

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 2 June 2008

Public Authority: The National Archives
Address: Kew
Richmond
TW9 4DU

Summary

The complainant made a request to The National Archives for access to the transcript and papers of the Fisher inquiry into the trial for the murder of Mr Maxwell Confait in 1972. The National Archives made some of the files relating to the inquiry available to the public; however it withheld substantial parts of the transcript evidence relying on sections 40(2) and 41 of the Act. As a result of the Commissioner's investigation, it was revealed that most of this evidence was in the public domain at the time of the request. A redacted version of the transcript was made available to the complainant in January 2008. The redacted information relates mainly to the evidence of witnesses who were promised confidentiality when they participated in the Fisher inquiry. The Commissioner is of the view that this information is exempt by virtue of sections 40(2) and 41 of the Act. Therefore the Commissioner does not require The National Archives to take any remedial steps in relation to this request.

The Commissioner's Role

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

The Request

2. The complainant has advised the Commissioner that on 6 April 2005 he requested information from The National Archives under section 1 of the Act. The complainant referred to a number of Home office files referenced under HO253¹ relating to the inquiry of Sir Henry Fisher (the Fisher inquiry) into the murder of Mr

¹ HO253/3/5/8/9/10/12/18/9/20/21/22/23/26/27/28/85/86-92/97-100/102/104-116/128-132 and HO253 31-77, 117-127

3. Maxwell Confait. The complainant asked The National Archives to advise whether the files were open or closed, and to review any files which were closed under freedom of information and data protection legislation. In conducting the review he asked that the public interest in the 'study of why miscarriages of justice take place' be considered.
3. The complainant advised The National Archives that he was aware that it consulted with the Home Office in relation to the review of closed files. The complainant asked The National Archives what procedures and criteria it used in deciding whether or not to accept any advice offered by the Home Office. Specifically the complainant asked whether The National Archives or the Home Office took the final decision on whether to open a file.
4. The information requested related to the transcript and papers of the Fisher inquiry into the circumstances surrounding the trial of persons accused of the murder of Mr Confait in April 1972.² Three young men (Colin Lattimore, Ronald Leighton and Ahmet Salih) were tried for Mr Confait's murder and a fire at 27 Doggett Road, London. The accused were aged 18, 15 and 14 respectively, although Mr Lattimore had a mental age of eight. All three were interviewed by police without another adult being present. These young persons claimed at the trial that their admissions to murder and arson were made because of police brutality.³
5. On 11 November 1972, the jury at the Old Bailey found Colin Lattimore guilty of manslaughter (on grounds of diminished responsibility) and two counts of arson (Doggett Road and Ladywell Fields). He was retained indefinitely under the Mental Health Act at Rampton Hospital. Ronald Leighton was found guilty of arson and burglary and received a life sentence. Ahmet Salih was also convicted of arson and burglary but because of his age received a four year sentence to be served at the Royal Philanthropic School. Appeals were refused, but following a lengthy campaign to re-open the case by the accused's Members of Parliament and the National Council for Civil Liberties, these convictions were overturned by the Court of Appeal.⁴ On 28 November 1975 the then Secretary of State for the Home Department, the Right Honourable Roy Jenkins MP, issued a warrant directing that an inquiry be held into the circumstances leading to the convictions. This was conducted between September and December 1976. Although the Fisher inquiry was held in private to protect the privacy and confidentiality of witnesses, a full report of the inquiry was published in December 1977.
6. The National Archives responded to the complainant's request for the inquiry transcript and papers on 9 April 2005. It advised that most of the files referred to were in fact closed, and that a review would be undertaken as requested. The National Archives also advised the complainant that four files were open⁵ and available for viewing.

² See the House of Commons Report of the Fisher Inquiry (13 December 1997)

³ Lattimore admitted to the murder of Maxwell Confait, Salih confessed to observing the murder and Lattimore and Salih admitted to starting the fire at 27 Doggett Road.

⁴ Judgement was given in 1975

⁵ HO253/5/8/9/12

7. On 21 April 2005 and 3 May 2005 The National Archives advised the complainant that, following its review, two of the requested files were now open and available for viewing. The National Archives advised the complainant on 6 May 2005 that it had not yet completed its review of the remainder of the requested files.
8. On 19 May 2005 The National Archives advised the complainant that redacted versions of some of the files⁶ would be made available in the reading room and also that a further six files⁷ were now open and available for viewing. The National Archives advised that information contained in a further nine files was partially exempt, but that the redacted information was now available for viewing.
9. In relation to the remaining information, The National Archives advised the complainant that it considered all of this information was exempt from disclosure under the Act. The National Archives explained that it sought to rely on the exemption under section 40 of the Act, which relates to personal information, and section 41, which relates to information provided in confidence. The National Archives also advised the complainant of the requirement to consult the 'responsible authority' (in this case the Home Office) under section 66 of the Act and the fact that while it was required to consult, ultimately the decision to disclose information lay with itself.
10. On 24 June 2005 the complainant requested an internal review of The National Archive's decision to withhold the remaining information. The National Archives wrote to the complainant on 22 July 2005 to advise that, while the review was not yet complete, it had decided that more information was not in fact exempt, and could be made available for viewing.⁸ On 18 August 2005 The National Archives advised the complainant that the internal review was now complete. The National Archives advised that some more of the information was being made available for viewing⁹, but that the decision to withhold the remainder of the information held had been upheld. The complainant was also advised that more personal information of the three accused could be released if their informed consent was obtained. The National Archives advised that the withheld information was exempt under sections 40(2) and 41 of the Act.

The Investigation

Scope of the case

11. On 7 September 2005 the complainant contacted the Commissioner to request a decision as to whether or not The National Archives had acted correctly in withholding the information referred to at paragraph 9 above. The complainant advised the Commissioner that he was particularly interested in files HO253 31-77, which contained the verbatim transcript evidence of witnesses to the inquiry.

⁶ HO 253/10/19-21/23/27-28/104-106/112/113/117 and 128-132

⁷ HO253/3/18/22/26/97/102

⁸ Extracts from HO252/128/1

⁹ Redacted witness statement of Winston Goode dated 2 May 1972; names of medical professionals

The complainant explained that the inquiry raised a number of issues of significant public interest issues and that if such an inquiry were to be held today, proceedings would be held in public. In the aftermath of the inquiry the government had set up the Royal Commission on Criminal Procedure which led to the Police and Criminal Evidence Act (PACE) and the tape recording of police interviews and an independent Crown Prosecution Service. The complainant argued to the Commissioner that disclosure of the withheld information was clearly in the public interest given the significance of the Confait case.

12. The Commissioner therefore limited the scope of his investigation to the application of the exemptions by The National Archives to files HO253 31-77 (the 'withheld information').

Chronology

13. The Commissioner wrote to The National Archives on 24 March 2006 to advise it of the complaint. On 31 March 2006, the Commissioner requested further information from The National Archives in relation to its application of the exemptions under sections 40 and 41 of the Act to the withheld information. The Commissioner also asked The National Archives for information about the Fisher inquiry, and the circumstances under which The National Archives received relevant records from the Home Office.
14. The National Archives responded to the Commissioner on 31 March 2006 and again on 9 May 2006. It provided background information on the Confait murder and the Fisher inquiry, to assist the Commissioner's understanding of the withheld information. The National Archives also provided further information on its application of the exemptions under sections 40 and 41 of the Act. These arguments are summarised below.
15. After the intervention of the Commissioner, consent was received from two individuals. The National Archives then confirmed to the Commissioner on 11 October 2007 that it would release the information of the two individuals as well as the prosecutorial and expert evidence provided to the inquiry. The National Archives was concerned not to release information relating to Colin Lattimore without his consent and also the testimony of third parties who had been promised anonymity.
16. The Commissioner invited The National Archives to further review its application of the exemptions and to take into consideration the fact that the bulk of the withheld information was in fact published in the Fisher Report in 1977. As a result of the intervention of the Commissioner, much of the information in files HO253 31-77 was made available for inspection by the complainant on 20 January 2008

Section 40(2) exemption

17. The National Archives sought to rely on section 40(2) of the Act in relation to the withheld information. This exemption applies to information that constitutes personal data of an individual other than the requester.
18. The National Archives advised the Commissioner that the withheld information comprised the transcript of the Fisher inquiry, and as such included information provided to the inquiry by a number of individuals. These individuals included witnesses of fact, police, medical and other expert witnesses, as well as the three individuals who were originally convicted of the Confait murder. Much of the evidence of witnesses to the inquiry related to Mr Confait as the murder victim, and to one of the suspects, a William Goode. However, the exemption under section 40(2) only applies to the personal information of living individuals.
19. The National Archives advised the Commissioner that Sir Henry Fisher stated at the beginning of the inquiry that:

“The substantive hearing is in private, these transcripts are to be treated as confidential.”

The National Archives also drew the Commissioner’s attention to the Preface to the Fisher Report¹⁰ which refers to the need to protect the confidentiality or privacy of the individuals concerned.

20. The National Archives advised the Commissioner of its view that the withheld information contained sensitive personal information relating to the sexual lives of the witnesses, the murder victim and other individuals as well as information concerning the alleged commission or commission of offences. Given that the individuals, who provided evidence to the inquiry, did so in expectation of confidence, The National Archives argued that disclosure into the public domain would be unfair on those individuals.

Section 41 exemption

21. As indicated above, The National Archives argued to the Commissioner that the withheld information was provided to the Fisher inquiry in confidence. The National Archives was of the view that disclosure of the information would constitute an actionable breach of confidence. Therefore The National Archives argued that the withheld information was also exempt under section 41 of the Act. The withheld information comprised the following:

- (i) Prosecutorial evidence
- (ii) Expert witness evidence
- (iii) Evidence of the accused
- (iv) Evidence of third parties

¹⁰ Paragraphs 2 and 4 at pages 3-4 of the report

22. Information which is in the public domain at the time of a request does not have the necessary quality of confidence and therefore the section 41 exemption will not apply. The complainant had indicated in his correspondence to The National Archives that the individuals who were accused of Mr Confait's murder would be willing to agree to disclosure under the Act. Where an individual has consented to the disclosure of confidential information, this is a defence to any action for breach of confidence.

Consent of individuals

23. Some of the information withheld by The National Archives comprised the witness evidence of the three individuals who were wrongly convicted of the murder. The National Archives advised the Commissioner that it would be prepared to disclose this part of the withheld information, if consent was obtained from these three individuals. The Commissioner asked the complainant whether he was in a position to seek consent from these individuals.
24. On 20 June 2006 the complainant provided the Commissioner with letters signed by two of the three individuals (Ronald Leighton and Ahmet Salih), both of whom did consent to their personal information being disclosed under the Act. The complainant advised the Commissioner that he was unable to trace the third individual, Colin Lattimore.
25. The Commissioner considered the letters from the two individuals, but was not satisfied that they provided informed consent. Given the sensitivity of the information relating to these individuals contained in the transcript evidence, the Commissioner wrote to Mr Leighton and Mr Salih asking them to confirm that they understood the implications of disclosure of the information into the public domain.
26. Mr Leighton wrote to the Commissioner on 28 January 2007 to confirm that he did consent to his information being disclosed under the Act and therefore effectively into the public domain. Mr Salih provided similar consent by letter dated 16 May 2007. The Commissioner provided The National Archives with copies of these letters, and requested that the relevant information be provided both to the complainant, and to each individual. The Commissioner advised the complainant that it was unlikely that the personal information relating to the third individual could be disclosed in the absence of that individual's consent. On 26 September 2007, the Commissioner provided to The National Archives his view on the application of the exemptions to the prosecutorial and expert witness evidence as well as that of the accused in light of the consents obtained.
27. In light of these consents, The National Archives confirmed to the Commissioner on 11 October 2007 that it would release the information of the two individuals referred to at paragraph 22 above as well as the prosecutorial and expert evidence provided to the inquiry. The National Archives was concerned not to release information relating to Colin Lattimore without his consent and also the testimony of third parties who had been promised anonymity.

28. At this stage, the scope of the Commissioner's investigation was narrowed to focus on the third party evidence as well as the evidence and personal details relating to Colin Lattimore. The Commissioner undertook a detailed inspection of all of this withheld information on 5 and 6 December 2007. During that inspection the National Archives provided to the Commissioner a copy of the Fisher Report. The Commissioner examined carefully the content of that report and compared its contents with the withheld information.
29. The Commissioner noted that the Fisher Report extends to 280 pages and provides a detailed history of the initial investigation, notes of the police interviews, particulars of and extracts from the evidence heard at the inquiry as well as texts of the written statements of the accused. A list of all the witnesses who gave oral evidence to the inquiry was provided at Appendix B of the Fisher Report. However, the Commissioner also noted that the identity of two witnesses was not disclosed and these individuals were referred to as Mr A X and Mr B X. It is clear from the Fisher Report that these witnesses whose evidence is referred to in the transcript were given assurances of confidentiality. The Commissioner was also aware, following the inspection, of the extent to which the verbatim transcript of the inquiry was quoted and relied upon in the production of the report. In particular although the information relating to Colin Lattimore had been withheld from the complainant, it was noted by the Commissioner that much of his personal information, his evidence and the findings of the inquiry relating to him were available in chapters 5, 8 and 12 of the report.
30. In light of this, the Commissioner invited The National Archives to further review its application of the exemptions and to take into consideration the fact that the bulk of the withheld information was in fact published in the Fisher Report in 1977. As a result of the intervention of the Commissioner, much of the information in files HO253 31-77 was made available for inspection by the complainant on 20 January 2008.
31. The Commissioner's decision in this case will deal solely with the application of the exemptions to the remaining withheld information (the redacted information). This comprises mainly the names or other identifying details as well as personal (and sensitive personal information) of individuals who gave evidence to the Fisher inquiry and who were promised confidentiality. This information was not in the public domain at the time of the request nor is it currently available.

Analysis

Procedural matters

Section 1: General right of access

32. Section 1(1) states that any person making a request for information to a public authority is entitled to be informed in writing as to whether the public authority holds the information and if so have the information communicated to him. The complainant made his request on the 6 April 2005 and complained to the

Commissioner on 7 September 2005. The National Archives withheld the information under sections 40 and 41 of the Act but during the Commissioner's investigation disclosed some of this information to him.

33. The Commissioner finds that the failure of The National Archives to provide this information by the date of the complaint to the Commissioner is a breach of section 1(1)(b). In reaching this finding the Commissioner has followed the decision of the Information Tribunal in the case of *King v Information Commissioner and DWP*¹¹:

The Tribunal agrees that in cases of delay there are separate breaches which can be recorded under sections 10 and 17 FOIA, but is satisfied that a failure to provide disclosable information by the date of a complaint to the Commissioner should be properly categorized as a breach of section 1 FOIA as well as a breach of section 10 or 17 FOIA.

Section 10: Time for compliance

34. Section 10 of the Act requires that a public authority must comply with section 1(1) promptly and in any event no later than the twentieth working day following the date of receipt. Section 1(1) states that any person making a request for information to a public authority is entitled to be informed in writing as to whether the public authority holds the information and if so have the information communicated to him.
35. The complainant made his request on 6 April 2005. The National Archives withheld the information under sections 40 and 41 of the Act but during the Commissioner's investigation disclosed this information to him.
36. In failing to supply some of the information requested in line with the requirements of part 1(1) of the Act, within twenty working days from receipt of the request, the Commissioner finds that The National Archives breached section 10 of the Act.

Section 17: refusal notice

37. Where a public authority refuses a request for information it is required under section 17 of the Act to provide the applicant with a 'refusal notice' detailing the refusal and explaining the exemption or exemptions relied upon. Section 17(1) specifies that this notice must be provided within the time for complying with section 1(1), ie twenty working days from the day after the request is received.
38. The National Archives did not issue a refusal notice until 19 May 2005 (although it had communicated with the complainant on a number of occasions since it received his request). The time for compliance did not form part of the complainant's request, but in the interests of thoroughness the Commissioner did consider all aspects of The National Archive's handling of the request.

¹¹ EA/2007/085

39. The Commissioner notes that the Freedom of Information (Time for Compliance with Request) Regulations 2004 (the Regulations) provide an extension of time for requests made to:

“an appropriate records authority or by a person at a place of deposit appointed under section 4(1) of the Public Records Act 1958”

if the requested information has not been designated as “open information” for the purposes of section 66 of the Act. The Regulations specify that in these circumstances the time for compliance is extended to thirty, rather than twenty, working days (see the legal annex on page 16 for full details).

40. The National Archive did explain to the complainant that the Regulations extended the time for compliance, and its refusal notice of 19 May was issued within this time. Therefore the Commissioner finds that The National Archives complied with section 17 of the Act.

Exemptions

Section 40(2): personal information of third parties

41. Section 40(2) via section 40(3)(a) provides that personal information is exempt if its disclosure would contravene any of the data protection principles¹² or a notice served under section 10 of the Data Protection Act 1998 (the DPA). Having inspected the redacted information, the Commissioner is satisfied that it does comprise personal information relating to a number of individuals. In the absence of information to the contrary, the Commissioner believes that it is reasonable to assume that the individuals are still living. These were individuals who assisted the Fisher inquiry in its deliberations and who gave evidence on the understanding that it would remain in confidence. The Commissioner will also consider the application of the section 41 exemption to the redacted information.
42. The first data protection principle requires that personal information be processed fairly and lawfully and that a Schedule 2 or (in the case of sensitive personal information¹³) a Schedule 3 condition is met. In this case, The National Archives argued to the Commissioner that to disclose the redacted information would be unfair to the individuals concerned given the private nature of the inquiry and the undertakings of confidentiality given to these persons.
43. The Commissioner is mindful of the direction of the then Secretary of State for the Home Department¹⁴ and of the Attorney General that the Fisher inquiry be held in private. Apart from a preliminary hearing which was held in public on 19 December 1975, the inquiry was conducted in private for a period of 46 days between 6 September and 2 December 1976. In addition to the oral evidence of 38 witnesses, Sir Henry Fisher considered written statements or other documentary evidence of 257 other persons.¹⁵ In the preface to his report, Sir

¹² See Schedule 1 to the DPA

¹³ Section 2 of the DPA

¹⁴ The Right Honourable Mervyn Rees MP

¹⁵ Paragraph 2, Page 3 of the Fisher Report

Henry Fisher advised that he had been approached about future public access to the inquiry papers and the publication of the report. He explained that it was essential to support his findings by extensive references to the evidence; however he had sought the comments of officials on questions of privacy and confidentiality as well as those who gave evidence on the question of disclosure. The Fisher Report reflects these considerations in light of the comments and observations received.

44. The Commissioner is mindful of the fact that at the time of the request (April 2005) a considerable amount of the requested information was publicly available as a result of the publication of the Fisher Report in 1977. Some of this information was subsequently released by The National Archives at internal review and at a late stage as a result of the Commissioner's investigation. However, the Commissioner is satisfied that the redacted information has never before been published. In light of the assurances given to the witnesses who assisted the inquiry the Commissioner considers that it would be unfair to such persons to disclose this personal information under the Act. The Commissioner is mindful of the expectations of these individuals that their personal information would be kept confidential, despite the high profile nature of the Confait case.
45. The Commissioner considers therefore that to disclose this personal information would be unfair and in breach of the first data protection principle. The redacted information is therefore exempt under section 40(2) of the Act, as the condition in section 40(3)(a)(i) is satisfied. Since section 40(2) is an absolute exemption, there is no requirement to consider the public interest as identified by the complainant. Although the Commissioner is satisfied that the redacted information is exempt by virtue of section 40(2) and need not consider the application of the section 41 exemption, he is mindful of the public interest in the Confait case and will consider the application of the section 41 exemption.

Section 41: Information provided in confidence

46. The National Archives has relied upon section 41 of the Act, which is an absolute exemption, as the reason for not disclosing the redacted information. Information is exempt by virtue of section 41 if it was obtained by the public authority from any other person (including another public authority), and the disclosure of the information to the public (otherwise than under this Act) by the authority holding it would constitute a breach of confidence '*actionable*' by that or any other person.
47. In relation to the application of the section 41 exemption, the Commissioner must first consider whether or not the requested information was in fact obtained from another person. This is to satisfy the requirements of section 41(1)(a).
48. The Commissioner notes that the redacted information was originally provided to The National Archives by the Home Office and that it comprised witness evidence given to the Fisher inquiry by relevant individuals. This information was not created by The National Archives. The Commissioner is satisfied in those circumstances that the information was obtained from another person.

49. Having established that the redacted information was in fact obtained from another person, the Commissioner must next consider whether or not its disclosure to the public (otherwise than under the Act), would constitute a breach of confidence 'actionable' by that or any other person.

An 'actionable' claim for breach of confidence

50. The Commissioner takes the view that the word 'actionable' in the context of section 41 means that all the requirements for a successful claim for breach of confidence must be fulfilled. In other words: if a claim were brought, would it succeed? A mere chance of success is not sufficient to satisfy section 41. The Commissioner has also taken into account the observations of Lord Falconer during the Committee stage of the Bill, which became the Act¹⁶, in relation to the meaning of 'actionable'.
51. The requirements for a claim for breach of confidence are set out in the case of *Coco v Clarke*.¹⁷ A claim for breach of confidence can be established where:
- (1) the information has the necessary 'quality of confidence',
 - (2) was imparted in circumstances giving rise to an obligation of confidence, and
 - (3) there has been (or would be) an unauthorised disclosure of the information.

All three elements must be present for a claim to be made out. However, for that claim to be 'actionable' within the meaning of section 41(1)(b) of the Act requires a further consideration in any case, namely, whether or not there would be a defence to such a claim.

The necessary 'quality of confidence'

52. The Commissioner has had sight of the redacted information and has carefully considered whether or not it had the necessary quality of confidence at the time of the request. The Commissioner is satisfied that a promise of confidentiality as is not in itself sufficient to confer on the information the necessary quality of confidence. A key test is whether the information is public knowledge or public property.
53. The Commissioner is mindful of the impact of the House of Lords' judgment in the *Campbell*¹⁸ case, on the development of the law of confidence where personal information is an issue, and the fact that the values enshrined in articles 8 and 10 of the European Convention on Human Rights are now part of that law. The Commissioner accepts that the action for breach of confidence in such circumstances has been "reshaped" into an action for misuse of personal information.¹⁹ In this case, the Commissioner has considered the *Campbell* test for what constitutes 'private information' – the question in any case is whether, in

¹⁶ Hansard HL (series 5) Vol 617, col 92 (17 October 2000)

¹⁷ *Coco v AN Clark (Engineers) Ltd* [1969] RPC 41

¹⁸ *Campbell v Mirror Group Newspapers (MGN) Ltd* [2002] EWCA Civ 1373

¹⁹ Clerk and Lindsell on Torts, 19th edition, 2006

relation to that information, the individual had a reasonable expectation of privacy. The Commissioner considers that information given in the context of the Fisher inquiry which related to such sensitive issues as the relationships with the murder victim, the accused and the witnesses' own sexual lives is a clear example of personal information which an individual would expect to be kept private. The Commissioner considers that such information would be confidential in nature.

54. Having carefully considered the nature and content of the redacted information and the fact that it is not publicly available nor is it public knowledge; the Commissioner considers that this information does have the necessary quality of confidence. The Commissioner has concluded that the first requirement for an

action for breach of confidence, the 'necessary quality of confidence', has been met in this case.

Obligation of confidence

55. The Commissioner has also considered whether the redacted information was imparted in circumstances giving rise to an obligation of confidence. In light of the facts set out at paragraph 28 above, the Commissioner is satisfied that an obligation of confidence existed in this case and that any disclosure without consent would be unauthorised.
56. Although not a pre-requisite in every case the Commissioner has considered whether there would be a detriment to any individual in the event that such information was to be disclosed. Given the private nature of the redacted information the Commissioner is satisfied that such detriment would exist.

Public interest defence

57. A claim for breach of confidence can be successfully defended where there is a public interest which requires disclosure. The Commissioner has considered the highly sensitive nature of the redacted information in this case which relates to the private and personal lives of the individuals who assisted in the inquiry or whose lives were touched by the circumstances surrounding the murder of Maxwell Confait and the subsequent trial. In light of the intensely private nature of such information and the significant public interest in ensuring that witnesses feel free to testify when promised anonymity, the Commissioner considers in this case that there is significant public interest in maintaining confidence. The Commissioner has considered the public interest arguments put forward by the complainant in paragraphs 2 and 12 and acknowledges they are factors that can be given some weight but not enough to exceed the weighty public interest in preserving confidence, in this case.

The Commissioner is satisfied therefore that The National Archives correctly withheld the redacted information from the complainant under section 41.

The Decision

58. The National Archives failed to deal with the complainant's request correctly at the request and internal review stage. However, as a result of the intervention of the Commissioner, The National Archives subsequently disclosed to the complainant the bulk of the requested information. The Commissioner is satisfied that the remaining redacted information is exempt by virtue of sections 40(2) and 41 of the Act.
59. The Commissioner has decided that the following elements of the request were not dealt with in accordance with the Act:
- i. Breach of section 1(1)(b) of the Act as some of the requested information that fell to be disclosed was not provided to the complainant until after the complaint had been lodged with the Commissioner.
 - ii. Compliance with section 10 of the Act.

Steps Required

60. The Commissioner therefore does not require the public authority to take any steps.

Right of Appeal

61. 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

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 2nd day of June 2008

Signed

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

Legal Annex: Relevant statutory obligations

1. **Section 1(1)** provides that:

- (1) 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.

2. **Section 40** provides that:

- (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).

4. **Section 41** provides that:

- (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.

5. **Regulation 4 of the Freedom of Information (Time for Compliance with Request) Regulations 2004** provides that:

(1) This regulation applies where-

(a) a request for information is received by an appropriate records authority or by a person at a place of deposit appointed under section 4(1) of the Public Records Act 1958; and

(b) the request relates wholly or partly to information:

(i) that may be contained in a transferred public record, and

(ii) that has not been designated as open information for the purposes of section 66 of the Act.

(2) Where this regulation applies, subsections (1) and (2) of section 10 of the Act have effect as if any reference to the twentieth working day following the date of receipt were a reference to the thirtieth working day following the date of receipt.