

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 31 January 2011

Public Authority: NHS Warwickshire
Address: Westgate House
Market Street
Warwick
CV34 4DE

Summary

The complainant requested information relating to an internal investigation into the death of an in-patient of the public authority. Some information was disclosed, but other information was refused under the exemption at section 41(1) of the Freedom of Information Act, on the grounds that it was given in confidence. The Commissioner has examined the withheld information and finds that the information was correctly withheld under the exemption provided at section 41(1) of the Act. He does not require any action to be taken.

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.

Background

2. The complainant's elderly mother died while an in-patient of the public authority, NHS Warwickshire, formerly Warwickshire PCT.
3. The complainant's concerns focus on a regime of antipsychotic drugs, specifically Haloperidol, which was administered to his mother during her stay in hospital and which, he asserts, contributed to her decline. He has

provided the Commissioner with various press cuttings which suggest that the use of such medication by hospitals and care homes, in some circumstances, has been strongly criticised. He also criticises the conduct of the internal investigation carried out by the PCT, arguing that it was not competently undertaken and that disclosure of the report, witness statements and other supporting evidence is therefore in the public interest to expose inadequate public protection. He further argues that, as the investigation failed to uncover what he believes to be the truth, it has failed to obtain the candid statements from staff which the obligation of confidence is intended to facilitate and therefore the obligation of confidence is itself discredited in the circumstances.

4. He argues that quotations from the statements which have appeared in a Healthcare Commission review indicate that the statements are *'deceitful'* or *'perjurious'* and that, if they contain no reference to what he describes as the *'covert Haloperidol Assaults/Poisoning'* that is evidence of collusion to cover-up any culpability in the face of a Healthcare Commission inquiry. Conversely if they make reference to the Haloperidol, they are tantamount to an admission of complicity and guilt. Therefore, regardless of the content, the information should be disclosed in the public interest.

The Request

5. In the course of correspondence with the public authority over an extended period, the complainant wrote on 6 July 2009 with reference to what he described as:

"[...] my earlier requests for access to my mother's medical records at yr Heathcote "Hellhole" (her word).. AND 2008 FOI requests for her Post Mortem Data, OR Warwickshire PCT "Complaints File": Esp for disclosure of the Data Processing re this itemised list of esp Signed Witnessed Interviews." [sic].

6. The complainant argues various points in the course of this letter, including one section which reads:

"I am writing now specifically because the Info Commissioner has finally reached this case (from August 2008) AND has asked me to re-submit this FOI Data Request to Warwickshire PCT for Disclosure of what maybe you describe as the "Complaints File". Esp the Data from the itemised list of Interviews.. Which must likely appear intended to mislead, deceive, diffuse rightful responsibility, entrench patterns of Default, Abuse, Neglect, AND covert Assault/Poisoning? The PCT Complaints Co-ordinator advised me in April 2008 to

request "All the Appendages of PCT Investigator [Named individual] 's Report". " [sic]

7. The public authority replied on 20 July 2009, refusing the requested information on the grounds that it was given in confidence and is exempt from disclosure under section 41 of the Act. The complainant was invited to request anything from the file which the public authority did not deem to be confidential, clarifying that 'the interview notes etc' were considered to be confidential. The public authority informed the complainant of his right to apply to the Information Commissioner but did not offer him an internal review of its response.
8. The Commissioner was also dealing with a closely-related complaint brought by the complainant against the same public authority under the Data Protection Act 1998 (the DPA). Subsequently, the freedom of information elements of the complaint were accepted for investigation in the absence of a specific internal review in this case, because it was clear to the Commissioner that the public authority had already visited and revisited the matters complained about on several occasions and therefore its refusal of the information under section 41 of the Act represented its settled position.

The Investigation

Scope of the case

9. On 23 July 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
 - NHS public employees should not expect to make *"signed witness mis/statements 'in Confidence' "* [sic]
 - The 'concealed interviews' serve to protect individuals whose actions require independent scrutiny.
10. During the course of the Commissioner's investigation the following matters were resolved informally and therefore these are not addressed in this Notice:
 - One document which had been refused: the minutes of a meeting about the complainant's mother's ongoing care (and which was held before her death), was disclosed to the complainant under the Access to Health Records Act 1990.

11. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

12. Following correspondence with the complainant, the Commissioner has established that his request should be understood to describe elements of a complaint file relating to an investigation, conducted by the public authority for a complaint brought by him, following the death of his mother while she was an in-patient of the PCT.
13. The Commissioner also corresponded with the public authority on the matter and learnt that a substantial body of information had already been disclosed to the complainant. This included his mother's medical records [disclosed under the Access to Health Records Act 1990¹ (the AHRA)] and those elements of the complaints file, described above, which constituted the complainant's personal data, disclosed under the DPA. Some information had not been disclosed. This consisted of material in the complaints file which was described as routine admin. material (such as invitations to meetings, acceptances of invitations, and similar matters of no significance to the substance of the file) which the public authority had satisfied itself was not of interest to the complainant, and other information, not the complainant's personal data, which had been withheld as confidential under section 41 of the Act.
14. The complainant had been given the opportunity to receive the 'non-confidential' material by the public authority, prior to the complaint to the Commissioner, and has not taken this up with it. The Commissioner has also established from the complainant directly that this information is not considered by him to be part of the complaint. This material has therefore not been considered further.
15. The complainant takes issue with the withholding of the 'confidential' material and his letter of 6 July seeks to formally request the disclosure of this material under the Freedom of Information Act. The complainant's correspondence is substantial and the larger part addresses matters which are outside the Commissioner's remit to investigate. It is not germane to the Commissioner's investigation and the chronology of this case will not be described in detail, the salient points are summarised below.
16. In correspondence with both parties during a period from 29 March 2010 to 19 July 2010, the Commissioner was able to establish that the

¹ Available online at http://www.opsi.gov.uk/acts/acts1990/ukpga_19900023_en_1

information in the complaints file which had been withheld by the public authority under section 41 of the Act, and which was agreed by the complainant to be the subject of his complaint, comprised the following:

- staff interview notes/statements;
 - notes of meetings that the complainant was not present at; and
 - the investigating officer's report.
17. The Commissioner is satisfied that this is the objective reading of the request applied by the public authority in its response to the complainant.
18. The public authority has provided the Commissioner with copies of the withheld information and its arguments for withholding it under section 41 of the Act.
19. The complainant has provided the Commissioner with his arguments as to why the information should be disclosed. The majority of his arguments focus on his allegations of misconduct at the public authority and are not relevant to the considerations of the applicability of section 41 of the Act to the withheld information. To the extent that the complainant's arguments present a case which would support a public interest defence to a breach of confidence, those arguments have, so far as possible, been taken into account in the Commissioner's analysis.

Analysis

Exemptions

Section 41(1) – Information provided in confidence

Section 41(1) provides that –

“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.”*

20. Although section 41 is an absolute exemption which does not require consideration of the public interest in disclosure, the law of confidence

does contain its own inbuilt public interest test in that one defence to an action for breach of confidence is that the disclosure is in the public interest. Consideration will also be given to the wider public interest in preserving the principle of confidentiality and also the impact that disclosure would have on the interests of the confider. The weight of the consideration will depend on the specific circumstances applicable in the complaint

21. Before that must be done, however, it is first necessary to establish whether the exemption at section 41 can be applied to the withheld material. That requires the Commissioner to be satisfied that the information was provided to the public authority by any other person, see s41(1)(a), and that the information possesses the necessary quality of confidence, such that its disclosure could be considered to be a breach of confidence.

Was the information obtained from another person?

22. The withheld information comprises:

- witness statements taken by an investigating officer;
- her final report;
- the minutes of two feedback meetings held with contributors to the investigation, about that investigation, and;
- the minutes of one meeting relating to the complainant's mother's care, at which the complainant was not present.

Of these documents, one (the minutes of a meeting relating to the complainant's mother's care) was in existence at the time of the complainant's mother's death and therefore may be considered to constitute part of her medical records. The remainder were created during the course of an internal investigation into her death.

23. The Commissioner is satisfied that the information contained in these documents was provided to the public authority by the participants, namely the witnesses, the investigating officer and the attendees at meetings. Therefore section 41 can be considered in this case. (The minutes of the meeting relating to the complainant's mother's care are those disclosed to the complainant during the Commissioner's investigation, as noted at paragraph 10, above).

24. The complainant has alluded to the Information Tribunal case in *Bluck v ICO and Epsom & St Helier University NHS Trust* (EA/2006/0090)² which relates to the duty of confidentiality owed to a deceased person in

² Available online at

<http://www.informationtribunal.gov.uk/DBFiles/Decision/i25/mrspbluckvinformationcommissioner17sept07.pdf>

respect of their medical records. The Commissioner draws a distinction between this case and the tribunal in *Bluck* because, here, the withheld information is not his mother's medical records and any obligation of confidence is not owed to the deceased but to those who provided the information to the public authority's investigation. He remains, however, assisted by the tribunal's wider arguments.

Does the information possess the necessary quality of confidence?

25. The withheld information contains comments, appraisals, opinions and witness statements which possess the necessary quality of confidence because they are not otherwise accessible and the contents are more than trivial. The circumstances in which the information was obtained will import an obligation of confidence because the witnesses and participants to the meetings are not compelled to provide the information, but it is important that there is no reticence in providing frank and honest responses to such enquiries. That is only likely to be achieved if the parties are assured that the information they impart will be treated in confidence, and there is thus a general expectation that such information is given and received in confidence.
26. The Commissioner therefore agrees that section 41 of the Act is engaged with respect to the withheld information because the information possesses the necessary quality of confidence and was imparted in circumstances which can be expected to give rise to an obligation of confidence.

Would disclosure constitute an actionable breach of confidence?

27. The Commissioner is assisted by the definition of an actionable breach of confidence quoted by the Information Tribunal in the case of *Bluck*, at paragraph 7:

*"It is also common ground that section [41(1)(b)] refers, on the facts of this case, to the protection of confidences established as an equitable principle over many years. The most frequently quoted statement of the constituent elements of the cause of action is to be found in the first instance decision of Megarry J in *Coco v A N Clark (Engineers) Limited* [1968] FSR 415. It reads:*

*"in my judgment, three elements are normally required if, apart from contract, a case of breach of confidence is to succeed. First, the information itself, in the words of Lord Greene in the *Saltman* case on p.215 must 'have the necessary quality of confidence about it'. Secondly, that information must have been imparted in circumstances importing an obligation of confidence. Thirdly,*

there must be an unauthorised use of that information to the detriment of the party communicating it..."

The Commissioner also observes that, as discussed by the Information Tribunal in *Bluck*, there may not necessarily be a requirement for detriment to the confider.

28. The complainant's correspondence to the Commissioner makes it abundantly clear that he holds the medical practitioners who attended his mother, while in hospital, responsible for her death. His letters adopt a tendentious tone, the hospital ward is routinely referred to as a 'Poison Chamber' in a 'Rehab Obstruction Hospital'; doctors are referred to as 'Pocket Dr Shipmen' (understood to be a reference to the serial-killer GP, Dr Shipman) and nurses as 'Nurse-Poisoners'; his mother is referred to as a 'prisoner' and he routinely uses terminology such as 'deceit', 'abuse', 'harmdoing', 'obstruction' and similar expressions to describe the actions of the protagonists in this matter.
29. The complainant informs the Commissioner that these matters are also currently the subject of complaints to the Nursing and Midwifery Council and other professional bodies.
30. The Commissioner accepts that there are good grounds for adhering to the principle that matters such as the investigation at issue ought to be undertaken in confidence. While there is no specific requirement for an action for breach of confidence to show detriment, it is clear that such a breach in this case would further draw the complainant's attention to the individuals concerned, and that such attention would be unwelcome. The Commissioner acknowledges that the parties who provided the information in confidence would have an interest in protecting that confidence and the public authority would leave itself vulnerable to an action for breach of confidence if disclosure were made.
31. In order for section 41(1)(b) to be engaged, the Commissioner's position is that for a breach of confidence to be actionable, it is not sufficient for an action for breach of confidence to be arguable, for the breach to be truly actionable there must, on the balance of probabilities, be a real possibility that any such action would succeed.
32. The question for the Commissioner in this case is, therefore, whether the public authority would have a defence against an action for breach of confidence, that disclosure was in the public interest, and whether that defence would render any such action unlikely to succeed.
33. The complainant argues that there is a public interest in disclosure of the information because the circumstances of his mother's death are

indicative of malpractice within the PCT which is being 'covered up'. Disclosure of the information is therefore necessary to expose both the malpractice, and the 'cover up'. If this were the case, the Commissioner accepts that the public authority would have a valid defence against an action for breach of confidence: that the disclosure was in the public interest. In such circumstances, there would not be an actionable breach of confidence and section 41 of the Act would not be engaged.

34. The Commissioner is aware, from the public authority's evidence and confirmed by the complainant, that the Healthcare Commission undertook an investigation into the circumstances of the complainant's mother's death (and his associated allegations). The public authority provided that investigation with copies of the information which is being withheld from the complainant under section 41 of the Act. The Commissioner therefore finds that there is not likely to be a clear public interest defence to the disclosure of the withheld information under the Freedom of Information Act on the specific grounds above, because such disclosure is not the only route to expose any malpractice or wrongdoing. The Healthcare Commission has already had the opportunity to scrutinise the information and, if it supported the complainant's allegations, it is reasonable to assume the Healthcare Commission would have become aware of this. The Commissioner acknowledges, however, that it is the complainant's view that the Healthcare Commission investigation was unsatisfactory.
35. Similarly, the other avenues of complaint which are being pursued, quite legitimately, by the complainant, afford him the opportunity to bring his concerns to the attention of appropriately-constituted bodies which have their own investigatory powers and may take further action if it is deemed warranted in the circumstances. The Commissioner is therefore not persuaded that the public interest in disclosure – that the information will expose wrongdoing and an associated cover-up – would be sufficient defence against an action for breach of confidence, because the complainant has not established that such disclosure is the only route to expose any alleged wrongdoing.
36. The complainant additionally argues that information which is incorrect cannot have the quality of confidence. He maintains that professionals such as lawyers, doctors and nurses have a fiduciary duty to their clients and patients and that that duty includes the obligation to be truthful and provide information honestly. If such a duty is breached by the provision of information which is not truthful, there can be no obligation of confidence arising from circumstances which involve the imparting of information which is manifestly incorrect.

37. The complainant has provided copies of information already disclosed to him in this matter, which he suggests is contradictory. He concludes that the information which has not been disclosed to him is necessarily incorrect, and deliberately so on the part of the confider, and that this therefore removes from it any such quality of confidence as it might otherwise have possessed.
38. The complainant has drawn the Commissioner's attention to two documents he has already obtained: a record of a meeting held on 20 June 2006, between the investigating officer and one clinician, and a record of a meeting held on 3 July 2006 between the investigating officer and a different clinician. He argues that these two accounts are inconsistent and contain untruths. Because they reflect the recollections or views of two individuals, the Commissioner does not find it surprising that there may be differences between them, and they do not cover directly comparable material in any event, but he has been unable to identify any contradictions which would support a reasonable suspicion that either party was misrepresenting his position, or that they had deliberately and materially misled the investigation. Furthermore, the Commissioner does not agree that the complainant is entitled to draw any firm inferences about the veracity of information he has not seen, on the basis of what he considers to be incompatibilities between other documents.
39. The complainant has produced no strong evidence to support his assertion that the withheld material is, essentially, untrue. The Commissioner, having examined the withheld information, has found no suggestion of deceit, still less any deceit which would be material to the circumstances of the case. He has not found anything which would support an argument that the statements contain deliberate deception and which could therefore invalidate any obligation of confidence.
40. The Commissioner observes that the public interest may be served in other ways than just those which the complainant proposes and it is necessary to take a wider view. While the exposure of wrongdoing, complicity, collusion or other abuses is clearly in the public interest, the specific circumstances relate to the treatment of one individual, on one ward of one hospital. The complainant argues that this may be extrapolated to imply the premature deaths, by neglect or casual abuse of antipsychotic medication, of many hundreds, perhaps thousands of vulnerable people, annually. Clearly, if this were the case, and if disclosure of the withheld information were the only route to remedy such a serious wrong, then a strong case could be made for a justifiable breach of confidence. The Commissioner notes, however, that the complainant's allegations have already been investigated, both internally and independently, and other avenues can be pursued by the

complainant, including complaints to other professional regulatory bodies or, ultimately, criminal investigations by the police if warranted.

41. The Commissioner also notes the discussions over the use of antipsychotic drugs which the complainant has drawn to his attention. These are covered in the media clippings he has provided, and the Commissioner is aware that the topic is still live at the time of his investigation (receiving, for example, prominent coverage in the Daily Telegraph of 26 October 2010). Consequently, the complainant's associated argument (that disclosure of the requested information is necessary to expose the 'wrongdoing' in this case, in order to promote public awareness and debate of the issue and prevent similar misadventure in future), is overstated. The issue of the possible misuse of antipsychotic medication, in circumstances similar to those described by the complainant, is already a live (and publicly-debated) subject.
42. Consequently, the Commissioner has also considered the wider public interest argument that, if confidential information in internal investigations were to be published or made generally available, then participants might be expected to be more guarded and less frank in their responses to such investigations. This has implications not just for the case under consideration, but for any investigations into allegations of malpractice where the co-operation and candour of interviewees is central to the effective conduct of those investigations, and extends beyond healthcare into other regimes where public safety may be compromised. While this argument does not constitute a general expectation that there will never be circumstances in which such information should be disclosed, the Commissioner has not found any compelling reason to make an exception in this case.
43. The Commissioner has been guided by the findings of the Information Tribunal in the case of *Higher Education Funding Council for England (HEFCE) and IC and Guardian News and Media Ltd* (EA/2009/0036)³ at paragraphs 20-30 concluding, at paragraph 30:

"Our conclusion on this part of the case, therefore, is that the HEFCE must establish that disclosure would expose it to the risk of a breach of confidence claim which, on a balance of probabilities, would succeed. This includes considering whether the public authority would have a defence to the claim. Establishing that such a claim would be arguable is not sufficient to bring the exemption into play."

³ Available online at

<http://www.informationtribunal.gov.uk/DBFiles/Decision/i360/Final%20Decision%2013.1.10%20without%20signature.pdf>

44. The Commissioner has also taken the findings of the Information Tribunal in the case of *Pauline Bluck and IC and Epsom & St Helier University NHS Trust* (EA/2006/0090)⁴ into account.
45. The circumstances are not directly analogous, because the information withheld under section 41 of the Act in the case of *Bluck* was the medical records of the deceased, and the obligation of confidence is less ambiguous in the circumstances of that case. Nevertheless, the Commissioner finds the Tribunal's comments at paragraph 13 helpful:

"The Appellant's case is that there is a clear public interest in the disclosure of information in cases where a hospital has been negligent in its treatment of a patient, leading to that patient's death. Her counsel emphasised the importance of poor treatment being recognised and avoided in the future and of the public being made aware of the treatment of diseases. He also submitted that disclosure of such information would facilitate communication between medical staff and the relatives of a deceased person, whose grieving may be assisted if they receive a full medical explanation. The Trust accepted that circumstances may arise where disclosure may be justified, including the need for public scrutiny of the activities of a public authority, but both the Trust and the Information Commissioner argued that the factors in favour of disclosure are outweighed by the need to ensure that patients retain trust in the confidentiality of information they impart to doctors. They argue that if a patient is aware that the information he gives his doctor may be disclosed to the public after his death he may not make full disclosure, with the result that medical staff may be unable to make a correct diagnosis or provide appropriate treatment. [...] we believe that the public interest in maintaining confidentiality in the medical records of a deceased outweighs, by some way, the countervailing public interest in disclosure. [...] We accordingly decide that there would be no ground for defending a claim for breach of confidence on this basis."

46. The complainant's arguments are broadly similar to the appellant's arguments in *Bluck*, above, and the Tribunal acknowledged the arguments in that case, but found them insufficient to outweigh the public interest in the protection of the confidentiality of medical records. The question for the Commissioner in the present case is, therefore, whether the obligation of confidence in the circumstances of this case, being less definite than in the case of medical records, would be

⁴ Available online at

<http://www.informationtribunal.gov.uk/DBFiles/Decision/i25/mrspbluckvinformationcommissioner17sept07.pdf>

diminished to the point where the public interest arguments in favour of disclosure ought to constitute a valid defence to a breach of confidence.

47. The argument employed by the Tribunal in *Bluck* is, essentially, that patients should not be deterred from full disclosure of information to their doctors by the concern that the information might be revealed. The Commissioner might suggest, however, that alongside the strong obligation of confidence within the doctor-patient relationship, stands a strong self-interest in the patient providing his doctor with all the information possible in order to facilitate his treatment. Therefore, while the Commissioner acknowledges the essential nature of doctor-patient confidentiality, he also observes that any inhibition to disclosure as a result of possible release of the information would be mitigated, at least to some degree, by a patient's natural wish to enable his doctor to cure his illness.
48. In the circumstances of the current case, the inhibition to frank disclosure to an investigator is arguably greater, because there may be circumstances where such disclosure would be to the confider's detriment, for example in the apportioning of blame or criticism. This makes the argument for holding such disclosures confidential all the stronger, so that any sanctions which may arise can be undertaken appropriately, in a controlled environment, rather than through 'trial by media'. Thus a professional may be more prepared to disclose damaging evidence about his conduct, and accept appropriate penalties within his profession, than he would be if that evidence were likely to reach the wider community and result in disproportionate public or media condemnation.
49. Consequently, while the Commissioner acknowledges the absolute nature of the confidence described in *Bluck*, above, he finds that the confidence due to a participant in an investigation of any misadventure ought also to be taken very seriously. For this reason, he is guided by the Tribunal's view, in that case, that "*the public interest in maintaining the confidence outweighs, by some way, the countervailing interest in disclosure*". Therefore, the argument that the public interest in disclosure in the present case ought to be sufficient to form a valid defence against a breach of confidence, because the importance of maintaining the confidence is modest, is not one which the Commissioner can support in the circumstances.
50. Having carefully considered the complainant's and the public authority's arguments, the Commissioner finds that section 41 of the Act is engaged with respect to the withheld information and, for the reasons examined above, he concludes that there would be no clear public interest defence

to an action for breach of confidence as a result of disclosure under the Act.

51. Therefore the Commissioner concludes that such a breach of confidence would be actionable and consequently the information has been correctly withheld under section 41 of the Act.

The Decision

52. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

53. The Commissioner requires no steps to be taken.

Other matters

Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

54. The public authority's refusal notice of 20 July 2009 does not offer the complainant the opportunity to request an internal review of its refusal, but instead refers him directly to the Information Commissioner.

55. Part VI of the section 45 Code of Practice (the "Code") makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information. The Commissioner's guidance⁵ (published in February 2009) echoes the Code's recommendation and emphasises the benefits of internal reviews, which include:

- reviews enable conformity with the codes of practice;
- in considering a complaint, the Commissioner will take into account the position at the time of completion of the internal review. The

⁵ Published on the ICO website at:

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/practical_applications/internal%20reviewsv1.pdf

review process provides an authority with an opportunity to correct most breaches, mistakes or errors;

- reviews should enhance an authority's reputation and,
- by providing a mechanism for the applicant's concerns to be addressed at an early stage, reviews may result in fewer complaints being made to the Information Commissioner about the handling of the request.

56. In its future handling of requests, the Commissioner expects that the public authority will have regard for the recommendations of the Code and for the guidance available via his website.

Right of Appeal

57. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: 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 sent.

Dated the 31st day of January 2011

Signed

Andrew White
Group Manager – Complaints Resolution

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

Legal Annex

S.1 General right of access

Section 1(1) provides 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.'

Section 1(2) provides that -

'Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.'

Section 1(3) provides that –

'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 1(4) provides that –

'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.'

Section 1(5) provides that –

'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).'

Section 1(6) provides that –

'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'.'

S.41 Information provided in confidence

Section 41(1) provides that –

'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.'*

Section 41(2) provides that –

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