

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date 27<sup>th</sup> November 2006

**Public Authority:** Peterborough City Council

**Address:** Town Hall, Bridge Street, Peterborough, Cambridgeshire,  
PE1 1HG.

#### Summary

---

The complainant requested the public authority to provide certain street name and area details for children who lived furthest away from a particular college and who had been admitted to that college in accordance with the college's admission criteria. The public authority whilst providing the details of the relevant areas refused to provide details of the street names relying upon an exemption under section 40(2) of the Freedom of Information Act ("section 40(2)") indicating that the information constituted personal information in respect of which there was an absolute exemption against disclosure. The Commissioner considered the papers in the case and corresponded with both parties as a result of which he finds that the public authority incorrectly applied the section 40(2) exemption.

#### The Commissioner's Role

---

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

#### The Request

---

2. On 11 September 2005 the complainant requested the public authority to provide *for the last three academic years:*

*The total number of children admitted to the college under criteria 6 (children living nearest .... as measured by the shortest available safe walking distance).*

*The street name and area of the child admitted under criteria 6 that lived the furthest away from the college.*

The public authority responded on 26 September 2005 providing the complainant with the information referred to in the first part of his request and the area details referred to in the second part. The street name details were refused on the basis

that under the Data Protection Act the requested information could amount to personal data.

On 27 September 2005 the complainant invited the public authority to reconsider his request.

On 28 September 2005 the public authority advised the complainant that the matter had been reviewed and that its current communication was to be considered a refusal notice under the Act. The section 40(2) exemption was applied upon the basis that it was considered that as so few children were involved and the school uniform identified them further to release the street names could identify the individual children.

On 17 October 2005 the complainant requested an internal review of the decision.

On 21 October 2005 the public authority confirmed that an internal review had been completed which upheld the decision to refuse to release the information.

## The Investigation

---

### Scope of the case

3. On 24 October 2005 the complainant contacted the Commissioner to complain about the way his request for information had been handled in that he felt that the public authority had incorrectly applied the section 40(2) exemption.

The only information withheld by the public authority is the detail of the street names for the three children in question. The Commissioner has accordingly considered the public authority's application of the section 40(2) exemption to this aspect of the request.

### Chronology

4. Having already considered the initial correspondence between the public authority and the complainant the Commissioner on 20 and 21 September 2006 invited both parties to provide any further information felt appropriate in support of their respective view points.

Although further correspondence was subsequently entered into neither party initially took the opportunity to provide any such further information.

Having considered the position the Commissioner wrote to the public authority on 15 November in relation to a specific point upon which its views were sought. It responded the following day.

## Findings of fact

5. The college in question is a mixed comprehensive college within the public authority's area. It has a college uniform policy.

There are five principal criteria for admission to the college with a sixth being the determining factor in the event of there being more applicants than available places. That determining factor will be the proximity to the college of the child's address as measured by the shortest available safe walking route.

The public authority has a co-ordinated admissions scheme whereby parents of children living within its area may list up to three preferences when applying for their child's entry to secondary school.

The college's yearly admission limit is 234 and points out on its website that second preference applications rarely gain admission to the college under any of the admission criteria.

## Analysis

---

6. The Commissioner will now consider the public authority's use of the section 40(2) exemption. A full text of the relevant statutes referred to is contained in the legal annex.

## Exemption

7. Section 40(2) of the Act provides an absolute exemption from release of information which constitutes personal data about a third party where its release would breach any of the eight principles set out in the Data Protection Act 1998 ("the DPA").

The public authority maintain that disclosure would breach principles 1, 2, 6 and 7.

8. As the information is clearly about a third party the Commissioner must initially consider whether it constitutes personal data.
9. Section 1(1) of the DPA provides the definition of personal data in part as being data which relates to a living individual from which that individual could be identified.
10. The public authority also refers the Commissioner to the definition of personal data contained in Article 2 of the European Data Protection Directive 95/46/EC -

*Personal data shall mean any information relating to an identified or identifiable natural person (data subject); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity.*

11. The Court of Appeal recognised in the case of Michael John Durant v Financial Services Authority [2003] that the DPA should be interpreted, so far as possible in the light of, and to give effect to, the provisions of this Directive.
12. In Durant the Court did not consider the matter of the identifiability of an individual as this was not an issue in the case. Rather the Court instead concentrated on the meaning of “relate to” as contained in the Directive’s definition.

It concluded that data will relate to an individual if it “is information that affects [a person’s] privacy, whether in his personal or family life, business or professional capacity”.

13. As has been pointed out by the Commissioner in his Legal Guidance on the DPA potentially the question of whether data relates to an individual could be construed very widely. It will be a question of fact in each particular case. One element to be taken into account would be whether a data controller can form a connection between the data and the individual.
14. The public authority in the light of these definitions argues that an identifiable person appears to be one whose separate identity is ascertainable but who is not known in person and who then becomes identified where there is sufficient information either to contact him or to recognise him by picking him out in some way from others.

It considers that a child would be identifiable by disclosure of a street name, where the child was wearing a college uniform and the number of children attending that college, within a particular area was as low as 9. The child’s physical appearance, distinguished by the uniform would identify him.

15. The complainant argues that a street name in itself could not be regarded as personal data. He has refers to paragraph 2.2.3 of the Commissioner’s Legal Guidance on the DPA and specifically to the indication that “in the majority of cases the ability to identify an individual will be achieved by knowing the name and address of an individual”.

It should be noted however that within the same paragraph the Commissioner also makes it clear that an individual may be “identified” without knowing the name and address of that particular individual.

16. Each case has to be considered on its particular facts and the Commissioner has given careful consideration to this matter. Here the request for information is quite specific and if answered would potentially lead to the names of three streets being provided.

However it would not lead to three numbered or named addresses being provided. The public authority has been invited by the Commissioner (correspondence 15 November) to indicate any particular circumstances that would distinguish the individual addresses (irrespective of the absence of the provision of numbering) concerned for example by virtue of their being of a

limited number in the streets in question. No such distinguishing features have been made known.

17. The public authority has referred to the fact that the children in question wear college uniforms and it is this that would distinguish them. However the reality is that these and all other children wearing college and school uniforms are already so distinguished to members of the public.
18. In the absence of appropriate individual distinguishing features the Commissioner does not find the requested information to be personal data. The section 40(2) exemption has not therefore been engaged.
19. No other exemptions have been put forward by the public authority.

### **The Decision**

---

20. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act in that it incorrectly applied the section 40(2) exemption.

### **Steps Required**

---

21. The Commissioner requires the public authority within 35 calendar days of the date of this Notice to release to the complainant the outstanding requested information.

## Right of Appeal

---

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

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

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

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

**Dated the 27<sup>th</sup> day of November 2006**

**Signed .....**

**Richard Thomas  
Information Commissioner**

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

## Legal Annex

### Freedom of Information Act 2000

**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 40** provides that -

(1) 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.

(2) 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 second condition below is satisfied.

(3) 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.

(4) 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).

(5) 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) the 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).

(6) In determining for the purposes of this section whether anything done before 24<sup>th</sup> 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.

(7) In this section –

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

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

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

### **Data Protection Act 1998**

1(1) Unless the context otherwise requires “personal data” means data which relate to a living individual who can be identified –

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.