

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 17 December 2009

**Public Authority:** Nottinghamshire County Teaching Primary Care Trust  
**Address:** Quality and Governance  
Birch House  
Ransom Wood Business Park  
Southwell Road West  
Mansfield  
Notts  
NG12 0HJ

### Summary

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The complainant requested a letter of complaint about a named doctor's surgery. He also requested who wrote it and when. The public authority explained that it was confidential and that it would not be provided. It then applied section 40(2) [third party personal data] to the source's details in its internal review. The Commissioner has investigated this case and it became apparent that the letter could not be located within the costs limit. The Commissioner has therefore considered section 12(2) [the costs exclusion] and has found that it can be applied correctly. He finds a breach of section 17(5) for not providing a refusal notice that stated that the costs exclusion applied within twenty working days of receiving the request. In respect to the source's name, he has considered section 40(2) and considers that this exemption has been applied correctly. In respect to the date, he is satisfied that the complainant has this information and has not considered it further. He requires no remedial steps to be taken in this case.

### 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.

## Background

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2. The complainant has made a number of requests concerning the operation of a named doctor's surgery. As a result of these requests, he became aware of another complaint that had been made by another doctor and asked for a copy of the letter of complaint under the Act. This case concerns that letter and the source of it.
3. Nottinghamshire County Teaching Primary Care Trust was formed, in October 2006, through the merger of six organisations – Ashfield PCT, Broxtowe and Hucknall PCT, Gedling PCT, Mansfield District PCT, Newark and Sherwood PCT and Rushcliffe PCT. The relevant letter was addressed to Rushcliffe PCT and was inherited by the public authority when the merger took place.

## The Request

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4. On 28 July 2009 the complainant requested the following information in accordance with section 1(1) of the Act (the Commissioner has changed the format and added numbers for ease of reference).
  1. This relates to a document referred to in the PCT letter of 10/03/2009 which says:- "*A neighbouring doctor also wrote to the Chief Executive to complain that patients reported lack of appointment capacity at [named doctor's surgery redacted].*" I make a formal request under the Freedom of Information Act 2000 for as much of the text of that letter as the Act permits me to obtain.
  2. I also request information as to who wrote it...
  3. ...and when.'
5. On 5 August 2009 the public authority provided a response. It referred to previous letters and explained:

*'We have now consulted with the ICO and I am advised by them that as it is likely that the letter of complaint will have been written with the expectation of confidentiality, we are required to respect this. For this reason, as we have previously advised, we remain unable to send the letters of complaint.'*
6. On 17 September 2009 the complainant requested an internal review to be conducted. He explained that he believed that the argument that the writer might have wanted this letter treated as confidential was speculative and appeared unsupported by any firm evidence and to be a pretext for refusing to disclose embarrassing information. He commented that the public authority did not say if it had asked what the doctor's wishes were and had given no reason why it had not.

7. On 8 October 2009 the public authority communicated the results of its internal review to the complainant. It explained that it was withholding the source's name and address under section 40(2) of the Act. It also explained that it would be important to redact personal information from the complaint letter and that the costs limit might be applicable. It also provided the Commissioner's details.

## The Investigation

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### Scope of the case

8. On 23 October 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
9. During the course of the Commissioner's investigation the following matters were resolved informally and therefore these are not addressed in this Notice:
  - The date of the complaint was provided by the public authority to the complainant in its response dated 28 July 2009. This was the letter that preceded the request that the Commissioner has considered. The date was 28 July 2005. The Commissioner will not consider part 3 of the request any further.
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. The Commissioner is unable to consider issues about the capacity of doctor's surgeries. He is only able to consider issues that concern information access.

### Chronology

11. On 3 November 2009 the Commissioner wrote to the public authority to ask for a copy of the information that was being withheld in this case. On 24 November 2009 the Commissioner telephoned the public authority to ask for an update about this matter. He was informed that the letter (for part 1 of the request) was proving difficult to track down and that the costs limits should be considered.
12. On 24 November 2009 the Commissioner wrote to the public authority and enquired about its position in relation to section 12(2) for part 1 of the request. On 5 December 2009 he received these submissions and he also received the withheld information for part 2.
13. On 7 December 2009 the Commissioner called the public authority to enquire about part 3 of the request. The public authority evidenced that it had provided this information to the complainant on 28 July 2009 and stated that it was not withholding this information. The Commissioner acknowledged this email on the same day.

## Findings of fact

14. Information about complaints received by Rushcliffe PCT (before the merger) and associated information has been kept in the public authority's archive.
15. The public authority has checked its electronic records and does not have a copy of the original complaint letter. If held, it will therefore be in the public authority's archive.
16. The archive is situated offsite under the supervision of the company TNT. The information is held in boxes.
17. There are a large number of boxes that would potentially need checking to find the original complaint letter. The public authority would need to look at:
  - o 86 boxes for 2005.
  - o 194 boxes for 2006.
  - o 232 boxes for 2007.
18. There is no index file for the archives between 2005 and April 2007. Therefore to conclusively determine whether any specific information is held between those dates it is necessary to check the contents of each of those boxes.

## Analysis

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### Substantive Procedural Matters

#### *How is the recorded information held?*

19. The Commissioner believes it is instructive to indicate how the requested information is held in this case. The letter that is the subject of part 1 of the request may be held in its archive. The public authority has argued that the expense of checking through the archive would exceed the fees limit. This will be considered in the section 12(2) analysis below. The response to that letter is held electronically and therefore the source's name can be acquired from that response without checking the archive. The public authority has applied section 40(2) to withhold this information. This will be considered in the section 40(2) analysis below.

### Exclusion

#### *Section 12(2)*

20. In order to confirm whether or not it inherited the complaint letter the public authority has estimated that it would take over 18 hours of work..
21. Section 12(2) provides that a public authority can refuse to confirm or deny if information is held if the cost of complying with section 1(1)(a) alone, that is the cost

of confirming or denying whether the information requested is held, would exceed the cost limit.

22. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Regulations") provide that the cost limit for non-central government departments is £450. This must be calculated at the rate of £25 per hour, providing an effective time limit of 18 hours. If a public authority estimates that confirming or denying whether information is held would exceed 18 hours, or £450, section 12(2) provides that the request may be refused.
23. Regulation 4(3) provides that only the following factors can be taken into account when formulating a cost estimate:

*"(a) determining whether it holds the information,*

*(b) locating the information, or a document which may contain the information,*

*(c) retrieving the information, or a document which may contain the information, and*

*(d) extracting the information from a document containing it."*

24. The Information Tribunal (the 'Tribunal') in *Quinn v Information Commissioner & Home Office* [EA/2006/0010] explained this point in this way (at paragraph 50):

*'The fact that the rules drafted pursuant to s.12 have the effect of defining what is a reasonable search and the amount of time and money that a public authority are [sic] expected to expend in order to fulfil their obligations under the Act, serves as a guillotine which prevents the burden on the public authority from becoming too onerous under the Act.'*

25. The issue of what constitutes a reasonable estimate was also considered in the case of *Alasdair Roberts and the Commissioner* (EA/2008/0050) and the Commissioner endorses the following points made by the Tribunal at paragraphs 9 -13 of the decision:

- *"Only an estimate is required"* (i.e. not a precise calculation)
- The costs estimate must be reasonable and only based on those activities described in Regulation 4(3)
- Time spent considering exemptions or redactions cannot be taken into account.
- Estimates cannot take into account the costs relating to data validation or communication
- The determination of a reasonable estimate can only be considered on a case-by-case basis and
- Any estimate should be *"sensible, realistic and supported by cogent evidence"*

26. The analysis will be in two parts. The first part will be to see if there are any reasonable alternatives to checking the archive for the letter. The second part will be to discuss the estimate provided in this case and whether it was reasonable and related to the activities that are allowed to be included.
1. *Were there reasonable alternatives in this case?*
27. In the *Alasdair Roberts* case, the complainant offered a number of suggestions as to how the requested information could be extracted from a database. The Tribunal concluded that none of the ways suggested would have brought the request under the costs limit. However the Tribunal also made the following more general comments on alternative methods of extraction:
- “(a)...the complainant set the test at too high a level in requiring the public authority to consider all reasonable methods of extracting data;*
- (b) that circumstances might exist where a failure to consider a less expensive method would have the effect of preventing a public authority from relying on its estimate...”* (para 15).
28. Those circumstances were set out at paragraph 13 where it was said:
- “...it is only if an alternative exists that is so obvious to consider that disregarding it renders the estimate unreasonable that it might be open to attack. And in those circumstances it would not matter whether the public authority already knew of the alternative or had it drawn to its attention by the requestor or any other third party...”*
29. In order to ensure that it was reasonable to base its estimate on checking through its archives the Commissioner has considered whether the public authority held the information in another format.
30. The public authority has explained that while it had the response that was sent as part of its electronic records, the original letter of complaint was not present. It also explained that it had checked complaints files and other correspondence files held by it and could not locate the letter.
31. The Commissioner has considered whether the public authority would have had any business purpose to have this letter outside its archives. He is satisfied that there is no such reason. The letter concerns practical issues at one general practice and it was reasonable for the public authority to have archived the document when the six organisations were merged and when it considered that the matter had been addressed.
32. The Commissioner is content that there are no reasonable alternatives to obtaining this letter other than checking through its archives.
2. *Is the estimate submitted reasonable in this case and in excess of the costs limit?*

33. The public authority has confirmed that the only way that it can be certain whether or not it holds the letter is to check through all the boxes in its archive. It would have to check from 28 July 2005 to 2007 as this was the period where the letter existed and may have been archived. It could not be any more specific as it could not be clear when the complaint file was closed. In addition the letter may have been archived at any time in this period.
34. It accepts that should the letter be in the earlier boxes it may be found before the 18 hours had been exhausted. However, the only way to be sure whether it holds the letter would be to methodically check each and every box. It is therefore required to make a reasonable estimate about how long it would take to locate the letter where it may be in any of 512 boxes. The Commissioner believes that the purpose of section 12(2) is to prevent the possibility of a disproportionate level of search and that it is reasonable in these circumstances to adjudicate on the basis of a reasonable estimate of the worst case scenario.
35. It has explained as above that the boxes are not indexed and therefore the search could not be reduced through use of the index.
36. It has explained that it would be required to retrieve the boxes from the archive. This archive is maintained offsite by TNT. It explained that it estimated five hours would be required to order the boxes, supervise their delivery, arrange their return and supervise collection. The Commissioner believes that only the time taken to retrieve the boxes can be taken to account and not the time taken to return them. He therefore believes that two hours can be considered reasonable to obtain the boxes.
37. It explained that each of the boxes contains a non-uniform volume and type of records. It would therefore be difficult to break the estimate down per record but that a reasonable estimate would be 15 minutes per box. The Commissioner accepts that this estimate is reasonable in this case. Therefore to check every one of the 512 boxes for this letter would take an estimated 128 hours.
38. Finally it has also spent four more hours searching complaints files, related correspondence and contacting TNT to establish the quantity of boxes and how the information is held and how it can be accessed. The Commissioner accepts that it is reasonable to accept these activities as chargeable in this instance (under regulation 4(3)(a) and (b)).
39. The Commissioner therefore accepts an estimate of 134 hours is reasonable for locating the letter in the circumstances of this case. This is well in excess of the threshold of 18 hours. He is therefore satisfied that the costs limits would be exceeded in this case and that the estimate is 'sensible, realistic and supported by cogent evidence'. He is therefore content that section 12(2) has been applied correctly by the public authority.
40. He does find a breach of section 17(5) as the public authority failed to issue a section 12(2) notice by the time of its internal review.



41. He also finds a breach of section 17(1)(b) as the public authority failed to state which exemption that it was relying upon in relation to the letter of complaint.
42. He also finds a breach of section 1(1)(a) in confirming that it held the letter when it did not know whether it does hold the letter or does not.

### **Exemption**

#### *Section 40(2)*

43. The public authority has applied section 40(2) to withhold the name of the source of the complaint (the source) in this case.
44. In analysing the application of section 40(2), the Commissioner considered a) whether the information in question was personal data and b) whether disclosure of the personal data under the Act would contravene the first data protection principle. The Commissioner has analysed the first data protection principle as it is the one that is most relevant in the circumstances of the case. For clarity, if one data protection principle would be contravened by disclosure then the exemption will have been correctly applied.

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

45. Personal data is defined in section 1 of DPA as data '*which relate to a living individual who can be identified—*

- (a) *from those data, or*
- (b) *from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,*

*and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.'*

46. When considering whether the information is personal data, the Commissioner had regard to his own published guidance: "Determining what is personal data" which can be accessed at:  
[http://www.ico.gov.uk/upload/documents/library/data\\_protection/detailed\\_specialist\\_guides/personal\\_data\\_flowchart\\_v1\\_with\\_preface001.pdf](http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/personal_data_flowchart_v1_with_preface001.pdf)
47. The Commissioner notes that the withheld information in this case amounts to the name of the source of the complaint. The Commissioner accepts that this data is directly linked to the source and is therefore personal data.
48. The information may also amount to the personal data of the doctors who are working in the practice that has been complained about. In this case the Commissioner has not considered this issue any further as the fact that a complaint has been made has been disclosed.



*Would disclosure contravene the first data protection principle?*

49. The first data protection principle has two main components. These are as follows:
- requirement to process all personal data fairly and lawfully;
  - requirement to satisfy at least one DPA Schedule 2 condition for processing of all personal data;
50. Both requirements must be satisfied to ensure compliance with the first data protection principle. If even one requirement cannot be satisfied, processing will not be in accordance with the first data principle.

*Would disclosure be fair and lawful?*

51. It is also important to note that any disclosure under this Act is disclosure to the public at large and not just to the complainant. If the public authority is prepared to disclose the requested information to the complainant under the Act it should be prepared to disclose the same information to any other person who asks for it. The Tribunal in the case of *Guardian & Brooke v The Information Commissioner & the BBC* (EA/2006/0011 and EA/2006/0013) (following *Hogan and Oxford City Council v The Information Commissioner* (EA/2005/0026 and EA/2005/0030)) confirmed that, “*Disclosure under FOIA is effectively an unlimited disclosure to the public as a whole, without conditions*” (paragraph 52):  
[http://www.informationtribunal.gov.uk/Documents/decisions/guardiannews\\_HBrooke\\_v\\_infocomm.pdf](http://www.informationtribunal.gov.uk/Documents/decisions/guardiannews_HBrooke_v_infocomm.pdf).
52. The Commissioner believes that the fairness analysis should take a wide view of the circumstances of each particular case. Primarily that disclosure must be fair to the data subject themselves. The important factors that required consideration in this case were:
- What are the reasonable expectations of the source in relation to the handling of their personal data?  
Including:
    - How the fact that the source is a public sector employees influences their expectations;
    - The seniority of the source and the accompanying expectations of the public about individuals in that role.
  - Is any duty of confidentiality owed to the source?
  - Whether disclosure would cause any unnecessary or unjustified damage or distress to the source;
  - Whether the information in the public domain would reduce this expectation; and

- Legitimate interests of the public in knowing the withheld information. In particular the legitimate interests of the public in obtaining transparency in this area.
53. The Commissioner has considered the reasonable expectations of the source when raising a complaint about another doctor in the circumstances of this case. The Commissioner believes that the reasonable expectation in these circumstances would be that the individual would want to remain either anonymous or only known to those about whom they have made a complaint. He does not believe that they would expect the information to be disclosed to the public. He believes that the source would want to have their complaints effectively investigated and would want to be aware of the verdict. It is also likely that the contents of the complaint and that verdict would be placed into the public domain, but that their name would not be. This outcome follows the Commissioner's standard practice when issuing his Decision Notices. He notes that it is open to the source to decide whether or not they wish to publicise their complaint and the outcome. This factor strongly supports the argument that the disclosure of this data would be unfair to the data subject.
54. The complainant has asked the public authority whether it has consulted the relevant third party and if not why not. The Commissioner notes that there is no requirement to consult third parties in cases such as these, although it may be said to be good practice. The Commissioner has instead considered the facts of the case and whether the background would create reasonable expectations. This would be enough evidence in this case.
55. The Commissioner has taken into account that the source's role is a public one and that the contents of that complaint, which have been disclosed, relate to issues experienced when conducting their public role. This factor supports the argument that disclosure of the information may be fair. The Commissioner also notes that doctors can be regarded as relatively senior employees in this case, but does not believe that this factor provides any additional weight.
56. The public authority has explained that it believes that a duty of confidentiality is owed to the source in this case and the disclosure of their name would be unfair as it would breach that confidentiality. The Commissioner has considered this issue in a number of previous cases and accepts that the context of the complaint is critical in this case. The Commissioner believes that the circumstances will have meant that the source would expect that their name to be kept confidential. This factor supports the fact that the disclosure of this information would be unfair.
57. The public authority has also explained that it desires to protect sources generally from unfair scrutiny from members of the public and believes that its policy of not disclosing this information ensures that complainants are not inhibited from bringing complaints forward. It also ensures that there is no unnecessary or unjustified damage to the individual. This factor supports the argument that a source's reasonable expectations will be that their name would not be disclosed. This factor also supports the fact that there are also legitimate public interests in finding that the disclosure of this information would be unfair to the data subject.

58. The Commissioner has considered whether the information in the public domain would make the disclosure of the name information fair. He notes that the response to the complaint is in the public domain (without the name information). He therefore believes that the disclosure of the name information itself would be unlikely to add anything further into the public domain about understanding the complaint and that this factor does not support the argument that disclosure would be fair.
59. In finally considering the legitimate interests of the public, the Commissioner appreciates that it is important that the public authority is accountable and that complaints from members of the public are dealt with. However, he does not believe that there is any further legitimate interest for the public to know the name of the source in this case. Instead he believes that the legitimate interests of the public lie in this information continuing to be withheld.
60. In considering how the factors balance, the Commissioner has come to the conclusion that the disclosure of the requested information would be unfair to the data subject. The central reason for this conclusion is that the legitimate expectations of the individual are that the information would not be provided and the overriding of these expectations cannot be justified in this case. As the release of the information would be unfair, the first data protection principle would be contravened and the information therefore engages the section 40(2) exemption.
61. As the Commissioner has found that disclosure would be unfair and therefore in breach of the first data protection principle there is no need to consider whether the release would also be unlawful, or if the processing of the personal data would meet one of the conditions of Schedule 2 of the DPA.
62. The Commissioner therefore upholds the public authority's application of section 40(2) [by virtue of section 40(3)(a)(i)] in relation to the name of the source in this case.

## **Other Procedural Requirements**

### *Section 16(1)*

63. Section 16(1) (full copy in the legal annex) provides an obligation for a public authority to provide advice and assistance to a person making a request, so far as it would be reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case if it has conformed with the provisions in the Section 45 Code of Practice in relation to the provision of advice and assistance in that case.
64. Whenever the cost limit has been applied correctly, the Commissioner must consider whether it would be possible for the public authority to provide advice and assistance to enable the complainant to submit a new information request without attracting the costs limit in accordance with paragraph 14 of the Code

65. In this case the Commissioner considers that there was no advice and assistance that could have been provided that would have meant that the costs limit was not exceeded. Therefore the Commissioner has found that the public authority has not breached section 16(1) of the Act in this instance.

## The Decision

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

- It applied section 12(2) correctly in respect to the complaint letter.
- It applied section 40(2) correctly in respect to the name of the source of the complaint.
- It complied with the obligations imposed by section 16(1) of the Act.

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

- It breached section 17(5) by failing to issue an appropriate notice explaining that it was relying on section 12(2) in relation to the letter.
- It breached section 17(1)(b) in failing to state the exemption number that it was relying on at the date of its internal review, in relation to the letter.
- It breached section 1(1)(a) in wrongly confirming that it held the letter, when it did not know that this was so.

## Steps Required

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67. The Commissioner requires no steps to be taken.

## Right of Appeal

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68. 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 17<sup>th</sup> day of December 2009**

**Signed .....**

**David Smith  
Deputy Commissioner**

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

## Legal Annex

### The Freedom of Information Act 2000

#### Section 1 - General right of access to information held by public authorities

(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 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.

...

#### Section 17 - Refusal of request

(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 subsection (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 12 – Exemption where cost for compliance exceeds the appropriate limit**

(1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.

(2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.

(3) In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.



(4) The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority—

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.

(5) The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are to be estimated.

### **Section 16 – Duty to provide advice and assistance**

(1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.

### **Section 40 – Personal information**

(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 [1998 c. 29.] 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 [1998 c. 29.] 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 [1998 c. 29.] 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 [1998 c. 29.] 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 [1998 c. 29.] 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 [1998 c. 29.] 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 [1998 c. 29.] 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.

## **Data Protection Act 1998**

### **Section 1 - Basic interpretative provisions**

(1) In this Act, unless the context otherwise requires—

- “data” means information which—

(a)

is being processed by means of equipment operating automatically in response to instructions given for that purpose,

(b)

is recorded with the intention that it should be processed by means of such equipment,

(c)

is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system, or

(d)

does not fall within paragraph (a), (b) or (c) but forms part of an accessible record as defined by section 68;

- “data controller” means, subject to subsection (4), a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed;
  - “data processor”, in relation to personal data, means any person (other than an employee of the data controller) who processes the data on behalf of the data controller;
  - “data subject” means an individual who is the subject of personal data;
  - “personal data” means data which relate to a living individual who can be identified—
    - (a) from those data, or
    - (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;
  - “processing”, in relation to information or data, means obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data, including—
    - (a) organisation, adaptation or alteration of the information or data,
    - (b) retrieval, consultation or use of the information or data,
    - (c) disclosure of the information or data by transmission, dissemination or otherwise making available, or
    - (d) alignment, combination, blocking, erasure or destruction of the information or data;
  - “relevant filing system” means any set of information relating to individuals to the extent that, although the information is not processed by means of equipment operating automatically in response to instructions given for that purpose, the set is structured, either by reference to individuals or by reference to criteria relating to individuals, in such a way that specific information relating to a particular individual is readily accessible.
- (2) In this Act, unless the context otherwise requires—
- (a) “obtaining” or “recording”, in relation to personal data, includes obtaining or recording the information to be contained in the data, and
  - (b) “using” or “disclosing”, in relation to personal data, includes using or disclosing the information contained in the data.
- (3) In determining for the purposes of this Act whether any information is recorded with the intention—
- (a) that it should be processed by means of equipment operating automatically in response to instructions given for that purpose, or

(b) that it should form part of a relevant filing system,

it is immaterial that it is intended to be so processed or to form part of such a system only after being transferred to a country or territory outside the European Economic Area.

(4) Where personal data are processed only for purposes for which they are required by or under any enactment to be processed, the person on whom the obligation to process the data is imposed by or under that enactment is for the purposes of this Act the data controller.