

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 8 March 2011**

**Public Authority:** Children and Family Court Advisory and Support Service (CAFCASS)  
**Address:** 6<sup>th</sup> Floor  
Sanctuary Buildings  
Great Smith Street  
London  
SW1P 3BT

### Summary

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The complainant asked the Children and Family Court Advisory and Support Service (the "public authority") to provide board minutes and papers for a specific time period. The public authority refused to disclose these stating the request was exempt by virtue of the exclusions under sections 14(1) (vexatious requests) and 14(2) (repeated requests) of the Freedom of Information Act 2000 (the "Act").

The Commissioner has considered the submissions of both parties and has determined that the public authority's application of sections 14(1) and (2) was incorrect. The complaint is therefore upheld.

The public authority's handling of the request also resulted in breaches of certain procedural requirements of the Act as identified in this Notice.

### 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 public authority's published minutes can be found online<sup>1</sup>.
3. The public authority has confirmed the following in relation to publication of its Board meetings:

*"Minutes are written by the minute taker within 2 weeks followed by quality control by the corporate team and the Chair of the Board. Minutes are published once they are agreed by the main Board at the following meeting ... The minutes are published approximately 2-3 weeks following the meeting subject to changes, where required. I am unable to provide you the exact date for the papers in summer/autumn 2009 but can assure you that papers are systematically published. Board papers are assessed for publication in accordance with the Freedom of information [sic] Act and published around the same time as the minutes".*

4. The public authority has advised the Commissioner that it usually has seven Board meetings in a year. Having looked at its website the Commissioner notes that the dates and numbers of meetings vary.

## The request

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5. On 1 August 2009 the complainant made the following information request:

*"Under the freedom of information act and the general principles of the right to know I formally request copies of all board minutes and board papers for all board meetings that have occurred after 12th June 2009".*

6. On 24 September 2009, outside the statutory deadline for compliance, the public authority advised the complainant as follows:

*"Please refer to previous correspondence on this subject ... , All minutes and appropriate papers from Board meetings are published on the Cafcass website; [www.cafcass.gov.uk](http://www.cafcass.gov.uk).*

*You have requested this same information on several occasions and Cafcass have now considered your requests for information.*

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<sup>1</sup>[http://www.cafcass.gov.uk/publications/board\\_reports\\_and\\_minutes.aspx](http://www.cafcass.gov.uk/publications/board_reports_and_minutes.aspx)

*The wider context and history of your questions have been taken into account and Cafcass has concluded that your requests are vexatious and repeated.*

*Cafcass has considered your requests to be repeated for the following reasons:*

- The requests are deemed 'obsessive' due to the volume and frequency of your correspondence.*
- You have repeatedly requested information, which is substantially similar to previous requests*

*Cafcass are issuing you with a notice of refusal to process your Freedom of Information requests. Cafcass are relying on section 14(1) and 14(2) of the Freedom of Information Act 2000*

*Please note: If you are unhappy with the decisions made in relation to your request, you may ask for an internal review to be undertaken".*

7. On the same day the complainant sought an internal review. Within his correspondence he raised various concerns including:

*"...I have noticed over the last couple of years that board minutes ONLY APPEAR on your website AFTER I make freedom of information request and that when the Board Minutes are uploaded to your website they are for more than one meeting and usually in practise they are the minutes for 3 board meetings".*

*"My requests have not been vexatious, usually 2-3 months elapses between requests for board minutes and I only request copies of the minutes for the period between the date of the last post board meeting and the date of the request therefore it can be concluded that I may be making requests for Board Minutes but the requests are not for the exact same information and therefore do not fall within the spirit or the text of the Freedom of Information Act 200 [sic] as vexatious".*

8. On 10 February 2010 the complainant chased a response.
9. On 17 February 2010 the public authority advised the complainant:

*"You have requested Board minutes after 12th June 2009. The Board minutes are placed on the Cafcass internet periodically and*

*the meeting minutes are up to date... As the information has been made available there is nothing to review".*

10. On the same date the complainant responded saying:

*"Actually I wanted a review of being branded "Vexatious"".*

11. In correspondence incorrectly dated 18 March 2010, which was actually sent on 19 August 2010, the public authority wrote to the complainant as follows:

*"I have reviewed the handling of this application and have concluded that no further action is necessary. Section 21 of the Freedom of Information Act 2000 specifies 'exempt information'. S. 21 (1) of the Act states that 'Information that is reasonably accessible to the applicant ... is exempt information'.*

*In this case there have been repeated applications for minutes of the meetings of the Cafcass Board and on each occasion the applicant has been informed that such records are published on the Internet regularly and promptly after approval by the Board. The applicant corresponds by e-mail and has access to the Internet to do so. The information sought is readily and reasonably available to him. It is not irrelevant that in a separate application he asked for information to be sent to him electronically.*

*I have also reviewed whether his applications in respect of these Minutes should have been treated as 'vexatious' under the Act. I am satisfied that given the accessibility to records via the Internet and the many communications of that fact, repeat applications lacked any serious purpose or value and it was justified to treat them as vexatious for that reason. I note there have been at least eight separate applications for the same information and on each occasion the response has been to the same effect, referring to Internet access. I consider it was justified to regard the latest application (and arguably earlier ones) as vexatious for that reason".*

## The investigation

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### Scope of the case

12. On 31 May 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:

- non-compliance with his request for an internal review (at this stage he had not received a copy of the internal review incorrectly dated 18 March 2010);
- whether his request was 'vexatious'.

13. On 20 August 2010 the Commissioner raised some preliminary enquiries regarding the lack of internal review. On 19 August 2010 he was advised that this had "*been processed*".

14. On 21 August 2010 the complainant advised the Commissioner:

*"I have today received notification of the (attached) pdf documents, which are the internal review documents your office requested\*, however I have a few issues with the letters supplied as they are dated 18th March 2010 and I have strong suspicions that they were written and dated retrospectively, i.e. after your offices request for copies as both documents have file creation dates of the 19th August 2010 and I was never sent copies despite CAF/CASS having my e-mail and postal mail addresses, would your office please take this on board when considering my complaint".*

(\* There were two requests with outstanding internal reviews, this case being one of them).

15. The complainant's concerns regarding late receipt of his internal review are covered in the 'Other matters' section at the end of this Notice. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

16. The public authority has advised the Commissioner that two meetings are covered by the scope of this request; these were held on 12 and 26 June 2009.

## Chronology

17. On 22 September 2010 the Commissioner wrote to the complainant to advise him that he was commencing his investigation. He confirmed the scope of the investigation with him, as outlined above.
18. On 6 October 2010 the Commissioner wrote to the public authority and raised various queries.
19. On 1 November 2010 the public authority posted its response. With this it gave details of earlier requests which has caused it to claim this request as being 'vexatious' and explained about publishing its minutes – as quoted in the *'Background information'* above.
20. On 10 November 2010 the Commissioner raised further queries and received a response on 17 November 2010.

## Analysis

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### Substantive procedural matters

21. The Commissioner notes that the public authority has cited both limbs of this exclusion.

### Exclusion – section 14

22. Section 14(1) provides that –

*“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious”.*

23. Section 14(2) provides that –

*“Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with a previous request and the making of the current request”.*

24. In its original refusal notice the public authority advised the complainant:

*"The requests are deemed 'obsessive' due to the volume and frequency of your correspondence.*

*You have repeatedly requested information, which is substantially similar to previous requests".*

25. In its internal review it stated:

*"I have also reviewed whether his applications in respect of these Minutes should have been treated as "vexatious" under the Act. I am satisfied that given the accessibility to records via the Internet and the many communications of that fact, repeat applications lacked any serious purpose or value and it was justified to treat them as vexatious for that reason. I note there have been at least eight separate applications for the same information and on each occasion the response has been to the same effect, referring to Internet access. I consider it was justified to regard the latest application (and arguably earlier ones) as vexatious for that reason".*

26. In correspondence with the Commissioner the public authority asserted:

*"[The complainant] has been informed on several occasions over the last 2 years that the Board minutes can be found on the Cafcass webpage, this is indicated in several emails. The section 14 exemption was applied in September 2009 in response to the applicants obsessive repetition for the request for [sic] the Board minutes and papers".*

27. The public authority also supplied copies of further requests made by the complainant for Board meeting papers, reports and policy documents, in support of its application of section 14 . These were as follows.

- 22 April 2006 – copies of the 'private' board meetings for the last 12 months.
- 17 October 2006 – details of meeting held 8 September 2006.
- 21 November 2006 - details of meeting held 5 October 2006.
- 28 July 2007 - details of meeting held 20 April 2007.
- 28 September 2007 - details of any meetings held after 20 April 2007.
- 29 February 2008 – details of all meetings from 1 November 2006 to February 2008.
- 24 June 2009 - details of all meetings after March 2009.



28. Further requests and enquiries made by the complainant were also provided to the Commissioner but the public authority advised that these had not been considered in support of its application of section 14.

### ***Section 14(1) – vexatious requests***

29. Section 14(1) provides that a public authority does not have to comply with a request for information if the request is vexatious. The Commissioner's published guidance explains that the term "vexatious" is intended to have its ordinary meaning and there is no link with legal definitions from other contexts (e.g. vexatious litigants). Deciding whether a request is vexatious is a flexible balancing exercise, taking into account all the circumstances of the case. In line with the Commissioner's guidance<sup>2</sup>, when assessing whether a request is vexatious, the Commissioner considers the following questions.

- Could the request fairly be seen as obsessive?
- Is the request harassing the authority or causing distress to staff?
- Would complying with the request impose a significant burden?
- Is the request designed to cause annoyance and disruption?
- Does the request lack any serious purpose or value?

30. It is not necessary for all of the above criteria to be met but, in general, the more criteria that apply, the stronger the case for arguing that a request is vexatious. It is also the case that some arguments will naturally fall under more than one heading.

31. The public authority's arguments to support its position that the request is vexatious are stated above. Unfortunately, it did not clearly indicate which of its arguments related to each of the questions specified in the Commissioner's guidance. The Commissioner has therefore considered the arguments under the headings he thought most relevant to those arguments. The Commissioner believes that the public authority had attempted to argue its case under the first and last bullet points. His considerations have been set out below.

*Could the request fairly be seen as obsessive?*

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[http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/de\\_tailed\\_specialist\\_guides/vexatious\\_and\\_repeated\\_requests.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/de_tailed_specialist_guides/vexatious_and_repeated_requests.pdf)



32. The Commissioner's published guidance explains that when considering any of the questions posed above, a public authority can take account of the wider context and history of the request. It states the following:

*"A request may not be vexatious in isolation, but when considering in context (for example if it is the latest in a long series of overlapping requests or other correspondence) it may form part of a wider pattern of behaviour that makes it vexatious".*

33. The public authority has advised that it deems the request to be 'obsessive' due to *"the volume and frequency of [your] correspondence"*. The Commissioner notes that there have been several requests for minutes, as listed above. There are three from 2006, two from 2007, one from 2008, one from 2009 and this request too. This totals eight requests for minute-related information over three years. (Additional copies of seven similar requests were also provided, although not relied on by the public authority in support of its position).
34. The Commissioner accepts that this request could be viewed as *"the latest in a long series of overlapping requests"* as the complainant continues to 'chase' disclosure of minutes. However, he here notes the following points made by the complainant:

*"... my requests for copies of the board minutes were usually after the 3 month period had elapsed and were made specifically because the board minutes were not available on CAFcASS's website and the comment made in the review letter 'In this case there have been repeated applications for minutes of the meetings of the Cafcass Board and on each occasion the applicant has been informed that such records are published on the Internet regularly and promptly after approval by the Board. The applicant corresponds by e-mail and has access to the Internet to do so. The information sought is readily and reasonably available to him.' is therefore moot because the information was not available until it was requested by myself".*

35. Although there has not always been a 'gap' of three months or more between the meeting date and the date of the request the Commissioner accepts that this is true on some occasions. Where the 'gap' is less than three months it is generally longer than one month.
36. The Commissioner also notes the explanation that the public authority gave him, as quoted above, that minutes are published within two to three weeks of the meeting at which they have been approved, papers

also being published around the same time. Therefore, for the two meetings covered by the scope of this request, the Commissioner concludes the following:

- the minutes for the meeting held on 12 June 2009 will have been approved at the meeting on 26 June 2009;
  - the minutes for the meeting held on 26 June 2009 will have been approved at the meeting on 11 September 2009.
37. Allowing a time period of two to three weeks to prepare the minutes for publication, the Commissioner concludes that the earlier minutes should have been available online at the time of the request. However, if they were then he notes that the public authority did not direct the complainant to them; alternatively, it may be that the minutes were not made public within the timescale suggested by the public authority. By the same analogy, the Commissioner would not have expected the later minutes to be available as they had not yet been approved. However, rather than advising the complainant when they would be made available the public authority has chosen to state that the request was 'vexatious' and 'repeated'.
38. Unfortunately, the public authority has been unable to provide the Commissioner with details of the dates on which the requested information was uploaded onto the internet. He notes that it was available when the public authority wrote to the complainant on 17 February 2010.
39. The Commissioner accepts the complainant's position that he has only asked for information where it is not already available; the public authority has not provided any evidence to suggest otherwise. Having read the complainant's other requests the Commissioner accepts that he appears to be happy to be directed to items on the public authority's website once they are available rather than requiring a personal disclosure. The Commissioner therefore concludes that, at the time of asking for the information, it was not available. Based on the public authority's own calculations, he would have expected the information from the earlier meeting to have been published but not that from the later meeting.
40. Although there were a number of requests from the complainant for board minutes and associated papers, the Commissioner does not accept that they are 'obsessive' in nature. He believes that the complainant has only asked for these documents when they are not available and defers his requests to give the public authority sufficient time to publish them in the normal course of business. In those circumstances when they had not yet been approved, the public

41. In the circumstances, the Commissioner does not accept that it is reasonable to characterise these eight requests over a period of three years as 'obsessive'.

*Does the request lack any serious purpose or value?*

42. As quoted above, the public authority believes that the request lacks any serious purpose or value because the requested information is already available online. It also refers to 'repeated requests' which will be considered later in this Notice.
43. In direct response to the public authority's assertion about the availability of the requested information the complainant has stated:

*"... I find the comments ... are offensive given that: -*

*1. I do have a serious purpose firstly from a personal and public interest perspective in making sure that CAF/CASS are publicly accountable, and in fact board minutes were not published in full on the website until a couple of years ago after I made an freedom of information request for copies of the 'private' minutes".*

44. The Commissioner again refers to the complainant's comments that he only asks for information when it has not appeared on the website. As the public authority has not been able to provide the dates on which the published documents were actually uploaded onto its website the Commissioner is unable to comment further on this. However, he notes that by its own calculations the papers for its later meeting could not have been available at the time of the request as they had not yet been approved. Had the documents been available at the time they were requested then the Commissioner would have expected the public authority to advise the complainant that they were reasonably accessible to him and to consider applying the related exemption under section 21 of the Act. Having not done so the Commissioner has assumed that the particular papers requested were not already available.
45. The Commissioner considers that it is not unreasonable for an applicant to want to view information such as that requested in this case in order to gain an understanding of the work and performance of a public authority. Minutes and associated papers are a useful way of learning about the current issues being considered and how a public authority

deals with matters. The fact that this information is already made available demonstrates that the public authority itself accepts that there is a genuine public interest in such matters.

46. The Commissioner therefore concludes that the request does not lack serious purpose or value. The requests have required responses and thereby increased the public authority's workload; however, were it to proactively publish the minutes and papers on a regular basis, explaining when the next set should be made available, then the Commissioner believes that any burden would be minimised. Furthermore, were it to undertake this regularly then it could consider applying the exemption at section 22, i.e. it could state that the information was intended for future publication.
47. Therefore, in light of the context and history of the requests and the lack of sufficient evidence to substantiate claims that the requests were designed to be disruptive, demonstrated a pattern of obsessiveness or lacked any serious purpose, the Commissioner finds that the request was not vexatious within the meaning of section 14(1) of the Act.

### ***Section 14(2) – repeated requests***

48. The legal text of this section is cited above as are the public authority's arguments for citing it. These can be summarised as:
- there have been at least eight separate applications for the same information;
  - the requested information is already available on the internet;
  - the requests demonstrate an "*obsessive repetition*" for the Board minutes and papers.
49. The Commissioner's approach to section 14(2) can be found in his Awareness Guidance, as explained above. The guidance states that a request can be refused as a repeated request if:
- it is made by the same person as in the previous request;
  - it is identical or substantially similar to the previous request;
  - and
  - no reasonable time has elapsed since the previous request.

*Are the requests made by the same person?*

50. To be repeated, the requests must have been submitted by the same person. This point has not been contested by either party and, as the requests are made under the same given name, the Commissioner is satisfied that they are made by the same person.

*Is the identical or substantially similar to previous requests?*

51. The public authority has contended that the requests are 'substantially similar' in that they are all for board minutes and papers. However, the Commissioner's guidance clearly states:

*"Where the wording of the request is identical to a previous request and it is asking for the same information (ie information already provided or refused), you can regard the request as repeated. However, if the wording is identical but the request is actually asking for different information (eg a recurring request asking for "any new or amended information" on a particular subject, or for "last month's figures"), you cannot refuse the request as repeated.*

*Similarly, a request will be substantially similar to a previous request only if you would need to disclose substantially similar information to respond to both requests (ie with no meaningful differences). You should not refuse a request simply because it relates to the same subject or theme as a previous request, unless you would have to give the same information in response."*

52. Except for one request made on 29 February 2008, which covered all meetings from 1 November 2006 through to February 2008, some of which had been previously sought, the minutes / papers requested are all for different dates. The request from 29 February 2008 is one where the Commissioner may have considered it was partly repeated as it covered some items which had previously been requested. However, the Commissioner does not know which items had or had not been released at this point and neither party has raised any specific issues about this. The Commissioner has therefore not taken this into account. In any event, the current request under consideration in this Notice is for information which could not have been caught by this earlier request as it was produced at a later date.
53. The Commissioner considers that the information which is the subject of this request has not previously been requested. Similarly, the majority of requests identified above are for different information. The

information to be disclosed on each occasion is therefore not substantially similar.

54. The Commissioner finds it implausible to suggest that by releasing one set of its minutes a public authority should not have to disclose any further sets on the grounds that the same information is being requested every time a request for the next set of minutes is received. Accordingly, the Commissioner does not find that this request is identical or substantially similar to previous requests.
55. As he has concluded that the request is not identical or substantially similar to previous requests the Commissioner does not need to consider whether or not a reasonable time has elapsed as the request is in fact a 'new' request for 'new' information. The Commissioner finds that the public authority incorrectly applied section 14(2).

## **Procedural requirements**

### ***Section 1(1) and 10(1)***

56. 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".*

57. Section 10(1) provides that-

*"... 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."*

58. As the Commissioner has decided that the public authority inappropriately applied sections 14(1) and (2) of the Act to the request and should therefore have disclosed the information, it breached sections 1(1)(b) and 10(1) for failing to provide this to the complainant within the statutory time limit.

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

59. Section 17(5)(a) of the Act provides that:

*“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”.*

60. In exceeding the statutory time limit to inform the complainant of its application of sections 14(1) and (2), the Commissioner finds that the public authority breached section 17(5) of the Act.

## **The Decision**

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61. The Commissioner’s decision is that the public authority did not deal with the request for information in accordance with the Act.

- In failing to provide a timely response it breached section 17(5).
- In failing to provide the requested information it breached sections 1(1)(b) and 10(1).

## **Steps required**

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62. As the requested information has been made available the Commissioner requires no steps to be taken.

## **Failure to comply**

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



*Internal review*

65. The complainant sought an internal review on 24 September 2009. He clearly outlines his concerns which include his requests being 'branded' as vexatious. He chased a response on 10 February 2010 and, in its response of 17 February 2010, the public authority stated only that the information had been published so that "*there is nothing to review*". On the same day the complainant stressed that he actually wanted a review in respect of the 'vexatious' element.
66. Following intervention from the Commissioner, the public authority emailed its internal review to the complainant on 19 August 2010; the correspondence was dated 18 March 2010. The complainant received it on 21 August 2010 and advised the Commissioner that, although dated 18 March 2010, the document actually had a creation date of 19 August 2010. He therefore believed that the date was added retrospectively and that it had never been sent on 18 March 2010.
67. The Commissioner raised enquiries with the public authority to ascertain whether or not it could 'prove' the date on which its original response was sent. It advised him as follows:
- "It appears the date was incorrectly placed in the letter. The letter was sent on the 19<sup>th</sup> August 2010 and the date on the letter should read August not March. The document has been saved with the date on it. The letter was in response to the ICO asking Cafcass to conduct an internal review ... I am not sure why the date has changed and apologise for the confusion. I can confirm I did not send this email in March 2010".*
68. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his 'Good Practice Guidance No 5', the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. In this case, the timescale for the public authority's review significantly exceeded the Commissioner's recommended timescales. The delay has been logged by the Commissioner's Enforcement team and it is expected that future reviews conducted by the public authority will not incur such delays.

## Right of Appeal

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69. 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: 0300 1234504

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 8<sup>th</sup> day of March 2011**

**Signed .....**

**Jon Manners  
Group Manager**

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