

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 19 February 2009

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

Summary

The complainant submitted a request to Ofsted for information concerning a registered provider of nursery and day care for young children. Ofsted responded to the complainant by issuing a refusal notice citing section 40(2) of the Act in relation to the first part of his request and by informing him that it held no information relevant to the second part of his request. The Commissioner finds that Ofsted responded appropriately by informing the complainant that it held no information relevant to the second part of his request. The Commissioner has examined the information sought by the complainant in the first part of his request. He finds that the information contains the nursery provider's personal data, some of which also constitutes her sensitive personal data. The Commissioner is satisfied that disclosure of the data subject's personal data would not breach the data protection principles and therefore this information does not engage section 40(2). Ofsted's failure to supply this information is therefore a breach of sections 1(1)(b) and 10(1) of the Act. Where the information concerns the nursery provider's sensitive personal data, he finds that section 40(2) is engaged and was appropriately applied by the public authority. The Commissioner has outlined the steps required for compliance with section 1(1)(b) of the Act in this decision notice and has provided instructions contained within a confidential annex.

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 16 May 2005 the complainant wrote to Ofsted asking to be given the following information:
 - i. Copies of all the registration documents relating to [a named person] of [a specified address].
 - ii. Copies of all documents for the year 1989 relating to the activities run by [a named person] at [a specified address].
3. Ofsted made its response to the complainant on 13 June 2005. It informed the complainant that section 40(2) of the Act applied to the first part of the request because the information is the personal data of the named person (hereafter referred to as the data subject). Ofsted confirmed that it held no information matching the second part of the request.
4. The complainant wrote to Ofsted on 3 July 2005 to complain about its refusal to send him the information he is seeking.
5. Ofsted determined that the complainant's letter of 3 July was a request for an internal review. It carried out this review and informed the complainant of its decision in a letter dated 10 August 2005. Ofsted upheld its decision concerning the application of section 40(2) to the first part of the request and confirmed that it held no information in respect of the second part.

The Investigation

Scope of the case

6. On 13 September 2005 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
 - The complainant contends that the withheld information does not constitute personal data and therefore it should have been disclosed to him.
 - The complainant asserts that Ofsted's procedures are 'not fit for purpose'; his complaint was not properly addressed and was dealt with by a junior member of staff.
 - Ofsted informed the data subject that the request had been made and thereby alerted her to the fact that she was the subject of the complainant's research.
7. On 18 June 2006, prior to the case being allocated to a case officer for investigation the complainant wrote to the Commissioner to request that he also consider whether the public authority had deliberately destroyed information

after his request was received. The Commissioner considered this matter and has referred to it further in the other matters section of this notice. He has not included this within the formal decision notice, as it is not a requirement under Part 1 of the Act, section 50(1) of the Act states that a complainant Commissioner may apply to the Commissioner for a decision as whether the request for information has been dealt with in accordance with requirements of Part I..

8. The focus of this notice is the determination of the following question:

Was Ofsted correct in its application of section 40(2) of the Act in relation to the first part of the request?

9. This notice does not consider the second part of the request. This is because the Commissioner spoke with the complainant about this matter on 16 October 2008 and the complainant confirmed that he accepted that Ofsted did not hold this information.
10. The Commissioner has not made a decision about the other issues raised by the complainant as they are not requirements of Part I of the Act. However he has made further comments about them in the other matters section of this notice.

Chronology

11. The Commissioner wrote to Ofsted on 25 October 2006 with the purpose of initiating his enquiries. He asked Ofsted to answer a number of questions relating to its regulatory functions and procedures, the information it collects, and the information it routinely publishes. He asked further questions concerning the extent to which Ofsted holds, or held, information about the named person, relating to 1989.
12. Ofsted wrote to the Commissioner on 30 October 2006. Ofsted described how it holds information relevant to the complainant's request and went on to develop its position regarding its application of section 40(2) to the requested information. Ofsted also responded to the specific questions the Commissioner asked.

Findings of fact

13. Ofsted holds recorded information relevant to the complainant's request. This information is held electronically on Ofsted's RSA database and as paper documents. The paper documents were transferred from West Sussex County Council in September 2001 when Ofsted assumed responsibility for the registration of nursery providers.
14. Ofsted informed the Commissioner that it had destroyed the data subject's paper file during a routine review in February or early March 2006 and that this destruction was not documented. Ofsted sent the Commissioner a minute from Her Majesty's Chief Inspector's office which stated that its Board had cleared its file disposal policy. This minute is dated 15 March 2005. Ofsted retained copies of those documents it considered to be relevant to the complainant's

request, which it knew was the subject of a complaint to the Information Commissioner. These documents were sent to the Commissioner to assist him in making his decision.

15. Since June 2005 Ofsted operated a disposal policy concerning its paper-based files. This policy was adopted by the Ofsted Board after internal consultation and consideration of a submission on the retention and destruction of Local Authority files. On 15 March 2005 the Ofsted Board agreed the destruction of all provider files transferred from local authorities and that this policy should be given immediate effect. At his same meeting the Early Years Directorate was given the task of selecting those files requiring longer retention, applying criteria which include cases where there was on-going action or concerns about a provider.
16. In February or early March 2006 it destroyed its files relating to the data subject. Conscious of the complainant's information request, Ofsted copied those documents it considered fell within the request's scope and retained these copies. Some of the retained material is in partially redacted form.
17. Information is held on the RSA database. This information was created post September 2001, when the data subject's registration details were transferred from paper documents. Once the data was transferred the paper documents were routinely destroyed.

Analysis

Section 40(2)

18. Section 40(2) provides an exemption for information which is the personal data of any third party. Where disclosure would breach any of the data protection principles contained in the Data Protection Act 1998 (DPA) subsection 3(a)(i) of section 40 is relevant.
19. In order to rely on the exemption provided by section 40, the information being requested must therefore constitute personal data as defined by the DPA. The DPA defines personal data as:
 - '... 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 intention of the data controller or any other person in respect to the individual.
20. Ofsted argues that the requested information is the personal data of the data subject: It relates to a living individual who can be identified from those data.

Some of the documents contained within the withheld information satisfied the definition of sensitive personal as stated in the Data Protection Act 1998.

21. The Commissioner has examined the withheld information and is satisfied that, taken as a whole, it is relevant to the complainant's request. He is also satisfied that it constitutes the personal data of the data subject and some of it her sensitive personal data. The Commissioner acknowledges that the withheld information contains references to third parties and consequently it is also their personal data.
22. The focus of the documents is the data subject's registration as a childminder or nursery provider. The documents include requests for references, the references themselves, requests for checks to be made of police and social service files, applications for registration, notices schedules and certificates relating to the conditions of registration, memorandums and assorted letters.
23. The Commissioner's approach has been to examine each document separately and to determine whether it contains personal data or sensitive personal data: Where the information is personal data he has considered the first data protection principle; including fairness of disclosure and Schedule 2 condition 6 of the DPA. Where the information is additionally sensitive personal data he has considered the fairness of disclosing this information.

The first data protection principle

24. Ofsted argues that disclosure of the requested information (part one of the request) would contravene the first data protection principle and it is therefore exempt from disclosure under the Act.
25. The first data protection principle has two components:
 - i. The personal data must be processed fairly and lawfully, and
 - ii. Personal data shall not be processed unless one of the conditions in the Data Protection Act 1998 (DPA) Schedule 2 is met, and in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

Fairness

26. The Commissioner's approach to the first component is to consider whether the data subject would have a reasonable expectation that her personal data will be disclosed.
27. The Commissioner has also considered the final statement of Ofsted's Declaration and Consent Form (the DC2). This informs those persons completing the form of the way in which their personal data is likely to be processed by Ofsted. The DC2 includes a statement that Ofsted will not give out personal information unless the law permits it to do so. It then provides examples, taken from the Child Minding and Day Care (Disclosures Functions) (England) Regulations 2004 (the 'CMDRC Regulations'), of the categories of person or organisation that it may release information to. The Commissioner notes that none of the examples cited include the possibility of disclosure of

information in response to a request under the Act, though in the Commissioner's experience, specific statements that information may be released under the Act are still relatively uncommon.

28. The examples from the CMDC Regulations do not purport to be an exhaustive list: Ofsted has cited them as an indication of where they are permitted to disclose information. Nevertheless it could be argued that a reasonable person may infer, solely on the basis of the DC2 form that their data would be given out in limited circumstances and not in response to a request under the Act. The Commissioner also notes that the statement in the DC2, that Ofsted will not give out personal information unless the law permits it to do so, can be read as indicating that disclosure may be permissible if it does not contravene the DPA.
29. However, notwithstanding the comments above, when assessing the expectations of the data subjects, the Commissioner considers it appropriate to take into account additional factors besides the DC2. These include the type of information already in the public domain about child care settings. He believes consideration should be given to the level of detriment to the privacy of the data subject should the requested information be released.
30. One of Ofsted's functions is to inspect daycare and nursery providers and to report the findings of these inspections. Ofsted's reports are made available to the public through their routine publication on the internet. The report on the daycare setting, to which the request relates, names the data subject, states her address in full and provides a description of the property insofar as it is relevant to its use for this particular purpose. The number of children attending the nursery is given as is their pattern of attendance. The Commissioner can therefore make the conclusion that the data subject would have the reasonable expectation that at least these details would be publicly disclosed.
31. If the requested information was disclosed it would reveal the data subjects name and address (the address of the Nursery School). It would reveal biographical details of the data subject, as well as those of her family, friends and associates. The information would also illustrate the checking and administrative activities which have occurred throughout the data subject's period of registration, including her registration with the local authority and with Ofsted.
32. The Commissioner is mindful that the requested information relates to the data subject acting in her professional capacity, that is, the registered provider of a children's day care setting. As a registered provider, the data subject provides a service to members of the public in the form of nursery education, which has been deemed appropriate for a public authority to regulate. The data subject has responsibility for the setting and for the children in her care. The fact that the information concerns the data subject's professional capacity, even though the setting operates from her private address, leads the Commissioner to consider that there is a reduced expectation of privacy in relation to it. He does not accept that the disclosure of the majority of the withheld information would result in any significant detriment to the privacy of the data subject, where that information is properly characterised as her personal data. The Commissioner therefore finds that disclosure would not be unfair. Where the information

- constitutes sensitive personal data, the Commissioner considers it would be unfair for that information to be disclosed.
33. Ofsted supplied a letter from the data subject expressly withholding her consent for Ofsted to release to the complainant the information he had requested. The data subject sent this letter to Ofsted on 31 July 2005 in response to its letter of 19 July. The Commissioner notes that this was after Ofsted had received the complainant's request.
34. The Commissioner has given the data subject's letter careful consideration. He considers that her refusal to consent to Ofsted's disclosure of the requested information is relevant in his determination of fairness. He considers that it is relevant to some of the information, particularly where it concerns the data of third parties or where it can be characterised as sensitive personal data. He does not consider that the letter is relevant to the majority of the information and therefore he has gone on to consider this information in relation to the conditions for processing contained within Schedule 2 of the Data Protection Act.

Lawfulness

35. The Commissioner has considered the disclosure statement contained in Ofsted's DC2 form and the CMDC Regulations. The disclosure statement is often referred to as a 'fair processing notice' and usually advises the data subject of circumstances his or her information will be used, over and above those purposes which are obvious. The Regulations provide the Chief Inspector with a duty to supply information to prescribed organisations and individuals under section 79N(5) of the Children Act 1989. They also limit the circumstances in which it is necessary for the Chief Inspector to comply with that duty, for example in Regulation 4. In the Commissioner's view the CMDC Regulations do not constitute a prohibition against disclosure where a request is made to Ofsted under the FOI Act. Further, they do not state that disclosure of information is to be allowed only in the circumstances specified in the Regulations. Therefore the Commissioner does not consider that disclosure of the requested information would be unlawful.

Schedule 2 Conditions for processing

36. In order for disclosure to be fair and lawful and therefore in accordance with the first principle of the DPA, one of the conditions in Schedule 2 of the DPA must be satisfied. In this case the Commissioner is satisfied that condition 6 is relevant and is satisfied. Condition 6 states that:
- “The processing is necessary for the purpose of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject”.
37. In *House of Commons v ICO & Leapman, Brooke, Thomas (EA/2007/0060)*, the Information Tribunal determined that for condition 6 to be satisfied two considerations should be given to:

- a) Whether the disclosure of the requested information was necessary for the legitimate interests of the recipient (the general public), and,
 - b) Whether, even if the disclosure was necessary, it would nevertheless cause unwarranted prejudice to the rights and freedoms of the data subject.
38. In the Commissioner's view there is a necessary legitimate interest in seeing evidence that a person who is responsible for the day-to-day care of children is properly registered with the appropriate regulator and that the regulator has followed all of its necessary procedures.
39. The Commissioner finds that the majority of the information held by Ofsted in relation to the Nursery Provider is relevant to the necessary interests of the public stated at paragraph 35. However, disclosure of some of the information is not necessary to satisfy the interests of the public. This information falls within the definition of sensitive personal data and has therefore been considered separately.
40. The Commissioner accepts that the CMDC Regulations allow Ofsted to supply information to a number of recipients, including government departments, the police, child protection agencies, local authorities and childcare organisations. However he does not believe that the provision of information to these organisations provides sufficient access to information to organisations and persons with equally legitimate interests in it. One such group would be prospective parents. Consequently the Commissioner concludes that the Regulations do not satisfy the legitimate interests of the public in general.
41. The Commissioner has considered the extent to which information exists in the public domain concerning the data subject's registration as a nursery provider. He has examined Ofsted's published reports concerning the nursery and also the content of the data subject's website. The Commissioner notes that Ofsted's reports provide information about the nursery setting. This includes the name of the nursery provider the nursery address and a characterisation of the local area. It also outlines the number of places available at the nursery and the education provision the children receive. The Commissioner has also viewed the nursery's very extensive website. He has considered this information in order to determine whether it would satisfy the legitimate interest of the public.
42. The Commissioner accepts that there is extensive information available to the public concerning the data subject's nursery. This provides details of the nursery as it is now and how it has developed. Much of the information is made public by the data subject herself. The Commissioner believes that the published information goes some way in satisfying the legitimate interests of the public. However it does not provide the historical details of the provider's registration which are contained within the withheld information. This information illustrates the process of registration and it is this process which demonstrates that the necessary procedures, checks, etc were followed. The Commissioner concludes therefore that the available information does not by itself satisfy the legitimate interest of the public.

43. The Commissioner believes that the disclosure of the majority of the requested information is necessary to meet the legitimate interests of the wider community. He considers that disclosure of the withheld information would not prejudice the rights freedoms and interests of the data subject for the following reasons: The information relates to the data subject in the context of her professional capacity and can be redacted to the extent that her sensitive personal data and the details of other parties can be removed. The data subject would have a reasonable expectation that information relating to her provision of a nursery from her private address might need to be made available to satisfy the interest of the wider public.
44. The Commissioner considers that disclosure the majority of the registration documents is necessary for the purpose of legitimate interests pursued by the public and would not cause unwarranted prejudice to the data subject. Therefore condition 6 is satisfied in respect of these documents.
45. Whilst condition 6 is relevant to information falling within the definition of sensitive personal data, this information must also meet at least one of the conditions of schedule 3 of the Data Protection Act.

Sensitive personal data

46. The Commissioner has examined the data subject's registration documents and has determined that they contain information which can correctly be characterised as her sensitive personal data.
47. Sensitive personal data is defined by the Data Protection Act 1989 as data consisting of information as to:
 - a) the racial or ethnic origin of the data subject,
 - b) his political opinions,
 - c) his religious beliefs or other beliefs if a similar nature,
 - d) whether he is a member of a trade union (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992),
 - e) his physical or mental health condition,
 - f) his sexual life,
 - g) the commission or alleged commission by him of any offence, or
 - h) any proceedings for any offence committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.
48. The Commissioner considers that the data subject would not have any reasonable expectation that her sensitive personal data would be disclosed to the public and therefore he believes that it would be unfair to order such disclosure.
49. The Commissioner has referred to the requirements of the first data protection principle, outlined at paragraph 26 above) and to the conditions of Schedule 3 of the DPA (as amended). He considers that none of the conditions outlined in this schedule would be satisfied to allow the sensitive personal data to be disclosed and therefore section 40(2) is appropriately applied.

The Decision

50. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act. He finds that Ofsted breached section 1(1)(b) of the Act by failing to supply information falling within part one of the complainant's request where section 40(2) was inappropriately applied and that it did not breach section 1(1)(b) where elements of the requested information did attract section 40(2).

Steps Required

51. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
52. The Commissioner has prepared a table outlining the withheld information. This is referred to as the 'Confidential Annex'. He has given each document a descriptor which includes the number of pages it contains and has provided Ofsted with instructions which state whether the document should be withheld, disclosed or disclosed with identified redactions. The Commissioner requires Ofsted to disclose the information requested by the complainant in accordance with the comments made in the Confidential Annex. The Confidential Annex is not for public disclosure.
53. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Other Matters

Section 77

54. The complainant has asserted that the public authority deliberately destroyed information relevant to the request in an effort to avoid disclosure.
55. The Commissioner wishes to highlight that a decision made under section 50 of the Act relates to the extent to which a public authority has complied with Part I of it. Section 77 is not part of the requirements of Part I of the Act. Therefore any decision as to whether or not a public authority had committed an offence under section 77 would not be dealt with via a decision notice.
56. Notwithstanding the comments above, the Commissioner wishes to make the following observations regarding the complainant's assertion in this regard.
57. In the course of a public authority's ordinary business, and in line with the provision of section 1(4) of the Act, information may be deleted or destroyed between the receipt of a request and the time when that request is complied with. Where this has happened the public authority can lawfully state that the

information is not held. However, if such deletion or destruction was to occur outside the ordinary business of the authority it would be acting unlawfully.

58. In the circumstances of this case, and taking into account Ofsted's account of the destruction of information and its retention schedule, the Commissioner finds that there is no evidence to suggest that Ofsted deliberately destroyed information in an attempt to avoid the potential disclosure of information. The destruction which occurred appears to have been routine and was a response to the file disposal policy agreed by Ofsted's Board on 15 March 2005. It should be noted that Ofsted examined the information it held and retained those pieces of information it considered relevant to the complainant's request.
59. Bearing in mind his comments at paragraph 57, the Commissioner asks all public authorities to retain copies of the information where he notifies them that he has received a complaint under section 50 of the Act. In doing this he would bring paragraph 9.9 of the section 46 Code of Practice to the attention of public authorities; this states:

"If a record due for destruction is known to be the subject of a request for information, destruction should be delayed until disclosure has taken place or, if the authority has decided not to disclose the information, until the complaint and appeal provisions of the FOIA have been exhausted."

60. The Commissioner will carefully consider all allegations that a public authority destroyed altered or concealed information to prevent its lawful disclosure. In this case, the caseworker discussed the complainant's allegations with a member of the Commissioner's investigations team. The caseworker was advised that, in the circumstances of this case, there is insufficient evidence to merit a formal investigation.

Consultation with the data subject

61. The complainant received Ofsted's Refusal Notice and subsequently, on 3 July 2005 asked for the decision reviewed. Ofsted wrote to the complainant on 20 July 2005 to inform him that there would be a delay in making its response since it had written to the data subject to seek her consent to disclose the information.
62. One of the complainant's complaints to the Commissioner concerns Ofsted alerting the data subject to his information request.
63. The Secretary of State for Constitutional Affairs has issued a Code of Practice under section 45 of the Freedom of Information Act 2000. Part IV of this code specifically relates to the circumstances in which a public authority may consult with third parties.
64. The Commissioner finds that Ofsted were correct in alerting the data subject to the request and that Ofsted's action was entirely consistent with the Code of Practice. However, the Commissioner considers that Ofsted should not given the complainant's name to the data subject.
65. The relevant part of the Code of Practice is included at the end of this notice.

Ofsted's complaints procedure

66. Part VI of the Code of Practice requires all public authorities to have a complaints procedure which provides for a fair and thorough review of the issues raised by a complainant. Paragraph 40 of the Code requires the review to be undertaken by a person senior to the person who originally made the decision.
67. The complainant asserts that Ofsted's internal review was undertaken by a more junior member of Ofsted's staff. The Commissioner cannot comment on the accuracy of the complainant's assertion: The officer who carried out the review failed to state his position on the letter he sent to the complainant.
68. The Commissioner is unable to state at this date, whether in fact, the officer is junior to the person who made the original decision. He would however point out to all public authorities that the issue of the seniority of reviewers is part of the code of practice and should be properly addressed. Consequently the Commissioner will monitor Ofsted's refusal notices and internal reviews to ensure that Ofsted is compliant with this part of the Code of Practice.

Failure to comply

69. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

70. 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@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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

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

Dated the 19th day of February 2009

Signed

**Steve Wood
Assistant Commissioner**

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

Legal Annex

Section 1: 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.”

Section 1(2) provides that -

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

Section 1(3) provides that –

“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 1(4) provides that –

“The information –

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”

Section 40: Personal information

(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.

(2) 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.

(3) 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 [1998 c. 29.] 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 [1998 c. 29.] Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

(4) The second condition is that by virtue of any provision of Part IV of the [1998 c. 29.] Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).

Data Protection Act 1998

SCHEDULE 1

THE DATA PROTECTION PRINCIPLES

PART I THE PRINCIPLES

1 Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

2 Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.

3 Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.

4 Personal data shall be accurate and, where necessary, kept up to date.

5 Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.

6 Personal data shall be processed in accordance with the rights of data subjects under this Act.

7 Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

8 Personal data shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection

for the rights and freedoms of data subjects in relation to the processing of personal data.

SCHEDULE 2

CONDITIONS RELEVANT FOR PURPOSES OF THE FIRST PRINCIPLE: PROCESSING OF ANY PERSONAL DATA

6 (1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

Code of Practice

Part IV

Consultation with Third Parties

25. There are many circumstances in which:

- requests for information may relate to persons other than the applicant and the authority; or
- disclosure of information is likely to affect the interests of persons other than the applicant or the authority.

26. It is highly recommended that public authorities take appropriate steps to ensure that such third parties, and those who supply public authorities with information, are aware of the public authority's duty to comply with the Freedom of Information Act, and that therefore information will have to be disclosed upon request unless an exemption applies.

27. In some cases it will be necessary to consult, directly and individually, with such persons in order to determine whether or not an exemption applies to the information requested, or in order to reach a view on whether the obligations in section 1 of the Act arise in relation to that information. But in a range of other circumstances it will be good practice to do so; for example where a public authority proposes to disclose information relating to third parties, or information which is likely to affect their interests, reasonable steps should, where appropriate, be taken to give them advance notice, or failing that, to draw it to their attention afterwards.

28. In some cases, it may also be appropriate to consult such third parties about such matters as whether any further explanatory material or advice should be given to the applicant together with the information in question. Such advice may, for example, refer to any restrictions (including copyright restrictions)

which may exist as to the subsequent use which may be made of such information.

29. No decision to release information which has been supplied by one government department to another should be taken without first notifying, and where appropriate consulting, the department from which the information originated.
30. Where information to be disclosed relates to a number of third parties, or the interests of a number of third parties may be affected by a disclosure, and those parties have a representative organisation which can express views on behalf of those parties, the authority may consider whether it would be sufficient to notify or consult with that representative organisation. If there is no representative organisation, the authority may consider that it would be sufficient to notify or consult with a representative sample of the third parties in question.

Part VI

Complaints procedures.

40. Where the complaint concerns a request for information under the general rights of access, the review should be undertaken by someone senior to the person who took the original decision, where this is reasonably practicable. The public authority should in any event undertake a full re-evaluation of the case, taking into account the matters raised by the investigation of the complaint.