

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 28 March 2011

Public Authority: London Borough of Islington Council
Address: Islington Town Hall
Upper Street
London
N1 2UD

Summary

The complainant requested a report held by the council on a review which was carried out on a care home in Islington. The complainant's aunt moved to the home but was admitted to hospital within a few days with a number of severe medical conditions which ultimately led to her death. The report is on a review of the care provided to her aunt at the home. The review sought to establish whether and how mistakes in the care she received at the home led to the swift deterioration of her health to the point where she was admitted to hospital.

The council refused to provide the complainant with the information she requested, citing the exemptions in section 41 and section 40 of the Act. The Commissioner's decision is that the council was correct to apply section 41 to all of the information. He has not therefore gone on to consider the application of section 40 to the information. The Commissioner has also decided that the council breached section 17(1).

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 aunt died in hospital in 2008. Shortly before her death she was transferred into care facilities regulated by the council. After 10 days in the home she was transferred into hospital with numerous serious medical conditions. She never recovered and died a week or so later. A review of the care she received at the care home was carried out, and a report was produced detailing the findings of that review. The council was provided with a copy of that report. The complainant was provided with an abridged copy of the report by the council, outside of its obligations under the Act. When she subsequently discovered that she had been provided with an abridged version she made a request for the full version. The council informed her that her request was to be treated as a request under the Act, and subsequently refused the request under sections 41 (information provided in confidence) and section 40 (personal data).

The Request

3. On 2 February 2010 the complainant wrote to the council asking it to provide her with a full unabridged copy of the report under any act or legal right she had to that information, including the Act. This included any access rights she may have to that information as a relative or the executor of her aunt's estate.
4. On the same date a member of the council responded. It stated a full copy of the report would not to be provided. It had taken legal advice and the only copy which could be provided to her was the abridged version. The complainant responded stating that she was not happy with that response and wanted the council to reconsider.
5. On 5 February she wrote another letter asking the authority to provide a response to her request. The council responded on the same day indicating that it had already responded to the request on 2 February 2010. On the same day the complainant wrote back and asked the council to state whether that was its final refusal so she could make a complaint to the Commissioner.

6. On 8 February 2010 the complainant wrote to another member of the council asking if her response was a response relating to this request, or to another request which she had made at the same time. This second request does not form part of this notice. The Commissioner understands that the complainant then discussed the matter with the council over the telephone, at which point the complainant re-sent her request on 9 February 2010.
7. On the same day the council responded, stating that it had logged her complaint and would respond in due course.
8. On 5 March 2010 the complainant wrote to the council stating that the 20 day deadline had now passed. She asked why she had not received a response. She followed that with another letter on 12 March 2010 highlighting that she had still not received a response. She wrote again on the 17 March 2010 for the same reason.
9. The complainant then made a complaint to the Commissioner about the lack of response. In the interim period between that letter and the Commissioner's letter to the council it responded to the complainant. On 31 March 2010 the council wrote to the complainant stating that it was still relying on its initial position; that the information was exempt under section 41 of the Act.
10. On 1 April 2010 the complainant wrote to the council asking for details about why the information fell within section 41. She asked for any written evidence the council held that the report, or interviews with staff held within the report were to be held in confidence. She also asked the council to again review its decision as regards a copy of the unabridged report.
11. On 11 June 2010 the council provided its response to the complainant. It stated that parts of the report were exempt under section 41 of the Act. It also stated that parts of the report were exempt on the basis that section 40(2) of the Act applied (personal information). It also explained to her why it had dealt with her request under the Act rather than any other legislation. It explained that there was *"no other legislative route to the report"*.
12. On 21 July 2010 the council wrote to the complainant. It asked her to explain what it is that she wished the council to

do. In that letter it also stated that it was waiting for information from the information commissioner's investigation. The complainant wrote to the council following this up with a number of other emails chasing a response from the council up to October 2010, at which point it became clear to her that the council was not in fact awaiting a response from the Commissioner.

The Investigation

Scope of the case

13. On 11 October 2010 the complainant contacted the Commissioner for a second time to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider both the delays which had occurred with the case, and also whether the unabridged copy of the report should have been provided to her. The complainant's complaint however related to her request of 2 Feb 2010 rather than to her earlier request for the report, and it is evidence from this date which she provided to the Commissioner. The Commissioner has therefore considered this to be the first request for information for the purposes of this Notice.

Chronology

14. As outlined above, the Commissioner had had earlier dealings with the council over this issue; the complainant had initially made a complaint that the council had not responded to her initial request. This Notice does not deal with that complaint but with the later complaint, made on 11 October 2010.
15. The Commissioner wrote to the council on 7 January 2011 and asked it to send a copy of the full report to him, together with any submission that it wished to make in support of its position.
16. That information was provided on 28 January 2011, however the compact disc which held the information was faulty. A further copy was received by the Commissioner on 15 February 2011.

Analysis

Exemptions

17. The council refused access to the information on the basis that sections 40 and 41 of the Act applied.

Section 41

18. Section 41(1) provides that information is exempt from disclosure if:

- (a) it was obtained by the public authority from any other person; and
- (b) the disclosure of the information to the public by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

The full text of section 41 can be found in the Legal Annex at the end of this Notice.

19. In considering whether disclosure would constitute an actionable breach of confidence the Commissioner has adopted the approach to confidentiality taken by the court in *Coco v A N Clark (Engineers) Limited [1968] FSR 415*. In that case it was decided that disclosure would constitute an actionable breach of confidence if:

the information has the necessary quality of confidence;

the information was imparted in circumstances importing an obligation of confidence; and

disclosure would be an unauthorised use of the information and to the detriment of the confider.

20. However, the element of detriment may not be necessary in every case. In the Commissioner's view, information on personal matters can still be protected under the law of confidence, even if disclosure may not be detrimental in terms of any tangible loss.

21. If the above criteria are satisfied, the Commissioner believes that he should then consider whether there would be a

defence to a claim for a breach of confidence. On this occasion this would be based on whether the public interest in a disclosure of the information would provide a defence to a breach of the duty of confidentiality.

22. After considering the contents of the report the Commissioner believes that it contains 3 categories of information, namely:

- Information obtained from the patient's medical records or records of care administered to her at the home, either directly or indirectly and in such a way as that details of their medical care and condition can be easily identified.
- Parts of the report which give detailed information of the circumstances surrounding the patient's sudden deterioration in health.
- Information relating to employees of the Trust involved in the patient's care.

23. The first 2 of these relate specifically to health and medical conditions of the complainant's aunt, and how these were treated. The 3rd factor deals more specifically with the systems, procedures of the care home and the actions of its employees.

24. The Commissioner has considered the application of section 41 to each of these categories of information.

25. Whilst taking into account the particular circumstances of this case, the Commissioner has also been mindful of the decision of the Tribunal in *Bluck v ICO & Epsom and St Helier University Hospital NHS Trust* [EA/2006/0090] (the "Bluck case"). In that case a request had been received for a deceased person's medical records from an individual who was not the deceased person's personal representative. The Tribunal upheld the Commissioner's decision that the requested information was exempt from disclosure under section 41 of the Act. Whilst the Commissioner accepts that the request in this case was not for the deceased patient's medical records, given that the contents of much of the report focus on the medical care of the patient, he believes that this Tribunal judgment is relevant to this case.

Was the information obtained from a third party?

26. The Commissioner has firstly considered whether the information was obtained by the authority from another person.
27. The Commissioner notes that the report was commissioned by the Assistant Director (MIICOP) Camden and Islington Mental Health and Social Care Trust. The council has not however argued that it owes a duty of confidentiality to this organisation.
28. The Commissioner is satisfied that a large proportion of the information contained in the report has been drawn directly from monitoring of the complainant's aunts health whilst at the home. The report also contains information which has been written after close consideration of the patient's medical records. Information has therefore drawn from those records, and details of the patient's medical care and condition can be easily identified from that information.
29. Whilst this information is not in the form of medical records, the Commissioner believes that it is of the same sensitivity and relevance to the deceased as her medical records and has been obtained in connection with the provision of health services to her by the home.
30. Therefore the Commissioner is satisfied that the information contained in the report was obtained from third parties. It contains information provided by the care home and, in regard to the information obtained from the patient's medical records, by the complainant's aunt and medical professionals working at or in conjunction with the care home.
31. The Commissioner has therefore considered whether the various categories of information have the necessary quality of confidence.

Does the information have the necessary quality of confidence?

32. For information to have the necessary quality of confidence it must be information which is not trivial, and that is not already in the public domain.
33. The information specifically addresses the quality of care received by the complainant's aunt whilst at the home. It details that care, together with sensitive personal and private details of her aunt's ailments and of the care which she required. It considers the care which was actually provided,

and from that it provides conclusions and recommendations which address the actions of the care home.

34. The information analyses in detail the circumstances leading to the eventual admission of the complainant's aunt to hospital, and identifies areas where her care could/should have been better, including providing some indicators of individual fault with the provision of her care. The Commissioner is therefore satisfied that the information is not trivial.
35. The Commissioner is also satisfied that the nature of much of the information is highly personal and private to the complainant's aunt. It provides a sensitive and detailed description of her ailments and the care which she required.
36. The Commissioner has considered whether the information is already in the public domain. Islington Council only applied exemptions to parts of the report. It provided an abridged copy of the report to the complainant summarising large sections of the information held in the full report to her outside of the Act. The complainant states that this was not provided to her under the Act but was simply provided in response to her asking for it as a concerned relative and one of the executors of her aunt's estate.
37. He is also aware that following a number of failings at the home there has been media coverage and condemnation of the home and its staff, and of the home's owners at that time, Care UK. The manager of the home at that time tendered her resignation following this media coverage and this too was reported in the media. However the media reports did not provide specific information. They simply stated that there had been deaths which had been partially attributed to the care received at the home, and also reported on other unrelated incidents which reflected badly on the provision of care provided by the home
38. Given the provision of the abridged report to the complainant it could be argued that a large amount of this information is already known to the complainant. This is not however the same as stating that all of the information is within the public domain, and there are clearly details of the complainant's aunts ailments, and of any failings by specific individuals providing care to her which have not been disclosed more widely.

39. In the case of *S v the Information Commissioner and the General Register Office (EA/2006/0030)*, the complainant argued that because some aspects of the information requested in that case were known to some people (including the complainant and her family), it no longer retained the necessary quality of confidence.
40. The Information Tribunal (as it was then) dismissed this argument. It acknowledged that the information may indeed be known to the complainant and her family, and parts of it may be known to others, but drew a distinction between this and information disseminated to the general public. It stated, "Whether the information is in the public domain is a matter of degree." (para 42)
41. In considering whether the breach of confidence may be actionable, the Tribunal developed the point above, and asked whether information already known to someone independently would have lost its quality of confidence. It concluded, "information in the public domain loses the quality of confidentiality but dissemination to a limited number of people does not stop information from being considered to be confidential." (para 78)
42. The Commissioner is satisfied that information about the complainant's aunt, her medical requirements, physical and mental ailments and details of the care she required is not already within the public domain.
43. He is also satisfied that information about the care which was provided to her aunt, and of the actions taken by the home when providing care to her is also not in the public domain at a level which would serve to undermine the quality of confidence of this information. The report is specific as to the care particular individuals provide in the home, and where some of the responsibility for failings in that care might lie.
44. The Commissioner is therefore satisfied that the information does have the necessary quality of confidence. He is also satisfied that information pertaining to individual fault at the home also has the necessary quality of confidence.

Does the information have the necessary obligation of confidence

45. The Commissioner considers that the information does have the necessary obligation of confidence. There is an implied

duty of confidentiality between a resident at a care home and the carers which provide care which is akin to the confidentiality between a doctor and patient. Residents put their care in the hands of professional carers and organisations with a clear expectation that the detailed and very private information which they obtain through providing that care will not be disclosed more widely than is necessary to provide that care. An equitable duty of confidentiality would exist which would prevent such a disclosure occurring.

46. The Commissioner is also satisfied that details of an individual's failings in the provision of care raises issues relating to the implied duty of confidentiality between an employer and an employee. Details of an individual's failings at a junior level would not be expected to be disclosed, but held in confidence. At a more senior level there may be a greater expectancy that some information would be disclosed such as performance figures and information which is necessary to provide appropriate levels of transparency and accountability. Again however there would be an expectation that disciplinary matters or matters akin to disciplinary matters would normally be retained in confidence unless it was necessary to disclose that information for other reasons.
47. The Commissioner is therefore satisfied that the information has the necessary obligation of confidence. The next question which he must consider is whether a disclosure would be an unauthorised use of the information to the detriment of the confider.

Would a disclosure of the information result in a detriment to the provider?

48. The first question which the Commissioner must consider regarding this question is whether there is a need to show a detriment if there is an unauthorised disclosure of the information.
49. The Bluck case (mentioned above) dealt with the confidentiality of a deceased person's medical records. It is very helpful in setting out the development of the law of confidentiality in relation to what can be characterised as personal information. It quotes from the Attorney *General v Guardian Newspaper* case in which first Lord Goff agreed with *Coco v Clark* that it was appropriate "to keep open the question of whether detriment to the plaintiff is an essential ingredient of an action for breach of confidence ...". However

later in the same ruling Lord Keith of Kinkel found that it would be a sufficient detriment to the confider if information given in confidence were disclosed to persons to whom he "... would prefer not to know of it, even though the disclosure would not be harmful to him in any positive way." (*Bluck* para's 7 & 8).

50. In relation to the information contained in the report which was drawn from the deceased patient's medical records and from interviews with the relevant health professionals involved in her care, the Commissioner considers that as medical and care records there is no need for there to be any detriment to the confider in terms of a tangible loss in order for it to be protected by the law of confidence. The detriment is through the tangible loss of personal privacy which, in the case of personal confidences, as mentioned above, is considered sufficient for a duty of confidence to apply. In the same way that a doctor disclosing detailed medical information on a patient may not actually result in a detriment in terms of a tangible loss, the breach of that confidence and the personal loss of privacy which would ensue would itself be sufficient for the duty of confidence to apply.
51. The Commissioner has also considered information held in the report relating to employees of the Care Home. The context of that information is that it is a report looking at the circumstances leading to the death of a resident under their care. The Commissioner recognises that that information clearly includes significant personal information about the employees, their individual actions and their failings. Again therefore it is not necessary to establish that a detriment would occur from a disclosure of the information.
52. The Commissioner is therefore satisfied again that it is not necessary to identify a tangible detriment in order for a duty of confidence to apply.

Is disclosure actionable?

53. The Commissioner must consider whether a disclosure of the information would be actionable; i.e., whether a disclosure of the information could lead to legal action being taken against the council for a breach of confidentiality, and if so whether the actions stood a reasonable prospect of success.
54. In the first instance he notes that even though the lady in question is deceased then the executor, personal

representative or relatives can still take action for a breach of confidence on her behalf. The complainant has stated that she can obtain written confirmation from her other relatives that they wish a full copy of the report to be disclosed under the Act. However, although the complainant is the executor and personal representative, the Commissioner is not able to take into account the identity of the complainant when making his assessment of the request. He must consider purely whether a disclosure of the information would be actionable, and if so whether any such action would have a reasonable prospect of success. He is satisfied that in this case there are relatives who could bring about an action if the information was disclosed.

55. Having established that a breach of the duty of confidence would potentially be actionable the Commissioner must therefore establish whether there would be any defence to an action for a breach of that duty.
56. There are a number of defences to a breach of a duty of confidence. Of most relevance to this case is whether there would be a public interest defence to a disclosure of the withheld information occurring.

Would there be a public interest defence to the information being disclosed?

57. There will be a defence to any claim to a breach of confidence in certain circumstances. One of these circumstances is if there is a public interest in a disclosure of the information which outweighs the public interest in keeping that information confidential. The Commissioner has therefore considered the balance of the public interest factors in this case.

Public interest arguments in favour of disclosing the requested information

58. The complainant argues that there is a strong public interest in the disclosure of the full report. She argues that the report highlights serious and systematic concerns with the home and that its disclosure would make the public aware of the level of those concerns. This would be beneficial with regard to the issues which the home had at that time, but also because it would demonstrate whether the council carried out appropriate checks on the home before allowing residents to be placed there. She states that no inquest was carried out

into her aunt's death because she was not informed at that time that relatives had the ability to require one. She also states (although this is not part of her complaint to the Commissioner) that the council did not respond when she asked it why it had not carried out a serious case review. Her view is therefore for that a disclosure of this report in full would provide some of the information which would have been addressed by these had these procedures been carried out.

59. The Commissioner found that details of serious concerns about the home and about the company who owned the home have been reported in the media. There were other deaths at the home in the same period which were referred to in media reports, and other issues of concern were also brought to light. Media reports indicate that the manager of the care home resigned after investigations were launched into practices at the home, and that the council eventually terminated its contract with the company in question.
60. The Commissioner is mindful of the role that investigations into care homes play in ensuring that care is provided at appropriate levels, and that relevant safeguards and procedures are in place to ensure the safety, dignity and wellbeing of residents. There is clearly a strong public interest in the public being able to have access to the findings of reviews of this nature in order to hold authorities to account if they have failed to carry out proper checks prior to allowing a care home to take residents in. Care of the elderly is an ongoing and growing matter of concern within the country.
61. There is also a strong public interest in allowing information to be disclosed where it would highlight issues and failures in the systems, procedures and processes in this home which ultimately resulted in the death of the complainant's aunt, and where it may shed light on some of the other issues at the home which led any of the other incidents which have been reported in the press.
62. There is also a very strong public interest in information being disclosed which would highlight any failures by the council to make proper checks on the home prior to allowing it to admit residents.
63. The Commissioner therefore believes that there is therefore a strong public interest in the public understanding how such an

incident occurred and whether it has been investigated appropriately.

The public interest in maintaining confidences

64. In weighing this against the public interest in keeping the information confidential, the Commissioner has been mindful of the wider public interest in preserving the principle of confidentiality.
65. The consequence of any disclosure of confidential information will, to some degree, undermine the principle of confidentiality which is really to do with the relationship of trust between confider and confidant. In cases such as this, the trust which residents have placed on care homes and their employees to keep details about their health, their ailments and even their behaviours in confidence creates an equitable duty of confidence on those involved.
66. If this was not the case people could be discouraged from confiding in public authorities or with care homes. They and their relatives may be more reluctant to accept care services in the future if sensitive personal details of their time in residence could subsequently be disclosed to the wider general public in response to a freedom of information request. The potential disclosure of sensitive details of the individuals' medical conditions etc may lead to a fear of public embarrassment and/or a loss of personal dignity to an extent which could lead individuals to make a decision that using the service would be intolerable. It is often difficult for the elderly and those who require such care to make a decision to enter such homes in the first instance, and details such as the potential for subsequent disclosures of very personal details may give individuals further anxiety in such circumstances.
67. In the Bluck case the Tribunal quoted from *Attorney General* case, which stated that "...as a general rule, it is in the public interest that confidences should be respected, and the encouragement of such respect may in itself constitute a sufficient ground for recognising and enforcing the obligation of confidence..."
68. The Commissioner recognises that media stories of the nature published about this home appearing in the media themselves create significant anxiety amongst those considering accepting places in care homes and their relatives. Clearly

therefore a disclosure of information which would allow the public to assure themselves whether homes are adequately scrutinised by authorities, and this would to some degree reduce those fears.

69. Having said this however, the nature of the information held by such homes sits at the heart of personal privacy and personal dignity. A disclosure under the Act is intended to be global – i.e. to any member of the public. The Commissioner therefore considers that whilst there is a very strong public interest in allowing the public to access information which demonstrates that appropriate scrutiny is carried out by authorities, the nature of the information which would be disclosed in this report goes beyond what could be considered reasonable to disclose as widely as it would under the Act. Where there is a need for such disclosures to occur they would in general be as a result of public inquiries, inquests or coroner's reports. These are written with a clearer view that they will subsequently be published, and where details of criminal negligence may be under discussion. That appears not to be the case here.
70. As regards details of the employees a disclosure of this information would breach the implied duty of confidence between an employer and an employee. Clearly reviews of this sort will find fault with both processes but also individuals working within the system. In cases of this kind this may easily lead to a very public condemnation of the individuals concerned – and potentially a media campaign to have that person's employment terminated. In many cases a formal review may in fact lead to disciplinary action being taken, however the implied duty of confidence would protect junior employees from the additional pressure of public rebuke and sanction for their mistakes.
71. It is also important to recognise that in many instances fault will rest not only with individuals but with other pressures put on those individuals due to the systems in place. Fault then may actually lie with more senior staff or with the employers themselves. Clearly in some cases errors will be made due to a lack of training, through the wrong individuals being assigned to carry out specific tasks, through understaffing or through the general pressure of workload being too heavy. In such circumstances errors may be made by individuals; however it may not necessarily be those individuals who are actually at fault.

72. At a junior level, employees should therefore be accountable to their employer rather than to the public. Clearly health professionals have a duty to be accountable to a much wider degree than this, however the Commissioner does not consider that that duty would extend to the extent envisaged under the Act. At more senior levels details should be made available to ensure that the healthcare professional's actions are transparent, but this should be weighed carefully with an individual's right to privacy and the employer/employee duty of confidence should not be overturned lightly.

Balancing the public interest

73. The Commissioner recognises that the complainant is aware of the issues and the circumstances of her aunt's admission to hospital through the disclosure of the abridged report, together with the much fuller report which resulted from the second review. However her argument is that she cannot be sure what the council's review actually contained because the copy of the report which they provided to her was written specifically for her, missing vital pieces of information.
74. The Commissioner is satisfied that in cases of this kind it is right that relatives and personal representatives of the individuals have access to information in order to be able to ascertain that their relative has been treated appropriately, with dignity and respect, and safely. Where such basic requirements fail to be delivered there is a public interest in the organisations concerned being reviewed, and of the findings of that review acted upon and lessons learnt. Clearly relatives should be informed of the circumstances surrounding the death, and there is an onus to inform them of the actions intended to be taken to ensure that such failures do not happen again.
75. However the rights of relatives and personal representatives to access sensitive personal details of the deceased, are different to a general right of access by any person as envisaged under the Act.
76. The Commissioner has considered whether the public interest in disclosure was met to a large degree by the disclosure of the abridged report to the complainant. The complainant also states that a further review was carried out by a third party

company, Capita Consulting. This was instigated by Care UK together with the complainant.

77. Employers and companies of this sort should be subject to proper scrutiny, and there is clearly a public interest in the public having access to information which would allow it to ensure that an authority's checks are carried out appropriately prior to allowing individuals to be placed at the home.
78. The Commissioner notes however that the report does not provide information on the authority's checks prior to the home opening but a report on the failures which occurred prior to the complainant's aunt being admitted to hospital. It neither addresses the other issues which occurred at the same time, nor provides any information as to whether council checks would or could have identified systematic failures prior to allowing the home to admit residents.
79. Greater accountability surrounding the provision of care by the home would be provided through a disclosure of this information. However the Commissioner considers that that would be provided at significant expense to the privacy of individuals. The individual's expectations would be that that information would not be disclosed to the extent that would occur via a disclosure under the Act.
80. If such a breach of the significant trust were to occur it may detrimentally affect the level of care which can be provided. Individuals providing care will be significantly less inclined to cooperate with reviewers if they believe that their responses may subsequently be disclosed and that media pressure and public sanction may then occur. Lessons may then fail to be learned which otherwise might be. Additionally the Commissioner considers that a disclosure of the sensitive medical information would be a significant breach of the trust which is placed on care providers to keep such matters private.
81. The degree of disclosure of this sort of information should only be at the level necessary to establish appropriate transparency, or that appropriate action has been taken to ensure that such events do not occur again. The Commissioner is satisfied in this instance that a disclosure to the world at large would not be necessary to achieve that objective, and may actually make achieving that objective more difficult. He is aware that further consideration of the

care which was provided is still underway by other organisations.

82. The Commissioner's decision is therefore that the public interest in this case would not provide a defence to a disclosure of the review to wider the general public. He recognises that there is a need for relatives to be informed of the circumstances surrounding the failures in care, however his decision is that a disclosure under the Act is not an appropriate channel for this to occur in this instance.
83. The Commissioner's decision is therefore that the council was correct to apply section 41 in this instance.

Section 40

84. Given the Commissioner's findings as regards the application of section 41 the Commissioner has not considered the application of section 40 to the information.

Procedural Requirements

85. Part of the complainant's complaint to the Commissioner relates to the response to the request by the council. The complainant's argument is that the delays which occurred were unacceptable and breached her rights under the Act.
86. The Commissioner has considered the chronology of the request as outlined above. Although the council did not provide its final response until 21 July 2010 he notes that on various occasions prior to that time the council had responded to the complainant stating that it would not provide the information. On some occasions the council offered a review, but on others the position is less clear. It appears that the complainant simply asked the council to reconsider its response on a number of occasions' because she had not been specifically told that the council had given its final decision on the matter.
87. The complainant's first request was 2 February 2010, and the council responded to that request on the same day, stating that the information could not be provided to her. In that response the council did not clarify the exemption it was relying upon, nor did it specifically state whether it had treated the request as a request under the Act at that time. Nevertheless its response did respond to her request, and so the Commissioner considers that in doing this it met its

obligation to provide a response to the complainant within 20 working days, as required by section 10(1).

88. The Commissioner considers however that that response did not meet with the requirements of section 17. It did not provide adequate reasons for its refusal of the request nor highlight which exemption it was relying upon. The council's response therefore breached 17 (1) of the Act.
89. The subsequent reviews process was confused and not clear to the complainant. However the council did provide responses to the complainant's requests eventually. The Commissioner considers that this is not a breach of the Act. He draws attention to his conclusions' in the other matters section of this Decision Notice however.

The Decision

90. 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:

- The council was correct to apply section 41 to the information.

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

- The Council breached section 17(1) as it did not provide an adequate response to the complainant's request.

Steps Required

92. The Commissioner requires no steps to be taken.

Other matters

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

The council's correspondence with the complainant during the review of the request were disorganised and were likely to be extremely confusing to the complainant. The Commissioner considers that some of the complainant's arguments regarding the council's delay in responding to her request were based on the fact that she made the same request to a number of different people within the council at the same time, and that different responses were then received.

94. The confusing manner in which the council dealt with the complainant's repeated requests would appear to have been the central reason for the ensuing delays and confusion. The council did not clarify from an early position that the response of 2 February 2010 was a final first response, nor that its response was even a refusal notice under the Act. Subsequently correspondence and requests for a review were not dealt with clearly and left the complainant unsure of her position; hence her earlier complaint to the Commissioner.
95. The introduction to the code of practice issued under section 45 of the Act (the "Code") states:

"All communications in writing to a public authority, including those transmitted by electronic means, may contain or amount to requests for information within the meaning of the Act, and so must be dealt with in accordance with the provisions of the Act. While in many cases such requests will be dealt with in the course of normal business, it is essential that public authorities dealing with correspondence, or which otherwise may be required to provide information, have in place procedures for taking decisions at appropriate levels, and ensure that sufficient staff are familiar with the requirements of the Act and the Codes of Practice issued under its provisions. Staff dealing with correspondence should also take account of any relevant guidance on good practice issued by the Commissioner. Authorities should ensure that proper training is provided in this regard..."

96. Although the introduction does not form part of the Code itself, the Commissioner would echo its recommendations and notes that, in its initial responses, the public authority failed to recognise and deal with the request appropriately. In future, the Commissioner expects that the authority will deal with requests in accordance with the Act and that it will have regard to the recommendations of the Code.

Right of Appeal

97. 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

98. 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.
99. 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 28th day of March 2011

Signed

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Legal Annex

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 2(3) provides that –

"For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption –

- (a) section 21
- (b) section 23
- (c) section 32
- (d) section 34
- (e) section 36 so far as relating to information held by the House of Commons or the House of Lords
- (f) in section 40 –
 - (i) subsection (1), and
 - (ii) subsection (2) so far as relating to cases where the first condition referred to in that subsection is satisfied by virtue of subsection (3)(a)(i) or (b) of that section,
 - (iii) section 41, and
 - (iv) section 44"

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.”