

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 16 January 2012

Public Authority: Dyfed Powys Police Authority
Address: PO Box 99
Llangunnor
Carmarthen
Carmarthenshire
SA31 2PF

Summary

The complainant requested information relating to a recruitment exercise for a senior position within the Authority, for which he was one of the applicants. The Authority provided the complainant with some information falling within the scope of his request, and withheld other information by virtue of sections 40(1) and 40(2) of the Act. The Authority went on to consider the parts of the information it had withheld under section 40(1) as a subject access request under the DPA. The Commissioner has considered the Authority's application of the DPA to the information constituting the complainant's own personal data under a separate case reference. With respect to the information which does not constitute the complainant's own personal data, the Commissioner has decided that the Authority was correct to withhold the information as disclosure would breach the first data protection principle. The Commissioner has also identified procedural breaches relating to the Authority's handling of this request.

The Commissioner's Role

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

Background

2. Due to the circumstances of this case, the level of background detail which the Commissioner can include in this notice is limited in some

areas. The Commissioner has therefore produced a confidential annex which sets out the background detail. This annex will be provided to the Authority but not, for obvious reasons, to the complainant.

The Request

3. On 11 October 2009 the complainant wrote to the Authority in relation to a selection process for a senior vacancy at the Authority with the following request:
 - a. *I seek a copy of the letter dated the 3rd April or thereabouts, from Police Authority member [named individual] to the Home Secretary.*
 - b. *I seek a copy of the holding reply of the Home Office of 7th May 2008, or thereabouts.*
 - c. *I seek a copy of the reply of the 20th May 2008 of [named individual] of the Home Office.*
 - d. *I seek copies of all correspondence exchanged between HM Chief Inspector of Constabulary and the Chair-person of Dyfed Powys Police Authority on this matter, the existence of which I understand is referred to in the letter of the 20th May 2008 above.*
 - e. *I seek copies of all letters, notes, memoranda, e-mails, faxes or other records relating to myself held by Dyfed Powys Police Authority, including all of the above that related to myself and which were recorded prior to, in the course of the assessment for the post of Chief Constable, or subsequently to that assessment.*
4. The Authority responded on 16 December 2009 and provided the complainant with some information falling within the scope of part (e) of his request. The Authority confirmed that information falling within the scope of parts (a) to (d) of the complainant's request was held, but that it needed to consider whether any exemptions applied to this information. The Authority explained that it aimed to make a decision on these issues by 22 January 2010.
5. The Authority issued a substantive response to the request on 25 January 2010, providing the following responses; numbering as above:
 - a. The Authority confirmed that this information was held, and provided the complainant with a redacted copy of the letter. The Authority confirmed that the redacted information was exempt

from disclosure by virtue of section 40(1) of the Act, and that the Authority was under no duty to disclose that information under section 7(1) of the DPA. The Authority also confirmed that some of the information was exempt from disclosure by virtue of section 40(2) of the Act.

- b. The Authority provided the complainant with this information in full.
 - c. The Authority confirmed that this information was held, and provided the complainant with a redacted copy of the letter. The Authority confirmed that the redacted information was exempt from disclosure by virtue of section 40(2) of the Act.
 - d. The Authority confirmed that three pieces of information were held, falling within the scope of part (d) of the request. The Authority provided the complainant with redacted copies of these letters, and confirmed that the redacted information was exempt from disclosure by virtue of section 40(1) of the Act, and that the Authority was under no duty to disclose that information under section 7(1) of the DPA. The Authority also confirmed that some of the information was exempt from disclosure by virtue of section 40(2) of the Act.
 - e. The Authority confirmed that 4 further pieces of information falling within the scope of part (e) of the request had been identified. One of these documents was provided in full, the remaining 3 documents were redacted. The Authority confirmed that the redacted information was exempt from disclosure by virtue of section 40(1) of the Act, and that the Authority was under no duty to disclose that information under section 7(1) of the DPA. The Authority also confirmed that some of the information was exempt from disclosure by virtue of section 40(2) of the Act.
6. On 12 February 2010 the complainant wrote to the Authority and requested an internal review of its decision, providing full grounds of appeal by letter on 14 March 2010.
 7. On 14 April 2010 the Authority wrote to the complainant to confirm that an internal review decision would be made by the Professional Standards Committee. The Authority also confirmed that 5 further documents falling within the scope of the request had now been identified. One of these documents was disclosed in full, two documents were disclosed but subject to redactions, and two documents were withheld in their entirety. The Authority confirmed that some of the information in question (i.e. the withheld documents and the redacted

information) was considered to be exempt from disclosure by virtue of section 40(1) of the Act, and that the Authority was under no duty to disclose that information under section 7(1) of the DPA, whilst other information was exempt from disclosure by virtue of section 40(2) of the Act.

8. On 29 June 2010 the Authority provided the outcome of its internal review. The Authority upheld its previous decisions in respect of most of the withheld and redacted information. However, the Authority provided some further information in respect of five of the pieces of information previously subject to redactions. The Authority decided to provide some information from one of the documents that had previously been withheld in its entirety. Finally, the Authority decided to release the remainder of the withheld information in relation to one of the documents, meaning that it had now been disclosed in its entirety.

The Investigation

Scope of the case

9. On 25 August 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider whether the Authority had correctly withheld the requested information under the Act and the DPA.
10. Some of the requested information was withheld by the Authority under section 40(1) of the Act, on the basis that it constituted the complainant's own personal data. This information was subsequently considered as a subject access request under section 7 of the DPA by the Authority, and the Authority's handling of the request under the DPA has been considered by the Commissioner separately as it falls outside the scope of the Act, and of this case. The remaining information falling within the scope of the complainant's request was withheld by the Authority under section 40(2) of the Act, and it is this information that forms the focus of the Commissioner's investigation in this case.

Chronology

11. On 26 November 2010 the Commissioner wrote to the complainant to explain that the relevant parts of his complaint would initially be considered under the DPA.
12. On 29 March 2011 the Commissioner wrote to the Authority to provide his findings in respect of the information which had been considered by the Authority under the DPA.

13. On 10 June 2011 the Commissioner wrote to the complainant and the Authority to provide his preliminary view, in an attempt to resolve the complaint informally.
14. On 10 July 2011 the complainant wrote to the Commissioner to provide submissions to explain why, in his view, the Authority had erred in its application of section 40(2) of the Act, and confirmed that he wanted the Commissioner to issue a formal decision notice to address his complaint in full.

Analysis

Exemptions

Section 40(2)

15. Section 40(2) provides an exemption for information which is the personal data of any third party, where disclosure would contravene any of the data protection principles contained in the Data Protection Act 1998 ("the DPA").
16. Due to the circumstances of this case and the content of the withheld information, the level of detail which the Commissioner can include in this notice about the Authority's submissions to support its position in respect of its application of this exemption, and the Commissioner's consideration of these arguments is very limited. This is because inclusion of any detailed analysis is likely to reveal the content of the withheld information itself. The Commissioner has therefore produced a confidential annex which sets out in detail his findings in relation to the application of the exemption.

Is the information personal data?

17. In considering whether the Authority has correctly applied section 40(2) of the Act to the withheld information, the Commissioner has first considered whether the withheld information can be considered to be "personal data".
18. According to section 1(1) of the DPA, personal data can be defined as follows:

"...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 intention of the data controller or any other person in respect of the individual”.

19. In considering whether the information requested is “personal data”, the Commissioner has also taken into account his own guidance on the issue.
20. The two main elements of personal data are that the information must “relate to” a living person, and that person must be identifiable. Information will “relate to” a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts them in any way.
21. Having considered the withheld information, and the context in which it was obtained, the Commissioner is satisfied that the withheld information constitutes information that falls within the definition of “personal data” as set out in section 1(1) of the DPA.
22. The Commissioner considers that the information in question comprises the personal data of the appointments committee and Professional Standards Committee (“the committees”) and a member of HM Inspectorate of Constabulary (“HMIC member”). The Commissioner has decided that the information constitutes these individuals’ personal data to the extent that it reveals their views and opinions on the recruitment process and other topics, along with their views and opinions about the candidates, their performance at interview and suitability for the job. However, since much of the personal data of the committee members consists of their opinions in respect of the successful candidate and HMIC member, that information therefore contains the personal data of more than one type of individual. The Commissioner has therefore considered the personal data of the members of the committees to be the minimal amount of information that remains after the personal data of the successful candidate and the HMIC member are removed from the set of information.
23. The Commissioner also considers that the withheld information consists of the personal data of the successful candidate, as it clearly contains individuals’ opinions about them, their performance at interview and suitability for the job, often referring to them by name.

Would disclosure contravene any of the principles of the DPA?

24. Having accepted that all the information requested constitutes the personal data of living individuals other than the complainant, the Commissioner must next consider whether disclosure would breach one of the data protection principles. He considers the first data protection principle to be most relevant in this case.

First data protection principle

25. The first data protection principle has two main components. They are as follows:

- a. The requirement to process all personal data fairly and lawfully; and
- b. The requirement to satisfy at least one DPA Schedule 2 condition for the processing of all personal data

26. Both requirements must be satisfied to ensure compliance with the first data protection principle. If even one requirement cannot be satisfied, processing will not be in accordance with the first data protection principle. The Commissioner's general approach to cases involving personal data is to consider the fairness element first. Only if he believes that disclosure would be fair would he move on to consider the other elements of the first data protection principle.

Would disclosure of the information be fair?

27. In determining whether a disclosure is fair under the first principle of the DPA for the purposes of section 40 of the Act, the Commissioner considers it appropriate to balance the consequences of any disclosure and the reasonable expectations of the data subject with general principles of accountability and transparency.

28. Due to the number of arguments submitted by the Authority and by the complainant, the Commissioner will list them separately in turn before going on to balance the consequences of disclosure and expectations of data subjects with the general principles of accountability and transparency.

29. When going on to consider the consequences of disclosure, the reasonable expectations of the data subjects and the general principles of accountability and transparency, the Commissioner considers there to be three distinct sets of data subjects: the successful candidate, the HMIC member and the committees, and he has therefore considered these separately where appropriate in his analysis.

The Authority's view

30. Due to the circumstances of this case, some of the arguments supplied by the Authority in support of its view that disclosure of the disputed information would be unfair have been included in the confidential annex.
31. The Authority provided the Commissioner with detailed arguments to support its view that disclosure of the requested information would be unfair. The Authority accepted that the information related to the professional (i.e. public) lives of the individuals in question, but argued that the reasonable expectations of all individuals concerned would be that the information would be kept confidential and not released into the public domain.
32. The Authority also further evidenced the confidentiality attached to appointments processes by the exemption contained in paragraph 1 of the Schedule 7 of the DPA, covering references given in confidence by a data controller which concern the appointment, or prospective appointment, of the data subject to any office. Whilst the Authority accepted that the exemption does not apply directly to the interview stages of the process, it considered that the exemption would have a bearing on the handling of records of oral discussions about appointments, by underlining the general expectations of confidentiality surrounding such processes.
33. The Authority, therefore, considered that all participants in the discussions would have expected their views to be treated on a confidential basis and not to be reported back to the individuals being discussed, or placed into the public domain.
34. The Authority therefore considered that it would be "fair" to uphold the expectations of confidentiality held by the data subjects in this matter.
35. The Authority concluded by making reference to previous decisions by the Tribunal¹ where the withholding of 'confidential' information relating to public servants has been upheld.

The complainant's view

36. The complainant provided the Commissioner with arguments to support his view that the information in question should be disclosed. Most of the arguments supplied were made in relation to the 'reasonableness' of third party personal data being disclosed in response to a subject access

¹ EA/2010/0165, EA/2010/0089, EA/2009/0026

request, under section 7 of the DPA rather than in relation to a disclosure to the public at large under the Act.

37. In the complainant's view, each individual affected (including the complainant, the successful candidate, the committee members, the HMIC member and the Professional Standards Committee) should be considered separately, and the complainant also considered that it would be inappropriate to apply a blanket consideration of 'fairness'.
38. The complainant provided the Commissioner with various submissions relating to his belief that the recruitment process was not conducted in a satisfactory manner, and that mistakes were made. The complainant made reference to passages within documents that were released to him by the Authority, and questioned the robustness of the recruitment process.
39. The complainant went on to provide detailed submissions to support his view that it would be "reasonable in all the circumstances to comply with the request without the consent of the other individual" and to disclose the information in question to him, under the DPA.
40. In the complainant's view, any expectation of privacy was lost when an email was sent by one individual involved in the deliberations to the Chief Executive of Carmarthenshire County Council and a work colleague of the complainant – in the complainant's view, "putting the information in the public domain".
41. The Commissioner considers that some other arguments put forward by the complainant are not relevant for this decision notice as they relate to allegations of malpractice against the Authority and other public authorities, and relate more closely to arguments around the "reasonableness" of disclosing third party personal data under the DPA, rather than disclosure to the wider public under the Act. The Commissioner considers that he has included all arguments relevant to this decision notice within the paragraphs above.

a) Expectations of the individuals concerned

Reasonable expectations of the data subjects – the successful applicant

42. Based on the nature of the withheld information and the submissions provided to the Commissioner by the Authority, the Commissioner is satisfied that the successful applicant would have had a reasonable expectation that their information would be kept confidential and not passed onto third parties without their explicit consent. The Commissioner considers that, as an applicant for a vacancy, the successful applicant would have had a reasonable expectation that

deliberations over his performance in the selection process and the weighing up of his suitability as an applicant would be kept confidential.

Reasonable expectations of the data subjects – the HMIC member and committees

43. The Commissioner has considered the reasonable expectations of the committees and the HMIC member in this section. Both sets of data subjects were involved in the deliberations over the outcome of the recruitment process. The Commissioner therefore considers that the reasonable expectations of the HMIC member would be identical to those of the committees.
44. The Commissioner notes the Authority's arguments about the confidentiality of the process in question, and the frank discussions that are required to ensure the appointment of the most suitable candidate to this senior office. The guidance note (to which the committees were required to adhere) sets great store in the requirement for the selection process to be confidential.
45. The Commissioner is of the opinion that disclosing personal data is generally less likely to be considered unfair in cases where the personal data relates to an individual's public or professional life rather than their private life. In his view, the threshold for releasing professional information will generally be lower than that in releasing information relating to an individual's private or home life.
46. When considering whether any information about a data subject's public/professional life should be disclosed, the Commissioner's view is that it is useful to take account of the following factors:
 - a. The seniority of the role;
 - b. Whether the role is public facing; and
 - c. Whether the position involves responsibility for making decisions on how public money is spent
47. The Commissioner considers that public sector employees should expect some information about their roles and the decisions they take to be disclosed under the Act. This approach is supported by the Information Tribunal decision in the case of *House of Commons v Information Commissioner and Norman Baker* (EA/2006/0015 and 0016). This decision involved a request for information about the details of the travel allowances claimed by MPs. In its decision the Tribunal noted that:

“where data subjects carry out public functions, hold elective office or spend public funds they must have the expectation that their public actions will be subject to greater scrutiny than would be the case in respect of their private lives” (para 78)

48. In this case, the Commissioner considers that the HMIC member and the committees were responsible for selecting a preferred candidate for the appointment of a new Chief Constable, a post paid for by the public purse.
49. The Commissioner has also compared the intrusive nature of the information held about the candidates with the nature of the information held about the HMIC member and the committees.
50. The Authority has argued that the committees and HMIC member would have a expectation that their personal data would not be released into the public domain on the basis of the confidentiality that is attached to the recruitment process by the guidance governing the selection process. However, the Commissioner recognises that, simply because an individual has an expectation that information held about them will not be disclosed, this does not necessarily mean that this expectation is a reasonable one.
51. In this particular case the Commissioner is not entirely satisfied, considering the nature of the information and in particular given their role in the appointments process and their seniority, that the HMIC member and the committees had a reasonable expectation that their personal data would not be disclosed.

b) Consequences of disclosure

Consequences of disclosure – the successful applicant

52. The Commissioner acknowledges the likelihood that job applicants, when they apply for a job, will have a clear expectation that the potential new employer will keep the fact of their application and the ensuing deliberations confidential. Although he gives weight to this argument, the Commissioner is of the view that prevention of the candidates from being publicly identified can be achieved by redaction of the information and therefore there would be no detriment to candidates' future employment prospects via disclosure.
53. Redaction would significantly reduce the likelihood of public identification of the candidates in many circumstances, but the Commissioner notes that there were only two applicants for this position; the complainant and the successful applicant. Therefore inferences could easily be drawn as to the information which relates to the successful candidate (whose identity is known to the public).

54. Due to the circumstances of this case and the nature of the withheld information, further analysis of the consequences of disclosure in relation to the successful applicant is set out in the confidential annex.
55. The Commissioner is therefore satisfied that disclosure of the information to the public and the associated loss of privacy have the potential to cause unnecessary and unjustified harm to the individual in this case.

Consequences of disclosure – the HMIC member

56. Due to the circumstances of this case and the nature of the withheld information, the analysis of the consequences of disclosure in relation to the HMIC member is set out in the confidential annex.
57. The Commissioner is satisfied that disclosure of the information to the public and the associated loss of privacy have the potential to cause unnecessary and unjustified harm to the HMIC member in this case.

Consequences of disclosure – the committees

58. The Authority has not put forward any arguments in relation to the potential consequences of disclosure on the committees. The Commissioner does not consider that disclosure of the information would have the potential to cause unnecessary and unjustified harm to the committees in this case.

Legitimate public interest and the general principles of accountability and transparency

59. The Authority argued that it had already carefully considered the legitimate public interest in the disputed information and recognised the legitimate interest in the release of information about a selection process whose procedures had been criticised. In response to this legitimate interest, the Authority had decided it would be fair and appropriate, in response to the information request, to release core factual information in response to the complainant's information request. The Commissioner notes that a number of pieces of information were released by the Authority during its handling of the information request.
60. The Authority subsequently explained that where information was not released in response to the legitimate public interest it had identified, this reflected both that it would be unfair, and that any "legitimate interest" was outweighed by the need not to cause harm to the data subjects in question.

61. The Authority went on to argue that disproportionate harm or distress could be caused to individuals whose views about the selection process would be released in circumstances in which they reasonably did not expect them to be released. This applies to those who actually wrote the letters and emails that now form the disputed material, as they were expressing views in private correspondence. But the Authority argued that it also applies to those third parties whose (alleged) views or reactions are quoted in the various letters or emails, but who played no part in generating the correspondence. The selection process was a confidential one. The Authority argued that committees were not consulted before an account was given of their views about it, and they have not agreed that it is an accurate one.
62. The complainant stated that candidates and the public have the right to expect that the highest of standards of fairness will prevail, especially in significant public service appointments and where those standards have not been met, it is in the public interest that the information is disclosed.
63. The complainant explained his view that in the wider interests of the police service and the public, it would not be in the best interests of the police service for 'malpractice' to be concealed. The complainant also argued that the people of Dyfed Powys would wish to be confident that their Authority could not be wrongfully perceived as being involved in any "cover up" of what had happened.

The Commissioner's view – the successful applicant

64. Due to the circumstances of this case and the nature of the withheld information, further analysis of the Commissioner's view of the legitimate public interest in the successful applicant's personal data is set out in the confidential annex.
65. With respect to the successful applicant, the Commissioner does not consider that the release of any of their own personal data would add to the legitimate public interest which has already been met, in part, by the carefully considered release of information by the Authority in response to the information request.
66. Given the nature of the withheld information and its sensitivity, the Commissioner does not consider that the legitimate interests of the public in accessing this information are sufficient to outweigh the successful candidate's right to privacy. The Commissioner considers that the data subject had a reasonable expectation of privacy in relation to information relating to his part in the recruitment process and that to release this information would be unfair and likely to cause distress to the data subject.

The Commissioner's view – the HMIC member

67. The Commissioner does not consider that the release of the personal data of the HMIC member would add to the legitimate public interest which has already been met, in part, by the carefully considered release of information by the Authority in response to the information request.
68. Given the nature of the withheld information and its sensitivity, the Commissioner does not consider that the legitimate interests of the public in accessing this information are sufficient to outweigh the HMIC member's right to privacy. The Commissioner considers that the data subject had a reasonable expectation of privacy in relation to information relating to their part in the recruitment process and that to release this information would be unfair and likely to cause distress to the data subject.

The Commissioner's view- the committees

69. As set out above, the Commissioner is not persuaded that the committees would have had a reasonable expectation of confidence, and has not been provided with any information to suggest that the consequences of disclosure would cause harm to these individuals. (As stated in paragraph 22 above, the Commissioner considers the personal data of the members of the committees to be a minimal amount of information. Any of the committee members' personal data which also constitutes the data of the HMIC member or the successful applicant has been considered under the subheadings for these individuals above.)
70. However, the Commissioner does not consider that disclosure of the minimal information that would remain after removal of the information relating to the successful candidate and the HMIC member would serve a legitimate public interest.
71. In conclusion, the Commissioner considers that disclosure of the requested information would be unfair to the data subjects.

Procedural requirements

Section 10 – time for compliance

72. Section 1(1)(a) states that any person making a request for information to a public authority is entitled to be informed in writing by that public authority whether it holds any information of the description specified in the request.
73. Section 10(1) requires a public authority to respond to a request promptly and in any event no later than 20 working days after the date of receipt.

74. The initial request in this case was made on 11 October 2009. The Authority issued a holding reply on 16 December 2009 and a substantive response on 25 January 2010. In failing to comply with section 1(1) within 20 working days, the Authority breached section 10(1) of the Act.

The Decision

75. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

- The Authority correctly withheld the requested information under section 40(2) of the Act.

76. However, the Commissioner has also decided that the following element of the request was not dealt with in accordance with the Act:

- The Authority breached section 10(1) of the Act as detailed at paragraph 74 above.

Steps Required

77. The Commissioner requires no steps to be taken.

Right of Appeal

78. 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@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

79. 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.

80. 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 16th day of January 2012

Signed

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

Legal Annex

General Right of Access

Section 1(1) provides that -

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

–

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him."

Time for Compliance

Section 10(1) provides that –

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

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.