

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date 27<sup>th</sup> November 2006

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

**Complainant:** Reynolds Hardiman  
**Address:** 21 Harrow Road West  
Dorking  
Surrey  
RH4 3BH

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 Freedom of Information Act (the 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 information from the Commissioner which related to a case heard by the Information Tribunal following an appeal by another individual against a decision made by the Commissioner. The request was refused under section 32 of the Freedom of Information Act on the basis that the documentation consisted of court records. This Decision Notice does not uphold the complaint made and agrees that the exemption has been applied correctly. However, the refusal notice issued in response to the request does not fully comply with the requirements of section 17.

### 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. In a letter dated 2 June 2006, the complainant requested the following information from the Commissioner which related to a case heard by the Information Tribunal following an appeal by another individual against a decision made by the Commissioner:  
  
*“1. The Notice of Appeal (redact please Mr Harper’s address, and any disability information if he included it; ditto, ‘phone/fax/email identifications if they are Ex-directory and/or not published ordinarily), Rule 6(1)(b) receipt I rather think;*  
  
*2. Your rule 8(2)(a) and 8(2)(b) response*  
  
*3. Your Agent’s skeleton argument, and any list of detailed, or, sub-issues and any list of reliance authorities.”*
3. The Commissioner responded to the request by letter of 20 June 2006. The request was refused on the basis of section 32(1) of the Act relating to court records. No further explanation was given.
4. The complainant wrote to the Commissioner on 28 June 2006 to request that an internal review be conducted. The outcome of the review was sent to the complainant by letter of 25 July 2006. It was conceded that the refusal notice should have provided more explanation as to why the exemption applied. This detail was therefore included in the review.
5. It was explained to the complainant that all of the information requested falls within the scope of the section 32(1) exemption as the documents requested were “filed with, or otherwise placed in the custody of a court for the purposes of proceedings in a particular cause or matter.” It was confirmed that the Information Tribunal comes within the definition of a court by virtue of section 32(4)(a).
6. The Commissioner cites the Information Tribunal decision in *Mitchell v The Information Commissioner (EA/2005/0002)* (“*Mitchell*”) as authority for the definition of documents to which paragraphs (a) and (b) of section 32(1) relate. The Information Tribunal’s Decision is quoted: “Documents to which paragraphs (a) and (b) relate will routinely include pleadings, witness statements and exhibits served as part of a litigant’s (...) case as well as lists of documents, material served under obligation to disclose and documents such as skeleton arguments prepared by advocates.”
7. The review also confirms that any information relating to “sub-issues” or “reliance authorities” are referred to in the skeleton argument.

8. The result of the internal review was to uphold the original decision not to release the information requested whilst conceding that the refusal notice provided did not sufficiently explain why the exemption applied.

## **The Investigation**

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### **Scope of the case**

9. On 28 July 2006 the complainant contacted the Commissioner to complain about the refusal of his request. Since the breach of section 17 of the Act was not raised by the complainant, the investigation of the complaint focussed upon the grounds for the refusal.
10. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

### **Chronology**

11. 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 on 11 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. The officer also obtained copies of all the information requested.
12. The complainant responded to the case officer's letter on 10 and 18 October 2006 but did not provide any further relevant information or submissions to be taken into account as part of the investigation.
13. The investigation focussed upon the submissions made by both parties within the course of the handling of the request and upon consideration of the information requested.

## **Analysis**

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### **Procedural Matters**

14. 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.
15. The refusal notice provided to the complainant, did not fully comply with section 17 of the Act. In accordance with that section, the refusal notice should explain why the exemption applies if it is not otherwise apparent. This issue was addressed however, within the internal review.

16. 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.
17. The exemption relied upon by the Commissioner in this case is absolute.

### **Section 32**

18. The exemption relied upon by the Commissioner is found at section 32 of the Act and applies to information that constitutes court records.
19. The Act is explicit in its definition that the word "court" encompasses Tribunals in section 32(4)(a). The requested information was provided to the Information Tribunal as a submission for a hearing and the Commissioner is therefore content that this element of the exemption under section 32 of the Act has been satisfied. In view of this, he has gone on to consider whether the requested information is of the type that is covered by this section of the Act.
20. The Notice of Appeal is the document lodged with the Tribunal and served upon the respondent by the appellant in order to initiate an appeal. The rule 8 response is the respondent's reply to the Notice of Appeal and the Skeleton Argument is an outline of a party's questions and points that he/she wishes to raise at the hearing.
21. Section 32(1)(a) provides a specific type of information which is covered by the exemption. The Commissioner is aware that this section has been further analysed by the Information Tribunal in Mitchell. He has therefore paid particular attention to the findings of that case in reaching his decision in the present complaint.
22. Paragraph 33 of the Tribunal's decision in Mitchell clearly sets out the specific kinds of information to which an exemption under section 32 of the Act can apply. Having thoroughly reviewed the requested information, the Commissioner is satisfied that the information contained in the documents is indeed covered by the list of example documents set out in Mitchell, referred to in paragraph 6 above.
23. As the exemption is absolute, no public interest test need be applied.
24. In view of the above, the Commissioner is satisfied that the exemption under section 32(1) of the Act is valid.

### **The Decision**

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25. The Commissioner's decision is that he dealt with the following elements of the request in accordance with the requirements of the Act:

The exemption conferred by section 32(1) was correctly applied.

However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

The requirements of section 17(1) were not fully complied with, in that a more detailed explanation of why the exemption applied should have been provided.

### Steps Required

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26. The Commissioner requires no steps to be taken.

### Right of Appeal

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27. 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 27<sup>th</sup> day of November 2006**

**Signed .....**

**Richard Thomas  
Information Commissioner**

**Information Commissioner's Office**

Reference: FS50129136



Information Commissioner's Office

**Wycliffe House  
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Cheshire  
SK9 5AF**