

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

10 October 2006

**Public Authority:** The Information Commissioner's Office  
**Address:** Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

Note: The complaint in this case was made against the Information Commissioner. Since the Commissioner is himself a public authority for the purposes of the FOI Act, he is unusually under a duty to make a formal determination of a complaint made against himself. It should be noted, however, that the complainant has a right of appeal against the Commissioner's decision, details of which are given at the end of this Notice.

### Summary

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The complainant requested the residential addresses of all the Information Commissioner's current salaried staff. The request was refused on the basis that the information constitutes personal data and was provided to the Commissioner by his employees in confidence. Sections 40 and 41 respectively are therefore being relied upon. This Decision Notice does not uphold the complaint made and agrees that the exemptions have been applied correctly.

### 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 16 May 2006, the complainant made the following request by email to the Commissioner:

*"I wish to receive a list of residential addresses for all of the Information Commissioner's current salaried staff. I do not require the names of staff."*

3. The Commissioner responded to the request in an email of 9 June 2006 by refusing to provide the information to the complainant on the basis that sections 40 and 41 of the Act apply.
4. The Commissioner stated that the addresses of employees are provided to him in confidence and the disclosure of that information would amount to an actionable breach of confidence on his part. The requested information was therefore exempt by virtue of section 41 of the Act.
5. Section 40 was also cited on the ground that the requested addresses are personal data about the Commissioner's staff and that disclosure would contravene the first data protection principle as it would be both unfair and unlawful on the basis of the law of confidence.
6. On 11 July 2006, the complainant made an email request for an internal review of the decision not to disclose the information requested.
7. The internal review was conducted and the result communicated to the complainant by email of 28 July 2006. The outcome of the review was to uphold the decision not to release the information requested.

## **The Investigation**

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### **Scope of the case**

8. On 1 August 2006 the complainant contacted the Commissioner to complain about the refusal of his request. Since there did not appear to be any breaches of the procedures required by the Act and such matters were not raised by the complainant, the investigation of the complaint focussed upon the grounds for the refusal.

### **Chronology**

9. The complaint was allocated to a case officer who had not been involved in responding to the initial request for information. The officer wrote to the complainant by email of the 4<sup>th</sup> September 2006 to ask whether there was any further information that the complainant would like to have taken into account before any decision was reached. No response was received to this correspondence prior to the drafting of this Decision Notice.

## Findings of fact

10. The officer was able to confirm the sequence of events outlined in paragraphs 2-7 above. These facts do not appear to be disputed by the complainant.

## Analysis

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### Procedure

11. The full text of the relevant sections of the Act is given in the legal annex. The key elements are summarised in the analysis below.
12. Section 1 of the Act establishes the right to make requests for recorded information held by public authorities and places on those authorities the duty first to confirm or deny that the requested information is held and, second, to communicate that information to an applicant. However, the Act recognises that there are limits to the right of access and sets out a series of exemptions from disclosure that apply in certain cases. Exemptions are either 'absolute', that is they always apply to information falling within an exemption, or are 'qualified', that is they do not apply if there is an equal or greater public interest in disclosure compared to maintenance of the exemption.
13. The exemptions relied upon by the Commissioner in this case are both absolute.

### Section 41

14. The first exemption cited by the Commissioner is found at section 41 of the Act and applies to information obtained from a third party whose disclosure would constitute an actionable breach of confidence.
15. The Commissioner is satisfied that the requested information was indeed obtained from other persons, that is the employees themselves.
16. He is satisfied, moreover, that when his employees provided him with their home addresses, they did so with the expectation that that information would not be disclosed to third parties without their consent. In other words, he is satisfied that an obligation of confidence is created by the very nature of the employee / employer relationship, the duty is therefore implicit.
17. In reaching this conclusion, the Commissioner has taken into account the argument that information cannot be regarded as having the quality of confidence if it is readily available elsewhere, or it may be considered to be of low sensitivity. It has been considered whether addresses alone could fall into these categories, but in the Commissioner's view, this is a superficial argument. It seems clear that disclosure of the addresses of staff alone would allow the complainant to establish that particular employees of the Commissioner lived at particular addresses. This information is not otherwise generally available. Nor in the Commissioner's view is it trivial information. He is satisfied for these reasons that

disclosure would indeed constitute a breach of confidence, actionable in this case by his employees. This issue is considered further in the analysis of the application of the section 40 exemption.

## Section 40

18. Section 40 of the Act contains an exemption for personal information. It provides, among other things, that information is exempt if it is the personal data of a person other than the applicant (as is the case in this instance) and if disclosure to any member of the public would breach one or more of the data protection principles.
19. In this case, the most relevant of these principles is the first principle which provides that  

“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.”
20. Although the complainant has requested the addresses of employees alone, the Commissioner is satisfied that these could easily be used to identify members of staff. This would constitute a disclosure of personal data.
21. To a very large extent, the effect of the first data protection principle overlaps with the exemption relating to confidential information. Disclosure without consent would, in the Commissioner's view, represent a clear unfairness to his employees. It would also constitute the unlawful processing of personal data since that processing would entail a breach of the duty of confidence.
22. The Commissioner has taken into account decisions that he has made in other cases in which he has found that the disclosure of addresses alone would not represent a contravention of the data protection principles. For instance, in a decision notice issued in relation to a request for information to Mid-Devon Council (dealt with under the reference FS5082890), the Commissioner found that the addresses of Council properties should be disclosed even though the applicant in that case would be able to compare the lists of addresses to the Electoral roll and thus derive the information that particular voters, living at particular addresses were council tenants.
23. However, the Commissioner does not accept that the present case is equivalent. Making a similar comparison with the electoral roll, the applicant in this case would be able to deduce that a particular individual was an employee of the Commissioner. Information available from the Commissioner's web site or revealed by staff in the course of their day to day work would allow the complainant to deduce the home address of an officer who had dealt with a particular complaint or had been charged with conducting a particular criminal investigation. The information which the complainant would be able to deduce would, in other words, be of considerably greater sensitivity than the fact that a

particular person was a council tenant. The Commissioner is satisfied, in summary, that the refusal of the applicant's request in this case is based upon a consistent application of the Data Protection Act.

## The Decision

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24. The Commissioner's decision is that he dealt with the complainant's request for information in accordance with the Act.

## Steps Required

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25. The Notice therefore requires no steps to be taken.

## Right of Appeal

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26. 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](mailto: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 10<sup>th</sup> day of October 2006**

**Signed .....**

**Richard Thomas  
Information Commissioner**

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

## Legal Annexe

### Section 40 - Personal information

40. - (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 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.

(4) The second condition is that by virtue of any provision of Part IV of the 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).

(5) The duty to confirm or deny-

- (a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and
- (b) does not arise in relation to other information if or to the extent that either-
  - (i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or

- (ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).

(6) In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.

(7) In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;

"data subject" has the same meaning as in section 1(1) of that Act;

"personal data" has the same meaning as in section 1(1) of that Act.

#### **Section 41 - Information provided in confidence**

41. - (1) Information is exempt information if-

- (a) it was obtained by the public authority from any other person (including another public authority), and
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

(2) The duty to confirm or deny does not arise if, or to the extent that, the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) constitute an actionable breach of confidence.