

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 7 December 2010**

**Public Authority:** The British Transport Police Authority  
**Address:** The Forum  
5th Floor North  
74-80 Camden Street  
London  
NW1 OEG

### Summary

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The complainant made a request to the British Transport Police Authority (the Authority) for an electronic copy of an economic model used in the calculation of the cost of the services provided by British Transport Police, together with all the underlying data used to populate the model. The complainant also requested the supporting explanation and commentary relevant to the model. The Authority confirmed it held the model and underlying data but refused to provide it on the basis that it was exempt from disclosure by virtue of section 43 (commercial interests). During the course of the Commissioner's investigation, the Authority cited section 12 (costs) in relation to the supporting explanation and commentary. The Commissioner has not found the exemption in section 43 to be engaged, and therefore requires that part of the requested information to be disclosed. He also found that the Authority's application of section 12 was incorrect. He requires the Authority to confirm or deny whether it holds that part of the information and either disclose it or issue a refusal notice. He also identified a series of procedural shortcomings on the part of the public authority relating to delay (sections 1 and 10) and failure to cite exemptions (section 17).

## 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. British Transport Police is the specialist national police force for the railways. It is largely funded by the companies that provide passenger, freight and infrastructure services on railways across England, Scotland and Wales. Within the jurisdiction of British Transport Police there are in excess of 30 operators of services from the railway community, including passenger service operators, infrastructure owners and freight companies.
3. The British Transport Police Authority enters a Police Service Agreement (PSA) with each of these companies, indicating the level of policing resource that will be allocated to its line and services and on the basis of which it will pay the Authority for the police services it provides.
4. The Authority is under a statutory duty to ensure that the contributions made to policing costs from PSA holders approximately reflect the nature and extent of services provided to that operator by the British Transport Police in the financial year.
5. Following complaints from a number of PSA holders, the Authority's predecessor (the British Railways Board) carried out a charging review in 1998/99. Following this review, it was decided that a charging system should be put in place that approximately reflected the amount of police services each PSA holder received from British Transport Police. This charging system was designed by the Authority's consultants at that time, PA Consulting.
6. The PA Consulting Model (also known as the Old Charging Model) was used as the basis for calculating the charges PSA holders should pay for the provision of police services in the period 1999/2000 to 2006/2007.
7. The Commissioner has previously issued Decision Notice FS50176916 in relation to a request for information concerning a similar model.

That model, the New Charging Model, is used for some PSA holders in place of the Old Charging Model which continues to be used for other PSA holders.

## The Request

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8. Whilst acknowledging that a request for information under the Act should take no account of the specific applicant or purpose of the request, the Commissioner notes that the request for information in this case was made against a background of arbitration proceedings.
9. The Commissioner has set out the key correspondence between the complainant's agent and the British Transport Police Authority (the Authority) below.
10. The complainant's agent wrote to the Authority on 2 October 2009 with the following request:

*"I also request, pursuant to the Freedom of Information Act 2000, that you provide [complainant] with a fully executable version of the PA Consulting Model, including all relevant source files that were used to populate the model, along with supporting explanation and commentary that will enable us to understand how and where in the model the data has been applied".*

11. Following a complaint from the complainant's agent that no response had been received, the Authority responded on 22 December 2009. In this brief correspondence, the Authority confirmed that it holds *"some of the information"* requested but that it would not be disclosing the information, citing the exemption at section 43(2) (commercial interests) of the Act. It did not specify which of the requested information it considered to be held.
12. In further correspondence dated 14 January 2010, the Authority cited section 43(2) of the Act and told the complainant's agent:  
  
*"the BTPA has decided not to provide [complainant] with a fully executable version of the PA Consulting Model ('Old Model') as the Old Model is something to which considerable commercial confidentiality and sensitivity attaches. This decision applies to all the information you have requested".*
13. This was in contrast to its previous correspondence which said that only some of the requested information was held.

14. The Authority also said that it had recently written to PSA holders "*in a spirit of cooperation*" seeking their consent to the release of the requested information and was reviewing their responses.
15. The complainant's agent responded on 28 January 2010 expressing dissatisfaction with the Authority's response. Accordingly, the Commissioner considers this to be a request for internal review. In this correspondence, it asked the Authority to provide its public interest arguments with regard to its refusal to disclose the requested information. In relation to the fact that the Authority had written to PSA holders, the complainant's agent told the Authority that it did not consider their views:

*"could cause [the Authority] properly to conclude that the public interest in withholding the information outweighs the public interest in disclosure".*

16. On 15 February 2010 the Authority wrote to the complainant's agent, providing its public interest arguments and repeating its reliance on section 43(2). The Commissioner considers this to be the outcome of its internal review.

## The Investigation

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### Scope of the case

17. The complainant's agent first contacted the Commissioner on 10 February 2010 to complain about the way this request for information had been handled. Referring to a previous Decision Notice on a similar matter (FS50176916), the complainant's agent specifically asked the Commissioner to consider the following points:

*"the information requested is in nature identical to that addressed within the Decision Notice";*

*"Despite the apparent similarities between the nature and function of the existing charging model and the New Charging Model, and despite the clear ruling from the Information Commissioner that the New Charging Model is not exempt from disclosure under the Act, the BTPA has refused to provide the information requested".*

18. The complainant's agent contacted the Commissioner again on 3 March 2010 and 29 March 2010. Further correspondence was also received by the Commissioner on 27 April 2010.
19. During the course of the Commissioner's investigation, as detailed in the Chronology section below, the Authority told the Commissioner that it did not hold some of the requested information, namely the supporting explanation and commentary relating to the charging model.
20. The complainant's agent confirmed that it wished the Commissioner to consider this matter as part of his investigation.
21. Accordingly, the focus of the Commissioner's investigation in this case has been on whether or not the Authority holds all of the requested information as well as its citing of section 43.

## **Chronology**

22. The Commissioner wrote to the Authority on 12 May 2010 asking it for further explanation of its reasons for citing section 43(2) in relation to the request, including its reasons for concluding that the public interest in maintaining the exemption outweighs the public interest in disclosure of the information requested.
23. The Authority provided a comprehensive response on 10 June 2010. In this correspondence, the Authority confirmed that it holds a copy of the PA model (the Old Model) and source files. However, it told the Commissioner that, as the model was developed, and originally populated, by external consultants, the supporting explanation and commentary requested by the complainant *"is not held by the Authority"*.
24. The Commissioner contacted the complainant's agent and sought to resolve this element of the complaint informally. However, the complainant's agent expressed concern that the Authority had not previously raised this issue and asked the Commissioner to consider the matter as part of his investigation.

## Analysis

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### Substantive Procedural Matters

25. With respect to the supporting explanation and commentary, the Authority initially told the Commissioner that it did not hold this information. It explained that, while information of this nature may have been held by its predecessor, it was not passed to the Authority. However, it advised that it may be held in archive by PA Consulting who developed it in the first place. During the course of the Commissioner's investigation, it accepted that, if this is the case, it would be held on behalf of the Authority in accordance with section 3(2) of the Act. However, it then cited section 12 in relation to this information.

### Section 12 - Cost of compliance exceeds appropriate limit

26. Section 12(2) removes the requirement to comply with section 1(1)(a) (that is confirming or denying the information is held) if the cost of doing so would exceed the appropriate limit. The appropriate limit is currently set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations'). These state that the cost limit is £600 for central government, legislative bodies and the armed forces and £450 for all other public authorities.
27. The fees regulations also specify that the cost of compliance with a request must be calculated at the rate of £25 per hour, giving an effective time limit of 18 hours.
28. In estimating whether complying with a request would exceed the appropriate limit, Regulation 4(3) states that an authority can only take into account the costs it reasonably expects to incur in:
- determining whether it holds the information;
  - locating the information or a document containing it;
  - retrieving the information, or a document containing it; and
  - extracting the information from a document containing it.
29. Section 12 of the Act makes it clear that a public authority does not have to make a precise calculation of the costs of complying with a request. Only an estimate is required. However, the estimate must be reasonable and can only be based on the four activities identified above.

30. During the course of his investigation, the Authority provided the Commissioner with an estimate for the cost of complying with the complainant's request regarding the supporting explanation and commentary. The Commissioner notes that this estimate was obtained by the Authority following consultation with PA Consulting. The Commissioner has considered the estimate in line with the fees regulations, in other words as if it were costed at £25 per hour.
31. Having considered the estimate provided in this case, the Commissioner is not persuaded that it provides a clear understanding of whether or not the information is held. He therefore finds it unreasonable for the Authority to claim that to respond to the complainant, as to whether it holds the requested information, would exceed the appropriate limit. He therefore finds section 12(2) is not engaged.
32. As he has found section 12(2) is not engaged, the Commissioner requires the Authority, in accordance with its duties under section 1(1)a) of the Act, to confirm or deny whether it holds the requested information and, if held, to disclose it or issue a refusal notice.

## **Exemptions**

### **Section 43 Commercial interests**

33. Section 43(2) of the Act provides:

*"Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it)".*

#### *Applicable interests*

34. The Authority has argued that the release of a fully executable version of the Old Model would cause prejudice to the commercial interests of Police Service Agreement (PSA) holders as it would provide other PSA holders with commercially sensitive information. The Authority has provided the Commissioner with details of the form this sensitive information takes.
35. The Authority has also argued that its own interests would be prejudiced by the release of a fully executable version of the Old Model.
36. Accordingly, the Commissioner considers that the applicable interests in this case are those of the Authority itself as well as those of the



companies whom the Authority charges for British Transport Police services.

*Does the information relate to, or could it impact on, a commercial activity?*

37. The term 'commercial interests' is not defined in the Act. However the Commissioner has considered his Awareness Guidance on the application of section 43. This comments that:

*"... a commercial interest relates to a person's ability to participate competitively in a commercial activity, i.e. the purchase and sale of goods or services";*

and

*"The underlying motive for these transactions is likely to be profit, but this is not necessarily the case, for instance where a charge for goods or the provision of a service is made simply to cover costs".*

38. The Commissioner has also referred, when considering this case, to guidance issued by the Scottish Information Commissioner in relation to commercial interests and section 33(1)(b) of the FOI (Scotland) Act 2002. This guidance states that:

*"commercial interests will specifically relate to any commercial trading activity it undertakes, e.g. the ongoing sale and purchase of goods and services, commonly for the purpose of revenue generation. Such activity will normally take place within a competitive environment".*

39. With respect to the Authority's core business purpose, the Commissioner considers that provision of policing services to train operators in the current context can reasonably be classed as a commercial activity. The Commissioner has noted sections 33 and 34 of the Railways and Transport Safety Act 2003. While there may be limited possibilities for competition in transport policing services and in some cases services can be imposed via compulsory service agreements there is enough variation possible to introduce an element of commercial negotiation. In particular the Commissioner notes that additional services beyond the Authority's policing objectives, plans, targets and directions can be provided. The Commissioner considers that the negotiations to set PSAs are akin to commercial negotiations.

40. With respect to the PSA holders, as the withheld information relates to payments and charges for goods and services relevant to the environment in which rail operators compete, (for example to win rail franchises), the Commissioner is satisfied that the withheld information



relates to applicable commercial interests and therefore arguments about prejudice to such interests can potentially fall within the scope of the exemption contained in section 43(2).

### *Nature of the prejudice*

41. The Information Tribunal in *Hogan and Oxford City Council v The Information Commissioner Hogan* (EA/2005/2006 and EA/2005/0030) commented:

*"An evidential burden rests with the decision maker to be able to show that some causal relationship exists between the potential disclosure and the prejudice and the prejudice is, as Lord Falconer of Thoroton has stated 'real, actual or of substance' (Hansard HL (VOL. 162, April 20, 2000, col. 827))".*

42. The Commissioner's view is that the use of the term "prejudice" is important to consider in the context of the exemption at section 43. It implies not just that the disclosure of information must have some effect on the applicable interest, but that this effect must be detrimental or damaging in some way.
43. In this case, the Authority has argued that the third parties whose data is contained in the Old Model "*operate in a highly competitive bidding environment*". The Authority has argued that the release of the requested information would cause prejudice as it would provide other PSA holders with commercially sensitive information.
44. With respect to its own interests, the Authority has argued that disclosure might damage its business reputation and PSA holders' confidence in the Authority itself.
45. In this case, the Commissioner is satisfied that there are commercial interests that are capable of being prejudiced. He has therefore gone on to consider whether the disclosure of the information in question in this case would cause such a prejudice.

### *Likelihood of prejudice*

46. The Authority confirmed to the Commissioner that, in its view, release of the information "*would have*" a prejudicial effect. The Commissioner considers this means that, whilst it would not be possible to prove that prejudice would occur beyond any doubt whatsoever, prejudice would at least be more probable than not.

47. The Commissioner has considered the potential prejudice to the PSA holders and the public authority in turn.

*Evidence of prejudice to the commercial interests of the Authority*

48. The Commissioner has first considered the arguments put forward by the Authority as to why it considers its own commercial interests would be prejudiced.

49. The Authority has argued that although it is not a commercial organisation, it is responsible for the efficient and effective policing of the rail network and has a duty to recover the costs of providing these services from the train and rail operating companies. It told the Commissioner that, as such, *"it is required to gather and hold information of a commercially sensitive nature"*.

50. In correspondence with the complainant's agent, the Authority argued that it considered that release of a runnable copy of the Old Model may deter PSA holders from engaging with or providing information to the Authority. It told the Commissioner:

*"There is concern that releasing this information might damage the Authority's business reputation and the confidence that PSA holders have in it to protect their commercial interests"*.

51. During the Commissioner's investigation, the Authority also argued that the release of the model is likely to increase its costs *"as it will have to respond to more legal challenges being brought about by aggrieved PSA holders"*. In support of this stance, the Authority provided the Commissioner with details of a history of previous challenges and judicial review proceedings. The Authority also brought to the Commissioner's attention the concern reflected by some of the PSA holders, when asked to set out their views about the request, that the release of the requested information could trigger a further round of legal challenges.

52. The Authority explained that it has a duty to recover its costs from the train and rail operating companies for providing rail network policing services. It argued that, in defending any proceedings brought about as a result of disclosure, its legal costs *"would then have to be passed on to all of the PSA holders"*. This would in turn, it said, increase the amount the PSA holders would have to pay for the provision of police services:

*"which would not assist the Authority in providing an efficient service and maintaining constructive relationships with the PSA holders"*.

53. The Commissioner acknowledges the Authority's responsibility for the efficient and effective policing of the rail network and recognises that some of the arguments it has put forward have some relevance with regard to the functions it exercises. Arguments related to increased legal costs, have not been explained convincingly, in terms of establishing a plausible link between disclosure and commercial prejudice. He has also had particular regard to the fact that the PSA holders are, to a significant extent, a 'captive market' with respect to funding the Authority's (commercial) activity. Overall, the Commissioner is not persuaded that disclosure of the withheld information would, or would be likely to, prejudice the commercial interests of the Authority.

*Evidence of prejudice to the commercial interests of the PSA holders*

54. The Commissioner has next considered the arguments put forward by the Authority as to why it considers the commercial interests of the PSAs would be prejudiced.
55. The Commissioner considers it important that in claiming the exemption on the basis of prejudice to the commercial interests of a third party, the public authority must have evidence that this does in fact represent or reflect the view of the third party. The public authority cannot speculate in this respect: the prejudice must be based on evidence provided by the third party, whether during the time for compliance with a specific request or as a result of prior consultation. This approach has been confirmed by the Information Tribunal in the case of *Derry City Council v Information Commissioner* (EA/2006/0014).
56. In this case, the Authority wrote to 21 PSA holders on 4 January 2010, some three months after receiving the request for information and after it had issued its refusal notice in which it claimed the exemption at section 43. While he accepts that, due to time constraints for responding to requests, it may be that arguments are formulated by a public authority based on its prior knowledge of the third party's concerns, the Commissioner's view is that prejudice and the public interest are normally to be assessed at the time of the request, or, at the latest, at the time the refusal notice should have been issued.
57. The Authority told the complainant's agent on 14 January 2010 that it had written to PSA holders "*in a spirit of cooperation*" in order to see whether they would consent to the release of a fully executable version of the Old Model. However, in the Commissioner's view, the Authority was obliged to make this approach if it did not already have prior

knowledge of the views of the third parties involved, including any concerns they may have, regarding the release of the requested information.

58. The Authority told the complainant's agent on 15 February 2010 that it received responses to its letter from ten PSA holders, six of whom objected to disclosure. The complainant has argued that the incomplete set of responses implies that the other PSA holders were not sufficiently concerned about the Authority's letter to respond. However, the Commissioner understands that the reason why some of the PSAs contacted did not respond is that not all of the entities charged under the Old Model continue to exist as train operators.
59. Examples of the objections the Authority received, which it provided to the complainant's agent as well as to the Commissioner, are:

*"Please note that we object to this document being released on the grounds that it contains commercially sensitive information."*

*"[Name redacted] objects to the release of the Old Charging Model which, of course, applies to this company on an ongoing basis. As you acknowledge in your letter, the Old Charging Model is commercial information. Its release could cause significant loss to [name redacted]'s commercial interests."*

*"[Name redacted] (the old franchisee) and [name redacted] (which took over the franchise on [date]) objects to the release of the Old Charging Model which, of course, applied to [name redacted] up to [date]. As you acknowledge in your letter, the Old Charging Model is commercial information. Its release could cause significant loss to our commercial interests."*

*"The release of commercial information relating to the franchise could prejudice the commercial operations of our business and could potentially be a breach of the obligations of [redacted]"*.

*"We object to the release of a fully executable version of the PA Consulting Model on the following grounds:*

- the information contained therein is commercially confidential;*
- we are not aware of the identity of the individual or organisation who made the request;*
- we do not believe that there is sufficient time to robustly review the information contained in the model between receipt of your letter on 5 January and a due date for response of 8 January" .*

60. The Commissioner understands that the Old Model formed the basis on which various train operating companies calculated and submitted their franchise bids. For many PSA holders, it still forms the basis on which they are charged for police services.
61. The Commissioner also notes the following responses from PSA holders which supported, or did not object to, release of the model:
- "We have no objections to the release of an executable version of the PA Consulting Model."*
- "Whilst the model contains limited commercial information our view is that most of this information is available from other sources and therefore we do not believe there are grounds for objecting to the release of this information".*
- "I have no objections to the release of the PA Consulting Model (Old charging model) as requested. Any commercial data contained re (name redacted] would likely be very historic in nature and not sensitive. So the release has my support".*
- "I have no objection to you releasing details of the financial model".*
62. In his guidance on section 43, the Commissioner expresses the opinion that, although public authorities should consider the views of the affected party, it is the responsibility of the public authority to decide whether or not the exemption applies. In his view, a public authority can only withhold information if it is satisfied that any arguments for withholding the information are justified.
63. In this case, the Authority told the Commissioner that in its view *"there were a sufficient number of objections received from PSA holders currently being charged on the PA model to support an exemption"*.
64. The Authority also argued that, although superceded, the model still contains potentially sensitive third party data which, in its view, could be used in the preparation of a competitive bid.
65. Having considered the Authority's arguments in relation to the 'would prejudice' test the Commissioner is not persuaded that the threshold for this level of prejudice is reached. In particular, he finds the brevity of the PSA holders' responses to be at variance with the Authority's statement, in correspondence with the complainant's agent, that the Old Model *"is something to which considerable commercial confidentiality and sensitivity attaches"*.

66. However, the section 43(2) prejudice test is not restricted to 'would prejudice'. It provides an alternative limb of 'would be likely to prejudice'. This second limb of the test places a lesser evidential burden on the public authority to discharge and the Commissioner has therefore gone on to consider whether, in this case, the lower threshold is met.
67. Where the issue is that disclosure is only **likely** to give rise to the relevant prejudice then, in accordance with the Tribunal's decision in the case of *John Connor Press Associates Limited v The Information Commissioner (EA/2005/0005)*, *"the chance of prejudice being suffered should be more than a hypothetical or remote possibility; there must have been a real and significant risk"*.
68. As the Authority has not put forward discrete arguments specifically in relation to the test of 'would be likely to prejudice' the Commissioner has applied its arguments in relation to the 'would prejudice' test (described above) when determining whether or not the lower prejudice threshold is met.
69. Having considered the arguments against the lower threshold, the Commissioner does not find them compelling with respect to a real and significant risk of prejudice being suffered by the PSA holders as a result of disclosure in this case.
70. As the Commissioner has concluded that the exemption is not engaged, he has not gone on to consider the public interest test in this case.

## Procedural Requirements

### Section 1 General right of access

71. In accordance with section 1(1)(a) of the Act the Authority has an obligation to state whether it holds recorded information of the description specified in the request.
72. In this case, the Authority told the complainant's agent on 22 December 2009 that it held some of the requested information. It did not specify at that stage which of the requested information was held and which was not.
73. However, the Commissioner notes that, in correspondence to the complainant's agent dated 14 January 2010, when referring to its decision not to disclose the requested information, the Authority advised



*"this decision applies to all the information you have requested".*

74. It was not until during the Commissioner's investigation that the BTPA clarified that it considered it did not hold a copy of the "*supporting explanation and commentary*" requested by the complainant. The reason it gave was that the model was developed by external consultants. It later came to accept that this information was held on its behalf and to rely on the exemption in section 12 with respect to this element of the requested information.
75. In failing to confirm in writing whether it held all of the information requested, the Commissioner finds the authority in breach of section 1(1)(a). In failing to disclose information which the Commissioner has determined was not exempt, it breached section 1(1)(b).

### **Section 10 Time for compliance**

76. The time limit for complying with section 1(1), set out in section 10(1), is twenty working days. In this case, the request was made on 2 October 2009 but the Authority did not issue its refusal letter until 22 December 2009. Accordingly, in failing to confirm or deny within 20 working days whether it held the requested information, and in failing to disclose information which the Commissioner has determined was not exempt, the Authority breached the requirements of section 10(1).

### **Section 17 Refusal of request**

77. The Authority also breached section 17(1) by failing to provide a refusal notice containing the details required by that section within 20 working days.
78. Section 17(5) of the Act states that a public authority which is relying on a claim that section 12 or 14 applies must give the applicant a notice stating that fact within the relevant timescale. In this case, it was not until during the Commissioner's investigation that the Authority cited section 12(1) of the Act with regard to the supporting explanation and commentary.
79. In the Commissioner's view, as the Authority did not specify its reliance on the application of this section until his investigation was underway it breached the requirements of section 17(5) of the Act.



## The Decision

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80. The Commissioner's decision is that the public authority did not deal with the request in accordance with the requirements of the Act:
- it incorrectly cited section 12 of the Act;
  - it breached section 1(1)(a) by failing to notify the complainant in writing whether it held all of the information of the description specified in the request;
  - it breached section 1(1)(b) by not providing the complainant with the part of the requested information which the Commissioner has determined was not exempt by the time of the completion of the internal review;
  - it breached section 10(1) by failing to inform the complainant whether it held the requested information within 20 working days of the request;
  - it breached section 10(1) by not providing the complainant with the part of the requested information which the Commissioner had determined was not exempt within 20 working days of the request;
  - it breached section 17(1) by failing to issue the refusal notice within the statutory time limit; and
  - it breached section 17(5) by failing to cite the exemption in section 12 which it later came to rely on.

## Steps Required

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81. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- *disclose a fully executable version of the PA Consulting Model, including all relevant source files used to populate the model;*
  - *confirm or deny whether it holds a copy of the supporting explanation and commentary and, if held, disclose it or issue a refusal notice.*
82. 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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83. 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

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84. 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 7<sup>th</sup> day of December 2010**

**Signed .....**

**Steve Wood**  
**Head of Policy Delivery**

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

## Legal Annex

### Section 1 General right of access

Section 1(1) provides that:

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

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

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

### Section 12 Costs of compliance exceeds appropriate limit

Section 12(1) states:

*"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit".*

Section 12(2) provides that:

*"Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit".*

Section 12(3) states that:

*"In subsections (1) and (2) "the appropriate limit" means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases".*

### Section 43 commercial interests

Section 43(1) provides that –

*"Information is exempt information if it constitutes a trade secret."*

Section 43(2) provides that –

*"Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it)."*

Section 43(3) provides that –

*“The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the interests mentioned in subsection (2).”*