

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 25 November 2009

**Public Authority:** Ofsted  
**Address:** Alexandra House  
33 Kingsway  
London  
WC2B 6SE

#### Summary

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The complainant requested a number of pieces of information in relation to an inspection of Bishop Vessey's Grammar School, Birmingham, which took place in November 2006. Ofsted relied upon sections 33 and 41 to withhold this information. Following correspondence with the complainant the Commissioner limited his investigation to Ofsted's withholding of the Evidence Forms relating to this inspection. During the Commissioner's investigation Ofsted informed him that it was no longer seeking to rely upon sections 33 and 41. Instead it was seeking to rely upon sections 40(2) and 40(3)(a)(i) to withhold some of the information on the Evidence Forms. It also disclosed some of the previously withheld information to the complainant. After investigating the case the Commissioner decided that majority of the outstanding information should be withheld under sections 40(2) and 40(3)(a)(i). However, he also believes that some of the outstanding information can be disclosed to the complainant in an anonymous format. Finally, the Commissioner also found that Ofsted had not met with the requirements of sections 1, 10 and 17 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. In February 2007 the complainant contacted Ofsted by email and requested information relating to the details of the verbal briefing given to Bishop Vessey's Grammar School at the end of the Ofsted inspection that took place on 8

November 2006, as well as any other information the inspection team recorded about the school that was not contained in the website report.

3. Ofsted responded to this request on 7 March 2007. It informed her that the Evidence Forms on which the verbal feedback to the school was recorded reflected the explanation of the inspection findings that were publicly available on its website, and as such this information was exempt under section 21 of the Act. It also provided her with the Pre-Inspection Briefing and the Performance and Assessment Report – although it noted that some information had been removed from these documents, "...because it could be possible to learn the results of individual pupils, which would breach the Data Protection Act." Finally it informed her of her right to request an internal review. This response also included an annex which gave detailed arguments in relation to sections 33 and 41, although it did not specify what information it was seeking to apply this exemption to.
4. Following an email from the complainant Ofsted wrote to her again on 14 March 2007. It acknowledged that a passage from its earlier email had been omitted, which had led to confusion. The omitted paragraph stated that, "...evidence forms which may have contained details such as verbal feedback or briefings are exempt from disclosure under sections 33 and 41(1)..."
5. Following further emails from the complainant in which she asked for an internal review, Ofsted emailed her on 25 May 2007 with the outcome of this review. It acknowledged that there had been administrative errors in relation to the handling of her request, and informed her of steps it had taken in regard to these errors. In addition to this it noted that her request had specified that she was seeking access to information that was "not contained on the website report", and therefore it accepted that it had been incorrect to rely upon section 21. However, it upheld its use of sections 33 and 41. Finally, it informed her of her right to complain to the Commissioner.

## The Investigation

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### Scope of the case

6. On 1 June 2007 the complainant contacted the Commissioner to complain about the way her request for information had been handled. In her complaint she stated that, "I do believe that it would have been possible to give the information I requested appropriately 'filtered' to avoid personal identification."
7. The Commissioner contacted the complainant on 29 July 2009 to inform her that her case has been allocated to a case officer. In this email he stated that after considering the details of her complaint and the information she had provided him with, he intended to focus his investigation on the information contained in the Evidence Forms relating to the Ofsted inspection of Bishop Vessey's Grammar School in November 2006. He asked her to contact him if she did not agree with this suggested scope of the case.

8. The complainant contacted the Commissioner by way of a telephone call on 31 July 2009 and confirmed that the Evidence Forms formed the scope of her complaint. Therefore his investigation focused on the Evidence Forms held by Ofsted in relation to the inspection of Bishop Vessey's Grammar School in November 2006.
9. During the course of the investigation Ofsted informed the Commissioner that it now intended to disclose a large amount of the previously withheld information to the complainant. It should be noted that it still continued to withhold information which it believed to be the personal data of the complainant, members of staff, pupils and other individuals who were not members of staff. Ofsted believed that this information was exempt from disclosure under sections 40(1), 40(2) and 40(3)(a)(i). The Commissioner contacted the complainant by email on several occasions before this disclosure was made and informed her of Ofsted's intentions. He also drew the complainant's attention to an earlier case against Ofsted which also dealt with a request for Evidence Forms (FS50123184).<sup>1</sup>
10. Following the disclosure of the previously withheld information, the complainant wrote to the Commissioner on 13 November 2009 and informed him that she was unhappy with Ofsted's continued withholding of information relating to lesson observations.
11. The Commissioner responded in an email on 17 November 2009 and noted that she was dissatisfied with Ofsted's use of section 40 in relation to the lesson observation information. He informed her that after considering her comments he would now focus his investigation on the information in the Evidence Forms relating to lesson observations. Accordingly he would draft a decision notice in relation to this information only.
12. Therefore the revised scope of this case is the information contained in the Evidence Forms relating to the Ofsted inspection of Bishop Vessey's Grammar School which took place in November 2006, where that information relates to lesson observation. Bearing in mind the complainant's comments in her email of 17 November 2009 he has not gone on to consider the other information still withheld by Ofsted, where that information does not relate to a lesson observation. Nor has he considered the information which Ofsted disclosed to the complainant during the course of the investigation.

The Commissioner has identified the Evidence Forms which contain lesson observations in the Confidential Annex attached to this Notice.

13. Although not raised by the complainant the Commissioner has also gone on to consider whether Ofsted has met with the requirements of sections 10 and 17.

### **Chronology**

14. Following his initial communication with the complainant (see paragraphs 7 and 8 above) the Commissioner wrote to Ofsted on 31 July 2009 and asked for a copy

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<sup>1</sup> [http://www.ico.gov.uk/upload/documents/decisionnotices/2008/fs\\_50123184.pdf](http://www.ico.gov.uk/upload/documents/decisionnotices/2008/fs_50123184.pdf)

- of the withheld information. In reference to Ofsted's use of sections 33 and 41 he drew its attention to the previous Ofsted decision in FS50123184, and asked it whether, after considering his findings in that case, it still intended to rely upon these exemptions to withhold the requested information in this case. He also asked it whether, after reconsidering the case, it wished to rely upon sections 40(2) and 40(3)(a)(i) to withhold any of the requested information.
15. Ofsted provided a substantive response in a letter dated 11 September 2009, along with a copy of the withheld information. It informed him that after reconsidering the case it now intended to release some of the previously withheld information to the complainant. However, it still believed that some of the requested information should be withheld, and it informed the Commissioner that it now intended to withhold this information under sections 40(2) and 40(3)(a)(i). It applied this exemption in relation to information which it believed to be the personal data of third parties, i.e. pupils, members of staff and non-members of staff. It provided further submissions as to why it believed that the disclosure of this information would be a breach of the Data Protection Act 1998 (the "DPA").
  16. The Commissioner contacted Ofsted by way of a telephone call on 16 September 2009. He noted that Ofsted was no longer relying upon sections 33 and 41 to withhold the information, and was now prepared to disclose some of the previously withheld information. He also noted that it was now seeking to rely upon sections 40(2) and 40(3)(a)(i) to withhold the outstanding information. Following this, the Commissioner emailed Ofsted on the same day and informed it that after considering its submissions he had some initial concerns about its application of sections 40(2) and 40(3)(a)(i) in relation to some of the information. In particular he was not persuaded that some of this was personal data, or that some of it would be unfair to disclose.
  17. Ofsted responded in an email dated 17 September 2009. It informed the Commissioner that after considering his comments it was now prepared to disclose some additional information. It also provided further submissions to support its use of sections 40(2) and 40(3)(a)(i) in relation to the remaining information. The Commissioner emailed Ofsted on 18 September 2009 and sought further clarification in relation to some of the withheld information. Ofsted responded in an email dated 2 October 2009 and provided this clarification.
  18. Following an exchange of communications between the Commissioner, the complainant and Ofsted, a large part of the previously withheld information was disclosed to the complainant on 9 November 2009.
  19. The complainant emailed the Commissioner on 13 November 2009 and stated that she was still unhappy with Ofsted's continued withholding of information relating to lesson observations. In an email dated 17 November 2009 the Commissioner informed the complainant that after considering her comments he would now focus his investigation solely on the information in the Evidence Forms relating to lesson observations (see paragraphs 10 to 12). Following this there was a further exchange of emails between the complainant and the Commissioner in which she provided further submissions as to why she believed

that the information in the Evidence Forms relating to lesson observations should be disclosed.

## Findings of fact

20. The information in question consists of forms completed by hand during the investigation of the school in question.
21. The published report of that inspection is distinct from the information contained in these forms. Whilst it is based on the findings made during the inspection, none of the detail of the handwritten forms is included within the published, publicly available, report.

## Analysis

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### Exemptions

#### Section 40(2)

22. Ofsted has relied upon sections 40(2) and 40(3)(a)(i) in order to withhold the information in question, stating that it believes that disclosure would be in breach of the 1<sup>st</sup> principle of the DPA.
23. Section 40(2) provides an exemption for information which is the personal data of an individual other than the applicant, and where one of the conditions listed in sections 40(3) or 40(4) is satisfied.
24. In this case the condition in question is contained in section 40(3)(a)(i), which applies where the disclosure of the information to any member of the public would contravene any of the data protection principles. As stated above, in this case Ofsted believes that the disclosure of the lesson observations would be in breach of the 1<sup>st</sup> principle of the DPA.
25. In order to establish whether this exemption has been applied correctly the Commissioner has first looked at whether the withheld information constitutes the personal data of third parties.

#### Is it personal data?

26. Section 1 of the DPA defines personal data as data which relate to a living individual, who can be identified:
  - from that data, or
  - from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.
27. In this case the withheld information consists of observations of individual lessons, which are identified on the individual Evidence Forms. This information

contains detailed assessments of individual lessons. The Evidence Forms contain information which identifies specific classes (e.g. Subject Codes and Year Groups), and the comments themselves contain references which identify specific classes and/or subjects. Although individual teachers are not named on the forms, given the level of detail on the forms the Commissioner believes that individual teachers are identifiable from this information. In addition to this, the Commissioner also believes that some individual pupils would be identifiable from some of the withheld information.

28. As the Commissioner is satisfied that living individuals are identifiable from this information, he believes that this information does constitute the personal data of third parties, namely the teachers whose lessons were observed. As noted above, he also believes that the lesson observations also contain some information which is the personal data of pupils.
29. The Commissioner has gone on to consider whether the release of this information would be in breach of the 1<sup>st</sup> principle of the DPA.

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

30. The 1<sup>st</sup> principle requires that personal data is processed fairly and lawfully and must not be processed unless at least one of the conditions for processing in Schedule 2 of the DPA is satisfied. The Commissioner has initially considered whether the disclosure of this information would be unfair.
31. The withheld information in this case consists of detailed observations of lessons – and comments on both teachers' performance and assessments of the class. Given the context of this information, and the level of detail contained in the lesson observations, the Commissioner believes that this information forms a detailed performance assessment of the teacher who was in charge of that lesson. Given the role of the teacher in teaching and leading a lesson, the Commissioner believes that any assessments of that lesson are intrinsically linked to individual performance of that teacher.
32. In reaching a view on whether the disclosure of this information would be fair the Commissioner has been mindful of his findings in FS50123184, which also related to a request to Ofsted for Evidence Forms. In particular he has been mindful of paragraphs 53 to 55 of that decision. He has repeated these comments below.
33. In reaching a view on fairness the Commissioner has considered the expectation of disclosure that would be held by the teachers. Whilst teachers have an expectation that they will be assessed through inspections carried out by Ofsted, the Commissioner believes that it would be in their reasonable expectation that the outcome of this assessment would be in the form of the final published report, which relates to the school as a whole and does not make reference to the performance of individual teachers. He believes that teachers would hold no reasonable expectation that information recording their individual performance (such as the information contained in the lesson observations) would be disclosed.



34. The Commissioner notes that teachers would be aware that Ofsted is subject to the Act, and therefore it would be possible that Evidence Forms would be subject to a request and potential disclosure via the Act. In FS50123184 the Commissioner noted that Ofsted produced a document titled "Guidance on the use of evidence forms" (dated July 2005) which contained the following statement:

"Inspection evidence may be subject to disclosure to the public if requested under the Freedom of Information Act. Interviewees cannot expect that evidence recorded on EFs will always remain confidential."

35. However, the Commissioner does not believe that this notification would be sufficient to suggest that teachers would hold a reasonable expectation that information recording their individual performance would be disclosed. In the absence of such an expectation, the Commissioner concludes that the disclosure of this information would be unfair and in breach of the 1<sup>st</sup> principle of the DPA.
36. As noted above, the Commissioner also notes that the lesson observation information contains the personal data of some pupils. The Commissioner believes that these individuals would have no reasonable expectation that any of their personal data, contained in the Evidence Forms, would be disclosed under the Act. Therefore the Commissioner believes that the disclosure of personal data of pupils which is contained in the lesson observations would also be unfair and in breach of the 1<sup>st</sup> principle of the DPA.
37. The exemption listed at section 40(2) and section 40(3)(a)(i) is an absolute exemption, and therefore is not subject to a public interest test.
38. The full text of section 40 can be found in the Legal Annex at the end of this Notice.
39. As the Commissioner has decided that the disclosure of this information would be unfair he has not gone on to consider whether one of the conditions of Schedule 2 of the DPA is met. However, he has gone on to consider whether any of the information contained in the lesson observations can be anonymised.

#### **Can the information be anonymised?**

40. The complainant has argued that were the names of individuals and classes redacted from the lesson observations, this would render the remaining information anonymous.
41. In relation to the main body of the lesson observations, having considered the withheld information the Commissioner believes that given the context of the inspectors' comments, which contain detailed references to individual lessons, this information cannot be successfully anonymised.

42. However, the Commissioner has also considered the grading marks shown on the lesson observation Evidence Forms, and whether these could be anonymised. These give grades for the following:

- Standards.
- Progress.
- Personal Development.
- Teaching.
- Curriculum.
- Care, guidance and support.
- Leadership and management.

In addition to these, he has also noted that each lesson observation Evidence Form gives a grading for, 'Judgement on the overall quality of the lesson'.

43. After considering this information the Commissioner believes that were this information to be removed from the rest of the information on the Evidence Forms, this could be effectively anonymised. If this information is disclosed in this way the Commissioner believes that no living individual can be identified from that information alone. Therefore he believes that if it is disclosed without the other information on the lesson observation Evidence Forms it will not be personal data, and as such can be disclosed without breaching the requirements of the data protection principles. As such he believes that this information should be disclosed.

44. The Commissioner has listed the information that he believes should be disclosed in the Confidential Annex attached to this Notice.

### **Procedural Requirements**

45. Section 1(1) of the Act states 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.”

46. Section 10(1) of the Act states 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.”

47. As the Commissioner has decided that some of the withheld information is not exempt from disclosure under sections 40(2) and 40(3)(a)(i) he believes that this information should have been provided to the complainant in line with the duty at section 1(1)(b). Ofsted's failure to do so therefore constitutes a breach of section



- 1(1)(b). Furthermore, by failing to provide this information within 20 working days of the request Ofsted also breached section 10(1).
48. The Commissioner has gone on to consider whether Ofsted has complied with its obligations under section 17(1) of the Act.
49. Section 17(1) requires a public authority, which is relying upon an exemption in order to withhold requested information, to issue a refusal notice which
- (a) states that fact,
  - (b) specifies the exemption in question, and
  - (c) states (if that would not otherwise be apparent) why the exemption applies.
50. During the course of the investigation of this case Ofsted sought to rely upon sections 40(2) and 40(3)(a)(i) to withhold the requested information. However, it had not referred to these exemptions in either the initial refusal notice or the internal review. Therefore the Commissioner believes that in failing to do so Ofsted did not meet the requirements of section 17(1).
51. The full texts of sections 1, 10 and 17 can be found in the Legal Annex at the end of this Notice.

## The Decision

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52. The Commissioner's decision is that Ofsted dealt with the following elements of the request in accordance with the requirements of the Act:
- The contents of the lesson observation Evidence Forms, other than that information described at paragraphs 42 to 44 above and detailed in the Confidential Annex, were correctly withheld under sections 40(2) and 40(3)(a)(i).
53. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- Ofsted did not deal with the request for information in accordance with section 1(1)(b) of the Act insofar as it inappropriately relied upon sections 40(2) and 40(3)(a)(i) to withhold some of the requested information. This information is detailed in the Confidential Annex attached to this Notice. In failing to comply with the requirements of section 1(1)(b) within 20 working days it also breached section 10(1).
  - Ofsted also failed to meet the requirements of section 17(1) in that it failed to inform the complainant that it was seeking to rely upon sections 40(2) and 40(3)(a)(i).

## Steps Required

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54. The Commissioner requires Ofsted to take the following steps to ensure compliance with the Act:

Ofsted should disclose the withheld information referred to in paragraphs 42 to 44, and as detailed in the Confidential Annex.

55. Ofsted 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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56. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Right of Appeal

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57. 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](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.

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 25<sup>th</sup> day of November 2009**

**Signed .....**

**David Smith  
Deputy Commissioner**

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

## Legal Annex

### Section 1

- (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) Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.
- (3) Where a public authority –
- (a) reasonably requires further information in order to identify and locate the information requested, and
  - (b) has informed the applicant of that requirement,
- the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.
- (4) The information –
- (a) in respect of which the applicant is to be informed under subsection (1)(a), or
  - (b) which is to be communicated under subsection (1)(b),
- is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.
- (5) A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).
- (6) In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.

### Section 10

- (1) 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.
- (2) Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on

which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.

**(3)** If, and to the extent that –

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.

**(4)** The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.

**(5)** Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.

**(6)** In this section –

“the date of receipt” means –

- (a) the day on which the public authority receives the request for information, or
- (b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

## **Section 17**

**(1)** A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.

**(2)** Where—

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-
  - (i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
  - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and
- (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.

**(3)** A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

- (a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or
- (b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

**(4)** A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.**(5)** A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.**(6)** Subsection (5) does not apply where –

- (a) the public authority is relying on a claim that section 14 applies,
- (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
- (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.

**(7)** A notice under section (1), (3) or (5) must –



- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (b) contain particulars of the right conferred by section 50.

## Section 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) he 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.