

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 15 February 2011

Public Authority: The University of Cambridge
Address: University Offices
The Old Schools
Trinity Lane
Cambridge
CB2 1TN

Summary

The complainant requested information about post-dismissal financial settlements agreed by the public authority. The information was refused under the exemptions provided by sections 40 and 43 of the Act. The Commissioner has considered the public authority's arguments and he finds that the information was correctly withheld under section 40 of the Act. He has therefore not gone on to consider the applicability of section 43 of the Act any further, however he notes that the refusal notice issued by the public authority was deficient and that this constitutes a breach of section 17 of the Act.

The Commissioner's Role

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

The Request

2. On 12 February 2010 the complainant submitted the following request by email to the University of Cambridge ('the university').

"In response to a previous Freedom of Information request you have stated that the University agreed 4 post-dismissal compensation settlements in the period December 2008 to 13 December 2009. For each post-dismissal compensation settlement since December 2008, please tell me the amount agreed (in pounds) in the settlement. If the exact amounts cannot be revealed due to data protection concerns, I am happy to accept the amounts to the nearest appropriate figure (provided you indicate this figure in your response), cf. the "When should salaries be disclosed?" guidance note.

Also, if it is possible to provide the following information without revealing personal data in a way which would be unfair, for each amount, please indicate the category of dismissed staff (academic, academic-related, etc.) with whom the settlement was made."

3. The university responded on 12 March 2010, confirming that it held the information requested by the complainant, but refusing to disclose it. The request was refused on the grounds that the information requested was personal data and therefore exempt under the provisions of section 40(2) and 40(3) of the Act. Additionally, it argued that the information was exempt under section 43 of the Act as disclosure would be likely to prejudice the commercial interests of the university by making public the level at which it may be prepared to settle individual claims, and the public interest in maintaining the exemption outweighed the public interest in disclosure.
4. The complainant requested an internal review of this response on 22 March 2010.
5. On 12 April 2010 the university wrote to the complainant with the outcome of its internal review, upholding its original response.

The Investigation

Scope of the case

6. On 19 April 2010 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:
 - He disputes the application of section 40 of the Act to the withheld information on the grounds that the requested information is not

personal data as it contains no personal identifiers and the complainant does not have, nor is likely to come into possession of, any other information which would enable him, in conjunction with the requested information, to identify a specific individual.

- He disputes the public authority's application of section 43 of the Act because one of the principal guiding factors in determining the level of settlement claims will be the amounts awarded by employment tribunals, which are a matter of public record.
- Furthermore, other factors will be specific to the individual circumstances of the case, such as salary level, length of service, reason for dismissal, etc. and any negotiation is likely to be conducted by an individual's union or other representative, who will be familiar with the likely levels of settlements, through experience.
- These factors, and the individual circumstances of each case, are not matters of public record and therefore cannot be used in subsequent negotiations as their relevance could not be established.
- By failing to cite the correct subsection of section 43 which was being relied on, and by failing to fully explain the public interest arguments applied, the public authority committed a breach of section 17 of the Act.
- The complainant also argues that the public authority has breached section 10 of the Act in that its response was not 'prompt'.
- He also complains that the public authority did not provide any advice and assistance to him in relation to his request, arguing that:

"it should have provided advice and assistance by suggesting I refine my request to one for aggregate figures, or else provided such aggregate figures as a matter of course".

7. 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

8. On 8 July 2010 the Commissioner wrote to the complainant. The university's refusal of the information as 'personal data' was considered in some detail, and a possible informal resolution of the complaint, by disclosure of the withheld information as an aggregated sum, was proposed.

9. On 21 July 2010 the Commissioner wrote to the university. He referred to the complainant's suggestion that the university could have offered an aggregated figure. Noting that he had not at this time had sight of the withheld information, and so was unable to conclude that this would be an appropriate course, the Commissioner asked the university to consider whether it could provide an aggregated figure, if this would allow the complaint to be informally resolved. The Commissioner also explained the type of arguments which the university would be required to provide for his investigation of its application of section 43 of the Act, and possibly further consideration of the application of section 40.
10. The university replied on 27 July 2010, commenting that as the complainant had been very specific in his original request, it had not appreciated that he might be satisfied with an aggregated figure. It indicated that there would be no difficulty volunteering such a figure to the complainant.
11. The Commissioner wrote to the complainant on 27 July 2010, confirming that the university had agreed to the disclosure of an aggregated sum, if this would resolve the complaint and asking whether the informal resolution proposed would be acceptable.
12. The complainant replied on 3 August 2010, setting out his requirements for informal resolution:

"As an informal resolution I would accept the following information:

- * The number of settlements*
- * The aggregate total monetary value of the settlements*
- * The arithmetic mean (average) value of the settlements*
- * The standard deviation of the arithmetic mean of the settlements*

...all figures to be for the period from December 2008 to date.

IF AND ONLY IF *the University discloses this information to the e-mail address from which the original request was made (rather than to any other address they may have for me, or by disclosing the information to you and asking you to disclose it to me)."*

13. The Commissioner replied on 16 August 2010. He observed that the information the complainant requested for informal resolution was different to the information he had originally requested and so would not be pursued. He also noted that the aggregated sum of post-dismissal compensation payments had recently been provided to the complainant in the course of a response to a more recent request. For this reason, the

Commissioner enquired whether the complaint should be progressed further.

14. The complainant replied on 18 August 2010. He indicated that he did not wish to withdraw his complaint and asked the Commissioner to proceed to a Decision Notice.
15. On 14 September, the Commissioner wrote to the public authority for its arguments in support of its decision to withhold the information under the exemptions provided at section 40 and 43 of the Act.
16. The university replied on 13 October 2010, providing its arguments.

Findings of fact

The university has confirmed that during the period referenced in the request, December 2008 to 13 December 2009, it agreed four post-dismissal compromise agreements with former employees.

Analysis

Substantive Procedural Matters

Section 10

17. The Commissioner has recently served a Decision Notice in a related complaint (case reference FS50307811¹), from the same complainant, about the same public authority. The request for information in FS50307811, was submitted on the same date, 12 February 2010, as the request under consideration here.
18. The university has explained that the similarities between the requests meant that they were effectively processed in parallel. Therefore, its explanation for the time taken to produce a response to the request in FS50307811, also applies to the present case. The Commissioner found that the university responded 'promptly' to the other request and does not find any reason to vary that finding in the present case.
19. The Commissioner notes that, in the present case, the response to the request was provided within the 20 working day statutory timescale. Therefore he finds that the university has not breached section 10 of the

¹ Available online at http://www.ico.gov.uk/upload/documents/decisionnotices/2010/fs_50307811.pdf

Act, either by failing to respond within 20 working days, or by failing to respond promptly.

Exemptions

Section 40

20. The Commissioner notes that the requested information comprises two elements:

- the amount agreed in each of four post-dismissal settlements; and
- the category of the staff each settlement relates to.

21. Each of these is considered to be personal data because it 'relates to' an identifiable living individual². The first describes a sum of money paid to an individual in settlement of an employment dispute and is personal data because it is information about the financial circumstances of that individual. The second is personal data because it describes the general nature of their employment. Collectively, they are personal data because, in the context, they are information about an individual who has reached a compromise agreement with the university after their dismissal.

22. To address the first bullet point in the complainant's arguments at paragraph 6: it is not necessary for the requester to possess facts to connect the requested information with an individual in order for the information to be classed as personal data, it is merely necessary for such facts to exist. Disclosure is not simply to the requester, but to the world at large. The requested information is not anonymous statistical data in the sense that any connection between a living individual and the information has been obscured and cannot be recreated, but information with a real and direct relationship to a living person.

23. Having established that the withheld information is personal data, the Commissioner is satisfied that section 40 of the Act is engaged. It is therefore necessary to decide whether the information is exempt from disclosure under any of the conditions described in section 40(3). The first condition applicable is that described at section 40(3)(a)(i), that disclosure will breach any of the data protection principles.

² See the Commissioner's guidance, available online at http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/personal_information.pdf

Would it be fair to disclose the requested information?

The consequences of disclosure

24. Schedule 1 of the Data Protection Act 1998 (the DPA) contains the eight data protection principles. The first data protection principle states:

'1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.'

25. The Commissioner has therefore considered whether it would be fair to disclose the requested information. If disclosure is to be considered, whether that disclosure will be unfair may depend on whether the connecting facts referred to at paragraph 22 are in the public domain to any extent and therefore, whether anybody other than the data controller may make such a connection. It may also depend on whether the disclosure will have any consequences for a person whose personal data is disclosed.

26. While the information is, in the form requested by the complainant, anonymous, the university argues that it relates to a small number of individuals, and that these individuals worked, and are likely to have lived, in a close collegiate community. It is therefore reasonable and realistic to assume that there would be colleagues or acquaintances of the individuals who were, or became, aware of any disputes with the university and the timing and nature of such disputes. It is therefore likely that there will be individuals who would be able to associate the requested information, if disclosed, with specific persons.

27. The basis of a compromise agreement is that it remains an essentially private and confidential matter between employer and employee. Indeed most compromise agreements will contain clauses relating to the need to hold the contents confidential (and the university has confirmed that that is the case in the four examples under consideration here). Such clauses are binding on both parties and it is therefore clear that the dismissed individuals will have a reasonable expectation that information relating to the circumstances of their dismissal, indeed information relating to the very existence of a compromise agreement, will not be disclosed by the university.

28. The complainant, for his part, argues that these 'confidentiality clauses' prevent either party from even disclosing the existence of a compromise agreement. Therefore there can be no connecting information in the public domain provided both parties have maintained the confidence.
29. The Commissioner has also considered the university's counter-argument, that disclosure of the requested information could permit an individual with other 'corroborating information' to identify a dismissed person subject to a compromise agreement settlement. That corroborating information might have been obtained, for example, through an individual's relationship with the dismissed person while at the university, perhaps as a friend or colleague, or a former or current staff member whose duties gave them access to corroborating information. Having thus made such a link, that individual could learn essentially private information about the dismissed person if the requested information were to be disclosed.
30. This argument is not considered to be artificial. The Commissioner considers it likely that friends, former colleagues, or acquaintances of a dismissed person may, through their contact with that person, know something of the circumstances of that person's departure. They may not know that the person was dismissed, however, nor be aware of the existence of a compromise agreement, or any settlement amount agreed. It is clear to the Commissioner that these are essentially private matters which ought to remain private and, if disclosure would enable others to deduce some or all of these matters, that is likely to be of some importance to the dismissed person and would be an undesirable consequence of disclosure.
31. Furthermore, the second element of the requested information (the category of staff) would, if disclosed, serve to further 'narrow the field of search' and therefore make identification of individuals through the disclosure more likely. Given the close-knit nature of an academic institution, the Commissioner agrees that it is likely that there will be people in possession of such corroborating information, including present and former members of the university's staff and former colleagues of the dismissed individuals themselves.

The reasonable expectations of the dismissed individuals

32. There is an emphasis on confidentiality implicit in most compromise agreements and the university has confirmed that in the four cases referred to in this notice, this has been formally acknowledged by the use of confidentiality clauses in the agreements. The Commissioner is therefore satisfied that the subjects of the compromise agreements will,

as previously stated, have a reasonable expectation that details (or even the existence) of their compromise agreements will not be disclosed.

Summary

33. Because disclosure of the requested information would enable private information to be deduced about individuals, by others who possessed suitable 'corroborating information'; because wider knowledge of that information would be likely to have undesirable consequences for those individuals; and because those individuals have a reasonable expectation that the information will remain confidential, the Commissioner concludes that the disclosure of the requested information would be unfair. It has therefore not been necessary to go on to consider any of the conditions in Schedule 2 of the Data Protection Act 1998.
34. The Commissioner therefore upholds the university's application of the exemption provided at section 40(2) of the Act.

Section 43

35. As the Commissioner has found that the requested information is exempt under the provisions of section 40 of the Act, he has not gone on to consider the application of the exemption provided at section 43 to the withheld information.

Procedural Requirements

Section 16

36. The complainant argues that the university failed to provide him with advice and assistance. He suggests that, under its duty to provide advice and assistance it could have offered to provide him with an aggregated total of the settlements and/or the average settlement amount.
37. The Commissioner discussed this with the university, which indicated that it was unaware that a response of that nature would have satisfied the complainant's request and confirmed that it would be willing to provide a response in this form, if that would satisfy the complainant's requirements and permit the complaint to be informally resolved.
38. This was put to the complainant, who said he would accept:
- an aggregated total, plus;
 - the number of settlements;
 - the arithmetic mean (average) value of the settlements and;
 - the standard deviation of the arithmetic mean of the settlements;

- all figures to be from December 2008 to the present date.

As this was not the information he had originally requested, the Commissioner did not pursue the matter further.

39. Section 16 of the Act requires a public authority to provide advice and assistance *"so far as it would be reasonable to expect the public authority to do so, to persons who propose to make, or have made, requests for information to it"*.
40. The Secretary of State for Constitutional Affairs has issued a code of practice in compliance with section 45 of the Act ('the section 45 code of practice'). This provides, at paragraphs 3 to 15, guidance on the conduct which may be expected from a public authority in the provision of advice and assistance under section 16 of the Act. Compliance with the code of practice is taken, under section 16(2) of the Act, to be sufficient to comply with the duty to provide advice and assistance under section 16(1) of the Act.
41. The section 45 code of practice confines itself mainly to the provision of advice and assistance to help a complainant who is having difficulty framing a request which a public authority is able to comply with, either by clarifying an initial request, or refining an existing one. The code of practice makes no reference to a duty to provide advice and assistance in circumstances where information has been refused under any exemption in part II of the Act. The duty to provide advice and assistance extends only to the point at which a public authority is able to provide a substantive response to a request.
42. The Commissioner does not find that there is any obligation to provide advice and assistance under section 16 of the Act in the circumstances, because the duty to provide advice and assistance does not relate to circumstances where a request has been refused under an exemption in part II of the Act.
43. The university has stated that it had not appreciated at the time of the request that the aggregated figure would have been acceptable to the complainant. The complainant has himself explained to the Commissioner that the provision of an aggregated total would not have been sufficient. It is clear to the Commissioner that the complainant's response when this option was offered to him during the investigation suggests strongly that, had this offer been made at the time of the university's refusal, his response would have been likely to be of the form described above.
44. The Commissioner does not therefore find that it would have been reasonable in the circumstances for the university to have offered advice

and assistance to the complainant. It appears that the 'advice and assistance' proposed by the complainant would not have been acceptable to him in any event and the university had worked on the assumption that he required the information in its entirety. Events during the course of the Commissioner's investigation appear to suggest that this assumption was reasonable. Consequently he does not find any breach of section 16 of the Act.

Section 17

45. The complainant argues that the public authority refused the information under section 43 of the Act but failed to specify the specific subsection of the Act (ie section 43(2)) and failed to clearly explain the public interest arguments applicable in the circumstances. The relevant provisions (section 17(1) and (3)) are reproduced in the legal annex.
46. The Commissioner agrees that it is necessary for a public authority to explain clearly which exemption it is relying on and, to that end, it is advisable for it to cite the applicable exemption by the full section and subsection reference. In this case, the university cited the section reference, (ie section 43), but omitted the subsection (in this case, section 43(2)). It did however, qualify the exemption clearly, stating "*[...] the requested information is exempted under section 43 (commercial interests) of the FOIA [...]*". The Commissioner therefore does not find that the university's response would leave an applicant in any doubt about which subsection of section 43 of the Act was considered to apply in the circumstances and he does not find a breach of section 17(1).
47. The complainant argued that the university failed to provide any reasons for claiming, in its refusal notice, that the public interest in withholding the information outweighs the public interest in disclosure. The Commissioner agrees that the university has not provided sufficient information in its refusal notice to permit the complainant to understand the public interest arguments considered by it, and its reasons for considering where the balance of those public interests lay. Accordingly, he agrees that the university has breached section 17(3)(b) of the Act.

The Decision

48. 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 requested information was correctly refused under the exemption provided at section 40(2) of the Act.

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

- The public authority failed to state its reasons for claiming that in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Consequently it breached section 17(3)(b) of the Act.

Steps Required

50. The Commissioner requires no steps to be taken.

Right of Appeal

51. 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 15th day of February 2011

Signed

**Faye Spencer
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

S.10 Time for Compliance

Section 10(1) provides that –

'Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.'

Section 10(2) provides that –

'Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.'

Section 10(3) provides that –

'If, and to the extent that –

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

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

Section 10(4) provides that –

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

Section 10(5) provides that –

'Regulations under subsection (4) may –

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

Section 10(6) provides that –

'In this section –

"the date of receipt" means –

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

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

S.16 Duty to provide Advice and Assistance

Section 16(1) provides that -

'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'.

Section 16(2) provides that -

'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.'

S.17 Refusal of Request

Section 17(1) provides that -

'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.'*

Section 17(2) states –

'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.'

Section 17(3) provides that -

'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.'*

Section 17(4) provides that -

'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.'

Section 17(5) provides that –

'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.'

Section 17(6) provides that –

'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.'

Section 17(7) provides that –

'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.'

S.40 Personal information

Section 40(1) provides that –

'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.'

Section 40(2) provides that –

'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.'*

Section 40(3) provides that –

'The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of 'data' in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-*
 - (i) any of the data protection principles, or*
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and*
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.'*

Section 40(4) provides that –

'The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).'

Section 40(5) provides that –

'The duty to confirm or deny-

- (a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and*
- (b) does not arise in relation to other information if or to the extent that either-*

- (i) *he giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or*
- (ii) *by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).'*

Section 40(6) provides that –

'In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.'

Section 40(7) provides that –

'In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;

"data subject" has the same meaning as in section 1(1) of that Act;

"personal data" has the same meaning as in section 1(1) of that Act.'

Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part I of the Freedom of Information Act 2000

Issued under section 45 of the Act.

I Introduction

1. This Code of Practice provides guidance to public authorities as to the practice which it would, in the opinion of the Secretary of State for Constitutional Affairs, be desirable for them to follow in connection with the discharge of their functions under Part I (Access to information held by public authorities) of the Freedom of Information Act 2000 ("the Act").

2. Words and expressions used in this Code have the same meaning as the same words and expressions used in the Act.

II The provision of advice and assistance to persons making requests for information

3. The following paragraphs of this Code apply in relation to the provision of advice and assistance to persons who propose to make, or have made, requests for information to public authorities. They are intended to provide guidance to public authorities as to the practice which it would be desirable for them to follow in the discharge of their duty under section 16 of the Act.

Advice and assistance to those proposing to make requests:

4. Public authorities should publish their procedures for dealing with requests for information. Consideration should be given to including in these procedures a statement of:
 - o what the public authority's usual procedure will be where it does not hold the information requested (see also III - "Transferring requests for information"), and
 - o when the public authority may need to consult other public authorities and/or third parties in order to reach a decision on whether the requested information can be released (see also IV - "Consultation with third parties"),
5. The procedures should include an address or addresses (including an e-mail address where possible) to which applicants may direct requests for information or for assistance. A telephone number should also be provided, where possible that of a named individual who can provide assistance. These procedures should be referred to in the authority's publication scheme.
6. Staff working in public authorities in contact with the public should bear in mind that not everyone will be aware of the Act, or Regulations made under it, and they will need where appropriate to draw these to the attention of potential applicants who appear unaware of them.
7. Where a person is unable to frame his or her request in writing, the public authority should ensure that appropriate assistance is given to enable that person to make a request for information. Depending on the circumstances, consideration should be given to:

- advising the person that another person or agency (such as a Citizens Advice Bureau) may be able to assist them with the application, or make the application on their behalf;
- in exceptional circumstances, offering to take a note of the application over the telephone and then send the note to the applicant for confirmation (in which case the written note of the telephone request, once verified by the applicant and returned, would constitute a written request for information and the statutory time limit for reply would begin when the written confirmation was received).

This list is not exhaustive, and public authorities should be flexible in offering advice and assistance most appropriate to the circumstances of the applicant.

Clarifying the request:

8. A request for information must adequately specify and describe the information sought by the applicant. Public authorities are entitled to ask for more detail, if needed, to enable them to identify and locate the information sought. Authorities should, as far as reasonably practicable, provide assistance to the applicant to enable him or her to describe more clearly the information requested.
9. Authorities should be aware that the aim of providing assistance is to clarify the nature of the information sought, not to determine the aims or motivation of the applicant. Care should be taken not to give the applicant the impression that he or she is obliged to disclose the nature of his or her interest as a precondition to exercising the rights of access, or that he or she will be treated differently if he or she does (or does not). Public authorities should be prepared to explain to the applicant why they are asking for more information. It is important that the applicant is contacted as soon as possible, preferably by telephone, fax or e-mail, where more information is needed to clarify what is sought.
10. Appropriate assistance in this instance might include:
 - providing an outline of the different kinds of information which might meet the terms of the request;
 - providing access to detailed catalogues and indexes, where these are available, to help the applicant ascertain the nature and extent of the information held by the authority;
 - providing a general response to the request setting out options for further information which could be provided on request.

- This list is not exhaustive, and public authorities should be flexible in offering advice and assistance most appropriate to the circumstances of the applicant.
11. In seeking to clarify what is sought, public authorities should bear in mind that applicants cannot reasonably be expected to possess identifiers such as a file reference number, or a description of a particular record, unless this information is made available by the authority for the use of applicants.

Limits to advice and assistance

12. If, following the provision of such assistance, the applicant still fails to describe the information requested in a way which would enable the authority to identify and locate it, the authority is not expected to seek further clarification. The authority should disclose any information relating to the application which has been successfully identified and found for which it does not propose to claim an exemption. It should also explain to the applicant why it cannot take the request any further and provide details of the authority's complaints procedure and the applicant's rights under section 50 of the Act (see "[Complaints Procedure](#)" in section VI).

Advice and assistance and fees

13. Where the applicant indicates that he or she is not prepared to pay the fee notified in any fees notice given to the applicant, the authority should consider whether there is any information that may be of interest to the applicant that is available free of charge.
14. Where an authority is not obliged to comply with a request for information because, under section 12(1) and regulations made under section 12, the cost of complying would exceed the "appropriate limit" (i.e. cost threshold) the authority should consider providing an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or re-focussing their request, information may be able to be supplied for a lower, or no, fee.
15. An authority is not expected to provide assistance to applicants whose requests are vexatious within the meaning of section 14 of the Act. Guidance on what constitutes a vexatious request can be found in the DCA Handbook - 'Guidance on Processing Requests'. The Information Commissioner has also issued advice on dealing with vexatious and repetitious requests.