

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 25 May 2010**

**Public Authority:** The General Medical Council (The 'GMC')  
**Address:** 5<sup>th</sup> Floor  
St James's Building  
79 Oxford Street  
Manchester  
M1 6FQ

### Summary

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The complainant asked for documentation relating to a complaint she made about two specified doctors. Some information was her personal data and was provided under the Data Protection Act (the 'DPA').

In relation to the remainder, after carefully considering the case, the Commissioner finds that the public authority was excluded from its duty to respond to the request under section 1(1)(a) of the Freedom of Information Act (the 'Act') by virtue of the provision of section 40(5)(b)(i) (exclusion from the duty to confirm or deny a public authority holds third party personal information) because in confirming or denying it held information, it would have to disclose to the public, information which would constitute third party personal data the release of which would breach the first data protection principle.

He does find a breach of sections 17(1)(a) and 17(1)(b) because the public authority failed to specify that it was relying on the exclusion in relation to any information it may hold until the time of his investigation. He requires no remedial steps to be taken in this case.

### 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.

## Background

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2. The complainant made a complaint about two named doctors.
3. The information requested is that generated in the public authority's handling of the case that is not the complainant's own personal data.

## The Request

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4. On 14 July 2009 the complainant requested the following information in accord with section 1(1) of the Act:

*'So may I ask please for copies of all the documentation you have concerning the investigation into the complaint I made about [Individual A redacted] and [Individual B redacted] from [Surgery redacted] in connection with the death of [Individual C redacted] following her 10 days in [Residence Redacted].'*

5. On 15 July 2009 the public authority responded. It explained that in its view the majority of the information requested would be the personal data of the complainant and said it would be processed as a Subject Access Request. It asked for the £10 fee.
6. Later that day the complainant replied that she did not believe the information was her personal data. She explained that:

*'The documentation I am requesting is everything submitted by [Individual A redacted] (full submission to the GMC by [Gender redacted]/[Gender redacted] solicitor) and [Individual B redacted] and/or their representatives, plus information about and including the 'independent expert', his Report submitted, plus any documentation/information/evidence submitted by anyone other than myself, for example [Individual D redacted and their role], [Individual E redacted] and/or anybody else.'*

7. She also explained that if any of the documentation refers to her or to [Individual C redacted] then it should be made available. She asked the public authority to clarify why it believed that the request related to mainly her personal information.
8. On 17 July 2009 the public authority replied to her email. It apologised for the confusion that had been caused and explained its view that the information related to a complaint that she had made and would be

likely to contain her own personal data. However, it explained that the main focus appeared now to be the documentation submitted by [Individual A redacted] and [Individual B redacted]. It asked for further clarification about whether she wanted the request to embrace all the investigation material (including her personal data) or just the documentation submitted by other individuals. It explained that it would not require a fee to action the request for information submitted by other individuals and it would be treated solely under the Act.

9. Later that day the complainant emailed the public authority. She explained:

*'I am only asking for copies of all documentation **submitted by persons other than myself, and any request made of/to those individuals by the GMC.**'*

She explained that she did not want the documents that she had submitted or the replies to her and explained that she needed the information in order to evaluate the public authority's investigation.

10. On 10 August 2009 the public authority sent a refusal notice to the complainant. It explained that it was going to consider the request under both pieces of legislation. It would do this because complaints against doctors are the personal information of both the complainant and the doctor. In respect to its consideration under the Act, it informed the complainant that it believed that exemptions applied and the information did not need to be provided:

- Section 21 – in relation to the medical records of [Individual C redacted]. This was because the information was available to the complainant under the Access to Health Records Act as the personal representative.
- Section 40(1) – in relation to the information that was her own personal data. This exemption is absolute because the correct regime to access this information would be through making a subject access request under the DPA.
- It also discussed its position in relation to any other information, if held.

11. On 16 September 2009 the public authority provided the complainant with documentation in relation to the Subject Access Request.

12. On 23 September 2009 the complainant telephoned the public authority.

13. Later that day the complainant wrote to the public authority. She explained that she was dissatisfied. She explained that she wanted all the information and was unhappy that anything had been withheld. Finally, she confirmed that she did not require the medical records of [Individual C redacted].
14. On 29 October 2009 the public authority issued its response to the complainant's request for an internal review. It provided some more information, but maintained its position in relation to the other information, if held.

## **The Investigation**

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### **Scope of the case**

15. On 4 November 2009 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
  - She required access to the documentation that she had requested from the public authority.
  - She required this information for a specified purpose. The Commissioner cannot state the exact purpose to maintain the integrity of the withheld information.
  - She confirmed that she was concerned by the lack of veracity of some of the redacted documents that she had already received.
  - She required the information in order for justice to be done.
  - She sought the relevant submissions from all individuals in relation to the complaint. This could include expert evidence and those documents that enabled the decision to be made.
  - She was not interested in [Individual C redacted]'s medical or care notes as she had already received them.
  - She did not consider the submission about the care of [Individual C redacted] to be the personal data of [Individual A redacted].

- She just wanted the documentation and believed that it was not for her to know which legislation the information would fall under.
16. On 10 December 2009 the complainant provided further information. She explained that she would appreciate that the Commissioner expedites her case.
17. During the course of the Commissioner's investigation the following matter was investigated elsewhere and therefore is not addressed in this Notice:
- The Commissioner has conducted a data protection assessment under section 42 of the DPA in respect of the complainant's own personal data. This is a separate legal process and does not relate to the Commissioner's considerations under section 50 of the Act. As a result the information that is the complainant's own personal data will not be considered in this Notice because it has been considered under the appropriate channel already.
18. The Commissioner appreciates that there has been some variance throughout the correspondence about exactly what information was requested. The Commissioner has therefore investigated this case on his understanding of what was sought. This is:
- Any document representing communications between the GMC and someone else that was generated as a result of the complainant's complaint, except for information that was exchanged between the complainant and the GMC.
  - The information that has already been provided is not included, except that, the redactions within that material should be considered.
  - The request does not include the medical records of [Individual C redacted].
19. On 27 April 2010 the complainant confirmed to the Commissioner that she accepted the scope of the case without reservation.
20. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act. In particular the Information Commissioner is not a forum of appeal about the way the public authority may have conducted its investigations into substantive complaints about doctors. His role under this Act only concerns whether the **public** has the right of access to recorded information. The Commissioner can not consider the veracity of the

recorded information that is held either. The right of access is to the recorded information that is held at the time of the request.

## **Chronology**

21. 23 December 2009: The Commissioner wrote to the public authority. He explained that he had received a complaint that was likely to relate to both pieces of legislation. He asked to be provided with an understanding of how the authority had dealt with the request.
22. 18 January 2010: The public authority responded. It also explained its position under both pieces of legislation.
23. 22 March 2010: The Commissioner wrote to the complainant to explain that there was a small delay before the case could be allocated.
24. 26 March 2010: The complainant expressed her dissatisfaction about this delay.
25. 12 April 2010: The Commissioner communicated to the complainant and the public authority the findings of its assessment under the Data Protection Act. He explained that the section 50 investigation under the Act would now commence.
26. 21 April 2010: The complainant contacted the Commissioner to ask for the case to be allocated quickly.
27. 22 April 2010: The Commissioner telephoned the public authority to ask for it to clarify its position in respect of a couple of issues from its submissions dated 18 January 2010. The public authority explained that it would research these issues and call the Commissioner back.
28. On the same day the Commissioner wrote to the complainant to explain his remit and to set the scope of his investigation.
29. 27 April 2010: After a telephone conversation and a further exchange of correspondence the complainant confirmed that she was happy with the scope of the Commissioner's investigation.
30. 28 April 2010: The public authority provided the clarification that the Commissioner asked for.
31. 29 April 2010: The Commissioner spoke to the public authority to confirm one further point to enable him to come to a decision.

## Findings of fact

32. The GMC has not confirmed to the public whether it has received any complaints in this case.
33. There was no public hearing so if it did, the GMC closed the complaints at an early stage.

## Analysis

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### Section 40(5)(b)(i)

34. From the outset it is important to point out that, apart from in very few scenarios (none of which are applicable in this case), the Act is applicant blind. In other words, a disclosure made under the Act is in effect to the world at large, as every other applicant would be entitled to that information upon request. Therefore in reaching a view on this case the Commissioner cannot take into account the identity of the complainant and must consider what information can be disclosed to the public.
35. Section 1(1)(a) of the Act normally imposes a duty on public authorities to inform the applicant whether it holds the requested information. This duty is known as the duty to confirm or deny.
36. However, it is possible to be excluded from this duty if the confirmation or denial would itself contravene any of the data protection principles (Section 40(5)(b)(i) of the Act).
37. During the course of the investigation, the public authority has explained that it is now citing section 40(5)(b)(i) in respect of all the information and does not wish to confirm or deny whether information is held.
38. The nature of the request means that the public authority's response in accordance with the duty under section 1(1)(a) would inevitably disclose whether or not specified individuals were subject to complaints. Having considered the public authority's arguments the Commissioner is satisfied that this fact alone deserves protection.
39. In *Bowbrick v Information Commissioner* in paragraph 51, the Information Tribunal confirmed that the Commissioner has discretion

under the Act to proactively look at section 40 issues when considering cases under the Act:

*'If the Commissioner considered that there was a section 40 issue in relation to the data protection rights of a party, but the public authority, for whatever reason, did not claim the exemption, it would be entirely appropriate for the Commissioner to consider this data protection issue because if this information is revealed, it may be a breach of the data protection rights of data subjects....Section 40 is designed to ensure that freedom of information operates without prejudice to the data protection rights of data subjects.'*

40. It is clear that the Commissioner must take into account the fact that he is the regulator of both the DPA and the Act. The wording of the Act ensures that the rights provided under it cannot prejudice or take precedence over a data subject's rights under the DPA. This interpretation was confirmed in the House of Lords decision: *Common Services Agency (Appellants) v Scottish Information Commissioner (Respondent) (Scotland)* [2008] UKHL 47. While the House of Lords decided the case on the basis of the Freedom of Information (Scotland) Act 2002, the relevant provisions are so similar that the Commissioner believes that he can use the reasoning of this decision in considering the application of the Act.
41. The Commissioner has therefore considered his dual role and has used his discretion to allow the public authority to raise arguments that section 40(5)(b)(i) could apply to all the information embraced in the scope of the request. He will look at this issue first. He will consider if informing the public whether any complaints had been made regarding [Named Individual A] or [Named Individual B] would contravene any of the data protection principles.
42. The Commissioner notes that the public authority did confirm or deny to the complainant whether information was held in its refusal notice and internal review. He can confirm that this fact is not relevant for the purposes of this Notice.
43. In order for section 40(5)(b)(i) to be correctly applied the public authority must establish the following two elements:
  - (1) That confirming whether or not information is held by the public authority would reveal the personal data of a data subject as defined by section 1(1) of the DPA.



(2) That to confirm whether or not information is held would contravene one of the data protection principles.

(1) *Would the confirmation or denial that the information requested is held in itself constitute 'personal data'*

44. The first issue to determine is whether, if such exists, information on any complaints regarding [Named Individual A] or [Named Individual B] would constitute their personal data.

45. Personal data is defined in section 1 of DPA as 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.'*

46. At the time the request was made, the Commissioner is satisfied that the people the request was about were alive and at the time of drafting this Notice, there is nothing to suggest that this is no longer the case.

47. The Commissioner is of the view that any complaint would plainly be an expression of an opinion regarding [Named Individual A] or [Named Individual B] and therefore would constitute their personal data. In addition, any information as to whether or not a complaint had been received against a particular doctor would equally constitute their personal data, as confirming or denying the complaint's existence or otherwise would in itself reveal significant information about them.

(2) *Would confirming or denying the existence of the information breach any of the data protection principles?*

48. The Commissioner must then go on to look at whether the release of the personal information of the third party would contravene any of the data protection principles of the DPA. The Commissioner notes in considering whether the exclusion applies, that he must consider what information is in the public domain as opposed to what information the particular applicant may be aware of.

49. The public authority has confirmed that it has not told the public about whether or not it has received a complaint regarding [Named Individual A] or [Named Individual B]. The Commissioner next considered

whether to confirm or deny to the public that the personal data of these individuals, if it exists, is held by the public authority would itself be a breach of the data protection principles.

50. The data protection principles are a statutory code for the processing of personal data. They are set out in Part I of Schedule 1 to the Data Protection Act 1998. The principle that is generally most relevant is the first data protection principle. It requires, amongst other things, that personal data are fairly processed. In order to determine whether it would be fair to process the personal data the Commissioner considered the following factors:
- The way that the public authority considers complaints and what the data subjects' expectations would be in the event of it receiving a complaint;
  - The likely expectations of the data subject regarding the disclosure of the information. Would they expect that their personal information, if held, would be disclosed to the public?;
  - The effect which disclosure could have on the data subjects, for example, could the disclosure cause unnecessary or unjustified distress or damage to them?; and
  - The type of the information that may be held.
51. In coming to this decision, the Commissioner has reviewed the GMC's complaints handling functions. It has the power to investigate complaints in its statutory remit, including any complaint that a doctor's fitness to practise may be impaired by virtue of misconduct, ill-health, deficient performance, a conviction or as a result of a decision from another regulatory body. This means the GMC deals with a variety of complaints against doctors which cover both their professional performance and their private lives. Not only can the GMC investigate complaints about a doctor's professional judgment and treatment of patients but it can look, for example, at complaints about allegations of criminal activity as well as looking into health issues, such as mental illness and addiction.
52. While doctors are acting in a public capacity in discharging their duties (whether in the private or public sector), the Commissioner recognises that complaints received and investigated by the GMC can involve details of a doctor's private life. Further, allegations regarding their professional performance may also be unfounded and/or malicious. Were such details publicly available, this may harm a doctor, even if it were subsequently found that there was no case to answer and this

outcome or the possibility of such an outcome had been explicitly stated upon disclosure of the information.

53. The GMC's Fitness to Practise procedures are divided into two separate stages, namely 'investigation' and 'adjudication'. During the investigation stage, it investigates cases to assess whether they need to be referred to adjudication. The adjudication stage consists of a Fitness to Practise Panel hearing in those cases which are referred forward.
54. Upon receiving a complaint, the GMC decides whether there are issues which require further investigation and, if so, what form this should take. If the issues raised in the complaint do not directly relate to the doctor's fitness to practice then the complaint can be referred for investigation at a local level, for example, by the doctor's employer. Where concerns potentially raise questions about a doctor's fitness to practise, the complaint will be investigated further and the doctor and his/her employer will be provided with details of the complaint. Further investigation is dependent on the complainant's consent.
55. At the end of the investigation, there are a number of actions that can be taken, including issuing a warning to the doctor or referring the case to a Fitness to Practice Panel. This is the final stage of the procedure which takes the form of a hearing which is held in public, unless it is hearing confidential information about a doctor's health. A fuller explanation of these procedures can be found on the GMC's website.
56. The Commissioner notes from the above outline of the GMC's procedure that disclosure of a complaint to a member of the public under the Act may create an anomaly whereby the doctor is not yet aware that a complaint has been lodged. Until the complainant provides consent for the doctor to be notified, the doctor would be unaware that a complaint had been made. It would clearly be unfair for a member of the public to be able to access details of complaints made against a doctor before the doctor was him/herself aware of a complaint being made.
57. Once the GMC has determined that there is a case to answer under its Fitness to Practise regime, details of the complaint would usually enter the public domain following the public hearing. However, where the GMC feels that it would be in the public interest to do so, it can exceptionally release details of the complaint into the public domain at an earlier stage. The Commissioner is satisfied that this is a proportionate approach. It should prevent malicious or unfounded complaints from reaching the public domain and unfairly prejudicing

the ability of a doctor to attract and treat patients, while similarly allowing those complaints which warrant investigation to be publicised in due course.

58. In considering fairness, the Commissioner takes the view that a prime consideration must be the consequences of processing the data for the interests of the data subjects.
59. At the date of request, the Commissioner believes that the named doctors in question would have had no expectation that details of complaints, if held, would be made public if the complaint has been closed off at an early stage. In view of this, he views it as being unfair for documentation concerning potential complaints to be released without first notifying the doctors of this. He has been provided with evidence that the individuals have been approached and have not provided consent. While this is not determinative on the issue of fairness, he does believe that this adds further weight to the argument that processing would be unfair.
60. The Commissioner is satisfied that disclosure of this type of information would breach the DPA in that it would be contrary to the first data protection principle. It would be unfair to release the documentation relating to complaints that may have been received against the doctors, except where the complaint is sufficiently serious to mean that it goes before the Fitness to Practice Panel which issues public judgements. The disclosure of any such information would be likely to infringe the data protection rights of the doctors (as well as potentially the complainant and any relevant third party, although not in this case). As any complaint will necessarily be focussed on the doctor in question, it would be impossible to redact the details of the complaint in such a way as to satisfy the first principle.
61. The Commissioner's decision is that to communicate to the public whether any complaints have been made about the specified individuals would in this case be unfair to them. There would be a reasonable expectation that the existence and details of complaints might be provided to the public authority, but there is nothing to suggest that those individuals would expect that their personal data would be communicated to the general public without their consent in the circumstances of this particular case. Such a communication would be likely to cause unnecessary distress to [Named Individual A] and [Named Individual B]. The type of information requested is that which ordinarily remains confidential between an employee, his employer and the public authority.

62. As the disclosure of whether it had received complaints about specified individuals would have been unfair to those individuals, the Commissioner has found that such a disclosure would contravene the first data protection principle. He therefore finds that he supports the public authority's application of section 40(5)(b)(i) and finds that the public authority is not required to confirm or deny to the public whether any of the requested information was held.
63. The Commissioner's view is that the public authority should have applied section 40(5)(b)(i) from the outset in this case.
64. The Commissioner has also considered conversely whether to confirm that a particular doctor was **not** the subject of a complaint would also be unfair. In this case the Commissioner believes that the approach needs to be uniform. Any other approach would indirectly expose those that had been subject to complaints. The Commissioner therefore considers that to confirm that there was not a complaint would be unfair too.
65. As the public authority is not required by the legislation to confirm or deny whether information is held on the facts of this case, it follows that it is not required to provide, if held, any further information to the complainant under the Act.

### **Procedural Requirements**

66. The Commissioner notes that this request was difficult to deal with for the public authority because it was a hybrid request that needed to be considered under both the DPA and the Act simultaneously. However, there were a number of procedural breaches that are noticeable from its handling of this request under the Act.

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

67. Section 17(1)(a) provides the public authority with an obligation to state the correct position in relation to confirming or denying whether the information is held within twenty working days. As the public authority failed to state the position it was relying on until the Commissioner's involvement it breached section 17(1)(a).

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

68. Section 17(1)(b) requires any refusal notice issued within twenty working days to specifically cite the exclusion that it is relying on for any part of the withheld information, if held. The Commissioner notes

that the public authority failed to cite the exclusion that it eventually chose to rely in relation to all of the information. It should have stated that it was excluded from the duty imposed on it by the provisions of section (1)(1)(a) by virtue of the provision of section 40(5)(b)(i). In failing to cite the exemption that it relied on for all the information it has also breached section 17(1)(b) of the Act.

## **The Decision**

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69. The Commissioner agrees that the public authority was excluded from its duty to respond to the request under section 1(1)(a) of the Act by virtue of the provision of section 40(5)(b)(i). It is therefore not required in this case to confirm or deny whether information is held, or provide any further information to the complainant.
70. However, the Commissioner has also decided that there were some procedural breaches of the Act:
- The public authority breached section 17(1)(a) in issuing an inadequate refusal notice.
  - The public authority breached section 17(1)(b) in failing to state that it was relying on section 40(5)(b)(i) in relation to all of the information before the Commissioner's involvement.

## **Steps Required**

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71. The Commissioner requires no steps to be taken.

## Right of Appeal

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72. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 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.

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

**Dated the 25<sup>th</sup> day of May 2010**

**Signed .....**

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

## Legal Annex

### Freedom of Information Act 2000

#### General right of access to information held by public authorities

**Section 1(1)** provides that -

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

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

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

#### Time for compliance with request

**Section 10** provides that-

(1) 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.

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#### Refusal of request

**Section 17** provides that -

(1) 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.

(2) Where—

(a) in relation to any request for information, a public authority is, as respects any information, relying on a claim—

(i) that any provision of Part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or

(ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and



(b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.

(3) A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming—

(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

(4) A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

(5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

(6) Subsection (5) does not apply where—

(a) the public authority is relying on a claim that section 14 applies,

(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and

(c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.

(7) A notice under subsection (1), (3) or (5) must—

(a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and

(b) contain particulars of the right conferred by section 50.

## Personal information

**Section 40(5)** provides that –

“The duty to confirm or deny-

(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and

(b) does not arise in relation to other information if or to the extent that either-

(i) he giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or

(ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).”

## **Data Protection Act 1998**

### Basic interpretative provisions

**Section 1(1)** provides that -

“In this Act, unless the context otherwise requires—

- “data” means information which—

(a)

is being processed by means of equipment operating automatically in response to instructions given for that purpose,

(b)

is recorded with the intention that it should be processed by means of such equipment,

(c)

is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system, or

(d)

does not fall within paragraph (a), (b) or (c) but forms part of an accessible record as defined by section 68;

- “data controller” means, subject to subsection (4), a person who (either alone or jointly or in common with other persons) determines the

purposes for which and the manner in which any personal data are, or are to be, processed;

- “data processor”, in relation to personal data, means any person (other than an employee of the data controller) who processes the data on behalf of the data controller;
  - “data subject” means an individual who is the subject 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, 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;
  - “processing”, in relation to information or data, means obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data, including—
    - (a) organisation, adaptation or alteration of the information or data,
    - (b) retrieval, consultation or use of the information or data,
    - (c) disclosure of the information or data by transmission, dissemination or otherwise making available, or
    - (d) alignment, combination, blocking, erasure or destruction of the information or data;
  - “relevant filing system” means any set of information relating to individuals to the extent that, although the information is not processed by means of equipment operating automatically in response to instructions given for that purpose, the set is structured, either by reference to individuals or by reference to criteria relating to individuals, in such a way that specific information relating to a particular individual is readily accessible.
- (2) In this Act, unless the context otherwise requires—
- (a) “obtaining” or “recording”, in relation to personal data, includes obtaining or recording the information to be contained in the data, and

(b) "using" or "disclosing", in relation to personal data, includes using or disclosing the information contained in the data.

(3) In determining for the purposes of this Act whether any information is recorded with the intention—

(a) that it should be processed by means of equipment operating automatically in response to instructions given for that purpose, or

(b) that it should form part of a relevant filing system,

it is immaterial that it is intended to be so processed or to form part of such a system only after being transferred to a country or territory outside the European Economic Area.

(4) Where personal data are processed only for purposes for which they are required by or under any enactment to be processed, the person on whom the obligation to process the data is imposed by or under that enactment is for the purposes of this Act the data controller."