appropriate limit.

Section 12(1) provides that –
"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."

Section 12(2) provides that –
"Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit."

Section 12(3) provides that –
"In subsections (1) and (2) "the appropriate limit" means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases."

Section 12(4) provides that –
"The secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

(a) by one person, or
(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them."

Section 12(5) – provides that
"The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are estimated.

Personal Information

Section 40(1) provides that –
"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."

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(1) provides that –
"Information is exempt information if it constitutes a trade secret."

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)."

Section 43(3) 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, prejudice the interests mentioned in subsection (2)."

The Freedom Information and Data Protection (Appropriate Limit and Fees) Regulations 2004

Regulation 4

(3) In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only of the costs it reasonably expects to incur in relation to the request in-

(a) determining whether it holds the information,
(b) locating the information, or a document which may contain the information,
(c) retrieving the document, or a document which may contain the information
(d) extracting the information from a document containing it.

(4) To the extent to which any of the costs which a public authority takes into account are attributable to the time which persons undertaking any of the activities mentioned in paragraph (3) on behalf of the authority are expected to spend on those activities, those costs are to be estimated at a rate of £25 per person per hour.