

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 16 May 2011

**Public Authority:** Royal Mail Group PLC  
**Address:** 148 Old Street  
London EC1V 9HQ

### Summary

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The complainant requested information from the Central Collections Management Database (which contains the location details of Royal Mail postboxes in the UK). Royal Mail Group PLC ('the Royal Mail') withheld the information under section 43(2), 43(1) and 22(1) of the Act. The Commissioner has decided that section 43(2) was correctly engaged with regard to information which concerns or reveals the location of postboxes. The Commissioner does not consider that the remaining information falls within any of the exemptions cited. The Commissioner therefore requires that this information should be disclosed. Furthermore the Commissioner considers that the Royal Mail breached section 1(1)(b) and section 10(1) in the handling of this request.

### 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. On 17 March 2010 the complainant made a request for the following information in electronic format: -

*'I'd therefore like to know whether your 'Central Collections Management Database' does include information about each postbox, and exactly what information about each box is stored there. If it*

*does, I would like an extract from this database listing each postbox, with whatever of the following is held there: its number, location description, postcode, and last collection times. For each box, I'd also like whatever location coordinates/data is used to calculate the 'Position of Box on an electronic map'.*

3. On 16 April 2010 the Royal Mail responded to the complainant's request for information and confirmed that the Central Collections Management Database ('the Database') contained the following information: -

- Road/location
- Postcode District
- Box Number
- Barcode
- Collection Office
- Cost Centre
- Box type
- Final Collection Time – Weekday
- Final Collection Time – Saturday
- Northing
- Easting
- Latitude
- Longitude

The Commissioner considers that all of the above information falls within scope of the complainant's request with the exception of collection office and cost centre data.

4. The Royal Mail advised the complainant that it was withholding the requested information by virtue of the exemption at section 43(2) of the Act (the exemption for commercial prejudice) and explained its reasons for doing so. It also provided the complainant with its assessment of the public interest test, although no public interest arguments in favour of disclosure of the information were acknowledged or cited.

5. As the complainant was dissatisfied with the response he had received he requested an internal review to be carried out.
6. On 25 May 2010, the Royal Mail wrote to the complainant with the result of the internal review it had carried out. The Royal Mail upheld its decision to withhold the information requested under section 43(2). In addition, the Royal Mail advised that the information was exempt by virtue of section 22, and that the coordinates data only was exempt under section 43(1).

## The Investigation

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### Scope of the case

7. On 25 June 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant asked the Commissioner to consider whether the Royal Mail had correctly applied the stated exemptions. In addition, the complainant contended that,

*'even if the detailed location data is deemed to be exempt, the arguments for withholding the rest of the data from the Central Collections Management Database are much weaker'.*

The complainant noted that the Royal Mail had released similar information in response to previous FOI requests.

8. The complainant also drew the Commissioner's attention to the timing of the responses provided to him by the Royal Mail in this request, both of which had been provided on the twentieth day following the request for information and internal review of the decision. The complainant contended that such responses at the outside of the time permitted under the Act and recommended in the Commissioner's guidance, were, *'contrary to the spirit, if not the letter, of the Freedom of Information Act'.*

### Chronology

9. On 6 August 2010 the Commissioner wrote to the Royal Mail and asked it to provide him with a copy of the withheld information for the purposes of his investigation.
10. On 8 September 2010 the Royal Mail provided the Commissioner with a sample of the withheld information.
11. On 20 October 2010 the Commissioner wrote to the Royal Mail in order to obtain its submissions to support the exemptions applied to the

complainant's request. In an attempt to reach an informal resolution of this matter, the Commissioner subsequently asked the Royal Mail to provide the complainant with more detailed information in support of the exemptions relied on. The Royal Mail provided the complainant with this information on 6 December 2010.

## Analysis

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### Substantive Procedural Matters

#### Exemptions

#### Section 43(2)

12. Section 43(2) states that,

*'Information is exempt information if its disclosure under this Act would, or would be likely to prejudice the commercial interests of any person (including the public authority holding it).'*

This is a qualified exemption, and is therefore subject to the public interest test.

13. In its letter to the complainant of 6 December 2010, the Royal Mail confirmed that, *'release of the requested information would be likely to prejudice Royal Mail's commercial interests, and that the likelihood of such prejudice materialising is high'*. In dealing with the issue of the likelihood of prejudice, the Commissioner notes that in the case of *John Connor Press Associates Limited v The Information Commissioner* (EA/2005/0005), the Information Tribunal ('the Tribunal') confirmed that where it has been claimed that prejudice "would be likely" to occur, *'the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk'*. He has viewed this as meaning that the risk of prejudice need not be more likely than not, but must be substantially more than remote.
14. In order to determine whether the exemption is engaged the Commissioner has first considered whether the prejudice claimed relates to the commercial interests of the Royal Mail.
15. The term 'commercial interests' is not defined in the Act. However the Commissioner has considered his awareness guidance on the application of section 43. This states that,

*'...a commercial interest relates to a person's ability to participate competitively in a commercial activity, i.e. the purchase and sale of goods or services.'*

16. In the case of FS50122723, the Commissioner accepted that the Royal Mail engages in commercial activities. Although it is principally funded by tax payers, like private companies, the Royal Mail operates within a competitive communications market and consequently there are aspects of its operations which have to be protected from unfair competition
17. As the Tribunal made clear in *Hogan v Oxford City Council* (EA/2005/0026 EA/2005/0030), in cases where prejudice to a particular interest(s) is being claimed, then the nature of that prejudice must be considered.

*'An evidential burden rests with the decision maker to be able to show that some causal relationship exists between the potential disclosure and prejudice, and the prejudice is, as Lord Falconer of Thoroton has stated, 'real, actual or of substance' (Hansard HL (Vol. 162, April 20, 2000, col. 827)). If the public authority is unable to discharge this burden satisfactorily, reliance on 'prejudice' should be rejected'.*

In its responses to the complainant's request and its submissions to the Commissioner, the Royal Mail argued that disclosure of the information requested would be likely to prejudice its commercial interests in two main respects.

### **The reputational damage argument**

18. In its original response to the request on 16 April 2010, the Royal Mail explained that it, *'cannot guarantee the accuracy of the location information which is currently held in the database'*. Although the information held was sufficient for the Royal Mail's operational requirements, such as route planning, *'it would not necessarily be accurate for use in other ways'*. The prejudice claimed by the Royal Mail in this respect, was the dissatisfaction which would be likely to be caused to Royal Mail customers by the disclosure of, *'incorrect details of postboxes being quoted outside of Royal Mail's control'*, and the consequential damage to *'public perception of Royal Mail'*. This initial argument with regard to the accuracy of the information contained in the Database was not given prominence in the Royal Mail's internal review decision and its later submissions to the Commissioner.
19. During the course of his investigation, the Commissioner contacted the Royal Mail to enquire as to how accurate and comprehensive the postbox location information stored in the Database was at the time of the complainant's request for this information. Although the Royal Mail

could not be specific, it did confirm that the information held was probably at least 90% accurate at that time. Furthermore, as of March 2011, the Royal Mail confirmed that the information recorded in the Database, was very largely the same as at the time of the complainant's request. Any changes in the information stored would have been with regard to changes which had since occurred at the local level (i.e. the installation of a new postbox or the removal or relocation of another). Also, the Royal Mail advised that some of the precise location coordinates data may have been updated in some instances (following fixing from route drivers).

20. It is evident from this clarification that at the time of the complainant's request, the postbox location information held was largely accurate and complete. Since the Royal Mail had initially collected the coordinates data in July 2008, and the complainant first submitted his request on 17 March 2010, the Commissioner considers it highly unlikely that the accuracy of the information recorded would have altered to any significant degree in the intervening twenty months. The Commissioner considers that any slight discrepancies with regard to the precise coordinates of some postboxes would not (in a disclosure scenario) have posed any realistic problems with regard to customer dissatisfaction, since the vast majority of customers would only be looking to establish the general whereabouts of a particular postbox on a particular street or in a particular area.
21. For the reasons given above, the Commissioner is not satisfied that prejudice would have been likely to be caused to the Royal Mail's commercial interest via damage to its reputation or public perception, on the grounds of the accuracy of the information held. However, the essential accuracy of the information does have an important bearing on the nature of the second prejudice put forward by the Royal Mail in this specific case.

**The prejudice to the Royal Mail's ability to exploit the information commercially argument.**

22. In its initial response to the request, the Royal Mail advised the complainant that it was also its,

*'intention to renew the CMD data and use the updated information to improve the information available to the public via our websites. A postbox finder is intended to be added to the branch finder feature on the Post Office website in the future'.*

Slightly more detail was provided by the Royal Mail following its internal review when it informed the complainant that,

*'The information has a commercial value to Royal Mail which would be undermined by its release into the public domain. This would clearly be likely to prejudice the commercial interests of Royal Mail; significantly reducing, if not removing completely, Royal Mail's ability to exploit the information commercially'.*

23. Confirming that it would, *'in the future'*, be providing postbox location information through its websites, the Royal Mail stated that,

*'Releasing this raw data would deny Royal Mail Group the full benefit of providing this service directly to customers and attracting visitors to its own website through this innovation. It would be detrimental if members of the public were drawn to alternative websites for reasons of cross-marketing and promotion of other services provided by Royal Mail and Post Office Limited'.*

24. The Royal Mail did not provide the complainant with any further details as to how exactly it intended to commercially exploit the postbox location information requested.

25. Following further enquiries, the Royal Mail informed the Commissioner that at the time of receipt of the complainant's request, two products were in development which were to use the postbox location information held in the Database and which were commercially valuable to the Royal Mail.

26. The first of these was an update to the Royal Mail's online branch locator tool which would enable customers to search for postboxes.

27. The Royal Mail advised that some work was due to be carried out before the new postbox search tool would be available, mainly checks of the precise locations of all postboxes through GPS (Global Positioning System) enabled PDAs (Personal Digital Assistants), and changes to the database extraction process. This latter alteration was expected to cost £17,000. The Royal Mail confirmed to the Commissioner that it did not plan to charge customers for this new service.

28. The Royal Mail expanded on its concerns about disclosure in submissions to the Commissioner.

*'The release of any part of the requested information at the time of the request would have jeopardised the anticipated benefits of the update. It was expected that the update would mean that more members of the public would access Royal Mail's website in order to find a postbox, which would provide Royal Mail with significant marketing opportunities. Having found the website useful, customers would be more likely to visit it again. At that time there were already open*



*source websites seeking to collate the location of all postboxes across the country and it was likely that those websites would use the requested information to supplement their data. That would make those sites more comprehensive and more useful and as a result, fewer people would visit Royal Mail's website to use the updated branch locator tool'.*

29. The Royal Mail has informed the Commissioner that the update project for the online tool is currently on hold. However, since the project was ongoing at the time of the complainant's request, the Commissioner does not consider that this subsequent development has any material bearing on the strength and validity of the concerns put forward by the Royal Mail in its submissions to the Commissioner.
30. The second product that was in development by the Royal Mail at the time of the complainant's request, was an iPhone application ('the iPhone app'). The Royal Mail explained that the iPhone app would allow iPhone users to locate postboxes by reference to a map, and that the iPhone app would draw on data from the Database. Clarifying the position in submissions to the Commissioner, the Royal Mail confirmed that although the iPhone app would be available to download for free, it was intended to serve as a 'prequel' to an 'umbrella app', which would include the postbox locator tool and other Royal Mail features. The Royal Mail intended to charge iPhone users £0.59 to download the umbrella application.
31. In its submissions to the Commissioner, and in a letter to the complainant on 6 December 2010, the Royal Mail advised that at the time of the request there was already a rival iPhone application called, 'Find Postboxes' which was created and designed by Elbatrop Ltd. Elbatrop Ltd charges £0.59 for downloading the app. In terms of where Elbatrop had sourced its information from, the Royal Mail advised that,

*'We cannot say for certain where the information for that app comes from, but it is likely to come from a combination of information we have already released in response to previous requests and open source websites that seek to collect postbox location data from the public'.*

32. Whilst the Commissioner is unable to comment on the source of the postbox location information currently used by Elbatrop (and any other rival applications), he accepts that if the Royal Mail were to make detailed postbox location information freely available it is likely that its competitors would seek to utilise that information to their commercial advantage.



33. In his request for internal review of 26 April 2010, the complainant highlighted the fact that the Royal Mail had provided similar information previously (albeit not precise location details of postboxes) and assumed that, *'it is only the location coordinates that are causing the problem this time'*. However, in submissions to the Commissioner, the Royal Mail explained that when they had responded to requests for postbox location information in 2009, it did not have any plans to commercially exploit this information via its website and the iPhone app. Noting that the application of the exemptions is very context specific, the Royal Mail stated that had it,

*'sought to withhold this information under section 43(2) at that time, we would have expected the Commissioner to rule that we had not applied the exemption correctly, as we would have had no clear idea of what damage would be caused by releasing the information'*.

34. The Commissioner agrees that with regard to section 43(2) in particular, the context in which the request is made is crucial. The Commissioner does not consider there to be any inconsistency in the way in which the Royal Mail responded to the complainant's request, given the new intention to commercial exploit the postbox location information. The Royal Mail also confirmed that, to date, it has not released the coordinates data.
35. With regard to the differences between the Elbatrop app, and its own planned iPhone app, the Royal Mail also explained to the Commissioner that the information in the 'Find Postboxes' app does not use the coordinates data held in the Royal Mail's own database (presumably because this information, although ascertainable through individual mapping of postboxes, has never been previously disclosed by the Royal Mail). Unlike the Royal Mail iPhone app, the Elbatrop app would not automatically update when the Database updates. The Royal Mail contended that disclosure of the coordinates data in particular, would mean that there would be very limited difference between the quality of postbox location information provided by the Royal Mail, and that provided by their commercial rivals.
36. In its letter to the complainant of 6 December 2010 (provided to the complainant at the request of the Commissioner), the Royal Mail explained that,

*'At that time [of the request], there were already open source websites seeking to collate the location of all postboxes across the country and it was likely that those websites would use the requested information to supplement their data. That would make those sites more comprehensible and more useful and as a result fewer people would visit Royal Mail's website to search for the information in question'*.

37. The Commissioner accepts that at the time of the request, there were open source websites which would have had a commercial interest in obtaining the detailed and comprehensive postbox location information held by the Royal Mail in its Database. To use the example cited by the Royal Mail, the Commissioner examined the website of Elbatrop where it is stated that,

*'Not all areas feature complete coverage yet, although most major (and many not so big) metropolitan areas have excellent coverage. We're adding more postbox locations to the database daily so the data will only ever improve – and even if we don't know about your absolute closest mailbox, we'll normally have one nearby which might be good enough in many situations'.*

38. It is clear from this caveat, that Elbatrop (and other similar competitors), do not have possession or access to the comprehensive and complete postbox location information held by the Royal Mail. The Commissioner considers that had the Royal Mail released the requested information into the public domain, then it is likely that Elbatrop and other similar commercial rivals of the Royal Mail, would have used the information to update their own applications/databases and would have regarded the disclosure as something of a windfall with regard to postbox location information.

39. Furthermore, the Royal Mail contended that,

*'Release of Royal Mail's own information would mean that the difference between the quality of information which Royal Mail plans to release itself and information provided by others would be very limited'.*

40. The Commissioner has clarified this point with the Royal Mail. He understands that the argument here is that because at the time of the request the Royal Mail held significantly more precise and complete postbox location information than any of its commercial rivals, the provision of this information to such competitors would mean that the Royal Mail's commercial interests would be likely to be prejudiced. Since the complete and detailed information held by the Royal Mail (subject to automatic updates) could be considered to give the Royal Mail a commercial advantage in the field of locator applications, then easy accessibility to the same information by rival competitors, would be highly likely to diminish the Royal Mail's commercial advantage in what is, for it in particular, a fledgling market.

41. A further form of likely prejudice caused by disclosure of the information requested was set out by the Royal Mail in its internal review decision of 25 May 2010. It was argued that,

*'Releasing this raw data would deny Royal Mail Group the full benefit of providing this service directly to customers and attracting visitors to its own website through this innovation. It would be detrimental if members of the public were drawn to alternative websites for reasons of cross-marketing and promotion of other services provided by Royal Mail and Post Office Limited'.*

42. In subsequent submissions to the Commissioner, the Royal Mail confirmed that,

*'The release of part of the requested information at the time of the request would have jeopardised the anticipated benefits of the update. It was expected that the update would mean that more members of the public would access Royal Mail's website in order to find a postbox, which would provide Royal Mail with significant marketing opportunities. Having found the website useful, customers would be more likely to visit it again'.*

43. In submissions to the Commissioner, the complainant has expressed doubt about any damage to the Royal Mail's commercial interests which might be caused by disclosure of the requested information. The complainant stated (with regard to the online search tool),

*'Given the monopoly nature of many of Royal Mail's services and the low demand for postbox search tools, I would contend that any additional income directly resulting from such a search tool would be minimal, and probably amount to less than the cost of developing the tool in the first place'.*

44. As regards the 'IT-based search tool', which the complainant correctly conjectured as being an iPhone application, the complainant commented that, *'I would suspect that the development costs would outweigh any income generated'.*

45. Responding to the complainant's presumptions on this point, the Royal Mail advised the Commissioner that they did not agree with the assertion that any additional income generated would be minimal. In relation to the online tool (which the Royal Mail had not intended to charge for), the Royal Mail repeated that it has,

*'always maintained that the prejudice it believes it would be likely to suffer would flow from the impact on visitor numbers to the website and the reduced opportunity for cross-selling and advertising'.*

46. Acknowledging that estimates were difficult to make in the absence of empirical evidence, the Royal Mail contended that,

*'it seems logical at the least to estimate that the tool will attract new users to the website, which offers services and products which are income-generating, and that those users may sometimes purchase one or some of those other services'.*

47. The Commissioner would accept the Royal Mail's rationale here, which refers to a marketing strategy well recognised in the commercial and advertising sectors. He has noted in this respect the prevalence with which on-line advertisers seek to attract users to their home websites via links within advertisements.
48. The Commissioner does not consider that the complainant has credibly supported his supposition that the development costs of the iPhone app would outweigh any income generated. The fact that one commercial competitor of the Royal Mail at least (Elbatrop) currently charges for accessing such information, is a reasonable indication of the potential for income generation in this area. It would not make commercial sense for any company to develop and implement a product/feature whose development costs exceeded the scope for income generation and potential for profit. Such decisions are not taken without careful analysis of the considerations involved and the Commissioner is satisfied that the Royal Mail has credible grounds for believing there is a commercial potential in the iPhone app that goes beyond the merely minimal.
49. It is also the case that the potential for income generation afforded by the Royal Mail iPhone app and the online search tool (through cross-marketing and charging for the sequential 'umbrella' application) should be considered in the context of the commercial market and field in which the Royal Mail was operating at the time of receiving the complainant's request. In its submissions to the Commissioner, the Royal Mail referred to a recent update of the Hooper Report (an independent review of the postal service in the UK commissioned by the government and originally published in December 2008) and the identification of poor cash flow as a key obstacle to driving through modernisation. In view of such findings, and against a background of steadily declining mail volumes, the Royal Mail asserted that, *'It is therefore the case that even relatively modest damage to Royal Mail's revenues could have a significant effect given the nature of Royal Mail's position'.*
50. The Commissioner is of the view that the prejudice claimed (likely loss of cross-marketing opportunities from its website and income generation from the umbrella application) by the Royal Mail, does relate to its ability to participate competitively in the market within which it operates. The Commissioner therefore considers that the

prejudice claimed is connected to the Royal Mail's commercial interests.

51. In considering the prejudice claimed in this case, the Commissioner is also satisfied that that prejudice is *'real, actual or of substance'* and that the Royal Mail has demonstrated a causal link between the disclosure of the postbox location information and the argued prejudice. The Commissioner wishes to emphasise that a key determining factor in his finding that such prejudice would be likely to result from disclosure of the postbox location information requested, is the respective timings of the request and the planned implementation of the search tools devised by the Royal Mail. The complainant made his request on 17 March 2010. At that time, the two search tools which the Royal Mail intended to provide to members of the public remained at the development stage only.
52. During the course of his investigation, the Commissioner asked the Royal Mail to confirm when the iPhone app (the online search tool having been put on hold) was going to be made available. In submissions to the Commissioner dated 31 January 2011, the Royal Mail confirmed that, *'the (postbox location) information is due to be published imminently via the iPhone app'*. As of 8 March 2011, the Commissioner notes that this publication has yet to take place, but he has no reason to think that it will not do so in the very near future. In submissions to the Commissioner, the Royal Mail advised that the instructions process for the iPhone app had required more checks and scrutiny from a legal angle than had been anticipated at the time of the complainant's request.
53. At the time of the complainant's request, the Royal Mail's intended postbox locator tools were under development and intended for publication, but were not yet available to the public. But at the time of the complainant's request, the 'Find Postboxes' app of Elbatrop (and similar open source websites) had already been implemented and was available to the public. As previously noted, the Commissioner considers, as suggested by the Royal Mail, that it is likely that the requested postbox location information would be used by its competitors.
54. Therefore, the disclosure of the information requested to the complainant *at the time of his request*, would not have resulted in a levelling of the commercial playing field in this area, since the Royal Mail's locator tools had yet to be rolled out. Rather, the Commissioner considers that disclosure of the information would have been likely to have resulted in Elbatrop and similar commercial competitors gaining relatively instant access to the most comprehensive and reliable (at that time) source of postbox location information.

55. Accessibility to this information by Elbatrop and others, before the Royal Mail was in a position to commercially exploit the information itself, would, the Commissioner believes, have likely prejudiced the commercial interests of the Royal Mail by denying it the opportunities for cross-marketing for the period that the iPhone app remained in development, but not available, to the public (i.e. potential customers of the Royal Mail). The period of time in which the rival competitors of the Royal Mail could have commercially exploited the information (to the exclusion of the Royal Mail) has now exceeded one year. Given that the Royal Mail had 'concrete' plans to commercially utilise the postbox location information held in its Database at the time of the complainant's request (as opposed to previous occasions when similar information has been requested and provided), the Commissioner is satisfied that disclosure of the information by the Royal Mail would have been likely to prejudice its commercial interests.
56. Whilst Elbatrop and other open source websites could conceivably gather and collate such comprehensive postbox location information via GPS (Global Positioning System), logistically speaking, this would require considerable investment of time and resources. It would clearly be commercially advantageous for Elbatrop and others to have easy access to the most comprehensive and accurate source of this information (that held by the Royal Mail at the time of the request). Since the Royal Mail intends to commercially utilise the information for its own purposes, it logically follows that these purposes would be prejudiced by rival competitors having easy access to such valuable information, and the ability (unlike the Royal Mail at the time of the request) to immediately maximise the commercial benefit of the same.
57. For the reasons explained above, the Commissioner is satisfied that the section 43(2) exemption is engaged in this case in relation to the postbox location information held within the database. However, he is of the view that not all of the information contained within the Database could be considered to fall within the scope of the section 43(2) exemption.
58. Specifically, information such as box number, barcode, box type, and final collection times for weekdays and Saturdays, could not, without reference to the other information held in the Database, provide the location of any particular postbox, and thus could be of no assistance to open source websites or other commercial competitors. The Royal Mail has not provided any arguments as to how the disclosure of such limited information might prejudice its commercial interests, and the Commissioner is therefore not satisfied that the exemption has been shown to be engaged in relation to this particular information.



59. In his submissions to the Commissioner, the complainant highlighted the fact that,

*'Royal Mail do not seem to have properly considered whether a subset of the information I requested could be released without triggering their claimed exemptions. I disagree most strongly with Royal Mail's unsubstantiated assertion that, 'the release of any part of the requested information at the time of the request would have jeopardised the anticipated benefits of these products'.'*

60. The Commissioner would entirely concur with the complainant in regard to his comments about the Royal Mail's flawed consideration of whether partial disclosure of the information requested would have been appropriate in this case. In submissions to the Commissioner, the Royal Mail advised that it could not see,

*'how this stand-alone information could assist the public, with no context, and yet its release would be likely to compromise or degrade the core value of the data from a commercial perspective for Royal Mail'.*

61. Although the Commissioner would agree that the disclosure of the non-postbox location information, in isolation, might be considered to be of little practical value or interest to the public, nor could it credibly be considered to be of real commercial value to competitors.
62. Where the exemption has been successfully engaged (in relation to the location specific information), as section 43 is a qualified exemption, the Commissioner has gone on to consider the public interest in relation to the application of the exemption in this case. Specifically, he has considered whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

### **Public interest arguments in favour of disclosing the requested information**

63. The Commissioner is mindful of the presumption of openness in approaches to requests for information under the Act, and of the strong public interest in openness, transparency, public understanding and accountability in relation to the activities of public authorities.
64. In its internal review decision of 25 May 2010, the Royal Mail stated that,

*'The Universal Service guarantees one delivery for every UK household and business each working day and one collection of mail six days a week and postboxes are a vital part of providing the collection service. Royal Mail recognises therefore that there is public interest in*



*promoting access to postboxes and informing the public of postbox locations'.*

65. The Royal Mail stated that it *'entirely understands the public interest in promoting access to postboxes and informing the public of postbox locations'*. The Commissioner would note that the second public interest point referred to here, that of informing the public of postbox locations, is perhaps the strongest (and certainly the most obvious) public interest argument in favour of disclosure of the requested information.
66. For his part, the complainant put forward a number of public interest factors which he believed formed *'a strong case'* in favour of disclosure in helpfully clear and cogent submissions to the Commissioner.
67. The complainant noted the benefit of having access to the information now, rather than waiting for the tools being devised by the Royal Mail, noting (on 10 January 2011) that, *'the public has therefore been without the data for 9 months and counting'*. The complainant cited the benefit of allowing multiple search tools to be produced by various third parties, suggesting that, *'Different tools may better meet different users' needs'*. Similarly, the complainant highlighted the benefit of competition between search tools, *'which will force operators to innovate and produce tools with better user experience'*.
68. The complainant noted that accessibility to more complete and up-to-date information by existing 'open source' tools, would enable those tools to provide members of the public with more accurate information.
69. Finally, the complainant cited,

*'an interest in being able to get a complete overview of all postboxes, and perform arbitrary analysis of the raw data, rather than being restricted to a few search results or whatever format Royal Mail's planned tools return data in'.*
70. The complainant added that, *'the importance of this point is underlined by the Government's plans to introduce a new 'Right to Data' on top of the existing FOI legislation'*.
71. The Commissioner fully recognises and appreciates that there is some public interest in knowing the location of postboxes and promoting access to the same.
72. The complainant considers that there is a benefit to the public in having access to the information now, rather than waiting for the tools being developed by the Royal Mail, and states that, *'The public has therefore been without the data for 9 months and counting'*. There is

an implied importance and urgency to this statement which the Commissioner considers to be overstated. Whilst the Commissioner accepts that there is a public interest in the information being made available sooner rather than later he does not accept that the public interest in this regard is actually urgent or pressing.

73. Similarly, in his submissions, the complainant proposes a public interest,

*'in being able to get a complete overview of all postboxes, and perform arbitrary analysis of the raw data, rather than being restricted to a few search results or whatever format Royal Mail's planned tools return data in'.*

74. Responding to this point, the Royal Mail advised that it is not clear,

*'as to what is the actual public interest in being able to perform 'arbitrary analysis of raw data' as the complainant suggests. As you are aware, the test is in relation to what serves the general public interest and not what might be of interest from a curiosity or hobby point of view'.*

75. This is an accurate articulation of the public interest test, and the Commissioner would concur with the Royal Mail that he does not consider there to be an actual public interest in the ability to be able to get a complete overview of all postboxes, and perform arbitrary analysis of the raw data.
76. Other public interest arguments put forward by the complainant are the benefits that increased competition can bring in terms of innovation and improved customer service and experience. The Commissioner would agree that disclosure of postbox location information to commercial competitors of the Royal Mail, would be likely to act as an incentive for improved customer access to such information via the Royal Mail and counteract complacency. However, the Commissioner also notes that such innovation was already underway within the Royal Mail at the time of the request and these commercial considerations have a direct bearing on the section 43(2) exemption applied.
77. Related to the above point, is the complainant's rationale that by existing open source tools (e.g. Elbatrop) having access to more complete and up-to-date information concerning the location of postboxes, the public can thereby be provided with more accurate information. The Commissioner would agree with this public interest proposition.

## Public interest arguments in favour of maintaining the exemption

78. Both in its responses to the complainant and in subsequent submissions to the Commissioner, the Royal Mail advanced a number of arguments to support its contention that the public interest in this case lay in favour of maintaining the section 43(2) exemption.

79. Originally, the Royal Mail argued that,

*'It would not be in the public interest to potentially misinform members of the public with information which is not suitable for uses other than its current purpose'.*

80. It is important to note that the 'current purpose' referred to here by the Royal Mail, was that confirmed to the Commissioner in its submissions, namely that,

*'all the requested information has been collected in the Database for some time to support the collection of postal items from postboxes. The Street and Postcode Data was and is collected for the purposes of route production (the route taken by Royal Mail to collect the mail from various collection points). The Co-ordinates Data was first collected for all collection points (including Post Offices) in July 2008 to both support the branch locator tool on the Royal Mail website, and for use in enhanced route planning alongside PDAs (Personal Digital Assistants – handheld digital devices carried by postmen and women), that were then about to be introduced'.*

81. The Commissioner notes that the above assertion made by the Royal Mail, that the information is, *'not suitable for uses other than its current purpose'*, tends to contradict the claim by the Royal Mail that disclosure of this information would be of commercial value to its rivals (i.e. if the information held is only suitable for mail collection and route planning, how can it currently be considered to be of commercial value to Elbatrop and others, as the Royal Mail contends?). The Commissioner accepts that at the time of the request, the Royal Mail could not guarantee the complete accuracy of the information stored in the Database, and changes may have occurred at the local level which had not been updated to the central Database. Nevertheless, it is clearly the case, as the Royal Mail have contended, that the disclosure of *any* postbox location information not already held by commercial rivals (such as Elbatrop), would be of interest and use to those rivals.

82. The Commissioner understands that in making the statement above, the Royal Mail was attempting to argue that the information was not suitable for purposes other than that for which it was originally held, because of concerns about the accuracy of the information in the

Database, not that the information would not have been of any commercial worth to competitors.

83. In any event, the Commissioner would not accept the accuracy argument as a valid ground for non-disclosure of the requested information. Firstly, he has already established that the information was around 90% accurate. Secondly, any concerns which the Royal Mail might have had about the integrity and accuracy of the information held in the Database at the time of the request (and the Commissioner has ascertained that the information was largely accurate and up to date at that point) could have been managed by way of a suitably worded disclaimer attached to disclosure or similar contextual caveat.
84. The Royal Mail has also expressed its belief that the public interest aim of promoting access to postboxes and informing the public of their locations, would be best met through its own projects. In submissions to the Commissioner, the Royal Mail asserted that,

*'It is not in the public interest for there to be products available which are not connected with formal updates or functionality. In other words, the information is likely to be used in a 'rogue' fashion, in order to generate income for competitors who are unable to assure quality'.*

85. As noted above, the Commissioner does not consider such arguments as to the accuracy of the information held to be of relevance in determining whether the information should, or should not be disclosed. At the time of this request, the Database was not subject to the updates intended by the Royal Mail, and the Commissioner can only consider the information in the format in which it was held at that point in time.
86. A considerably stronger argument advanced by the Royal Mail was its assertion, detailed in submissions to the Commissioner, that it is in the public interest for Royal Mail to be commercially viable. The Royal Mail contended that,

*'This is in particular following a review of a government report into the role of Royal Mail which found that as a company in the markets in which it operates, it is facing a significant financial struggle. Release of the information in advance of the launch of Royal Mail's app and online tool would give competitors the opportunity to exploit the information. This would be likely to impact negatively on Royal Mail's commercial gain from the information. Prejudice caused to Royal Mail will directly impact on its ability to continue to provide its essential services to the public'.*

87. The Royal Mail added that it needed,

*'to protect its commercially valuable data in order to support the universal service at present, as well as in the future, when the need for Royal Mail to draw on all resources available to it and maximise their value may be even greater to support this service. Loss of control over the requested information would deprive Royal Mail of potentially valuable income streams from selling products to the public, such as the umbrella app, and from licensing the data to third parties who wish to incorporate it into their own products'.*

### **Balance of the public interest arguments**

88. The Commissioner acknowledges the general public interest arguments in favour of disclosure of the withheld information. The Commissioner fully accepts that there is some public interest in the public having access to the whereabouts of any particular postbox or postboxes within the UK.
89. The Commissioner also acknowledges the public interest points made by the complainant about the potential benefits of increased competition and other open source tools having access to the requested information.
90. As noted above, the Commissioner is not persuaded by the arguments advanced by the Royal Mail as to the inaccuracy or incompleteness of the information held at the time of the request. Rather, the public interest consideration which the Commissioner has accorded the most weight to in this specific case, is that of the public interest in the Royal Mail's continued commercial viability. The Commissioner considers that the Royal Mail, like any public authority operating within an increasingly competitive and challenging environment, is entitled to explore all available avenues for improving and extending its commercial interests. Those avenues would include a decision to use its information to enter the relatively new online locator and iPhone application markets. He considers that there is a particular public interest in the Royal Mail being commercially successful in order to allow its commercial activities to subsidise the provision of the "universal service" that it is obliged to provide under the terms of its licence from the Postal Services Commission.
91. Having considered all of the above the Commissioner is satisfied that the public interest argument(s) in favour of disclosure are not sufficient to outweigh the public interest in maintaining the exemption.

## The other exemptions claimed

92. The Commissioner notes that the Royal Mail applied the section 22 exemption only in regard to the '*postbox location description*' part of the complainant's request (the information which the Commissioner has found to be covered by section 43(2)). Similarly, in regard to its use of the section 43(1) exemption, the Royal Mail has confirmed that it only applied this exemption with regard to the Co-Ordinates Data (information which the Commissioner has again found to be covered by section 43(2)). The Commissioner has not gone on to consider the application of the other exemptions applied by the Royal Mail to the location specific information as he has already found this to be exempt under section 43(2). Nor has he gone on to consider the application of other exemptions to the non-location specific information as, for this information, no other exemptions have been claimed.
93. Since the non-location specific information is not caught by the section 43(2) exemption, or any other exemption applied by the Royal Mail in this case, the Commissioner has found that the Royal Mail was wrong to withhold this information from the complainant.

## Procedural Requirements

### Section 1(1)

94. Section 1(1) of the Act provides that: -

*'Any person making a request for information to a public authority is entitled –*

*(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*

*(b) if that is the case, to have that information communicated to him'.*

95. The Commissioner has considered whether the Royal Mail has complied with section 1(1)(b) of the Act.
96. As the Commissioner considers that the Royal Mail incorrectly applied the section 43(2) exemption in order to withhold some (specifically non-postbox location) information requested, it has breached section 1(1)(b) of the Act by failing to communicate this partial information to the complainant in response to the request.

### Section 10(1)

97. Section 10(1) of the Act 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'.*

98. The Commissioner has considered whether or not the Royal Mail complied with section 10(1) of the Act.
99. As the Royal Mail did not provide the non-exempt parts of the requested information to the complainant within the statutory time for compliance because it incorrectly applied the section 43(2) exemption, the Commissioner has found that it breached section 10(1) of the Act in relation to its obligation under section 1(1)(b).

### **Section 17(1)**

100. As noted in paragraph seven, in his complaint to the Commissioner, the complainant also highlighted the fact that the original refusal of his request was provided on the twentieth working day following its receipt, the maximum period of time stipulated by the Act. The complainant contended that this response was, *'potentially contrary to the spirit, if not the letter'* of the Act.
101. Section 17(1) provides that where a request is refused then an appropriate refusal notice must be provided within the time limits set out at section 10(1) of the Act. Although it is accepted that the Royal Mail provided its refusal notice within the twenty working days stipulated in section 10(1), the Commissioner must consider, given that there is also a duty to respond 'promptly' to a request, whether the time taken by the Royal Mail was appropriate in this specific case. The Commissioner therefore asked the Royal Mail exactly how it had processed and managed the complainant's request.
102. The Royal Mail advised that it received and logged the complainant's request on 17 March 2010 and on the same day referred the request to contacts with the Royal Mail's letters business who had previously provided the FOI team with information relating to postboxes. In this case they were not the custodians of the data requested and they identified a more appropriate person who could provide the relevant information. Extracts of the data were provided and the content of the extracts was confirmed on 30 March 2010. On 31 March 2010, the information was referred to a nominated senior manager within the Royal Mail Letters Department for comments on the accuracy of the information and the impact of disclosure. The Royal Mail informed the Commissioner that this is part of its standard process to obtain commentary from relevant managers in key parts of the business who can advise, to the best of their knowledge, that the information is correct and give their views on release of the information.



103. It was identified that there were commercial concerns about releasing the information and it was therefore necessary to go back to the source of the data to obtain further detail on the accuracy of the data and how it had been created or obtained. This was done on 1 April 2010. Further comment on the likely impact of releasing the information was also sought from relevant people in the Royal Mail's commercial department. On 9 April 2010, the commercial department provided an initial view that the information should not be disclosed as it would harm the Royal Mail's own plans to exploit the data, a view which was confirmed on 13 April 2010. A response was drafted by the Royal Mail's FOI team on 15 April 2010 and a final response was sent to the complainant on 16 April 2010. To place this request in some context, the Royal Mail informed the Commissioner that it received 47 other FOI requests in March 2010 and that 94% of these requests were answered within twenty working days.
104. The Commissioner has examined the chronology of this request from its receipt by Royal Mail on 17 March 2010, to the response provided to the complainant on 16 April 2010. Given the nature of the information requested, and the requirement for further enquiries and checks to be made concerning the same, coupled with the Royal Mail's need to balance its FOI duties and responsibilities with its business operations, the Commissioner is satisfied that the response of the Royal Mail in this case was as prompt as was reasonably practicable and that it therefore complied with the requirements of section 17(1) in this respect.

## The Decision

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105. The Commissioner's decision is that the Royal Mail dealt with the following elements of the request in accordance with the requirements of the Act:

- The application of the section 43(2) exemption to the information within the complainant's request which concerned the location of postboxes.
- The provision of a refusal notice promptly and within the time for compliance, in accordance with the requirements of section 17(1).

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

- The application of the section 43(2) exemption to the information within the complainant's request which did not concern the location of postboxes. The misapplication of the exemption to this part of the

requested information led to a breach of section 1(1)(b) and section 10(1) as explained above.

### **Steps Required**

107. The Commissioner requires the Royal Mail to take the following steps to ensure compliance with the Act:

- Disclose to the complainant (in electronic format) all the information contained in its Database relating to box number, barcode, box type and final collection times for weekdays and Saturdays (non-postbox location information)

108. 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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109. 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.

### **Other matters**

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

Although the Royal Mail did provide the Commissioner with detailed and cogent submissions as to its reasoning for withholding the information requested, its responses to the complainant, both initially and following internal review, were significantly less comprehensive and omitted important information such as the development of the 'IT-based product'. Without this relevant information, the complainant could not reasonably be expected to understand the full rationale for the application of the section 43(2) exemption. Although it is entirely possible that the provision of the information which the Royal Mail eventually helpfully provided to the complainant at the request of the Commissioner would not have had any bearing on the complainant's decision to pursue a complaint in this matter, the Commissioner considers it important for complainants to be provided with the fullest possible response at the earliest available opportunity.

111. In this context, the Commissioner would remind the Royal Mail of the requirement (if relying on a qualified exemption like section 43(2)) of

giving due and demonstrable consideration of the public interest arguments in favour of disclosure of any particular information as well as those public interest arguments which favour the maintenance of the exemption concerned. .

112. With regard to the complainant's request for an internal review of the initial decision, the complainant considers that the Royal Mail acted *'contrary to the spirit if not the letter, of the Freedom of Information Act'* in only providing its internal review outcome on the twentieth working day after the request for a review had been received. The Royal Mail confirmed that the request for an internal review was received, logged and acknowledged on 26 April 2010. An internal review was then undertaken, which necessitated contact with the Royal Mail's commercial department to confirm the plans to make postbox location information available on the Royal Mail website (which was intended to be implemented at that time), and the planned iPhone application. The internal review was referred to the internal appeals panel of senior managers on 18 May 2010. The panel requested further information in order to determine whether the relevant exemptions were engaged and where the balance of the public interest lay (specifically the dates for the Royal Mail's own planned release of the information). It was therefore necessary to go back to contacts to confirm this. On 25 May 2010, it was confirmed in an email to the Royal Mail FOI team that it was still planned to add this data to the business website and launch the mobile platform, but that dates for these events could not be confirmed. The complainant was provided with the internal review decision on the same day, just within twenty working days of the Royal Mail receiving his request for the same.
113. The Commissioner considers that the provision of the internal review decision to the complainant by the Royal Mail was made within the expected time frame of the Commissioner's guidance, and was consistent with reasonable handling, given the chronology provided.

## Right of Appeal

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114. 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: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

115. 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.

116. 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 16<sup>th</sup> day of May 2011**

**Signed .....**

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

## Legal Annex

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### General Right of Access

#### Section 1(1) provides that -

'Any person making a request for information to a public authority is entitled:

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.

#### Section 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 22 provides that –

'Information is exempt information if -

(a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not).

(b) the information was already held with a view to such publication at the time when the request for information was made, and

(c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).

#### Section 43 provides that –

(1) 'Information is exempt information if it constitutes a trade secret.

(2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).