

**Freedom of Information Act 2000 (Section 50)
Environmental Information Regulations 2004**

Decision Notice

Date: 23 June 2011

Public Authority: Hackney Council
Address: London Borough of Hackney
Town Hall
Mare Street
London
E8 1EA

Summary

The complainant requested information about the East Marsh wind turbine survey. The council handled the request under the Freedom of Information Act 2000 (FOIA) and disclosed some of the requested information, but withheld the remainder as personal data citing section 40(2) and additionally section 41(1) of the Act. The Commissioner finds that the Council should have dealt with the request under the Environmental Information Regulations (EIR). Having considered the case under regulation 13 of EIR the Commissioner finds that the withheld information is not personal data. The Commissioner also found that regulation 12(5)(d) 'confidentiality of proceedings' did not apply. The Commissioner has therefore ordered the Council to disclose the information. The Commissioner also noted a number of procedural breaches.

The Commissioner's Role

1. The Environmental Information Regulations (EIR) were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into the EIR.

Background

2. In 2009 the Olympic Delivery Authority (ODA) proposed putting a wind turbine on East Marsh in Hackney to generate local renewable energy as part of the legacy of the 2012 Olympic Games, thereby offering Hackney Council the opportunity to buy green energy for up to 25 years, cutting carbon emissions significantly and potentially saving money. The Council could also receive rent for the land the turbine would sit on which the Council could invest in sports and playing facilities on the Marshes. The Council ran a consultation exercise by way of a survey to gauge the views of local people on the proposal.
3. An IP address is also known as an "IP number" or simply an "IP," this is a code made up of numbers separated by three dots that identifies a particular device (computer, router or server) on the Internet. IP stands for internet protocol. Every device, requires an IP address to connect to the Internet. IP addresses consist of four sets of numbers from 0 to 255, separated by three dots. An Internet Service Provider (ISP) will assign either a static IP address (which is always the same) or a dynamic IP address, (which changes every time someone logs on). ISPs typically assign dial-up users a dynamic IP address each time they sign on because it reduces the number of IP addresses they must register. However, if connected to the Internet through a network or broadband connection, a static IP address may be more likely.

The Request

4. On 21 February 2010 the complainant requested the following information from the council:

'Please supply me with the following information in connection with the East Marsh wind turbine survey:

- *How many responses were there in total?*
- *How many were online responses and how many on paper?*
- *The main question on the survey gave 3 choices – what was the total vote for each choice?*
- *Were any submissions rejected? If so how many and for what reasons?*
- *What form of validation, if any, was performed to ensure multiple responses were not submitted by the same computer, or that the respondents were Hackney residents?*

- *Please supply me with the online survey data recorded, including the IP address from which the response was submitted and the option selected on the first page of the survey. You may omit the remainder of the survey responses if it is personal data. Please be aware that the Information Commissioner does not consider IP addresses to be personal data.'*

5. On 16 March 2010 the Council wrote to the complainant and disclosed the information in respect of parts 1, 2, 3, 4 and 5 of the request.
6. In respect of part 6 of the request the Council told the complainant that a full report of the consultation findings was available on its website but that in respect of the IP addresses of online respondents it was refusing to disclose them by relying on section 40(2) and section 41(1) of the FOIA.
7. The council re-sent the response again on 29 March as the complainant had not received it when it was initially sent on 16 March 2010.
8. On 29 March 2010 the complainant wrote to the Council and told them he would like to amend the request:

'I would like to amend the request as follows, which believe [sic] does not contravene any of the Data Protection Principles. I am also adding a further request for geographical location information.

- *Please provide a listing of the IP address used for each of the 685 online survey responses. These do not need to be related to any other information.*
 - *Please could you also provide, in a separate file, a listing of all the addresses provided in the survey response. These can have the street number and name removed, ie. Leaving area/city/postcode'*
9. On 28 April 2010 the Council wrote to the complainant and informed him that his correspondence of 29 March 2010 was being treated as a request for an internal review of its decision of 16 March 2010 and also a new request in respect of the request for addresses provided in the survey responses. In respect of the 'new' request the Council disclosed the information on addresses which included the street name, City/Town and the postal code.
 10. On 27 May 2010 the Council wrote to the complainant with the outcome of its internal review.

11. The Council told the complainant that it was maintaining its reliance on the stated exemptions in sections 40(2) and 41(1) of the FOIA but that it noted the complainant's reference to EIR in his correspondence and that should the information be considered environmental then the information would be exempt under regulation 13 of EIR for the same reasons provided for section 40(2) and 41(1).

The Investigation

Scope of the case

12. On 5 June 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 that:
 - he had modified his request in order to ensure that no privacy or Data Protection principles would be compromised;
 - that he did not accept that the guidance quoted from the Commissioner's draft Personal Information Online Code of Practice applied in the context of the information he had requested;
 - that he did not accept that IP addresses in isolation are personal data being that they are associated with pieces of electronic equipment which cannot be connected to an identifiable individual; and
 - that it was his view that there is no way to establish who was using computer(s) connected via the IP addresses requested in order to take part in the survey.

Chronology

13. The Commissioner wrote to the Council to ask for additional information about its handling of the request.
14. The Council provided the Commissioner with a sample copy of the withheld information together with additional arguments for its reliance on the cited exemptions under FOIA.
15. Following his analysis of the information the Commissioner notes that the Council disclosed the requested information at parts 1, 2, 3, 4 and 5 of the request of 21 February 2010 as well as the information from the additional request as detailed at paragraph 9 of this Notice. Accordingly, the scope of the Commissioner's investigation focussed on the handling of part 6 of the request:

'Please supply me with the online survey data recorded, including the IP address from which the response was submitted and the option selected on the first page of the survey. You may omit the remainder of the survey responses if it is personal data. Please be aware that the Information Commissioner does not consider IP addresses to be personal data';

as amended on 29 March 2010:

'I would like to amend the request as follows, which believe [sic] does not contravene any of the Data Protection Principles. I am also adding a further request for geographical location information.

Please provide a listing of the IP address used for each of the 685 online survey responses. These do not need to be related to any other information'.

16. Accordingly, the Commissioner focussed his investigation on the handling of the request as amended on 30 March 2010, namely the list of IP addresses of those responses to the East Marsh wind turbine survey not related to other information.

Analysis

Substantive Procedural Issues

Is the information environmental?

17. The Commissioner notes that although the Council handled the request under FOIA it did refer to the Environmental Information Regulations 2004 (EIR) in its internal review letter of 27 May 2010. However, the Council, having the opportunity to correct its original decision to handle the request under FOIA at that stage did not do so, instead referring to the potential that the information could be environmental.
18. Therefore during the course of his investigation the Commissioner considered whether the requested information was environmental information. He did so as it seemed to him that the withheld information was related to an environmental issue, namely a proposal to install a wind turbine in a green space. Having considered the detail before him, the Commissioner has determined that the information is environmental information as he considers that the council, in conducting the survey, is considering a measure that effects the environment. He considers the effect on the environment to be the move to a more pollution-free means of generating energy. Likewise he considers that the installation

of a wind turbine has an affect on the landscape. As the Council undertook a consultation exercise on the proposed measure the Commissioner considers that the consultation exercise is information on that measure.

19. The Commissioner therefore considers that the information requested falls within regulation 2(1)(c): *'measures (including administrative measure), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect these elements'*.
20. The Commissioner is satisfied that the Council, having dealt with the request under the Freedom of Information Act 2000 (FOIA), should have dealt with it under the Environmental Information regulations 2004 (EIR).
21. Accordingly, in this section of the Notice the Commissioner has conducted his analysis of the handling of the request under the Environmental Information Regulations 2004.

Exceptions

Regulation 13 – Personal information

22. The Commissioner notes that the Council applied section 40(2) of the FOIA to the withheld information, which states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the Act would breach any of the data protection principles or section 10 of the Data Protection Act 1998 ('the DPA').
23. Having already determined that the requested information is environmental information the Commissioner has considered the equivalent exception in the EIR, namely regulation 13.
24. Regulation 13 provides an exception for information which is the personal data of any third party, where disclosure would breach any of the data protection principles contained in the Data Protection Act 1998 ("DPA"). (The relevant sections of Regulation 13 are included in the legal annex attached to this Notice).
25. In order to rely on the exception provided by Regulation 13, the information being requested must therefore constitute personal data as defined by the DPA.

Is the requested information personal data?

26. As already stated in this Notice the withheld information in this case is a list of IP addresses not associated with any other information. The Commissioner having inspected a sample of the withheld information is satisfied that it is simply a list of IP addresses that can be presented unconnected to other information.
27. The Council stated that it considered the IP addresses to be personal data of the survey respondents and that disclosure of that information would breach the first data protection principle
28. The Commissioner must first consider whether the requested information is personal data. Personal data is defined in Section 1 of the DPA as follows:

“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.’

29. Secondly, if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the data protection principles under the DPA.
30. The first data protection principle states that:

‘Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

a) at least one of the conditions in schedule 2 is met, and

b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.’

31. In considering whether the information requested is “personal data”, the Commissioner has taken into account his own guidance on determining

whether information is personal data¹. The two main elements of personal data are that the information must “relate to” a living person, and that person must be identifiable. Information will “relate to” a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way. The Commissioner has also considered the guidance he has provided in the Personal Information Online Code of Practice². Page 9 of the Code provides good practice advice about when the DPA applies to information processed online and non-obvious identifiers, such as cookies and IP addresses.

32. The Commissioner acknowledges that the Council drew on the Code when considering the request and ICO provided general advice via its helpline based on the Code. However, the Code contains good practice advice and does not contain a definitive statement that all IP addresses should be treated as personal data. The Commissioner accepts that in some contexts IP addresses will be personal data but the focus must be whether the IP addresses are personal in the circumstances of this case.
33. The Commissioner accepts the possibility that some of the IP addresses held by the Council may be personal data in their hands, as the Council have a greater ability to link the data to other information, such as postcodes submitted.
34. But the correct test to apply in this case is not whether the personal data to be disclosed is personal data in the hands of the data controller. The focus must be on the process of disclosure and whether any member of the public could identify an individual from the information. In taking this position the Commissioner is following the approach taken by the High Court in its recent judgment in the case of *Department of Health v Information Commissioner*³ and the Upper Tribunal in *All Party*

1

http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/personal_data_flowchart_v1_with_preface001.pdf

2

http://www.ico.gov.uk/for_organisations/data_protection/topic_guides/~media/documents/library/Data_Protection/Detailed_specialist_guides/personal_information_online_cop.ashx

³ Department of Health, R (on the application of) v Information Commissioner [2011] EWHC 1430 (Admin) (20 April 2011)

*Parliamentary Group on Extraordinary Rendition v Information Commissioner and the Ministry of Defence*⁴

35. The Commissioner has therefore considered whether any member of the public could identify an individual through the IP addresses. When considering the means available to identify the Commissioner has considered the guidance provided by recital 26 of the European Data Protection Directive⁵:

'(26) Whereas the principles of protection must apply to any information concerning an identified or identifiable person; whereas, to determine whether a person is identifiable, account should be taken of all the means likely reasonably to be used either by the controller or by any other person to identify the said person; whereas the principles of protection shall not apply to data rendered anonymous in such a way that the data subject is no longer identifiable; whereas codes of conduct within the meaning of Article 27 may be a useful instrument for providing guidance as to the ways in which data may be rendered anonymous and retained in a form in which identification of the data subject is no longer possible;' (emphasis added)

36. As described at paragraph 3 of this notice an IP address is made up of a series of numbers. The Commissioner notes that there are 'look up' websites⁶, where an IP address can be entered and a search for additional information about an the IP address can be conducted. Location data often provided in this additional information is commonly known as 'geolocation information'. The Commissioner finds that such searches are not accurate enough at the present time to closely identify the actual location or user of the device linked to the IP address. He notes that one 'look up' site states:

Determining the physical location down to a city or ZIP code, however, is more difficult and less accurate because there is no official source for the information, users sometimes share IP addresses and Internet service providers often base IP addresses in a city where the company is basing operations.

⁴ APG v Information Commissioner & The Ministry of Defence [2011] UKUT 153 (AAC) (15 April 2011)

⁵ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data

⁶ For example <http://www.whois.net/> and <http://whatismyipaddress.com/>

Accuracy rates on deriving a city from an IP address fluctuate between 50 and 80 percent, according to DNS Stuff, a Massachusetts-based DNS and networking tools firm⁷.

37. However the Commissioner notes that in future, with technological advances it may be possible that resources such as geolocation information could be used to identify a user of an IP address. It is therefore important this decision is viewed as on the circumstances of the case.
38. As already described at paragraph 3 of this Notice, the characteristic of an IP address can be either static or dynamic and the addresses are linked to devices not people. In the case of dynamic IP addresses assigned to a device, the address may change over time when a device is used. The Commissioner has considered whether this characteristic of an IP address would provide some additional distance between the IP address and the identity of its user and concludes that it is likely that this would be the case. The Commissioner also notes that an IP address is more likely to be personal data if it relates to a PC or other device that has a single user; this is another variable that means the identification of individuals is less likely. The Commissioner also notes that finding out the name of an organisation whose IP address was used to submit a consultation response is not the same as revealing personal data.
39. Whilst the Commissioner was drafting this notice he noted the High Court issued its judgment on the judicial review of Digital Economy Act 2010 brought by British Telecommunications and TalkTalk⁸. The Court concluded that IP address data processed by copyright owners would be personal data (paragraph 157). Having considered the judgment the Commissioner finds that the judgment is confined to the circumstances of the case and does not have wider application or set a wider precedent. In the scenario before the Court it was clear that copyright owners have the means and motivation to identify subscribers, who could be identified through the IP address. This scenario is quite different to the case the Commissioner has before him, there is little evidence to suggest legal means and the motivations for identification are in any way comparable.
40. As already stated, the request in this case is for IP addresses in isolation, unlinked to the survey submissions. This is another important

⁷ <http://whatismyipaddress.com/geolocation-accuracy>

⁸ British Telecommunications Plc & Anor, R (on the application of) v The Secretary of State for Business, Innovation and Skills [2011] EWHC 1021 (Admin) (20 April 2011)

factor that clearly makes identification less likely. All disclosing the IP addresses would reveal is that IP address xxx.xxx.xxx.xxx submitted a response to a windfarm consultation on the Olympic site. This additional information is very limited. The Commissioner finds that other information about the survey the Council disclosed to the complainant could not be linked to the IP addresses and this does not significantly increase the risk of identification.

41. The Commissioner considers the information to be anonymous and therefore it would not constitute personal data. Accordingly the Commissioner finds that information can be disclosed without having to consider the data protection principles.

Information provided in confidence

42. The Council asserted that if the request was to be considered under the EIR regulation 12(5)(d) applied and a parallel between this exemption and section 41 of FOIA 'information obtained in confidence' could be drawn. This not a submission the Commissioner accepts as the provisions are distinctly different. The Commissioner interprets "proceedings" as possessing a certain level of formality (i.e. they are unlikely to encompass every meeting held / procedure carried out by a public authority). They will include (but may not be limited to):

- legal proceedings;
- formal meetings at which deliberations take place on matters within the public authority's jurisdiction; and
- where a public authority exercises its statutory decision making powers.

Public authorities can only refuse to disclose information relating to proceedings where the confidentiality of those proceedings is provided by law.

41. The Commissioner find that the Council have not identified relevant proceedings under Regulation 12(5)(d) and the exception is not engaged.

The Decision

43. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the EIR.
44. Since the Council should have made the information available, it breached:

- regulation 5(1) for not making the information available on request; and
 - regulation 5(2) for failing to make the information available, within 20 working days after the receipt of the request.
45. Since the Council should have considered the request under EIR rather than FOIA, it breached:
- regulation 11(3) for failing to consider the representations of the complainant who requested a review under EIR;
 - regulation 11(4) for failing to consider the review under EIR no later than 40 working days after the date of receipt of representations;

Steps Required

46. The Commissioner requires the public authority to take the following steps to ensure compliance with the EIR:
- to make available to the complainant the list of IP addresses for the East Marsh wind turbine survey.
47. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

48. 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

49. 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.

Website: www.informationtribunal.gov.uk

50. 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.
51. 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 23rd day of June 2011

Signed

Steve Wood
Head of Policy Delivery
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Legal Annex

Environmental Information regulations 2004

Regulation 5 - Duty to make available environmental information on

Regulation 5(1)

Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.

Regulation 5(2)

Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.

Regulation 13 - Personal data

Regulation 13(1)

To the extent that the information requested includes personal data of which the applicant is not the data subject and as respects which either the first or second condition below is satisfied, a public authority shall not disclose the personal data.

Regulation 13(2)

The first condition is –

- (a) in a case where the information falls within any paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene –

- (i) any of the data protection principles; or
- (ii) section 10 of the Act (right to prevent processing likely to cause damage or distress) and in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it; and

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998(a) (which relates to manual data held by public authorities) were disregarded.

Data Protection Act 1998

SCHEDULE 1

First data protection principle

Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

SCHEDULE 2

Conditions relevant for purposes of the first principle: processing of any personal data.

Condition 1 provides that –

The data subject has given his consent to the processing.

Condition 2 provides that –

The processing is necessary—

(a) for the performance of a contract to which the data subject is a party, or

(b) for the taking of steps at the request of the data subject with a view to entering into a contract.

Condition 3 provides that –

The processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract.

Condition 4 provides that –

The processing is necessary in order to protect the vital interests of the data subject.

Condition 5 provides that –

The processing is necessary—

- (a) for the administration of justice,
- (b) for the exercise of any functions conferred on any person by or under any enactment,
- (c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department, or
- (d) for the exercise of any other functions of a public nature exercised in the public interest by any person.

Condition 6 (1) provides that –

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

Condition 6 (2) provides that –

The Secretary of State may by order specify particular circumstances in which this condition is, or is not, to be taken to be satisfied.

Freedom of Information Act 2000

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 2(3) provides that –

"For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption –

- (a) section 21
- (b) section 23
- (c) section 32
- (d) section 34
- (e) section 36 so far as relating to information held by the House of Commons or the House of Lords
- (f) in section 40 –
 - (i) subsection (1), and
 - (ii) subsection (2) so far as relating to cases where the first condition referred to in that subsection is satisfied by virtue of subsection (3)(a)(i) or (b) of that section,
 - (iii) section 41, and
 - (iv) section 44"

Section 40 - Personal information.

Section 40(1) provides that –

"Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject."

Section 40(2) provides that –

“Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.”

Section 40(3) provides that –

“The first condition is-

- (c) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - 1. any of the data protection principles, or
 - 2. section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (d) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.”

Section 40(4) provides that –

“The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).”

Section 40(5) provides that –

“The duty to confirm or deny-

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

3. the 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 the Act were disregarded, or

4. 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)."

Section 40(6) provides that –

"In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded."

Section 40(7) provides that –

"In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;

"data subject" has the same meaning as in section 1(1) of that Act;

"personal data" has the same meaning as in section 1(1) of that Act."

Section 41 - Information provided in confidence.

Section 41(1) provides that –

"Information is exempt information if-

(g) it was obtained by the public authority from any other person (including another public authority), and

(h) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person."

Section 41(2) provides that –

“The duty to confirm or deny does not arise if, or to the extent that, the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) constitute an actionable breach of confidence.”