

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

22 January 2007

**Public Authority:** Doncaster Metropolitan Borough Council  
**Address:** 2 Priory Place  
Doncaster  
DN1 1NB

### Summary

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The complainant sought the names of those who had repaid money to the Council following excessive expenses claims, as well as details of the amounts each individual had repaid. The Council applied an exemption to the information under section 40 of the Act. During the investigation by the Commissioner, the Council also submitted that to disclose the information would exceed the appropriate limit (section 12) and, in any event, some information was already in the public domain and therefore exempt under section 21 of the Act. The Commissioner ascertained that the information could be split into two types, namely money repaid as a result of criminal convictions through compensation orders and voluntary repayments made by both convicted and non-convicted Council members and officers. The Commissioner has decided that the cost of considering the request for all of the information would exceed the appropriate limit, but that the Council did not provide any advice and assistance with a view to the complainant narrowing his request (section 16). The Commissioner has therefore considered whether any of the information requested could be released and has decided that it would be fair to release names and details of repayments ordered to be made as a result of criminal convictions, but the names of those who made voluntary payments and the amounts involved is exempt under section 40. The Council should therefore clarify with the complainant whether the information relating to the criminal repayments is still sought and, if so, provide it. The exemption under section 21 was not found to be valid.

### The Commissioner's Role

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

## The Request

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2. The complainant has advised that the following information was requested from the Public Authority in accordance with section 1 of the Act in January 2005:  
  
*“Please provide [...] details of the names of Doncaster Councillors and Council Officers who paid money back to Doncaster Council as a result of fraudulent expenses claims, following South Yorkshire Police’s Operation Danum investigation into expenses abuse at Doncaster Council”.*
3. On 3 February 2005, the Council refused the complainant access to the information on the grounds that the information was exempt under section 40 of the Act. It was stated that disclosure of the information “would breach the Data Protection principle that personal information shall be processed fairly and lawfully”. This is a reference to the first data protection principle which is contained in the Data Protection Act 1998 (the “DPA”).
4. The complainant wrote to the Council on 11 February 2005 clarifying that the information request was also for the amounts that were repaid by the Councillors and Council Officers. This letter also included a request for a further explanation of the reasoning in the initial refusal notice.
5. The Council responded in full on 14 March 2005 explaining the application of the exemption in more detail and offering the complainant the opportunity to have this decision reviewed under the Council’s complaints procedure.
6. In an email of 15 March 2005, the complainant took up this offer of internal review. Upon receiving no response, the complainant contacted the Commissioner to investigate on 5 April 2005. After a telephone call to the Council from the Commissioner, the findings of the internal review upholding the original decision were sent to the complainant on 25 April 2005.
7. Following the receipt of the internal review, the complainant applied to the Information Commissioner on 26 April 2005 for a decision as to whether the Council’s decision to withhold the information was in accordance with the requirements of Part I of the Act.

## The Investigation

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### Scope of the case

8. On 26 April 2005, the complainant contacted the Commissioner to complain about the way the request for information had been handled. The complainant specifically asked the Commissioner to consider whether the Council had been right to withhold the information requested.

## Chronology

9. On 25 May 2005, the Commissioner contacted the Council for a copy of the information requested and for a full explanation as to the application of the exemption under section 40 of the Act.
10. The Council responded in full on 17 June 2005. This included the provision of a copy of the report made to the Full Council on 27 October 2003 so as to provide some background information to explain the Council's decision to consider the information exempt from disclosure under the Act, as well as a list of 23 people who were convicted as a result of the fraudulent expenses claims. The Council's submission covered a wide range of points which are summarised below.
  - i) At the time the expenses claims were made, the Council did not have any clear guidance as to what would be an appropriate amount to claim for expenses. This was remedied following the police investigation into the matter in the late 1990s.
  - ii) The Council considered that some of these claims were excessive and either deducted monies directly from allowances or requested repayment of the sums. A number of council officers in particular voluntarily agreed to do this, however a proportion did not as they argued that there had been no wrongdoing in accordance with the practices in place at the time.
  - iii) Having received the request from the complainant, the Council believe that it is the names of these people that are covered by the request for information.
  - iv) The Council also stated that it considered the information was held in confidence and that members and council officers involved would not likely consent to the disclosure of the information requested.
  - v) To disclose the names of those who repaid money to the Council following requests would therefore breach the DPA.
  - vi) The Council also submitted that it believed that while these claims may have been excessive, they were not fraudulent. In view of this, disclosure of the names of people who had repaid amounts to the Council voluntarily would not meet the terms of the complainant's request.
  - vii) It argued that although some members were prosecuted and convicted, this information is already in the public domain and suggested that an exemption under section 21 of the Act would therefore apply. However, the Council accepted that details of amounts repaid as a result of these convictions was not in the public domain. It was stated that this information could be released as a global sum, but it would not be possible to provide details of individual repayments as this would breach the appropriate limit and the information may also be the subject of a confidentiality agreement.
11. After reviewing the response, the Commissioner sought further information from the Council on 3 August 2005. In particular, this correspondence addressed the issue of what was covered by the complainant's request; whether the appropriate limit would be breached by disclosure of the information; and what information

- regarding this matter was already in the public domain. In addition, the Commissioner asked whether it would be possible to release an anonymised version of the information relating to money repaid on a voluntary basis.
12. The Commissioner simultaneously sought the complainant's view as to what information it had intended to cover with the request. On 10 August 2005, the complainant wrote to confirm that it had intended that the names of all those repaying monies, whether as a result of criminal prosecution ("criminal repayments") or on a voluntary basis ("voluntary repayments"), would be covered by the request. However, the complainant also indicated that the request would be satisfied by the release of only the voluntary repayments, if this would expedite the matter.
  13. On 23 September 2005, the Council responded to the Commissioner. The Council's submission made it clear that the people convicted as a result of the police investigation had been contacted by the Council and issued with "letters before action" initiating civil proceedings to recover the money. The majority of those involved agreed a settlement with the Council, though some were not in a position to offer any payment. These agreements were reached out of court and the Council believe that the agreements were reached on the condition of confidentiality, even if this was only implied.
  14. As regards the issue of voluntary repayments, the Council requested these "[...] on no other basis than that if the claims were looked at today they would not be considered to be reasonable." In view of this, it had taken the view that repayment of these claims should be requested.
  15. In addition to this, the Council also provided an indication as to whether the appropriate limit would be exceeded by compliance with the request for information. To this end, the Council submitted that the names of those who had repaid money would have to be cross-checked against figures held. As it is likely that full sets of information for the cross-referencing process no longer exist, information would have to be collected from across departments.
  16. For the information relating to those convicted, the figures held are in respect of monies recovered as a result of both the criminal proceedings and the civil proceedings together. Separating out the figures would require "extensive work and may not be possible".
  17. As for the officers who voluntarily repaid monies to the Council, it was estimated that it would take 30 minutes to look at each of the files. This would enable the Council to check how much money had been repaid, but also whether any settlements were the subject of confidentiality clauses. It was estimated that this process would take around 11½ hours in total, but that to do this work in conjunction with the other work would readily exceed the appropriate limit of £450 (18 hours work in total.)
  18. Having considered this submission, the Commissioner required further clarification as to precisely what information was held by the Council in relation to the request and how it would exceed the appropriate limit to comply with the

complainant's request. Following telephone discussions with the Council, the Commissioner sent an email to the Council on 15 November 2005 with a list of issues for the Council to address in order to determine whether the information is held and whether to disclose it would exceed the appropriate limit.

19. The Council sought clarification of some of these points in an email of 7 December 2005, which were addressed in a telephone conversation dated 8 December.
20. Once these points had been clarified, the Council emailed its response to the Commissioner's email of 15 November on 19 December 2005.
21. In reaching his decision, the Commissioner has taken into account all of the submissions put forward by both parties and taken relevant internal advice.

## Analysis

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22. The Commissioner has considered the following points in relation to this matter, namely:
  - whether it was necessary to provide advice and assistance to the complainant when the original request was made,
  - whether to respond to the request would have exceeded the appropriate limit,
  - whether the Council should have provided advice and assistance to aid the complainant to narrow his request, and
  - whether any of the requested information should be considered exempt under section 40 as the Council initially stated.
23. The analysis of the above points is set out in detail below.

## Procedural matters

### Section 16

24. There has been some debate as to the wording of the request which involved the use of the word "fraudulent". The Council has provided an explanation to the Commissioner of the nature of the repayments. It seems that there are two categories of repayment, those which were the result of criminal convictions and contained a compensation order as part of the sentence ("criminal repayments") and those where the Council contacted an individual and asked for the return of money on a voluntary basis ("voluntary repayments").
25. In particular, the Council stated to the Commissioner that the wording of the request, which used the word "fraudulent" meant that the Council did not hold any relevant information. The Council explained that it did not consider any of the voluntary repayments to have been made in relation to fraudulent expenses claims. It maintained that the expenses claims had not been repaid as a result of there being any wrongdoing, but that judged by today's standards, the claims were considered to be excessive and the Council had sought to recoup some of this money. Therefore, no repayments could be considered to be fraudulent and,

as a result, it did not hold any information covered by the request. However, this point was not addressed in the original correspondence with the complainant, either in the refusal notice or in the internal review.

26. In investigating the complaint, the Commissioner has been able to establish that the complainant is seeking details of all repayments made to the Council relating to the expenses claims, whether these were criminal repayments or voluntary repayments. This was established during correspondence with the complainant in August 2005, in which the complainant stated that it would have been prepared to narrow the request to simply the voluntary repayments, but that, ideally, details of all repayments should be released.
27. Section 16 of the Act requires public authorities to provide advice and assistance to persons who have made or are going to make information requests with a view to establishing the information that the complainant was seeking. The full text of section 16 can be viewed in the Legal Annex at the end of this Notice.
28. Given the word 'fraudulent' is clearly open to interpretation, the Commissioner considers that the Council should have clarified the information that the complainant was seeking with his information request as this would have enabled them to provide a more detailed, focussed response to the complainant when the initial refusal and internal review were carried out. In turn, this would have allowed the Commissioner to more readily identify the relevant issues and reduced the need for some of the correspondence on this case.

## Section 12

29. Once the Commissioner had established the extent of the request, the Council submitted that to provide all of the information would exceed the appropriate limit.
30. Section 12 provides that public authorities are not obliged to respond to requests for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit. The appropriate limit for local authorities is currently £450, which is calculated as being work resulting in up to 18 hours of staff time at £25 per hour. Where requests are likely to take longer than 18 hours to answer, the public authority is not compelled to answer it. The full text of section 12 can be found in the Legal Annex.
31. The Commissioner asked the Council to provide a full explanation as to whether the appropriate limit would be exceeded by responding to the request for information from the complainant. In responding, the Council outlined what information was held and how it was stored.

## Criminal repayments

32. The Council stated that in relation to the convicted members, information relating to criminal repayments and voluntary repayments is held. In view of this, it should be possible to provide details of all repayments. Details of the convictions and the attempts to recover money through civil proceedings which led to the voluntary repayments are held across two departments, namely Legal Services

and Audit Services. In Legal Services, a paper file is held for all of the 23 convicted members, while Audit has lists provided by the police as a result of Operation Danum and holds spreadsheets containing the details of repayments. Using both sets of information, the Council stated that it should be possible to ascertain details of the convicted members' criminal and voluntary repayments, though it may be time-consuming to do so.

### Voluntary repayments

33. In relation to the voluntary repayments by non-convicted members / officers, the Council felt the information was probably held, but that to identify and retrieve it would be more problematic. The Council stated that it is unlikely that a full set of information would be held for all of the voluntary repayments and that information is again held across more than one department, chiefly Legal Services and Audit Services. It would therefore be necessary to collate the information relating to expenses claims (some of which were incurred on the Council's credit card) and to cross-reference figures against the names of those involved to verify that the information held is accurate.
34. To determine what amount should be repaid, the Council devised some simple formulas to provide an indication as to what level of claim would be considered reasonable now. Once this was ascertained, the Council sought to recover the difference between that sum and what was actually claimed. In relation to the use of the Council's credit card, letters were sent to members and officers advising of amounts which should be repaid, while letters before action were sent to a small number of officers but this action was not pursued.
35. The situation is complicated by the nature of the repayments. These sometimes differed between deductions from officers' salaries / members' allowances and direct repayments. Therefore, the type of information which would need to be consulted in order to determine the precise amount repaid is likely to differ according to which type of repayment was made.
36. Having provided this explanation, the Council supplied the Commissioner with a breakdown of the time it would take to supply the information and was based on two officers, one from Legal and one from Audit working together in view of the way the information is held. The estimate was submitted broken down into the time taken to supply the information in respect of the criminal repayments and the voluntary repayments.
37. It was estimated that it would take 13 hours to provide the information relating to the criminal convictions. This would be broken down as follows:
  - a) determining whether the information is held – 1 hour
  - b) locating it – 2 hours
  - c) retrieving it – 4 hours
  - d) extracting it – 6 hours
38. As for the voluntary repayments, it was estimated that it would take a total of 20 hours to provide the information. This would be broken down as follows:
  - a) determining whether the information is held – 1 hour

- b) locating it – 4 hours
- c) retrieving it – 6 hours
- d) extracting it – 9 hours

39. The Council therefore estimates that it would take a total of 33 hours to provide the entirety of the information. The Commissioner has considered whether the estimates above could be considered to be reasonable.
40. The Council has provided an explanation as to how the information requested is held, and an indication as to the volume of the information. The report provided to the Commissioner by the Council would seem to support the suggestion that the information is voluminous in nature and that it would take some time to locate, retrieve and extract.
41. In relation to the criminal convictions, the Council has submitted that the information is, at least in part, held in paper files in Legal Services. These files contain details of both the monies recovered as a result of the criminal repayments and the voluntary repayments together. It has submitted that to separate out these figures “would require extensive work and may not be possible at all”. In the first correspondence which raised the issues of costs, the Council’s initial assessment was that it would take approximately 30 minutes to go through each file, which would amount to 11½ hours work. In view of the nature of the information involved, this would seem to be a reasonable estimate of time, and would support the more detailed breakdown provided to the Commissioner highlighted in paragraph 35.
42. The Commissioner is not convinced however that it would take a further 1 hour to determine whether the information relating to the criminal payments is held, given that the Council has already stated that it is held. However, there is no evidence to suggest that it is not reasonable to estimate that it would take 2 hours to locate the paper files and the other information from Audit Services required to answer the request.
43. As for the estimate involving retrieval and extraction of the information, the Commissioner is content that the estimates of time involved here are reasonable. He is satisfied that the information held by the Council is held in such a way that it contains details of the criminal repayments and the voluntary repayments and have submitted that the real difficulty in answering the request would lie in extraction of the information. It indicated that two officers, one from Legal and one from Audit, would be required to extract the information given that the information is held in more than one department. The information compiled from the various files would therefore need to be cross-checked to ensure it was precise.
44. Turning to the voluntary repayments, the Council have submitted that the information is probably held. However, for the Council to assure itself that the information is held, the Commissioner is prepared to accept that it may take an hour to determine this.

45. The Commissioner is aware that voluntary repayments were made by members and officers in relation to expenses claims, use of the Council's credit card and claims relating to telephone calls. Other claims were examined in respect of overseas visits, but no repayments were made.
46. The Commissioner is aware that a number of voluntary repayments were made, but that a greater number of repayments were requested. Some of the repayments were made by deductions from members' allowances / officers' salaries and others were made in the form of direct repayments. The Commissioner is also aware that there were a number of voluntary repayments made and that these repayments were made across the range of claims listed above in paragraph 43.
47. Given the information provided by the Council, the Commissioner is satisfied that the Council's estimate of time it would take to comply with the request is a reasonable one. The voluntary repayments are not held in one place and as they cover a variety of claims, it is likely to take some time to be able to produce a comprehensive picture of the repayments in order to answer the request. The Commissioner is therefore content that it is a reasonable estimate to suggest that it would take four hours to locate the information, six more hours to retrieve it from various locations and formats and a further nine hours to extract the information. As in paragraph 41, the Council submitted that the time for extraction involves two officers cross-checking the information to ensure that the information is accurate.
48. Having considered the facts and reached this view, the Commissioner believes that a total of 32 hours is a reasonable estimate of the time in which it would take in order to deal with the request as a whole.

## Section 16

49. The Commissioner is aware that the issue of section 12 was only raised during the investigation of this case. Therefore, the Council has not contacted the complainant to ask whether the request could be narrowed in such a way that the appropriate limit was not exceeded.
50. While the Commissioner has not raised this issue with the Council earlier, where public authorities rely on section 12 of the Act, the section 45 code of practice states that it is best practice to contact the complainant to see if the request can be narrowed so that the appropriate limit is not exceeded. As this was not done, the Commissioner considers that the Council's obligations under section 16 were not fulfilled, although the Commissioner recognises that this is largely a result of the initial handling of the case under section 40 of the Act and not section 12.

## Exemption

### Section 21

51. Section 21 of the Act provides that information which is reasonably accessible to the applicant by other means is exempt from disclosure. The full text of section 21 is provided in the Legal Annex to this Notice.

52. The Council briefly submitted that the information sought by the complainant in relation to the names and repayments of those convicted was available by other means. It was suggested that this information was already in the public domain, but it later transpired that the information would only be available to the public via court records and that this information would only relate to the names of those convicted and any compensation orders which were issued as part of the sentence.
53. The Council has not provided sufficient evidence to support this submission. It has not for example explained whether these particular court records are always available for inspection by members of the public or that it would be possible for members of the public to search for the court records from the limited information in the public domain. The Commissioner believes that an individual would need to know certain key data to locate the judgments. For example, the names of those convicted and the courts in which they were convicted is information likely to be important in searching for the court records.
54. There is insufficient evidence to say that the names of those convicted are already in the public domain. A brief internet search on the matter yielded inconclusive results, with the number of convictions differing across a number of reports. From the information available, the Commissioner concludes that the information is not readily accessible by other means.

#### Section 40

55. The Commissioner has considered whether the information requested could be disclosed if the complainant were to narrow the request so that it would not exceed the appropriate limit. In doing this, particular consideration has been given to the exemption under section 40 of the Act which was cited by the Council as reason for withholding the information when the original refusal was made.

#### Criminal repayments

56. In relation to the criminal convictions, the Commissioner considers that to disclose the names of those convicted and the amount repaid by compensation order would not contravene the DPA. This information is the result of a conviction which has followed due process and took place in the relatively recent past. While the Commissioner would not expect this information to be routinely disclosed in perpetuity as this may prevent the rehabilitation of offenders, the circumstances at this point in time would indicate that to provide this part of the information in question would not breach any of the data protection principles, in particular the first principle.

#### Voluntary repayments

57. The situation relating to voluntary repayments is somewhat different. The Council has submitted that the voluntary repayments relating to those convicted were made in the expectation that the repayment would be kept confidential. The

Council wrote to each of those convicted with letters before action with a view to conducting civil proceedings to reclaim the money.

58. The Commissioner recognises that it is an established principle that letters before action are sent on a confidential basis. It would therefore be unfair to disclose the information requested as this would significantly alter the arrangements which those who repaid the money had agreed to.
59. The Commissioner is also aware that not all of the convicted parties were in a position to voluntarily repay money that was asked for in the letter before action. To name those that did repay a sum and provide details of the amount involved would not therefore be fair as it would inadvertently penalise those who had returned money, particularly those who repaid the full amount. It could, for example, be read into smaller repayments made on the basis of limited circumstances that the crime was less serious when this would not necessarily be the case.
60. It is also likely to be unlawful on the basis of a breach of a duty of confidence. Some of the repayments are, according to the Council, the subject of explicit confidentiality agreements, while the remainder would be the subject of implicit agreements.
61. The situation regarding voluntary repayments of those who were not convicted is less uniform still. The Council has stated that the repayments were not as a result of fraudulent repayments, but “excessive” ones. Such claims would not be considered reasonable when viewed by the today’s expenses policy, but are not considered by the Council to be evidence of wrongdoing and there is no reasonable prospect that the claims could be recovered in a court of law. This is evidenced by the fact that a small number of officers were sent letters before action (despite not being prosecuted) in an effort to recover expenses claims and these officers refused, citing the policy and culture in place at the time.
62. In relation to this point, the Council have submitted that there was no clear guidance in place at the time in relation to expenses claims and this has made it difficult to pinpoint “unreasonable” expenses claims. Further, the culture in place at the time may indeed have influenced the actions of some members / officers and impacts upon whether some individuals are willing to repay any money.
63. Having contacted a number of non-convicted members / officers, it is clear that some money was repaid in full, whether from allowances / salaries or in direct payments. Others have only repaid a proportion of the money requested, often as a result of personal circumstances. However, it is apparent that some members / officers have not repaid any money at all. This may be because in some cases the individuals involved have left the Council or because the people involved feel that the expenses claims made were in accordance with practices at that time and therefore no wrongdoing took place.
64. In view of the above, the Commissioner is satisfied that to disclose the information requested regarding voluntary repayments would be unfair as it would adversely affect the people who have repaid money to the Council, whether in

part or in full. The Commissioner believes that it is impossible to determine the motives of those who made the excessive expenses claims and therefore no distinction could be made between repayments from officers / members who may have acted inappropriately and those who, for example, misunderstood the expenses policy. This is evidenced by the fact that no legal action has been taken against those who have made voluntary repayments.

65. Those who were not convicted of an offence may be accused of having done so if it was revealed that they made voluntary repayments. This would have the effect of tarnishing the individual's reputation, in effect penalising him/her for honesty in repaying the money. From the information requested and the way in which the information is held by the Council, the Commissioner considers that it would be difficult to distinguish the motives of those who repaid the money and it would unfairly penalise these individuals over those who only made partial or no voluntary repayments
66. The Commissioner is satisfied that to provide the information would therefore breach the first data protection principle in that it would be unfair. In view of this, the Commissioner has not gone on to consider whether to disclose the information would also be unlawful, although the Council has raised an argument that the repayments have either an explicit or implicit duty of confidence attached to them.
67. Although to disclose the details of repayments would be unfair, the Commissioner has considered whether it would be possible to provide anonymised payments, such as A repaid £100, B £150 and so on. This would allow the complainant to ascertain the size of the individual repayments. While the Commissioner believes that to do this would not breach the data protection principles, when he contacted the Council to suggest this as a way forward to informally resolve the complaint, it contended that to do this would breach the appropriate limit as outlined above. Therefore, the Commissioner has not given this point any further consideration.
68. The Commissioner is aware that figures exist for the total repayments made to the Council. He considers that to release these would not breach the DPA.

## The Decision

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69. The Commissioner has decided that the following elements of the request were not dealt with in accordance with the Act:

The Council did not clarify the scope of the request and later discrepancies emerged between the complainant and the Council's interpretations of the request. As the scope would appear to have been unclear, the Commissioner considers that the Council did not deal with the request in accordance with section 16 of the Act.

However, the Commissioner's decision is also that the public authority dealt with the request in accordance with section 12 of the Act, in that to respond to the request would exceed the appropriate limit.

The Commissioner has also decided that the Council breached section 16 in relation to this matter, by not offering the complainant the opportunity to narrow the request in order to bring it within the appropriate limit. A request in relation to the criminal repayments would have been an appropriately narrowed request.

The Commissioner has therefore also considered whether the Council were correct to apply an exemption under section 40 of the Act:

The Commissioner's decision is that the Council dealt with the request in relation to the voluntary repayments in accordance with section 40 of the Act in that it would breach the first data protection principle to disclose the information.

However, the Commissioner has also decided that the request in relation to the criminal repayments was not dealt with in accordance with the Act in that the information is not properly exempt under section 40.

## Steps Required

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70. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

The Council should supply to the complainant the information relating to the criminal repayments and the total figures of all the repayments.

71. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

## Failure to comply

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

## Right of Appeal

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73. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 22nd day of January 2007**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

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

## Legal Annex

### Freedom of Information Act 2000

#### Section 12 - Exemption where cost of compliance exceeds appropriate limit

**Section 12(1)** provides that –

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

**Section 12(2)** provides that –

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

**Section 12(3)** provides that –

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

**Section 12(4)** provides that –

“The secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

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

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

**Section 12(5)** – provides that

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

## **Section 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 and 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) to that case.”

## **Section 21 - Information Accessible by other Means**

**Section 21(1)** provides that –

“Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.”

**Section 21(2)** provides that –

“For the purposes of subsection (1)-

- (a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and
- (b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.”

**Section 21(3)** provides that –

“For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.”

## **Section 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.

## **Data Protection Act 1998**

**Section 1(1) DPA** provides:

In this Act, unless the context otherwise requires –

"personal data" means data which relate to a living individual who can be identified –

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;