

## **Freedom of Information Act 2000 (Section 50)**

### **Decision Notice**

**Date: 28 March 2011**

**Public Authority:** The Information Commissioner  
**Address:** The Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

### **Summary**

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The complainant requested that the Information Commissioner's Office ('the ICO') provide him with the contents of the Register of Data Controllers in any usable format. The ICO refused the request under section 21(1) of the Freedom of Information Act 2000 (the 'Act') as the information was available in the online Data Protection Public Register, as maintained by ICO. The complainant has argued that the ICO has an obligation to provide the requested information in an electronic format which can be used for research. He quoted another case where the Commissioner ordered the disclosure of electronic data under the Environmental Information Regulations 2004 (the 'EIR'). The Commissioner does not consider that this other case is relevant to this one and is satisfied that section 21(1) was correctly applied.

### **The Commissioner's Role**

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

## The Request

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2. On 30 April 2010 the ICO received a request for information from the complainant. He requested the following:

*'I have read your office decision FS50163282 of 29th March 2010 relating to access to electronic sources with much interest.*

*I wish to make a Freedom of Information request to access the contents of the Register of Data Controllers for research purposes. I am happy to receive this in any usable format - DVD, mag tape, etc. - in any of the standard database formats. I also wish any documentation which is required for me to make sense of the logical structure of the data.*

*I believe that the preparation of a copy for my research use should take less than 12.5 hours and thus 'would not constitute a significant burden on' the ICO or its sub-contractors'*

3. The Data Protection Public Register is a public register of data controllers which is maintained by the ICO. Each register entry includes the name and address of the data controller and details about the types of personal information they process. A sample entry can be found on the ICO website at the following link:

<http://www.ico.gov.uk/ESDWebPages/SearchSample.html>

4. On 1 June 2010 the ICO informed the complainant that the requested information was exempt from disclosure under section 21 of the Act.
5. The ICO explained that he was obliged under section 19 of the Data Protection Act 1998 to maintain a register of data controllers and make this available for inspection by the public. The register is available electronically online for free and is provided as part of the publication scheme of the ICO. The Register can be found at:

<http://www.ico.gov.uk/ESDWebPages/search.asp>

6. The ICO explained that the requested information was accessible via the online register. It can be extracted in full by performing separate searches using, for example, postcode information or another identifier.

7. However, the ICO appreciated that this would be extremely time consuming. Therefore, to provide assistance (and as a discretionary disclosure) he provided a complete list of data controllers and reference numbers to the complainant. This list was provided in text format (compressed to reduce the size of the file) and included names and reference numbers. The complainant was informed that any further information could be obtained by searching the online register using the details provided.
8. The ICO explained that section 11(1)(a) of the Act allows an applicant to ask for a copy of information in permanent form or in electronic form. However it does not allow an applicant to specify down to the next level, such as the specific software format (or, in this case, that the register is provided as a usable database).
9. The complainant had specified that he wished to receive the information in an electronic form. The ICO had responded and indicated the way the information could be accessed electronically.
10. The ICO informed the complainant that the register changes on an almost daily basis and so this list constitutes a snapshot in time. He explained that the ICO would no longer hold a copy of the exact information held on the date of the request as the register is subject to routine amendments, additions and deletions that would be made regardless of the receipt of the request.
11. Finally, the ICO noted that the complainant had stated that he required this information for 'research purposes'. Although the ICO was under no requirement to supply this information under the Act, the ICO asked the complainant to inform him if the above information was not sufficient. He would forward any further enquires to the ICO's Notification and IT departments (as appropriate), who may be able to provide additional materials, should they be of assistance.
12. On 2 June 2010 the complainant requested an internal review of this response. He explained that the information as provided did not allow data mining for the purposes of his research methodology as a simple listing as provided was not suitable. He therefore did not believe that the information was 'reasonably accessible'. He argued that the ICO was applying a different standard to his own data than was applied to the research data in the Commissioner's Decision Notice for the case FS50163282, dated 29 March 2010.
13. The complainant confirmed he required a snapshot of the register.

14. The complainant informed the ICO that he understood that the Commissioner was a public body as far as The Re-use of Public Sector Information Regulations 2005 are concerned, and that he intended to make a parallel request for access for re-use under those regulations should his request prove unsuccessful. He asked the ICO to provide him with a copy of his re-use conditions.
15. On 2 June 2010 the ICO sent the complainant a link to a copy of the ICO's re-use conditions on the ICO website.
16. On 25 June 2010 the ICO provided the complainant with an internal review. He upheld the first response and explained that he considered the information requested was exempt under section 21 of the Act. It was reasonably accessible by virtue of the fact that it is published on the ICO website in accordance with ICO's duty under section 19 of the Data Protection Act 1998 and the ICO's publication scheme under section 19 of the FOI Act.
17. The Commissioner confirmed that the list that had been sent to the complainant, which he had said was not suitable for his purpose, was an attempt to be helpful rather than a formal response under the Act.
18. The Commissioner explained the reasoning for his conclusion.

## **The Investigation**

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### **Scope of the case**

19. On 21 July 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 his argument that the issue of data protection was a contentious topic and was a valid area for research in public policy making. He pointed out that the ICO stated that it commissioned research in this area and argued that such research should be encouraged and should be carried out in an independent manner. The complainant argued that data mining was a useful research technique to determine what sort of data was being collected and processed in the UK.
20. The complainant argued that ICO had taken a very limited approach to the definition of information and that the content of electronic information ought to be provided in a fully accessible manner.
21. The complainant also argued that the Decision Notice for the case FS50163282 was relevant to his request.

22. Within the scope of this case, the Commissioner will therefore consider the application of section 21(1) to this request and the relevance of the conclusions provided in the Decision Notice for the case FS50163282.

## **Chronology**

23. On 12 January 2010 the Commissioner informed the complainant and the ICO that he would proceed to preparing a Decision Notice on this matter.

## **Analysis**

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### **Exemptions**

#### **Section 21(1)**

24. Section 21(1) can be found in the Legal Annex at the end of this Notice.
25. Section 21(1) provides that information which is reasonably accessible to the applicant otherwise than under section 1 of the Act (i.e. on request) is exempt information. This is an absolute exemption so not subject to the public interest test under section 2.
26. The Commissioner has explained to the complainant that the combined effect of section 21(2)(b) and section 21(3) is generally taken to be that information published in accordance with a public authority's publication scheme is to be taken to be reasonably accessible. In this case the Commissioner was satisfied that the section 21 exemption stands as he finds that the information is properly published as part of the section 19 publication scheme of the ICO and is therefore reasonably accessible.
27. The complainant disagrees with this because the information as provided does not allow data mining for the purposes of his research methodology. However, the Commissioner has explained that there is no obligation upon the ICO to provide the information to the complainant under the Act for such purposes. The information the complainant requested is available to him. The Act does not require a public authority to provide an applicant with information which is already published in a format required by the applicant in order that he (or any other member of the public) may use it in a particular way or for a particular purpose.
28. Section 11(1)(a) of the Act requires a public authority to give effect to any preference expressed by the applicant for communication of the information requested in a particular form, however, that provision does not apply where there is no duty to comply with the request on the basis that the information is exempt, as it is in this case. The Commissioner

considers that the ICO has discharged its duty by making the information reasonably accessible on its website.

29. The complainant has argued that in its current form the information is not 'fully accessible' under the Act. He believes the ICO has taken a limited approach to the definition of information and one which seems to deny the development of digital technology. He has argued that the ICO claims the information is accessible but that access to the content of the ICO's register is constrained by the manner in which it has set up its database. It is not sufficient to say that the information is accessible; given current digital technology, the ICO should make the content of the database fully available so that it can be electronically accessed, as one would expect in a digital age.
30. The complainant has quoted Article 3(a) of the EU Regulation on public access to documents (1049/2001) which states that in the current technical framework, a document is "any content whatever its medium". Likewise the European Ombudsman in Public Access to Information in EU Databases stated that the definition of a document "implies a 'content' contained in the medium". The Commissioner finds that these arguments by the complainant are misplaced, the European Regulation and caselaw he cites only have effect on European institutions and the rights and definitions contained in the Regulation are expressed in quite different terms to the UK Freedom of Information Act. There is no reasonable case that the Commissioner should take them into account when interpreting the Act in the context of this request.
31. The complainant has argued that the definition of information should be at least as broad as that of a document.
32. The Commissioner appreciates the argument that in a digital age, it is desirable to make information available electronically in a format which is accessible via current technology.
33. In view of this, the ICO is currently in the process of considering the provision of the register of data controllers in a re-usable, downloadable format. It is conducting a small scale Privacy Impact Assessment which includes consulting stakeholders on the proposal. Further details are in the "other matters" section below.
34. However, irrespective of the outcome of this consultation, the Act does not currently require a public authority to provide an applicant with information which is already published, in a format required by that applicant in order that he (or any other member of the public) may use it in a particular way or for a particular purpose.

35. There is no obligation upon the ICO to provide information to the complainant under the Act in a format for the specific purpose of data mining for research.
36. The Commissioner therefore considers that the information required is reasonably accessible to the complainant and is therefore exempt under section 21(1) of the Act.

### **Comparison to case reference FS50163282**

37. The Decision Notice for case FS50163282 concerned a request for electronic data relating to tree ring research. This was refused under section 12 of the Act and then under the Environmental Information Regulations 2004 (the 'EIR'). The regulations applied were:
  - 12(4)(d) - information that is unfinished or in the course of completion
  - 12(4)(b) - request is manifestly unreasonable
  - 12(5)(c) - intellectual property rights
  - 12(5)(e) - commercially confidential
38. The Commissioner in that case found that none of the exceptions were engaged and that the information should be disclosed. The complainant has argued that as the public authority was required to produce raw data in electronic format in that instance, the same should be applied to this case.
39. The complainant has argued that the ICO is applying a different standard to his case than that applied in the tree ring data case. However, the Commissioner has explained that there are some very important differences between the cases.
40. The Commissioner explained that information in the present case is not environmental, so access is governed by the provisions of the Act, not the EIR. The Act provides an absolute exemption for information which is otherwise available (section 21, as discussed above.) The EIR contains no equivalent absolute exemption.
41. The Act also requires a public authority to adopt a publication scheme as a framework for proactive disclosure of information (section 19). The EIR do not. The subsections of section 21 make a link between information published in accordance with a publication scheme and the absolute exemption for information available other than on request.
42. With regard to a request for information in a particular format, regulation 6 of the EIR makes provision for this. The provision is broadly the same in effect as that in section 11 of the Act. However, regulation 6(1)(b) explicitly excludes the duty to comply with the form and format

request if the information is already publicly available and easily accessible to the applicant by another means.

43. In addition, in this present case the public authority (the ICO) already publishes the information requested, so it is available other than on request. In the tree ring data case the public authority did not already publish the information requested. Therefore the request had to be determined in accordance with the EIR regime, in particular by reference to the exceptions provided by those regulations and the public interest test to which those exceptions are subject.
44. As the complaint to the ICO about the public authority's handling of that case was therefore determined in accordance with the EIR and not the Act, the Commissioner has concluded that the legal basis for the decision in each case is different and the pertinent facts in each case are also different.
45. In this case the request is not for environmental information and the EIR therefore do not apply.
46. The complainant has argued that he does not wish his request to be treated as an EIR request. He argued that in the tree ring data case once the decision was made that the public authority held the information and that it should be made available, then the question of how much time was involved in complying with the request was taken into account. He argued that the ICO must have a process in place for the backup and restoration of its database and that the issue of cost should therefore not exist.
47. However, the Commissioner is satisfied that the issue of cost is not relevant in this case. Unlike the tree ring data case, the requested information is available to the complainant and so is exempt under section 21(1). The question of cost therefore does not arise.
48. The complainant has argued that in the tree ring data case there was also a requirement for the public authority to produce raw data in an electronic format. He argued that if the Commissioner required access to electronic data under EIR regulation 6(1) then he did not see why it should not be made available under section 11.
49. Regulation 6(1)(b) explicitly excludes the duty to comply with the form and format request if the information is already publicly available and easily accessible to the applicant by another means. Likewise section 11(1)(a) of the Act (which requires a public authority to give effect to any preference expressed by the applicant for communication of the information requested) does not apply when the information is exempt. In this present case the public authority (the ICO) already publishes the information requested, so it is available other than on request. Neither



section 11 nor regulation 6(1) is relevant to this case. It is therefore not relevant that in the tree ring data case the Commissioner required access to electronic data under EIR regulation 6(1).

50. In addition, the complainant has argued that in the tree ring data case there was held to be no intellectual property right (particularly database rights) which would be affected by making available the tree ring data. The complainant assumed that this would hold with respect to the Register.
51. The Commissioner does not consider these arguments to be relevant to this case. The question of intellectual property rights has not arisen.
52. Finally, the complainant has quoted Sir Muir Russell in 'The Independent Climate Change Emails Review, July 2010'. He noted that modern technologies permit the acquisition and manipulation of very large databases and that to enable proper validation of conclusions, "such datasets must be made freely available, along with details of the associated computational manipulation". The complainant has argued that this clearly set the policy context for expectations of access to data in scientific research.
53. This quote was not in existence at the time of the request; however it may reflect the general support for the reusability of data and greater openness which was apparent in April 2010.

## **Conclusions**

54. The complainant has argued that the general tenor of openness which brought in the Act was not based upon one technical environment.
55. The Commissioner agrees that the Act is intended to provide access to recorded information and to promote a duty of openness within public authorities. However, the Act does provide for exemptions to that general duty and in this instance section 21 provides that a public authority does not have to provide the requested information if it is reasonably accessible to the applicant via other means.
56. The Commissioner appreciates that the information which is accessible is not in the format required by the complainant but would reiterate that the Act places him under no obligation to provide the information in the format required.

57. The Commissioner also notes that the Protections of Freedoms Bill<sup>1</sup> (published February 2011) will amend section 11 and 19 of the Act to add further rights in terms of reusable formats when datasets are requested. Although this was not in existence at the time of the request, the amendment confirms that the Commissioner's position that the Act as currently drafted does not contain the rights the complainant claims.
58. The Act is concerned with the provision of information and this is not the same as the provision of the content of documents in a particular format or the provision of data which may be processed by others. The Commissioner therefore is satisfied that he was correct to apply section 21(1) to this request and that he has fulfilled his obligations under the Act. He does not consider that he has a duty to provide data in a specific electronic format when the information required is available to the applicant via other means.

## **The Decision**

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59. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

## **Steps Required**

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60. The Commissioner requires no steps to be taken.

## **Other matters**

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61. Although it does not form part of this Decision Notice, the Commissioner wishes to note that the ICO is in the process of considering the provision of the register of data controllers in a re-usable, downloadable format. The Commissioner recognises that there are some benefits to the register being available in this format, however he is also conscious that there are data protection implications. The ICO is therefore currently conducting a small scale Privacy Impact Assessment which includes consulting stakeholders on the proposal.
62. There is more information available on the ICO website and the complainant has been invited to input his views on the proposal. The

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<sup>1</sup> <http://services.parliament.uk/bills/2010-11/protectionoffreedoms.html>

consultation closes at the end of March 2011, when responses will be collated and analysed, before a decision is made. Details of the consultation can currently be found on the website at:

[http://www.ico.gov.uk/about\\_us/consultations/our\\_consultations.aspx](http://www.ico.gov.uk/about_us/consultations/our_consultations.aspx)

## Right of Appeal

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63. 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)

64. 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.

65. 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 28<sup>th</sup> day of March 2011**

**Signed** .....

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

## Legal Annex

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**Section 1(1)** provides that –

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

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

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

### **Information Accessible by other Means**

**Section 21(1)** provides that –

“Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.”

**Section 21(2)** provides that –

“For the purposes of subsection (1)-

(a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and

(b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.”

**Section 21(3)** provides that –

“For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.”