

Freedom of Information Act 2000 (Section 50)

Decision Notice

1 December 2008

Public Authority: Ofsted (Office for Standards in Education)
Address: Alexandra House
33 Kingsway
London
WC2B 6SE

Summary

Following his request for information relating to child day care settings in England, the complainant requested the names of the Person in Charge for each setting. Ofsted refused to supply the requested information on the basis that it constituted personal information and therefore section 40(2) of the Act applied. Following its internal review Ofsted argued that the information was not collated and would require it to undertake new work in order to create it. Ofsted therefore concluded that the information was not held. The Commissioner has determined that information relevant to the request is held on Ofsted's RSA database and that Ofsted breached section 1(1)(a) of the Act. The Commissioner has considered the arguments advanced by Ofsted in support of the application of section 40(2). He has determined that the provision of the requested information would not breach either the first or second data protection principle and therefore section 40(2) was inappropriately cited. Consequently Ofsted have breached section 1(1)(b) of the Act.

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. The complainant made an initial request for information concerning child day care settings in England. Ofsted supplied the complainant with the following: the name of each setting, the address, postcode, telephone number, the number of child

day care places, the type of care each setting provides, the number of places for each type of care provided and the name of the owner (the provider).

3. Ofsted subsequently told the complainant that the name of the Registered Person in Charge was contained in the Ofsted database and asked whether the complainant wanted to add this to the information already provided. In making this enquiry, Ofsted informed the complainant that a check would have to be made to determine if this data was releasable. The Complainant responded to this question by asking for the Person in Charge data. It is the names of the Persons in Charge which are the substantive information addressed by this Decision Notice.
4. On **20 April 2005** Ofsted issued a Refusal Notice to the complainant on the basis that the information 'falls under the 'personal information' exemption of the Freedom of Information Act 2000' and that to release the names of the Persons in Charge would contravene the data protection principles of the Data Protection Act 1998 ('DPA').
5. The complainant made an appeal against the refusal on **21 July 2005**, arguing that Ofsted's interpretation of personal data did not extend to information about someone acting in an official or work capacity unless there was some risk to the individual concerned.
6. Ofsted undertook an Internal Review of its decision and responded to the complainant on **19 August 2005**. This Internal Review mistakenly addressed details of Registered Providers and not Persons in Charge. As explained above Ofsted had already in fact provided the complainant with a list of the Registered Providers previously. Nevertheless, Ofsted found that it was wrong to rely on section 40(2) of the Act and that the principles of the Data Protection Act would not be breached by the disclosure of this information. However, the decision not to disclose the information was upheld on the basis that it 'does not exist in the form requested', and, 'new work would have to be carried out in order to extract and present the information from existing records'. Ofsted stated that, 'such new work (extrapolation) is not an obligation under the Act'.
7. The complainant wrote to Ofsted on **23 August 2005** pointing out that the Internal Review had addressed the wrong information and asking for a second review. In this letter he also offered a number of arguments refuting Ofsted's 'new work' statement.
8. Ofsted wrote to the complainant again on **5 September 2005**. Ofsted declined a second review and confirmed its decision to withhold the requested information on the basis that it does not exist.

The Investigation

Scope of the case

9. On **5 October 2005** the complainant wrote to the Commissioner to complain about Ofsted's refusal to disclose the names the Persons in Charge of child day care settings in England. It is pertinent to mention at this point that the complainant indicated to the Commissioner in his initial letter of complaint that he would be content to accept information in any format acceptable to the public authority. He stated that he had not requested that the information be provided in a spreadsheet and that a text file would be acceptable if this was easier for the public authority. In view of the fact that the complainant is willing to accept information in any format acceptable to the public authority, the Commissioner has not addressed section 11 further in this notice.
10. The Commissioner has investigated the following points concerning the Persons in Charge data:
 - Is the requested information held;
 - whether the disclosure of the information would breach any of the data protection principles cited.
11. The complainant's request relates to the information held on Ofsted's RSA database. The Commissioner has therefore limited the scope of this decision to the contents of the database. He has not considered information relevant to the request which may be held in Ofsted's paper-based manual files.

Chronology of the case

12. The caseworker wrote to Ofsted on **15 June 2006** with the purpose of clarifying the reason for its refusal of the request. The caseworker asked Ofsted to provide detailed comments about why it would be necessary to create new information in order to respond to the complainant's request.
13. Ofsted responded to the caseworker on **19 July 2006**. It asserted that it would 'now be unlikely that the information originally requested could be reconstructed accurately' due to the time the complaint had been at the Information Commissioner's Office. It further asserted that the complainant had previously been provided with a list which 'was created at his request detailing Day Care Providers by Local Authority', and that, this list had been 'customised in relation to his specific requirements'. Essentially, the document which had been sent to the complainant had not previously existed and had been uniquely created in response to the first request. Ofsted maintained that the Freedom of Information Act does not oblige authorities to create information in response to requests. It therefore did not consider that the list provided to the complainant constituted a release of information under the Act. It conceded however that the elements of the required information were contained in its Regulatory Support Application

- (RSA) software, but that analytical work would have been required to produce 'new information'.
14. Also contained in its 19 July letter were Ofsted's comments concerning the format requirement in the complainant's second request. The complainant asked for the information to be provided in 'any convenient electronic format, referenced to the name and address of each establishment and perhaps local authority area'. Ofsted determined that this specifically described a spreadsheet. It therefore considered that the complainant was not simply asking for information, but requiring it to present and reorganize data relating to 31,000 Childcare providers. Ofsted restated that its refusal of the request is founded on the fact that the information does not exist in the format requested and that to produce the required list would need new work resulting in the creation of new information. It considered that the implications of the complainant's request would be that Ofsted would lose control of the statistical work it conducts and that it would be, in effect, conducting research on behalf of commercial bodies.
 15. The caseworker telephoned Ofsted on **8 August 2006** with the purpose of exploring the possibilities of reaching an informal resolution to the case. Ofsted declined this approach and informed the caseworker that any Decision Notice would need to reflect the length of time the case had been with the Information Commissioner. Ofsted asked for the Commissioner's position to be stated in writing concerning whether the information is held or not and whether section 40(2) of the Act applies to it. Ofsted also stated that it would also pursue section 12 of the Act if its previously stated arguments could not be relied on.
 16. The caseworker wrote to Ofsted on **24 August 2006**, drawing its attention to the general right of access to information conferred by section 1 of the Act. The caseworker informed Ofsted that the term 'information' included data held electronically in a records management system and that Ofsted had confirmed that the names of Registered Persons in Charge was held in its database, in an email to the complainant dated **22 March 2005**. The caseworker informed Ofsted that he did not accept its assertion that it did not hold the information and he provided his reasons for this. The complainant's request for the information to be given in any electronic format was also addressed by referring Ofsted to the provisions of section 11 of the Act. Ofsted was also asked to provide the Commissioner with an explanation of how the provision of the information would exceed the cost of compliance limit in section 12 if it were seeking to rely upon this as a basis for refusing to comply with the request.
 17. On **4 October 2006** Ofsted telephoned the caseworker to enquire whether it would be possible to advance arguments in support of its renewed application of section 40(2). This request followed advice Ofsted had received from its legal advisors. This concerned the assurance given to people registering with Ofsted, that their personal details would not be processed contrary to the principles of the DPA. No further information was supplied by Ofsted in relation to section 12 and therefore this has not been addressed further in this decision notice.
 18. Ofsted wrote to the caseworker on **5 October 2006**. In this letter Ofsted brought the caseworker's attention to its Declaration and Consent Form (the DC2) which

is used for registering different categories of persons associated with day-care provision. One of the categories caught by the DC2 is the person in charge of the day-to-day running of the provision. Ofsted asked the Commissioner to particularly consider the final page of this document, which explains how the personal information will be processed. The statement gives the assurance that: 'we will not give information about you to anyone unless the law permits us to do so', and goes on to give the following examples where permission is allowed:

'The law states that we can give information to the following people or organisations:

- *to parents (using that childcare service), we can give information about the setting, conditions of registration, quality of care and any enforcement action on request;*
- *to childcare organisations, that is, Children's Information Service, we can give details of childcare providers in their area, including names, addresses, registration dates, telephone numbers, and information relating to enforcement activity as appropriate, on a regular basis;*
- *to childcare protection agencies and the police, we can give information about particular child protection cases and enforcement activity;*
- *to other government departments and local authorities, we can give information about individual providers and all the providers in the relevant area on receipt of a written request.'*

*Child Minding and Day Care (Disclosure Functions) (England) Regulations 2004 ('CMDC Regulations').
Statutory Instrument 2004 Number 3136.*

19. In relation to fairness of disclosing the information Ofsted also argued that releasing the 29, 970 names would expose those individuals to a greater risk of identity theft and that it would therefore be unfair. Further, it claimed that people may make the assumption that poor performance of a particular setting reported in the public domain was the responsibility of the Person in Charge, where in fact this falls to the registered provider. Ofsted also argued that disclosure of this type of information could allow someone to build up an employment history of particular individuals. It claimed that people may infer that if some people regularly move employers because of employer/employee disputes.
20. On 19 December 2007 the Commissioner contacted Ofsted to ask whether it continued to take quarterly 'snap-shots' from its RSA database and whether it had retained the snap-shot taken on 6 April 2005. On 20 December Ofsted informed the Commissioner that it still held a copy of this data.

Findings of the case

21. The DC2 Declaration and Consent Form is used by Ofsted to register details relating to the Persons in Charge of Day Care providers. Information is extracted from the DC2 and entered into Ofsted's Regulatory Support Application (RSA)

- database. The database can be up-dated at a later date following separate contact with Ofsted.
22. Section D4 of the DC2 asks the question: Do you directly manage or intend to directly manage the day-to-day operation of the provision? This question may be answered affirmatively by ticking the appropriate box. Whilst this question does not explicitly refer to the Person in Charge, it does allow Ofsted to make an entry onto its RSA in the field called 'Manager'.
 23. The 'Manager' field is not a mandatory field and of the 32,703 active day care provisions 29,970 had a person listed in this category. Of those provisions where there is no designated manager, most are run by an individually named provider, who might be assumed acts as Person in Charge. There are some nurseries, run as part of a chain, which have neither a manager nor a named individual provider (approximately 10% of the day care provisions).
 24. Ofsted's RSA has the capacity to allow searches of its data using the application's bespoke search tool. Data may also be extracted from the RSA using SQL (Structured Query Language) and Business Objects. To access the data requested by the complainant, Ofsted states that it would have to use an SQL code to extract the information and that the outcome of such a search would require manual validation.
 25. Ofsted frequently supplies statistical analysis to external parties. It maintains that it does this outside of the Freedom of Information Act. When asked; would Ofsted be prepared to supply the up-to-date data to him (the complainant) as a means of informally resolving this complaint? Ofsted stated that it would decline this approach on the basis that to provide the information would breach the first and second Data Protection Act principles.
 26. Ofsted acknowledges that information matching the complainant's request could be 'created' using SQL tools and specialist programming skills.
 27. Ofsted holds information relevant to the complainant's request both in its live RSA database and in the quarterly snapshot taken on 6 April 2005.

Analysis

28. The Commissioner has considered the information obtained in the course of the investigation and the arguments put forward by both parties in order to reach a decision about the two questions outlined in the 'Scope of the Investigation' section of this decision notice.

Procedural matters

Is the requested information held?

29. 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.”

The Commissioner has established that Ofsted holds information relevant to the complainant's request on its RSA database. In this case he is satisfied that the 29,970 people named in the Manager field of the RSA database are relevant to the request. The question to be answered is whether the extraction of this information and its collation constitutes the creation of new information.

30. Having established that information relevant to the request is held in the RSA database, the commissioner has gone on to consider the principles of database construction and their function.
31. Databases hold information in one or more tables (usually many) which contain records in multiple fields. The database software has query tools which enable information in linked fields to be extracted into reports. Where information cannot be extracted through standard reports, query languages, such as SQL, can be used to combine data from multiple tables and/or databases.
32. A public authority may be asked to provide a list of information. The information as requested may not exist in list form; nevertheless the authority may hold the constituent data from which the requested list may be constructed.
33. It is the Commissioner's view that where a database contains recorded information identified in the request, that information is held, and the public authority is under an obligation to provide it (unless exempt). The Commissioner's view is that the nature of databases is such that any query of the database amounts to information retrieval or extraction rather than the creation of new information, because, simply, the information is held within the database. As the Act provides a right of access to recorded information, and such information is recorded, the difficulty of the retrieval or extraction process – the complexity of the query is irrelevant to the question of whether the information is held.
34. The Information Tribunal took the above approach in the case of the *Home Office & the Information Commissioner* (EA/2008/027) in which the applicant asked for the number of work permits obtained in 2005 and 2006 by nine named employers in the IT sector. The Home Office said it did not hold the information and that to comply with the request would require the creation of new information for which the public authority had no business need.
35. The Tribunal said that there was “no distinction” between information held by a public authority and ‘raw data’ held on a database by the public authority. At paragraph 13, the Tribunal said:

“...the legislation is concerned with information as an abstract phenomenon (i.e. facts which are recorded) and not with documents or records as such. Thus the fact that the total number of work permits is not recorded anywhere as a number is in our view irrelevant: the number is implicit in the records of the relevant permits when put together and whether it comes in the form of a list of individual work permits or a total figure seems to us to be simply a matter of form....”

36. The Tribunal also referred to Lord Hope's observation in the Scottish Information Commissioner's case involving the Common Services Agency ([2008] UKHL 47) which deal with this issue that “...this part of the statutory regime should...be construed in as liberal a manner as possible” (para 8).
37. The Act provides a right of access to recorded information, and in this case names of Persons in Charge (Managers) are recorded in the RSA database.
38. In his Decision Notice in FS50166599 the Commissioner noted that the difficulty of the retrieval or extraction process, in this case using an SQL query, is irrelevant to the question of whether the information is held.
39. In view of the above the Commissioner considers that running an SQL query would result in a collated list of information held by Ofsted in its RSA database rather than the creation of new information. In denying that it held the requested information at the time of the request Ofsted therefore breached section 1(1)(a) of the Act.
40. The Commissioner understands that the RSA database is constantly amended to ensure that details are accurate and up to date. He is also aware that Ofsted take quarterly snapshots of this data for quality assurance purposes. Ofsted has confirmed that it still holds the snapshot taken at the time of the complainant's request and consequently the Commissioner has limited his consideration to whether the snapshot taken at the time of the request should have been disclosed.
41. The Commissioner has therefore gone on to consider the application of section 40(2) to the names of Persons in Charge (Managers) currently held by Ofsted.

Exemption – section 40

42. For the names of Persons in Charge (Managers) to be meaningful it would be necessary to disclose them together with the name of the relevant child care setting. The Commissioner accepts that this information would constitute personal data of the Persons in Charge as it would reveal their name and place of work.

Would the disclosure of the information breach any of the data protection principles?

43. Ofsted has argued that disclosure would breach the first and second data protection principles and that therefore section 40(2) of the Act applies to the requested information. The Commissioner has addressed each of the principles in turn below. The full text of section 40 can be found in the Legal Annex at the end of this decision notice.

First data protection principle

44. The first data protection principle states that information should be processed fairly and lawfully. The Commissioner has therefore considered whether or not the disclosure of the Person in Charge (Manager) names would be fair and lawful. In doing so he has considered the expectations of the persons in charge and the degree to which the release of the information would infringe on their privacy.

Fairness

45. When considering the reasonable expectations of the Persons in Charge (Managers), the Commissioner has taken into account the statement on the final page of the DC2 form. This informs those completing the form of the way in which their personal data is likely to be processed by Ofsted. As mentioned above, the form includes a statement that Ofsted will not give personal information out unless the law permits it to do so. It then provides examples, taken from the CMDC Regulations 2004, of the types of people or organisations that information may be released to. It is noted that none of the examples cited include the disclosure of information in response to a request under the Act, though in the Commissioner's experience specific statements that information may be released under the Act are still relatively uncommon.
46. The examples from the Regulations do not purport to be an exhaustive list and Ofsted has cited them simply as an indication of where they are permitted to disclose information. Nevertheless it could be argued that a reasonable person may infer, solely on the basis of the DC2 form that their data would only be given out in limited circumstances and not in response to a request under the Act.
47. However, notwithstanding the comments above, when assessing the expectations of the data subjects the Commissioner considers it appropriate to take into account additional factors besides the DC2. These include the type of information that is already in the public domain about child care settings. He also believes the level of detriment to the privacy of the Persons in Charge (Managers) if the requested information were released to be important.
48. The requested information would reveal the name of Person in Charge (Manager) and his/her place of employment. The Commissioner accepts that if this type of information were released routinely it would potentially allow the public to track movement of Persons in Charge (Managers) between employers, provided that they had a sufficiently distinctive name. Ofsted has argued that this would detrimentally affect the employment opportunities of those individuals because prospective employers will infer that their frequent movements are the result of employee/employer disputes. Even if it were possible to track the employment history of individuals as a result of routine disclosure, there are numerous reasons why people may change employers relatively frequently such as changes to personal circumstances and development opportunities. The Commissioner is not persuaded therefore that there is sufficient evidence to demonstrate that employers would necessarily attribute movement to such disputes.

49. The Commissioner is mindful that this information relates to individuals in the professional capacity rather than in their private lives. In its submissions Ofsted cited a previous decision that the Commissioner had made in relation to a request for details of his own staff to support its position that disclosure would be unfair. However, in the Commissioner's view, that case involved markedly different information: the request was for the private home addresses of his staff as opposed to their place of work. It is noted that some day care settings are run from private residences. As those residences are used for business purposes the Commissioner considers that this reduces the reasonable expectation of privacy in relation to them.
50. He is aware that in this case the individuals are not public sector employees. Nevertheless they do provide services to the public in the form of child care, which it is deemed appropriate for a public authority to regulate. He also notes that ultimate responsibility for the setting lies with the Registered Provider however the Person in Charge (Manager) still has a significant level of responsibility either for the setting or in some cases for care of the children. In some cases the Person in Charge is the same as the Registered Provider. Ofsted has explained that it is required by law to release the name of the Registered Provider for each childcare setting. In the Commissioner's view, where the Registered Provider is a person rather than a company and they also occupy the role of Person in Charge it would not be unfair to release that information as the individual would already have an expectation that their link to a particular setting would be in the public domain.
51. In relation to Ofsted's argument that releasing names of Persons in Charge may lead to them being held ultimately responsible for poor performance within a particular setting, he would point out that, when releasing information, Ofsted could explain where the ultimate responsibility for a particular setting lies.
52. The Commissioner has conducted his own searches to determine the degree to which information similar to that requested in this case is already available in the public domain. He has established that many child care settings provide details of staff including the Person in Charge on their website. He notes that such sites often include details of staff with considerably less responsibility and also feature photographs of those individuals.
53. In addition the Commissioner has located internet-based directories of day care settings which include details of managers or Persons in Charge. He acknowledges that the information within the directories does not originate from Ofsted. However he considers it relevant to note that the same sort of information has been made available to the public without any apparent detriment to the individuals concerned. Given the amount of material that is available in the public domain and which could therefore be used by people intent on identity theft, he is not persuaded that disclosure would significantly increase the risk of identity theft so as to render disclosure unfair.
54. The DC2 form includes a wide range of personal data with varying degrees of sensitivity. For example, people are required to provide their name, child care

experience and qualifications as well as information about criminal convictions. In the Commissioner's view it would be reasonable for Persons in Charge (Managers) to have different expectations as to whether or not information would be released depending on its nature and the likely detriment. In other words, someone's expectations in relation to details about their criminal record are likely to be markedly different to their name and place of employment.

55. The Commissioner understands that Ofsted has not consulted the Persons in Charge (Managers) to seek their consent to disclosure. Given the volume of people involved he considers this to be reasonable. However, he does not accept Ofsted's position that the individuals would not distinguish between the different information provided on the DC2 form when determining whether they felt that disclosure would be unfair.
56. In view of all of the above, the Commissioner considers that in this case it would not be unfair to release the names of the Persons in Charge (Managers) of day care settings. He does not accept that disclosure would result in any significant detriment to the privacy of those individuals.

Lawfulness

57. Ofsted has asserted that any disclosure of information contained in the DC2 form is restricted by the CMDC Regulations and therefore releasing the material in response to the request would be unlawful. The Regulations place an additional duty upon the Chief Inspector under section 79N(5) of the Children Act 1989 to supply information to certain organisations or people. They also limit the circumstances in which it is necessary for the Chief Inspector to comply with that duty for example in Regulation 4. However, in the Commissioner's view the CMDC Regulations do not constitute a prohibition against disclosure where a request for information is made to Ofsted under the Act. Further, they do not state that disclosure of information is to be allowed only in the circumstances specified in the Regulations. Therefore the Commissioner does not consider that disclosure of the requested information would be unlawful.

Schedule 2 Condition 6

58. In order for disclosure to be fair and lawful and therefore in accordance with the first data protection principle, one of the conditions in schedule 2 of the DPA must be satisfied. In this case the Commissioner is satisfied that condition 6 is relevant and is satisfied. Condition 6 states that,

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

59. The sixth condition establishes a three part test which must be satisfied;
- there must be legitimate interests in disclosing the information,

- the disclosure must be necessary for a legitimate interest of the public and,
 - even where the disclosure is necessary it nevertheless must not cause unwarranted interference (or prejudice) to the rights, freedoms & legitimate interests of the data subject
60. The Commissioner has followed the approach taken by the Information Tribunal in *House of Commons v ICO & Leapman, Brooke, Thomas* (EA/2007/0060 etc). In this case the Tribunal set out that the first stage when applying the sixth condition was to establish whether the disclosure was necessary for the legitimate purposes of the recipient (the public) and then you had to go on to consider whether, even if the disclosure was necessary, it would nevertheless cause unwarranted prejudice to the rights & freedoms of the data subject (paragraphs 59 onwards). The case involved requests to the House of Commons for details of the expenses that 14 named MPs had claimed for their second homes. In considering whether the sixth condition was satisfied the Tribunal asked itself two questions;
- “(A) whether the legitimate aims pursued by the applicants can be achieved by means that interfere less with the privacy of the MPs (and, so far as affected, their families or other individuals),
(B) if we are satisfied that the aims cannot be achieved by means that involve less interference, whether the disclosure would have an excessive or disproportionate adverse effect on the legitimate interests of the MPs (or anyone else).”
61. In the Commissioner's view there is a public legitimate interest in knowing the identity of those responsible at a day to day level for the care of children. The Commissioner understands that the ultimate responsibility for child day care settings rests with the Registered Provider. Nevertheless, Persons in Charge do have responsibility for children either because they are involved directly with the provision of care or because they are responsible for the setting. According to the Daycare Trust, managers or Persons in Charge are informed by Ofsted inspectors of any changes to the setting or care that are required prior to registration. This is to ensure that the 14 national standards established by the Sure Start Unit are met. Details of these standards can be found at the following internet site:
- http://www.daycaretrust.org.uk/mod.php?mod=userpage&page_id=40.
62. The Commissioner considers that there is a legitimate interest to the public, including parents, prospective parents and carers in accessing details of the Person in Charge (Manager), particularly when researching and deciding about potential care settings for children. It is legitimate for the public to know and be able to verify that someone purporting to be registered with Ofsted as a person involved in management of childcare provision is indeed registered. Given that the request being considered here is for individual's names, the Commissioner considers that if any prejudice to the rights and freedoms of the Persons in Charge (Managers) was to arise following disclosure, this would be very limited. This is for the same reasons as set out in his considerations of fairness above.

63. The Commissioner accepts that the CMDC Regulations allow Ofsted to supply information to a number of recipients, including government departments, the police, child protection agencies, local authorities and childcare organisations. The information Ofsted provides to local authority Children's Information Services may be given to parents on application. Ofsted contend that the regulations provide access to information in sufficient detail and to a sufficiently wide circulation to render condition 6 to be met without the need for additional disclosure. The Commissioner does not accept this and would point out that the regulations deny access to that same information to other members of the community, who might themselves have equally legitimate interests in it. One such group would be prospective parents. He therefore concludes that the Regulations do not satisfy the legitimate interests of the public in general. He concludes that the disclosure of the requested information is necessary in order to meet the legitimate interests of the wider community and that disclosure would not prejudice the rights, freedoms and interests of the data subjects.
64. The Commissioner therefore finds that disclosure would not breach the first data protection principle.

Second data protection principle

65. The second data protection principle states that personal data shall be obtained only for one or more specified purposes, and shall not be further processed in any manner incompatible with that purpose or purposes.
66. Ofsted has argued that as the DC2 indicates that it will only use the data provided in specified ways and disclosure under the Act is not one of them. It argues that this supports the position that releasing the requested information would breach the second data protection principle.
67. The Commissioner acknowledges that Ofsted obtains data for the purposes of its own functions. Furthermore, it makes this information available to the public in circumstances which are compatible with its functions, albeit in a limited way. The Commissioner considers that the provision of additional information, such as that required by the complainant, is compatible with the purpose for which the data was obtained. He makes this conclusion in recognition of the Information Tribunal's decision in *The Corporate Officer of the House of Commons v The Information Commissioner* (EA/2006/0015 and 0016).
68. The second data protection principle relates to the business purposes for which a data controller intends to process personal data. Public authorities do not collect personal data in order to respond to FOI requests and therefore there is no need for them to specify such disclosures as a purpose for which they are processing the data. A disclosure of personal data that would not breach any of the remaining data protection principles or would not involve the disclosure of information that would be exempt under any other exemptions of the Act will not be incompatible with the business purposes that have been specified.
69. The Commissioner therefore finds that disclosure would not breach the second data protection principle.

The Decision

70. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act.
71. Ofsted denied holding information relevant to the request. This was on the basis that collating relevant material within the RSA database would constitute the creation of new information. The Commissioner has concluded that the collation of information about Managers from the RSA database does not constitute the creation of new information and that Ofsted does in fact hold information relevant to the request. At the time the request was made Ofsted breached section 1(1)(a) of the Act in denying that relevant information was held.
72. He does not consider that releasing the names of the Persons in Charge would breach either the first or second data protection principles and therefore he has concluded that section 40(2) was inappropriately cited. In failing to provide the information to the complainant the public authority breached section 1(1)(b) of the Act.

Steps Required

73. The Commissioner is aware of the changing nature of the information held in the Ofsted RSA database. However the Commissioner is required to examine the way the public authority dealt with the request at the time it was made and consequently he requires the public authority to take the following steps to ensure compliance with the Act:
- Disclose the names of Persons in Charge (Managers) together with the name of the relevant day care setting held in the quarterly snap-shop of its RSA database taken on 6 April 2005. This information should be disclosed to the complainant in an electronic format convenient for the public authority.
74. The public authority must take the steps required by this notice within 35 calendar days from the date of this notice.
75. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act, and may be dealt with as a contempt of court.

Right of Appeal

76. 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@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

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 1st day of December 2008

Signed

**Steve Wood
Assistant Commissioner**

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

Legal Annex

Section 1

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.”

Section 40(2)

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.”