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## FREEDOM OF INFORMATION ACT 2000 (SECTION 50)

### DECISION NOTICE

Dated 8 June 2006

**Name of Public Authority:** Pembrokeshire County Council  
**Address of Public Authority:** County Hall  
Haverfordwest  
Pembrokeshire  
SA61 1TP

#### **Nature of Complaint**

The Information Commissioner (the "Commissioner") has received a complaint which states that the following information was requested from Pembrokeshire County Council (the "Council") under section 1 of the Freedom of Information Act 2000 (the "Act"):

*"Print-outs of all e-mail traffic referred to at paragraph 129 of the Ombudsman's report [dated 20 December 2004]."*

It is alleged that:

*The Council failed to provide the complainant with all the information requested in accordance with its obligations under section 1(1) of the Act because it applied the exemption at section 40 of the Act inappropriately by redacting the names of the senders and recipients of the e-mails.*

#### **The Commissioner's Decision**

Under section 50 of the Act, except where a complainant has failed to exhaust a local complaints procedure, or where the complaint is frivolous or vexatious, subject to undue delay, or has been withdrawn or abandoned, the Commissioner is under a duty to consider whether the request for information has been dealt with in accordance with the requirements of Part I of the Act and to issue a Decision Notice to both the complainant and the public authority.

The Commissioner's decision is that the Council applied section 40(2) of the Act inappropriately in redacting the names of employees. As a consequence, the Council did not respond to the request in accordance with the requirements set out in section 1(1) of the Act. Section 1(1) states:



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*“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.”*

## Background

The Council identified a single e-mail exchange consisting of three e-mails, all dated 23 July 2003, as being relevant to the request. It released copies of these e-mails to the complainant, but redacted the information described below, citing section 40 of the Act.

In particular, section 40(2) provides:

*“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”*

The relevant condition in this case is section 40(3)(a) of the Act. This provides:

*“in a case where the information falls within any of the 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 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).....”*

The information withheld consisted of the names of the senders and recipients of the e-mails (employees of the Council) and the name of an individual member of the public who was the subject of the e-mail discussion.

The names of five Council employees appear, either as senders, recipients or copy recipients of the three e-mails.

## The Complainant's View

The complainant argues that the names of senders and recipients should not automatically be treated as personal data under the terms of the Data Protection Act 1998. The complainant further argues that the identity of the senders and recipients of the e-mails, together with their positions in the Council, form a material part of the documents.



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The complainant has not indicated that he wishes to complain about the redaction of the name of the member of the public. Accordingly, this redaction has not been considered as part of this case and is not covered in detail in this Decision Notice.

### The Council's Response

The Council believes that the names of the employees do not constitute a material part of the request, and therefore the Council has fully responded to the request for information by providing a redacted copy.

However, the Council has also argued that the exemption at section 40(2) applies, as the names of the employees constitute 'personal data' and disclosure in this case would breach the first data protection principle.

Part 1 of Schedule 1 to the Data Protection Act 1998 (the "DPA") sets out the first data protection principle:

*"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"*

The Council has argued that the individuals involved were middle-ranking employees and it would be unfair to disclose their identities. In particular, the Council has emphasised that these individuals were not in position to make a final decision on the issues that were discussed in the e-mails.

Furthermore, the Council has argued that it does not believe any of the conditions in Schedule 2 of the DPA are met in this case.

Finally, the Council has stated that it has taken the lead of the Commissioner for Local Administration in Wales (the "Ombudsman") in redacting the names of individuals. The Ombudsman's report, dated 20 December 2004 and in which the e-mails in question were referred to, was anonymised throughout.

### The Commissioner's Decision

In reaching his decision, the Commissioner has looked at the following issues:

- Was the Council correct to take the view that the names of employees did not constitute a material part of the request?
- Does the redacted information constitute 'personal data'?



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- If so, would its disclosure breach the first data protection principle?

### Scope of the request

The complainant's request was for: *"Print-outs of all e-mail traffic referred to at paragraph 129 of the Ombudsman's report [dated 20 December 2004]."*

The Commissioner can see no good argument that the request for information does not include any names which appear in the "e-mail traffic". Where public authorities are unclear as to the scope of a request, they should certainly take steps to clarify it with the applicant. However, the Act does not permit a public authority to take an independent view as to what information an applicant wants or to take a restrictive view of a request simply because that suits the wishes of the public authority itself.

### Does the redacted information constitute 'personal data'?

Personal data is defined in section 1(1) of the DPA as:

*"...data which relate to a living individual who can be identified –  
(a) from those data, or  
(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual"*

The Commissioner has seen an unredacted version of the e-mail exchange and is satisfied that the information in this case does constitute personal data of which those individuals are the data subjects.

### Would disclosure breach the first data protection principle?

The first data protection principle, cited by the Council, requires that personal data be processed fairly and lawfully.

Each case must be considered on its merits. The Commissioner accepts that there will be cases in which there would be clear unfairness to individuals in the disclosure of their names alone. For instance, it may be unfair (and therefore a breach of the first data protection principle) to disclose the names of staff working in the prison service or in controversial scientific research.



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However, in this particular case, the Commissioner does not agree that there would have been any unfairness to Council staff if their names had not been removed from the e-mail that was supplied to the complainant in response to his information request.

The Commissioner has considered whether different considerations may apply according to seniority of the staff involved. Four of those who are named in the e-mail string are relatively senior and may be expected, as part of their general duties, to have relations with the public and with organisations other than the Council, in the course of which their names will be routinely disclosed. The Commissioner is satisfied that it would not be unfair to disclose their names in response to a request under the Act.

The fifth member of staff is relatively junior. It appears that her name only appears in the e-mails because she forwarded one e-mail to the others. Although the Commissioner does not accept that there would be any unfairness in the disclosure of the name of this junior member of staff, he would raise no objection to the Council explaining her role to the complainant.

The first principle also requires that personal data are processed lawfully and, in particular that one of the conditions set out in Schedule 2 of the DPA is satisfied. Paragraph 6 of schedule 2 provides that information is lawfully processed if:

*“The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.”*

The Commissioner is satisfied that the complainant is pursuing a legitimate interest in seeking information under the Act and, because there would be no unfairness to the five members of the Council's staff, that there would be no “prejudice to the rights and freedoms or legitimate interests” of those staff.

## Summary

The Commissioner concludes that the Council applied the Act inappropriately by redacting the names of the employees of the Council. Whilst the names of these individuals do constitute personal data, disclosure would not breach any of the data protection principles and therefore the Council cannot rely on the exemption at section 40(2) of the Act.

## **Action Required**

In view of the matters referred to above the Commissioner hereby gives notice that in exercise of his powers under section 50 of the Act he requires that:



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The Council shall, within 30 days of the date of this Decision Notice, –

Send to the complainant the information requested, with the names of the five officials unredacted.

### **Failure to comply**

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

### **Right of Appeal**

Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process can be obtained from:

Information Tribunal	Tel: 0845 6000 877
Arnhem House Support Centre	Fax: 0116 249 4253
PO Box 6987	Email: <a href="mailto:informationtribunal@dca.gsi.gov.uk">informationtribunal@dca.gsi.gov.uk</a>
Leicester	
LE1 6ZX	

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

Dated the 8<sup>th</sup> day of June 2006

Signed: .....

Anne Jones  
Assistant Commissioner

Information Commissioner  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF