

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 25 August 2009**

**Public Authority:** Chief Constable of Surrey Police  
**Address:** Surrey Police HQ  
Mount Browne  
Sandy Lane  
Guildford  
Surrey  
GU3 1HG

### Summary

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The complainant requested information recording the advice received by the public authority from the Association of Chief Police Officers regarding a disagreement between the public authority and another police force about the approach adopted by the public authority when investigating deaths at the Deepcut Army Barracks. The public authority refused the request, citing the exemptions provided by sections 30(1)(a)(i) (information relating to investigations) and 36(2)(b)(i) (inhibition to the provision of free and frank advice). During the course of the Commissioner's investigation, the public authority also cited section 40(2) (personal information). The Commissioner finds that the exemptions provided by sections 30(1)(a)(i) and 40(2) are not engaged and that section 36(2)(b)(i) is engaged, but that the public interest in maintenance of the exemption does not outweigh the public interest in disclosure. In failing to disclose the information on the basis of exemptions that the Commissioner has not upheld, the public authority did not comply with the requirements of sections 1(1)(b) and 10(1). The public authority also failed to comply with the requirements of section 10(1) in failing to confirm or deny whether it held information falling within the scope of the request within 20 working days of receipt, and section 17(1) in failing to issue a refusal notice within the statutory time limit. The public authority is required to disclose the information in question.

### The Commissioner's Role

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

## The Request

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2. The complainant made the following information request on 31 May 2007:

*“My request relates to minutes of the Chief Constable’s report to a Surrey Police Authority meeting held on November 17 2005 at Woking Borough Council’s office and, in particular, where the chief constable updated members of ‘developments in the Deepcut Inquiry’.*

*The final paragraph of page four of the minutes starts ‘The chief constable welcomed the fact...’*

*The third, fourth and fifth lines of the paragraph states ‘There was a fundamental disagreement between the Forces on the approach adopted by Surrey Police and this had been referred to the service’s professional advisers for clarification’.*

*I would like to request any correspondence Surrey Police has received from the service’s professional advisers regarding clarification in this matter.”*

3. The public authority responded to this on 31 July 2007, outside the twenty working days maximum required by the Act. The public authority confirmed that it held information falling within the scope of the request, but refused to disclose this, citing the exemptions provided by sections 30(1) (investigations), 36(2)(b)(i) and (ii), and 36(2)(c) (prejudice to the effective conduct of public affairs).
4. The complainant responded on 1 August 2007 and requested that the public authority carry out an internal review of its handling of the request. The public authority finally responded with the outcome to the review on 7 November 2007. The refusal of the request was upheld.

## The Investigation

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### Scope of the case

5. The complainant contacted the Commissioner on 7 November 2007 to raise the issue of the refusal of his request. The complainant indicated that he did not agree with the exemptions cited by the public authority and that he did not believe that the public authority had adequately addressed the grounds cited in his internal review request.

### Chronology

6. The Commissioner contacted the public authority initially on 16 February 2009. The background to the complaint was set out and the public authority was asked to respond with clarification about what information it held that fell within the scope of the request, a copy of the information in question and further explanation

of its reasoning for the exemptions cited.

7. After a lengthy delay, the public authority responded by letter dated 24 April 2009 and stated that the information it held that fell within the scope of the request consisted of two letters from the Chief Constable of Durham Constabulary to the Deputy Chief Constable of Surrey Police dated 13 October 2005 and 20 December 2006. The public authority specified that the *'the service's professional advisers'* referred to in the meeting minutes upon which the request was based was the Association of Chief Police Officers (ACPO). The Chief Constable of Durham Constabulary had written these letters to the public authority in the capacity of ACPO lead on the Homicide Working Group. Copies of these letters were provided to the Commissioner's office.
8. In connection with section 30, the public authority specified subsection 30(1)(a)(i) and stated that it believed that this exemption applied only to some extracts from the information withheld. The public authority did not specify which parts of the information it believed were covered by this exemption, or why it believed that this exemption was engaged. On the issue of the public interest, the public authority stated that the open verdicts of the Coroner in respect to the deaths at Deepcut meant that there was a realistic possibility of the public authority's investigations of these deaths being reopened. The public authority also believed that the victims' families were seeking a further Inquest into the deaths and that, pending this, no further information should be disclosed.
9. In connection with section 36, the public authority stated that the Chief Constable had acted as qualified person and had given his opinion that the exemption was engaged in July 2007. The public authority also provided a copy of the 'enquiry action log', which referred to an opinion on the citing of section 36 having been sought from the Chief Constable on 31 July 2007. The public authority stated that the Chief Constable viewed the information in question when forming his opinion and that his opinion was that sections 36(2)(b)(i) and (ii) were engaged, but that section 36(2)(c), which had been cited in the refusal notice, was no longer believed to be engaged.
10. In connection with section 36(2)(b)(i), the opinion of the Chief Constable was that disclosure may inhibit the advice that chief officers provide to each other. The public authority cited no arguments of relevance to section 36(2)(b)(ii). The public authority addressed the public interest as it was at the time of that letter (24 April 2009), rather than as it was at the time of the request and refusal, and stated that it believed that any public interest in disclosure would by now have lessened through the passage of time to the point where the public interest in avoiding inhibition to advice provided by chief police officers to each other would outweigh the public interest in disclosure. The public authority also indicated that, whilst not cited previously, it believed that the exemption provided by section 40(2) (personal information) was engaged where individuals are named within the withheld information.
11. The Commissioner contacted the public authority again on 19 May 2009. First the issue of the scope and purpose of the request was raised. It was noted that it appeared that not all of the content of the two letters that the public authority

- believed constituted information falling within the scope of the request was relevant to the request. The public authority was asked to consider what content of these two letters would fall within the scope of the request and to respond with confirmation about this.
12. Secondly, the public authority had stated in its previous response that the two letters were all information held of relevance to the request that it was '*aware of*'. The public authority was advised that a more definitive confirmation that all relevant information had been identified would be necessary and was asked to respond describing what steps had been taken to locate information falling within the scope of the request and to confirm definitively that all information of relevance to the request had been located.
  13. The public authority responded to this by e mail dated 4 June 2009. The public authority agreed that not all of the content of the two letters was relevant to the request. It now stated that it did not believe any of the content of the letter of 20 December 2006 to be relevant and that only parts of the letter of 13 October 2005 were relevant. The public authority provided to the Commissioner's office a copy of the letter of 13 October 2005 highlighted to show which parts of this were considered relevant to the request.
  14. On the issue of the searches undertaken to locate information relevant to the request, the public authority stated that the '*paperwork registry files*' had been searched and that the Senior Investigating Officer for the Deepcut investigation had been consulted. The public authority confirmed that the letter of 13 October 2005 contained all the information held by the public authority of relevance to the request.

## Analysis

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### Exemptions

#### Section 30

15. The public authority has cited section 30(1)(a)(i), which is set out in full in the attached legal annex, as are all other sections of the Act referred to in this Notice. For this exemption to be engaged, the information in question must have been held by the public authority for the purposes of an investigation which the public authority has a duty to conduct with a view to it being ascertained whether a person should be charged with an offence.
16. The information in question must relate to a specific investigation; not to investigations in general. The Act is also clear in that the exemption will be engaged in relation to information held *at any time* for the purposes of an investigation. This means that, for example, where information was held for the purposes of an investigation that was complete at the time of the request, this information will continue to fall within the class specified in this exemption.

### **A relevant investigation?**

17. The first step in considering whether this exemption is engaged is to establish whether the public authority has powers to carry out investigations conforming to the description given in section 30(1)(a)(i). As the public authority in this case is a police force, it is clear that it does have such powers.
18. The next steps are to consider whether the investigation in question conforms to the description given in section 30(1)(a)(i) and whether the information in question is held for the purposes of this investigation. Without giving detailed consideration to this point, the Commissioner accepts that the various investigations carried out by the public authority of the deaths at Deepcut would conform to the description in section 30(1)(a)(i). The element of this case that requires more detailed analysis is whether the information identified by the public authority from the letter of 13 October 2005 can be accurately characterised as being held for the purposes of any investigation.
19. As noted above at paragraph 8, the public authority stated that it believed that this exemption was engaged in relation to only some of the information that falls within the scope of the request, but did not specify which of this information it believed to be relevant. In the absence of this explanation from the public authority, the Commissioner has considered this exemption in relation to all of the information from the letter of 13 October 2005 which the public authority has specified as relevant.
20. The public authority provided no explanation at either the refusal notice or internal review stage as to why it believes this exemption to be engaged and has provided little further explanation in its correspondence with the Commissioner. Those representations that the public authority has made focus on the possibility of the reopening of the investigations and the harm that could result to any reopened investigation through disclosure. Whilst arguments about harm that may result through disclosure may be relevant to the issue of whether the public interest favours the maintenance of the exemption, they are not relevant to the issue of whether this class based exemption is engaged.
21. The public authority has stated that some parts of the information relate directly to its criminal investigation, but did not elaborate on this point. Having reviewed the information in question, the Commissioner recognises that this does indeed include content that relates to the Deepcut investigations. However, section 30(1)(a)(i) specifies information held *for the purposes of* a relevant investigation; it is not sufficient for information to merely *relate to* an investigation.
22. The Commissioner also notes that the public authority published a document titled "*Surrey Police Deepcut Investigation Final Report*" on 4 March 2004. The title of this document suggests that the investigations of the deaths at Deepcut by the public authority were complete by that time, a period significantly prior to the date of the letter that constitutes the information falling within the scope of the complainant's request. If the public authority was not investigating the deaths at Deepcut at the time of the recording of the information in question, this further calls into question the suggestion that this information was held for the purposes

of any such investigation.

23. The conclusion of the Commissioner is that the information in question has not at any time been held for the purposes of a relevant investigation and that the exemption provided by section 30(1)(a)(i) is not, therefore, engaged. This conclusion is based on the absence of an explanation from the public authority as to why it believed this exemption to be engaged and on the content of the information not supporting the stance of the public authority. As this conclusion has been reached, it has not been necessary to go on to consider the balance of the public interest.

### **Section 36**

24. The role of the Commissioner when considering whether section 36 is engaged is to consider whether the opinion of the qualified person (QP) that the inhibition described in the exemption *would or would be likely to occur* is objectively reasonable. Where the conclusion is that this opinion is objectively reasonable, the exemption is engaged. Having established that section 36 is engaged, it is necessary to then go on to consider whether the balance of the public interest favours the maintenance of the exemption. The effect of section 36 being subject to the public interest is that, where the balance of the public interest does not favour maintenance of the exemption, the information should be disclosed regardless of how clear it is that the opinion of the QP is objectively reasonable.

#### **Opinion of the qualified person**

25. The public authority has cited sections 36(2)(b)(i) and (ii). These are engaged where, in the reasonable opinion of the QP, disclosure would or would be likely to lead to inhibition to the free and frank provision of advice, and the free and frank exchange of views for the purposes of deliberation. When considering whether sections 36(2)(b)(i) and (ii) are engaged, the Commissioner will take into account:
- whether an opinion was given;
  - whether the person who gave that opinion is the QP for the public authority in question;
  - when the opinion was given;
  - whether the opinion is reasonable.
26. The public authority has stated that an opinion was given by the Chief Constable and that this opinion was given in July 2007, but has provided no exact date. The Ministry of Justice maintains a list of who is QP for each public authority. This states that the QP for a police force is the Chief Officer. The person who gave the opinion in this case is, therefore, the QP for the public authority.
27. There appear to have been flaws in the process of applying this exemption. The public authority has provided evidence that the opinion was sought on 31 July 2007, as referred to above at paragraph 9. That this opinion was sought on the same day as the refusal notice was issued calls into question how thorough a process was undertaken by the Chief Constable when forming his opinion. However, in the absence of evidence that the QP did not give an opinion, even if

- this opinion was cursory and provided at short notice, the Commissioner accepts that an opinion was given by the QP.
28. Turning to whether the opinion of the QP was objectively reasonable, the Commissioner has taken into account whether it was reasonably arrived at and reasonable in substance. On the issue of whether the opinion was reasonably arrived at, the public authority has provided no evidence of what the QP took into account when forming his opinion, but has stated that the QP viewed the information in question. The public authority was uncertain about what information it held that fell within the scope of the request. This was demonstrated by the public authority altering its stance about what relevant information it held when this issue was raised with it by the Commissioner. This suggests that the QP viewed information that the public authority now states does not fall within the scope of the request and this may have meant that the QP gave less focus than would otherwise have been the case to the information that the public authority now states does fall within the scope of the request. However, the information that the public authority states the QP viewed when forming his opinion would have at least included that falling within the scope of the request and, therefore, the Commissioner accepts that the opinion was reasonably arrived at.
  29. The public authority has stated that the opinion of the QP was that inhibition may occur to the provision of free and frank advice between senior officers. The public authority has not specified if the opinion of the QP was that inhibition *would* occur, or if it was that inhibition *would be likely to* occur. In the absence of this clarification the Commissioner will, for the purposes of this Notice, assume that the opinion of the QP was that inhibition would be likely to occur. The test that the Commissioner applies when considering whether inhibition would be likely to occur is that the likelihood of this must be real and significant and more than hypothetical or remote.
  30. The public authority provided no argument of relevance to section 36(2)(b)(ii). Further flaws in the process undertaken by the QP and the public authority when applying this exemption are apparent here. The public authority appears to have kept no record of the opinion of the QP, or of what was taken into account when forming this opinion. Had it done so, the public authority may have been able to provide a more thorough explanation for the QP's opinion, as well as resolving the issues surrounding whether and when this opinion was given.
  31. The Commissioner notes that the one factor given by the public authority as the basis for the QP's opinion is supported by the content of the information in question. This consists of advice provided from one senior officer to another. The Commissioner also accepts that the highly sensitive context and subject of this advice, as well as the nature of some of it, means that it can be accurately characterised as having been provided in the context of a free and frank exchange.
  32. Having established that this advice can be accurately characterised as free and frank, it is necessary to go on to consider whether it is reasonable to hold the opinion that disclosure would be likely to inhibit the provision of similarly free and frank advice in future. As already noted, the subject of this advice is one of high

sensitivity. Given this, the Commissioner believes that it would be reasonable to conclude that a senior officer giving advice on a similarly sensitive issue in future would be likely to be inhibited if they believed that the content of this advice may be disclosed via the Act. Further, the Commissioner recognises that the QP, as a senior officer himself, was well placed to reach an informed opinion on the likelihood of inhibition to the candour of future advice between senior officers. The Commissioner, therefore, accepts that the opinion on section 36(2)(b)(i) was reasonable in substance.

33. The Commissioner does not, however, accept that the opinion on section 36(2)(b)(ii) was reasonable in substance. This exemption relates to the free and frank exchange of views, as opposed to the provision of advice. His reasoning for this is twofold; first, the public authority has provided no explanation for the QP's opinion in connection with this subsection and, secondly, the content of the information includes nothing that could be properly characterised as an exchange of views, free and frank or otherwise.
34. The conclusion of the Commissioner is that the exemption provided by section 36(2)(b)(i) is engaged. The basis for this conclusion is that the Chief Constable gave an opinion on the citing of this exemption and that this opinion was both reasonably arrived at and reasonable in substance. However, the Commissioner also finds that the exemption provided by section 36(2)(b)(ii) is not engaged. The basis for this conclusion is that the opinion of the Chief Constable was not reasonable in substance.

### **The public interest**

35. Having concluded that this exemption is engaged, the Commissioner has considered whether the public interest in maintaining this exemption outweighs the public interest in disclosure. It was the opinion of the QP that disclosure in this case would be likely to inhibit the free and frank provision of advice. In accepting that the opinion of the QP is reasonable, the Commissioner has accepted that disclosure here would be likely to inhibit the provision of free and frank advice between senior officers in future. The role of the Commissioner here is to consider whether the public interest in disclosure outweighs this concern.
36. In the case of *Guardian & Brooke v The Information Commissioner & the BBC* (EA/2006/0011 & EA/2006/0013), the Information Tribunal acknowledged that the application of the public interest test to the section 36 exemption “involved a particular conundrum”, noting that although it is not for the Commissioner to form his own view on the likelihood of prejudice under this section (because this is given as a reasonable opinion by a qualified person), in considering the public interest, “it is impossible to make the required judgement without forming a view on the likelihood of inhibition or prejudice” (paragraph 88).
37. In the Tribunal's view, the reasonable opinion is limited to the *degree of likelihood* that inhibition or prejudice would occur, on the balance of probabilities. It therefore argued that the reasonable opinion “does not necessarily imply any particular view as to the severity or extent of such inhibition [or prejudice] or the



frequency *with which it will or may occur, save that it will not be so trivial, minor or occasional as to be insignificant*" (paragraph 91).

38. This means that whilst the Commissioner should give due weight to the reasonable opinion of the qualified person when assessing the public interest, he can and should consider the severity, extent and frequency of prejudice or inhibition to the subject of the effective conduct of public affairs.
39. On the issue of the severity of the inhibition resulting from disclosure here, the Commissioner accepts that, if the decision making of senior officers was negatively impacted upon through an inability to source free and frank advice, this would be likely to result in an impact on the public authority of some severity. However, the opinion of the QP was limited to advice provided between senior officers, rather than between all officers. If inhibition was likely to result where advice is provided between officers at all levels within the public authority, the severity of the inhibition would be greater.
40. In terms of the extent of this inhibition, similarly to the severity, this is limited by the opinion of the QP being specifically confined to senior officers within the public authority. However, it appears reasonable to conclude that this inhibition would be likely to occur to officers within other police forces aside from that in question here, meaning that the extent is greater than were it to occur only in relation to the public authority.
41. It is likely that the provision of free and frank advice between senior officers takes place regularly, suggesting that the frequency of prejudice is likely to be high. However, an issue with the same profile and sensitivity as that which is the subject of the advice in this case is likely to be rare. The Commissioner assumes that the opinion of the QP is that inhibition would be likely to occur only in cases where free and frank advice is provided about an issue of at least some sensitivity, so does not accept that the frequency of inhibition is likely to be as high as in every case where advice is provided between senior officers.
42. The public authority argued that the information should not be disclosed as this may prejudice future investigations. However, only those prejudice arguments relevant to this exemption can be taken into account here, meaning that the only prejudice to be taken into account is that likely to result through inhibition to the free and frank provision of advice between senior officers. This argument from the public authority is therefore not relevant to this exemption. This approach is in line with that taken by the Information Tribunal in *Bellamy v the Information Commissioner and the DTI* (EA/2005/0023) in which it clarified:

*"As section 2(2)(b) makes clear, the relevant exercise is to weigh the public interest in maintaining the exemption which is manifested by the relevant provisions against the public interest in disclosing the information. If the weighing process is in favour of the maintenance of the exemption, then any duty to communicate or disclose is disapplied. It necessarily follows that not all public interest considerations which might otherwise appear to be relevant to the subject matter should be taken into account.*

*What has to be concentrated upon is the particular public interest necessarily inherent in the exemption or exemptions relied upon.”*  
(paragraph 5)

43. Turning to those factors relating to the specific information in question here, that this information relates to the deaths at the Deepcut Army Barracks and the police investigations of these deaths is highly relevant to the balance of the public interest. First, even aside from the controversy surrounding these deaths and the police investigations, the Army has been criticised through official channels about the operation of Deepcut. The implication of this criticism is that the failings in the operation of Deepcut contributed to the deaths of four Army recruits. Given the seriousness of the outcome of these failings there is a strong public interest in full disclosure of all information relating to the deaths at Deepcut. This public interest extends to the information in question here, despite this information relating only tangentially to the failings in the operation of Deepcut.
44. Secondly, there is controversy about the various police investigations into the deaths at Deepcut and this controversy was ongoing at the time of the request. Part of the source of this controversy is questions about the quality of the investigations carried out by the public authority, including whether the public authority had adopted the correct approach, or 'mindset', at the outset of these investigations. That the information in question relates directly to this issue makes this a public interest factor in favour of disclosure of significant weight.
45. Another source of this controversy is the perception, rightly or wrongly, that information relating to the deaths at Deepcut and the police investigations of these has been suppressed in order to obscure the facts of the deaths and the failings of various public bodies in relation to these deaths. Full disclosure of information relating to the deaths at Deepcut is in the public interest in order to resolve this suspicion.
46. The public authority may argue that the circumstances of the Deepcut deaths, the operation of the Barracks and the investigations it carried out have been subject to sufficient checks and balances, including its review of its own investigation and the third party review carried out by Devon & Cornwall Constabulary, Army Boards of Inquiry and an independent review commissioned by the Government, and this means that the public interest in understanding what led to the deaths at Deepcut has been satisfied. Disclosure of the information in question here is not, therefore, necessary in order to satisfy this public interest. However, the Commissioner does not believe that the various investigations and reviews of the Deepcut deaths carried out previously significantly reduces the public interest in full disclosure for the following two reasons.
47. First, the Government has stated that no full public inquiry into the Deepcut deaths will be held. Such an inquiry may well have had a significant reductive effect on the public interest in disclosure. In the absence of such an inquiry, the public interest in disclosure remains significant.
48. Secondly, rightly or wrongly and despite the various investigations and reviews, the suspicion that the full facts and causes of the Deepcut deaths have not been

disclosed remains. As previously noted, disclosure that would resolve this suspicion would be in the public interest.

49. The Commissioner concludes that the public interest in maintaining the exemption does not outweigh the public interest in disclosure. Whilst the Commissioner has recognised that the severity, extent and frequency of the inhibition that the QP identified would be likely to be reasonably significant, the public interest in avoiding this impact does not outweigh the very considerable public interest in full disclosure of information relating to the deaths at Deepcut. This factor carries particular weight given that the information in question is specifically and directly relevant to this public interest, rather than this being a case where the conclusion is that the default position of disclosure is followed due to the lack of convincing arguments in favour of maintenance of the exemption.

## Section 40

50. The exemption provided by section 40(2) will be engaged where the information in question constitutes the personal data of an individual other than the applicant and where the processing of that personal data inherent in the disclosure of this information through the Act would be in breach of any of the data protection principles.

### Personal data?

51. Section 1(1) of the Data Protection Act 1998 (the "DPA") gives the following definition of personal data:

*"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."*

52. The information in question refers to a number of individual police officers, both within the public authority and from elsewhere, by name. Given that these individuals can clearly be identified from this information, the Commissioner concludes that the information recording the names of individual police officers does constitute the personal data of those officers.

### First data protection principle

53. The next step is to consider whether disclosure would result in a breach of any of the data protection principles. The Commissioner has focussed on the first data protection principle, which requires that personal data be processed fairly and lawfully. In order for the processing of personal data to be in compliance with the first data protection principle it first must be, in general, fair and, secondly, must fulfil at least one of the conditions in Schedule 2 of the DPA.
54. Covering first the issue of fairness, this personal data relates to the data subjects

in a solely professional capacity. Even then, little information about these individuals in a professional capacity is disclosed within the information. Given these two factors; that the personal data relates to the data subjects in a solely professional capacity and the minimal volume of this information, the Commissioner does not believe that it would be unfair to the subjects of this personal data for this information to be disclosed.

55. The approach of drawing a distinction between public and private lives is in line with that taken by the Information Tribunal in *House of Commons v ICO & Norman Baker MP* (EA/2005/0015 and 0016) where it stated:

*"...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."* (paragraph 78)

*"...it is possible to draw a distinction between personal data related to an individual's public and private life"* (paragraph 79)

56. Turning to whether any Schedule 2 condition would be met if this personal data were disclosed, paragraph 6(1) of Schedule 2 of the DPA provides a condition for processing personal data where:

*"The processing is necessary for the purposes of the legitimate interests pursued by the data controller or by a 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."*

57. The Commissioner has adopted the approach taken by the Tribunal in the case *House of Commons v ICO & Leapman, Brooke, Thomas* (EA/2007/0060 etc). In that decision the Tribunal set out that the first issue when applying the sixth condition was to establish whether the disclosure was necessary for the legitimate purposes of the recipient (the public) and the second issue was to consider whether, even if the disclosure was necessary, it would nevertheless cause unwarranted prejudice to the rights and freedoms of the data subject.

58. On the issue of legitimate purpose, the Commissioner would refer again to the public interest in full disclosure of information relating to the deaths at Deepcut, a factor of considerable weight in favour of disclosure when considering the balance of the public interest in connection with section 36(2)(b)(i). Although this public interest is likely to be focussed on other parts of the content of the information than the names of individual police officers, in order for this public interest in full disclosure to be fully satisfied, the disclosure must be free from redactions, however minor. On the basis of the legitimate and significant public interest in full disclosure of information relating to the deaths at Deepcut, the Commissioner considers that disclosure of the personal data is necessary for the legitimate purposes of the public.

59. In connection with the issue of prejudice to the rights and freedoms of the data

subjects, the Commissioner would refer back to his analysis of the general fairness issue. As this information relates to individuals in a solely professional capacity, and indeed reveals little about this aspect of the lives of the data subjects, the Commissioner does not believe that disclosure would cause any significant prejudice to the rights and freedoms of the data subjects, unwarranted or otherwise.

60. The Commissioner concludes both that the processing of personal data inherent in the disclosure of this information would not be unfair and that it would fulfil the sixth condition of DPA Schedule 2. This processing of personal data would not, therefore, be in breach of the first data protection principle and the exemption provided by section 40(2) is not engaged.

## **Procedural Requirements**

### **Section 1**

61. As the public authority failed to disclose the information on the basis of exemptions which the Commissioner now finds are not engaged, the public authority did not comply with the requirement of section 1(1)(b). This section of the Act is set out in full in the attached legal annex, as are all other sections of the Act referred to in this notice.

### **Section 10**

62. In failing to confirm or deny within 20 working days of receipt of the request whether it held relevant information, the public authority breached section 10(1).
63. As the public authority failed to disclose the information requested within 20 working days of receipt of the request on the basis of exemptions which the Commissioner now finds are not engaged, the public authority did not comply with the requirement of section 10(1).

### **Section 17**

64. At neither the refusal notice nor internal review stage did the public authority cite the subparagraph of section 30(1) on which it was relying (30(1)(a)(i)) or provide any adequate explanation as to why it believed that this exemption was engaged. In so doing, the public authority failed to comply with the requirements of sections 17(1)(b) and (c).

## **The Decision**

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65. 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 concluded incorrectly that the exemptions provided by sections 30(1)(a)(i) and 40(2) were engaged and that the public interest favoured the maintenance of the exemption provided by section 36(2)(b)(i). In failing to disclose the requested information on the basis of

exemptions that the Commissioner has not upheld the public authority did not comply with the requirements of sections 1(1)(b) and 10(1). The public authority further breached section 10(1) by failing to confirm or deny whether relevant information was held within the statutory time limit. The Commissioner also finds that the public authority failed to comply with the requirements of sections 10(1) and 17(1) by issuing a late and inadequate refusal notice.

## Steps Required

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66. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- disclose the information falling within the scope of the request, that is those parts of the letter dated 13 October 2005 that the public authority clarified in its response to the Commissioner of 4 June 2009 as being relevant to the request.
67. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

## Failure to comply

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

## Other matters

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

As covered above in the section 36 analysis, the public authority appears to have kept no record of the opinion of the Chief Constable. This meant it was unable to provide a thorough description of the reasoning for the opinion of the Chief Constable, or the exact date on which this opinion was given. The Commissioner would recommend to the public authority that, when the opinion of the Chief Constable is that section 36 should be cited, it should keep a thorough record of the opinion, including the reasoning for this opinion, the date the opinion was given and the material viewed by the Chief Constable when forming this opinion.

70. The Commissioner's published guidance on internal reviews states that a review should be conducted within 20 working days, unless there are exceptional circumstances, in which case the review period may be extended to 40 working

days. In this case the Commissioner notes that there appeared to be no exceptional circumstances, but that the public authority failed to provide the outcome to the review within 20 working days. Neither was this outcome provided within 40 working days. The Commissioner would advise the public authority to ensure that comprehensive internal reviews are conducted promptly in future.

## Right of Appeal

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71. 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](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://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.

72. 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 25<sup>th</sup> day of August 2009**

**Signed .....**

**Anne Jones  
Assistant Commissioner**

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



## Legal Annex

### Section 1

Section 1(1) provides that -

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

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

### Section 10

Section 10(1) provides that –

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

### Section 17

Section 17(1) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

### Section 30

Section 30(1) provides that –

“Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of-

- (a) any investigation which the public authority has a duty to conduct with a view to it being ascertained-
  - (i) whether a person should be charged with an offence, or
  - (ii) whether a person charged with an offence is guilty of it,

- (b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or
- (c) any criminal proceedings which the authority has power to conduct.”

### **Section 36**

Section 36(2) provides that –

“Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act-

- (a) would, or would be likely to, prejudice-
  - (i) the maintenance of the convention of the collective responsibility of Ministers of the Crown, or
  - (ii) the work of the Executive Committee of the Northern Ireland Assembly, or
  - (iii) the work of the executive committee of the National Assembly for Wales,
- (b) would, or would be likely to, inhibit-
  - (i) the free and frank provision of advice, or
  - (ii) the free and frank exchange of views for the purposes of deliberation, or
- (c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.”

### **Section 40**

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.”