

DATA PROTECTION ACT 1998
SUPERVISORY POWERS OF THE INFORMATION
COMMISSIONER

ENFORCEMENT NOTICE

DATED: 25 JANUARY 2012

To: Staffordshire County Council

Of: County Buildings
Martin Street
Stafford
Belfast
ST16 2LH

1. Staffordshire County Council is the data controller, as defined in section 1(1) of the Data Protection Act 1998 (the "Act"), in respect of the processing of personal data carried out by Staffordshire County Council and is referred to in this notice as the "data controller". Section 4(4) of the Act provides that, subject to section 27(1) of the Act, it is the duty of a data controller to comply with the data protection principles in relation to all personal data with respect to which he is the data controller.
2. The Act came into force on 1 March 2000 and repealed the Data Protection Act 1984 (the "1984 Act"). By virtue of section 6(1) of the 1998 Act, the office of the Data Protection Registrar originally established by section 3(1) (a) of the 1984 Act became known as the Data Protection Commissioner. From 30 January 2001, by virtue of section 18(1) of the Freedom of Information Act 2000 ("FOIA") the Data Protection Commissioner became known instead as the Information Commissioner (the "Commissioner").
3. The Commissioner has considered a request for assessment made under section 42 of the Act by [REDACTED] (the "individual"). The request for assessment concerned the failure by the data controller to respond within the prescribed period of 40 days to a subject access request made in compliance with the requirements of section 7 of the Act by

[REDACTED] on 18 August 2010.

4. The Commissioner has considered a report on the issues arising out of the request for assessment referred to in paragraph 3 above. The Commissioner has further considered the data controller's compliance with the provisions of the Act in light of this matter.
5. Section 4(4) of the Act provides that subject to section 27(1), it is the duty of a data controller to comply with the data protection principles in relation to all personal data with respect to which he is the data controller. The relevant provisions of the Act are the Sixth Data Protection Principle and section 7 of the Act.
6. The Sixth Data Protection Principle provides, at Part I of Schedule 1 to the Act, that:

"Personal data shall be processed in accordance with the rights of data subjects under the Act".

Paragraph 8(a) of Part II of Schedule 1 to the Act further provides that:

"A person is to be regarded as contravening the sixth principle if, but only if, he contravenes [amongst other things] section 7 by failing to supply information in accordance with that section."

7. Section 7 of the Act provides, amongst other things, as follows:

Subsection (1)

"Subject to the following provisions of this section and to sections 8 and 9, an individual is entitled-

- (a) to be informed by any data controller whether personal data of which that individual is the data subject are being processed by or on behalf of that data controller,
- (b) if that is the case, to be given by the data controller a description of-
 - (i) the personal data of which that individual is the data subject,

- (ii) the purposes for which they are being or are to be processed, and
 - (iii) the recipients or classes of recipients to whom they are or may be disclosed,
- (c) to have communicated to him in an intelligible form-
- (i) the information constituting any personal data of which that individual is the data subject, and
 - (ii) any information available to the data controller as to the source of those data, ..."

15. The Commissioner is of the view that, in respect of the individual referred to in paragraph 3 above, the data controller has contravened the Sixth Data Protection Principle in relation to the right of subject access at section 7 of the Act in that it failed to inform him, without undue delay, whether personal data of which he was the data subject were being processed by it or on its behalf. Furthermore where that was the case, the data controller failed, without undue delay, to communicate to him in an intelligible form such information as may constitute such personal data.

16. The Commissioner has also considered the representations made by the data controller in response to the Preliminary Notice dated 11 November 2011 regarding the withheld information. The Commissioner is satisfied that the information withheld on the basis that it is not the individual's personal data are not required to be released to the individual. The Commissioner is also satisfied that it would be unreasonable in all the circumstances to supply the individual with the information containing third party data. Therefore the information that should be released to the individual are as indicated in the document attached to this Notice as Annex 1 other than where redactions have been indicated as acceptable.

17. The Commissioner considered, as he is required to do under section 40(2) of the Act when deciding whether to serve an Enforcement Notice, whether any contravention has caused or is likely to cause any person damage or distress. The Commissioner took the view that in the event of the data controller failing to comply with the subject access request

referred to in paragraph 3 above that damage or distress to an individual is likely. This is as a result of them being denied the opportunity of correcting inaccurate personal data about them, which may be processed by the data controller, because they are unable, within the statutory timescale, to establish what personal data are being processed. In any case the Commissioner considers that the right of access to one's own personal data is a fundamental element of the Act and needs to be enforced even if damage or distress is not immediately evident.

18. The Commissioner has further taken account of the effect of the incorporation in English law of the European Convention on Human Rights ("ECHR"), by virtue of the Human Rights Act 1998, in deciding whether or not to serve an Enforcement Notice. In particular, the Commissioner is mindful of the provisions of Article 8 of the ECHR in that the individual referred to in paragraph 3 above has the right to respect for private and family life, home and correspondence which has been unlawfully interfered with by reason of the failure of the data controller to respond to his subject access request in compliance with the Act.

In view of the matters referred to above the Commissioner hereby gives notice that, in exercise of his powers under section 40 of the Act, he requires that the data controller shall within 35 days of the date of this Notice:

- (1) Supply the individual referred to in paragraph 3 above with a copy of the document in Annex 1, attached to this Notice, redacted as indicated.**

Right of Appeal

There is a right of appeal against this Notice to the First-tier Tribunal (Information Rights), part of the General Regulatory Chamber. Information about appeals is set out in the attached Annex 2.

Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Notice is served. If the Notice of Appeal is served late the Tribunal will not accept it unless it is of the opinion that it is just and right to do so by reason of special circumstances.

Dated the 25th day of January 2012

Signed:

David Smith
Deputy Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF