

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 17 March 2011

**Public Authority:** The Commissioner for the Metropolitan Police  
**Address:** Metropolitan Police Service  
New Scotland Yard  
Broadway  
London  
SW1H 0BG

### Summary

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The complainant requested certain types of information relating to sergeants at Hillingdon Borough, including badge numbers of sergeants on duty on three days in July 2007. The public authority disclosed some information but refused to provide the remainder citing the exemptions at section 31 (Law enforcement) and section 40 (Unfair disclosure of personal data) as its bases for doing so. It disclosed further information on internal review but continued to withhold badge numbers of sergeants on duty on the three days in July 2007 citing the same exemptions apart from one of the provisions of section 31 that it had previously cited.

In correspondence with the Commissioner it withdrew reliance on any of the provisions of section 31. The Commissioner has decided that the public authority is not entitled to rely on section 40(2) as a basis for withholding the remaining information. In failing to provide this information within 20 working days the public authority contravened the requirements of section 1(1) and section 10(1) of the Act.

### The Commissioner's Role

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

## The Request

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2. On 15 February 2010, the complainant requested information of the following description:

“Please can you provide the following information in relation to Hillingdon Borough division of the Metropolitan Police.

1. Please list all the shoulder numbers for all current officers of the Rank Sargeant
2. Please provide the job description and responsibilities/duties of a Metropolitan Police Sargeant
3. Please identify, by shoulder badge number which Police Sargeants were 'on duty' on the following dates;
  - (a) 15/07/2007
  - (b) 16/07/2007
  - (c) 17/07/2007”.
3. The public authority provided a response on 4 March 2010 in which it disclosed information relating to the complainant’s second question but withheld the remainder of the information on the basis of the exemptions contained in section 31 (Prejudice to law enforcement), namely sections 31 (1) (a), (b) and (c), and section 40(2) (Unfair disclosure of personal data).
4. The complainant requested an internal review of the public authority’s decision on 15 March 2010.
5. On 14 May 2010 the public authority wrote to him with the details of the result of the internal review it had carried out. It renumbered the separate parts of the complainant’s request noting that it was the information described in his first and third question which remained at issue. Thus, the first question was named as Question 1 and the third question was renamed Question 2.
6. It disclosed information in response to Question 1.
7. In response to the renamed Question 2, it withdrew reliance on section 31(1)(c) but upheld its original decision with regard to the application of section 40(2) and sections 31(1)(a) and (b).

## The Investigation

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### Scope of the case

8. On 21 June 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
- The public authority was not entitled to rely on the exemptions it has cited (in relation to the renamed question 2), particularly given the passage of time; and
  - The public authority's delay in conducting an internal review was excessive.

### Chronology

9. On 4 August 2010, the Commissioner wrote to the complainant to acknowledge receipt of his complaint. On the same day, the Commissioner wrote to the public authority to advise receipt of the complaint and to ask for a copy of the information that remained withheld.
10. On 8 December 2010, the Commissioner wrote to the public authority again. In the letter he repeated his request for a copy of the withheld information and asked for the public authority's full and final arguments as to the application of exemptions that it sought to rely on.
11. The following day, the public authority telephoned the Commissioner to advise of a likely delay in meeting the deadline set by the Commissioner for providing a response (6 January 2011). This likely delay was due to staff availability and volume of work.
12. On 22 December 2010, the public authority telephoned the Commissioner to discuss the likely delay. The Commissioner agreed to extend the deadline for providing full and final arguments as to the application of exemptions to 17 January 2011. On the same day, the public authority emailed a copy of the withheld information to the Commissioner.
13. On 13 January 2011, the public authority contacted the Commissioner to discuss a likely further short delay in meeting the revised deadline of 17 January 2011. Due to a high volume of requests for internal review that it had received over the December holiday period and availability of staff to deal with these requests for internal review it advised that there may be a delay of two days.

14. On 19 January 2011, the public authority provided a detailed response to the Commissioner's letter of 8 December 2010.

## Analysis

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### Exemptions

15. In its letter to the Commissioner of 19 January 2011, the public authority withdrew reliance on the provisions of section 31 that it had cited in earlier correspondence. The Commissioner will therefore only consider the application of section 40(2)(a) and (b) by virtue of section 40(3)(a)(i) in relation to the information which remains withheld.
16. Section 40 is set out in full in a legal annex to this notice. In this case, the public authority is arguing that the withheld information is the personal data of the individual officers to whom it relates and that the disclosure of this personal data would contravene the first data protection principle of the Data Protection Act 1998 (DPA).

### The public authority's submissions

17. The public authority explained what the numerals and letters displayed on each sergeant's epaulette signified. The two letter abbreviation XH signified Hillingdon Borough Police. The number (either two or three digits) relates to the serving officer. It also explained that where the officer is transferred to another division, his or her number would be assigned to a new officer.
18. It explained that the badge number is recorded against deployment figures for "*every day that the officer is attached to the borough or department, even if off duty, on leave, court appearance, sick, training or on covert duty*".
19. In support of its position that the information constituted personal data, it commented that "*divisional numerals do identify the wearer of the uniform as being a specific individual and allows you to distinguish one particular police officer from another, excluding names of course. These designations are widely used amongst all police forces on the UK mainland and Northern Ireland, just that the MPS [Metropolitan Police Service] has rather more variations [of divisional numbers] because of the sheer size of the organisation*".
20. It went to explain that "*the [withheld] information provides direct information linking a particular officer to a specific day, and whether or not they were on duty. What such a disclosure will also indicate, by*

*default, are those sergeants that are not on duty and therefore on leave, sick or other event potentially connected to their private life".* Though not particularly relevant to the request in this case, the public authority also provided the Commissioner with a copy of its own records for 16 July 2007 which showed what each officer (including its police sergeants) were recorded as doing on that day under a column headed "*Activity*". Terms used for activities on the day included "*Annual Leave*", "*Rest Day*", "*ODS Shift*", "*Cert Sick-Non assault*", "*Uxbridge Magistrates Court*".

21. The public authority accepted that it could be argued that, "[on] *their own without other supporting information, (deployment data) the numerals would not necessarily constitute personal information*". However, it had reached the view that the numerals were personal data having had regard for the Commissioner's own guidance – "*Determining what is personal data*"<sup>1</sup>. In particular, it referred to the Commissioner's observation that:

*"when considering identifiability it should be assumed that you are not looking just at the means reasonably likely to be used by the ordinary man in the street, but also the means that are likely to be used by a determined person with a particular reason to want to identify individuals. Examples would include investigative journalists, estranged partners, stalkers or industrial spies."*

22. Having set out its arguments as to why, in its view, the withheld information was the personal data of each officer to whom each badge number related, the public authority went on to explain why it believed that disclosure of this information would contravene the first data protection principle of the Data Protection Act 1998 (DPA).
23. The first data protection principle has two main components and, in cases involving sensitive personal data, there is an additional component. These are as follows:
- requirement to process all personal data fairly and lawfully;
  - requirement to satisfy at least one DPA Schedule 2 condition for processing of all personal data;
  - additional requirement to satisfy at least one DPA Schedule 3 condition for processing sensitive personal data (if applicable).

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[http://www.ico.gov.uk/upload/documents/library/data\\_protection/detailed\\_specialist\\_guides/personal\\_data\\_flowchart\\_v1\\_with\\_preface001.pdf](http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/personal_data_flowchart_v1_with_preface001.pdf)

24. Both (or, where applicable, all three) requirements must be satisfied to ensure compliance with the first data protection principle. If even one requirement cannot be satisfied, processing will not be in accordance with the first data protection principle.
25. When arguing as to fairness, the public authority commented that there was a legitimate expectation that an officer's divisional number *"whilst visible when worn on duty in uniform, would not be released to the world in conjunction with other related information i.e. the time and place of duty"*.
26. It added:  
  
*"There are clearly defined occasions when the provision of name and number to a member of the public by a police officer are required, namely when their behaviour is brought into question or conversely a message of thanks. The provision of such information is then very much a transaction between the officer and the individual requiring such information. Any follow up on these specific issues are addressed by either local senior managers, Independent Police Complaints Commission or MPS Directorate of Professional Standards. There would not be any reason for that officer to believe that this information would be disclosed to a wider audience, particularly if accompanied by additional data."*
27. It then described a hypothetical situation which had been referred to in the Commissioner's own guidance, namely, one which involved an estranged partner. It suggested that such an individual, where they are involved in an ongoing domestic dispute, would be able to use such evidence about the officer's attendance at work on a given date or set of dates. It did not go further and explain how this could have an unwarranted and negative impact on the officer concerned.
28. It acknowledged that this was a fictional scenario but commented that, in its view, *"such an eventuality is not beyond the bounds of probability"*.
29. When arguing as to whether any condition for processing (disclosing) the personal data could be satisfied, the public authority discussed the most applicable condition in Schedule 2, namely Condition 6, which states:  
  
*"The processing is necessary for the purposes of legitimate interests pursued by the data controller or by a 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."*

30. It commented that it was unable to identify a legitimate interest held by the complainant in the requested information. As such it could not establish whether that interest could only be served by the disclosure of the requested information. It argued that the officers in question had a legitimate expectation that such a disclosure would not be made

*"given the seriousness of the breach to their Article 8 rights along side the risks posed to them should this information be used by those with negative intent. Indeed, given the role that police officers play in the community it is vital that we maintain this protection for not only the benefit of the individual but also their families".*

31. It also drew attention to the fact that the numbers in question may now be assigned to different individuals and that any "*publication of 'old' information would be likely to have a negative effect on the current holder of that data, particularly if publicised in a less than appreciative manner. The MPS would wish to avoid such an eventuality*".

32. It summarised its overall position as follows:

*"the MPS contends that the numerals of Hillingdon Borough sergeants for 15, 16 and 17 July 2007, would constitute information that enables a living individual to be identified. This does constitute the personal information of officers and although it covers those officers whilst engaged in 'public duty' it also, by default, provides information relating to those officers in their private life".*

33. In response to a specific question from the Commissioner it advised that it had not contacted the affected officers to ascertain whether or not they would object to their information being released in the manner requested.

34. Although it had focussed its arguments on section 31 in correspondence with the complainant it also made the following additional arguments to the complainant as to the application of section 40:

- Routine disclosure of information of this nature on a day to day basis would confirm which officers were on or off duty. Such information is those officers' personal information.
- To publicly disclose patterns of exactly when the officers may be on duty would enable individuals to locally map which individual officers may be likely to be off duty on a particular day. This is also those officers' personal information



- Officers are entitled to a certain level of privacy regarding their identity and thereby the release of the shoulder number has the potential risk of identifying the individual(s) concerned.

### **The complainant's submissions**

35. The complainant's submissions focussed primarily on the public authority's arguments as to the application of section 31. However, he gave particular emphasis to the age of the information he had requested and the limited likelihood of an adverse impact were such information to be disclosed.

### **The Commissioner's conclusions**

36. In analysing the application of section 40(2), the Commissioner considered a) whether the information in question was personal data and b) whether disclosure of the personal data under the Act would contravene the first data protection principle.

### **Is the information personal data?**

37. "Personal data" is defined in section 1 of the Data Protection Act 1998 (DPA) as data

*"which relate to a living individual who can be identified from those data or those and other information in the possession of or which is likely to come into the possession of the data controller and includes expressions of opinions about the individual and indications of the intentions of any other person in respect of that individual".*

38. "Data" is also defined in section 1 of DPA. The first of five categories of data within that definition is given as information "*which is being processed by means of equipment operating automatically in response to instructions given for that purpose*". Section 1 of the DPA is set out in full in a Legal Annex to this Notice. The Commissioner is satisfied that the information in this case is held electronically and is therefore data for the purposes of DPA.

39. When considering whether the data is personal data, the Commissioner also had regard to his own published guidance (see Footnote 1). He sought to establish:

- Whether an individual or individuals could be identified from the data; and
- Whether the data was biographically significant about the individual or those individuals



40. On the face of it, the withheld information is a series of numbers each combined with the suffix XH (signifying Hillingdon Borough Police headquarters which are at Uxbridge police station). Without extra detail to “de-code” the withheld information, the Commissioner considers that it would be impossible to identify individual officers from that information. However, given the public-facing roles of some or all of the officers concerned, it is, in the Commissioner’s view, safe to conclude that members of the local community, particularly those who had had dealings with the officers on the days in question or who had regular dealings with officers during that period, would be able to link badge numbers to named individuals.
41. The Commissioner is also satisfied that the information in question is biographically significant. In the Commissioner’s view, information about where an officer of the public authority was on duty at a particular time and on particular dates constitutes biographically significant information about each officer.
42. The Commissioner is therefore satisfied that the information in question is the officers’ personal data. Having reached this conclusion, the Commissioner then considered whether disclosure would contravene the first data protection principle.

### **Would disclosure contravene the first data protection principle?**

43. As noted above, for disclosure (or any other processing of personal data) to be in accordance with the first data protection, such disclosure must be fair and lawful and a condition for processing found in Schedule 2 of DPA must be satisfied. The Commissioner is satisfied that none of the withheld information constitutes sensitive personal data and therefore the conditions for processing set out in Schedule 3 of DPA are not relevant.

### **Would disclosure be fair?**

44. It is important to note that any disclosure under this Act is disclosure to the public at large and not just to the complainant. If the public authority is prepared to disclose the requested information to the complainant under the Act it should be prepared to disclose the same information to any other person who asks for it.
45. In considering fairness, the following are significant factors:
- What are the reasonable expectations of the individual in relation to the handling of their personal data?
  - What was that person told about what would happen to their personal data?

- Is any duty of confidentiality owed to that person?
46. The public authority has asserted that the officers in question would reasonably expect that their badge numbers would not be disclosed under the Act. It describes a “transaction” that might take place between officers and members of the public whereby the badge number might be made available to a member of the public. It also acknowledges that the badge number would be visible to anyone where the officer is encountered on duty wearing their uniform. However, it has argued that this is substantively different to a disclosure to the world of a badge number in conjunction with information about the time and place of duty of the badge holder. It further appears to argue that it is the substantively different nature of the disclosure that renders it unfair.
  47. The Commissioner accepts that by providing its uniformed officers with a visible badge number whilst on duty, the public authority is facilitating accountability in a “live” situation, i.e., where a member of the public is provided with a memorable reference number when in contact with a uniformed officer. If the member of the public has concerns about the officer or indeed has cause to praise them, they can more readily raise the matter locally or with relevant supervisory bodies where they have the officer’s badge number.
  48. However, the Commissioner also considers that where the badge numbers are readily available and not subject to restriction in a “live” situation, it is difficult to accept that its disclosure under the Act in retrospect (some two and half years later) would have adverse privacy implications for the officers concerned.
  49. The public authority has set out a hypothetical scenario for the Commissioner’s consideration to explain why it believes a disclosure of the withheld information would be unfair. This is reproduced above. However, the public authority did not complete its description of the scenario to explain how an individual officer might be adversely affected where an estranged partner has evidence that the officer was on duty on the days in question some two and a half years prior to the date of the request. The Commissioner would observe that if an acquaintance of the estranged partner had occasion to be in contact with the officer in question while they were on duty, they would be in a position to give a statement to that effect with or without a disclosure of the officer’s badge number under the Act along with the date they were on duty. In other words, the public authority is seeking to protect the fact that an officer was on duty on a particular day by withholding the requested information. However, this fact could already be more widely known within the local community.

50. The public authority has raised concerns about privacy implications for the routine disclosure of badge numbers along with further information about when the current user of the badge number is on duty. The Commissioner would note that, in this case, he has not been asked to make a finding about whether such information should routinely be disclosed upon request. Instead, he has been asked to make a finding as to whether the badge number information described in the request (which was two and a half years old at the time of the request) should be disclosed. The Commissioner must consider each case on its merits. In this case, the Commissioner does not consider that that the public authority has adequately demonstrated that there would be any adverse impact on the privacy of the officers in question. In addition, in the Commissioner's view, the age of the information lessens the privacy impact that the public authority has asserted.
51. The Commissioner notes that the public authority had not contacted any of the officers to ask for their views. Had it done so, the Commissioner would have taken those views into account. For example, if an officer had outlined a likely adverse impact on his or her privacy arising from disclosure relating to a domestic matter or an employment dispute, the Commissioner considers that this would have added weight to the public authority's arguments as to unfairness.
52. In light of the above, the Commissioner does not agree with the public authority's assertion that disclosure of the withheld information would be unfair. The public authority has asserted that disclosure would be outside the reasonable expectations of the officers but has failed to provide compelling arguments as to why this is the case, especially in the context of the information being two and a half years old. It has set out a hypothetical scenario which is, in the Commissioner's view, unconvincing. It did not provide testimony from officers and, in fact, explained that it had not consulted them.
53. The Commissioner also fails to see how the public authority is under a duty of confidentiality to withhold the information in question. This information is readily available to the public in a live situation and clearly relates to an officer's public role rather than his personal life. Although the public authority has sought to argue that the officers and their families would be at risk of harm from persons "*with negative intent*" if the information were to be disclosed, it has failed to explain how such harm would arise.
54. The Commissioner accepts that the information could, in theory, be relevant in a domestic dispute or an employment dispute and that such matters would relate more closely to the officer's private life. However, in the absence of commentary from the officers concerned, the Commissioner considers that such a connection is purely speculative.

As a consequence, the Commissioner does not agree that disclosure would be likely to give rise to harm to the privacy of the officers concerned, particularly given the age of the information.

### **Would disclosure be lawful?**

55. The public authority did not set out why disclosure would be unlawful and the Commissioner, for his own part, was unable to identify any aspect of disclosure of the withheld information that would be unlawful. The Commissioner accepts that disclosure is likely to be unlawful where it can be established that the disclosure would be a breach of a statutory bar, a contract or a confidence. No such likely breach was identified in this case.

### **Fairness and lawfulness - Conclusion**

56. For the reasons set out above, the Commissioner does not agree with the public authority's assertion that disclosure of the withheld information would be unfair nor does he consider that disclosure would be unlawful.

### **DPA Schedule 2 condition for processing**

57. Although the Commissioner is satisfied that disclosure would be fair and lawful, such disclosure can only be in accordance with the first data protection principle where a Schedule 2 condition for processing can be satisfied.
58. The public authority asserts, and the Commissioner agrees, that the most relevant condition for processing is Condition 6.
59. In the Commissioner's view, the sixth condition establishes a three part test which must be satisfied;
- there must be **legitimate interests** in disclosing the information,
  - the disclosure must be **necessary** for a legitimate interest of the public and,
  - even where the disclosure is necessary it nevertheless must not cause **unwarranted interference** (or prejudice) to the rights, freedoms and legitimate interests of the data subject(s) (in this case, the officers whose badge numbers have been requested).

### **Legitimate interests**

60. The public authority has argued that the complainant has not asserted any legitimate interest in accessing the withheld information under the Act. The Commissioner considers that – given the benefits of

transparency and accountability - a legitimate interest arises from the disclosure on request of information by public bodies.

61. The Commissioner would observe that there is also a legitimate interest in learning more about the work patterns of officers at Hillingdon Borough Division. For example, there is a legitimate interest in local residents knowing whether Hillingdon Borough Division was regularly staffed at the time by the same individual officers (as evidenced by the appearance of their badge numbers on more than one day in the withheld information). Where the same officers are available over a period of three days, this would indicate a degree of continuity of personnel which is more likely to be welcomed by members of the public who have dealings with that Division, particularly where they are victims of crime. Conversely, where the withheld information shows that there was a high turnover of staff at the rank of sergeant on duty over the period, this would indicate a lack of continuity of personnel. Disclosure of the withheld information would therefore aid transparency, accountability and public understanding in the local area regarding staffing levels and continuity of personnel.
62. However the public authority has asserted that there is a risk to the privacy of the officers in question where disclosure is made. The Commissioner accepts that avoiding such a risk, were it likely to arise, would constitute a legitimate interest of the officers in question.

### **Necessity**

63. When considering necessity, the Commissioner has considered whether there are any alternative means of meeting the identified legitimate interests and the extent to which those alternative means meet those legitimate interests. The Commissioner has also considered whether the disclosure of the personal data would satisfy the legitimate interest in any event.
64. The Commissioner would observe that disclosure would be necessary to satisfy the complainant's legitimate right of access under the Act, where no exemptions apply. The Commissioner accepts that this creates a somewhat circular argument. The complainant has a right of access to information but this right is subject to the application of exemptions. The officers are entitled to expect that their personal data is handled in accordance with the data protection principles of the DPA (as expressed in the exemptions at Section 40 of the Act). In essence, there is a balance to be struck between the legitimate interests of the complainant and the legitimate interests of the officers to whom the badge numbers relate.

65. As noted above, the Commissioner has identified an additional legitimate interest of the wider public (particularly in Hillingdon) knowing more about staffing continuity at Hillingdon Borough Division. The Commissioner would observe that this legitimate interest would be served more effectively by the disclosure of more recent data than that described in the request in this case.
66. Therefore the Commissioner would observe that where the information is historical (as is the case here) disclosure is less likely to serve the legitimate interest he has identified but, equally, it is less likely to give rise to unwarranted prejudice to the legitimate interests of the officers concerned.
67. The Commissioner has concluded that disclosure is not essential for satisfying the legitimate interest that he has identified in understanding staff rotation patterns at Hillingdon Borough Division given its age and relative usefulness. However, it is necessary to satisfy the legitimate interest in accountability and transparency that is served by the disclosure on request of information by public bodies.

**Would disclosure cause unwarranted interference to the rights, freedoms and legitimate interests of the officers?**

68. The public authority has asserted that disclosure would give rise to unwarranted interference to the officers' privacy rights. It has presented a hypothetical scenario in support of its position. However, it did not provide any direct testimony from the officers in question because it had not approached them for comment. As outlined above, the Commissioner does not accept the public authority's assertion in this regard.
69. In discussing whether disclosure would cause unwarranted interference of this nature, the public authority described disclosure as being likely to result in a serious "*breach to [the officers'] Article 8 [Human Rights Act 1998] rights*" and referred to the "*risks posed to them should this information be used by those with negative intent. Indeed, given the role that police officers play in the community it is vital that we maintain this protection for not only the benefit of the individual but also their families*".
70. The public authority gave no further explanation as to what the risks posed would be beyond a hypothetical and incomplete scenario regarding an estranged partner. Had it set out the alleged risks in more detail or provided more commentary from the officers themselves, the Commissioner would have taken this into account.
71. Disclosure of the information would allow an informed observer (a person who could "decode" the badge numbers) to determine which



officer was on duty on one or more of the three days in question two and a half years before the request was made. In terms of the officers' Article 8 rights, the Commissioner notes that Article 8 of the Human Rights Act 1998 provides a right to respect for an individual's private and family life. However in the absence of commentary from the officers to whom the badge numbers relate, the Commissioner does not consider that disclosure of the requested information would constitute a serious breach of those officers' privacy.

72. The Commissioner notes that the complainant's legitimate interest reflects a generic interest in the proper exercise of applicants' rights under the Act. It could be argued that his interest in the withheld information does not appear to have any additional legitimacy beyond a generic legitimate interest in the principles of accountability and transparency that is served by the exercise of information access rights under the Act.
73. However, in the Commissioner's view, while there is no additional compelling legitimate interest which could be served by disclosure, there is little or no unwarranted prejudice to the officers' legitimate interest that would follow as a result of disclosure.
74. The Commissioner has therefore concluded that Condition 6 set out in Schedule 2 of the DPA would be satisfied to allow disclosure under the Act. In considering the balance that must be struck between the competing legitimate interests, he finds that disclosure would serve the complainant's legitimate interest and not give risk to unwarranted prejudice to the officers' legitimate interests.

### **Section 40(2) – the Commissioner's conclusions**

75. For the reasons outlined above, the Commissioner is satisfied that disclosure of the withheld information would not contravene the first data protection principle of the DPA. The Commissioner therefore does not agree that the withheld information is exempt under section 40(2) of the Act.

### **Procedural Requirements**

76. In failing to provide the requested information to the complainant within 20 working days, the public authority contravened the requirements of section 1(1)(b) and section 10(1) of the Act. These provisions are set out in full in a Legal Annex to this Notice.



## The Decision

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77. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act in that it failed to provide the requested information within 20 working days of the request. In failing to do so, it contravened the requirements of section 1(1)(b) and section 10(1) of the Act.

## Steps Required

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78. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- Disclose the information described in the final part of the complainant's request of 15 February 2010.
79. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

## Failure to comply

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

## Other matters

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81. The complainant raised concerns about the time taken by the public authority to complete its internal review. By the Commissioner's calculations the public authority took 40 working days to complete this. The Commissioner's published guidance<sup>2</sup> recommends that public authorities should take no longer than 40 working days to complete an internal review and that this limit should only apply to the most complicated matters.
82. It is regrettable that the public authority failed to respond more promptly to the complainant's request for an internal review but the

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<sup>2</sup>

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

Commissioner is satisfied that the response was given within the timescale he has recommended.

## Right of Appeal

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83. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

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

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

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

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

**Dated the 17<sup>th</sup> day of March 2011**

**Signed .....**

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

## Legal Annex

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### Freedom of Information Act 2000

#### General Right of Access

##### **Section 1(1) provides that -**

"Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him."

#### Time for Compliance

##### **Section 10(1) provides that –**

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

...

#### 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-

- (c) it constitutes personal data which do not fall within subsection (1), and
- (d) 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."

...

## **Data Protection Act 1998**

### **Basic interpretative provisions**

#### **Section 1(1) provides that: -**

In this Act, unless the context otherwise requires—

"data" means information which—

- (a) is being processed by means of equipment operating automatically in response to instructions given for that purpose,
- (b) is recorded with the intention that it should be processed by means of such equipment,
- (c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system,
- (d) does not fall within paragraph (a), (b) or (c) but forms part of an accessible record as defined by section 68; or
- (e) is recorded information held by a public authority and does not fall within any of paragraphs (a) to (d);

...